



W.P.(MD).No.18215 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.18215 of 2023

V.Velmurugan

... Petitioner

Vs.

1.The Director General of Police (Law & Order),
O/o. The Director General of Police,
Beach Road,
Chennai-4.

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

... Respondents

*(R2 is amended vide Court order, dated 08.09.2023 in
W.M.P(MD)No.15703 of 2023)*

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 seniority of the petitioner in his recruited batch in the recruitment year 2009-2010 in the appropriate place as per the rule 25(a) of Tamil nadu Police Subordinate Service Rules (TNPSS) with attendant monetary and service benefits.

For Petitioner : Mr.Raja Karthikeyan



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W.P.(MD).No.18215 of 2023

For Respondents : Mr.N.Muthuvijayan
Special Government Pleader
ORDER

The present writ petition has been filed seeking a Mandamus, directing the respondents to fix the seniority of the petitioner in his recruited batch in the recruitment year 2009-2010 in the appropriate place as per the rule 25(a) of Tamil Nadu Police Subordinate Service Rules (TNPSS) with attendant monetary and service benefits.

2. The petitioner was working as a Grade-II Police Constable in Virudhunagar District under the 2nd respondent Armed Reserve Police. He has been appointed as a Grade-II Police Constable as per the appointment order issued by the SP, Thoothukudi, dated 21.09.2015 as per the selection list of the Tamil Nadu Uniform Recruitment Board for the recruitment year 2009-10. The petitioner has not been sponsored for training in the year 2010 due to some defects in the medical examination. Hence, he has been sent for re-medical examination at Rajiv Gandhi Government Hospital, Chennai. He had appeared before the re-medical board and declared that he was fit for the appointment of Grade-II Police Constable. Thereafter, the Superintendent of Police, Thoothukudi had issued endorsement that he was selected for the appointment



W.P.(MD).No.18215 of 2023

for the post of Grade-II Police Constable vide order, dated 30.05.2013 and he was further informed that the summon will be issued for basic training along with the next batch of candidates. Subsequently, he was called for basic training by the Principal of Police Recruits School, Vellore. It was made clear in the appointment order as well as the endorsement of the SP, Thoothukudi District, dated 30.05.2013 that he is belonging to recruitment batch for the year 2009-10 of Grade-II Police Constable. As per Rule 25(a) of Tamil Nadu Police Subordinate Service Rules (TNPSS), the seniority will be fixed based on the marks obtained by the candidate in the final examination conducted by the Police Recruitment Training School.

3. While so, the 2nd respondent's office establishment section informed that his name is considered along with the recruitment batch year 2015 and no order was issued to the writ petitioner with regard to the fixation of seniority. In the meanwhile, he came to know that the similarly placed persons like the petitioner have got revision of seniority on par with their batch mates. In view of the same, he has given several representations to the respondents to revise his seniority on par with his batch mates of the year 2009-10 as per rule 25(a) of TNPSS. Since there was no response, this writ petition came to be filed.



W.P.(MD).No.18215 of 2023

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4. Per contra, the learned Special Government Pleader 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 2009-10, only after the selected persons in the year 2009-10 completed their basic training for appointment, the petitioner was sent for basic training which commenced on 05.10.2015. Hence, his request for revising his seniority from 2009 cannot be considered. On that basis, he pressed for dismissal of the writ petition.

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 2009-10 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



W.P.(MD).No.18215 of 2023

medical examination. Hence, the petitioner is entitled for revision of his seniority on par with his batchmates of the year 2009-10.

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 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



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W.P.(MD).No.18215 of 2023

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 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



W.P.(MD).No.18215 of 2023

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.

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 2009-10 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 2009-2015.



W.P.(MD).No.18215 of 2023

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

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



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W.P.(MD).No.18215 of 2023

L.VICTORIA GOWRI, J.

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W.P.(MD).No.18215 of 2023

08.09.2023