



W.P.(MD).No.10924 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 22.11.2023

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THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.(MD).No.10924 of 2016

and

W.M.P.(MD).No.18160 of 2016

K.Jalendran

.. Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by its Secretary,
Home Department,
Fort.St.George,
Chennai - 600 009.
- 2.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai - 600 004.
- 3.The Commissioner of Police,
Madurai City,
City Police Office,
Madurai - 01,
Madurai District.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Rc.No.171020/NGB.III(2) 2015, dated 23.05.2016



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on the file of the Respondent No.2 and quash the same as illegal and consequently to direct the Respondent No.2 to provide promotion to the petitioner to the post of Head Constable with effect from 01.04.1987 and all further promotions to the post of Sub-Inspector and Inspector of Police on par with other persons of the enlistment date of 02.04.1981 in the Armed Reserve Police within the time stipulated by this Court.

For Petitioner : Mr.G.Karthik
for M/s.T.Lajapathi Roy and Associates

For Respondents : Mr.T.Amjad Khan
Government Advocate

ORDER

The present Writ Petition has been filed challenging the order passed by the second respondent dated 23.05.2016 and consequently direct the second respondent to provide promotion to the petitioner to the post of Head Constable with effect from 01.04.1987 and all further promotions to the post of Sub-Inspector and Inspector of Police on par with other persons of the enlistment date on 02.04.1981 in the Armed Reserve Police within the time stipulated by this Court.

2. The petitioner was appointed as Grade-II Constable on 02.04.1981. On 01.04.1987, he was promoted to the post of Havildar and was transferred



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to Armed Reserve in the year 1993. On 25.07.1995, he was appointed as Havildar Grade I and on 07.01.1998, as Grade I Constable in Taluk. After having rendered the service in the Taluk as Grade I Constable, he was promoted to the post of Head Constable on 25.07.2000. He was benefitted with the time bound promotion as Special Sub Inspector on 01.08.2010, appointed as regular Sub Inspector on 02.02.2015 and he retired from service on 30.04.2017.

3. The petitioner made a representation on 25.03.2013 seeking for promotion to the post of Head Constable with effect from 01.04.1987 and all further promotions to the post of Sub Inspector and Inspector of Police on par with other persons appointed with him on 02.04.1981.

4. Since the said representation was not considered, the petitioner filed W.P.(MD).No.10740 of 2013 before this Court. This Court, by order dated 24.07.2015, directed the Director General of Police, Tamil Nadu to consider the said representation on merits and pass orders within a period of three months.



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5. In obedience of the order of this Court dated 24.07.2015, personal hearing was afforded to the petitioner on 28.12.2015. During the time of hearing, the petitioner pointed out the order of the Tamil Nadu Administrative Tribunal in O.A.Nos.5856 and 6035 of 1997 dated 29.10.1999, whereunder, his batchmate, namely, one S.Irulandi was granted the benefit in the following terms:

“5. ..The reason given in the reply, for rejecting their claim is that their transfer is on their own requests, on their relinquishing the claim for the same rank after transfer. In the earlier case, dealt with by this Tribunal in O.A.Nos. 3666/90 etc. dated 17.7.1991, such an argument was advanced. In that case also, the applicants were stated to have relinquished their rights, when they opted for transfer. But, inspite of it, the Tribunal has observed that the rank should be protected. Therefore, in the light of the existing rules, the Memorandum and the Government orders that I am not in a position to agree with the contention that since the applicants were posted as Grade II Police Constables, they should continue to serve as Grade II Police Constables in the District Armed Reserve. They are entitled to be posted as Head Constables, when the vacancies arise. Though the applicants have given some particulars about the vacancies on 15.12.1993 and 17.12.1993, I am not in a position to



accept that they should be given promotion from those dates. However, it is made clear that they are entitled to be posted immediately as Head Constables, if there are vacancies available. If there are no vacancies, as and when vacancies arise in future, they should be given priority and should be posted as Head Constables. As regards the seniority, they will be governed by the provisions contained in Rule 24 (b) of the Tamilnadu Special Police subordinate Service Rules.

6. In the circumstances, the applications are allowed. The applicants are directed to be posted as Head Constables immediately, if there are vacancies available, and if not, in the next immediate vacancies that are to arise in future. With respect to other claims there will be no order.”

6. Apart from that, it is the case of the petitioner that the petitioner ought to have been considered for promotion to the post of Sub Inspector and Inspector of Police either in the Armed Reserve or in the local Police with effect from 01.04.1987, when the petitioner was promoted to the post of Havildar. He was emboldened to make such a pleading because the persons similarly situated like the petitioner, namely,



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- i. Tr.Kandhasamy, Kancheepuram District,
- ii. Tr.Natarajan, Madurai City,
- iii. Tr.Sankaranarayanan, Coimbatore City,
- iv. Tr.Koil Anthony, Coimbatore City and
- v. Tr.Irulandi, Ramanathapuram District

had been benefitted with the same claim as made by the writ petitioner.

7. The second respondent rejected the petitioner's request on the ground that an undertaking had been given by the petitioner to forego his Battalion seniority from 01.04.1987, i.e., from the date he had been promoted as a Havildar. Challenging the same, the present Writ Petition has been filed.

8. Heard Mr.G.Karthik, learned counsel for the petitioner and Mr.T.Amjad Khan, learned Government Advocate appearing for the respondents.

9. A perusal of the impugned order shows that the order does not speak about the original seniority that was enjoyed by the petitioner from



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02.04.1981 till 01.04.1987. The plea that he had given up his seniority has not been substantiated by any records before this Court.

10. Apart from that, perusal of the typed set of papers would go to show that the following persons, namely,

- i) A.Subbiah Pandian,
- ii) P.Subramanian,
- iii) S.Subramanian and
- iv) M.Karuthapandi,

who were all enlisted on the same day as the petitioner, namely, 01.04.1981, were given the benefit of promotion in the year 2004 itself.

11. In order to demonstrate before me that the said persons had been given the benefit of promotion, the learned counsel for the petitioner has produced the orders of this Court in W.A.(MD).No.500 of 2008 dated 16.06.2008, W.P.(MD).No.2163 of 2008 dated 21.11.2008 and W.P.(MD).Nos.603 to 605 of 2010 dated 20.07.2010.



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12. Furthermore, this Court dealt with a case of a person by name, Thiru.M.Duraipandian, whose case is identical to the case of the writ petitioner. The said issue was tried by this Court in W.P.No.36530 of 2004 and the Writ Petition was allowed on 04.12.2009. Against this order, an appeal had been preferred by the State in W.A.No.868 of 2010 and the Writ Appeal was dismissed on 15.02.2011.

13. When the benefit that is claimed by the writ petitioner had been given to similarly placed persons, I am able to perceive the only reason, the writ petitioner was not granted relief there, because, he has not approached the Courts and obtained similar orders. There cannot be two sets of law, one for those who have approached the Court and the other for those who have not approached the Court. When an opportunity is granted to the second respondent to correct the position by way of a direction given by this Court, unfortunately, he has not taken the said opportunity and has passed the impugned order.

14. In the light of the above discussion, I had no other alternative than to follow the previous decisions of this Court. Accordingly, the impugned



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order passed by the second respondent dated 23.05.2016 is quashed and the Writ Petition stands allowed. The third respondent is directed to give the benefit of promotion to the petitioner to the post of Head Constable with effect from 01.04.1987 and all other consequential benefits in terms of the orders passed by this Court. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

22.11.2023

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

To

- 1.The Secretary,
The State of Tamil Nadu,
Home Department,
Fort.St.George,
Chennai - 600 009.
- 2.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai - 600 004.
- 3.The Commissioner of Police,
Madurai City,
City Police Office,
Madurai - 01,
Madurai District.



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V.LAKSHMINARAYANAN,J.

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