



W.P.(MD) No.1420 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 25.09.2023

ORDERS PRONOUNCED ON : 31.10.2023

CORAM

THE HON'BLE MR.JUSTICE BATTU DEVANAND

W.P.(MD) No.1420 of 2016

M.Haja Sherif

... Petitioner

Vs.

- 1.The State,
Rep., by the Home Secretary,
Secretariat,
Fort St. George, Chennai.
- 2.The Director General of Police,
DGP Office,
Beach Road, Chennai.
- 3.The Superintendent of Police,
Tirunelveli District,
Tirunelveli.
- 4.The Commandant,
Office of the Commandant,
TSP IX Battalion,
Manimuthar, Tirunelveli.

... Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the Respondent No.4 in R.C.No.A2/15011/2013 dated 10.12.2013 and quash the same and consequently direct the Respondent No.2 to promote the petitioner by fixing the seniority of the petitioner with his batch mates for the year 2007-2008 with all consequential service benefits.

For Petitioner : Mr.S.M.A.Jinnah

For Respondents : Mr.Veerakathiravan,
Additional Advocate General
assisted by
Mr.A.Kannan
Additional Government Pleader

ORDER

This writ petition has been filed by a Grade-II Police Constable against the order of the 4th respondent rejecting the petitioner's request to promote him and provide seniority on par with his batch mates of the year 2007-2008.

2. The case of the petitioner is that he appeared for selection to the post of Grade-II Police Constable for the year 2007-2008. He came up



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successful in all the tests conducted by the Tamil Nadu Uniformed Services Recruitment Board. The Recruitment Board published the selection list in their website and the register number of the petitioner found place therein. In the month of February, 2009, appointment orders were issued to all selected candidates. But, the petitioner was not issued with the appointment order. Aggrieved by the action of the authorities concerned, the petitioner was constrained to file a writ petition before this Court in W.P.(MD) No. 2885 of 2009. The respondents therein took a stand before this Court that on verification, it was found that the petitioner was an active member of an association namely “Manitha Neethi Pasarai” and since the said association was involved in anti-social activity, the petitioner was not given appointment order. The Court allowed the said writ petition by order dated 12.11.2009 directing the respondents therein to issue appointment order to the petitioner, provided he does not suffer from any other disqualification, after once again verifying his antecedents and involvement in any anti-social or anti-national activities and held as extracted hereinunder:

“5. In my considered opinion, the said argument of the learned Additional Government Pleader



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cannot be countenanced at all. When a specific query was posed on him as to whether “Manitha Neethi Pasarai” has been banned by the Government, the learned Additional Government Pleader would say that this particular organisation has not been banned, though Al-Umma has been banned. It is not established before this Court by producing any material that “Manitha Neethi Pasarai” is an outfit of Al-Umma. When the said organization is freely involved in public activities, I do not think that being a member of the said organization would be a disqualification for a person to get appointment.

6. As held in the Judgments, cited supra, being a member of a political organization or a non-political organization, can never be a disqualification for getting public employment unless the individual has other bad antecedents. After all, this country is ruled only by politicians. As of now, it is not brought to the notice of this Court that the petitioner suffers from any other disqualification. In view of all the above, I reject the contentions of the learned Additional Government Pleader.



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7. In the result, the Writ Petition is allowed and the respondents are directed to issue appointment order to the petitioner, provided he does not suffer from any other disqualification after once again verifying his antecedents and involvement in any anti-social or anti-national activities. The said exercise shall be completed by the respondents within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.”

3. Consequent to the said order, the 2nd respondent herein passed an order dated 13.04.2010 rejecting to give appointment order to the petitioner by reiterating the same reason that was negated by this Court in the order dated 12.11.2009 passed in W.P.(MD) No.2885 of 2009. Challenging the same, the petitioner has filed a writ petition in W.P.(MD) No.6294 of 2010. In the said writ petition also, the respondents took a stand in their counter affidavit contending that since the petitioner is an active member in Manitha Neethi Pasarai, which is an offshoot of Student Islamic Movement of India, Al-Umma and Jihad Committee, which are banned



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organisations, the petitioner was denied appointment. This Court, after considering all aspects, quashed the order impugned therein and directed the 2nd respondent therein to issue appointment order to the petitioner as Grade-II Police Constable forthwith, by order dated 02.08.2012, while allowing the writ petition.

4. In compliance of the said order, on 21.03.2013, an appointment order was issued to the petitioner and he was posted at the IX Battalion Special Police Force, Manimuthar. Subsequently, the petitioner has submitted a representation dated 09.12.2013 requesting to grant seniority along with the candidates selected for the post of Grade-II Police Constables for the year 2007-2008, as there was no fault on his part to join the service and he has no connection with the delay occurred in issuing the appointment order to him. But the said representation was rejected by the 4th respondent informing the petitioner that he is not eligible for seeking seniority prior to the date of actual appointment in the Department. Aggrieved by the same, the present writ petition has been filed.



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5. On behalf of the respondents, the 4th respondent has filed counter affidavit. Subsequently, as per the direction of this Court, the 2nd respondent filed his counter affidavit. Almost all the averments in both the counter affidavits are one and the same.

6. It is averred in the counter affidavit filed by the 2nd respondent that the petitioner has applied for the post of Grade-II Police Constable for the year 2007-2008 and he was provisionally selected for the post of Grade-II Police Constable subject to verification of medical, character and antecedents. However, during the verification of his character and antecedents, it came to light that the petitioner was an active member of Manitha Neethi Pasarai (MNP). As per Rule 14(b) of Special Rules for Tamil Nadu Special Police Sub-ordinate Services, Appointing Authority has to satisfy that the character and antecedents of a candidate shall be such as to qualify him for police service. Courts in India in catena of judgments held to the effect that the police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of



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that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. In recent times, the image of a police force is tarnished. Instances of police personnel behaving in a wayward manner by misusing power are in public domain and are a matter of concern. The reputation of police force has taken a beating. In such a situation, we would not like to dilute the importance and efficacy of a mechanism like the Screening Committee created by the Delhi Police to ensure that persons who are likely to erode its credibility do not enter the police force. At the same time, the Screening Committee must be alive to the importance of trust reposed in it and must treat all the candidates with even hand. Hence, his name was not considered for the post of Grade-II Police Constable and he was issued with a rejection endorsement.

7. It is further contended that in compliance of the order of this Court dated 02.08.2012, in W.P.(MD) No.6294 of 2010, the petitioner was appointed as Grade-II Police Constable on 21.03.2013. The petitioner submitted a representation dated 09.12.2013 with a request to fix his



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seniority on par with his batch mates of his actual appointment. The same was rejected by the 4th respondent with an endorsement in R.C.No.A2/15011/2013, dated 10.12.2013 informing that the question of seniority in a post in Government service arose only from the date of appointment on regular basis and seeking seniority prior to the date of actual appointment cannot be entertained.

8. Heard Mr.S.M.A.Jinnah, learned counsel for the petitioner and Mr.Veerakathiravan, learned Additional Advocate General assisted by Mr.A.Kannan, learned Additional Government Pleader appearing for the respondents and perused the material available on record.

9. Learned counsel for the petitioner would submit that the petitioner was selected as Grade-II Police Constable in the selection process held in the year 2007-2008. The appointment order was issued to him only on 21.03.2013 after the lapse of five years. For the delay of five years in issuing appointment order to the petitioner, there is no fault on the part of the petitioner and he has no connection with the delay occurred. In the

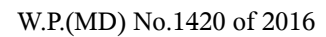


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appointment order issued on 21.03.2013, it is clearly stated that he was appointed for 2007-2008 batch. But the seniority has not been given to the petitioner on par with his batch mates. The respondents without any valid reason withheld and denied to issue appointment order to the petitioner for a period of five years and even after specific direction of this Court, by its order dated 12.11.2019 in W.P.(MD) No.2885 of 2009 also, rejected to give appointment to the petitioner with the same reason by their proceedings dated 13.04.2010 and only after passing order by this Court on 02.08.2012 in W.P.(MD) No.6294 of 2010 only the respondents issued appointment order to the petitioner on 21.03.2013.

10. Learned counsel for the petitioner would submit that the petitioner's co-batch mates, who were selected for the year 2007-2008 had already got their seniority and placed before the separate police station for service. But, due to the illegal and unreasonable action of the respondents, the petitioner though he belongs to 2007-2008 batch, he has not been placed in the seniority along with his batch mates.



12. Learned counsel further submits that as the respondents without any reason denied to give appointment order to the petitioner for five years without any fault of the petitioner and as such, the petitioner is entitled for seniority on par with his batch mates of his actual appointment year 2007-2008 and sought to allow the writ petition.



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13. On the other hand, learned Additional Advocate General appearing for the respondents submits that as per Rule 10 of Special Rules for Tamil Nadu Special Police Sub-ordinate Services, as amended in G.O.Ms.No.101, Home (Pol.IX) Department, dated 30.01.2003, the Appointing Authority for the post of Inspector-Adjutant Inspector and Sub-Inspector shall be the Deputy General of Police, Armed Police and for others, the Commandant of the force concerned. Accordingly, the request of the petitioner made in representation dated 09.12.2013 to fix his seniority on par with his batch mates of his actual batch of the year was considered by the 4th respondent herein and it was rejected *vide* endorsement in R.C.No.A2/15011/13, dated 10.12.2013, informing the petitioner that the question of seniority in a post in Government service arose only from the date of appointment on regular basis and seeking seniority prior to the date of actual appointment cannot be entertained.

14. Learned Additional Advocate General appearing for the respondents would submit that as the petitioner was appointed only on



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21.03.2013 and joined in service on the same day, he is not entitled to seek seniority prior to the date of actual appointment and sought to dismiss the writ petition.

15. Having heard the submissions of the respective counsels appearing on either side and upon careful examination of the entire material available on record, in our view, there is no dispute with regard to the admitted facts, which are already considered by this Court twice. It is an undisputed fact that the petitioner is one of the successful candidates for the selection to the post of Grade-II Police Constable for the year 2007-2008. On denial of issuing appointment order, the petitioner approached this Court by filing W.P.(MD) No.2885 of 2009. In the said writ petition, the stand of the respondents was that the petitioner was an active member of an association viz., Manitha Neethi Pasarai and since the said organisation was involved in anti-social activities, the petitioner was not given appointment order. This Court, rejecting the contention of the respondents therein, allowed the writ petition by its order dated 12.11.2009 and directed the respondents therein to issue appointment order to the petitioner, provided he



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does not suffer from any other disqualification, after once again verifying his antecedents.

16. Consequent to the order dated 12.11.2009 in W.P.(MD) No. 2885 of 2009, the 2nd respondent passed an order dated 13.04.2010 rejecting to give appointment order to the petitioner by reiterating the same ground, which was canvassed in W.P.(MD) No.2885 of 2009 and which was negated by this Court in the order dated 12.11.2009 in W.P.(MD) No.2885 of 2009. Against the said order dated 13.04.2010 of the 2nd respondent, the petitioner filed another writ petition in W.P.(MD) No.6294 of 2010. In this writ petition also, the respondents raised the same contention stating that since the petitioner is an active member in Manitha Neethi Pasarai, which is an offshoot of Student Islamic Movement of India, Al-Umma and Jihad Committee, which are banned organisations, the petitioner was denied appointment. In the said writ petition, it is contended by the respondents therein that the character, conduct and antecedents were once again examined and found the petitioner's character and conduct are not satisfactory for considering him for appointment to the post of Grade-II



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Police Constable.

17. This Court having regard to the careful examination of the contentions on either side and on consideration of Rule 14(b) of Special Rules for Tamil Nadu Special Police Sub-ordinate Services as amended in G.O.Ms.No.101, Home (Pol.IX) Department, dated 30.01.2003, held at Paragraph No.14 of the order as extracted hereinunder:

“14. The aforesaid paras of the counter affidavit makes it very clear that the only reason for denying appointment to the petitioner is his past association with an organization that is not banned and this Court has categorically held that the respondents shall not deny appointment on that score. Again, the second respondent has chosen to pass the impugned order declining to give appointment on the same ground that was negated by this Court. Hence, the impugned order is liable to be quashed.”

18. Accordingly, the said writ petition was allowed with a direction to the 2nd respondent to issue appointment order to the petitioner as



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Grade-II Police Constable forthwith. Thereafter, the petitioner was issued with the appointment order dated 21.03.2013.

19. On perusal of the entire facts and circumstances of the case and the contentions of both parties and material available on record, it is clear that the respondents are responsible for the delay caused in issuing the appointment order to the petitioner without any legally sustainable reason. It is an admitted fact that during the course of hearing of W.P.(MD) No.2885 of 2009, this Court posed a specific query to the respondents as to whether Manitha Neethi Pasarai has been banned by the Government and the learned Additional Government Pleader answered that this particular organisation has not been banned, though Al-Umma has been banned. Then this Court observed at Paragraph No.5 as extracted above.

20. It appears that even after specific finding of this Court in W.P. (MD) No.2885 of 2009, the 2nd respondent rejected to issue appointment order to the petitioner on the same ground, which was negated by this Court. When the said order dated 13.04.2010 was challenged before this



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Court in W.P.(MD) No.6294 of 2010, the said order was quashed by this Court by order dated 02.08.2012 for the reason that the 2nd respondent has chosen to pass the said rejection order on the same ground that was negated by this Court.

21. At this juncture, it is very apt to extract the following observations of the Hon'ble Apex Court in ***State of Madhya Pradesh v. Ramashanker Raghuvanshi and another⁽ⁱ⁾***:

“2. Everyone is entitled to his thoughts and views. There are no barriers. Our Constitution guarantees that. In fact members of these organisations continue to be Members of Parliament and State Legislatures. They are heard, often with respect, inside and outside the Parliament. What then was the sin that the respondent committed in participating in some political activity before his absorption into government service? What was wrong in his being a member of an organisation which is not even alleged to be devoted to subversive or illegal activities? The whole idea of seeking a police report on the political faith and the past

(i) (1983) 2 SCC 145



political activity in a mild manner. Most students and most youngmen are exhorted by national leaders to take part in political activities and if they do get involved in some form of agitation or the other, is it to be to their ever lasting discredit? Some times they get involved because they feel strongly and badly about injustice, because they are possessed of integrity and because they are fired by idealism. They get involved because they are pushed into the forefront by elderly leaders who lead and occasionally mislead them. Should all these youngmen be debarred from public employment? Is Government service such a heaven that only angels should seek entry into it? We do not have the slightest doubt that the whole business of seeking police reports, about the political faith, belief and association and the past political activity of a candidate for public employment is repugnant to the basic rights guaranteed by the Constitution and entirely misplaced in a democratic republic dedicated to the ideals set forth in the Preamble of the Constitution. We think it offends the Fundamental Rights guaranteed by Articles 14 and 16 of the Constitution to deny employment to an individual because of his past political affinities, unless such



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affinities are considered likely to affect the integrity and efficiency of the individual's service. To hold otherwise would be to introduce "McCarthyism" into India. "McCarthyism" is obnoxious to the whole philosophy of our Constitution. We do not want it."

22. While dealing with a case of appointment of a Judge of a High Court, the Hon'ble Apex Court in ***Anna Mathews and others v. Supreme Court of India and others***⁽ⁱⁱ⁾ observed as extracted hereinunder:

"The principle of secularism and dignity of every individual regardless of religion, caste or creed, is the foundation of Rule of Law and an equal protection of laws."

23. This Court can't lose its sight towards the contention of the learned counsel for the petitioner that the respondents, only with an intention to prevent the development of minorities, have curtailed their rights and entered into the social arena thereby fixing the stigma stating that the minorities are the anti-social elements.

(ii) 2023 SCC OnLine SC 131



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24. It is the responsibility of this Court to take into account the 'agony' of persons like the petitioner. No human being born on this planet has any choice to decide as to where or how to begin their journey of life. None can choose their parents, place or nation of birth, colour of the body, language, region, religion or caste or race. Our life is given. None is superior or inferior to any one else. Hence all human beings must be provided with equal opportunity to unleash their full potential. That is how everyone gets a chance to serve the society in which they live performing various roles assigned to them.

25. Discrimination should not be shown in any form based on ones caste , race, colour, region or religion etc socio cultural identities. Only those persons with chronic shoddy past or acute illegal track record which is proven beyond doubt , and objectionable under the laws of the land should be restricted entry into certain core sectors, and confidential areas of administrative structures as the safety , security and crucial national interests will be at stake.



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26. If there is no such proven record of malfeasance , none should be deprived of their career and promotions which are given after a certain period of service as per certain statutes. Every responsible citizen should be given ample scope to prove their potential in the service of the nation without imposing any hurdles. In fact, facilitating bright future to all individuals without any discrimination ensures a strong and stable nation. So, mere presumptions and prejudices of anyone acting in any capacity shouldn't be a valid reason for restricting someone else's career growth as stipulated by the law in a democratic society.

27. In this civilized 21st century, this attitude has to be changed in the minds of all, particularly the officers of the State and Central Governments, who are vested with the statutory powers. Otherwise, the persons like the petitioner have to suffer like this without any fault on their part.

28. This particular case doesn't fall under that negative criterion of threat to safety , security or national interests, that's why the petitioner was



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allowed earlier to be selected to the job in which he has been shouldering responsibilities without any blemish or complaint against his conduct for the past several years. Once taken into the government service in a particular batch , he will be naturally eligible for consideration for promotions along with his batch mates as per the statutory provisions. Depriving this would be against the principles of equity and natural justice.

29. On consideration of this factual position, this Court has no hesitation to hold that the respondents denied to give appointment order to the petitioner, though he is fully qualified and eligible for the appointment for the selection held for Grade-II Police Constable in the year 2007-2008. The five years of delay occurred in issuing the appointment order to the petitioner is purely attributable to the respondents only. Admittedly, there is no fault on the part of the petitioner for the delay caused in this issue. All the batch mates, who came out successful in the selection process held for the post of Grade-II Police Constable in the year 2007-2008, have got appointment order immediately and now they got seniority.



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30. The petitioner joined as Grade-II Police Constable pursuant to the appointment order issued by the respondents on 21.03.2013. It appears, as of now he has completed 10 years of service. Even in the counter affidavit filed by the 2nd respondent, i.e., the Director General of Police, Tamil Nadu, there is no any whisper about the integrity issues with the petitioner while he is discharging his duties in the Police Department. It itself shows that the opinion framed by the respondents against the petitioner for not giving appointment order to him for five years is not correct and this Court rightly directed the respondents to issue appointment order to the petitioner in W.P.(MD) No.6294 of 2010.

31. For the aforesaid reasons, this Court is holding that the petitioner is entitled for the seniority on par with his batch mates, who were appointed in the selection process held in the year 2007-2008, basing on the marks obtained by him at the recruitment process as per Rule 24(d) of Special Rules for Tamil Nadu Special Police Sub-ordinate Services amended in G.O.Ms.No.101, Home (Pol.IX) Department, dated 30.01.2003.



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32. Accordingly, this Writ Petition is allowed with the following directions:

- i. The impugned order in R.C.No.A2/15011/2013 dated 10.12.2013 is hereby quashed;
- ii. The respondents are directed to fix the seniority of the petitioner with his batch mates of the year 2007-2008 and provide all consequential benefits including promotion; and
- iii. The entire exercise for fixing the seniority of the petitioner shall be completed within a period of four weeks from today.

33. There shall be no order as to costs.

31.10.2023

Note: Issue order copy by 31.10.2023.

NCC : Yes/No

Index : Yes/No

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BATTU DEVANAND, J.

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To

- 1.The Home Secretary,
State of Tamil Nadu,
Secretariat,
Fort St. George, Chennai.
- 2.The Director General of Police,
DGP Office,
Beach Road, Chennai.
- 3.The Superintendent of Police,
Tirunelveli District,
Tirunelveli.
- 4.The Commandant,
Office of the Commandant,
TSP IX Battalion,
Manimuthar, Tirunelveli.

Pre-delivery Order made in
W.P.(MD) No.1420 of 2016

31.10.2023