



W.P.(MD).No.18102 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.09.2023

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.18102 of 2023

and

W.M.P(MD)No.15109 of 2023

M.Ayyanar

... Petitioner

Vs.

1.The Director General of Police,
O/o. The Director General of Police,
Beach Road,
Chennai-4.

2.The Deputy Commissioner of Police,
Madurai City Police Commissionerate,
Madurai.

... 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 records on the file of 1st respondent proceedings vide C.No.1349524/Rect. 1(2)/2021 dated 24.11.2021 and consequential impugned order passed by 2nd respondent vide C.No.BII (1)/54442/2021 dated 09.12.2021 and quash the same as illegal as devoid of merits and direct the respondents to fix the seniority of the petitioner in their recruited batch in the year of 2012 in the appropriate place with attendant monitory and service benefits.



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For Petitioner : Mr.Raja Karthikeyan

For Respondents : Mr.M.Prakash
Additional Government Pleader

ORDER

The present writ petition has been filed to to call for the records on the file of 1st respondent proceedings vide C.No.1349524/Rect. 1(2)/2021 dated 24.11.2021 and consequential impugned order passed by 2nd respondent vide C.No.BII (1)/54442/2021 dated 09.12.2021 and quash the same as illegal as devoid of merits and direct the respondents to fix the seniority of the petitioner in their recruited batch in the year of 2012 in the appropriate place with attendant monitory and service benefits.

2. The petitioner was appointed as Grade-II Police Constable by the appointment order issued by the SP, Madurai for the recruitment year 2012. The 2nd respondent had issued endorsement that the petitioner was selected for the appointment for the post of Grade-II Police Constable vide proceedings, dated 26.07.2013 and it was further informed that the summon would be issued for basic training along with the next batch of candidates. Subsequently,



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appointment order was issued and the petitioner was called for basic training at Police Recruits School, Vellore. It was made clear in the appointment order as well as the endorsement of SP, Madurai, dated 26.07.2013 that the petitioner belong to recruitment batch for the year 2012 of Grade-II Police Constable. Since the petitioner belong to 2012 batch of Police Constable, as per Rule 25(a) of Tamil Nadu Police Subordinate Service Rules (hereinafter referred as TNPSS), the seniority would be fixed based on the marks obtained by the candidate in the final examination conducted by the Police Recruitment Training School. As such, the petitioner's seniority ought to have been based on the marks secured in the final examination among the 2012 batch mate. But the 2nd respondent office informed that the petitioner's name is considered only along with the recruitment batch for the year 2015. However, no communication was issued to him in this regard. Hence, the petitioner made a representation to the 2nd respondent to consider his case as per Rule 25(a) of TNPSS in the batch of 2012. But the 1st respondent 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.



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Challenging the said proceeding of the 1st respondent, dated 24.11.2021 and the consequential impugned order passed by the 2nd respondent vide proceedings, dated 09.12.2021, this writ petition came to be filed.

3. 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.

4. 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.”

5. 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.



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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, 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*.

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

7. The petitioner was provisionally selected to the post of Grade-II Police Constable for the year 2012. However, during verification and medical



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examination, medical board had declared him as unfit due to certain medical defects and had declared him as temporarily unfit on 03.12.2012 for the said defects. Hence, the petitioner was not appointed and he was sent for re-medical examination to the 2nd medical board / re-medical checkup to the Regional Institute of Ophthalmology and Government Ophthalmic Hospital, Egmore, Chennai. The petitioner on being examined by the 2nd medical board, was declared fit medically. Thereafter, the concerned Superintendent of Police / Commandants of TSP Battalions were requested to issue an endorsement to the petitioner stating that he was selected for appointment to the post of Grade-II Police Constable and he will be appointed and sent for basic training along with the next batch candidates. Accordingly, the concerned Superintendents of Police had issued endorsement to the petitioner. In furtherance to the same, the Commandants., TSP Battalion, Avadi had issued appointment order to the petitioner with a direction to report for basic training. The petitioner also reported for basic training on 05.10.2015 and completed the basic training successfully. While so, vide the impugned order, it was informed that the seniority of the petitioner in Grade-II Police Constable post has been fixed on par with the batchmates who were sent for basic training in the year 2015 based on the marks obtained by them in the PRS training. In view of the same, the



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petitioner requested to revise his seniority on par with his batchmates selected in the year 2012. But the impugned order came to be passed on 24.11.2021 stating that since the request for revising his seniority has been made beyond a period of 3 years from the date of appointment, the same cannot be considered. In the instant case, the petitioner had submitted his representation after a lapse of 5 years for revision of seniority. The 1st respondent passed another order on 09.12.2021 rejecting the petitioner's claim to fix his seniority on par with his batchmates selected in the year 2012-13.

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 orders dated 24.11.2021 and 09.12.2021 are quashed and the respondents are directed to fix the petitioner's seniority with a recruitment batch of the year 2012 at appropriate place.



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However, this Court makes it clear that the petitioner will not be entitled to any arrears of pay for the 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. Consequently, connected Miscellaneous Petition is closed.

08.09.2023

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

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To

1. The Director General of Police,
O/o. The Director General of Police,
Beach Road,
Chennai-4.
2. The Deputy Commissioner of Police,
Madurai City Police Commissionerate,
Madurai.



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L.VICTORIA GOWRI, J.

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