



W.P.(MD).No.1389 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.09.2023

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.1389 of 2022

and

W.M.P(MD)Nos.1226 & 1227 of 2022

1.M.Muthulakshmi

2.K.Marimuthu

3.G.Karthika

4.K.Rajendran

5.I.R.Vignesh

... Petitioners

Vs.

1.The Director General of Police,
O/o. The Director General of Police,
Chennai-4.

2.The Commissioner of Police,
O/o. The Commissioner of Police,
Vepery, Chennai-7.

3.The Commissioner of Police,
O.o. The Commissioner of Police,
Madurai City, Madurai.



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

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records related to the impugned order of the 1st respondent in his proceedings C.No.1349524/Rect.1(2)/2021, dated 24.11.2021 and quash the same in so far as the petitioners are concerned and consequently directing the respondents to refix the seniority of the petitioners on par with their batchmates of the year 2012.

For Petitioner : Mr.C.Jeganathan

For Respondents : Mr.D.S.Neduncheliyan
Government Advocate

ORDER

The present writ petition has been filed to call for the records related to the impugned order of the 1st respondent in his proceedings C.No. 1349524/Rect.1(2)/2021, dated 24.11.2021 and quash the same in so far as the petitioners are concerned and consequently directing the respondents to refix the seniority of the petitioners on par with their batchmates of the year 2012.



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2. The Tamil Nadu Uniformed Services Recruitment Board had called for the posts of Grade II Police Constable, Firemen and Grade II Jail Wardens -2012. The petitioners have applied for the said post and they have passed the written examination. While conducting the physical test, the petitioners were not considered since all the petitioners were having defects in their eyes. Thereafter, they were referred back to the second medical board and declared fit for the said job. The petitioners were sent for training scheduled to be held on 05.10.2015. The petitioners were appointed and now, working under the respondents 2 to 4. In the said circumstances, they came to know that the seniority of the similarly placed persons like the petitioners, was fixed on par with their batch mate of the year 2012. In view of the same, the petitioners have given a representation to the 1st respondent seeking re-fixation of seniority on par with their batch mates of the year 2012. The 1st respondent has returned the same vide proceedings, dated 24.11.2021 stating that the claim of revision of seniority after 3 years of date of appointment is barred by limitation as per Rule 35 (f) of Tamil Nadu State and Subordinate Service Rules and Section 40 (6) of the Tamil Nadu Government Servant (Condition of Service Act) Act, 2016. Challenging the said proceeding of the 1st respondent, dated 24.11.2021, this writ petition came to be filed.



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3. The learned Government Advocate filed a counter and submitted that in terms of Section 40 (6) of the Tamil Nadu Government Servant (Condition of Services) Act, 2016, the petitioner's request cannot be considered and pressed for dismissal of the writ petition.

4. For better appreciation, Section 40 (6) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 is extracted as follows:

“(6) Application for the revision of seniority of a person in a service, class, category or grade shall be submitted to the appointing authority within a period of three years from the date of appointment to such service, class, category or grade or within a period of three years from the date of order fixing the seniority, as the case may be. Any application received after the said period of three years shall be summarily rejected. This shall not, however, be applicable to cases of rectifying orders, resulting from mistake of fact.”

5. According to the learned Government Advocate, in terms of Section 40 (6) of the said Act, the petitioner ought to have made an application for revising his seniority within a period of 3 years from the date of appointment. Since the same has not been made within a period of 3 years, the petitioners' claim is not at all maintainable. However, the same Section mandates that the



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said limitation is not applicable to the cases of rectifying orders, resulting from mistake of fact. The case in hand is a clear case of mistake of fact which occurred on the part of the appointing authority for not examining the petitioners properly at the first instance during the medical examination of the selection process and the mistake in medical examination was later on rectified by the appointing authority by subjecting the petitioner to appear in 2nd medical board, wherein they were found fit. Though there is a delay in making an application for refixing the seniority, since the case in hand falls under Section 40 (6) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, the entire anomaly in pay revision has happened only from the mistake of fact committed by the appointing authority. This matter is no more *res integra*.

6. Heard the learned counsel on either side and perused the materials available on record.

7. This Court has already held in more than couple of cases in favour of persons placed similarly like the petitioner. A learned Single Judge of this Court in ***W.P(MD)No.25132 of 2018 (M.Karuppasamy Vs. The Director General of Police & Another)***, dated 03.01.2019 has passed a favourable order



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to the petitioner therein and the relevant portion of which is extracted as follows:

“6. In view of the above, this writ petition is allowed and the respondents are directed to fix the seniority of the petitioner with effect from 01.03.2008, i.e., the date on which the other candidates selected in the same batch were appointed. It is made clear that the petitioner will not be entitled to any salary for the said period.”

8. A learned Single Judge of this Court in ***W.P(MD)No.5356 of 2023 (M.Mohan Vs. The Director General of Police & Others)***, dated 06.06.2023 has been passed another order in similar lines. The relevant portion of which is extracted as follows:

“5. I carefully considered the rival contention and went through the materials on record. The issue raised in the writ petition is no longer res integra. An identical issue arose for consideration in W.P.No.22454 of 2021 vide order dated 27.10.2021. The writ petition was allowed in the following terms:-

“7. This is the case where the petitioner has successfully cleared examinations and the mile stone prescribed for qualifying himself to the post of Grade II Police Constable in the recruitment since during 2001-2003. However, the petitioner was not selected on the ground that the petitioner was medically unfit on account of bilateral flat feet which has been considered and not to be a qualifying for appointing the petitioner as Grade II Police Constable. The delay in getting appointed with the respondents was



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not on account of the fault of the petitioner but on account of the stand taken by the respondents. As a matter of fact under similar circumstances in W.P.(MD)No.33479 of 2016 by an order dated 02.09.2021, the appointment was directed to be given pursuant to the order of this Court in W.P.No.3273 of 2016, dated 25.01.2008. The issue is no longer res-integra and the issue is squarely covered in favour of the petitioner. There the petitioner had sought for refixing of seniority to include his name in the appropriate list and selection list during the year 2001-2003 for the post of Police Constable with effect from the date of training.

8. In view of the above, the writ petition stands allowed with consequential relief to the petitioner. The respondents are therefore directed to carry out the necessary corrections in the Service Register of the petitioner by refixing the seniority of the petitioner along with the batchmates who participated in the Recruitment called for during the year 2001-2003. The above exercise shall be carried out by the respondent within a period of twelve weeks from the date of receipt of a copy of this order.”

6. I am inclined to adopt the very same approach. As rightly pointed out by the learned counsel appearing for the petitioner, the petitioner was not at all at fault. Only because the recruiting agency proceeded on misconception that the petitioner's vision was defective, he was not appointed. If everything had taken place in the appropriate time sequence, the petitioner would have been sent for training in the year 2012 itself. Therefore, for the fault committed by the respondents, the petitioner cannot be made to suffer. Lost of three years seniority will definitely have serious civil consequence.



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The question that arises for consideration is whether the petitioner's application should be rejected as barred by limitation. Section 40(6) of the Tamil Nadu Government Servant (Condition of Service) Act, 2016 is as follows:- “Application for the revision of seniority of a person in a service, class, category or grade shall be submitted to the appointing authority within a period of three years from the date of appointment to such service, class, category or grade or within a period of three years from the date of order fixing the seniority, as the case may be. Any application received after the said period of three years shall be summarily rejected. This shall not however be applicable to cases of rectifying orders, resulting from mistake of facts.” The provision itself makes it clear that limitation will not be applicable to cases of rectifying orders resulting from mistake of facts. The case on hand would fall under such category. Non-inclusion of the petitioner in the seniority list of the year 2012 is a mistake of fact.

7. In this view of the matter, the orders impugned in the writ petition are set aside.”

9. I am fully in consonance with both the orders mentioned supra and the proviso itself makes it clear that limitation will not be applicable to the case of rectifying orders, resulting from mistake of facts. The case in hand also would fall under such category and non inclusion of the petitioners in the seniority list for the year 2012 is a clear case of mistake of fact.



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10. In this view of the matter, the impugned order dated 24.11.2021 is quashed and the respondents are directed to fix the petitioners' seniority with the recruitment batch of the year 2012 at appropriate place. However, this Court makes it clear that the petitioners will not be entitled to any arrears of pay for the said period 2012-2015. The said exercise shall be completed within a period of twelve (12) weeks from the date of receipt of a copy of this order.

11. Accordingly, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

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

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- To
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O/o. The Director General of Police,
Chennai-4.
 - 2.The Commissioner of Police,
O/o. The Commissioner of Police,
Vepery, Chennai-7.
 - 3.The Commissioner of Police,
O.o. The Commissioner of Police,
Madurai City, Madurai.
 - 4.The Superintendent of Police,
Madurai,
Madurai District.



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L.VICTORIA GOWRI, J.

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