



W.P.No.19502 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2023

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THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.No.19502 of 2011
M.P.No.1 of 2011 & 1 of 2012

E.Rajamanickam

... Petitioner

Vs

The Inspector General and
Commissioner of Police,
Salem City, Salem District.

... Respondent

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the entire records relating to C.P.O.No.443/2011, C.No.A2/20245/2006, dated 16.07.2011, from the file of the respondent to quash the same and pass such further order.

For Petitioner : Mr.R.Ezhilarasan

For Respondents : Mr.R.Neethi Perumal GA

ORDER

This Writ Petition had been filed seeking to quash the order of the respondent dated 16.07.2011, whereby the upgradation of the

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petitioner from Grade II Police Constable to Grade I Police Constable was revised.

2.Heard Mr.R.Ezhilarasan, learned counsel appearing for the petitioner and Mr.R.Neethi Perumal, learned Government Advocate appearing for the respondent.

3. The learned counsel would submit that the petitioner was appointed as Grade II Police Constable on 27.05.1988, and was upgraded as Grade I Police Constable w.e.f., 27.09.1999. In 2006, the petitioner had made a representation seeking for promotion to the cadre of Head Constable as the persons, who had joined with him were promoted as Head Constable. On 20.09.2006, the petitioner was informed by the Superintendent of Police, Salem, that his case would be considered after getting relaxation in respect of educational qualification. But, however by order dated 22.09.2009, the respondent herein was reverted back to Grade II Police Constable w.e.f.,

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28.07.1999 and his pay and allowances were also sought to be recovered. Being aggrieved against the same, the petitioner had preferred Writ Petition in W.P.No.22140 of 2009 on the ground of violation of principle of natural justice and this Court had granted liberty to the respondent to take necessary action after giving sufficient notice and providing an opportunity of personal hearing before passing any order in that regard.

4.He would submit that during the pendency of the said proceedings, there was an order of stay and he continued to work as Grade I Police Constable. After the order of this Court, an order was passed by the respondent dated 16.07.2011, wherein the earlier order of reversion had been cancelled and the up-gradation of the petitioner as Grade I Police Constable was revised from 30.09.1999 to 06.07.2006, when all his batch-mates, who had not educationally qualified, were promoted only on that date and the recovery was also directed to be made for the period between 28.07.1999 to 05.07.2006. He would

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submit that inspite of the specific direction issued by this Court to issue a show cause notice and also an opportunity of being heard in any further action to be taken in that regard, the respondent had failed to comply with such specific direction and had passed the present impugned order without issuing any notice or hearing thereby not only violating the principles of natural justice, but also violating the specific direction issued by this Court and therefore, he would seek interference of this Court on the orders impugned herein.

5.Countering his arguments, Mr.R.Neethi Perumal, learned Government Advocate appearing for the respondent would submit that the petitioner did not possess the required educational qualification that was required for a Grade II Police Constable to be upgraded as a Grade I Police Constable. The said upgradation had been erroneously made. Only upon his request, seeking for up-gradation to the post of Head Constable, it came to be noticed that the petitioner did not possess the educational qualification and similarly placed persons, specifically

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persons who did not have the educational qualification, were all upgraded, pursuant to the Government Order in G.O.Ms.No.581, Home (Pol.V) Department, dated 06.07.2006. Since the petitioner was also similarly placed persons to the beneficiary of the aforesaid Government Order, he was also upgraded to the post of Grade I Police Constable which was revised with effect from the date of the Court order. It is not the case of the petitioner that he had possessed the necessary educational qualification for him to be up-graded as a Grade I Police Constable. When that being so, there is no requirement to grant any opportunity of hearing to the petitioner and there is no infirmity in the order passed by the respondent.

6.I have considered the rival submissions made on either side and perused the materials placed on record.

7.It is an admitted case that the petitioner had been up-graded as Grade I Police Constable in the year 1999. Conditions have been

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imposed that such up-gradation would be reversed, if it is found that the up-gradation was granted overlooking the order of suspension or any criminal charges or enquiry into grave charges pending on the time of up-gradation. The petitioner was originally sought to be down graded as Police Constable Grade II, which came to be challenged by the petitioner before this Court in W.P.No.22140 of 2009, by allowing the Writ Petition, this Court had held that there has been clear violation of principles of natural justice, but however, granted liberty to the respondent to take action after affording an opportunity of personal hearing to the petitioner. For better appreciation of the fact, the relevant paragraphs of the said judgment is extracted hereunder:-

6.The short point for consideration in this Writ Petition is as to whether the petitioner was given any opportunity at all before passing the impugned order?

7.On a careful reading of the impugned order, it is very clear that the impugned order was passed by the authority concerned without issuing any notice at all to the petitioner. It is also further clear that even in the earlier order of promotion, details relating to previous



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enquiry were mentioned but nothing is mentioned insofar as the educational qualification. It is always open to the authority concerned to take necessary action, after providing sufficient notice to the concerned person. In this case, violation of principles of natural justice is clearly made out as no notice was given before passing the impugned order. Since the petitioner continued in the promotional post by virtue of stay granted by this Court on 30.10.2009, the impugned order is set aside for want of notice alone.

8. Thereafter, the respondent had issued an order cancelling the earlier order which has already been set aside by this Court and then the respondent had proceeded to revise the order of reversion by fixing the date of his up-gradation as 06.07.2006 and ordering recovery of OD pay and other allowances from the period between 28.07.1999 and 05.07.2006, from the petitioner's salary in equal installments.

9. The said order, as rightly pointed out by the learned counsel for the petitioner is not only in violation of the principle of natural justice,

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but also the specific direction issued by this Court in the earlier round of litigation as extracted supra. On this ground alone, I am inclined to interfere with the order impugned in this Writ Petition.

10.It has been brought to the notice of this Court that the petitioner had already superannuated only as a Grade I Police Constable.

11.In such view of the matter, I also do not propose to remit the matter back to the respondent to re-initiate the proceedings as I have said I am interfering with the order of the respondent on the ground of violation of principles of natural justice as the respondent had willfully failed to provide any opportunity to the petitioner as directed by this Court.

12.In fine, the Writ Petition is allowed and the impugned order is set aside. The respondent shall not proceed to re-initiate any enquiry in the issue concerned. However, there shall be no order as to costs.

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Consequently connected Miscellaneous Petitions are closed.

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Index : Yes/No

Speaking order : Yes/No

Neutral Citations : Yes/No

To

The Inspector General and
Commissioner of Police,
Salem City, Salem District.

K.KUMARESH BABU,J.

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