



W.P.No.216 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:14.06.2023

Delivered on: 14.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.216 of 2019

S.Arumugasamy

... Petitioner

Vs.

1.State of Tamil Nadu
Rep by its Principal Secretary to Govt.,
Home Department
Fort St.George
Chennai-9

2.Director General of Police
O/o Director General of Police
Kamarajar Salai, Mylapore
Chennai-600 004

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration declaring that the impugned G.O.(3D) No. 19 dated 02.04.2014 is illegal arbitrary and unconstitutional in so far as the petitioner was given temporary promotion without fixing the seniority of the petitioner is contrary to the consent order passed by the Learned Single Judge in W.P.No. 24322 of 2010 dated 09.11.2010 and consequently

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directing the 1st and 2nd respondents to pass Government Order Superseding G.O.(3D) No. 19 dated 02.04.2014 and to promote the petitioner as Additional Superintendent of Police on regular basis by fixing the seniority by inclusion of petitioner's name below to Tr.D.Wesley Ebenezer (belonging to 1976 batch Sub-Inspectors) and above the name of Tr.t.P.Sureshkumar (belonging to 2003 batch directly recruited DSP) while preparing the temporary panel of Deputy Superintendent of Police (Cat-I) for the year 2009-10 vide in Letter Rc.No.92902/GB V(I)/2009.

For Petitioner : Mr.A.Mohan

For Respondents : Mr.Haja Nazirudeen, AAG-I
assisted by
Mr.D.Gopal, Govt,Advocate

ORDER

Petitioner seeks issuance of Writ of Declaration to quash the G.O.(3D) No. 19 dated 02.04.2014 as illegal, arbitrary and constitutional in so far as the petitioner being given temporary promotion without fixing seniority, the same being contrary to the consent order passed in W.P.No.24322 of 2010 dated 09.11.2010 and to consequently direct 1st and 2nd respondents to pass a Government Order superceding G.O.(3D) No.19 and to promote the petitioner as Additional Superintendent of Police, on regular basis by fixing



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seniority.

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2. The case of the Writ Petitioner is that he was directly recruited to the post of Sub-Inspector of Police (Category I) 1987 and he was elevated to rank of Inspector of Police in 1997 and served in various capacities at various places. The petitioner was also appointed by recruitment by transfer to the post of Deputy Superintendent of Police Category-I in consultation with the Tamil Nadu Public Service Commission and the petitioner was given an out of turn promotion. In this connection, the Government issued G.O.Ms.No.1126 Home (Police-2) Department dated 22.11.2002, by relaxing 4(B) of Special Rules of Tamil Nadu Police Service and the petitioner was appointed to the immediate next higher post of Deputy Superintendent of Police (Category-I). The petitioner assumed charge as Assistant Commissioner of Police, Egmore Range on 01.02.2003. He completed his probation on 07.02.2005 AN. Some Police officers across grades who worked in Special Task force involved in sandalwood murder Veerapan's case were awarded one stage accelerated promotion. To the petitioner's



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dismay, the Director General of Police forwarded a letter dated 07.07.2007 to the Government where the petitioner's name was occurring in Sl.No.19, downgrading the petitioner's six years of approved service seniority in the post of DSP. The petitioner challenges the G.O.Ms.No.1396 dated 03.10.2007 for placing him incorrectly and to consequently promote him as Additional Superintendent of Police Category I. The petitioner's specific case is that he is not a one time accelerate promotee and he was eligible for promotion at every stage as per service entitlement. The petitioner, therefore filed W.P.No.24322 of 2010 seeking promotion to the post of Additional Superintendent of Police with effect from 07.02.2005. This Court, by an order dated 09.11.2010, directed the respondents to pass consequential order recording that the counsel for the respondents admitted to the fact that the case of the petitioner was covered by similar orders passed by this Court.

3. The respondents filed an application seeking extension of time by six months for complying with the order of the learned Single Judge. Once again, the respondents took out an application for extension of time which



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was also allowed. However, contrary to the case put forth in the application seeking extension of time. A Writ Appeal came to be filed in W.A.No. 2765 of 2012 after lapse of close to 18 months from the date of order of the learned Single Judge on 09.11.2010. The Hon'ble Division Bench of this Court, in and by judgment dated 02.01.2013 dismissed the Writ Appeal specifically observing that the attitude of the authorities in filing the Writ Appeal was lymphatic, especially after the Government Advocate had conceded that the issue in the Writ Petition was covered by earlier order of this Court and that the same has not only become final but also implemented by Government.

4. After the dismissal of the Writ Appeal, the petitioner filed Cont.P.No.705 of 2014 and pending contempt G.O.(3D) No.19 dated 02.04.2014, was issued giving temporary promotion as an Additional Superintendent of Police to the petitioner, however, without fixing any seniority. The petitioner was therefore constrained to file another Contempt petition in Contempt Sr.No.23979 of 2016. However, this Court disposed of the Contempt petitions by orders dated 24.11.2017 and 18.12.2017. The



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petitioner filed a review petition in Review No.1 of 2018 against the orders passed in the Contempt Petitions. However, Review petition came to be dismissed by order dated 18.09.2018. The petitioner, not satisfied with the order, filed Special Leave Petition (Civil) Dairy No.40026 of 2018 and Slp.Civil.Nos. 29954 and 29955 of 2018. The Hon'ble Supreme Court disposed of SLP.(Civil) Dairy No.40026 of 2018 on 22.11.2018, giving permission to the petitioner to challenge G.O dated 02.04.2014 by way of a substantive Writ Petition. Subsequently, by order dated 27.11.2018, the Special Leave Petition (Civil) Nos.29954 and 29955 of 2018 were dismissed.

5. The above Writ Petition has been filed pursuant to the liberty granted by the Hon'ble Supreme Court. It is the further case of the petitioner that the 1st respondent subsequently issued G.O.(Ms).No.1007 dated 20.08.2018, in and by which 10 persons who are junior to the petitioner were included in the panel for promotion to the post of Superintendent of Police from the post of Additional Superintendent of Police. The petitioner sent his objections by way of a representation dated 05.09.2018. The impugned order



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is challenged on the ground that it is contrary to the stand taken by the respondents themselves in the earlier round of litigation viz., W.P.No.24322 of 2010 and especially when a Division Bench of this Court has categorically held that the order passed by the learned Single Judge was a consent order and the respondents are bound to obey the order.

6. The respondents filed a counter stating that the case of the petitioner was considered for temporary promotion to the post of Additional Superintendent of Police Category I, on par with accelerated promotees along with Deputy Superintendent of Police and infact he was placed at Sl.No.1 in the temporary promotion list approved in G.O.Ms.No.771, Home (Pol.1A) Department dated 29.09.2013. The respondents also relied on the order of this Court dated 24.11.2017 in the Contempt petition holding that there is no willful intention to cause delay on the part of the respondents and cannot be said to have committed any act willfully or wantonly. The respondents also stated that none of the juniors of the petitioner have been promoted as Superintendent of Police and that his name will be considered for promotion



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as per his regular seniority, based on merit and eligibility. It is also pointed out that several Writ Petitions were filed challenging G.O.Ms.332 (Home) (Pol1A) department dated 03.05.2012 and therefore in the impugned G.O it was rightly pointed out that the matter was subjudice and the petitioner's request cannot be considered. According to the respondents the question of fixing of seniority of accelerated promotees is pending before the Court and the respondent the decision of the Court would apply to the petitioner also and the respondents prayed for dismissal of the Writ Petition on the ground that it is not contrary to orders passed in W.P.No.24322 of 2010.

7. The petitioner has filed a rejoinder to the said counter reiterating the various averments set out in the affidavit in support of the Writ Petition. The tenor of the counter filed by the respondents would amount to seeking review of the order passed by this Court in W.P.No.24322 of 2010 dated 09.11.2010 and therefore, the counter affidavit cannot be taken for consideration at all. The respondents themselves according to the petitioner supported the cause of the petitioner defending the accelerated promotion given to him in



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W.P.No.14359 of 2007 (originally O.A.No.333 of 2003) before the Tribunal.

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The reasoning of the respondents that accelerated promotion has to be rendered only for one stage defies logic and is arbitrary and it is prayed that the Writ Petition may be allowed as prayed for.

8. Heard Mr.A.Mohan, learned counsel appearing for the petitioner and Mr.Haja Nazirudeen, AAG-I, assisted by Mr.D.Gopal, learned Government Advocate for the respondents.

9. This Court has perused the pleadings by way of affidavits, counter and rejoinder as well as typedset of papers enclosing relevant documents by not only the petitioner but also by the respondents and the decisions relied on by the counsel for the petitioner.

10. At the outset, it is not in dispute that an order came to be passed by this Court in W.P.No.24322 of 2010 on 09.11.2010. The said order was based on the consent of the Government Advocate, agreeing to the fact that the



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earlier orders relied on by the Writ Petitioner were applicable to the facts of the Writ Petition in question and that those orders have not only become final but have also been implemented. The relevant portion of the order is extracted for easy reference:

“...3. The learned counsel for the petitioner submitted that the said order is followed in other cases and the said order of this Court was also implemented and therefore, the matter in issue is covered by the judgment of this Court, more particularly, W.P.No.17312 of 2008 dated 13.10.2009

4. When the matter was posted for admission on 28.10.2010, the learned Government Advocate was directed to take notice and to verify whether the matter in issue is covered by the above said judgments. The learned Government Advocate for the respondents on instructions and also on perusal of the earlier orders submitted that the earlier orders have become final as the same were implemented by the Government and therefore, similar order may be passed in this Writ Petition also.”

Thereafter, this Court passed the following order. The operative



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portion reads thus:

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“ In the light of the said submission, this writ petition is disposed of in terms of paragraph 7 of the judgment extracted above and consequential order has to be passed by the second respondent within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.”

From a bare reading of the said order, it is thus clear that the respondents have virtually conceded to the claims of the Writ Petitioner in the earlier round of litigation. They are only required to pass a consequential order in terms of the earlier order passed which have also become final besides also implemented by the respondents themselves.

11. It is seen that the respondents did not comply with the said order dated 09.11.2010 and instead they chose to seek extension of time by 6 months, not once but twice, seeking extension over a period of six months from 16.01.2011 and again from 17.07.2011 to 17.01.2012. In the affidavits filed in support of the applications seeking extension of time also, the

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respondents have categorically admitted that they only need to pass consequential orders fixing seniority of the petitioner. The right of the petitioner to get promoted is not challenged in both the applications. Despite having approached this Court twice seeking extension of time, the respondents chose to challenge the order dated 09.11.2010 in W.A.No.2765 of 2012. The Hon'ble Division Bench after noticing the conducts of the respondents as appellants there in, held as follows:

“ 7. We are pained to observe the lymphatic attitude of the authorities in filing the writ appeal, in public interest, against the consent given by the learned Government Pleader, having fully know that the Government Advocate has conceded that the issue is covered by the earlier order of this Court, and the same has become final and also been implemented by the Government.

8. In the circumstances, we do not find any merit in this appeal, which is accordingly dismissed. No costs. Consequently, miscellaneous petition is closed.”



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12. Even in the Writ Appeal, the only contention raised by the respondents was that the petitioner was not entitled to accelerated consequential seniority since the accelerated promotion was only for one stage. Therefore, the contention now raised by way of counter affidavit is nothing but a mere repetition of the stand taken by the respondents herein as appellants in the Writ Appeal. The said contentions were all negatived and the Writ Appeal was dismissed with quite strong observations. Merely because, subsequently several Writ Petitions have been filed on the same issue and there appears to be divergent orders being passed by this Court and also the matter having gone up to the Hon'ble Supreme Court and the Hon'ble Supreme Court directed that the High Court would decide the issue regarding seniority pertaining to an officer who was granted accelerated promotion, the respondents cannot take this as a defence in the petitioner's case for the following reasons:

(i) In so far as the petitioner, the issue has already attained finality with the judgment passed in Writ Appeal No.2765 of 2012.

(ii) Even otherwise, after suffering an order in W.P.No.24322 of 2010,



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the respondents at the first instance never chose to challenge the said order and instead they only sought time for complying with the said order. This was not once but twice.

(iii) Merely because in the Contempt petition, this Court held that the conduct of the respondents was not willful, or wanton it does not absolve the respondents from obeying the order of this Court dated 09.11.2010 in its true letter and spirit. Infact, the said order is found to be a consent order. The counsel for the petitioner therein had relied on earlier orders passed by this Court and stating that the said orders were similar in nature and directly applicable to the case of the petitioner. The respondents counsel did not disagree and instead consented for an order being passed in line with earlier order passed by this Court.

13. Therefore, having consented and allowed an order to be passed, it is not open to the respondents thereafter to turn around and take a contrary stand. Their attempt to challenge the order of the learned Single Judge was also rightly thrown out by the Hon'ble Division Bench of this Court with



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strong observations. This Court does not deem it fit to dwell into the various other contentions raised by the respondents on merits referring to subsequent orders passed by this Court being taken up on appeal by way of Writ Appeals and ultimately culminating in orders passed by the Hon'ble Supreme Court directing the High Court to decide the contentious issues for the simple reason that this is a clear case of constructive *resjudicata*.

14. The counsel for the petitioner relied on the following judgments:

(i) ***Forward Construction Co and others Vs. Prabhat Mandal (Regd), Andheri and Ors***, reported in (1986) 1 SCC 100, for the proposition that principles of *resjudicata* enunciated in Sec.11 of Code of Civil Procedure would apply to Writ Petitions as well.

(ii) ***Direct Recruit lass II Engineering Officers' Association Vs. State of Maharashtra and Ors***, reported in (1990) 2 SCC 715, for the proposition that an order passed by the High Court under Article 226 would bind the parties unless it is set aside on appeal.

In the said judgment also, the Hon'ble Supreme Court reiterated that



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the principles of constructive resjudicata underlying Explanation 4 of Sec.11 of Code of Civil Procedure would apply to Writ Petitions also.

15. Coming to the facts of the present case, the order in W.P.No.24322 of 2010 has become final. The feeble challenge made by the respondents in W.A.No.2765 of 2012 was also dismissed. Such being the position, it is not open to the respondents to cite other cases to deny relief to the petitioner, that too one granted with their active consent. The learned Additional Advocate General would refer to the various subsequent orders that have been passed touching the very same issue in question and contended that the petitioner cannot seek accelerated promotion beyond one stage. He also placed reliance on the following judgments:

(i) *Uttranchal Forest Rangers Association (direct recruit) and Ors Vs. State of UP and others*, (2006) 10 SCC 346;

(ii) *Union of India and Ors Vs. S.K.Saigal and Ors*, (2007) 14 SCC 556
2007 14 SCC 556;

(iii) *R.Thirunavukkarasu and two Ors Vs. The*



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State of Tamil Nadu, order in W.A.No.849 to 854 of 2010;

(iv) S.Rdhakrishnan and Ors Vs. The State of Tamil Nadu rep.by its Principal Secretary and Ors, Order in W.P.No.24461 of 2013 and batch.

16. In so far as order passed in Writ Appeal and Writ Petitions are concerned, the ratio laid down therein cannot be pressed into service as against the Writ Petitioner in respect of whom, already a final, binding and conclusive order was passed in W.P.No.24322 of 2010 and also confirmed in W.A.No.2765 of 2012.

17. In so far as the judgment of the Hon'ble Supreme Court in ***Uttranchal Forest Rangers*** case also it pertains to seniority being reckoned. In Union of India's case, the Hon'ble Supreme Court held that till service rules are held to be invalid or unconstitutional, Court cannot grant relief ignoring mandate of rules even if rules are found to be discriminatory.

18. Relying on the above judgments, the learned Additional Advocate



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General would contend that in the light of the law laid down subsequently, the respondents were not in a position to consider the petitioner's claim. However, such a contention does not merit any consideration for the simple reason that a lis between the petitioner and respondents has become final and even implementation of the order was also agreed to by the respondents. Their own conduct in seeking extension of time on two occasions to comply with the order only further prevents the respondents from taking any other stand subsequently.

19. This Court finds that the defence/objections now taken by the respondents are clearly not available to them in view of the order in W.P.No.24322 of 2010 confirmed in W.A.No.2765 of 2012. It is now well settled that the principles of estoppel and constructive resjudicata apply to Writ Petitions also. From the above discussion, it is a clear case where the respondents cannot sustain any of their objections in view of the principles of estoppel and constructive resjudicata clearly staring them in their face.



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20. In view of the discussions, here in above, Writ Petitioner is entitled to relief as prayed for. Accordingly, Writ Petition is allowed. No costs.

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Internet:Yes
Index:Yes/No
Neutral Citation:Yes/No
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To
1.The Principal Secretary to Government
State of Tamil Nadu
Home Department
Fort St.George
Chennai-9

2.The Director General of Police
O/o Director General of Police
Kamarajar Salai, Mylapore
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Pre-delivery order in
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