



W.P.No.34321 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	17.10.2022
Pronounced on	02.01.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.34321 of 2012

R.Murugesan

... Petitioner

Vs.

- 1.The Home (Police-III) Department,
Secretariat, Chennai-600 009.
- 2.The Director General of Police,
Mylapore, Chennai-600 004.
- 3.The Deputy Inspector General of Police,
Tirunelveli Range,
Maharaja Nagar,
Tirunelveli-627 002.
- 4.The Superintendent of Police,
Tirunelveli District, Palayamkottai,
Tirunelveli-627 002.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, calling for the records of the third respondent dated 25.05.2011 and to quash the same and consequently directing the respondents to include the petitioner's name in the C-List of head constable (AR) fit for promotion as Sub-Inspector



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as early as 31.03.2003 in seniority with the petitioner's juniors in the Department who were enlisted in 1988 with equivalent pay scale/emoluments.

For Petitioner : Ms.R.Vijaya Kamala

For Respondents : Mrs.P.Rajarajeswari, GA

O R D E R

To the claim made by the petitioner herein for retrospective promotion for the post of Naik and Head Constable on par with his junior and also for inclusion of his name in the C-List of Head Constable (AR) fit for promotion to the posts of Sub Inspector of Police, this Court by an order dated 14.09.2010 in W.P.No.22221 of 2009 had passed the following order:-

"18. Though the impugned order is in accordance with statutory rules, applicable to the post of Sub Inspector of Police, considering the averment made in the writ Petition and the statutory provision, Rule 25(b) of the Special Rules for Tamil Nadu Police Subordinate Service Rules, this Court is inclined to direct the respondents to include the name of the petitioner in the list of Police Constable fit for promotion as Naik, as on 26.12.1995 and consequently, as Head Constable as on 09.12.1997, on par with his Junior, Thiru.Lakshmanan. Insofar as the



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post of Sub Inspector of Police is concerned, the same had been filled up by conducting tests and other eligibility criteria, as per the service rules. Therefore, in view of the petitioner's inclusion in the list of Naiks as on 26.12.1995 and in the list of Head Constables as on 09.12.1997, it is open to the petitioner to make any representation to the concerned for the post of Sub Inspector of Police and if any representation is made, the respondents shall consider the case of the petitioner, with reference to the eligibility criteria, as per the rules."

In compliance with the aforesaid order, the fourth respondent herein had passed orders on 15.04.2011, declaring that the petitioner was deemed to have been promoted as Grade-I Naik and Head Constable with effect from 30.09.1995 and 10.12.1997 respectively, with retrospective effect, on par with his junior Mr. Lakshmanan. The petitioner's name was also included in the C-List of Head Constables (AR), fit for promotion to the post of Sub Inspector of Police (AR) for the year 2003. In accordance with the instructions given in the memorandum of the second respondent herein dated 21.02.2003, the petitioner was subjected to a promotional test through the impugned order dated 25.03.2011. The third respondent herein had stated that in the written test, drill test and Viva-voce held on 02.05.2011 &



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03.05.2011 respectively, the petitioner has scored 50.14 marks out of the total 100 marks, as against the cut off mark of 65.34 and therefore, he was not eligible for inclusion of his name in the C-List of Head constables (AR) fit, for promotion as Sub Inspector of Police (AR) for the year 2003. Challenging the same, the present Writ Petition has been filed.

2. Heard Ms.R.Vijaya Kamala, learned counsel for the petitioner and Mrs.P.Rajarajeswari, learned Government Advocate appearing on behalf of the respondents.

3. The learned counsel for the petitioner submitted that in accordance with the memorandum dated 21.02.2003, the written test requires to be conducted for a maximum of 30 marks, whereas the respondents have conducted the written test for 70 marks and converted the 70 marks into 30 marks, which is not as per the conditions in the said memorandum. It is her further submission that the respondents cannot adopt the cut off marks that was given in the C-List in the year 2002 for the subsequent test. It is also her submission that when this Court had directed for notional promotion for the post of Head constable in the year 1997, all the service benefits for the post of



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Head Constable would flow from the year 1997 and therefore, non consideration of the Annual Confidential Reports (ACRs) during that point of time, is also improper.

4. Per contra, the learned Government Advocate placed reliance on the averments made in the counter affidavit and submitted that, as per the directions of this Court in W.P.No.22221 of 2009, the petitioner was given notional promotion to the post of Gr-I Naik and Head Constable and his name was also included in the C-List of Head constables (AR) fit for promotion as Sub Inspector of Police (AR) for the year 2003. The memorandum applicable to the petitioner mandates for a written test, in which the petitioner has scored 15.64 and since he had qualified in the test, he was subjected to the subsequent drill test and Viva-voce. On a consideration of his service records, Clean D-Sheet and Rewards, along with the marks in the written test, drill test and Viva-voce, he has totally scored 50.14 out of 100 marks. The cut off marks for the drawal of C-List of Head Constables for the year 2003 was fixed as 65.34 and therefore, the petitioner's name was not included in the C-List of Head Constables (AR) for promotion as Sub Inspector of Police (AR). Hence, she would submit that there is no infirmity in the impugned order dated 25.05.2011.



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5. It is not in dispute that the petitioner was subjected to a written test, as per the instructions of the second respondent in the memorandum dated 21.02.2003. As per the said memorandum, the marks for the promotional test shall be allotted in the following manner:

S.No.	Test	Marks
1	Written Test	30
2	Drill Test	10
3	Viva-voce	10
4	Past Performance	
	a)Assessment of service based on PF, ACRs from the date of regular promotion as HC till date (2 marks should be deducted for each adverse entry)	30
	b)For clean D Sheet (the period from the date of regular promotion as HC alone should be taken into account for every minor punishment one mark should be deducted and for every major punishment, 2 marks should be deducted all subject to maximum of 10)	10
	c)Rewards (upto 100, 5 marks, 101 and above 10 marks)	10
		100



6. The aforesaid memorandum was issued on the basis of the orders of the Tamil Nadu Administrative Tribunal (hereinafter referred to as "Tribunal") passed in OA.Nos.2176 of 1991, etc., (batch cases), wherein it was observed that the assessment of the record has to be a comprehensive qualitative one, based on an appraisal of the performance of the candidate during his period of service as Head Constable. Though the memorandum specified the written test for 30 marks, the second respondent had chosen to conduct the written test for the petitioner at a maximum of 70 marks. This aspect is admitted by him in paragraph 10 of the counter affidavit. What has been done in the case of the petitioner is that he was evaluated in the written test for 70 marks and the same was converted into 30 marks as 15.64 ($36.50/70 \times 30$). Since after this conversion, the petitioner has secured more than 40 marks in the written test, he was subjected to further drill test and Viva-voce test. Though the petitioner was notionally promoted to the post of Head Constable from the year 1997, his ACRs for the year 1997-98, 1998-99, 1999-2000 and 2000-01 were not taken into account. Rather, his ACRs for the year 2002-2003 & 2003-2004 alone were reckoned and 6 marks out of 30 marks were awarded.



7. There is a vast difference in conducting a test for 70 marks instead of 30 marks. Likewise, conversion of marks secured by a candidate for a maximum of 70 marks into 30 marks, would also deprive a candidate from scoring higher marks. Even without reference to this, the very procedure of subjecting the petitioner to written test with maximum of 70 marks, is totally opposed to the respondents' own memorandum, which only stipulates for a maximum of 30 marks in the written test. Thus, the mode in which the written test was conducted, being opposed to the respondents' own instructions, would stand vitiated.

8. Likewise, when this Court had directed the respondents to grant notional promotion to the petitioner for the post of Head Constable with effect from 09.12.1997, the assessment of his service based on the ACRs from the date of his regular promotion as Head Constable ought to have been taken. On the other hand, the respondents seems to have taken a stand that since his promotion was only a paper posting with effect from 09.12.1997 and he has started working as Head Constable only from 22.07.2002, they had taken into account the ACRs for the years 2002-2003 and 2003-2004 and awarded 6 marks out of 30 marks. The mistake in granting promotion to the



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petitioner for the post of Head Constable with effect from 2002 is on the part of the respondents herein. Such a mistake should not be put against the interest of the petitioner, particularly, when this Court had directed for grant of notional promotion to the post of Head Constable, on par with his junior with effect from 09.12.1997. In these circumstances, the respondents ought to have granted the benefit of a notional "clean ACR" for the post of Head Constable for the year 1997-98, 1998-99, 1999-2000 & 2000-01 and could have granted full marks for each year.

9. On an overall appraisal of the manner in which the respondents have conducted the written test by subjecting the petitioner to 70 marks, as against the prescribed 30 marks, as well as assessed his service on restricted past performance of his ACRs for two years alone, the resultant impugned order, disqualifying the petitioner for inclusion of his name in the C-List of Head Constable (AR) fit for promotion to the post of Sub Inspector of Police (AR) for the year 2003, cannot be sustained owing to the infirmity and irregularity in conducting the promotional tests. Furthermore, on consideration of the fact that the petitioner herein had to knock the doors of this Court on two earlier occasions seeking for his rightful promotions, it would not be



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appropriate to direct the respondents to conduct any further promotional test. Such a decision is taken by this Court also on consideration that the petitioner was able to perform well in the written test for 70 marks and had qualified himself for the further drill test and Viva-voce test and also he had been deprived of the marks for his past performance for four years, he could be deemed to have qualified himself for inclusion of his name in the C-List of Head Constable for promotion to the post of Sub Inspector of Police for the year 2003.

10. In the result, the impugned order dated 25.05.2011 on the file of the third respondent herein, is quashed. Consequently, there shall be a direction to the respondents herein to pass appropriate orders, notionally promoting the petitioner to the post of Sub Inspector of police (AR) for the year 2003 and place his seniority, on par with his immediate junior who were enlisted in the year 1988, with equal pay scales and emoluments, within a period of four weeks from the date of receipt of a copy of this order. The Writ Petition stands allowed. There shall be no order as to costs.

02.01.2023

Internet:Yes
Order :Speaking
DP

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M.S.RAMESH,J.

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ORDER MADE IN
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