



W.A.(MD)No.1142 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 01.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

W.A.(MD)No.1142 of 2012

and M.P.(MD)No.2 of 2012

O.Shyed Mohaideen

... Appellant/Petitioner

Vs.

1.The Superintendent of Police,
Madurai District,
Madurai.

2.The Deputy Inspector General of Police,
Madurai Range,
Madurai.

3.The Inspector General of Police,
South Zone,
Madurai.

4.The Director General of Police,
Chief Office,
Chennai – 4.

5.S.Navaneethakrishnan

6.G.Murugesan

7.T.Murugesan

... Respondents/Respondents

PRAYER: Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 11.04.2012 made in W.P.(MD)No.2329 of 2011 on the file of this Court.



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For Appellant : Mr.T.Cibi Chakkaraborthy
For Respondents 1 to 4 : Mr.A.K.Manikkam
Special Government Pleader
For Respondents 5 to 7 : No appearance

JUDGMENT

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

This Intra Court appeal has been directed against the order passed by the Writ Court dated 11.04.2012 made in W.P.(MD)No.2329 of 2011.

2. It is the case of the appellant, who was writ petitioner before the Writ Court, that, he joined as a Police Constable Grade – II on 25.05.1988 in the Tamil Nadu Police Service and he was immediately attached to Motor Transport Branch on Other Duty basis.

3. Even though he has attached to M.T. wing, his lien continued in the regular wing, which is otherwise called as Armed Reserve wing.

4. After some years, normally test would be conducted for promotional avenue and the said test even though was conducted for the



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Police people who are being in the regular line, such test had not been conducted to the petitioner and it had not been informed to the petitioner and therefore, he was not able to participate in the test. Had he been continued in the regular wing itself without attached with the M.T. wing on Other Duty basis, he would have been in a position to write the test and at the earliest point of time he would have earned the promotion to the next cadre.

5. However, only after 10 years i.e., in the year 1998 such test was conducted in the M.T. wing itself, for which, the petitioner was permitted to participate and he has chosen to participate in that test and got through and subsequently only he was able to win the promotion.

6. The resultant situation, according to the petitioner, was that, even though the private respondents herein and some other people, who are juniors to the petitioners based on the date of enlistment originally in the year 1998, subsequently they got a promotion and marched over the petitioner, however, the petitioner, even though was senior in the enlistment and seniority list, could not achieve such promotion, marching over the



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7. A learned Judge of the Writ Court having considered the said plea made on behalf of the petitioner / appellant has rejected the same and dismissed the Writ Petition by order dated 11.04.2012, which is impugned herein.

8. Assailing the said order, Mr.T.Cibi Chakraborty, learned counsel appearing for the petitioner would submit that the denial of permission to participate in the test in the regular wing along with others, including the juniors of the petitioner is an inaction or arbitrary action on the part of the official respondents, for which, the petitioner cannot be



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blamed.

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9. Subsequently, after 10 years, only in the M.T. wing such a test was conducted, where the petitioner was permitted to participate and even though he become successful, he could not reach the position in the promoted category along with the juniors of the petitioner and therefore, on par with the said juniors the position of the petitioner shall be upgraded in the promoted position and the same was sought for, which was since denied by the Writ Court, the order impugned is infirm and therefore, the learned counsel seeks indulgence of this Court.

10. Heard Mr.A.K.Manikkam, learned Special Government Pleader, appearing for the official respondents, who would submit by relying upon paragraph Nos.1 and 7 of the counter affidavit filed by the first respondent before the Writ Court, where the first respondent had taken the following stand:-

“1) With regard to para 2, it is submitted that the applicant on this writ petition was appointed as a Grade II PC on 25.05.1988 and attached to Motor Transport Branch on Other Duty basis. His averment that he was not allowed to participate in LNK / Naik test conducted in the General line on



the pretext that he was borne on M.T. Strength cannot be accepted. Being a Police Constable, he must be aware of all the consequence of being on the O.D. in other units. When he was on O.D. in a particular branch of the unit, his lien in original unit from where he was taken on O.D. will remain there. So it is upto him to decide to participate in the test in the General line. Leaving this, he is claiming seniority in MT branch and that too after number of year which can not be accepted. His deputation to State Police Duty Meet in 1993 and Course Piloting & Escorting team in SB School does not mean that he is absorbed in MT branch. He was deputed for the above and courses as a driver Police Constable by which the writ petitioner cannot claim any seniority.

...

7. With regard to para 5(e), it is submitted that the respondents are not erred in considering for promotion for more than 20 years. The Motor Transport branch is treated as specialized line where as Armed Reserve is treated as a general line. Promotion are being ordered in both the lines separately. Hence, it is upto the writ petitioner to choose the correct line for earning his promotion. Besides the petitioner was served in M.T. Branch on other duty basis and he was allowed to attend the test during 1998 to absorb him in the M.T. Branch. Hence, the respondents can not be held responsible for the mistake committed by the writ petitioner.”



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11. By relying upon these averments and the stand taken by the official respondents, the learned Special Government Pleader would submit that, even though at the time of enlistment in the year 1988 he was enlisted in the general wing and subsequently attached to the Motor Transport Branch i.e., M.T. wing, the lien of the petitioner has not been cut of with the general wing. Therefore, it is his duty to verify when the test is going to be conducted by the Department for the people like the petitioner in the regular wing and when such test was conducted first, the petitioner ought to have appeared and he ought to have explored the possibility of getting through the test and get the promotion.

12. However, the petitioner since has not chosen to appear for such test conducted for the general wing candidates and in fact he had chosen voluntarily to attend the test conducted for the M.T. Branch and he had also become successful in the test and accordingly, he earned the promotion, after several years, he cannot now turn around and say that his juniors in the general wing already marched over the petitioner. This has been considered by the learned Judge, who has given his reasons that, it is not an automatic promotion to get a post of Sub-Inspector of Police and it is



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the promotion based on the test and selection process and in that selection process, if somebody has got selected, where the petitioner was not able to write the examination or test or not chosen to write the examination or test by virtue of that he has not been selected, the question of claiming seniority on par with his juniors does not arise and that resason has been assigned by the learned Judge for rejecting the plea raised by the petitioner before the Writ Court and therefore, the order impugned is to be sustained, he contended.

13. We have given our anxious consideration to the rival submissions made by the learned counsel appearing for the parties and the materials placed before this Court.

14. As has been rightly pointed out by the learned Special Government Pleader appearing for the official respondents, though the petitioner has been enlisted in the year 1988 as Grade – II Police Constable in the general wing, subsequently, he has been attached to Motor Transport Branch i.e., M.T. wing.



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15. The said attachment is only on the basis of “On Other Duty Category” and he has not been permanently absorbed in the said wing.

16. Insofar as the promotional avenue is concerned, there is a separate promotional avenue for the general wing people as well as the Motor Vehicle wing people.

17. Separate test would be conducted for general wing and another separate test would be conducted for M.T. branch or wing depending upon the vacancy arose in the particular wing in the promotional avenue.

18. Such a test when was conducted for the general wing the petitioner could have appeared, but he has not chosen to appear, whereas he has chosen to appear for the test conducted for the M.T. Branch in the year 1998 and he got through.

19. When that being the position, it is the voluntarily choosing of the path either General wing or M.T. Branch wing and in this context the petitioner by his own action in the year 1998 by participating in the test



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conducted for M.T. Branch he has chosen the said path and therefore, he earned promotion only through the said M.T. Branch path and not through the general wing path.

20. Whereas the private respondents and others, who might have been juniors to the petitioner at the time of enlistment has chosen to write the test in the general wing and they earned such promotions, which might have been earlier to the promotion that was earned by the petitioner after passing through the test in 1998, therefore, the said promotion given to the private respondents or other similarly placed persons cannot be equated with the petitioner by merely pointing the seniority of the petitioner based on the initial enlistment in the year 1988.

21. These reasons, in fact, in nutshell has been given by the learned Judge in the impugned order and accordingly, the plea of the petitioner was rejected by the Writ Court. The said order passed by the Writ Court, in the considered opinion of us, is to be sustained as it does not warrant any interference from this Court and hence, the said order is to be sustained and the Writ Appeal accordingly fails and therefore, it is



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dismissed. However, there shall be no order as to cost. Consequently,
connected miscellaneous petition is closed.

(R.S.K., J.) & (K.K.R.K, J.)

01.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
SJ

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