



W.P.(MD).No.1379 of 2022

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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.1379 of 2022

S.Jothi Muthuramalingam

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Represented by its Secretary to Government,
Home Department,
Secretariat,
Chennai-9.

2.The Director General of Police,
Tamil Nadu Police Department,
Dr.Radha Krishnan Salai,
Mylapore, Chennai-600 004.

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

4.The Deputy Commissioner of Police,
Madurai City, Madurai.

5.The Commandant,
6th Battalion,
City Armed Reserved,
Madurai City.

... Respondents



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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 entire records relating to the impugned letter C.No.BIT(1)/26498/2021, dated 29.11.2021 on the file of the 4th respondent and quash the same and further directing the 4th respondent to fix the Petitioner's Seniority on par with his batch mates within the time limit may be stipulated by this Court.

For Petitioner : Mr.R.Maheswaran

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

ORDER

The present writ petition has been filed to call for the entire records relating to the impugned letter C.No.BIT(1)/26498/2021, dated 29.11.2021 on the file of the 4th respondent and quash the same and further directing the 4th respondent to fix the Petitioner's Seniority on par with his batch mates within the time limit may be stipulated by this Court.

2. The petitioner before joining as Grade-II Constable in the respondent department, he was not selected by the proceedings of the 3rd respondent, dated 04.01.2013 for the reason that he was medically unfit. Challenging the same, he



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has filed W.P(MD)No.840 of 2013. Thereafter, based on the interim direction of this Court, dated 11.01.2013. he was referred to second medical test and he was found to be fit. Thereafter, the 2nd respondent by proceedings, dated 25.10.2013 directed the petitioner to appear for yet another medical test. Challenging the same, he has filed W.P(MD)No.5664 of 2014. Pending writ petition, the 3rd respondent has issued an order of appointment, dated 15.09.2014. Thereafter, the Commandant, Tamil Nadu Special Police Force, II Battalion, Avadi by proceedings, dated 19.09.2015 directed the petitioner to report for basic training to be commenced on 05.10.2015. Thereafter, he joined in the service on 05.10.2015 and he was posted to various places.

3. In the meanwhile, the petitioner sent a representation to the 2nd respondent through 3rd respondent on 08.04.2021 to revise his seniority on par with his batch mates recruited in the year 2013 and he sent an another representation to the 1st respondent on 19.04.2021 reiterating the above claim. The 3rd respondent by his proceedings, dated 31.05.2021 directed the petitioner to produce certain documents. Accordingly, the petitioner sent all the requisite documents along with a representation on 10.06.2021. Since there was no response, the petitioner filed W.P(MD)No.15624 of 2021 for directing the 2nd



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respondent to fix his seniority on par with his batch mates. This Court has passed an order, dated 01.09.2021 directing the 2nd respondent to consider the representation, dated 15.04.2021 on merits and in accordance with law within a period of 12 weeks from the date of receipt of copy of that order. The petitioner has sent a representation, dated 23.09.2021 attaching the order in W.P(MD)No. 15624 of 2021. The City Police Office, Madurai has rejected the claim of revision of seniority by pointing out 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, this writ petition came to be filed.

4. 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.



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5. 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.”

6. 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 petitioner's claim is not at all maintainable. However, the same Section mandates that the 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 petitioner 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,



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wherein he was 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*.

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

8. 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 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.”



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9. 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 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



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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. 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



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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.”

10. 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 petitioner in the seniority list for the year 2012 is a clear case of mistake of fact.

11. In this view of the matter, the impugned order dated 29.11.2021 is quashed and the respondents are directed to fix the petitioner's seniority with a recruitment batch of the year 2012 at appropriate place. However, this Court makes it clear that the petitioner will not be entitled to any arrears of pay for the



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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.

12. Accordingly, this Writ Petition stands allowed. No costs.

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

- 1.The Secretary to Government,
The Government of Tamil Nadu,
Home Department,
Secretariat,
Chennai-9.
- 2.The Director General of Police,
Tamil Nadu Police Department,
Dr.Radha Krishnan Salai,
Mylapore, Chennai-600 004.
- 3.The Commissioner of Police,
Madurai City, Madurai.
- 4.The Deputy Commissioner of Police,
Madurai City, Madurai.
- 5.The Commandant,
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L.VICTORIA GOWRI, J.

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