



W.P(MD)No.5356 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.06.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.5356 of 2023

and

W.M.P.(MD)No.5020 of 2023

M.Mohan

... Petitioner

Vs.

1.Director General of Police (Law & Order)

O/o Director General of Police,
Beach Road,
Chennai-600 004.

2.The Superintendent of Police,

Ramanathapuram District,
Ramanathapuram.

3.The Commissioner of Police,

Greater Chennai Police Commissionerate,
Police Commissioner Office, Egmore,
Chennai.

... 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 entire relevant records on the file of the first respondent proceedings vide No. 1349524/Rect. 1(2)/2021, dated 24.11.2021 and consequent impugned order passed by the second respondent vide C.No.A3/3077/65/2020-1, dated



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02.02.2022 and quash the same as illegal as devoid of merits and consequently, direct the respondents to fix the seniority of the petitioner in his recruitment batch in the year 2012 in the appropriate place.

For Petitioner : Mr.J.Velmurugan

For Respondents : Mr.K.Balasubramani
Special Government Pleader

ORDER

Heard the learned counsel on either side.

2. The writ petitioner is presently working as Grade-II Police Constable. He was appointed on 19.09.2015. His case is that he should have been included in the selection list held for the recruitment batch of the year 2012. The petitioner was disqualified on the ground that the petitioner's vision was defective. He was sent for re-examination to the second medical board which certified that the petitioner is fit for being appointed as Police Constable Grade-II. It was only thereafter, the petitioner came to be formally appointed. The question that calls for consideration is whether the petitioner's seniority should be reckoned along with his batchmates. By the impugned memorandum, the petitioner's request was rejected.



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3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for.

4. The respondents have filed counter affidavit and the learned Special Government Pleader took me through its contents. The arguments of the respondents is that the petitioner's request was rightly rejected in view of Section 40(6) of the Tamil Nadu Government Servant (Conditions of Service) Act 2016. He pressed for dismissal of the writ petition.

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



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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 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



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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 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.



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7. In this view of the matter, the orders impugned in the writ petition are set aside. The respondents are directed to fix the petitioner's seniority in the recruitment batch of the year 2012 at the appropriate place.

8. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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

1. Director General of Police (Law & Order)
O/o Director General of Police,
Beach Road,
Chennai-600 004.

2. The Superintendent of Police,
Ramanathapuram District,
Ramanathapuram.

3. The Commissioner of Police,
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