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W.A.No.3046 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2023

CORAM :

**THE HON'BLE MR. JUSTICE R. MAHADEVAN
AND
THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ**

**W.A.No.3046 of 2021 &
C.M.P.No.20961 of 2021**

S.Syed Absar

... Appellant

Vs.

1.The Commissioner of Police,
Office of the City Commissioner,
Chennai City,
Vepery, Chennai - 600 007.

2.The Joint Commissioner of Police,
South Zone, Saint Thomas Mount,
Chennai - 600 016.

3.The Senior Administrative Officer,
South Zone, Saint Thomas Mount,
Chennai - 600 016.

4.The Superintendent of Establishment Section,
South Zone, Saint Thomas Mount,
Chennai - 600 016.

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 06.09.2021 made in W.P.No.2211 of 2020, on the file of this Court.



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For Appellant : Mr.R.Ramesh
For respondents : Mr.M.Shahjahan
Special Government Pleader

JUDGMENT

(Judgment of the Court was made by R. MAHADEVAN, J.)

This Writ Appeal has been filed to set aside the order of the learned Judge dated 06.09.2021 passed in W.P.No.2211 of 2020.

2. The appellant herein is the petitioner in the aforesaid writ petition.

Originally, he preferred WP.No.2211 of 2020, for the following relief:

"To issue a writ of mandamus, directing the respondents to give a promotion as Special Sub Inspector to him based on his representations dated 22.05.2019, 16.11.2019, 10.12.2010 and 18.12.2019 given by him to the second respondent with all the other benefits."

3. Pending the writ proceedings, the second respondent issued a proceedings dated 13.04.2020, whereby the appellant was promoted as Grade-I Constable with effect from 01.10.2010 and Head Constable with effect from 01.01.2018. Being dissatisfied with the promotion so given by the second respondent, the appellant made a representation to the respondent authorities on 15.06.2020, stating that he is entitled for promotion to the post of Special Sub Inspector of Police. As the representation of the appellant was not considered, the appellant filed W.M.P.No.21888 of 2020 in W.P.No.2211 of 2020 for



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amendment of the prayer made in the writ petition. By order dated 06.09.2021, the said miscellaneous petition was ordered and thus, the amended prayer reads as follows:

"to issue a Writ of Certiorarified Mandamus, calling for the entire records in Na.Ka.Enn.Pa.Pi2(1)/Dhe.ma/210/13085/2019 by Dhe.Ma.Anai.Enn.190/2020 dated 13.04.2020 passed by the second respondent and to quash the same as illegal and further direct the second respondent to give a promotion to the petitioner as SSI based upon his representation dated 15.06.2020."

4. The learned Judge, after hearing the arguments advanced by the learned counsel on either side, dismissed the writ petition, by order dated 06.09.2021, the relevant passage of which is usefully extracted below:

" 7. It is seen from the records produced before this Court, that since the petitioner was inducted as Grade-II Police Constable on 25.10.1993, he would have been eligible for upgradation to the post of Grade-I Police Constable on completion of 10 years of qualifying service. However, within this 10 years of qualifying service, he had availed extraordinary leave on private affairs for total number of 258 days on various spells between 08.10.1995 and 18.06.2004. In this background, it is seen that though the petitioner had completed 10 years of qualifying service on 10.07.2005, he came to be dealt with charges under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 and awarded with the punishment of postponement of next increment for one year without cumulative effect on 18.08.2005. His increment which was due on 01.01.2006 was accordingly postponed for one year and the punishment period was completed only on 24.06.2007. However, during the currency of this punishment, the petitioner had suffered one more punishment of postponement of next increment for 3 years with cumulative effect on 29.05.2006, which punishment had completed only on 31.12.2009. As per the proceedings of the Director General of Police dated 12.08.2005, the up~gradation shall be made after one year from completion of the punishment which the incumbent is undergoing on the crucial date for consideration for promotion. Since the petitioner would be eligible for upgradation after completion of punishment, he was eligible for upgradation as Grade-I Police Constable only on 01.01.2010, which up-gradation was also given to the petitioner. In this factual scenario, I do not find any mistake committed by the respondents in upgrading the petitioner to the post of Grade-I Police Constable with effect from 01.01.2010.

8. Insofar as the petitioner's claim for upgradation to the post of Head Constable with effect from 01.08.2009 is concerned, the regulations prescribed a minimum of five years of service as Grade-I Police Constable as the criteria for such upgradation. However, during such qualifying service, he was again



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subjected to disciplinary proceedings under Rule 3(b) till 25.06.2015, on which date he was awarded with the punishment of postponement of next increment for two years without cumulative effect. Though his qualifying service of 5 years would have completed on 01.01.2015, he was upgraded as a Head Constable only on 01.01.2018 owing to this punishment, which ended on 31.12.2017. Thus, the petitioner's claim that he was eligible to be upgraded as a Head Constable on 01.08.2009, is unfounded.

9. From the aforesaid discussions, this Court is of the affirmed view that the petitioner's candidature for upgradation to both the post of Grade-I Police Constable, as well as, Head Constable was not given on completion of 10 years and 5 years of his qualifying services owing to the pendency of the disciplinary proceedings and various punishments suffered by him. It is not in dispute that the pendency of such disciplinary action or the currency of the punishment, on the crucial date for consideration for up-gradation, will be a disqualification for favourable consideration. Thus, I do not find any infirmity in the upgradations granted to the petitioner to the post of Grade-I Police Constable with effect from 01.01.2010 and to the post of Head Constable with effect from 01.01.2018.

10. If that be so, the petitioner would be entitled for further upgradation to the post of SSI on completion of 10 years of qualifying service in the rank of Head Constable. By taking into account that the petitioner was upgraded as a Head Constable on 01.01.2018, his eligibility for such an upgradation as an SSI would fall only on 01.01.2028, subject to any other pending departmental action or punishment, which he is, or may in future, undergo during the crucial period of his service. As such, the petitioner's prayer in the present Writ Petition seeking for promotion to the post of SSI, before attaining the crucial date, cannot be sustained.

11. In the result, I do not find any merits in the Writ Petition. Accordingly, the Writ Petition stands dismissed. There shall be no orders as to costs."

Challenging the aforesaid order of the learned Judge, the writ petitioner has come up with this writ appeal.

5. The learned counsel for the appellant has contended that on the date of preparing the panel for promotion, no punishment was pending against the appellant and however, he was not considered for grant of promotion by the respondent authorities. The learned counsel further submitted that the appellant



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was given three punishments and the major punishment undergone by him, is in P.R.No.33 of 2006, by which, the appellant was imposed with the punishment of postponement of increment for three years with cumulative effect. Challenging the same, the appellant filed an appeal before the Government and the same was subsequently, modified as without cumulative effect, by order dated 23.05.2020. The rest of the punishments undergone by the appellant are stoppage of increment without cumulative effect and those punishments would not affect the promotion of the appellant, inasmuch as on the date of preparation of panel for promotion, those punishments were not pending. Thus, according to the learned counsel, the respondent authorities have committed error in the appellant's promotion timeline. It is also submitted by the learned counsel that the appellant's batch-mates were promoted as Grade-I Police Constable on 01.11.2003, whereas the appellant was appointed as Grade-II Police Constable on 25.10.1993 and his 10 years of service ended on 25.10.2003, during which period he had taken 192 days of leave without pay. Therefore, the appellant's promotion should have been delayed by a maximum of 192 days compared to his colleagues. Adding 192 days from the date on which his colleagues were promoted, the appellant should have been promoted as Grade-I Police Constable on 11.05.2004. However, the respondents had incorrectly calculated the appellant's loss of pay as 258 days within his 10 years of service, using an invalid check period, leading to the appellant being entitled to Grade-I promotion only from 01.01.2010. The learned



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Judge had also accepted the same and dismissed the writ petition, by the order impugned herein, which is erroneous, illegal and contrary to law.

6. Per contra, the learned Special Government Pleader appearing for the respondents would submit that the contention of the learned counsel for the appellant that the appellant had taken 192 days leave as loss of pay during the 10 years of service, is not correct as he had taken 258 days. Adding further, the learned counsel submitted that the appellant was appointed as Grade II Police Constable on 25.10.1993 and for upgradation to the post of Grade I PC, 10 years of qualifying service in the cadre of Grade II Police Constable is required. As the appellant had availed 258 days of Extra Ordinary Leave on Private Affairs within 10 years of qualifying service, his actual completion of 10 years of qualifying service for promotion to the post of Grade I PC would commence only on 10.07.2004. But, due to the statutory punishment earned during the check period of 5 years prior to the crucial date on 10.07.2004, his due date for upgradation as Grade I PC on 10.07.2004 was extended to the next year as per Rule II (11) of Part A in Schedule XI of Tamil Nadu Government Servants (Conditions of Service), Act 2016.

7. The learned Special Government Pleader appearing for the respondents would further submit that due to the issuance of charge memo under



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Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, (in short, "the Rules") in P.R.No.9 of 2005 and another charge memo in P.R.33/2006 under Rule 3(b) of the Rules, the appellant could not be promoted as Grade I PC on the due date of 10.07.2005. That apart, the appellant was awarded punishment on 29.05.2006 before completing the punishment period in P.R.No.9 of 2005 and hence, he was not promoted as Grade I PC upto 31.12.2009 as per Rule II (2) (11) of Part A in Schedule XI of the Tamil Nadu Government Servants (Condition of Service) Act, 2016. The punishment awarded in P.R. Nos.9 of 2005 and 33 of 2006 were currency of punishment upto 31.12.2009. Upon completion of punishment periods in both the P.Rs, the second respondent issued the order dated 26.04.2019, upgrading the appellant as Grade I PC with effect from 01.01.2010.

8. The learned Special Government Pleader appearing for the respondents would also submit that the appellant was eligible for upgradation to the post of Head Constable on 01.01.2015 upon completion of 5 years of qualifying service as Grade I PC from 01.01.2010, but due to a pendency of charge under Rule 3(b) in PR 112/2013 for the delinquency of desertion, the appellant could not be upgraded as Head Constable on 01.01.2015. That apart, the punishment of "postponement of next increment for 2 years without cumulative effect" was awarded on 25.06.2015 in relation to PR No.112/2013,



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which further hindered the appellant's promotion. In view of the same, the appellant's next increments due on 01.01.2016 and 01.01.2017, were postponed and upon completion of the punishment period i.e., on 31.12.2017, he was granted increments with effect from 01.01.2018, as per the order dated 26.04.2019. The learned Judge, on a proper appreciation of the same, had rightly dismissed the writ petition and hence, the same does not call for any interference at the hands of this court, according to the learned Special Government Pleader appearing for the respondents.

9. Heard the rival submissions and also perused the materials available on record.

10. The order of the learned Judge dismissing the writ petition filed by the appellant seeking promotion as Special Sub Inspector of Police (SSI), has been questioned by making two fold submissions. The first submission is that there were no pending punishments against the appellant as on the date of promotion panel. It is seen from the records that the appellant had undergone three punishments including a major one of postponement of increment with cumulative effect, which was later modified as without cumulative effect, on appeal, *vide* order dated 23.05.2020. The remaining punishments of stoppage of increment without cumulative effect, should not affect promotion, as long as they were not pending on the date when promotion panel was prepared. No doubt,



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after the currency of the punishment period, a Government Servant is entitled to be considered for promotion, if otherwise eligible, but, however, *vide* G.O.(D)No.243, dated 23.05.2020, the Additional Secretary to Government did not set aside the punishments imposed on the appellant, but rather modified the same from "with cumulative effect" to "without cumulative effect". This implies that the appellant's major punishment of postponement of increment for three years still survives, *albeit* without cumulative effect. The remaining punishments of stoppage of increment without cumulative effect should not rise against the appellant's promotion, as long as they were not pending on the date when promotion panel was prepared. Therefore, the first submission made by the learned counsel for the appellant is rejected.

11. The second submission of the learned counsel for the appellant is that the appellant had taken a total leave of 192 days during his 10 years of service and based on his record, he should have been promoted to Grade I Police Constable on 11.05.2004, whereas the respondent authorities had miscalculated the appellant's leave as 258 days. On a perusal of the counter affidavit, it is seen that the respondents had furnished the total number of extraordinary leave on private affairs that had availed by the appellant within his 10 years of qualifying service, which is tabulated below for ready reference:



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<i>Sl.No.</i>	<i>Period</i>	<i>Days</i>
1	08.10.1995 - 16.11.1995	040 days
2	17.03.1998 - 23.03.1998	007 days
3	07.10.2001 - 28.02.2002	145 days
4	10.11.2003 - 18.12.2003	039 days
5	24.04.2004 - 03.05.2004	010 days
6	02.06.2004 - 18.06.2004	017 days
	Total	258 days

Upon a careful analysis of the timeline prescribed by the respondents, it is evident that the appellant had indeed taken 258 days of leave during his 10 years of qualifying service and as such, the contention raised by the learned counsel for the appellant that he had taken only 192 days of leave, is rejected.

12. It appears from the records that the appellant was appointed as Grade-II Police Constable on 25.10.1993. It is to be noted that the appellant had availed 258 days of Extraordinary Leave on Private Affairs within 10 years of qualifying service required for upgradation to Grade-I Police Constable from Grade-II Police Constable. However, due to being charged with Rule 3(b) of the Rules, the appellant's upgradation was delayed. His increment, originally due on 01.01.2006, was postponed to one year and he also suffered an additional punishment of postponement of the next increment for 3 years with cumulative effect, ending on 31.12.2009 and consequently, the appellant became eligible for upgradation as Grade-I Police Constable only on 01.01.2010, after completion of the punishment period. Further delays occurred due to pendency of disciplinary



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proceedings and the appellant was eventually upgraded to Head Constable on 01.01.2018. Thus, to be eligible for upgradation to Special Sub Inspector of Police, the appellant would require 10 years of qualifying service in the post of Head Constable, which would fall on 01.01.2028, subject to any pending departmental actions or punishments during the crucial period of his service. Upon considering all these aspects, the learned Judge has rightly dismissed the writ petition filed by the appellant.

13. Pertinently, it is to be pointed out at this juncture that promotion is not a fundamental right, but a right to be considered for promotion; and the suitability or otherwise of the candidate concerned, must be decided by the authority concerned, according to the prevailing rules. Hence, there is no infirmity or illegality in the order so passed by the learned Judge, warranting interference by this court.

14. In fine, the writ appeal deserves to be dismissed as devoid of merits and is accordingly, dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D,J.] [M.S.Q, J.]
17.04.2023

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Speaking Order / Non-speaking Order
Internet : Yes
Index : Yes/No



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R. MAHADEVAN, J.
and
MOHAMMED SHAFFIQ, J.

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