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WP.No.7740/2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.09.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.7740/2019

K.Mohanavelu

... Petitioner

Versus

1.The Inspector General of Police
Armed Reserve, Chennai 600 010.

2.The Commandant
Tamil Nadu Special Police
Regimental Centre, Avadi
Chennai 600 054.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the entire records which culminated in passed the order bearing proceeding in Na.Ka.No.A2/531/2018 dated 31.07.2018 by the 2nd respondent and quash the same and consequently, directing the respondents to give promotion as Havildar to the petitioner from the year 2015 and give all consequential benefits.

For Petitioner : Mr.P.Ganesan

For Respondents : Mr.T.K.Saravanan, GA



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ORDER

- (1) The comparative pay which the petitioner had received as on March 2021, when he was working as Police Constable in 'Q' Branch CID and the pay which he would have got had he been promoted as Havildar [MT] in Regimental Centre, Avadi, had been presented on behalf of the respondents. Similarly, the pay which he would have received at the time of his retirement on 31.07.2023 in the post in which he so retired and in the post if he had been promoted, had also been presented by the respondents. It is seen that if the petitioner had been promoted, his pay would be lesser than what he had actually drawn in March 2023 and what was his last drawn pay in June 2023.
- (2) The learned counsel for the petitioner may take serious note of this fact since this would have an cascading effect not only on that particular month salary, but revising the pension proposals of the petitioner herein.
- (3) With that preliminary observation, let me examine the averments made in the writ petition. In the writ petition, the petitioner claimed that he had been appointed as Recovery Mechanic in the Indian Army



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on 04.12.1982 and had been relieved from that service on 31.01.2001.

He then was selected as Police Constable Grade-II on 30.11.2003 and was posted to Tamil Nadu Special Police, Regimental Centre, Avadi on 01.09.2004. He was absorbed in Motor Transport Group with effect from 04.11.2004. He was transferred to Vigilance and Anti Corruption Special Investigation Cell, on deputation by an order dated 07.08.2006. The petitioner claims that one Murugesan had also joined the Indian Army similarly to the petitioner and had later, also joined the Tamil Nadu Police Service. He was however given promotion as Havildar by his Commandant. The petitioner was not granted that particular promotion to the post of Havildar. Claiming that particular promotion, the petitioner had given a representation, but that was rejected by an order dated 31.07.2018, necessitating filing of the present writ petition.

- (4) The respondent had filed a counter and also an additional counter affidavit.
- (5) In the counter affidavit, the respondents had stated that the petitioner was not entitled for such promotion and this particular statement was



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qualified in the additional counter affidavit wherein it had been stated that the petitioner who was working in the Motor Transport Department and had been as Police Constable Grade-II, can be promoted only as Havildar in the Motor Transport Department and not as Havildar in any other parallel Department. It had been stated that the other individual whom the petitioner had compared himself with, was in the Armory Department and when there was a vacancy in Armory Department, the said individual had been promoted. It had been contended in the additional counter affidavit that there cannot be interchange of Departments and promotions cannot be granted interchangeably. To state the facts little more detail, it was also stated that the petitioner was actually given temporary promotion on 19.09.2011. But, the petitioner had submitted a petition that he was not willing to be so promoted as Havildar in Motor Transport on 25.02.2012, citing health issues. He was willing to work as Police Constable in the Motor Transport. It was during that period that he was sent on deputation to the Vigilance and Anti Corruption Department. Thereafter, it was contended that since he had given that



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particular letter, not willing to be promoted, his promotion aspects were kept in abeyance for a period of three years between 2012-2015.

It had been further stated that there was no vacancy in the post of Havildar, Motor Transport between 2015-2020. When the promotion aspect opened up and the petitioner was invited to participate in the test for such promotion, the petitioner again citing pendency of the said writ petition, refused to participate in the test for such promotion as Havildar, Motor Transport. It is therefore contended that the respondents can never consider the petitioner as Havildar, Motor Transport.

- (6) It was also stated that the test involved having a valid driving license for driving heavy vehicles and it would also involve driving heavy vehicles in a zig-zag manner and in other skills. The petitioner had not subjected himself to such test. It was for those reasons, that the Impugned Order had been passed.
- (7) The learned counsel for the petitioner however contended that since the petitioner had requisite qualification and since he had already been considered eligible in the year 2012, he should not have been



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called upon to undergo the rigor of a preliminary test once again in the year 2021. It had been stated that the earlier test conducted in the year 2012, should have been taken as the benchmark and the petitioner should have been automatically promoted as Havildar, Motor Transport. But however, promotion cannot be granted without the petitioner undergoing the tests required to be so promoted. In the meanwhile, the petitioner had also retired from service on 31.07.2023.

- (8) The learned counsel for the petitioner therefore, widened the scope of argument, and stated that since the petitioner had retired, the respondents could consider granting promotion notionally which would only indicate that he would be granted one additional increment and that it would not be a financial burden on the respondents if it is so considered. It is stated that the petitioner had already reached that particular scale of pay as Havildar, Motor Transport.
- (9) It is in this connection that the instructions referred in the first part of the order becomes relevant.



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- (10) The comparative pay scales have been given and it is seen that the petitioner had drawn a higher scale of pay in the post of Police Constable, 'Q' Branch CID, in March 2021, then, he would have been paid had he been promoted as Havildar, Motor Transport. This is also reflected in the last drawn pay. Comparative Tables have been given and therefore, there would not be any financial benefit given to the petitioner by grant of such promotion, rather there would be loss.
- (11) This is recorded and in view this being a fresh information given to the petitioner herein, the Impugned Order would stand, but still, if the petitioner seeks that he should be so promoted, let him give a fresh representation to the respondents. Of course, he should suffer loss of pay to that extent since there is a difference in pay between the pay which he last drew on the date of his retirement and the pay which he would have drawn had he been promoted as Havildar, Motor Transport. It is now entirely in the hands of the petitioner herein to take a decision. But, let not the writ petition be kept pending.
- (12) The Impugned Order is maintained. But, once again if the petitioner



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gives a representation and is willing to give up the benefit of higher pay, then promotion with notional effect alone should be granted to the petitioner herein.

(13) Holding as above, the writ petition stands **disposed of**. No costs.

27.09.2023

AP

Internet : Yes

To

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C.V.KARTHIKEYAN, J.,

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