



W.P.No.275 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE J. SATHYA NARAYANA PRASAD

W.P.No.275 of 2020
and WMP.No.322 of 2020

K. Madana Logan

... Petitioner

Vs.

1. The Principal Secretary to Government
Home (Police-II) Department
Fort St.George, Chennai 9

2. The Director General of Police
Dr.Radhakrishnan Salai,
Mylapore, Chennai – 4

3. The Deputy Inspector General of Police
Salem Range, Salem.

... Respondents

PRAYER : Writ Petition filed under Article 226 of Constitution of India, seeking Writ of Certiorarified Mandamus to call for the records of the 3rd respondent in connection with the impugned order passed by him in RO No.120/2018 in RC No.B2/90/1314/2010 dated 23.05.2018 and quash the same and direct the respondents to regulate the period of suspension from 10.06.2003 to 06.06.2004 (353 days) and the period of out of employment from 06.05.2006 to 18.06.2012 as duty with continuity of service without salary and further direct the respondents to consider the claim of the petitioner for promotion to



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the post of Inspector of Police by including him in 'C' list of Sub-Inspector of Police fit for promotion as Inspector of Police for the year 2008-09 with all consequential benefits and grant such other further relief.

For Petitioner : Mr.K.Venkataramani
Senior Counsel
Asst.by Mr.M.Vignesh Raj
for Mr.M.Muthappan

For Respondents : Mr.M.Shajahan
Special Government Pleader

ORDER

The petitioner has filed the above writ petition seeking for the issuance of a writ of certiorarified mandamus calling for the records of the 3rd respondent in connection with the impugned order passed by him in RO No.120/2018 in RC No.B2/90/1314/2010 dated 23.05.2018 and quash the same and direct the respondents to regulate the period of suspension from 10.06.2003 to 06.06.2004 (353 days) and the period of out of employment from 06.05.2006 to 18.06.2012 as duty with continuity of service without salary and further direct the respondents to consider the claim of the petitioner for promotion to the post of Inspector of Police by including him in 'C' list of Sub-Inspector of Police fit for promotion as Inspector of Police for the year 2008-09 with all



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consequential benefits and grant such other further relief.

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2. The facts of the case in a nutshell:-

The petitioner entered the service as a directly recruited Sub-Inspector of Police through a selection conducted by Tamil Nadu Uniformed Services Recruitment Board in the year 1996 and further promoted as Inspector of Police on 21.09.2016. While serving as Sub Inspector of Police, he was falsely implicated in a criminal case registered in Crime No.387/2003 u/s 448, 376 r/w Sec. 511 and 506 part -2 IPC on the file of Hasthampatti Police Station and thereafter he was placed under suspension on 18.06.2003. The petitioner was charge sheeted before the competent court namely Mahila Court, Salem in SC.No.237/2005 for offences u/s.448, 376 r/w Sec.511 and 506 part-2 and the criminal case ended in conviction on 23.02.2006. This Court heard the criminal appeal No.290 of 2006 and by an order dated 17.12.2009 was pleased to issue an order holding that the petitioner has committed an offence only u/s 506 part – II and not any other offence and for the offence u/s 506 part-II held that the petitioner having done meritorious service and shown good antecedent and also considering the family of the accused, he was directed to be released on probation and good conduct under Section 4 of the Probation of Offenders Act and the petitioner was directed to appear before the trial Court for a period of



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one month. The 2nd respondent issued the order of reinstatement by setting aside the punishment of dismissal from service and was imposed with a punishment of reduction of pay by 2 stages for 3 years with cumulative effect and the petitioner was reinstated into service and he reported for duty on 19.06.2012. The third respondent/Deputy Inspector General of Police, Salem Range, Salem issued an impugned order dated 23.05.2018 holding that the period of suspension and as well as the period of out of employment is regulated as per Fundamental Rule 54B (1) (a) (b). Aggrieved by this order, the petitioner has come forward with the present writ petition.

3. The learned senior counsel appearing for the petitioner submitted that the petitioner was falsely implicated in a criminal case registered in crime No.387 of 2003 under Section 448, 376, r/w Sec.511 and 506 part-2 IPC on the file of Hasthampatti Police Station and thereafter the petitioner was suspended on 18.06.2003. Thereafter, he approached this Court and this Court passed an interim order staying the suspension order consequently the petitioner's suspension was revoked by order dated 04.06.2004. In the meanwhile, the petitioner was issued with a charge memo under rule 3(b) of Tamil Nadu Police Subordinate Service (D&A) Rules in PR.No.28/B1/2003 dated 22.07.2003.



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The petitioner was charge sheeted before the competent Court namely Mahila Court, Salem in SC.No.237 of 2005 for offences under Section 448, 376 r/w Sec.511 and 506 part-2.

4. The learned senior counsel further submitted that the criminal case ended in conviction on 23.02.2006 holding that the petitioner is guilty of charges under Section 451 IPC and 506 Part -II IPC and was sentenced to undergo 20 months RI and pay a fine of Rs.1000 and in default to undergo 4 months RI for offence under Section 451 IPC and further ordered to undergo 30 months RI and pay a fine of Rs.1500/- and in default to undergo 6 months RI u/s.506 (ii) IPC and the petitioner was acquitted of the charge under Section 376 IPC. Since the petitioner was convicted in the criminal case a show cause notice was issued u/r 3(b) (2) of TNPSS (D&A) Rules by the Deputy Inspector General of Police, Salem Range, Salem on 16.04.2006 as why he should not be imposed with a major penalty u/r 3(2) of TNPSS (D&A) Rules and the petitioner submitted a reply on 19.04.2006 stating that he has already preferred an appeal against the punishment imposed on him and pending appeal, requested not to take action, but the disciplinary authority namely the 3rd respondent by his proceedings dated 29.04.2006 based on the conviction



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sustained in the criminal case held that the petitioner is responsible for the incident and awarded a punishment of dismissal from service from the date of receipt of the order namely 29.04.2006.

5. The learned senior counsel would further more submit that against the imposition of punishment in the trial Court, the petitioner preferred a criminal appeal before this Court in view of the fact that the petitioner has suffered a major punishment. This Court heard criminal appeal No.290/2006 and by an order dated 17.12.2009 was pleased to issue an order holding that the petitioner has committed an offence only under Section 506 part – II and not any other offence and for the offence under Section 506 part-II held that the petitioner having done meritorious service and shown good antecedent and also considering the family of the accused, he was directed to be released on probation and good conduct under Section 4 of the Probation of Offenders Act and the petitioner was directed to appear before the trial Court for a period of one month and execute a bond for his good behaviour for a period of one year. Subsequent to the order passed by this Court in W.A.No.290 of 2006 dated 17.12.2009, the petitioner gave a representation to the 2nd respondent and the second respondent in his proceedings dated 02.06.2012 issued the order of



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reinstatement by setting aside the punishment of dismissal from service and was imposed with a punishment of reduction of pay by 2 stages for 3 years with cumulative effect and the petitioner was reinstated into service and he reported for duty on 19.06.2012. Thereafter, the petitioner made a representation through the Superintendent of Police, Krishnagiri District to settle the period of suspension and the period of unemployment as duty for all purposes with continuity of service. A proposal was sent by the Superintendent of Police, Krishnagiri District to the Director General of Police for regulating the period of suspension and out of employment. By the time, the petitioner was issued with a show cause notice dated 12.05.2016 as to why the period of suspension should not be treated as earned leave without salary and the petitioner submitted his explanation on 15.06.2016 requesting to settle the period of unemployment as eligible leave so that it will be treated as continuity of service for pensionary benefits. But the third respondent after a lapse of two years issued an order treating the period of suspension (353 days) and the period of out of employment (2535 days) will be treated as EOL as per Fundamental Rule 54B, 1(a) (b) and the claim of the petitioner to treat the period as eligible leave and grant of continuity of service was denied by the third respondent.



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6. The learned senior counsel further more submitted that the petitioner's suspension period and as well as the period of out of employment was treated as eligible leave without continuity of service. In the absence of any specific order with reference to the continuity of service the period out of employment from 2004-2012 will not be counted for the purpose of pensionary benefits. The impugned order dated 23.05.2018 issued by the third respondent, the period of suspension and as well the period of out of employment is regulated as per Fundamental Rule 54B (1) (a) (b) is unsustainable. This Court had an occasion to consider the above fact and it came to the conclusion that the period should be counted for the purpose of pensionary benefits instead of otherwise. Moreover, the punishment imposed on the petitioner dated 02.06.2012 by reinstating him into service, after the order of this Court modifying the punishment into one of releasing him under probation of offenders Act, the punishment goes back to the date on which the punishment of dismissal from service was imposed by the third respondent/Deputy Inspector General of Police, Salem Range, Salem dated 05.05.2006. Hence the punishment of reduction by 2 stages for 3 years with cumulative effect will have to be given effect and counted from 05.05.2006. Hence the punishment will be over by in 28.04.2009, since the petitioner has not been granted annual



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increments from the date of the suspension order namely 10.06.2003.

Moreover, the petitioner has become due for promotion as Inspector of Police as early as 2005-06 and the petitioner's junior by name Easwaran, seniority No.451, was promoted as Inspector of Police on 26.06.2006.

7. The learned senior counsel further submitted that the punishment was imposed in the year 2012, it goes back to the year 2006 and consequently the punishment will have to be counted from 2005-06, 2006-07, 2007-08 and for the year 2008-09 the claim of the petitioner should be considered for promotion as Inspector of Police. The petitioner was given promotion as Inspector of Police only w.e.f. 21.09.2016, hence the petitioner is entitled to get his promotion from the year 2008-09 on expiry of punishment of the petitioner from 2006 to 2009 and his claim cannot be overlooked after the panel year 2008-09. Assuming for a moment that the petitioner has given a representation for relinquishing the promotion for a period of 3 years, then it will have effect only from 2008-09, 2009-10, 2010-11 and not thereafter, since a temporary relinquishment as per the General Rules is only for a period of three years. Hence the claim of the petitioner will have to be considered for the purpose of promotion to the post of Inspector of Police, notionally with effect from 2008-



09 or from 2011-12. The denial of promotion to the petitioner is highly arbitrary and discriminatory in nature. As the petitioner's period of out of employment is treated as leave to which he is eligible, the petitioner is deprived of his service benefits including pensionary benefits. It is also submitted that the continuity of service will atleast enable him to get the services counted for the purpose of pensionary benefits notionally, thereby there will be no financial loss to the employer.

8. In this context, the learned senior counsel relied upon the Division Bench judgment of this Court in W.A.No.673 of 2008 dated 30.08.2009 and the relevant paragraphs are extracted hereunder:-

“7.Mr.K.Venkataramani, learned Senior Counsel appearing for the appellant, while assailing the judgment of the learned Judge, would submit that when once the punishment has been ultimately modified to that of reduction in time scale of pay by two stages for a period of two years with cumulative effect by an order dated 27.09.1994, it should go back to the original date of dismissal, namely 09.02.1988 and 03.03.1988 by which the punishment of dismissal was modified as compulsory retirement and after two years from the said date, the appellant should have been given promotion.

11. If the said argument is accepted, it is true that the



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appellant would not be entitled to promotion as Grade I Police Constable from the year 1989 till the crucial date, viz., 27.09.1994. But, the fact remains that the appellant has been given promotion as Grade I Police Constable on 20.03.1993. Therefore, it is clear that the said guidelines relating to the check period have no application on the facts and circumstances of the case, as it is understood by the respondent himself. It is seen that the appellant was promoted as Grade I Police Constable with effect from 20.03.11993, by an order dated 25.02.1998. Likewise, he was promoted as Head Constable with effect from 03.09.1999 and he has filed the Original Application before the Tribunal on 05.02.2001.

12. It is also relevant to note that when the final authority, namely the respondent has passed an order on 27.09.1994 modifying the dismissal order to that of reduction of time scale of pay by two stage for a period of two years with cumulative effect, it certainly goes back to the original date of dismissal, which was on 09.02.1988 of 03.03.1988 by which it was modified as compulsory retirement. From the said original date of punishment, if reduction of time scale of pay by two stages for two years is taken into consideration, the appellant may not be entitled to be promoted as Grade I Police Constable in the year 1989, but certainly he would be entitled to notional promotion after the lapse of two years from the date of original punishment.

13. In the present case, the claim of the appellant, as submitted by the learned Senior Counsel is that he should be given promotion notionally as Grade I Police Constable from the year 1992 instead of giving it from the year 1993. This vital aspect, that the



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modified punishment will be given effect to from the original date of punishment, has not been considered by the learned Single Judge. The learned Single Judge has proceeded on the pretext that from the date of dismissal on 09.02.1988 till the appellant was reinstated 25.07.1994 he was out of employment and therefore the reduction of time scale of pay by two stages for a period of two years cannot be notionally fixed, which in our view is not the correct legal position. The law is well settled that when once in the disciplinary proceedings the ultimate authority passes an order modifying the original punishment, certainly the modified punishment goes back to the original date of punishment.

9. A counter affidavit dated 21.01.2023 has been filed by the respondents. The learned Special Government Pleader appearing for the respondents submitted that it is relevant to extract paragraph Nos.6, 7, and 8 of the counter affidavit and the same are extracted as hereunder:-

“ 6. With regard to the averments made in paragraph 7 of the affidavit, it is submitted that the writ petitioner filed an appeal before the Director General of Police, Tamil Nadu, the 2nd respondent herein and the 2nd respondent vide his proceedings No.410/158720/AP2(2)/2010 dated 02.06.2012 has considered the order of the High Court, Madras and modified the punishment into that of “Reduction of Pay by two stages for three years with cumulative effect” and also reiterated the writ petitioner's assurance of relinquishment of his claim for promotion to be taken on record as per his petition dated 20.10.2010 and dated 12.04.2012. Accordingly, the writ petitioner was reinstated into service with the above punishment and reported for duty on 19.06.2012. Thus, the writ petitioner was not in service from 06.05.2006 to 18.06.2012 (2236 days).



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(i) *Further, it is submitted that the writ petitioner has requested for settlement of his suspension period from 10.06.2003 to 06.06.2004 and the out of employment period from 06.05.2006 to 18.06.2012 and the 3rd respondent the competent authority has analysed the Government orders, Rules and Acts pertaining to the settlement of suspension period and out of employment period and issued orders treating the above period as extraordinary leave without pay and allowances vide Range Order No.120/2018 in Rc.No.B2/90/1314/2010 dated 23.05.2018 in pursuance of Rule 54 B 1 (a) (b) of the Tamil Nadu Fundamental Rules.*

(ii) *It is also submitted that the prayer of the writ petitioner has no merits at all. He was under suspension from 10.06.2003 to 06.06.2004 and was not in Government Service from 06.05.2006 to 18.06.2012. Therefore the plea of the writ petitioner to treat the said period as duty does not arise since he was convicted by the trial Court for the criminal offences and this Hon'ble Court has modified the punishment. The writ petitioner was not acquitted by the Court from the criminal charges framed against him in the year 2003. Therefore, the question of considering his name for inclusion in the promotion panel for the year 2008-2009 does not arise. The prayer of the writ petitioner has no merits and hence it is prayed that the writ petition may be dismissed and thus justice rendered.*

7. *With regard to the averments made in paragraph 8 of the affidavit, it is submitted that, the he contention of the writ petitioner that the punishment of pay reduction by two stages for three years with cumulative effect ordered by the 2nd respondent has to be given effect from the date of dismissal of the writ petitioner is not*



correct. The punishment of pay reduction cannot be implemented to the writ petitioner when he was not in service. Any punishment can be implemented to the Government Servants on duty only. The order of punishment by the 2nd respondent was passed on 02.06.2012 and the writ petitioner on his reinstatement had reported for duty on 19.06.2012. Therefore, the punishment can be implemented only from 19.06.2012 and not from 05.05.2006 as averred by the writ petitioner. When the writ petitioner was not in service from 06.05.2006 to 18.06.2012, the question of his eligibility for promotion on par with his batchmates and juniors does not arise.

8. With regard to the averments made in paragraph 9 of the affidavit it is submitted that as per rules, the punishment of pay reduction by two stages for three years will take effect from the date of his reinstatement into service i.e., from 19.06.2012 only and the period of punishment is from 19.06.2012 to 18.06.2015. The averment of the writ petitioner that the punishment period to be counted from 2005-06, 2006-07, 2007-08 and in the year 2008-2009, the claim of the writ petitioner for promotion as Inspector of Police should have been considered is absolutely not correct. While praying for the reinstatement into service, the writ petitioner has clearly indicated in his representation dated 20.10.2010 that he has completed 48 years of age and having only 10 years to serve, no further promotion is needed to him, he will serve in the post of Sub Inspector of Police alone for the remaining 10 years of service and retire on his superannuation. The said assurance was recorded in the reinstatement order by the 2nd respondent. However, the services rendered by the writ petitioner was taken into consideration, after completion of the punishment period of three years after his reinstatement, his name was considered for promotion in the panel



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year 2015-2016 and was promoted as Inspector of Police with effect from 27.09.2016. The writ petitioner prayer that the out of employment period has to be accounted for as punishment period between the years 2005 to 2009 cannot be complied with since he was re-entered into service only on 19.06.2012. Therefore, the claim of the petitioner as contended in para 9 of the writ petition are totally incorrect and inadmissible by any of the rules in force”.

10. The learned Special Government Pleader further submitted that the petitioner was directed to be released on probation and good conduct and under Section 4 of Probation of Offenders Act by the orders of this Court in Criminal Appeal No.290 of 2006 on 17.12.2009, hence the punishment of reduction of pay by two stages for three years with cumulative effect will take effect only from 2009 to 2012. Hence his claim for promotion as Inspector of Police with effect from 2012 is unsustainable. The contention of the petitioner is that the punishment goes back to the year to the date of original punishment that is of the year 2006 and it get over by 2009 and the relinquishment for 2009 to 2012 is also unsustainable for the reason that the punishment cannot be imposed on the petitioner who was not in service and the punishment can be implemented on the Government servant while on duty only. The order of punishment by the second respondent was passed on 02.06.2012 and his reinstatement was on 19.06.2012 and the punishment can be implemented only



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from 19.06.2012 and not from 05.05.2006 as claimed by the petitioner.

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11. The learned Special Government Pleader further submitted that since the writ petitioner was not in service from 06.05.2006 to 18.06.2012 and the question of eligibility for promotion on par with his batch mates and juniors does not arise.

12. Heard both sides and perused the materials available on record.

13. The issue to be decided in this case in view of the order passed by this Court in Criminal Appeal No.290 of 2006 dated 17.12.2009 is that releasing the petitioner on probation under Section 4 of the Probation of Offenders Act and the punishment of reduction by two stages for three years with cumulative effect will be given effect and counted from 05.05.2006 or from the date of order passed by this Court from 2009 to 2012. The petitioner while working as Sub Inspector of Police, Thevoor Police Station in Salem district he was implicated in a criminal case registered in crime No.387 of 2003 under Section 448, 376, r/w Sec.511 and 506 part-2 IPC on the file of Hasthampatti Police Station. Subsequently the petitioner was placed under



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suspension on 18.06.2003. This Court stayed the order of suspension and he was released from suspension by an order dated 04.06.2004. The petitioner was charge sheeted before the competent Court namely Mahila Court, Salem in SC.No.237/2005 for offences under Section 448, 376, r/w Sec.511 and 506 part-2 and the criminal case ended in conviction on 23.02.2006 convicted the petitioner based on the conviction order passed by the criminal court the third respondent issued a show cause notice under rule 3(b) (2) of TNPSS (D&A) Rules by the Deputy Inspector General of Police, Salem Range, Salem on 16.04.2006 and he should not be imposed with capital punishment. The third respondent by its proceedings dated 29.04.2006 imposed the award of punishment dismissal from service from the date of receipt of the order namely 29.04.2006 from the criminal Court. The petitioner preferred an appeal against the order passed by the criminal Court before this Court vide Crl.A.No.290 of 2006 and this Court by order dated 17.12.2009 held that the petitioner has committed an offence only under Section 506 part-ii and not any other offence and also having done meritorious service and shown good antecedent and also considering the family of the accused, he was directed to be released on probation and good conduct under Section 4 of the Probation of Offenders Act.



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14. The petitioner based on the above order gave a representation to the 2nd respondent to reinstate him and by order dated 02.06.2012 reinstated the petitioner by setting aside the punishment from dismissal from service and was imposed with punishment of reduction of pay by 2 stage for 3 years with cumulative effect and the petitioner was reinstated into service and he reported for duty on 19.06.2012.

15. In view of the above order, the law is well settled that once in the Disciplinary Proceedings an ultimate authority passes an order modifying the original punishment certainly the modified punishment goes back to the original date of punishment and in this case the punishment of dismissal from service was issued by the third respondent on 23.05.2018 Salem Range, hence the punishment of reduction by two stages for three years with cumulative effect will have to be given effect and counted from 29.04.2006 and the punishment will be over by 28.04.2009. Even if the relinquishment is taken into account that will be only for a period of three years from 2009-12 and the petitioner is eligible for promotion as Inspector of Police with effect from 2012 but he was promoted as Inspector only on 21.09.2016 by proceedings of the 2nd respondent in RC.No.999/NGB (V) (1) P-03/2016-17. The period of suspension



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from 10.06.2003 to 06.06.2004 (353 days) and the period of out of employment from 06.05.2006 to 18.06.2012 has to be treated as duty period in view of the order passed by this Court in Crl.A.No.290 of 2006 dated 17.11.2009. **The order passed by the third respondent holding that the suspension period from 10.06.2003 to 06.06.2004 to be treated as extraordinary leave (EOL) as per Fundamental Rules 54B (1) (a) (b) is unsustainable in law in view of the order passed by this Court in releasing the petitioner under Section 4 of the Probation of offenders Act. Even in the order passed by the 2nd respondent dated 02.06.2012 reinstating the petitioner into service in para 11 it is mentioned that the assurance of the petitioner that he will relinquish his claim for promotion will be taken on record as stated by him in his representation ninth read above. Even as per this representation the relinquishing period is from 2009 for a period of three years which is from 2009 to 2012. The punishment period is from 29.04.2006 to 28.04.2009 and the relinquishment period is three years from 2009-2012, hence the petitioner is relived of all the punishments and the relinquishing period and he is eligible for promotion from the year 2012 but the promotion was given belatedly only on 21.09.2016 after four years. Hence the petitioner is entitled for promotion as Inspector of Police with effect from 2012**



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notionally and he is eligible for all consequential pensionary benefits.

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16. In view of the above facts and circumstances of the case and the ratio laid down by the Division Bench of this Court, this Court is of the considered view that the order passed by the third respondent in RO.No.120/2018 in RC.No.B2/90/1314/2010 dated 23.05.2018 is liable to be quashed and the same is hereby quashed.

17. In the result the writ petitioner stands allowed and the respondents are directed to regulate the period of suspension as duty period and to promote the petitioner as Inspector of Police notionally from the year 2012 with pensionary benefits. No costs.

24.08.2023

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
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J. SATHYA NARAYANA PRASAD, J.

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To

1. The Principal Secretary to Government
Home (Police-II) Department
Fort St.George, Chennai 9
2. The Director General of Police
Dr.Radhakrishnan Salai,
Mylapore, Chennai – 4
3. The Deputy Inspector General of Police
Salem Range, Salem.

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