



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.04.2022

DELIVERED ON : 17.06.2022

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

W.P.(MD)No.2014 of 2017

Mahalingam

...Petitioner

/Vs./

1.The Deputy Inspector General of Police,
Tiruchirappalli Range,
Tiruchirappalli-20.

2.The Superintendent of Police,
Tiruchirappalli.

3.The Deputy Superintendent of Police,
Armed Reserve, Trichy,
Tiruchirappalli District.

4.N.Gnanasekaran,
Sub-Inspector,
Armed Reserve, Trichy,
Trichy District.

5.R.Manivannan
Sub-Inspector,
Armed Reserve, Trichy,
Trichy District.

...Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings of the 1st Respondent bearing C.No.A1/8608/2015 dated 15.12.2016 and quash the same in illegal in respect of Respondents 4 & 5 concerned and consequently direct the 1st Respondent to promote the petitioner as a Head Constable with effect from 06.01.2006 as per Police Standing Order:42 and promote as a Sub Inspector with effect from 2010 and made his further promotion based on such seniority and settled all monetary benefits.

For Petitioner

: Mr.S.Mahalingam

For Respondents

: M/s.D.Farjana Ghoushia

Special Government Pleader
for RR1 to 3

No-appearance for RR4 and 5

**ORDER**

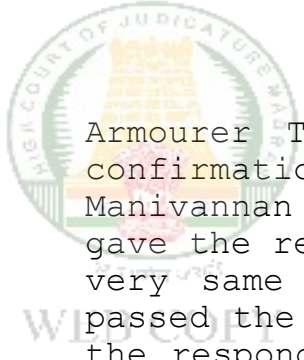
This Writ Petition has been filed to quash the impugned order dated 15.12.2016 in respect of the respondent Nos.4 and 5 and direct the first respondent to promote the petitioner as Head Constable with effect from 06.01.2006 as per the Police Standing Order No:42, promote him as Sub Inspector with effect from 2010, make his further promotion based on seniority and settle all monetary benefits.

2. The brief facts of the case is that the petitioner was enlisted as Grade-II Police Constable on 01.11.1995 and he was transferred to Rebrowning Centre (Armourer Unit), Trichy District on 27.05.1998. The petitioner was directed by the second respondent to attend the Armoured Training at Redbrowning Central Avadi for the period from 11.03.2000 to 10.01.2001. Due to his family circumstances, the petitioner was not able to complete the Armourer Training. After four weeks, the petitioner was again sent to Armourer Training Avadi as per the direction of the second respondent and the petitioner has completed the training on 11.12.2004. The second respondent released the seniority list of the candidates, who had completed 10 years of service in Grade-II Police Constable and underwent Selection Grade Post as Grade-I Police Constable. In the list, the name of the petitioner was placed in 23rd rank dated 13.11.2005 and the name of the fifth respondent was not included, since during that time, he has not completed 10 years of service in Grade-II Police Constable and his enlistment date was 31.11.1997.

3. The petitioner contended that due to the demise of Head Constable namely Chelladurai, the Head Constable namely Sivabalan was promoted as a temporary Sub-Inspector in Trichy Armed Reserve, two vacancies arose in the Unit. The petitioner got the original seniority and he is one of the fully qualified person is to be placed in any one of the vacancies.

4. In the meanwhile, the second respondent passed an order temporarily promoting one Gnanasekaran and another one namely Manivannan, who is the fifth respondent, as Head Constable on 06.01.2006 for filling the said two Head Constable vacancies, instead of the petitioner. The fifth respondent was appointed as Grade-II Police Constable in Trichy Battalion in the year 1997 and previously, his name was not mentioned in the seniority list. Aggrieved over the said promotion, the petitioner submitted a representation objecting the temporarily Head Constable promotion of the fifth respondent and claiming his seniority for Head Constable, since the petitioner's seniority was overlooked.

5. The respondents replied to the said representation stating that the seniority was fixed based on the completion of



Armourer Training in Avadi. The second respondent has passed a confirmation order of Head Constable promotion of Gnanasekaran and Manivannan dated 19.07.2006. In this order, the second respondent gave the retrospective effect as regularized from 06.01.2006. In the very same date i.e., 19.07.2006, the second respondent has also passed the promotion order of Head Constable to the petitioner, but the respondent did not give retrospective effect from 06.01.2006 to the petitioner. The first respondent has released C-List of eligible Head Constables and Temporary Sub-Inspector (Armourer) fit for promotion as Sub-Inspector in Armourer Unit bearing C.No.A1/11217/11 dated 27.10.2011. In the above list, the name of fifth respondent was given by the method of wrong seniority attained by him. Therefore, the petitioner has again sent a representation on 04.11.2011, objecting the seniority list, which was not prepared correctly and the fifth respondent attained Head Constable promotion by wrong way. Thereafter the petitioner filed writ petition in W.P. (MD).No.12740 of 2011 challenging the order dated 27.10.2011 and this Court vide order dated 11.11.2016 had directed the respondents to consider and pass orders.

7. The contention of the writ petitioner is that one Pugalendi had filed a writ petition in W.P.(MD).No.12460 of 2009 with a prayer to restore the seniority and promote the petitioner as Head Constable and the said writ petition was dismissed vide order dated 10.02.2011. The contention of the respondents in that case was that the Police Standing Order No.42 dealing with the promotion to the post of Head Constable is applicable. In the case of Pugalendi in W.P.(MD) No.12460 of 2009 the respondents are taking different stand and now the respondents are taking diagonally opposite stand in this present writ petition. There is a specific finding by the Hon'ble Court that the seniority is to be considered on the basis of completion of training is totally misconceived and contrary rules. The contention of the present writ petitioner is that if the stand taken by the respondents in W.P.(MD).No. 12460 of 2009 is applied to the present case, the petitioner is eligible to the said promotion. Hence the present writ petition is filed.

8. The respondents have filed a counter affidavit stating that in G.O. Ms. No. 252 Home (Pol.14) Department dated 21.03.2002, the vacant post of Head Constables in Rebrowning Centre/Armourer Wing can be filled up by transfer from AR Platoons and their seniority can be fixed only on completion of Armourer training. Accordingly, Ty.SI 701 Gnanasekaran and HC 877 Manivannan, who is the fourth and fifth respondent herein, are seniors to the petitioner as they have completed their Armourer training on 11.12.1997 and 31.12.1999 respectively, though they were posted in Trichy District Rebrowning Centre latter. The writ petitioner was enlisted as Grade-II Police Constable in TSP 1 Bn, Trichy, on 01.11.1995. He was relieved on transfer to Trichy City on 11.05.1998 from TSP 1 Bn Trichy and reported at Trichy City on 15.05.1998. Vide



order dated 18.05.1998, the petitioner was transferred to Trichy District from Trichy City and reported at Trichy District AR on 27.05.1998. The petitioner was posted to Rebrowning Centre AR, Trichy with effect from 01.06.1998 on OD basis from AR/Platoon to attend emergency work before his training in Armourer Trade. The petitioner was nominated to attend the Armourer Training at RC/Avadi for the period from 11.03.2000 to 10.01.2001. The petitioner was not able to complete the Armourer Training and reported at Rebrowning Centre on 19.04.2000. Thereafter, the petitioner attended 25th batch of Armourer basic course held on 11.02.2004. The petitioner had completed the Armourer course on 11.12.2004 and scored 135 marks out of 200. Thereafter, he was promoted as Head Constable (Armourer) on 24.07.2006.

9. The averments made in the affidavit that the petitioner is senior to the respondent Nos.4 and 5 in the seniority of Head Constable in Armourer Branch of AR/Trichy District by virtue of his date of joining in Trichy District AR on 27.05.1998 is denied as not correct. Though the respondents 4 and 5 joined in AR/Trichy District during the year 2004 and 2005 respectively, they had completed their Armourer training in the year 1997 and 1999 itself and become senior to the petitioner, who had completed the Armourer training in the year 2004 only. Hence, the contention of the petitioner that he is senior to the respondents 4 and 5 is denied and false. The contention of the petitioner that the seniority for promotion to the post of Sub-Inspector of Police should be based on the date of appointment is not correct. As per G.O.Ms.No.410 dated 19.04.2001 for promotion to the post of Sub-Inspectors or Sub-Inspectors (Armed Reserve), the candidates must have completed the Head Constable or Head Constable (Armed Reserve) as the case may be for the period of not less than four years on the date of commencement of training. But, while arranging the "C" list of eligible Head Constables, the petitioner has not completed the four years of service as Head Constable. Hence, the name of the petitioner was not recommended in "C" List. In accordance with the Government orders issued in G.O.Ms.No.252, Home (Pol-14) Department dated 21.03.2002, the post of Head Constable in Rebrowning Centre/Armourer wing can be filled up by transfer from AR Platoon and their seniority is fixed based on their completion of Armourer Training. Accordingly, since the respondents 4 and 5 were appointed as Grade-II PCs in the year 1995 and 1997 and transferred to AR in the year 2003 and 2004 respectively, they were kept above the petitioner, who had joined in the year 1998 in Armourer Head Constable Seniority. Therefore, the claim of the petitioner is wrong and the petitioner is junior to the respondents 4 and 5. The petitioner had already filed a writ petition in W.P.(MD).No.12704 of 2011 and this Court has already decided the matter on merits and disposed the case, whereas, the petitioner has again filed this writ petition for the very same relief. Therefore, the second petition filed by the petitioner is hit by principles of doctrine of *res-judicata* and the petition is



not maintainable. Hence, the respondents prayed to dismiss this petition as not maintainable both on merits and *res-judicata*.

10. Heard Mr.S.Mahalingam, the learned counsel appearing for the petitioner and M/s.D.Farjana Ghoushia the learned Special Government Pleader appearing for the respondents 1 to 3.

11. The learned counsel appearing for the petitioner relied on the order of this Court in W.P.(MD).No.12460 of 2009 dated 10.02.2011 and the relevant portion of the order is extracted hereunder:-

4. The reading of Police Standing Order 42 dealing with the promotion to the post of Head Constable reads as under:

"1. There shall be no separate examination for Grade-I Police Constables to qualify for promotion as Head Constables. Grade-I Police Head Constables from the combined seniority list maintained for the local police. All Grade-I Police Constables will take seniority from the date of their regular appointment irrespective of the mode of the selection whether by direct recruitment or by senior or by junior promotion.

2.All grade-I Police Constables in the Armed Reserve both in General Line and Specialist line should be promoted as Head Constable in test. However, a separate test shall be conducted from among Driver Head Constables for the post of Driver Mechanics.

3.All vacancies of more than one in the rank of Head Constables shall be filled by promotion in seniority.

5. The contention of the learned counsel for the petitioner that seniority is to be considered on the basis of completion of training is totally misconceived and contrary to rules.

6. Therefore, I find no merit in this writ petition, which is ordered to be dismissed.

12. In this case, the petitioner contended that the seniority should be taken from the date of their regular appointment and not from the date of completion of training and the petitioner relied on the Police Standing Order No.42. In the said standing order the qualification of completion of training was not prescribed and hence the respondents is wrong in stating that training ought to



completed. The petitioner is seeking promotion based on the Police Standing Order No.42. However, the respondents are now taking a plea that on the basis of completion of training, seniority will be considered which is diagonally opposite to the stand taken in the above said writ petition in W.P.(MD).No.12460 of 2009.

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13. The respondents have taken inconsistent stand which is giving confusion among the eligible candidates. Therefore, the matter is remanded back to the first respondent (i.e.,) Deputy Inspector General of Police, Tiruchirappalli, to consider the case of the petitioner and pass appropriate orders explaining the clear stand as to whether the Police Standing Order No.42 is applicable as stated in the order passed in W.P.No.12460 of 2009 dated 10.02.2011 or the Government Orders as stated in the counter affidavit are applicable, within a period of six weeks from the date of receipt of a copy of this order.

14. Accordingly, the Writ Petition stands disposed of. No costs.

Sd/-

Assistant Registrar(CS-)

// True Copy //

/06/2022

Sub Assistant Registrar(CS)

ssb

To

1.The Deputy Inspector General of Police,
Tiruchirappalli Range,
Tiruchirappalli-20.

2.The Superintendent of Police,
Tiruchirappalli.

3.The Deputy Superintendent of Police,
Armed Reserve, Trichy,
Tiruchirappalli District.

+1 CC to M/s.MAHALINGAM, Advocate (SR-26316[F] dated 17/06/2022)
+1 CC to M/s.SPL.GP (SR-27066[F] dated 21/06/2022)

Order made in
W.P.(MD)No.2014 of 2017
Dated:17.06.2022

kg (CO)

TR(27.06.2022) 6P 6C