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W.P.No.33314 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2023

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.33314 of 2013
and M.P.No.1 of 2013

A.John Kennedy

... Petitioner

-Vs-

1. The Commandant,
TN Special Police IX Battalion,
Manimutharu,
Kalladaikurichi PO,
Tirunelveli District.

2. The Superintendent of Police,
Villupuram District,
Villupuram.

3. The Director General of Police,
Mylapore,
Chennai 4.

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorari, calling for the records of the respondents 1 and 2 in connection with the impugned order passed in C.No.A4/1036/2010 BO No.295/2012 dated 02.07.2012 and DO No.126/2013 in C.No.N4/40215/2013 dated 15.02.2013 respectively and quash the same and direct the respondents to treat the period of out of employment as duty with continuity of service and also upgrade the petitioner as Gr.I Police Constable by taking into consideration the completion of 10 years of service and grant him all consequential service and



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monetary benefits.

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For Petitioner : Mr.K.Venkataraman, Senior Counsel
for Mr.M.Muthappan

For Respondents : Mr.V.Veluchamy
Additional Advocate General

ORDER

This Writ Petition has been filed calling for the records of the respondents 1 and 2 in connection with the impugned orders passed in C.No.A4/1036/2010 BO No.295/2012 dated 02.07.2012 and DO No.126/2013 in C.No.N4/40215/2013 dated 15.02.2013 respectively and to quash the same and directing the respondents to treat the period out of employment as duty with continuity of service and also upgrade the petitioner as Gr.I Police Constable by taking into consideration the completion of 10 years of service and grant him all consequential service and monetary benefits.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials available on record.

3. The Petitioner had entered into the service of Grade II Police constable through a selection conducted by the Tamil Nadu Uniformed Service Recruitment Board on 24.05.1999. After training, the petitioner had served in



the TSP IX Battalion, Manimutharu. However, he was declared as deserter by

the first respondent with effect from 07.05.2004, followed by the charge memo for deserting the Police Force. After enquiry, the petitioner was awarded with punishment of removal from service by an order dated 22.12.2004. Thereafter, on mercy petition dated 21.01.2010, the third respondent cancelled the removal from service and modified the punishment into postponement of increment for a period of two years without cumulative effect. Accordingly, the petitioner was taken back for duty on 30.03.2010 in the Battalion.

4. On the petitioner's willingness, he was transferred to Chennai City Armed Reserve on 01.04.2010 and subsequently, he was transferred to Villupuram District on 31.09.2010. Again he was transferred to Law and Order and he was serving in the Thiyaga Durga Police Station, Villupuram District. Thereafter, he was issued with a show cause notice dated 28.04.2010 for the settlement of the period of employment from 22.12.2004 to 29.03.2010. On receipt of the said show cause notice, the petitioner submitted his reply dated 26.05.2010, requesting that the period may be treated as duty without wages and the same may be counted for the purpose of seniority. However, the first respondent, by the proceedings dated 02.07.2012, treated the period from 12.02.2004 to 06.05.2004 as leave with pay and the period out of employment



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from 22.12.2004 to 29.03.2010 as leave without pay, thereby, the entire period is treated without any service benefits. As per the said order dated 02.07.2012, the second respondent issued the revision of pay orders on 15.02.2013, thereby, the entire service rendered from 2004 to 2010 is not counted for any purpose including notional fixation of pay.

5. The learned Senior counsel appearing for the petitioner submitted that the petitioner is entitled to count his period of service for continuity of service and also eligible for notional fixation of pay, which cannot be denied to the petitioner by any stretch of imagination in pursuance of the service rules. He is also eligible for upgradation as Grade-I PC on completion of 10 years of service in the year 2009. In view of the fact that the modified punishment imposed on 12.03.2010 will have no consequence on the upgradation of the petitioner as Grade-I PC in the year 2009, since the punishment has to be given effect from 2002 to 2004, besides the guidelines relating to punishment suffered during the check period will have no consequence in view of the Judgment passed by this Court.



6. He relied upon the Judgment of the Hon'ble Division Bench of this

Court in ***W.A.No.58 of 2011*** in the case of ***R.Ramesh Vs Deputy Inspector***

General of Police and others, wherein this Court held as follows:-

“.....we are prima facie of the view that the punishment imposed on the appellant is disproportionate to the charge leveled against him and it is in fact, shocking the conscience of this Court. We, therefore, allow this writ appeal, set aside the impugned judgment passed by the learned single judge and remit back the matter to the disciplinary authority, viz, the second respondent herein, to reconsider the matter with regard to the quantum of punishment imposed on the appellant and to take a decision within six weeks from today. It is made clear that in the event the quantum of punishment imposed on the appellant is reduced, he shall not make any claim with regard to wages for the period he has not performed his duty, but the continuity of service will not be affect.....”

7. Subsequently, the said order was implemented and the delinquent was imposed with a lesser punishment of stoppage of increment for a period of one year without cumulative effect by the Director General of Police, Chennai and he was reinstated into service. It was also followed in subsequent Judgment, wherein a person who has committed the delinquency of absence from duty on 4 occasions and desertion for 4 occasions was ordered to be reinstated into service. Therefore, the petitioner herein is also entitled to the same relief of continuity of period in which he was out of employment, otherwise, even after reinstatement, he might not get upgradation on par with



his junior.

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8. A perusal of the counter filed by the respondents revealed that after imposing of capital punishment, the petitioner had neither preferred any appeal nor filed review before the respective authority. He had preferred a mercy petition to set aside the punishment awarded to him after prolonged period of 5 years. On showing leniency, his mercy petition was modified into punishment of postponement of increment for a period of two years which shall not affect his future increments as per 15A (i) (ii) of TNPSS (D and A) Rules, 1955. Accordingly, the petitioner was taken back for duty and he had reported for duty on 30.03.2010. In respect of settlement of his out of employment, an explanation was called for from him. On receipt of explanation, as per the instruction issued by the third respondent and as per ruling (1) (a), the period spent by the petitioner under out of employment for the period from 22.12.2004 to 29.03.2010 was treated as eligible leave.

9. The learned Senior Counsel appearing for the petitioner also relied upon similar Judgment of this Court which indicates that the continuity of the petitioner's service should not be affected. As per the directions of this Court, what could be denied to the petitioner is the payment of his arrears of salaries



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for the period of his non-employment between 22.12.2004 to 29.03.2010. Apart

from that, all other service benefits, including notional pay fixation, requires to be extended to the petitioner, including the notional promotions. The total period of five years and three months from 22.12.2004 to 29.03.2010 was treated as LWP (P) in which the punishment imposed on the petitioner of postponement of increment for a period of two years can be deducted and the remaining period of three years and three months can be considered as qualifying service for calculation of 10 years of service for upgradation of Grade-I PC and that period also can be considered for his continuity of service.

10. In view of the above, the impugned orders passed in C.No.A4/1036/2010 BO No.295/2012 dated 02.07.2012 and DO No.126/2013 in C.No.N4/40125/2013 dated 15.02.2013 are hereby set aside. The respondents are directed to treat the period of three years and three months as qualifying service for calculation of 10 years of service for upgradation of Grade-I PC and for his continuity of service.

11. In the result, this writ petition stands allowed. Consequently,



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connected Miscellaneous petition is closed. There shall be no order as to costs.

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Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

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To

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G.K.ILANTHIRAIYAN, J.

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