



W.P.(MD).No.21435 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.09.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.21435 of 2017

and

W.M.P.(MD).Nos.2476 and 2477 of 2017

M.Thandapani

... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its,
The Principal Secretary,
Home Department,
Fort.St.George,
Chennai.

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

3.The Commissioner of Police,
Madurai City,
Madurai.

... 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 2 and 3 to revise and regularize the service seniority and give notional promotion with monetary benefits to the petitioner, within the time frame fixed by this Court.



W.P.(MD).No.21435 of 2017

For Petitioner : Mr.R.J.Karthick

For Respondents : Mrs.D.Farjana Ghoushia,
Special Government Pleader.

ORDER

This Writ Petition has been filed for Writ of Mandamus, directing the respondents 2 and 3 to revise and regularize the service seniority and give notional promotion with monetary benefits to the petitioner.

2. When the writ petition was taken up for hearing, the learned Special Government Pleader appearing for the respondents submitted that the issue of granting upgradation / promotion to the next level in the Police Department was considered by the Hon'ble Full Bench of this Court vide order dated 04.02.2022 passed in *State of Tamil Nadu and others Vs. C. Srinivasan (W.A. Nos. 3748 of 2019 batch order dated 04.02.2022)* reported in *2022 (1) CTC 833*. The issue that was referred is whether the upgradation/promotion to the next level can be granted only on completion of qualifying service as prescribed by the relevant Government Orders or can it be granted as deemed upgradation or deemed promotion. The Hon'ble Full Bench has held that the proposition laid down in the case of *The Principal Secretary to Government Vs.*

V.Ramachandran and others [Review Application Nos.70 to 79 etc. of 2015



W.P.(MD).No.21435 of 2017

dated 22.03.2017] has laid down the correct proposition of law. The judgment rendered in the case of ***The Government of Tamil Nadu represented by Home Secretary Vs. V.Samy and others [W.A.(MD).No.1506 of 2011 etc. batch dated 17.06.2013]***, did not lay down correct proposition of law and the Hon'ble Full Bench overruled the judgment of Sami's case (stated supra). The Hon'ble Full Bench has 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. The relevant portion of the order is extracted 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



W.P.(MD).No.21435 of 2017

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.”

3. Following the Hon’ble Full Bench Judgment, the Hon’ble Division Bench in W.A.Nos.3748 of 2019 etc., batch has allowed the Writ Appeals filed by the State.

4. At this juncture, the learned counsel appearing for the petitioner submitted that against the judgment of Ramachandran case (stated supra), S.L.P. No(s).6980 to 6996 of 2018 was filed and the case is pending. The Learned Special Government Pleader submitted that the similar plea was submitted before the Learned Single Judge while considering the case filed in W.P.(MD).No.17111 of 2019, wherein, the said Writ Petition was dismissed vide order dated 02.03.2022 and the relevant portion is extracted hereunder:

“3. However, this Court is of the considered opinion that in the event of disposal of the Special Leave Petition by the Hon'ble Supreme Court of India, if any benefit is granted, thereafter, the petitioner is at liberty to claim the same based on the judgment to be passed by the Hon'ble Supreme Court of India”.



W.P.(MD).No.21435 of 2017

5. Hence, following the judgment dated 04.02.2022 of the Hon'ble Full Bench and the judgment dated 15.03.2022 rendered by Hon'ble Division Bench in W.A.Nos.3748 of 2019 etc., batch and the judgment rendered in W.P.(MD).No.17111 of 2019 by Learned Single Judge, this Court is inclined to dismiss the present Writ Petition. Hence, this Writ Petition is dismissed. However, if any benefit is granted in Special Leave Petition by the Hon'ble Supreme Court, the petitioner is at liberty to claim the same after the disposal of the SLP. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

29.09.2022

Index : Yes / No
Internet : Yes/ No
Nsr

To

1.The Principal Secretary
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Chennai.

2.The Director General of Police,
Kamarajar Salai,
Mylapore,
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3.The Commissioner of Police,
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W.P.(MD).No.21435 of 2017

S.SRIMATHY, J.

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W.P.(MD).No.21435 of 2017

29.09.2022