



WEB COPY



W.P.No.28897 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.28897 of 2022
and WMP No.28188 of 2022

V.Shanmugam

...Petitioner

-Vs-

1. The Secretary to Government,
Home (Police II) Department,
Fort St.George, Chennai-9.
2. The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-4.
3. The Commissioner of Police,
Vepery, Chennai-7.
4. The Additional Commissioner of Police (Traffic),
Vepery, Chennai-7.
5. The Commandant,
TSP, II Battalion,
Avadi, Chennai-54

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India,
praying to issue a Writ of Certiorarified Mandamus to call for the records of the



W.P.No.28897 of 2022

4th respondent in connection with the impugned orders passed by him in Na.Ka.No.PaP2/Traffic/954/16813/2020 Traffic PO.Aa.No.818/2020 dated 16.12.2020 and the consequential order issued in na.Ka.No.PaP2/Traffic/1284/13100/2021 dated 28.06.2021 and quash the same and direct the respondents to give effect to the punishment in P.R.No.61/96 dated 05.03.1997 from the date of the original punishment namely 16.03.1997 and treat the period of out of employment as continuity of service for all purposes and further direct the respondents to restore the upgradation of the petitioner as Grade-I PC w.e.f.28.10.2005 and as Head Constable from 28.10.2010 and further upgrade him as Special Sub-Inspector of Police on completion of 10 years of service as Head Constable on 28.10.2020 and grant him all consequential service and monetary benefits.

For Petitioner : Mr.Venkataramani
Senior Counsel for
Mr.P.Jegan Inbarajan

For Respondents : Ms.V.Yamuna Devi
Spl.Government Pleader

ORDER

Heard Mr.Venkataramani, learned Senior Counsel for the petitioner and Mrs.V.Yamuna Devi, learned Special Government Pleader for the respondents.



2. On charges of insubordination framed under Rule 3(b) of Tamil Nadu Police Subordinate Service (Disciplinary & Appeal) Rules, the petitioner was subjected to domestic enquiry and ultimately, was imposed with punishment of removal of service on 05.03.1997. On his memorial petition, preferred before the second respondent herein, the petitioner's punishment was modified as reduction of pay by two stages for three years with cumulative effect from the date of reporting of duty.

3. Thereafter, the petitioner was reinstated back into service and joined service on 20.09.2001 and the modified punishment was also implemented. After completion of the punishment, his pay was restored with effect from 20.09.2004. When the original punishment was modified by the second respondent herein on 16.12.2020, his period of absence from 16.03.1997 to 28.03.1997 for 13 days was regulated as E.L (P) and for the period between 29.03.1997 to 20.09.2001 for 1637 days was regulated as E.O.L(P). The petitioner has now challenged the order dated 16.12.2020 and the consequential order dated 28.06.2021, wherein, his claim for continuity of service for the period of his non-employment is concerned.



4. Learned Senior Counsel for the petitioner relied upon the decision of the Hon'ble Division Bench of this Court in the case of ***Arokiadoss vs The Commissioner of Police, City Police Office, Chennai*** in ***W.A.673 of 2008*** dated 30.04.2009 and submitted that when the original punishment was modified and the petitioner was reinstated into service, his period of non-employment of service should be treated as service period. Learned Senior Counsel also submitted that he is not pressing the grounds raised insofar as it regularised out of employment period.

5. Per contra, learned Special Government Pleader placed reliance on the averments made in the counter affidavit that out of employment period has been regularised as E.L on private affairs and leave without pay, since he was not in employment and there is no infirmity in the order. She further submits that since the petitioner herein was not physically in duty and was removed from service, the petitioner cannot claim for continuity of service, when he was out of employment.

6. When the original punishment of removal of service dated 05.03.1997



was modified by the second respondent herein on 16.12.1990 and the petitioner herein had joined on 20.09.2001, the factual position would be that he is deemed to have never been dismissed from service. In other words, the modified punishment should be construed as if the petitioner had continued the service throughout from the date of his appointment till date.

7. During the period of petitioner's service, the modified punishment should be implemented from the date of his joining duty, which the respondents have also rightly implemented the same. However, when it comes to regulating his period of non-employment, since the petitioner is deemed to have continued the service throughout, continuity of service should also have been extended to the petitioner. In **Arokiadoss's** case, the Hon'ble Division Bench has dealt with this aspect in the following manner:-

“ 13. In the present case, the claim of the appellant, as submitted by the learned Senior Counsel, is that he should be given promotion notionally as Grade I Police Constable from the year 1992 instead of giving it from the year 1993. This



vital aspect, that the modified punishment will be given effect to from the original date of punishment, has not been considered by the learned Single Judge. The learned Single Judge has proceeded on the pretext that from the date of dismissal on 09.02.1988 till the appellant was reinstated 25.7.1994, he was out of employment and therefore, the reduction of time scale of pay by two stages for a period of two years cannot be notionally fixed, which, in our view, is not the correct legal position. The law is well settled that when once in the disciplinary proceedings the ultimate authority passes an order modifying the original punishment, certainly the modified punishment goes back to the original date of punishment.”

8. The aforesaid extract is self explanatory. Thus, in the light of the ratio laid down by the Hon'ble Division Bench, the objections raised by the respondents herein cannot be sustained.

9. Accordingly, the impugned order dated 16.12.2020 insofar as it denies the continuity of service for the period from 29.03.1997 to 20.09.2001 is set aside.



W.P.No.28897 of 2022

Consequently, there shall be a direction to the second respondent herein to pass appropriate orders, extending continuity of service to the petitioner, within a period period of eight weeks from the date of receipt of a copy of this order.

10. With the above direction, the writ petition is partly allowed. No costs.

Consequently, connected miscellaneous petition is closed.

08.12.2023

Index: Yes/No

Internet: Yes/No

sr

Note: Issue order copy on 14.12.2023

To

1. The Secretary to Government,
Home (Police II) Department,
Fort St.George, Chennai-9.
2. The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-4.
3. The Commissioner of Police,
Vepery, Chennai-7.
4. The Additional Commissioner of Police (Traffic),
Vepery, Chennai-7.
5. The Commandant,
TSP, II Battalion,



Avadi, Chennai-54.

WEB COPY



W.P.No.28897 of 2022

M.S.RAMESH,J.,

SR

W.P.No.28897 of 2022

08.12.2023