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W.A.No.3470 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2023

CORAM

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI**

**W.A.No.3470 of 2019
and
WM.P.Nos.5460 of 2016 and 22198 &22197 of 2019**

- 1 The Government of Tamil Nadu
Rep. by its Secretary to Government,
Home Department,
Fort St. George, Chennai-9.
 - 2 The Director General of Police,
Kamarajar Salai, Mylapore, Chennai-9.
 - 3 The Commissioner of Police,
Coimbatore City,
Coimbatore.
- ... Appellants

Vs.

S.Vivekananthan ... Respondent

Writ Appeal filed under Section 15 of Letters Patent to set aside the order passed in W.P.No. 12013 of 2012 dated 31.10.2014 on the file of this Court.

For Appellant : Mr.S.Manoharan, A.G.P.
For Respondents : No appearance



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JUDGMENT

(Judgment of the Court was made by D.KRISHNAKUMAR, J.)

The challenge in the Writ appeal is against the order passed by the Writ Court directing the respondents to give notional promotion to the petitioner and thereafter fix the revised pay and further directed to grant the retiral benefits and the pensionary benefits.

2. This Court in similar matter in W.A.No.1509 of 2015 (**The State of Tamil, Rep. by its Secretary to Government, Home Department, Fort St. George, Chennai-9. Vs. K.Mohan**) by relying upon the order of the Full Bench judgment of this Court in **The State of Tamil Nadu Rep. by its Secretary to Government, Home Department, Fort St.George, Chennai 600 009 and 2 others vs. C.Srinivasan [W.A.No.3748 of 2019, etc. Batch of cases, dated 4.2.202**, held that the benefit of upgradation/promotion to the next level can be granted/claimed only on completion of the qualifying service in each level/rank as prescribed in the relevant Government orders. The relevant portion of the judgment is extracted below;



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"2. *The learned Additional Government Pleader appearing for the appellants relied on the Full Bench judgment of this Court in **The State of Tamil Nadu Rep. by its Secretary to Government, Home Department, Fort St.George, Chennai 600 009 and 2 others vs. C.Srinivasan [W.A.No.3748 of 2019, etc. Batch of cases, dated 4.2.202,** wherein the Honourable Full Bench answered to the question that has been referred to the Full Bench which reads as follows:*

"We hold that the Division Bench in V.Samy case did not lay down the law correctly and we uphold the law laid down in V. Ramachandran case to the extent that there is no deemed upgradation or deemed promotion contemplated in the relevant Government orders and the benefit of upgradation/promotion to the next level can be granted/ claimed only on completion of the qualifying service in each level/rank as prescribed in the relevant Government Orders. At the risk of repetition, insofar as understanding the expression "retrospective operation" is concerned, we hold that The Government Orders operate prospectively but it imposes/grants new results in respect of a past event. In other words, the Government Order operates forward but it looks backward and in that it attaches new consequences for the future to an event that took place before the Government Order was issued.



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If the Government Orders are understood in this perspective, there is no need to get into the issue of "retrospective operation. Thus, we are of the view that the Division Bench while rendering the judgment in V.Ramachandran case has dealt with the Government orders in its proper perspective and the judgment in V.Samy case is hereby overruled".

3. In the light of Full Bench judgment answering to the question that has been referred to the Full Bench, wherein it is held that the benefit of upgradation/promotion to the next level can be granted/claimed only on completion of the qualifying service in each level/rank as prescribed in the relevant Government orders. In the instant appeal, the respondent/writ petitioner had not produced any materials to show that the petitioner had completed the minimum qualifying service at the time of promotion and therefore, the decision of the Full Bench cited supra, is squarely covered by the facts of the present appeal also.

4. Such view of the matter, order passed by the learned Single Judge in W.P.No.24111 of 2014 dated 5.09.2014 is set aside. Consequently, the Writ appeal stands allowed. No cost. Connected miscellaneous petition is closed."



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3. In light of the aforesaid decision of this Court, the order of this learned Single Judge in W.P.No. 12013 of 2012 dated 31.10.2014 is set aside. Consequently, the Writ appeal stands allowed. No cost. Connected miscellaneous petitions are closed.

(D.K.K.J.) (K.G.T.J.)
03.04.2023

Speaking/Non Speaking order
Index: Yes
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To

- 1 The Secretary to Government,
Home Department,
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- 2 The Director General of Police,
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