



Writ Appeal No.726 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated: 11.12.2023

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE G.ARUL MURUGAN**

**Writ Appeal No.726 of 2020
and C.M.P.No.9847 of 2020**

The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai – 4.

....Appellant

Vs.

A.Subramanian

... Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 02.11.2018 made in W.P.No.9854 of 2008 and allow this writ appeal.

For Appellant	: Mr.K.V.Sajeev Kumar, Special Government Pleader
For Respondent	: No appearance



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JUDGMENT

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(Judgment of the Court was delivered by R.SURESH KUMAR,J.)

This writ appeal has been directed against the order passed by the Writ Court dated 02.11.2018 made in W.P.No.9854 of 2008.

2. Before the Writ Court, the respondent A.Subramanian moved a writ petition seeking to quash the order dated 10.03.2008, under which, the Director General of Police had rejected the representation given by the said Subramanian, Head Constable for upgrading him to the post of Special Sub-Inspector on the ground that because of the currency of black mark imposed on him on 08.02.2007 his name cannot be considered for upgradation for the post of Special Sub-Inspector.

3. The said writ petition was heard and allowed by the learned Judge by the impugned order dated 02.11.2018.

4. Assailing the said order, Mr.K.V.Sajeev Kumar, learned Special Government Pleader appearing for the appellant would contend that the learned single Judge finding that mere black mark cannot be construed to



be a severe punishment. Therefore, the Court has expressed the view that the petitioner is entitled for consideration for the upgradation for the year 2004 as it may be construed that the black mark is not a punishment. Therefore, the petitioner since has not suffered any punishment, he is entitled to upgradation is correct, even then the respondent/writ petitioner is not entitled to get such upgradation in view of the law having been declared by the Full Bench of this Court in the case of ***State of Tamil Nadu Vs. C.Srinivasan*** in ***W.A.Nos.3748 of 2019 & etc., batch*** dated 04.02.2022.

5. The learned Special Government Pleader also relied upon a Division Bench of this Court dated 24.07.2023, where one of us (RSKJ) is a party, to support his contention.

6. We have heard the learned Special Government Pleader appearing for the appellant. Even though notice had been sent to the respondent, it has been returned as no such person and the private notice also could not be served, we felt that no useful purpose would be served in making further attempt to serve notice to the respondent as it has been returned as no such person. Moreover in view of the order, which we are



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going to passed based on the law having been declared by the Full Bench as stated supra, it would be an empty formality in making further attempt to serve the sole respondent.

7. Insofar as the entitlement of the respondent to seek such promotion or upgradation to the post of Special Sub-Inspector is concerned, it is based on the G.O that has been issued by the Government for giving such promotion and upgradation constantly from the Post of Grade -II, Police Constable to Grade – I, Police Constable, Grade – I Police Constable to Head Constable and Head Constable to Special Sub-Inspector after completing certain years of service.

8. In this regard, an interpretation that was given by the Division Bench in the case of *The Government of Tamil Nadu Vs. V.Samy [in short, V.Samy's case]* and another view taken by the another Division Bench in *Review application Nos.70 of 2015 & etc., batch* in the matter of *The Principal Secretary to Government Vs.V.Ramachandran* , the issue since had been referred to a Full Bench in the case of *State of Tamil Nadu Vs. C.Srinivasa*, the Full Bench has held that the Division Bench in *Samy's* case did not laid down the correct law and therefore,



the Full Bench upheld the law laid down by the Division Bench in **V.Ramachandran's** case, thereby it is not an automatic promotion in respect of these posts of Police Department from Grade-II, Police Constable to Grade -I, Police Constable and from Grade -I, Police Constable to Head Constable and from Head Constable to Special Sub-Inspector.

9. The relevant portion of the order that has been passed by a Division Bench of this Court on 24.07.2023 in **W.A.No.1705 of 2019 and 1748 of 2018** in the case of **Government of Tamil Nadu Vs.Jeevakumar and Ors.** is extracted hereunder for easy reference and better appreciation:

*“7. The said order was passed based on the judgment of a Division Bench made in **W.A.No.1506 of 2011 & etc., batch in the matter of The Government of Tamil Nadu Vs. V.Samy [in short, Samy's case]**.*

*8. However, subsequently another Division Bench in a batch of **Review application Nos.70 of 2015 & etc., batch in the matter of The Principal Secretary to Government Vs.V.Ramachandran** has taken a different view based on the relevant Government Orders, which were occupying the field.*



9. Since there has been two divergent views taken by two different Division Benches of this Court, the issue had been referred to a Full Bench for an authoritative pronouncement in ***W.A.Nos.3748 of 2019 & etc., batch*** in the matter of ***State of Tamil Nadu Vs. C.Srinivasan***, where a Full Bench of this Court by order dated 04.02.2022 has held by declaring the law to the following effect:

“42. In view of the above discussion, we proceed to answer the second question that has been referred to this Full Bench hereunder:-

“We hold that the Division Bench in *V.Samy* case did not lay down the law correctly and we uphold the law laid down in *V. Ramachandran* case to the extent that there is no deemed upgradation or deemed promotion contemplated in the relevant Government orders and the benefit of upgradation/promotion to the next level can be granted/claimed only on completion of the qualifying service in each level/rank as prescribed in the relevant Government Orders. At the risk of repetition, insofar as understanding the expression “retrospective operation” is concerned, we hold that The Government Orders operate prospectively but it imposes/grants new results in respect of a past event. In other words, the Government Order operates forward but it looks backward and in that



it attaches new consequences for the future to an event that took place before the Government Order was issued. If the Government Orders are understood in this perspective, there is no need to get into the issue of “retrospective operation. Thus, we are of the view that the Division Bench while rendering the judgment in V.Ramachandran case has dealt with the Government orders in its proper perspective and the judgment in V.Samy case is hereby overruled”.

*10. Therefore, what has been held in **V.Samy's** case has been held to be not the correct law by the Full Bench in their judgment as stated supra. Therefore, following **V.Samy's** case directions were given and the writ petitions were allowed by the learned Judge, which are impugned herein, hence, these writ appeals are deserve to be allowed in view of the Full Bench judgement.*

*11. It is to be noted that, similar writ appeals in many numbers came up for consideration before another Co-ordinate Bench in **W.A.No.3748 of 2019 & etc., batch** in the matter of **State of Tamil Nadu Vs. C.Srinivasan** dated 15.03.2022, where this Court allowed all those appeals filed by the State in the following terms:*

*“6.In view of the above submissions and taking into consideration the ratio laid down by the Larger Bench of this Court, **these Writ Appeals are***



hereby set aside and the respective orders of the learned Single Judges are hereby set aside. No costs. Consequently, connected Miscellaneous Petitions are closed.”

12. In view of the same, we feel that these appeals are also entitled to succeed and accordingly, these appeals are allowed. No costs. Connected miscellaneous petitions are closed.

10. Therefore, assuming that the black mark is not a punishment to be construed as a punishment for the purpose of withholding the promotion or upgradation is concerned as has been held by the learned Judge, otherwise the respondent is not eligible or entitled to seek such promotion or upgradation in view of the law having been declared by the Full Bench in **C.Srinivasan's** case as stated supra and it has been followed consistently in all other similar matters including the Division Bench Judgment, where one of us (RSKJ) is a party as referred to above dated 24.07.2023, hence, we are not inclined to accept the direction given by the learned Judge in the order impugned by giving direction to the appellant Department to give promotion to the respondent to the post of Special Sub-Inspector.



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WEB COPY 11. Resultantly, this appeal deserves to be allowed and accordingly, it is allowed. No costs. Connected miscellaneous petition is closed.

(R.S.K.,J.)

(G.A.M., J.)

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