



W.P.(MD)No.5138 of 2015

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.11.2022**

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.5138 of 2015

M.Velmurugan

... Petitioner

Vs.

1. The Director General of Police,
Kamarajar Salai,
Mylapore,
Chennai – 4.

2. The Deputy Inspector General of Police,
Dindigul Range,
Dindigul.

3. The Superintendent of Police,
Theni District,
Theni.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to revise the petitioner's seniority thereby upgrading him as Grade-I Police constable, Head Constable on completion of 10th and 15th



W.P.(MD)No.5138 of 2015

years and upgraded as special sub-Inspector of police on completion of 25 years of service viz., 25-05-2013 and also upgrade to the higher posts notionally in the light of Government orders and order made in W.P.NO. 11544 to 11550 of 2012 dated 28.06.2012 on the file of the Hon'ble Principal Seat at Madras on the basis of the petitioner's representation dated 25.01.2015.

For Petitioner : Mr.M.Saravanakumar

For Respondents : Mr.C.Baskaran
Government Advocate

ORDER

This writ petition is filed for Writ of Mandamus, directing the respondents to grant Sub-Inspector of Police on completion of 25 years of service as on 25.05.2013.

2. The petitioner was enlisted as Grade II Police Constable on 25.05.1988 and thereafter, promoted as Grade I Constable on 05.01.2005 and then promoted as Head Constable on 05.01.2005. The petitioner has put in 27 years of service and meritorious and an awardee. The



W.P.(MD)No.5138 of 2015

contention of the petitioner is that due to some family problems he had committed some lapses in his service by absenting himself without proper intimation. However, the petitioner submitted through Telegram for extending the leave. The respondents have considered the leave period from 25.12.1998 to 08.03.1999 as unauthorized absence for which charges under 3(a) was confirmed and the punishment of black mark was granted to the petitioner. Again, the petitioner absented from 20.04.2000 to 30.05.2000 for taking medical treatment to his mother. The respondents confirmed charges under 3(b) and awarded punishment of reduction in Time Scale of pay by one stage for one year without cumulative effect. During the year 2001, the Hon'ble Chief Minister of Tamil Nadu observed that a large number of police personnel are aggrieved for want of even one stage promotion in their entire carrier due to the stigma of minor mistakes they were not granted promotions. Therefore, policy decision was taken to cancel the minor punishment awarded to them.

3. The Director General of Police, vide proceedings, dated

3/12



W.P.(MD)No.5138 of 2015

26.09.2002 issued instructions to all Superintendent of Police and Deputy Inspector General to undertake a review of all punishments in which minor punishment were awarded and which are barring the promotions, such minor punishments bar for promotions may be cancelled suo motu under Rule 15 A1 (III) of TNPSS D & A Rules by the Appellate Authority. Since there was stagnation in the post of Grade II and Grade I Police Constable, there was no time bound promotions which were affecting their rights. Therefore, the first respondent herein granted upgradation of Police Constables. Thereafter, the Government had formulated the upgradation scheme in a time bound manner, in respect of Grade II Police Constables those who are completed 10 years of service were ordered to be upgraded as Grade I Police Constables and Grade I Constables who had completed 5 years of service were upgraded as Head Constables. In consensus with the Government Order and with concurrence of the Finance Department, the Home Secretary issued order in G.O.Ms.No.1247 Home (Police – V) Department, dated 28.10.2014 implementing the above time bound promotions.



W.P.(MD)No.5138 of 2015

4. Following the above orders, the Government has granted promotions to various Police Constables and upgraded them as Head Constables with effect from 25.07.2000 instead of 22.07.2002. Based on the above scheme, the petitioner is entitled to actual promotion as Grade I Police Constable on 08.10.1994 and Head Constable as 05.10.2005. If this length of service is taken into account, the petitioner is having 27 years of service. Hence, the petitioner is claiming to grant Special Sub Inspector of Police. But respondents denied by stating that the petitioner was undergoing punishment for two spells of unauthorized absence and hence the petitioner was granted promotion at the appropriate time and the petitioner is not entitled to promotion prior to that period. The petitioner has submitted a petition to grant promotion which was rightly rejected by quoting various procedures. Aggrieved over the denial of promotion the present writ petition is filed.

5. The learned Government Advocate submitted that time bound promotion of Police Constables were considered by the Hon'ble Full Bench Court in W.P.(MD)No.3748 of 2019, vide order, dated

5/12



W.P.(MD)No.5138 of 2015

04.02.2022 and it has been declared that the candidates are not entitled for time bound promotion and the promotion should be based on merits. Hence, the learned Counsel submitted that the petitioner is not entitled to promotion.

6. Heard Mr.Saravanakumar, learned Counsel appearing for the petitioner, Mr.C.Baskaran, learned Government Advocate appearing for the respondents and perused the records.

7. The Learned Government Advocate submitted that the petitioner is not entitled to automatic upgradation since the Hon'ble Full Bench has rendered that the upgradation should be based on merits. Since the petitioner is seeking upgradation for the past period, this Court is of the considered opinion that the petitioner is entitled to upgradation.

8. It is seen from the rival submissions that the petitioner had five punishments out of which two punishments are major. The contention of the respondents is that, if the petitioner's punishments are



W.P.(MD)No.5138 of 2015

taken into account, the petitioner is not entitled to the time bound promotion since there was a currency of punishment. The respondents counter affidavit is extracted hereunder:

“With regard to the averments made in para 9 to 11 of the affidavit, it is submitted that all the punishments earned by the petitioner are not minor, since out of 5 punishments, 02 punishments were awarded for major delinquency committed by the petitioner. It is also submitted that any punishment will be cancelled by the competent authority, only on the Appeal Petition/ Mercy Petition, preferred by the delinquent. In this regard, the petitioner had preferred only one Mercy Petition against the punishment awarded in PR.No.34/2000 u/r 3(b) and the same was also rejected by the competent authority. Hence, “No” punishment has been cancelled. As per G.O.Ms.No. 844, Home (Pol.V) Dept, dated 03.06.1997 and G.O. Ms.No.15, Home (Pol.V) Department, dated 07.01.2010, the petitioner is eligible for upgradation as Gr.I.PC.(28.11.1998) on completion of 10 years of service as Gr.II.PC, as Head Constable on completion of 5 years of service as Gr.I PC. (28.11.2003) as well as total service of 15 years and as SSI. On completion of 10 years of service (28.11.2013) as Head Constable as well as total service of 25 years (I.e.,) But, the petitioner was upgraded as Gr.I.PC with effect from 03.11.2002 and as Head Constable with effect from 03.11.2007 as he had “Currency” of punishments on the eligible date for upgradation.”



W.P.(MD)No.5138 of 2015

The contention of the respondents is that, since there was currency of punishment the petitioner was not granted upgradation. The petitioner is eligible for Grade I PC on 28.11.1998, but he was deserted from the force from 01.11.1998 and taken back for duty on 05.12.1998, for which charged in PR No.233 of 1998 and imposed with a punishment of postponement of increment for one year without cumulative effect on 14.5.1999, hence his next increment due on 01.07.2000 was postponed and punishment expired on 30.06.2001, eligible for upgradation on 01.07.2001. Again another punishment in PR No.34 / 2000 for reduction in time scale of pay by one stage for one year without cumulative effect was imposed on 13.09.2000 for absents from 20.04.2000 to 30.07.2000 and his pay was restored on 30.11.2002.

9. The contention of the petitioner is that the 1st punishment was on **14.5.1999**, but the petitioner is entitled to upgradation on **28.11.1998**, hence he is eligible for upgradation as Grade I PC. Likewise, the second punishment was imposed on **13.09.2000** but the petitioner is eligible for upgradation on **28.11.2003**. The eligibility of upgradation for



W.P.(MD)No.5138 of 2015

Grade I PC is prior to punishment and the eligibility of upgradation for Head Constable is after the punishment and both categories the respondents ought to have granted upgradation on **28.11.1998 and 28.11.2003.**

10. As rightly pointed out by the petitioner, if there is any minor punishment which is affecting the promotion of the Police, the respondents ought to have passed orders to cancel those minor punishments as per the direction of the Director General of Police, vide proceedings, dated 26.09.2002. Admittedly, in the present case, the first punishment is only for six months and the second punishment is for one year. Both the punishments are without cumulative effect and hence both the punishments ought to be considered as minor punishments. Recently, the Tamil Nadu Government has issued the Government Order, wherein, if the disciplinary proceedings were initiated under 3(a), all the punishment were cancelled and Police Constables were given promotions. In the present case, the petitioner's first punishment is under 3(a) and the second punishment is under 3(b). Therefore, the first



W.P.(MD)No.5138 of 2015

punishment cannot be a bar to grant upgradation. The second punishment is under 3(b), since it is minor punishment affecting the promotion, it has to be considered by the respondents based on the Circular of Director General of Police, vide proceedings, dated 26.09.2002. The Learned Counsel appearing for the petitioner further relied on the order passed by this Court in W.P.(MD)No.1398 of 2015 dated 17.02.2020, wherein this Court has granted the same relief to the petitioner's batch mate. Therefore, the upgradation granted belatedly is legally not sustainable. Hence this Court is passing the following order:

- (i) The petitioner is entitled to Grade I Police Constable on 25.05.1998. Thereafter, the subsequent upgradation should be on 25.05.2003 as Head Constable and Special Sub Inspector of Police on 28.11.2013.
- (ii) The respondents are directed to implement this order and grant upgradation within a period of six (6) weeks from the date of receipt of a copy of this order.

11. With the above said direction, this Writ Petition is allowed.



W.P.(MD)No.5138 of 2015

No costs.

WEB COPY

22.11.2022

Index : Yes / No

Internet : Yes / No

jbr

To

1. The Director General of Police,
Kamarajar Salai,
Mylapore,
Chennai – 4.
2. The Deputy Inspector General of Police,
Dindigul Range,
Dindigul.
3. The Superintendent of Police,
Theni District,
Theni.



WEB COPY



W.P.(MD)No.5138 of 2015

S.SRIMATHY, J

jbr

Order made in
W.P.(MD)No.5138 of 2015

22.11.2022