



W.P(MD)No.5595 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.06.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.5595 of 2023

and

W.M.P(MD)Nos.5226 & 5228 of 2023

M.Ramachandran

... Petitioner

Vs

1.The State represented by
The Additional Chief Secretary to Government,
Home (Pol.2) Department,
Secretariat,
Fort St.George,
Chennai.

2.The Director General of Police,
Head of Police Force, Tamilnadu,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai.

3.T.Gandhi
4.N.Premananthan
5.M.Magesh
6.M.Edison
7.S.Krishnan
8.L.Raju
9.A.Jerald Alexander
10.A.Veerapandi



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11.C.Uhayakumar

12.N.Ravikumar

13.P.Ravindra Prakash

14.C.Dhatchinamoorthy

***(R.3 to R.14 are impleaded vide order
of this Court dated 23.03.2023 in
W.M.P(MD)No.5756 of 2023)***

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the first respondent on 19.9.2022 vide Letter No.60624/Pol.2/2021-4 and quash the same and consequently direct the respondents to fix the inter-se seniority between directly recruited Deputy Superintendent of Police and promoted Deputy Superintendent of Police, by placing the directly recruited Deputy Superintendent of Police who are appointed on 10.03.2017 above the promoted Deputy Superintendent of Police who are appointed on 27.03.2017 and consequently draw the panel for the promotion of Additional Superintendent of Police and consider the petitioner for the promotion to the post of ADSP.

For Petitioner : Mr.S.Srinivasa Raghavan
for Mr.N.Mohan

For Respondents : Mr.Veera.Kathiravan
Additional Advocate General
Assisted by
Mr.G.Suriyananth
Additional Government Pleader
for R.1 & R.2

Mr.G.Prabhu Rajadurai for R.3

Mr.C.K.Chandra Sekar for R.4



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Mr.T.Lajapathi Roy
Senior Counsel
for M/s.Lajapathi Roy & Associates
for R.5 to R.13

ORDER

Heard the learned counsel on either side.

2.The issue raised in this writ petition is with regard to fixation of interse seniority between the promotee DSPs on the one hand and directly recruited DSPs on the other hand. The writ petitioner is a direct recruit. He was appointed on 10.03.2017. However, only on 03.04.2017 proceedings were issued directing the petitioner to report to the DGP for one-year institutional training on 10.04.2017. The petitioner joined for training on 10.04.2017. The promotee DSPs on the other hand were promoted from the Grade of Inspectors and appointed on 27.03.2017. On the very same day, they were instructed to join duty and they also joined duty. The petitioner sent a representation that since he was appointed on 10.03.2017, he must be placed above the promotee DSPs. This request was rejected by the Government. Questioning the same, this writ petition came to be filed.



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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. The learned counsel appearing for the petitioner relied on Section 40(2) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. It reads as follows:

“40. Seniority.- (1) ...

(2) The seniority of a person in a service, class, category or grade shall, where the normal method of recruitment to that service, class, category or grade is by more than one method of recruitment, unless the individual has been reduced to a lower rank as a punishment, be determined with reference to the date on which he is appointed to the services, class, category or grade:

Provided that where the junior appointed by a particular method of recruitment happens to be appointed to a service, class, category or grade, earlier than the senior appointed by the same method of recruitment, the senior shall be deemed to have been appointed to the service, class, category or grade on the same day on which the junior was so appointed:

Provided further that the benefit of the above proviso shall be available to the senior only for the purpose of fixing inter-se-seniority:

Provided also that where persons appointed by more than one



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method of recruitment are appointed or deemed to have been appointed to the service, class, category or grade on the same day, their inter-se-seniority shall be decided with reference to their age.”

Since the petitioner was appointed on 10.03.2017, the petitioner ought to be ranked higher than vis a vis the private respondent herein. He called upon this Court to set aside the impugned communication and grant relief as prayed for.

4.The respondents have filed counter affidavit and the learned Additional Advocate General, the learned counsel for some of the private respondents and the learned Senior Counsel appearing for the private respondents 5 to 13 submitted that the impugned order is in consonance with the statutory scheme set out in the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and the settled principles of service jurisprudence. They called upon this Court to sustain the impugned communication and dismiss the writ petition.

5.I carefully considered the rival contentions and went through the materials on record. The argument of the petitioner's counsel is attractive at the first blush. However, on a deeper scrutiny, it fails to hold. The issue turns on the meaning to be attached to expression “ appointed to the service”. This expression has been defined in Section 3 (b) of the Act as follows:



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“3.Definitions.- (a).....

(b) “appointed to a service” means when a person appointed in accordance with this Act or in accordance with the rules applicable at the time, as the case may be, discharges, for the first time the duties of a post borne on the cadre of such service or commences the probation, instruction or training prescribed for members thereof.

Explanation.— The appointment of a person holding a post borne on the cadre of one service to hold additional charge of a higher post in the same service or a post borne on the cadre of another service or to discharge the current duties thereof does not amount to appointment to the latter service;”

The language is plain and simple. The date on which the appointment order was issued or selection was made is not determinative. A person is appointed to a service only when he discharges for the first time the duties attached to the post or commences his probation or training. Admittedly the petitioner's training commences only on 10.04.2017. Applying the statutory definition I have to come to the conclusion that the petitioner was appointed to the service only on 10.04.2017.



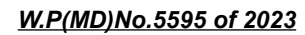
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6. In A.P State and Subordinate Service Rules, 1962 there is a in parie materia provision. It was interpreted in the way the official respondents have applied in the case on hand (vide **2018 SCC OnLine Hyd 359 S.S.S.Jaya Rao & Others Vs The State of Andra pradesh & Others**).

7.The issuance of appointment order on paper cannot be taken as conclusive. When the appointee beings to discharge the duties of the post or commences the training programme are the relevant factors. In this case, the private respondents were in-service candidates. They were not required to undergo any training. They had joined duty on 27.03.2017 itself. On the other hand, the petitioner joined training only on 10.04.2017. Section 40(2) has to be necessarily read in the light of Section 3(b) of the Act.

8.The Hon'ble Division Bench in the decision rendered on 10.12.2020 in W.A.No.879 of 2020 (D.Damuraj Vs The Director of Police & Another) had held as follows:

“12.It is settled proposition of law that the selection of a person will not always govern the fixation of his seniority. A selection to the post is only a recognition and/or acceptance of possession of the prescribed qualification, age, merit and ability etc., of a person to join a post. It will not confer seniority to a person at this stage. For the purpose of reckoning seniority, a person has to join the post to which he was selected and the date



"29. At this stage, we will proceed to decide as to the meaning and effect of the words 'recruitment' and 'appointment'. The term 'recruitment' connotes and clearly signifies enlistment, acceptance, selection or approval for appointment. Certainly, this is not actual appointment or posting in service. In contradistinction the word 'appointment' means an actual act of posting a person to a particular office.

30. Recruitment is just an initial process. That may lead to eventual appointment in the service. But, that cannot tantamount to an appointment. No doubt, Rule 5 talks of recruitment to Class II service. We consider these are two sources of recruitment. No where in the Recruitment Rules of 1959 it is specified that the services of a direct recruit under the Government shall be reckoned from the date of selection in the competitive examination. On the contrary, Regulation 12 (c) is very clear that the period of training is not to be reckoned as Government service. It is admitted before us that after successful completion of training when the appointment order is issued the direct recruits are put on probation. Similar is in the case of the promotees. Both of them undergo probation. Therefore, in the light of these



provisions, it is not possible for us to accept the contention advanced on behalf of the direct recruits that their seniority must be reckoned from the date of their recruitment."

13. Thus, appointment to a post is the determining factor for the purpose of fixation of seniority and not the selection to the post. A right to assert seniority will arise only from the date of joining service or rather from the date of appointment.”

In this view of the matter, the order impugned in this writ petition is sustained.

No interference is called for.

9. At the same time, the apprehension expressed by the learned counsel appearing for the petitioner cannot be brushed aside. When there are a large number of promotee DSPs, that would come in the way of the petitioner getting promotion in normal course. He submitted that there should be some kind of ratio in the matter of promotion. My attention is drawn to the order of the Hon'ble Division Bench rendered in W.A(MD)No.885 of 2018 dated 25.10.2018. The issue was between the direct recruits and promotees in the post of Assistants in the Revenue Department. The Hon'ble Division Bench held as follows:



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“10. Considering the above, we direct the first and second respondents to consider the representation of the petitioners dated 17.05.2018 and take a decision on the need for making amendment providing for ratio between the promotees and the direct recruits, which will go a long way in solving the dispute. We are of the view that the same may also be required for better administrative efficiency. Such exercise will have to be completed, within a period of eight weeks from the date of receipt of a copy of this order.”

The petitioner can very well submit a representation for making amendment providing ratio between promotee DSPs and direct recruits and in the matter of promotion to the post of ADSPs. If such representation is filed, the Government will take a call thereon within a period of twelve weeks thereafter.

10. With the aforesaid direction to the first respondent, this writ petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

22.06.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
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G.R.SWAMINATHAN, J.

MGA

To

- 1.The Additional Chief Secretary to Government,
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