

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.10.2022

CORAM:

**THE HON'BLE MRS JUSTICE J. NISHA BANU
AND
THE HON'BLE MR JUSTICE N. ANAND VENKATESH**

**W.A.(MD) No.971 of 2017 and
CMP(MD) No.6557 of 2017**

1.The State of Tamil Nadu,
Represented by its Secretary Government,
Home Department,
Fort St. George,
Chennai – 600 009.

2.The Director General of Police,
Kamarajar Salai,
Mylapore,
Chennai – 600 004.

3.The Superintendent of Police,
Theni District.

4.The Account General,
(Accounts and Entitlement),
Pension Section–15,
361, Anna Salai,
Chennai – 600 018.

... Appellants/Respondents

vs.

K.Dhanikodi

... Respondent/Petitioner

PRAYER : Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 28.11.2013 passed in W.P(MD)No.17340 of 2013 on the file of this Court.

For Appellants : Mr.D.Sasikumar
Additional Government Pleader

For Respondent : No appearance

JUDGMENT

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

Questioning the order of the learned Judge passed in the Writ Petition, directing the appellants to grant deemed upgradation/promotion to the respondent / writ petitioner, to the post of Special Sub Inspector of Police on completion of 25 years of service, irrespective of his transfer to other wing or District, and pay consequential benefits to him, the present writ appeal came to be filed by the appellants / police department.

2. Heard the learned Additional Government Pleader appearing for the appellants, who submitted that the issue involved herein is covered by a decision of the Full Bench rendered in ***W.A.No.3748 of 2019 and Rev.(MD)No.99 of 2014 on 04.02.2022, in the case of State of Tamil Nadu and others v. C.Srinivasan***, wherein, it was categorically held that '*there is no question of deemed upgradation or deemed promotion and the benefit can be extended only on completion of qualifying service in each level/rank*'; and therefore, the writ appeal will have to be allowed by setting aside the order impugned herein.

3. On a perusal of the aforesaid judgment of the Full Bench, it could be seen that taking note of the conflicting judgments of co-equal benches to the effect that the later Division Bench in the ***Principal Secretary to Government v. V.Ramachandran and others in Review Application Nos.70 to 79 etc. of 2015 and batch, through judgment dated 22.03.2017***, had disagreed with the earlier judgment of the Division Bench in ***the Government of Tamil Nadu represented by Home Secretary v. V.Samy and others in WA.(MD)No.1506 of 2011 etc. batch through judgment dated 17.06.2013***, the First Bench of this court referred

those writ appeal and review application viz., W.A.No.3748 of 2019 and Rev. (MD)No.99 of 2014 to the Full Bench for an authoritative pronouncement. Accordingly, the Full Bench answered the questions framed therein, through order dated 04.02.2022, the relevant passage of which can be usefully extracted below:

“38. A careful reading of the Government orders clearly brings out the fact that there is no scope for any deemed upgradation. The G.Os. makes it abundantly clear that the concerned Police Constable or Head Constable, as the case may be, should have held the relevant post for a fixed period of time in order to claim for upgradation. If the police personnel were aggrieved by such a stipulation, they ought to have challenged the Government Orders. No one has chosen to challenge the G.Os. and an attempt is being made to twist the G.Os. to suit their requirement. This Court has to necessarily understand the G.Os. in the plain language used in those G.Os. and see if the concerned police personnel is satisfying the requirement. When a benefit is conferred, the requirements to get such a benefit must be satisfied. There is no scope for a deemed satisfaction and what is expected is the actual satisfaction of the requirements. The concerned police personnel want these G.Os. to be implemented in such a way that upon completing a fixed period

namely 25 years of overall service, they would get upgradation as Grade I Constable automatically and thereafter, as Head constables automatically and ultimately as SSI of Police also automatically. There is no indication in the G.Os. for such automatic or deemed upgradation.

39. The Division Bench in V. Samy case at paragraph 4 of the order has given a finding as if the actual service of 5 years (it should have been 10 years) as Head Constable is, not required for, upgradation as SSI of Police. This finding of the Division bench runs completely contrary to the mandatory requirement found in G.O.Ms. No. 937, dated 21.7.1998 - At paragraph 4 of the concerned G.O., completion of, 10 years service as Head Constable is made mandatory, to be considered for upgradation to the post of SSI of Police. In view of the same, the finding given by the Division Bench in V. Samy case which formed the basis for granting the remedy, is not correct.

40. The finding of the later Division Bench in V. Ramachandran case to the effect that 10 years of qualifying service in the rank of Head Constable out of the total service of 25 years to be considered for the upgradation to the post of SSI of Police is the correct view.

41. For the sake of clarity, we hold that the benefit of upgradation to the next level of promotion can be granted only by taking into account the completion of the qualifying service in each level of rank as prescribed in the above G.Os. There is no scope for any deemed upgradation or deemed promotion to the next level/rank and such an interpretation of the G.Os. will cause violence to the plain language that has been used in those G.Os. Every upgradation involves financial implications and the sanction is accorded by the Finance Department as per the terms of the G.O. by anticipating the exact increase in the expenditure by virtue of the upgradation/promotion. If such deemed upgradation or deemed promotion is read into the G.Os., it will not only go beyond the scope of G.Os., but also will end up in granting the benefit to those persons who are not covered under the Government order. The direct consequence will be that there will be a huge outflow of expenditure than what was expected through the beneficial scheme and it will put a lot of strain in the State's exchequer.

42. In view of the above discussion, we proceed to answer the second question that has been referred to this Full Bench hereunder:-

“We hold that the Division Bench in V.Samy case did not lay down the law correctly and we uphold the law laid down in V.Ramachandran case to the extent that there

is no deemed upgradation or deemed promotion contemplated in the relevant Government orders and the benefit of upgradation/promotion to the next level can be granted/claimed only on completion of the qualifying service in each level/rank as prescribed in the relevant Government Orders. At the risk of repetition, insofar as understanding the expression “retrospective operation” is concerned, we hold that The Government Orders operate prospectively but it imposes/grants new results in respect of a past event. In other words, the Government Order operates forward but it looks backward and in that it attaches new consequences for the future to an event that took place before the Government Order was issued. If the Government Orders are understood in this perspective, there is no need to get into the issue of “retrospective operation”. Thus, we are of the view that the Division Bench while rendering the judgment in V.Ramachandran case dealt with the Government orders in its proper perspective and the judgment in V.Samy case is hereby overruled.”

4. In view of the authoritative Judgment pronounced by the Full Bench that the decision laid in ***V.Ramachandra case (supra)*** has been upheld, this Court

is of the opinion that there is no question of deemed upgradation or deemed promotion and such benefit can necessarily be extended only on completion of the qualifying service.

5. In such perspective of the matter, the order of the learned Judge in the writ petition, granting deemed upgradation/promotion will have to be interfered with by this Court.

6. Therefore, this Writ Appeal is allowed by setting aside the order passed by the learned Judge in the Writ Petition. No costs. Consequently, connected Miscellaneous Petition is closed.

(J.N.B.,J.) & (N.A.V.,J.)
12.10.2022

Index : Yes / No
Internet : Yes

PJL

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