



W.P.(MD).No.15844 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.09.2023

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.15844 of 2021

K.Suresh

... Petitioner

Vs.

1.The Director General of Police,
Tamil Nadu Police Department,
Mylapore,
Chennai-600 004.

2.The Tamil Nadu Special Police Team,
Ty.PRS Regimental Centre,
Avadi,
Chennai.

3.The Superintendent of Police,
Thoothukudi District,
Thoothukudi.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, directing the 1st Respondent to fix the petitioner's seniority on par with his batch mates recruited in the year 2012-2013 in the light of the proceedings passed by 1st Respondent in his proceedings C.No.3362/Rect 1(2)/2016, dated 11.11.2016 based on his representations made to the 1st respondent in the month of



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December 2020 in person and on 20.02.2021 made through registered post with
ack. due within the time limit that may be stipulated by this Court.

For Petitioner : Mr.G.Thalaimutharasu

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

ORDER

The present writ petition has been filed seeking a Mandamus, directing the 1st Respondent to fix the petitioner's seniority on par with his batch mates recruited in the year 2012-2013 in the light of the proceedings passed by 1st Respondent in his proceedings C.No.3362/Rect 1(2)/2016, dated 11.11.2016 based on his representations made to the 1st respondent in the month of December 2020 in person and on 20.02.2021 made through registered post with ack. due within the time limit that may be stipulated by this Court.

2. The respondent department has issued a notification for recruitment of Grade-II Police Constable in the Armed Reserve Force during the year 2012-13 and response to the same, the petitioner made an application and being qualified in the written examination and Physical Efficiency Test including



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medical examination. He was issued with a Memorandum by the Superintendent of Police, Tirunelveli District vide proceedings, dated 22.05.2013 stating that he was selected for Grade-II Police Constable bearing Registration No.3001719. While so, the District Medical Council has informed that he was temporarily dis-qualified i.e.(Tu.unfit). Thereafter, the petitioner underwent re-medical test done by the Regional Institute of Ophthalmology and Government Ophthalmic Hospital, Chennai. On the basis of the medical report, dated 06.02.2013, he was declared qualified. Moreover, in the said proceedings, it was stated that the similarly placed candidates were under the Training Programme on 18.02.2013 and 15 days of grade time was also completed. Hence, he will be appointed in the post of Grade-II Police Constable and will be sent for Training Programme in the next batch. Accordingly, he was appointed in the year 2015 as Grade-II Police Constable in the Armed Reserve by the 2nd respondent vide proceedings, dated 19.09.2015 and was initially posted at D Company, 12th Battalion, Armed Reserve, Manimuthar Venter. While so, the petitioner came to know that a similarly placed candidate like him, namely M.Valaiselvan, Grade-II Police Constable-2707, Armed Reserve, Thoothukudi has got a favourable order with respect to revision of seniority on par with his batchmates appointed in the year 2006 vide proceedings of the 1st



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respondent, dated 11.11.2016. Hence, the petitioner made a representation to the 1st respondent in person on December 2020 and thereafter, he made a reminder representation to the 1st respondent on 20.02.2021 through proper channel requesting to revise his seniority on par with his batchmates recruited in the year 2013. Since the same was not considered, the petitioner has filed this writ petition seeking to direct the 1st respondent to revise his seniority on the basis of his representation, dated 20.02.2021.

3. Per contra, the learned Government Advocate has filed a counter and vehemently submitted that the petitioner's case could not be considered, since the seniority has been fixed on 05.10.2015 as per the procedure. Though the petitioner was one among the batch recruited during the year 2012-13, only after the selected persons in the year 2012-13 completed their basic training for appointment, the petitioner was sent for basic training which commenced on 05.10.2015. After completion of training period, he was appointed as Police Constable with effect from 05.10.2015. Hence, his request for revising his seniority from 2013 cannot be considered. On that basis, he pressed for dismissal of the writ petition.



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

5. This Court has already held in more than couple of cases in favour of the persons, similarly placed like the petitioner. The hesitation of the respondents to revise the petitioner's seniority on par with his batchmates of the year 2012-13 is unwarranted. In few cases wherein the request of revising seniority of a similarly placed person was rejected by the appointing authority, this Court has categorically held that the delay in appointing the petitioner has resulted from the mistake of fact committed by the appointing authority during medical examination. Hence, the petitioner is entitled for revision of his seniority on par with his batchmates of the year 2012-13.

6. The 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 an 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



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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 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



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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 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



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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.”

7. In fully consonance to the order passed by the learned Single Judge of this Court discussed supra, I hereby direct the respondents to fix the petitioner's seniority with the recruitment batch of the year 2012-13 within a period of twelve (12) weeks from the date of receipt of a copy of this order. However, this Court makes it clear that the petitioner will not be entitled to any arrears of pay for the said period 2012-2015.

8. Accordingly, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

15.09.2023

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

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To

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- 2.The Tamil Nadu Special Police Team,
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Avadi,
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- 3.The Superintendent of Police,
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L.VICTORIA GOWRI, J.

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