



WP.No.32209/2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.09.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.32209/2017

A.Ibrahim Sheriff

... Petitioner

Versus

**1.The Director General of Police
Tamil Nadu, Chennai 600 004.**

**2.The Deputy Inspector General of Police
Villupuram Range, Villupuram.**

**3.The Superintendent of Police
District Police Office
Cuddalore District @ Cuddalore.**

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus to call for the records pertaining to the order passed by the third respondent herein in his C.No.A1/38561/2015 dated 06.11.2017 and quash the same and consequently direct the respondents herein to promote the petitioner notionally as regular Sub Inspector of Police with effect from 13.11.1995 and as Inspector of Police notionally from 01.02.2005 from the date of



WP.No.32209/2017

promotion of immediate junior and consequently revise the petitioners retirement benefits including pension with all consequential monetary and service benefits.

For Petitioner : Mr.Ravi Shanmugam
Senior counsel for
Mrs.Sudha Ravi
For Respondents : Mr.T.K.Saravanan, GA

ORDER

- (1) The writ petition has been filed in the nature of a writ of certiorarified mandamus seeking records of an order passed by the 3rd respondent, Superintendent of Police, Cuddalore District in C.No.A1/38561/2015 dated 06.11.2017 and to quash the same and to direct the respondents to promote the petitioner notionally as regular Sub Inspector of Police with effect from 13.11.1995 and as Inspector of Police notionally from 01.02.2005 from the date of promotion of the immediate junior and revise the retirement benefits of the petitioner including pension and also grant all consequential monetary and service benefits.
- (2) The petitioner had joined the police services as Grade II Police Constable on 15.11.1970. He was then promoted as Grade I Police



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WP.No.32209/2017

Constable. He was further promoted as temporary Sub Inspector of Police on 15.09.1986.

- (3) The petitioner was placed under suspension on 04.06.1992 based on a criminal complaint with respect to the death of one Nandagopal at Annamalai Nagar Police Station in Cuddalore District. In the ensuing trial, the petitioner was convicted of the offences and was imposed with sentence of rigorous imprisonment for three years for commission of offences under Sections 218, 323, 330 and 348 of IPC. The petitioner further stated that by proceedings dated 23.12.1997, the 2nd respondent had removed the petitioner from service invoking Police Standing Order 59 and Rule 3[c][i][1] of the Tamil Nadu Police Subordinate Service [Discipline and Appeal] Rules, 1955. The removal was on the ground that the petitioner had been convicted by a competent Criminal Court.
- (4) The petitioner then filed a Criminal Appeal in CA.No.680/1997 against the conviction of the Principal Sessions Court at Cuddalore. By a judgment dated 28.11.2002, a Division Bench of this Court had confirmed the conviction and dismissed the Criminal Appeal with



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WP.No.32209/2017

certain modifications. The petitioner then filed Criminal Appeal in CA.NO.1510/2003 before the Hon'ble Supreme Court. By a judgment dated 15.02.2011, the Hon'ble Supreme Court had allowed the Criminal Appeal and had observed that the petitioner deserves the benefit of doubt to be extended and that he is acquitted of charges and that the Appeal be allowed. The judgment of the Trial Court and the judgment of the High Court had been set aside.

- (5) Thereafter, the petitioner came back to the respondents seeking reinstatement. The Director General of Police, Chennai, had recommended reinstatement of the petitioner and to permit the petitioner to retire from service with effect from 31.05.2005 by determining the period of sentence of suspension and out of employment as 'period of duty'. Thereafter, the Principal Secretary to Government, by a letter dated 21.11.2014, had directed the 1st respondent herein to reinstate the petitioner back in service and to permit the petitioner to retire from service with effect from 31.05.2005. Necessary orders were also passed to treat the suspension period and the period out of employment as regular period



WP.No.32209/2017

on duty.

- (6) The claim of the petitioner is that he had been temporarily promoted as Sub Inspector of Police on 15.09.1986. A batch of Original Applications in OA.No.1565/1995 batch had been filed before the Tamil Nadu Administrative Tribunal by the Head Constables and temporary Sub Inspectors of Police challenging a Memorandum of the 1st respondent to constitute a Range Promotion Board for promotion as regular Sub Inspector of Police. On 13.11.1995, the Tribunal had rendered a decision that those who had already been acting as Sub Inspectors of Police, were eligible for Screening Test without written, viva voce and drill tests. It was stated that their performance should be on the basis of the past performance as Head Constables. The petitioner claimed that his juniors had been promoted as Sub Inspectors of Police and subsequently, also as Inspectors of Police. The petitioner then preferred a representation seeking regularisation of his services as Sub Inspector of Police and also to grant promotion as Inspector of Police. It is contended that the Superintendent of Police at Cuddalore District, in proceedings dated 13.01.2017, had



WEB COPY



WP.No.32209/2017

forwarded a proposal to the 2nd respondent herein stating that the petitioner was entitled for regularisation of his service as Sub Inspector of Police and also as Inspector of Police on par with his immediate junior. This proposal of the 3rd respondent was then forwarded by the 2nd respondent to the 1st respondent. It is understood that the 1st respondent had once again forwarded the proposal for remarks to the 3rd respondent. The 3rd respondent / Superintendent of Police at Cuddalore District, who had originally proposed regularisation of service both as Sub Inspector of Police and as Inspector of Police, however passed the Impugned Order stating that the petitioner is not entitled for such regularisation or for promotion since he had not attended the Range Promotion Board. This order is now impunged in the present writ petition.

- (7) A counter affidavit had been filed on behalf of the respondents wherein it had been stated that during the year 1995, the 1st respondent had issued instructions to convene Range Promotion Board for promotion of Head Constables to Sub Inspectors of Police. It was also stated that Original Applications had been filed before the



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WP.No.32209/2017

Tamil Nadu Administrative Tribunal against that particular direction to convene the Range Promotion Board. On 13.11.1995, the Tribunal had passed a direction that those who had already acted as Sub Inspectors of Police for a period of six years, should be regularised straightaway and those who had acted as Sub Inspectors for three years as on 21.02.1995 and those who are senior to them, should be subjected to Screening Test without viva voce and drill test. It had also been stated that the performance should be on the basis of past performance as Head Constables. It had been stated that the case of the petitioner was considered in detail by the 1st respondent. It had been further stated that the petitioner did not make himself available for the selection process of Head Constable to be promoted as Sub Inspector of Police through the Screening Board in the year 1995-1996. It had also been stated that seniority can be considered only when the merit and ability are approximately equal and then based on performance in test and viva voce. It had been stated that since the petitioner had not participated in the Range Promotion Board for the year 1995-1996, the competitive merit could not be decided at this



WP.No.32209/2017

distance of time. It had also been stated that as per the decision of the Tribunal, the Range Promotion Board was conducted as a screening method based on the past performance of the individuals. It had been finally stated that the petitioner is not entitled for the relief sought and that the writ petition should be dismissed.

- (8) Heard the learned Senior Counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents.
- (9) It is the contention of the learned Senior Counsel appearing on behalf of the petitioner that the petitioner had joined the services as Grade II Police Constable and later, was promoted as Grade I Police Constable. The petitioner was also promoted as temporary Sub Inspector of Police. These facts are not in dispute. Thereafter, the petitioner got involved in a criminal complaint relating to the death of one Nandagopal at Annamalai Nagar Police Station at Cuddalore District. The petitioner was placed under suspension. Consequent of filing of Final Report, the matter was tried before the Principal Sessions Court at Cuddalore and by a judgment dated 09.07.1997, the petitioner was convicted of offences under Sections 218, 323, 330 and 348 of IPC.



WP.No.32209/2017

The petitioner then filed CrI.A.No.680/1997 questioning such conviction. A Division Bench of this Court, vide judgment dated 28.11.2002, had dismissed the Criminal Appeal. Thereafter, the petitioner filed CA.No.1510/2003 before the Hon'ble Supreme Court. By a judgment dated 15.02.2011, the Appeal was allowed and the conviction and sentence imposed against the petitioner were set aside. In effect, the said conviction should not be considered by the respondents for any purpose. The period of suspension and the period out of employment of the petitioner was also regularised by the proceedings passed by the respondents. Again this fact is neither under dispute nor questioned by the respondents. The petitioner had also retired from service on attaining the age of superannuation. The petitioner now places a claim stating that he should be promoted as regular Sub Inspector of Police and further, as Inspector of Police. This claim is based on the judgment of the Tamil Nadu Administrative Tribunal wherein the issue of Range Promotion Board was considered and the Tribunal in a string of Original Applications filed by the Head Constables / temporary Sub Inspectors of Police, had stated that the



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WP.No.32209/2017

Screening Test alone should be conducted and the past performance should be examined and laid down certain criteria for consideration for further promotion as Sub Inspectors of Police.

- (10) The learned Senior Counsel appearing for the petitioner placed reliance on that particular judgment of the Tamil Nadu Administrative Tribunal and then pointed out the Impugned Order wherein, the request of the petitioner to be considered for promotion as Sub Inspector of Police was rejected since it had been stated that the petitioner had not participated in the Range Promotion Board. It is therefore, argued by the learned Senior Counsel that since the Board itself had been done away with by the Tribunal, there could not be any occasion for the petitioner from so participating in that particular promotion method. It was stated that the only method that the petitioner should be considered for promotion as Sub Inspector of Police was by examining the past records and the Screening Test as envisaged under the order. It is therefore insisted that the petitioner should be deemed to have been promoted as Sub Inspector of Police and later as Inspector of Police.



WP.No.32209/2017

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- (11) The facts stated are not in dispute. The issue is only with respect to eligibility of the petitioner to be promoted as Sub Inspector of Police and then to Inspector of Police. The petitioner had given a representation seeking such promotion.
- (12) In a communication issued by the Superintendent of Police, Cuddalore District, dated 13.01.2017 to the Deputy Inspector General of Police, Villupuram Range, the representation of the petitioner was considered and the Superintendent of Police was of the opinion that the petitioner had participated in the Screening Test and had also examined the marks obtained by the petitioner herein and had also observed that the said mark was more than the mark obtained by the immediate junior and further observed that the immediate junior had been promoted as Sub Inspector of Police and therefore, gave an opinion that the petitioner should also be considered for promotion as Sub Inspector of Police. This particular opinion of the Superintendent of Police, Cuddalore District / 3rd respondent herein, was then forwarded by the Deputy Inspector General of Police, Villupuram Range, to the 1st respondent / Director General of Police, Chennai, by a communication



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WP.No.32209/2017

dated 25.01.2017. The matter then came back to the office of the Superintendent of Police, Cuddalore District for further remarks. Further remarks given on 06.11.2017 is the order impugned and it is quite unfortunate to note that the very same Superintendent of Police, who had earlier recommended that the case of the petitioner could be considered for promotion, had taken a complete 'U' turn and stated that since the petitioner had not participated in the Range Promotion Board, he could not be considered for promotion.

- (13) The same authority, who had earlier passed a particular order, should not sit back and take a decision contrary to the earlier order without assigning reasons as to why he differed from the earlier order passed by him. If he has reservations to adhere to the earlier order, then in all propriety, the officer should have forwarded the entire papers to another officer of equal rank to re-examine the papers and pass further orders. But, it does not bode well to note that the same officer / Superintendent of Police, Cuddalore District had passed two separate orders, one, recommending promotion of the petitioner as Sub Inspector of Police and the other, stating that the petitioner



WP.No.32209/2017

cannot be promoted as Sub Inspector of Police since he had not participated in the Range Promotion Board.

(14) In the first instance, the very same official had placed reliance on the marks obtained by the petitioner in the Screening Test. There was no whisper about the participation or non-participation in the Range Promotion Board. In the order impugned, though it had been stated that the petitioner did not participate in the Range Promotion Board, and there is no whisper about the marks obtained in the Screening Test.

(15) To a little extent, the order could be accepted or could be termed 'acceptable' if two separate officials had examined the records. But the very same official on the basis of the same records, had taken two contradictory views. In my opinion, this cannot withstand the scrutiny of the Court and therefore, on this one ground alone, the order impugned will have to be interfered with and has to be set aside and the matter will have to be remitted back to the Superintendent of Police, Cuddalore, who, as on date, must be a different officer and the said Superintendent of Police may re-examine the entire issue on the



WP.No.32209/2017

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basis of the available records.

- (16) While so examining, the Superintendent of Police may also take into consideration, the judgment relied on by the learned Government counsel for the respondents in Civil Appeal No.11447/2014 ***[The Director General of Police, Tamil Nadu and Others Vs. V.Gurunathan]***, filed against a similarly placed individual. By a judgment dated 16.12.2014, the Hon'ble Supreme Court had examined the issue with respect to promotion as Sub Inspector of Police and had considered the arguments advanced that at a distant point of time, the respondents cannot be asked to perform an impossible act of granting promotion and further promotion. The reason of the Hon'ble Supreme Court is extracted below:-

"....Having heard learned counsel for the parties, we are of the considered opinion that the directions issued by the High Court are really difficult to be complied with by the appellants. The department be asked to perform impossible act. Whether the respondent could have applied for the post at tht point of time is another matter. Had he applied and the



WP.No.32209/2017

State had denied the matter would have been in another realm. Suffice it to state that at this distance of time, a direction would be in the realm of impossibility and, therefore, the order passed by the High Court is unsustainable and, accordingly, it is set aside.

Resultantly, the appeal is allowed and the order passed by the High Court is set aside. There shall be no order as to costs."

- (17) Though this judgment is binding on this Court, since the order impugned had been passed by the very same official who had also earlier considered the case of the petitioner, it would only be appropriate that the matter is remitted back to the Superintendent of Police, Cuddalore District, to re-examine the entire issue, not only on the basis of the available records, but also on the basis of the reasonings given by the Hon'ble Supreme Court in the aforementioned judgment. While examining the judgment of the Hon'ble Supreme Court, one distinguishing feature, as pointed out by the learned Senior Counsel, may also be examined, namely, that the respondent therein had not participated in the Screening Test, whereas the petitioner



WEB COPY



WP.No.32209/2017

herein had actually participated in the Screening Test, which had also been observed in the order of the Superintendent of Police dated 13.01.2017. All these factors may be considered and an order may be passed, preferably within a period of sixteen weeks from the date of receipt of a copy of this order. If clarifications are required, notice may be issued to the petitioner and the representation made by him, may also be considered before passing final orders.

(18) The writ petition stands **disposed of**. No costs.

13.09.2023

AP

Internet : Yes

To

- 1.The Director General of Police
Tamil Nadu, Chennai 600 004.
- 2.The Deputy Inspector General of Police
Villupuram Range, Villupuram.
- 3.The Superintendent of Police
District Police Office
Cuddalore District @ Cuddalore.

C.V.KARTHIKEYAN, J.,

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WP.No.32209/2017

WP.No.32209/2017

13.09.2023