



W.P.No.43383 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.43383 of 2016

K. Raji

... Petitioner

Vs.

1.The Director General of Police,
Chennai – 600 004.

2.The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai – 600 007.

3.The Deputy Commissioner of Police,
Office of the Deputy Commissioner of Police,
Vepery, Chennai – 600 007.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to proceeding in Na.Ka.No.15/11278/Pa.Pi.5(1)/2015 dated 06.05.2016 on the file of the second respondent and quash the same and direct the respondents to grant upgradation to the petitioner as Special Sub Inspector of Police from 27.02.2011 as per G.O.(Ms).15 dated 07.01.2010 by taking into account of 2332 days which was treated as Leave without pay while calculating total years of service for completing 25 years of service and consequential benefits.



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For Petitioner : Mr.M.S. Soundararajan

For Respondents : Mr.D. Gopal,
Government Advocate

ORDER

The petitioner joined the services of the respondents, as a Police Constable on 27.02.1986. He was thereafter promoted as a Head Constable on 07.03.1996, in which post, he continued to work. On 14.07.2007, he was placed under suspension and thereafter, an inquiry was conducted under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules. Based on the proven charges, the Disciplinary Authority had imposed a punishment of dismissal from service on 31.12.2007. Further, the appeal and revision preferred before the second and first respondents herein respectively, were also rejected. When the order of punishment was challenged before this Court in WP.No.27910 of 2008, the punishment of dismissal from service was set aside by this Court in its order dated 25.11.2013, by directing the respondents to reinstate the petitioner and regularise his non-employment period from 14.07.2007 onwards, as leave to which he is eligible on his credit and the period of



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suspension can be considered as punishment. In consequence to such directions of this Court, the petitioner was reinstated into service and he had reported for duty on 26.03.2014. His suspension and non-employment period from 16.07.2007 to 25.03.2014 was treated as eligible leave and the period was regulated by the second respondent herein in his proceedings dated 19.05.2014 as follows:-

<i>S.No.</i>	<i>From</i>	<i>To</i>	<i>No. of Days</i>	<i>Treated as</i>
1.	16.07.2007	26.03.2008	255	EL
2.	27.03.2008	24.06.2008	90	UEL(P)
3.	25.06.2008	25.03.2014	1896	LWP (P)

2. Thereafter, the petitioner herein had sought for upgradation of the post of Head Constable to Special Sub-Inspector of Police, with effect from 28.02.2011. This Court through its order passed in WP.No.30960 of 2014 dated 26.11.2014, had directed the second respondent herein, to consider the same within the stipulated time. In consequence to such direction, the present impugned order dated 06.05.2016 has been passed, by stating that since G.O.Ms.No.15, Home Police Department dated 07.01.2010 prescribes the criteria for such upgradation as completion of 10 years of qualifying service in the post of Grade-II Police Constable, 10 years in the post of



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Grade-I Police Constable, as well as 5 years in the post of Head Constable.

The petitioner lacks the complete service of 25 years since he was not in employment for the period between 16.07.2007 to 25.03.2014 and therefore, he is not entitled for the same. Challenging the said impugned order, the present Writ Petition has been filed.

3. The learned counsel for the petitioner placed reliance on the order passed by the learned Single Judge of this Court in the case of '**J. Chandrasekar Vs. The Superintendent of Police**' passed in WP.No.30556 of 2012 dated 11.04.2018 and submitted that when the original order of dismissal is set aside and the employee is reinstated into service and his services are regulated, the respondents cannot deny the service rendered by the petitioner during this period for the purpose of upgradation.

4. Per contra, the learned Government Advocate appearing for the respondents submitted that since G.O.Ms.No.15 dated 07.01.2010 provides for a minimum qualification of 25 years from the post of Grade-II Police Constable to Head Constable and the petitioner was not in employment for about 1896 days between 16.07.2007 to 25.03.2014, such a period cannot



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be taken into account for the purpose of calculating 25 years of service and therefore, there is no infirmity in the order passed by the second respondent.

5. The facts involved in the decision relied upon by the learned counsel for the petitioner in **J. Chandrasekar** (*supra*), is almost similar to that of the case of the petitioner herein. In that case, the Constable was treated as a deserter and was imposed with a punishment of removal from service. Through the orders passed by the Tamil Nadu Administrative Tribunal, he was reinstated back into service and the period of his non-employment was also regulated. When he was denied the benefit of upgradation by not calculating the period of non-employment as a qualifying service, as per G.O.Ms.No.15 dated 07.01.2010, the following observations were made:-

..... “10. This Court finds some force in the contention put forth by the learned counsel for the petitioner. Once the learned Tribunal has set aside the order of removal from service and ordered reinstatement and denied him back wages for the period of non-employment as the means of punishment, it must be construed that the petitioner is deemed to have worked for the period of employment, earned his back wages and yet to be foregone by means of



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punishment imposed on him in which it must be construed for all practical purposes that the petitioner is deemed to have served the Department and that non-employment period is also to be reckoned for the purpose of grant of benefit of upgradation.

11. Moreover, once the competent authority has passed the order granting the petitioner the benefit of fixing his seniority from the date of his original appointment i.e., 24.05.1999, there cannot be any justification for denying the benefit of service deemed to have rendered by the petitioner during the period of his non-employment. Since the service benefit of seniority cannot be divorced from actual service and once the authority has regulated the period of non-employment of the petitioner, such regularisation will have effect to the petitioner that he is deemed to have served the Department during the period of his non-employment.....”

6. Thus, by applying the ratio laid down in the aforesaid decision, when the respondents themselves have regulated the period of non-employment by treating it as an eligibility and he was also reinstated back into service, there is no justification on their part in refusing to include the



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service period during the period of non-employment. Moreover, while regulating the non-employment period, the respondents themselves have stated that the period between 16.07.2007 to 25.03.2014 would be treated as eligible leave.

7. This apart, Rule 22(2) of the Tamil Nadu Pension Rules, 1978, which deals with counting of past service on reinstatement, provides that the period of interruption in service between the date of dismissal and date of reinstatement, as well as the period of suspension, will not count as qualifying service, unless regularized as duty or leave by a specific order of the authority, which passed the order of reinstatement. By applying this Rule to the facts involved in the present case, it is seen that the respondents had indeed passed orders, regularizing the period of non-employment as eligible leave and by applying Rule 22(2) of the Tamil Nadu Pension Rules, the ground on which the petitioner's request for upgradation to the post of Special Sub-Inspector of Police, cannot be sustained.

8. In the light of the above findings, the impugned order dated 06.05.2016 passed by the second respondent in his proceeding in



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Na.Ka.No.15/11278/Pa.Pi.5(1)/2015, is hereby quashed. Consequently, there shall be a direction to the second respondent herein, to pass appropriate orders upgrading the post of Head Constable as Special Sub-Inspector of Police on completion of 25 years of his service, which is from 27.02.2011, in accordance with G.O.Ms.No.15 dated 07.01.2010, by including the service period between 16.07.2007 to 25.03.2014, together with all service and monetary benefits. Such orders shall be passed atleast within a period of four (4) weeks from the date of receipt of a copy of this order.

9. Accordingly, the Writ Petition stands allowed. No costs.

07.02.2023

Speaking/Non-speaking Order

Neutral Citation: Yes/No

Index: Yes/No

Internet: Yes/No

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To

- 1.The Director General of Police,
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M.S.RAMESH,J.

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