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W.P.(MD)Nos.1851 of 2016 and 10135 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.1851 of 2016 and 10135 of 2019

and

**W.M.P.(MD)Nos.1599, 1600 of 2016, 7872,
7873 and 9554 of 2019**

W.P.(MD)No.1851 of 2016:

R.Karhiravan

... Petitioner

VS.

1.The Inspector General of Police,
Tamilnadu Special Force,
(1st Battalion),
Trichy.

2.The Commandant,
T.S.P. 1 Battalion,
(Tamilnadu Special Police Force, 1st Battalion),
Trichy.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order issued by the 2nd respondent in his proceedings in Na.Ka.No.A1/1221/2015 Battalion Order 133 of 2015, dated 13.04.2015 and to quash the same and consequently, to direct the respondents herein to promote the petitioner to the post of Havildar Vehicle Section and pay all the monetary benefits.

W.P.(MD)No.10135 of 2019:

R.Karhiravan

... Petitioner

vs.

1.The Inspector General of Police,
Tamilnadu Special Force,
(1st Battalion),
Trichy.

2.The Commandant,
T.S.P. 1 Battalion,
(Tamilnadu Special Police Force, 1st Battalion),
Trichy.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the



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records pertaining to the impugned order issued by the 2nd respondent in his proceedings in Na.Ka.No.A1/11715/2018, dated 13.11.2018 and to quash the same and consequently, to direct the respondents herein to promote the petitioner to the post of Havildar Vehicle Section by giving effect from 14.08.2013 and pay all the monetary benefits.

In both cases:

For Petitioner : Mr.B.Jameel Arasu
For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader

COMMON ORDER

The writ petition in W.P.(MD)No.10135 of 2019 is filed for writ of Certiorarified Mandamus to quash the impugned order dated 13.11.2018 issued by the 2nd respondent and consequently direct the respondents herein to promote the petitioner to the post of Havildar Vehicle Section by giving effect from 14.08.2013 and pay all the monetary benefits.



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2. The brief facts of the case are that the petitioner has joined as a Police Constable in the year 2005. He has completed B.E. EEE., Engineering Course. The 2nd respondent on considering the petitioner's long service and other qualifications promoted him as a Havildar in the Transport Department on 14.08.2013. Along with the petitioner one Gangadevi who was also employed as a Constable and junior to the petitioner was also promoted on the same day to the post of Havildar. Thereafter, on 24.04.2014, the 2nd respondent has reverted the petitioner to the post of Transport Constable from the post of Transport Havildar, vide proceedings, in Na Ka No. A1 / 7441/2013 vide Order No. 200/2014. The reasons assigned in the said reversion order was that the petitioner was not having Heavy Vehicle Driving License. But the contention of the petitioner is that he was possessing Heavy Vehicle Driving License on the date of consideration. Therefore, he submitted a representation stating that he was in possession of the Heavy Vehicle



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Driving License. Based on this representation, the petitioner was again issued an order of promotion, promoting the petitioner to the post of Havildar Transport by order dated 20.05.2014 in Na Ka No. A 1/4051/2014 vide Order No. 247/2014. The mistake committed by the department was rectified and the promotion order was granted again on 20.05.2014.

3. While that being so, on 13.04.2015, again the 2nd respondent herein has served the impugned proceedings and reverted the petitioner back as Constable and now the reason given in the impugned order is "no vacancy is existing to the post of Havildar." The contention of the respondent is that as on the date of reversion, 11 vacancies were available. Already 9 Havildars were working and also two more persons were promoted to the post of Havildars on 18.03.2015. Thus, the total



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sanctioned post of 11 vacancies were filled up. Therefore, no vacancy was existing for the post of Havildar.

4. The contention of the petitioner is that the impugned order ought to be quashed, since he was already promoted on 14.08.2013 along with one Gangadevi to the post of Havildar, but he was reverted back on 24.04.2013 on factually incorrect reasoning that the petitioner was not in possession of Heavy Vehicle Driving License, which is illegal. After noticing the mistake, again the petitioner was reverted. When the petitioner was working after revision, the respondents promoted two more persons namely (1) Senthilkumar and (2) Balasubramanian ignoring the petitioner, who are very juniors to the petitioner and are belonging to 2011 batch. Moreover, the said two persons were promoted permanently on the date of promotion itself. Even though the respondents claim that there is no vacancy in the said post, the



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respondents failed to take note that the petitioner was already promoted along with Gangadevi in the year 2013 itself. Therefore, petitioner again submitted a representation stating that two persons were junior to the petitioner, since the petitioner joined the service in the year 2005 itself. Because of the discrimination and violation of provisions, the petitioner challenged the promotion in W.P.(MD)No.1851 of 2016.

5. On 18.03.2017, the second respondent sponsored the petitioners name for consideration to the post of Havildar on permanent basis. Thereafter, the petitioner was promoted permanently to the post of Havildar on 30.03.2017. While the petitioner was working in the above promotional post of Havildar, the respondents initiated some proceedings alleging insubordination and he was awarded the punishment of removal from service vide proceedings, dated 15.02.2018. The petitioner challenged the same in W.P.(MD)No. 15946 of 2018 and the same was



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disposed of by directing the first respondent therein to consider the mercy petition, dated 07.05.2018, on merits in accordance with law and an order to that effect shall be passed by the first respondent therein within a period of 8 weeks. The Director General of Police, Chennai, considered the mercy petition and directed to reinstate the petitioner into service with modified penalty of postponement of increment for a period of three years with cumulative effect, vide order dated 22.09.2018.

6. The petitioner was reinstated on 01.11.2018 in the promotional post of Havildar without any adverse remarks. The 2nd respondent has issued proceedings, dated 13.11.2018, reverted the petitioner back to the post of Constable on the ground that he has not completed probation as Havildar. Challenging the same, the petitioner is before this Court.



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7. The respondents contended that initially, the petitioner was not having Heavy Vehicle Driving License, therefore, he was reverted. Subsequently, on submission of the Heavy Vehicle Driving License, he was granted the promoted post. As far as the 2nd reversion is concerned, the respondents submitted that the petitioner was reverted for want of vacancy. Again, due to disciplinary proceedings was pending against the petitioner and he was awarded with a punishment of black mark for six months. Subsequently, another disciplinary proceeding was initiated for insubordination and he was removed from service. Based on the mercy petition, he was reinstated with modified punishment. Since the petitioner had faced two disciplinary proceedings, he did not complete probation. Therefore, he was reverted for the 3rd time. Based on the rules and regulations, the petitioner is not entitled to declaration of probation because the petitioner has faced the disciplinary proceedings



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and punishment was awarded during the period. Therefore, the claim of the petitioner cannot be considered.

8. Heard Mr.B.Jameel Arasu, learned Counsel appearing for the petitioner and Mr.R.Suresh Kumar, learned Additional Government Pleader appearing for the respondents in both the writ petitions and perused the records.

9. It is seen the petitioner was granted temporary promotion along with Gangadevi. The petitioner is senior to the said Gangadevi as per the date of appointment. However, the respondents have promoted the junior namely Gangadevi in the permanent post. The respondents ought to have granted permanent promotion to the petitioner before granting promotion to the said Gangadevi, based on the seniority. However, the respondents have declined to grant the same. When the petitioner prayed to grant permanent promotion, the respondents by citing the reason that the



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petitioner was not having Heavy Vehicle Driving License reverted the petitioner to the post of Constable. The said plea of the respondents was refuted by the petitioner by stating that he was possessing Heavy Vehicle License on the date of consideration. Even according to the counter affidavit, the respondents have not clearly clarified whether the petitioner was not in possession the Heavy Vehicle Driving License as on the date of consideration. They have simply stated that he was again promoted as Havildar on submission of valid license. When the respondents have not categorically denied the fact that the petitioner was not having Heavy Vehicle Driving License, then this Court is of the considered opinion that the petitioner was having valid Heavy Vehicle Driving License as on the date of granting promotion on 14.08.2013 and reverting the petitioner to the post of constable is illegal. Therefore, this Court is of the considered opinion that the petitioner is entitled to promotion for the Havildar post along with the said Gangadevi.



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10. The next point that was raised by the respondents is that the petitioner was facing two disciplinary proceedings, therefore, he had not completed probation. It is seen that the petitioner kept on nagging for granting promotion, when the respondents failed to grant the same the petitioner had exhibited insubordination. This Court is of the considered opinion that any employee is entitled to promotion if he is having requisite qualifications. Therefore, demanding promotion cannot be considered as insubordination that is why the respondents also considered the same and reduced the punishment. Of course, the petitioner has not challenged the modified punishment before this Court. Since this Court is of the considered opinion that the petitioner is entitled to permanent promotion along with Gangadevi, the subsequent disciplinary proceedings cannot be cited as an impediment for granting promotion. Therefore, the petitioner ought to be declared probation by taking the period from 14.08.2013. Moreover, the period from



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14.08.2013 is prior to the disciplinary proceedings and hence the respondents cannot take the subsequent disciplinary proceedings and deny to declare probation.

11. The next contention raised by the respondents is that for want of vacancy, the petitioner was not granted promotion. It is seen from the records that in the subsequent vacancy one Senthil Kumar and one Balasubramanian was granted promotion on 18.03.2015. Atleast, the respondents ought to have considered the petitioner's case during 2015 while granting promotion to the juniors. If the respondents had considered the petitioner's name during that time, then the respondents would not have granted promotion to the junior namely Balasubramanian. The respondents failed to grant promotion to the petitioner rather than granting promotion again, the petitioner was reverted back which is absolutely unnecessary and illegal.



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12. Therefore, this Court is of the considered opinion that the petitioner is entitled to promotion in the post of Havildar along with Gangadevi. Therefore, the respondents are directed to grant promotion as Havildar by fixing the date as 14.08.2013. The petitioner is entitled to consequential monetary benefits to the promoted post along with declaration of probation as well and the respondents shall implement this order within a period of four weeks from the date of receipt of the copy of the order.

13. With the above said observation, the writ petition in W.P. (MD)No.10135 of 2019 is allowed.

14. Since W.P.(MD)No.10135 of 2019 is allowed, the earlier writ petition in W.P.(MD)No.1851 of 2016 has become infructuous. Hence



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W.P.(MD)No.1851 of 2016 is dismissed as infructuous. No costs.

Consequently, connected miscellaneous petitions are closed.

Index : Yes / No

28.04.2023

Internet : Yes

NCC : Yes / No

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To

1.The Inspector General of Police,
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(1st Battalion),
Trichy.

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