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WA No.1434 / 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No. 1434 of 2022
and
C.M.P. No. 9292 of 2022

1.The State of Tamil Nadu,
Represented by its Additional Chief Secretary
to Government,
Home (Pol.III) Department,
Fort St. George,
Chennai – 600 009.

2.The Director General of Police,
Tamil Nadu, Kamarajar Salai,
Chennai – 600 004.

... Appellants

Versus

1.A. Karthick Ganesh
2.V. Rajendran
3.N. Srinivasan
4.K.T. Poongundran
5.D. Ganesan
6.S. Rajesh

... Respondents



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PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent praying to set aside the order dated 23.07.2021 made by the learned Judge in W.P. No. 1167 of 2020.

For Appellants : Mr. P. Kumaresan,
Additional Advocate General assisted by
Mrs. Mythreye Chandru,
Special Government Pleader.

For Respondents : Mr. R. Bharanidaran for
for Mr. R. Karthikeyan

J U D G M E N T

[Judgment of the Court was made by R. MAHADEVAN, J]

This Writ Appeal has been filed by the appellants challenging the order dated 23.07.2021 passed by the learned Judge in W.P. No.1167 of 2020.

2. The necessary facts leading to the filing of this writ appeal are as follows:

(a) The respondents herein were originally appointed as Grade II Police Constables on 16.04.1997 through the Tamil Nadu Uniformed



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Service Recruitment Board and got promotion to various posts and now working as Sub Inspector of Police in Tamil Nadu Special Police. While so, the Government issued G.O.(Ms) No. 1598, Home (Pol.3) Department dated 05.11.1997 thereby reserving 10% of direct recruitment vacancies in the post of Sub Inspector of Police (Taluk) to be filled up from among the holders of the posts of Sub Inspectors of Police in Armed Reserve / Tamil Nadu Special Police by transfer (conversion), subject to the condition that they must possess unblemished record of service and satisfy the conditions as prescribed in G.O.(Ms) No. 1512, Home (Pol.3) Department dated 09.10.1996, wherein, it has been stated that the directly recruited Sub Inspectors of Police in Armed Reserve / Tamil Nadu Special Police shall be transferred to Taluk Police as One time measure subject to satisfying the conditions that he / she must be a graduate, should not have completed 40 years of age and should have completed 5 years service as Sub Inspector of Police in Armed Reserve / Tamil Nadu Special Police. Thereafter, the Government issued G.O.Ms.No.09, Home (Pol.III) Department dated 06.01.2020, modifying the earlier G.O.Ms.No.1512, thereby deleting the portion of providing 10% reservation in the estimated vacancies for the post



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of Sub Inspectors of Police under direct recruitment for the year 2015-17 for filling up from Sub Inspector of Police (Armed Reserve / Tamil Nadu Special Police) of the year 2010 by transfer / by recruitment by transfer.

(b) Aggrieved by the aforesaid G.O., the respondents herein preferred the writ petition praying to quash G.O.Ms.No.09, Home (Pol.III) Department dated 06.01.2020 and consequently, direct the appellants to grant conversion / transfer by relaxing the age limit in terms of G.O. Ms. No.1598, Home (Pol.3) Department dated 05.11.1997 by transferring the respondents from Sub-Inspector of Police TSR/AR to the Inspector of Police, Taluk Police Establishment.

(c) By the order dated 23.07.2021 impugned herein, the learned Judge, after taking into consideration the facts and circumstances of the case and also following the earlier orders passed in three identical cases, allowed the writ petition in the following terms:

“11.... the petitioners are granted liberty to make an appropriate representation to the first respondent herein seeking for transfers to the Taluks and on receipt of such a representation, the first respondent herein shall consider the same, in the light of the earlier orders passed by this Court in W.P.Nos.4245 of 2014, 8481 of 2014 and 1579 of 2020 and the observations made by this Court and take a final decision, with regard to their claim for transfer, atleast within a period of 3 months from the date of receipt the representation.”



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Feeling aggrieved, the appellants / State are before this court with the present writ appeal.

3. Mr. P. Kumaresan, learned Additional Advocate General appearing for the appellants submitted that in order to encourage the working Sub Inspectors of Police in Armed Reserve / Tamil Nadu Special Police, the Government issued G.O.(Ms)No.1512 Home Department, dated 09.10.1996 to the effect that the Sub Inspectors of Police in AR/TSP shall be transferred to Taluk Police as one time measure subject to satisfying the conditions that he/she must be a graduate, should not have completed 40 years of age and should have completed 5 years service as Sub Inspectors of Police in AR/TSP. Subsequently, the Government issued G.O. Ms. No. 1598 Home (Pol.3) Department dated 05.11.1997 thereby reserving 10% of direct recruitment vacancies in the post of Sub Inspector of Police (Taluk) to be filled up from among the holders of the posts of Sub Inspectors of Police in AR/TSP by transfer (conversion) subject to the condition that they must possess unblemished record of service and satisfy the conditions as prescribed in G.O.Ms.No.1512 Home (Pol.3) Department dated 09.10.1996.



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Thus, according to the learned Additional Advocate General, the orders have been passed by the Government for appointing Sub Inspectors of Police in AR/TSP as Sub Inspectors of Police (Taluk) by transfer / by recruitment by transfer, based on the administrative / operational requirements.

4. Elaborating further, the learned Additional Advocate General appearing for the appellants submitted that the respondents herein were recruited as Grade II Police constables through TNUSRB on 16.04.1997. During the year 1997, totally 9527 Grade II PC have been recruited and they were sent for training in two batches and they were initially appointed in the Tamil Nadu Special Police Battalions including the respondents herein. On completion of 3 years service in the Tamil Nadu Special Police, most of the 1997 batch police constables were transferred to Armed Reserve except the respondents. The respondents had given unwillingness / permanent relinquishment for the transfer from the Tamil Nadu Special Police, but they are now claiming transfer to Taluk Police as sub Inspectors of Police overriding the seniority of their seniors who are still Head constables. The



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said claim cannot be considered as Rule 30 of the Tamil Nadu Special Police Subordinate Services Rules, 1978 clearly states that if the relinquishment is made permanently, the subsequent claim of the Police Constables shall not be entertainable. On the other hand, if the said claim is considered, it will open the flood gate and create disparities among the PCs recruited in the year 1997. It is also pointed out that the respondents' seniors, who were enlisted during the year 1993 and 1995 are now serving in Taluk Police as Special Sub Inspectors of Police on completion of 25 years (10+5+10), whereas the respondents are serving as Sub Inspectors of Police from the year 2010 itself as they got quick promotion in TSP and are now praying to be transferred to local police and be placed above their seniors as Inspectors. That apart, G.O.Ms.No.9 dated 06.01.2020 is not applicable to the respondents, but is applicable for the direct recruitment of sub Inspectors of Police (AR/TSP) for conversion from AR/TSP to Taluk, subject to fulfilling the conditions. Without properly appreciating all the aspects, the learned Judge erred in allowing the writ petition in favour of the respondents herein by the order impugned herein, which will have to be quashed.



impugned in this writ appeal. For better understanding, the relevant passage

of the order is reproduced as under:

“6. It is no doubt true that the decision to relax the condition, for the purpose of granting transfers from the Armed Reserve to the local police, is a policy decision of the Government and this Court will not direct the respondents to exercise such discretion. However, it is seen that such discretions were exercised in atleast three cases of the Sub Inspectors of Police, pursuant to the orders passed by this court.

7. In the case of A.Harihara Puthiran Vs. The Principal Secretary to Government, Home (Police-III) Department and another, this Court, in its order dated 14.02.2014 passed in W.P.No.4245 of 2014, had made a specific observation that the respondents had earlier transferred a Sub-Inspector of Police from the Tamil Nadu Special Police to the Criminal Investigation Department and had pointed out the discrimination in the case of the petitioner therein and accordingly, directed the respondents to consider that petitioner's case. Consequent to such a direction, the respondents had also considered the case of Thiru.A.Harihara Puthiran and by relaxing his upper age limit, had issued orders of transfer through G.O.(2D).No.398, Home (Police-III) Department, dated 03.11.2014.

8. A similar decision was taken in the case of M.Shankar, Sub-Inspector of Police, who had obtained orders from this Court on 04.04.2014 in W.P.No.8481 of 2014 and consequently, transfer orders were issued in his favour also.

9. In this background, it would be appropriate to point out another decision taken by a learned Single Judge of this Court in the case of D.Prem Ananth and 14 others Vs. State of Tamilnadu, Home (Pol.III) Department and another, wherein 15 Sub-Inspectors of Police, who had crossed the age of 40 years, had sought for conversion to the other departments and this Court had referred to earlier orders, wherein the Government had granted relaxation and converted the Sub-Inspectors to the Taluks and allowed the writ petitions. While passing such orders, the learned Single Judge had taken into consideration that when the upper age limit for direct recruitment has been placed at the age of 45 years, there was no justification for restricting the age of the Sub-Inspectors at 40 years, for the purpose of conversion. The relevant portion of the order reads as follows:-



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“11. In the above said circumstances, considering the fact that these petitioners are similarly and identically placed as that of the several other police personnel who had been benefited in the past by Government decisions converting them from Categories II and III to I, these petitioners cannot be placed on a different footing in the matter of considering their legitimate claim for conversion.

12. Once the facts, as disclosed in the affidavit filed in support of the writ petition, are conclusively established in favour of the petitioners, it is imperative on the part of the Government to treat all the Sub Inspectors of Police in the same scale of consideration and the Government cannot adopt a different and varying consideration from time to time. Even otherwise, factually, this Court is convinced that when in-service candidates are permitted to participate in the selection by way of direct recruitment for appointment in the post of Sub Inspector of Police prescribing upper age limit as 45 years, this Court does not see any acceptable reason as to why conversion alone should be restricted upto the age of 40 years. Nonetheless, the Government itself has taken a decision on some occasions, in converting police personnel who were similarly placed like the petitioners herein and granted them conversion even in respect of persons who have crossed the age of 40 years. In such event, this Court is unable to see as to how these petitioners alone should be deprived of such benefits, only on the ground that they have crossed the age of 40 years. When admittedly sufficient vacancies are available, there cannot be any obstacle or road block to consider the prayer of the petitioners herein favourably.

13. Therefore, the writ petition is allowed and the respondents are directed to pass appropriate orders granting conversion to these petitioners as Sub Inspectors of Police (Taluk), in line with earlier Government Orders issued in respect of the same subject matter of the claim, within a period of eight weeks from the date of receipt of a copy of this order.

14. It is also made clear that if, any age relaxation is required as a pre requisite for grant of the conversion, the same shall be granted by the Government in fulfillment of the equality principle enshrined in Article 14 and 16 of the Constitution of India.

10. On a co-joint reading of the various orders passed by the respondents herein, by relaxing the upper age limit of 40 years and



converting the Sub-Inspectors of Police attached to the Armed Reserve to the Taluks and in the light of the decision rendered in the case of D.Prem Ananth and others (supra), this Court is of the view that the ends of justice could be secured, if the respondents are directed to reconsider the petitioners-claim, in the light of the earlier orders of the respondents, as well as the orders passed by this Court cited in the aforesaid paragraphs, within a stipulated time.

11. In this background, the petitioners are granted liberty to make an appropriate representation to the first respondent herein seeking for transfers to the Taluks and on receipt of such a representation, the first respondent herein shall consider the same, in the light of the earlier orders passed by this Court in W.P.Nos.4245 of 2014, 8481 of 2014 and 1579 of 2020 and the observations made by this Court and take a final decision, with regard to their claim for transfer, atleast within a period of 3 months from the date of receipt the representation.

12. The writ petition stands allowed, accordingly. No costs. Consequently, connected miscellaneous petition is closed."

8. A reading of the above order would reveal that the learned Judge has categorically observed that the policy decision of the Government relating to relaxing the condition for the purpose of transfers from the Armed Reserve to the local police, cannot be interfered with by the court. However, such benefits have been extended to some of the similarly placed persons. Therefore, the learned Judge directed the appellants to consider the claim of the respondents / writ petitioners, in the light of the earlier orders passed in WP. Nos.4245 of 2014, 8481 of 2014 and 1579 of 2020 and pass appropriate orders.



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9. In such view of the matter, it is for the appellants to take a decision with regard to the claim of the respondents relating to conversion from the post of Sub Inspectors of Police (AR/TSP) to the Taluk Police, on merits and in accordance with law. While doing so, the appellants shall take into consideration the earlier orders passed as referred to above subject to appeals filed, if any. Such an exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this judgment.

10. With the aforesaid observations, this writ appeal stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

(R.M.D.,J) (M.S.Q.,J)
16.11.2023

ay

Index: Yes / No
Speaking Order / Non-speaking Order
Neutral Citation: Yes / No



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- 2.The Director General of Police,
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