



W.P.No.28269 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

W.P.No.28269 of 2023

Senthilkumar

... Petitioner

Vs.

1. The Director General of Police,
Tamil Nadu Police Department,
Dr.Radhakrishnan Road,
Mylapore, Chennai – 600 007.
2. The Commissioner of Police,
Chennai Metropolitan City,
Vepery, Chennai.
3. The Joint Commissioner of Police,
West Zone,
Chennai Metropolitan City,
Presently
Joint Commissioner of Police,
Commissionerate of Avadi.
4. The Deputy Commissioner of Police,
Adyar Police District.
Chennai.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records from the 3rd respondent pertaining to the proceedings No.Na.Ka.No.Pa.Pi2(1)/W.Z/1413/38451/2021 Order No.913 / 2021 dated 23.11.2021 and consequent re-fixation order passed in Na.Ka.No.Vu.Ni.Pi/W.Z/458/40067/2021, W.Z order dated 934/2021 dated 29.11.2021 and quash the same consequently direct the 2nd and 3rd respondents to promote the petitioner as Head Constable on par with his batch mates with effect from 01.12.2018 and restore the date of fixation from 01.05.2015 to its original date of 01.12.2013 in respect of Grade – I constable and Selection Grade in the category of Grade – II and provide all monetary benefits and seniority.

For Petitioner : M/s.A.Poonkodi

For Respondent Nos.1 to 4 : Mr.E.Vedabagathsingh
Special Government Pleader

ORDER

This writ petition has been filed challenging the order of the 3rd respondent, dated 23.11.2021 re-fixing the date of promotion of the petitioner in the posts of Selection Grade in Grade-II Constable, Grade-I Constable and Head Constable and also the consequential order of the 3rd respondent, dated 29.11.2021 re-fixing the pay of the petitioner



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accordingly.

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2.It is the case of the petitioner that, when he was working as Grade-II Constable, an FIR came to be registered in Crime No.782 of 2010 against the petitioner for the offences under Sections 341, 323 and 506(ii) IPC, based on which, the petitioner was placed under suspension and thereafter, a charge-memo was also issued in P.R.No.40/2011. Thereafter, at the request of the petitioner, the suspension was revoked and in the meantime, the criminal case which culminated into C.C.No.438 of 2011 on the file of the V Metropolitan Magistrate, Egmore, Chennai, ended in acquittal. Thereafter, the petitioner was moved to Selection Grade in the post of Grade-II Constable and he was promoted as Grade-I Constable in the year 2013 and his pay was fixed with effect from 01.12.2013. Subsequently, the Enquiry Officer submitted his Enquiry Report finding the charges against the petitioner as proved and therefore, the Disciplinary Authority imposed a punishment of postponement of increment for a period of one year without cumulative effect by order dated 30.04.2014. According to the petitioner, this punishment ended in the year 2015 and he was provided with regular increment with effect from 01.10.2015.



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3.While so, it is the grievance of the petitioner that, though the petitioner was fully qualified and eligible, his name was not included in the promotion list for the post of Head Constable for the reason that 5 years of check period was not completed on the crucial date of promotion, however, his batch mates were promoted to the post of Head Constable with effect from 01.12.2018. Thereafter, the petitioner preferred a petition before the Government to set aside the punishment imposed on the petitioner. The Government, after considering the case of the petitioner, by G.O.(D) No.554, dated 17.05.2021, modified the punishment from “postponement of increment for a period of one year without cumulative effect” to “black mark”. Thereafter, the petitioner submitted his representation to the respondents, dated 12.12.2019. However, pending representation, the petitioner was promoted to the post of Head Constable with effect only from 01.05.2020, even though he is eligible to get appointed with effect from 01.12.2018.

4.It is the grievance of the petitioner that, since the Government has modified his punishment as “black mark”, he is eligible to enjoy the promotion to the post of Grade-I Constable with effect from 01.12.2013



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and further promotion to the post of Head Constable with effect from 01.12.2018. However, upon wrong assumption, the 3rd respondent has passed the impugned orders, re-fixing the promotion dates as with effect from 01.05.2015 to the post of Grade-I Constable and 01.05.2020 to the post of Head Constable, and consequentially, re-fixing the pay accordingly. Challenging the same, the present writ petition has been filed.

5.It is the main contention of the learned counsel for the petitioner that, since the original punishment imposed on the petitioner, i.e., postponement of increment for a period of one year without cumulative effect has been modified by the Government as “black mark”, the question of check period does not arise and therefore, the date of effect of promotion of the petitioner ought to have been restored. He also submitted that similarly situated persons have been granted such benefits and hence, the same has to be extended to the petitioner also.

6.Heard Mr.E.Vedabagath Singh, learned Special Government Pleader, who takes notice for the respondents.



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7.The main grievance of the petitioner is that the check period is not meant for “black mark”. As per Rule 2 of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, “black mark” is also provided as a punishment. Hence, the contention of the petitioner that there is no currency of punishment in respect of “black mark”, has no legs to stand. In such view of the matter, merely because the punishment has been modified to “black mark”, that by itself will not come to the rescue of the petitioner in claiming seniority or promotion during the currency of punishment. Hence, this Court is of the view that the petitioner, as a matter of right, cannot claim restoration of his promotion and pay along with his batch mates, particularly when the petitioner was in the currency of punishment at the relevant point of time. Hence, I do not find any merit in this writ petition.

8.Accordingly, this writ petition is dismissed. No costs.

29.09.2023

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Internet : Yes

Index : Yes / No

Neutral citation : Yes / No

Speaking order / Nonspeaking order

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To
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N. SATHISH KUMAR, J.
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