



W.P.No.7919 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 12.12.2022

Orders delivered on 06.01.2023

CORAM :

THE HON'BLE Mrs.Justice **J.NISHA BANU**

W.P.No.7919 of 2015

M.Anbalagan

.. Petitioner

Vs

1. The Additional Chief Secretary to Government,
Higher Education Department,
Fort St.George, Chennai-9.
2. The Director of Collegiate Education,
DPI Complex,
Nungambakkam, Chennai-6.
3. The Joint Director of Collegiate Education,
Coimbatore
4. The Member Secretary,
Teachers Recruitment Board,
DPI Complex, College Road,
Chennai-6

..Respondents.

PRAYER: Writ Petition filed under Article 226 of the Constitution to issue a



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Writ of Certiorarified Mandamus to call for the records of the first respondent in connection with the impugned order passed in G.O.(Ms)No.214 Higher Education Department dated 18.12.2014 and quash the same insofar as the petitioner is concerned, regarding the date of regularisation as 12.12.2012 and further direct the respondents to fix the regularisation for the purpose of seniority of the petitioner with effect from 09.07.2009 in the cadre of Assistant Professor (Tamil) and grant him all consequential service and monetary benefits.

For Petitioner	: Mr.Venkataramani Senior Counsel For Mr.M.Muthappan
For Respondents	: Mr.T.Arunkumar Addl.Govt.Pleader For R.1 to R.3 Mr.R.Neelakandan Additional Advocate General Assisted by Mr.R.Siddharth Govt.Advocate For .4



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ORDER

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This Writ Petition has been filed to quash the order of the first respondent passed in G.O.(Ms)No.214 Higher Education Department dated 18.12.2014 insofar as the petitioner is concerned, regarding the date of regularisation as 12.12.2012 and further direct the respondents to fix the regularisation for the purpose of seniority of the petitioner with effect from 09.07.2009 in the cadre of Assistant Professor (Tamil) and grant him all consequential service and monetary benefits.

2. The case of the petitioner is that the petitioner belongs to scheduled caste community and is a PG degree holder in Tamil and has passed SLET for appointment as Lecture in the College service. He has served for more than 7 years in various colleges as Lecturer in Tamil and has acquired necessary qualification for appointment to the post of Assistant Professor in Tamil in Government Colleges. The petitioner, based on a notification No.4/2008 dated 18.09.2008 issued by Teachers Recruitment Board for appointment to the post of Lecturer in Tamil for the year 2008-09, submitted his application



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and attended the certificate verification on 4.3.2009. The petitioner produced all documents pertaining to his experience as a Teacher for having served in various colleges. He was awarded 16 marks but he was not called for interview. The petitioner had participated in the previous selection in the year 2007 and was awarded 15 marks for the Teaching experience by the Certificate Verification Committee. The petitioner's representation seeking for awarding correct marks was rejected by the 2nd respondent on 15.06.2009. Hence, he filed W.P.No.12690/2009 challenging the said rejection order and the said writ petition was disposed of, directing to award correct marks to the petitioner. Accordingly, the petitioner was awarded 5 more marks for teaching experience but the petitioner was not granted marks for books and articles. Hence, he filed W.P.No.37376 of 2007 and obtained an order dated 31.08.2009 to consider the petitioner's representation for awarding marks for his books and articles. The petitioner reached the zone of consideration for interview under SC communal turn and he was called for interview on 7.5.2010 and in the interview he was awarded 9 marks but was not selected stating that the last candidate under SC communal turn has secured 34 marks



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and the petitioner had secured 30 marks and hence, not selected and an order was passed rejecting his claim by order dated 21.05.2010. Challenging the same, the petitioner filed W.P.No.21963/2010 to quash the order of non-selection and for a direction to award marks for the Books & Article published by him. The said writ petition was allowed, directing the respondents to consider the Books and Articles published by the petitioner and to award him marks and in case, the petitioner gets marks over and above 34 marks, he should be issued with appointment order after verifying the documents that were available under SC category for the year 2008-2009 within a period of four weeks from the date of receipt of a copy of the order and the said order was passed on 15.11.2010. Against the said order, the Teachers Recruitment Board filed Writ Appeal No.1542/2011 and the same was dismissed at the time of admission itself on 04.11.2011. Thereafter, the petitioner filed contempt petition for non-compliance. In the meanwhile, the petitioner was called for scrutiny of documents on 25.09.2012 and the certificates have been verified and was awarded 5 marks for Books and Articles and the marks secured by the petitioner is over and above the last cut



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off marks namely 34 and the petitioner was selected provisionally under SC communal turn and an order was passed on 18.10.2012. Subsequently, during the pendency of Contempt Petition, the 1st respondent issued an appointment order in G.O.(D)No.235 Higher Education Department dated 10.12.2012, appointing the petitioner as Lecturer in the Government College and posting him at Government Arts College for Men, Kumbakonam, by proceedings dated 12.12.2012. Thus, after number of litigations, the petitioner was appointed on 12.12.2012, though he was selected in the year 2009. Now, the respondent has issued the order of regularisation dated 18.12.2012 in G.O.Ms.No.214 regularising the petitioner only from 12.12.2012 whereas the person who had secured less marks under SC category, one Shanmugam has been given seniority from 9.7.2009. The petitioner's service benefits cannot be denied merely because the petitioner assumed office on 12.12.2012. Hence, this writ petition.

3. Heard the learned senior counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the 1st to 3rd



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respondents and the learned Additional Advocate General appearing for the 4th respondent.

4. Learned senior counsel appearing for the petitioner would submit that the petitioner is fully qualified for appointment as Assistant Professor (Tamil) based on the recruitment notification issued by the Teachers Recruitment Board for the year 2008-2009. The delay in the appointment is only at the instance of the Teachers Recruitment Board who have denied marks for teaching experience as well as marks for books and articles. There is a long delay even after this Court passed an order in 2011 in the appointment of the petitioner as Assistant Professor (Tamil). The order of appointment was issued only on 10.12.2012. Hence, the petitioner is entitled to get his seniority from the date on which his batch mates were originally appointed based on the selection for the year 2008-2009. The delayed appointment of the petitioner as Lecturer in Tamil is purely due to the fault of the respondents 3 and 4 in rejecting the claim by refusing to award marks for teaching experience and for publication of books and articles. There is further



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delay in implementation and only after filing Contempt, order of appointment was issued by the respondents. For the fault of the respondents 3 and 4, the petitioner should not be made to suffer. He would further submit that in the appointment order itself at para 9, it is stated that the inter se seniority of the petitioner will be decided later on by the Director of Collegiate Education. The seniority of the petitioner has not been issued so far. But the Government issued an order for regularization of service of the petitioner with effect from 12.12.2012 instead of 09.07.2009. Hence, the petitioner cannot be denied seniority from 09.07.2009. Therefore, he would pray to allow the writ petition.

5. Learned counsel for the petitioner also relied on the following decisions:

- i) (2008) 3 SCC 222 (State of Haryana & Ors. vs. Dinesh Kumar)
- ii) Order in W.P.No.33749 of 2016 dated 02.09.2021 (P.Senthil Kumar vs. Secretary to Government, Home Department)
- iii) Order in W.P.No.19010 of 2017 dated 02.08.2021 (V.Viswanathan



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vs. The Director General of Police)

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iv) Order in W.P.No.39172 of 2016 dated 31.07.2019 (R.Mohan vs. The Registrar, General High Court) passed by the Division Bench of this Court.

6. Per contra, the learned Additional Advocate General appearing for the respondents would submit that first of all, the petitioner has not challenged the order of appointment. He would further submit that having accepted the appointment order in the year 2012, the petitioner cannot challenge the order of regularisation passed in the year 2014. Pursuant to the appointment order, the petitioner had worked for two years without challenging the same. He would also submit that regularisation can be done only from the date of appointment. Hence, he would seek to dismiss the writ petition.

7. This Court, considered the submissions made on either side and perused the materials available on record.



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8. At the outset, it is seen that the petitioner, after a long battle, got appointment in the year 2012, though he was fully qualified for appointment as Assistant Professor, based on the recruitment notification issued by the Teachers Recruitment Board for the year 2008-2009. Initially, the petitioner was not awarded marks for his teaching experience and hence, not selected. The petitioner approached this Court and obtained a direction, based on which, 15 marks was awarded for teaching experience. In the oral test, he was awarded 9 marks, but still not selected during schedule caste communal turn. Once again, he approached this Court and obtained a direction to award marks for his publications. Against which, writ appeal was filed and the same was dismissed and thereafter, contempt petition was also filed and finally, the petitioner was appointed vide proceedings dated 12.12.2012. The respondent has issued the regularisation order for the petitioner. Though, he was appointed in 2008-09, in G.O.Ms.No.214 College Education dated 18.12.2014, on successful completion of probation, in the annexure attached to the Government in respect of Tamil Department, the petitioner's name appears in Sl.No.94, but the date of regularisation has been mentioned only as



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12.12.2012, whereas the person who has secured less marks under SC category, one Shanmugam has been given seniority from 09.07.2009.

9. (i) In the first judgment cited by the learned counsel for the petitioner, the Hon'ble Supreme Court in (2008) 3 SCC 222 (State of Haryana & Ors. vs. Dinesh Kumar) in (Civil). No.84 and 85 of 2008 dated 08.01.2008, at paragraph No.31, has held as follows:

31. In the result, the Civil Appeal arising out of SLP(C) No. 1840 of 2007 is dismissed, while the Civil Appeal arising out of SLP(C) No.14939 of 2007 is allowed. The Judgment of the High Court dated 22nd September, 2005, impugned in the said appeal, is set aside and the concerned respondents are directed to take steps to issue appointment letters to the appellants in the said appeals subject to fulfillment of other conditions by them. It is also made clear that the appellants will be deemed to have been appointed as Constable-Drivers with effect from the date, persons lower in merit to them were appointed.

From the above decision, it is seen that the matter relates to the appointment of the petitioners as Drivers in Harayana Police and there was a delay and the Hon'ble Supreme Court not only directed to appoint them but also granted



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them seniority from the date on which their batch mates were appointed to service.

(ii) In the second decision cited above, this Court in W.P.No.33749 of 2016 dated 02.09.2021 (P.Senthil Kumar vs. Secretary to Government, Home Department), at paragraph No.10 to 13, has observed as follows:

10. The fact remains that the petitioner had cleared examinations and was called for medical test. It is only at the stage of medical test the petitioner was disqualified on the ground that he had defective eye sight. However, the fact remains that the petitioner had undergone the laser treatment and had removed the defect in the eye sight which led to be the order of this Court dated 25.01.2008 in W.P.No.3273 of 2006. Thereafter, the petitioner has been appointed as Grade~II Police Constable with the respondents with effect from 30.01.2008. Prior to the aforesaid date, the petitioner had also under gone training pursuant to the interim order of this Court. The delay in getting appointed with the respondents was not on account of the fault of the petitioner but on account of the stand taken by the respondents in not appointing the petitioner due to the apparent defects found by them in his eye sight.

11. The facts remains that the petitioner has been found



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eligible to be appointed as Grade-II Police Constable by the decision of this Court by its order dated 25.01.2008. Under similar circumstances, this Court has ordered notional promotions/seniority to be given to similarly placed persons in three years which has been cited by the learned senior counsel for the petitioner.

12. In the light of the above, this Writ Petition stands allowed with consequential relief to the petitioner. The respondents are therefore directed to carry out the necessary corrections in the service register of the petitioner by refixing the seniority of the petitioner along with the batchmates who were participated in the Recruitment called for during 2001-2002 Recruitment within a period of six weeks from the date of receipt of a copy of this order.

13. This Writ Petition stands allowed with the above observations. No costs.

From the above decision, it is seen that there was a delay in appointment to the post of petitioner as Police Constable and based on the court order, he was appointed and was granted seniority by the orders of the High Court on the ground that the delay is only at the instance of the department.

(iii) In the third decision cited above, this Court in W.P.No.19010 of



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2017 dated 02.08.2021 (V.Viswanathan vs. The Director General of Police),
at paragraph 13 to 20, has held as follows:

13. This is the case where the petitioner had successfully cleared all the exams in the recruitment for the year 1992~1993, but was not selected on account of his name in Cr.No.597 of 1991 before the Minsruti Police Station. However, later, petitioner's name was dropped from Cr.No.597 of 1991 and was not charge sheeted. Thereafter, the petitioner was appointed, pursuant to a direction dated 18.12.1999 of the Tamil Nadu Administrative Tribunal, Chennai in O.A.No.7319 of 1999. Thus, the reasons given in the impugned communication is not applicable to the petitioner.

14. That apart, in the case of S.Sakthivel, Head Constable No.568, Armed Reserve, Tiruvannamalai District, whose name was not included in the selection list to the post of Gr.III Police Constable in the year 1992~1993 due to his eyes are unfit due to defective vision, the seniority was fixed along with his seniority shall be fixed with the candidates who were provisionally selected in the year 1992~1993 and appointed on 01.11.1995 as per Rule 24(d) of TNPSS Rules.

15. The said Sakthivel had filed W.P.No.11324 of 1993 before this Court. By an order dated 24.02.2000, the Court



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directed the respondents for re~medical examination. The Medical Board in their letter dated 21.03.2001 later stated that the said Sakthivel was found to be medically fit for the post of Gr.II P.C. On such receipt of the same, the Director General of Police, Tamil Nadu, Chennai issued necessary appointment orders to the said Sakthivel. Thereafter, the said Sakthivel filed W.P.No.37880 of 2016 to direct the 1st respondent to consider the representation dated 26.09.2016 to include the said Sakthivel name at the appropriate place in the selection list of Police Constable of the year 1992~1993. The said writ petition was disposed on 01.11.2016 and directed the respondents to consider the representation of the said Sakthivel. The memorandum of the 1st respondent dated 17.04.2017 reads as follows:~

? As the petitioner was appointed as Gr.II PC pursuant to their selection for the year 1992~1993, he is entitled to count his seniority in the post of Gr.II PC from 1992~1993 from the date on which the candidates selected for the year 1992~1993 was appointed and sent for basic training (i.e.) w.e.f. 01.11.1995. Hence the request of Tr.S.Sakthivel, HC 568, Armed Reserve, Thiruvannamalai District seeking seniority on par with candidates selected for the year 1992~1993 is considered and his seniority shall be fixed with the candidates who were provisionally selected in the year 1992~1993 and appointed on 01.11.1995 as per rule 24(d) of



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TNPSS Rules.?

16. In the State of Haryana vs. Dinesh Kumar, (2008) 3 SCC 222, wherein it was held that the appellants will be deemed to have been appointed as Constable~Drivers with effect from the date persons lower in merit to them were appointed. However, while they will be entitled to the notional benefits of such continuous appointment and they will be entitled to salary only from the date of this judgment on the basis of such notional benefits.

17. This view was followed by this Court, by an order of Division Bench of this Court in The Secretary to Government, Home (Police 3) Department, Secretariat, Chennai vs. R.Madhan, W.A.No.211 of 2009 vide order dated 21.04.2009 in para Nos.7 & 8 of the above said Judgment.

18. The similar view also taken by the Single Bench of this Court in S.Balakrishnan, V.Parivallal and V.Kumar vs. The Director General of Police, Mylapore, Chennai~4, W.P.No.41271 to 41273 of 2006.

19. Since the petitioner-s appointment was not in terms of G.O.Ms.No.1339 Home (Pol.III) Department dated 01.10.1999, the petitioner is entitled to seniority on par with his batch mates as the criminal proceedings initiated against the petitioner were not proceeded. Therefore, the writ petition



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deserves to be allowed.

20. In the result, this writ petition is allowed with the consequential relief to the petitioner. No costs.

The above case is the similar case of denial as that of the present case on hand. There was a delay in granting appointment of the petitioner as Police Constable on the ground of involvement in criminal case. Based on the court order he was appointed to service and the Court has directed to grant him seniority on par with his batch mates.

(iv) In the fourth decision cited above in W.P.No.39172 of 2016 dated 31.07.2019 (R.Mohan, vs. the Registrar General, High Court, Madras), the Division Bench of this Court at paragraph 5, has held as follows:

5. Considering the facts and circumstances of the case, we are of the view that petitioner cannot be blamed for delay in sending him for fundamental training at Bhavani Sagar. Petitioner's service was regularised only after 5 years from the date of his initial appointment, which resulted in sending him to Bhavani Sagar Institute for fundamental training on 17.09.2012. Since the delay in regularising the petitioner's service as well as sending him for fundamental training at Bhavani Sagar has occurred only owing to administrative



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reasons, the petitioner cannot be denied promotion as Assistant on par with his juniors.

Accordingly, the Writ Petition is allowed. The orders of second respondent dated 01.06.2016 in Endorsement Endt.R.3250/16 and 18.09.2013 in Roc.No.275/2013-A are quashed. As a consequence, respondents 1 to 3 are directed to revise the seniority of the petitioner in the cadre of Assistant and promote him as Assistant by including his name in the appropriate panel notionally on par with his Junior Thiru K.Swaminathan. However, the petitioner is not entitled to get any arrears of salary for the promoted post and the seniority alone is to be given. The said notional promotion shall be calculated for all purpose except back wages. No costs.

In the above case, the petitioner was appointed on compassionate ground and there was a delay in sending him for fundamental training in Bhavanisagar Institute. The Division Bench has held that the delay was due to administrative reasons and the petitioner cannot be denied his seniority on par with his junior.

10. This Court is of the view that the above decisions would apply to the facts of the present case. In the case on hand, it could be seen that the

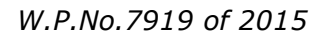


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petitioner was being aggrieved for not granting him seniority on par with his batchmates. The petitioner's service benefits cannot be denied merely because he assumed office on 12.12.2012, the date on which he joined duty as Lecturer (Tamil) in Government Arts College for Men at Kumbakonam. The petitioner was fully qualified at the time the applications have been called for but due to the fault committed by the respondents, he was not appointed in the year 2009 which has been done in the case of others. After number of litigations, he was appointed only on 12.12.2012. Therefore, this Court is of the opinion that the petitioner cannot be denied seniority. He is entitled for seniority from 09.07.2009 on par with his batch mates, even though he assumed office from 12.12.2012.

11. In view of the above discussions, the Writ Petition is allowed. The order of the first respondent passed in G.O.(Ms)No.214 Higher Education Department dated 18.12.2014 is quashed insofar as the petitioner is concerned, regarding the date of regularisation as 12.12.2012 and the respondents are directed to fix the regularisation for the purpose of seniority



06.01.2023

To

1. The Additional Chief Secretary to Government,
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J.NISHA BANU, J.



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Pre-delivery order in
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06.01.2023