



W.P No.305494 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2023

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

WP No.35494 of 2019

And

W.M.P.No. 36326 of 2019

P.Thamburaj

... Petitioner

-Vs-

1. State of Tamilnadu rep. by
Additional Chief Secretary, Home (Pol. VI) Department
The Secretariate, Chennai – 9.
2. The Deputy Inspector General of Police
Coimbatore Range, Coimbatore District.
3. The Superintendent of Police,
Coimbatore District.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records and quashing the impugned communication vide C.No. 13/AP26/34706/10 D.O.808/11 dated 28.10.2011 communicated by the third respondent intimating that the Additional DGP modified the original punishment in



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PR.No. 17/2008 into one of “Black mark” in Chief Office proceedings C.No. 206735/AP 1(1)/10 dated 30.04.2011 and consequently, direct the third respondent to fix the seniority of the petitioner in the post of special sub Inspector of Police (SSI) from the year 2018 by fixing his head Constable seniority on and from 15.06.2008 as was originally fixed by the third respondent as per his order dated 27.08.2013 vide District Order 843/2013 Na.Ka.No. A2/24187/2013.

For Petitioner : Mr. K. Ravi
For Respondents : Mr. T.K. Saravanan
Additional Government Pleader

ORDER

The Writ Petition has been filed in the nature of Certiorarified Mandamus to call for the records of the communication dated 28.10.2011 of the third respondent / the Superintendent of Police, Coimbatore District, intimating that the Additional Director of General Police had modified the original punishment in PR.No. 17/2008 into one of “Black mark” in Chief Office proceedings dated 30.04.2011 and direct the third respondent to fix the seniority of the petitioner in the post of Special Sub Inspector of Police



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(SSI) from the year 2018 by fixing his Head Constable seniority on and from 15.06.2008 as was originally fixed by the third respondent by order dated 27.08.2013.

2. The petitioner herein was employed as Head Constable at Thadagam Police Station at Coimbatore at the time of filing of the Writ Petition. When he was working as Mettupalayam Police Station as Head Constable on 02.09.2007 at around 6.30 hours in the morning, a phone call was received by the other Head Constable K.Loganathan. An information was given that a young infant of about one year was dead and was about to burial in the buried ground in the vicinity. This particular information, which had been conveyed to the police station was not informed to the higher officials. The petitioner, who was also on duty in Mettupalayam Police Station at that particular day along with K.Loganathan, and other Officer was charged with dereliction of duty for not conveying this vital information to the higher officials.



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3. An enquiry was conducted in this regard and the Enquiry Officer found that the petitioner had not directly received the phone call and had held that the allegations against the petitioner was not established. Thereafter, a show cause notice was however issued to the petitioner on 30.07.2009 calling upon him to give an explanation since the second disciplinary authority had differed from the findings of the enquiry officer. The petitioner had given his explanation and finally, the Superintendent of Police, Coimbatore District, had communicated imposition of punishment of increment. The petitioner had then filed a Petition before the Director General of Police, who, on consideration of the facts had imposed a punishment of “black mark”.

4. It must be stated that much earlier on 15.06.2008, the petitioner had been promoted as Head Constable. That was interfered with consequent to the imposition of the punishment of “Black mark” and it was held that owing to the said punishment of “Black mark”, the promotion given to the petitioner herein was pushed back and he was recognised to be



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Head Constable only on and from 11.05.2011. Questioning this particular punishment imposed as “Black mark” and consequential manner in which it had affected the promotion already granted to him, the Writ Petition has been filed seeking to quash all those orders.

5. A counter affidavit had been filed by the third respondent / the Superintendent of Police, Coimbatore District, who after stating the facts of the case had stated that the punishment was modified to that of “Black mark” by the Director General of Police in proceedings dated 30.04.2011 and therefore stated that since the currency of punishment completed only on 11.05.2011, the petitioner became eligible for promotion as Head Constable only with effect from 11.05.2011. It was stated that he had been mistakenly upgraded as Head Constable with effect from 15.06.2008. Therefore, there was a complete reversal of the standing of the petitioner herein so far as upgradation was concerned and later upgradation as Special Sub Inspector of Police.



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6. The learned Senior Counsel appearing on behalf of the petitioner questioned this particular denial of recognition of the petitioner being upgraded as Head Constable with effect from 15.06.2008 by placing reliance on the Police Standing Order 94(4) of the Tamilnadu Police Standing Orders, relating to “Black mark”.

7. Police Standing Order 94(4) of the Tamilnadu Police Standing Orders reads as follows:-

*“94. **Black Marks—Rules** — The following rules regulate the system of punishment by Black Marks: -*

(1)

(2)

(3)



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(4) Black Marks shall take effect from the date of the delinquency, unless otherwise stated.

(5) The above rules must be strictly enforced, provided that in any case in which the officer awarding the Black Mark considers that the application of the rules will result in hardship to the delinquent, he shall refer the case for the orders of the Deputy Inspector—General concerned.”

8. It is contended by the learned Senior Counsel that the punishment can be put into effect only from the date of offence and if it is so considered in this case, it should have come into effect before on and from 02.09.2007 when the information was received at the police station where the petitioner was working about the burial of an infant.

9. Learned Senior Counsel placed further reliance on Police Standing Orders 97, which is as follows:-



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“97. Deferred punishments —

(1) For minor offences and in case of more serious misconduct when a man has a previous good record, the punishment may be held in abeyance for a stated period ranging from three to six months at the end of which order of punishment will be cancelled, if the officer's conduct while on duty during the period or postponement has been good. If the delinquent's conduct is found to be unsatisfactory at any time during the period of postponement, the punishment may at once be confirmed. A deferred punishment will be entered in the defaulter sheet, if confirmed but not otherwise.(G. O. 2960, Home, 4th October, 1954)

NOTE -

(2) When the punishment held in abeyance is a Black Mark, Reprimand or a Censure, the period should not exceed six



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months. If the Black Mark, Reprimand or Censure is subsequently confirmed, it will have effect from the date of the delinquency to which it relates.

(G.O. 2494, Home, 26th June 1947 and 1926, Home 30th June 1954)

(3) ”

10. A reading of the above provision shows that any punishment could be kept in abeyance and if it is confirmed, it will have effect from the date of the offence to which it relates. It had also been stated that any punishment of “Black mark” or Censure can be in place only for a period of six months. It is therefore contended by the learned Senior counsel on behalf of the petitioner that even in the extreme case of the “Black mark” being confirmed by this Court, the punishment tenure will end on completion of six months from the date of offence, namely, 02.09.2007, which would indicate that it would lapse on 02.03.2008. This would not affect the promotion of the petitioner on 15.06.2008.



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11. On the other hand, the Additional Government Pleader placed reliance on Tamilnadu Government Servants (Conditions of Service) Act, 2016 and more particularly to Appendix 11 and Sub-rule (11) and Sub-rule (11) which are as follows:-

“(11) Any punishment (other than 'censure') imposed on a member of service within a period of five years prior to the crucial date and a punishment of 'Censure' imposed within a period of one year prior to the crucial date shall be held against the member of service and his name shall not be considered for inclusion in the approved list. Any punishment, including 'Censure' imposed on a member of service after the crucial date, but before actual promotion or appointment shall be held against the member of service and he shall not be given promotion or appointment.”

17. Any punishment imposed on a member of service under Rule 8 of the Tamil Nadu Civil



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Services (Discipline and Appeal) Rules shall take effect from the date on which the said punishment order is served to the member of service concerned and the name of such member of service shall not be considered for inclusion in the approved list until the said punishment is over.”

12. Thus it is stated that any punishment other than censure would be in force for a period of five years and the punishment of censure would be in force for a period of one year. It is therefore contended by the learned Additional Government Pleader that Black mark is a punishment other than Censure, and it will be in force for a period of five years. It is therefore contended that it had been rightly held by the respondents that the petitioner can be considered for upgradation to the post of Head Constable only in the year 2011 and not in the year 2008.

13. Learned Additional Government Pleader further placed reliance



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on the Judgment of a learned Single Judge of this Court in **W.P.No. 17392 of 2014 [L.Venkatesan Vs. the State of Tamil Nadu and Others]**. The punishment imposed in that particular case was postponement of increment with cumulative effect for one year and the issue was the effective date on which the punishment would commence. It was held as follows:-

“4.5. The learned counsel for the petitioner relied upon Rules 17 and 18 to Schedule XI of Section 7 (1) of the Tamil Nadu Government Servant Conditions of Service Act, 2016, which is reproduced hereunder for convenient reference:-
“SCHEDULE-XI [Section 7 (1)] PART-A (17)
Any punishment imposed on a member of service under rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules shall take effect from the date on which the said punishment order is served to the member of service concerned and the name of such member of service shall not be considered for inclusion in the approved list until the said punishment is over. (18) The performance of a member of service for promotion or



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appointment shall be assessed on the basis of the Annual Confidential Report or Record Sheet written for a period of five years prior to the crucial date. If any adverse remarks are recorded against a member of service in the Annual Confidential Report or Record Sheet within a period of five years prior to the crucial date, his name shall not be considered for inclusion in the approved list. Any adverse remarks relating to a period of five years prior to the crucial date which have not been shown to and acknowledged by the member of service shall be ignored and his name shall be considered for inclusion in the approved list.”

Thus, it is clear that the currency of promotion shall take effect from the date on which the said punishment order is served to the member of service concerned and it cannot be postponed to the period commencing from annual increment. ”

14. It is therefore contended by the learned Additional Government



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Pleader that in accordance with Rule 8 of Tamilnadu Government Servants (Conditions of Service) Act, 2016, the punishment would take effect only from the date on which the said order of punishment was served on the member of the service concerned. It is further contended that since the order of Black mark has been passed by the Director General of Police after modifying the earlier punishment, the upgradation of the petitioner only from the year 2011 is correct and should not be interfered with by this Court.

15. It must however be pointed out that this particular Act namely, the Tamilnadu Government Servants (Conditions of Service) Act, 2016 received the assent of the Governor only on 14.09.2016.

16. Section 68 of the said Act is as follows:-

“68. Overriding Effect of special rules.- If any provision of this Act is inconsistent with any provision of the special rules applicable to any particular service, the special rules shall, in



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respect of that service, prevail over the provisions of this Act.

17. So far as the Tamilnadu Police Force is concerned, the special rules would be the Police Standing Orders. In the Standing Orders a separate punishment of censure and of Black Mark had been provided. Therefore, when punishment of Black Mark is imposed, it would be in effect only for a period of six months from the date of commission of the offence.

18. In this connection, a learned Single Judge of this Court had also taken the same view in ***W.P.(MD).No. 14661 of 2019 by an order dated 07.10.2021 [S.Pitchai Vs. the Director General of Police and others]***, wherein also a punishment of Black mark had been imposed. The learned Single Judge had held as follows:-

“ 7.It is not in dispute that the petitioner was not given upgradation with effect from



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01.12.2013, only because, the petitioner suffered with the punishment of Black Mark and this punishment will disable the petitioner to be considered for promotion, in view of the check period of one year. According to the respondents, the petitioner was imposed with the punishment of Black Mark by order of the 2nd respondent dated 08.01.2015 and the punishment period was completed on 07.01.2016 and accordingly, he was upgraded as Grade I Police Constable on 01.02.2016.

8. The learned Standing Counsel for respondents has brought to the notice of this Court, the provisions of new enactment called “Tamil Nadu Government Servant (Condition of Service) Rules, 2016”. This Act, except Section 1 Sub Section 30, all the remaining provisions of the Act, came into effect from the date of notification.

9. As per the new enactment, the procedure for preparation of approval list for promotion



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should be as per para-A, schedule-XI of the Act.

Sub clause (11) of clause-II of Para-A of Schedule-XI of the Act reads as follows:

“II. Consideration of members for inclusion in the approved lists:

(11) Any punishment (other than “Censure”) imposed on a member of service within a period of five years prior to the crucial date and a punishment of “Censure” imposed within a period of one year prior to the crucial date shall be held against the member of service and his name shall not be considered for inclusion in the approved list. Any punishment, including “Censure” imposed on a member of service after the crucial date, but before actual promotion or appointment shall be held against the member of service and he shall not be given promotion or appointment.”

10. Relying upon the above, it is contended on behalf of the respondents that the punishment



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of black mark is a specific punishment for a Constable or a Head Constable and others, who are holding corresponding rank and only by virtue of the new enactment, the the petitioner cannot be considered for promotion, as he has suffered a minor punishment of black mark, which will disable the petitioner to be considered for promotion for a period of one year.

*11. However, it is relevant to extract Police Standing Order No.94(4) which reads as under:
“PSO 94. Blackmark - Rules - The following rules regulate the system of punishment by blackmarks:-*

(1) to (3)

(4). Blackmarks shall take effect from the date of the offence, unless otherwise stated.

(5). ”

12. Admittedly, the punishment of postponement



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of increment was modified as that of punishment of blackmark by the 2nd respondent on 08.01.2015 and it is not in dispute that the date of delinquency committed by the petitioner was 11.08.2012. Therefore, under PSO 94(4), it has been clearly contemplated that punishment of Blackmark shall take effect from the date of offence, unless otherwise stated. When that be so, as rightly contended by the learned counsel for the petitioner there was no embargo for consideration of the claim of the petitioner for upgradation as on 01.12.2013. The provisions of the new enactment extracted above will apply only in the matter of minor and major punishments that any punishment (other than “Censure”) imposed on a member of service within a period of five years prior to the crucial date and a punishment of “Censure” imposed within a period of one year prior to the crucial date shall be held against the member of service and his name shall not be considered for inclusion in the approved list. As regards the punishment of blackmark is concerned, as per



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PSO 94(4) extracted above, the punishment would take effect from the date of delinquency i.e. on 11.08.2012 and thereby, there was no impediment for consideration of the claim of the petitioner. Accordingly, after the punishment of blackmark was imposed, the petitioner is entitled to the upgradation with effect from 01.12.2013. Though the learned Government Counsel refers to the new enactment, namely, Tamil Nadu Government Servant (Condition of Service) Rules, 2016, which cannot have any application to the petitioner's case. Any provision, which is penal in nature, cannot be given retrospective effect unless there is express provision. ”

19. There is yet another Judgment of a learned Single Judge of this Court in ***W.P.No. 13831 of 2019 [T.Malai Mathi Vijayan Vs. the Commissionr of Police and others]*** wherein, the learned Single Judge had observed as follows:-

“10. It is clear from the above amendment that a candidate who is aspiring to participate



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under the Department Quota in the selection, must have a clean record of service without any punishment. The only exception that has been given under the Rule is that the minor punishment of Black Mark, Reprimand and/or Censure, are not considered to be disqualifications. It is clear from the Rule that apart from these three punishments which have been enlisted, a candidate who has suffered any other punishment is disqualified from participating in the appointment and such punishments are construed to the effect that the candidate does not possess a clean record of service. ”

20. It is thus seen that Black mark is only a minor punishment. Any person who suffers any other punishment would be disqualified, but Black mark is an exception to the general rule.

21. A conjoined reading of the ratio laid above would show that the petitioner's punishment having been modified to Black mark, can at the



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most be in force for a period of six months from the date of commission of the offence.

22. The learned Senior Counsel for the petitioner however contended that even the punishment of Black mark should not have been imposed since there had been a clear admission by the Head Constable, who was in place at that particular point of time, namely, K.Loganathan that he alone received the phone call and that he had not conveyed the message to the higher officials.

23. But if that is to be the case, the petitioner can give a fresh representation seeking review of the punishment of Black mark by citing this particular letter of the said Head Constable and seek that the said punishment should also be set aside by the respondents.

24. This Court cannot travel to that extent as, after considering all facts, the punishment of Black mark had been imposed against the petitioner



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by the Director General of Police. But however, it would not have any effect on the promotion of the petitioner herein and therefore, even though that particular punishment is retained by this Court subject to further representation given by the petitioner herein, the substantial relief of the petitioner, namely, to refix the promotion as Head Constable on and from 15.06.2008 as originally fixed by the third respondent by order dated 27.08.2013 is restored and the petitioner is to get the benefit of Seniority in the post of Special Sub Inspector of Police from the year 2018. He is also entitled for appropriate monetary benefits.

25. Necessary proceedings in this regard are directed to be issued by the respondents within a period of 16 weeks from the date of receipt of a copy of this order. To that extent, though the punishment of Black mark is not interfered but since liberty has been given to the petitioner to represent again by forwarding a copy of the letter of K.Loganathan, Head Constable, the Writ Petition stands allowed. No order as to costs. Consequently connected Civil Miscellaneous Petition is closed.



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Index: Yes/No

Neutral Citation: Yes/No

To

1. Additional Chief Secretary,
State of Tamilnadu
Home (Pol. VI) Department
The Secretariate, Chennai – 9.
2. The Deputy Inspector General of Police
Coimbatore Range, Coimbatore District.
3. The Superintendent of Police,
Coimbatore District.

C.V.KARTHIKEYAN, J.

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