

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.09.2023

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.20932 of 2023

and

W.M.P(MD)No.17335 of 2023

R.Sambath

... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Home Department,
Fort St. George,
Chennai-600 009.

2.The Director General of Police,
Kamarajar Salai,
Mylapore,
Chennai-600 004.

3.The Deputy Inspector of General of Police,
Dindigul Range,
Dindigul.

4.The Superintendent of Police,
Theni District,
Theni.

5.The Accountant General (Accounts & Entitlement),
Pension Section – 15,
No.361, Anna Salai,
Chennai-600 018.

... 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 pertaining to the impugned order bearing No.C.No.A1/21496/580/2017, dated 21.06.2019 on the file of the fourth respondent and quash the same as illegal and consequently direct the respondents to upgrade the petitioner's post as well as revision of pay and other benefits by implementing the G.O(Ms)No.15, dated 07.01.2010.

For Petitioner : Mr.R.Shankar Ganesh

For R1 – R4 : Mr.M.Prakash
Additional Government Pleader

For R5 : M/s.S.Mahalakshmi
Standing Counsel

ORDER

This Writ Petition has been filed for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order bearing No.C.No.A1/46451/2017, dated 13.06.2019 on the file of the fourth respondent and quash the same as illegal and consequently direct the respondents to upgrade the petitioner's post as well as revision of pay and other benefits by implementing the G.O(Ms)No.15, dated 07.01.2010.

2. When the writ petition was taken up for hearing, the learned Special Government Pleader appearing for the respondents submitted that the issue of granting upgradation / promotion to the next level in the Police Department was considered by the Hon'ble Full Bench of this Court vide order, dated 04.02.2022 passed in ***State of Tamil Nadu and others Vs. C.Srinivasan (W.A. Nos. 3748 of 2019 etc., dated 04.02.2022)*** reported in ***2022 (1) CTC 833***. The issue that was referred is whether the upgradation / promotion to the next level can be granted only on completion of qualifying service as prescribed by the relevant Government Orders or can it be granted as deemed upgradation or deemed promotion. The Hon'ble Full Bench of this Court has held that the proposition laid down in the case of ***The Principal Secretary to Government Vs. V.Ramachandran and others [Review Application Nos.70 to 79 etc. of 2015 dated 22.03.2017]*** is the correct proposition of law. The judgment rendered in the case of ***The Government of Tamil Nadu represented by Home Secretary Vs. V.Samy and others [W.A.(MD).No.1506 of 2011 etc. batch dated 17.06.2013]***, did not lay down correct proposition of law and the Hon'ble Full Bench overruled the judgment of Sami's case (stated *supra*). The Hon'ble Full Bench has held that there is no question of deemed upgradation or deemed promotion and the benefit can be extended only on completion of qualifying service in each level. The relevant portion of the order is extracted hereunder:

“We hold that the Division Bench in V.Samy case did not lay down the law correctly and we uphold the law laid down in V.Ramachandran case to the extent that there is no deemed upgradation or deemed promotion contemplated in the relevant Government orders and the benefit of upgradation/promotion to the next level can be granted/claimed only on completion of the qualifying service in each level/rank as prescribed in the relevant Government Orders. At the risk of repetition, insofar as understanding the expression “retrospective operation” is concerned, we hold that the Government Orders operate prospectively but it imposes/grants new results in respect of a past event. In other words, the Government Order operates forward but it looks backward and in that it attaches new consequences for the future to an event that took place before the Government Order was issued. If the Government Orders are understood in this perspective, there is no need to get into the issue of “retrospective operation”. Thus, we are of the view that the Division Bench while rendering the judgment in V.Ramachandran case dealt with the Government orders in its proper perspective and the judgment in V.Samy case is hereby overruled.”

3. Following the Hon’ble Full Bench judgment, the Hon’ble Division Bench of this Court in a batch of writ petitions in W.A.Nos.3748 of 2019 etc., has allowed the Writ Appeals filed by the State.

4. At this juncture, the learned Counsel appearing for the petitioner submitted that against the judgment of Ramachandran's case (stated *supra*), S.L.P. No(s).6980 to 6996 of 2018 was filed and the case is pending. The learned Special Government Pleader submitted that the similar plea was submitted before the learned Single Judge while considering the case filed in W.P.(MD).No.17111 of 2019, wherein, the said Writ Petition was dismissed vide order, dated 02.03.2022 and the relevant portion is extracted hereunder:

“3. However, this Court is of the considered opinion that in the event of disposal of the Special Leave Petition by the Hon'ble Supreme Court of India, if any benefit is granted, thereafter, the petitioner is at liberty to claim the same based on the judgment to be passed by the Hon'ble Supreme Court of India”.

5. Hence, following the aforesaid order of the Hon'ble Full Bench of this Court, dated 04.02.2022 and the judgment, dated 15.03.2022 rendered by Hon'ble Division Bench in a batch of writ petitions in W.A.Nos.3748 of 2019 etc., and the judgment rendered in W.P.(MD).No.17111 of 2019 by learned Single Judge, this Court is inclined to dismiss the present Writ Petition. Hence, this Writ Petition stands dismissed. However, if any benefit is granted in Special Leave Petition by the Hon'ble Supreme Court, the petitioner is at liberty

to claim the same after the disposal of the SLP. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

07.09.2023

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

gbg/btr

To

- 1.The Secretary to Government,
The State of Tamil Nadu,
Home Department,
Fort St. George,
Chennai-600 009.
- 2.The Director General of Police,
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Mylapore,
Chennai-600 004.
- 3.The Deputy Inspector of General of Police,
Dindigul Range,
Dindigul.
- 4.The Superintendent of Police,
Theni District,
Theni.

L.VICTORIA GOWRI, J.

gbg/btr

W.P.(MD).No.20932 of 2023

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