



W.P.(MD).No.15958 of 2023

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.15958 of 2023

R.Veerapandian

... Petitioner

Vs.

1.The Director General of Police (Law & Order),
Tamil Nadu Police Department,
Mylapore,
Chennai-4.

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

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to fix the petitioner's seniority on par with the batch mates recruited for the year 2012-2013 based on his representation dated 26.05.2022, and in the light of the order passed in WP(MD).No.25132 of 2018, dated 03.01.2019 and the order passed in WP.No.22454 of 2021, dated 23.11.2021 within a stipulated time fixed by this Court.

For Petitioner : Mr.M.P.Yuvaaraaja
for M/s.Arulvadi vel Associates



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

ORDER

The present writ petition has been filed seeking a Mandamus, directing the respondents to fix the petitioner's seniority on par with the batch mates recruited for the year 2012-2013 based on his representation dated 26.05.2022, and in the light of the order passed in WP(MD).No.25132 of 2018, dated 03.01.2019 and the order passed in WP.No.22454 of 2021, dated 23.11.2021 within a stipulated time fixed by this Court.

2. The petitioner has applied for the post of Grade-II Police Constable / Jail Warden / Fireman conducted by the Tamil Nadu Uniformed Services Recruitment Board in the year 2012 and got selected for the post of Grade-II Special Police. While so, the 2nd respondent sent an order, dated 09.12.2012 stating that he was not eligible to be appointed in the service. Challenging the said order, the petitioner has filed W.P(MD)No.2908 of 2013 and this Court has allowed the writ petition and set aside the order passed by the 2nd respondent on 26.03.2013. Since the said order was not complied, the petitioner



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has filed Cont.P(MD)No.963 of 2013. The same was closed recording the submission of the learned Government Pleader that the order has been complied with. Since the same has not been complied with, the petitioner again filed Cont.P(MD)No.429 of 2015. The same was closed as the order has been complied with by an order, dated 15.10.2015. Subsequent to the contempt petitions, he got appointed as Grade-II Special Police on 19.09.2015.

3. He has sent a representation on 26.05.2022 to the 1st respondent seeking to refix his seniority on par with his batch mates recruited in the year 2012-13. Since the same was not considered, this writ petition came to be filed.

4. Per contra, the learned Government Advocate appearing for the respondents vehemently submitted 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. On that basis, he pressed for dismissal of the writ petition.



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

6. 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. Hence, the petitioner is entitled for revision of his seniority on par with his batchmates of the year 2012-13.

7. 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 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.”

8. 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.

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

08.09.2023

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

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To

- 1.The Director General of Police (Law & Order),
Tamil Nadu Police Department,
Mylapore,
Chennai-4.

- 2.The Superintendent of Police,
Virudhunagar District,
Virudhunagar.



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L.VICTORIA GOWRI, J.

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