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W.P.No.5901 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.5901 of 2017

O.Senthilkumar

... Petitioner

vs.

1. The Commissioner of Police,
Tirupur City, Tirupur.

2. The Deputy Commissioner of Police,
Head Quarters, Tirupur City,
Tirupur.

3. Kadhirsan

... Respondents

Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to order of the first respondent made in Na.Ka.No.A2/3904/2016 dated 12.04.2016, to quash the same and to consequently direct the respondents 1 and 2 to accord appropriate placement over the 3rd respondent and to extend all benefits both service and monetary i.e., promotion as Grade -I Constable, Head Constable, Sub-Inspector of Police from the date on which his immediate junior i.e. the 3rd respondent herein .



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For Petitioner : M/s.L.Chandrakumar
for Mr.N.R.Jasmine Padma

For Respondents : Mr.D.Gopal
Government Advocate.

ORDER

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order of the first respondent made in Na.Ka.No.A2/3904/2016 dated 12.04.2016, to quash the same and to consequently direct the respondents 1 and 2 to accord appropriate placement over the 3rd respondent and to extend all benefits both service and monetary i.e., promotion as Grade -I Constable, Head Constable, Sub-Inspector of Police from the date on which his immediate junior i.e. the 3rd respondent

2. The case of the petitioner is that he was appointed as a Grade II Constable on 16.04.1997. As per G.O.Ms.No.15, Home (Pol.V) Department dated 07.01.2010, a Grade II Constable is eligible for upgradation of Grade I Constable on completion of ten years subject to availability of vacancy and for upgradation of Head Constable on completion of five years from the date of upgradation of Grade II Constable. In terms of the above G.O., on



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completion of ten years, the petitioner was upgraded as Grade-I Police Constable with effect from 16.04.2007 and was eligible for upgradation of Head Constable with effect from 1.05.2012.

3. It is the further case of the petitioner that the petitioner was subsequently imposed with a punishment of “Reduction in time scale of pay by one stage for one year and shall not operate to postpone his further increment vide proceedings dated 06.06.2012 of the Superintendent of Police, Theni District in PR/F1/2011, U/r 3(b) of TNPSS (D & A) Rules 1955 with effect from 06.06.2012 to 05.06.2013. Therefore, the petitioner was upgraded as Head Constable on expiry of the punishment period with effect from 01.07.2013.

4. It is the specific case of the petitioner that on 01.05.2012, when the petitioner was eligible for upgradation of Head Constable, there was no disciplinary proceedings against him and he was free from all angles. The penalty imposed on the petitioner was on the subsequent dates.



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5. It is submitted that the third respondent who was appointed as a Grade II Police Constable on 31.10.1997 after six months from the appointment of the petitioner as a Grade II Police Constable was promoted or upgraded as a Grade I Police Constable on 1.10.2004 and was thereafter promoted as Head Constable on 27.04.2007, whereas, the petitioner was promoted /upgraded as a Grade I Constable on 16.04.2007 only and later as a Head Constable on 01.07.2013.

6. Therefore, the petitioner had filed W.P.(MD)No.11310 of 2013 before the Madurai Bench of Madras High Court for a direction to the Deputy Inspector General of Police, South Zone, Madurai to upgrade the petitioner as Head Constable with effect from 01.05.2012. By an order dated 06.12.2013, Madurai Bench of this Court has directed the said Deputy Inspector General of Police to take appropriate action to upgrade the petitioner as Head Constable within a period of twelve weeks.

7. Pursuant to the same, the first respondent had passed an order for modifying the upgradation of the petitioner as Head Constable with effect from 01.07.2013 instead of 01.08.2014. However, subsequently, it was



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found that the restoration of placement as on 01.07.2013 was also not in conformity with the Government Orders which provided for taking into account of services rendered in the Armed Reserve from 1997 and thereafter which was extended to other similarly placed persons for the purpose of promotion and seniority and the same was extended and conferred in favour of third respondent who was appointed on 31.10.1997 much after the petitioner's appointment on 15.04.1997 and the joining date being 16.04.1997, who was upgraded as Grade-I from 01.10.2004 and thereafter promoted as Head Constable with effect from 27.04.2007.

8. Thereafter, the petitioner had made a representation dated 01.11.2014 to the first respondent seeking for the benefit as had been extended to the juniors and to rectify the same. As the first respondent has not considered and passed any order on the said representation dated 01.11.2014, the petitioner has filed W.P.No.5363 of 2016 before this Court for issuance of writ of Mandamus to direct the first respondent to consider and pass appropriate orders on the representation dated 01.11.2014 on merits. This Court by an order dated 12.02.2016 has directed the petitioner to submit one more copy of the representation dated 01.11.2014 to the first



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and second respondents and further directed the first and second respondents to consider the representation to be given by the petitioner.

9. Pursuant to the same, the petitioner has given a fresh representation dated 07.03.2016 instead of submitting a copy of the representation dated 01.11.2014. The first respondent has passed the impugned order dated 12.04.2016 rejecting the request of the petitioner sought in the said representation. Therefore, the present writ petition has been filed .

10. The respondents has filed counter affidavit wherein it has been stated that the petitioner was appointed on 16.04.1997 as Grade II Constable. As per G.O.Ms.No.15 Home (Pol.V) Department dated 07.01.2010, a Grade II Constable shall eligible for upgradation of Grade I Constable on completion of ten years subject to availability of vacancy and for upgradation of Head Constable on completion of five years from the date of upgradation of Grade II Constable.



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11. Therefore, on completion of five years as Grade I Constable, the petitioner was promoted/upgraded as Grade I Police Constable on 16.04.2007. When the petitioner's name was considered for the promotion as a Head Constable on 01.05.2012 as per the aforesaid G.O. and the Chief Office Memo dated 31.01.2010 bearing reference Na.Ka.No.3272/NGB IV(2)/2009, it was found that the petitioner had been awarded with a punishment of pay reduction by one stage for one year without cumulative effect under Rule 3(b) by the Superintendent of Police, Theni District *vide* Tha.Pa.No.49/2011 dated 06.06.2012. Therefore, the petitioner was denied promotion.

12. During the punishment period, the petitioner had also availed leave for a period of 120 days. Though the petitioner should be promoted as Head Constable on 05.06.2013, as he had availed 120 days leave during the punishment period of one year, the petitioner was promoted as Head Constable on 01.11.2013, whereas the third respondent joined the service as a Grade II Police Constable on 31.10.1997 and as there was no disciplinary proceeding against the third respondent, he was promoted as Grade I Constable on 01.10.2004 by adhering to the seniority list and was further



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promoted as a Head Constable from 27.04.2007. But, the petitioner has not completed the service of four years as Head Constable which is the primary criteria for further promotion. Hence, he prays for dismissal of the present writ petition.

13. The learned counsel for the petitioner would submit that the petitioner had already been promoted as Head Constable with effect from 01.11.2013, his claim for consideration for further promotion shall be made effective only four years thereafter and thereby the inclusion at the appropriate place for promotion as Sub-Inspector (Armed Reserve) is admissible. Hence, the impugned order of the first respondent dated 12.04.2016 is liable to be set side.

14. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents.

15. From the materials available on records, it is seen that the petitioner was appointed as a Grade II Constable on 16.04.1997 and was promoted/upgraded as a Grade-I Police Constable with effect from



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16.04.2007 and thereafter the petitioner was promoted on 01.11.2013 as Head Constable. As per G.O.Ms.No.410 Home (Pol-6) dated 19.04.2001 that a person must be worked in the Armed Reserve for a period of 7 years and further worked for a period of 4 years as Head Constable. Further, as there were no disciplinary proceedings pending against him, he shall eligible for the post of promotion as Sub-Inspector of Police in Armed Reserve. In this case, the petitioner had imposed with the punishment of reduction by one stage for one year without cumulative effect from 06.06.2012 was in force. The petitioner had availed leave for a period of 120 days during the period of punishment. So, the petitioner was promoted as Head Constable on 01.11.2013.

16. Considering the fact that the petitioner was promoted as Grade-I Police Constable with effect from 16.04.2007 and further promotion could not be granted on completion for five years for the post of Head constable on 01.05.2012, due to the punishment imposed on the petitioner, the petitioner is not entitled for promotion of Head Constable immediately as the petitioner has not completed the four years of service as Head Constable when the “C” list was prepared. It is clear that the third respondent was promoted only



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after the completion of period. Therefore, the petitioner's name was not included in the 'C' list for further promotion post of Sub-Inspector of Police, Armed Reserve. Hence, the impugned order passed by the first respondent dated 12.04.2016 is hereby confirmed.

17. This writ petition stands dismissed with the above observations.

No costs.

16.03.2023

Index : Yes/No

Internet : Yes/No

kkd

To

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Tirupur City, Tirupur.
2. The Deputy Commissioner of Police,
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V.BHAVANI SUBBAROYAN, J.
kkd

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