



W.P.(MD).No.22905 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.09.2023

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.22905 of 2022

M.Surendarakumar

... Petitioner

Vs.

1.The Director General of Police,
Tamil Nadu Police Department,
Kamarajar Salai, Kailasapuram,
Mylapore,
Chennai-4.

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

... 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 the 2nd respondent in connection with his proceedings in C.No.A9/E-2076740/2022, dated 25.05.2022 and quash the same as illegal and arbitrary consequently direct the respondents to fix the petitioner seniority on par with his batch mates recruited in the year 2012-2013 within the time limit that may be stipulated by this Court.

For Petitioner : Mr.G.Thalaimutharasu



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For Respondents : Mr.N.Muthuvijayan
Special Government Pleader

ORDER

The present writ petition has been filed to call for the records on the file of the 2nd respondent in connection with his proceedings in C.No.A9/E-2076740/2022, dated 25.05.2022 and quash the same as illegal and arbitrary consequently direct the respondents to fix the petitioner seniority on par with his batch mates recruited in the year 2012-2013 within the time limit that may be stipulated by this Court.

2. The respondent department has issued a notification inviting eligible candidates for appointment to the post of Grade-II Police, Grade-II Jail Warden and Fireman for the recruitment year 2012-13. In response to the same, the petitioner has applied for the post of Grade-II Police Constable. A Written Examination and Physical Efficiency Test were conducted, in which the petitioner came out successful. The physical test includes medical test as well. However, his candidature was not considered due to the adverse report found during course of police verification that the petitioner was involved in the criminal case in Crime No.262 of 2012 under Section 147, 294 (b), 323, 353 of



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IPC and the same was referred as mistake fact. Consequently, on the basis of the referred final report filed in R.C.S.No.392 of 2012 on the file of the Judicial Magistrate No.II, Dindigul, the learned Judicial Magistrate No.II, Dindigul has accepted the said final report vide order, dated 10.12.2012. Thereafter, belatedly on 19.09.2015, the Commandant of Tamil Nadu Special Police-II Battalion, Avadi, Chennai has appointed the petitioner in the post of Grade-II Police Constable in Tamil Nadu Special Police and instructed the petitioner to report for training on 05.10.2015 before Police Training School. After successful completion of training programme, the petitioner was posted at the office of 4 Battalion, Armed Reserve, Madurai District.

3. While so, the petitioner came to know that a similarly placed person like him, namely M.Valaiselvan, Grade-II PC-2707, Armed Reserve, Thoothukudi has got favourable orders regarding reversion of seniority on par with his batchmates appointed in the year 2006 as passed by the 1st respondent. Hence, the petitioner made a representations to the respondents through proper channel on 11.04.2019 and 07.02.2019 requesting to fix his seniority on par with his batchmates recruited in the year 2012-13. Since the same was not considered, the petitioner filed a writ petition in W.P(MD)No.1672 of 2022



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seeking direction to the 1st respondent to fix his seniority on par with his batchmates recruited in the year 2012-13 and the same was allowed by this Court on 31.01.2022. However, the petitioner's request was rejected by the proceedings of the 2nd respondent, dated 25.05.2022 on the ground that the petitioner had made a representation seeking revision of seniority after a lapse of 2 years as enumerated under Section 40(6) of Tamil Nadu Government Servant (Conditions of Service) Act, 2016. Assailing the said impugned order, this writ petition came to be filed.

4. The learned Special Government Pleader appearing for the respondents vehemently pressed for dismissal of the writ petition in view of the mandates of Section 40(6) of Tamil Nadu Government Servant (Conditions of Service) Act, 2016.

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

6. The petitioner was provisionally selected to the post of Grade-II PC for the year 2012-13. However, during verification, he was declared medically unfit due to his involvement in a criminal case in Crime No.262 of 2012. Since the same came to be referred subsequently by the concerned learned Judicial



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Magistrate No.II, Dindigul as mistake of fact, the petitioner was belatedly appointed on 19.09.2015. Thereafter, he was sent for training and joined duty at the office of 4 Battalion, Armed Reserve, Madurai District in the very same year. Though a similarly placed person, namely M.Valaiselvan Grade-II PC-2707, Armed Reserve, Thoothukudi was issued with a favourable order regarding his revision of seniority on par with his batchmate appointed in the year 2006, vide proceedings of the 1st respondent, dated 11.11.2016, the case of the petitioner seeking revision of seniority on par with his batchmates 2012-13 came to be rejected by the 2nd respondent vide impugned order, dated 25.05.2022 for the reason that the petitioner had made representation for the same after a lapse of 2 years relying upon Section 40(6) of Tamil Nadu Government Servant (Conditions of Service) Act, 2016.

7. 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



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of three years shall be summarily rejected. This shall not, however, be applicable to cases of rectifying orders, resulting from mistake of fact.”

8. A critical perusal of Section 40 (6) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 makes it clear that the application for revision of seniority of a person shall be submitted to the appointing authority within a period of 3 years from the date of appointment to such service, class, category or grade and in the case in hand, the delay has been occurred within a period two years from the date of appointment to the post of Grade-II PC.

9. This Court has already held in more than couple of cases in favour of persons placed similarly like the petitioner. The 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



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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.”

10. 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 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.



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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 seniority of a person in a service, class, category or grade shall be



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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.”

11. I am fully in consonance with both the orders discussed 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 2012-13 is a clear case of mistake of fact.

12. In view of the matter, the impugned order, dated 25.05.2022 is hereby quashed and the respondents are directed to fix the petitioner seniority on par



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with his batchmates in the year 2012-13 within a period of twelve (12) weeks from the date of receipt of 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.

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

15.09.2023

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

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To

1.The Director General of Police,
Tamil Nadu Police Department,
Kamarajar Salai, Kailasapuram,
Mylapore,
Chennai-4.

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



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L.VICTORIA GOWRI, J.

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