



W.P.(MD)No. 20978 of 2016

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.20978 of 2016

R.Selva Subramanian

... Petitioner

Vs.

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

2.The Inspector General of Police,
Technical Services,
i/c Deputy Inspector General of Police,
Technical Services,
Chennai – 4.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorarified Mandamus*, calling for the records pertaining to the impugned order in Proceedings No.Rc.No.A1/176/8323/2015 dated, 14.12.2015 on the file of the Respondent No.2 and quash the same as illegal and consequently to direct the Respondent No.2 to maintain continuing seniority from the date of his promotion as Head Constable i.e., on 01.09.2000, and give promotion to petitioner to the post of Inspector of Police including his name in



W.P.(MD)No. 20978 of 2016

WEB COPY

the Promotion panel, drawn for the year 2014-15, in the light of the Orders dated 21.07.2011, passed by the Court in W.P.(MD) No.5393 of 2007, within the time stipulated by the Court.

For Petitioner : Mr.G.Karthick

For Respondents : Mr.D.Lingadurai
Special Government Pleader

ORDER

This writ petition is filed to quash the impugned order, dated 14.12.2015, with consequential direction to the respondents to count commuted service from the date of his promotion as Head Constable and give promotion to the petitioner to the post of Inspector of Police including his name in the promotional panel in the year 2014-2015, in the light of the Order, dated 21.07.2011, passed by this Court in W.P.(MD) No.5393 of 2007.

2. The petitioner was initially appointed as Grade II Police Constable on 03.05.1982, thereafter he was transferred to Armed Reserve, Madurai City, in the year 1993. On 01.09.1993, with consent of the petitioner, he was posted in



W.P.(MD)No. 20978 of 2016

WEB COPY

Police Telecommunication Branch, Madurai. He was promoted as Grade I Constable on 07.11.1995 in the parent department. For further promotion, the seniority in parent department was maintained and the petitioner was granted grades and promotion under the “next below rule” vide, order, dated 31.08.2000, the petitioner was promoted as Head Constable on 01.09.2000. But, inspite of order in the parent department, the petitioner was not granted promotion in the Telecommunication Department.

3. The contention of the petitioner is that, he had passed police Telecommunication Basic Course. Then on 23.11.1983 he had passed High Frequency III Class Test. On 23.01.1992 he had passed the Class II Test. Then on 02.02.1999 the petitioner had passed the Class I test. Hence, the petitioner is entitled for seniority in the Telecommunication Branch, as per qualification of passed in III class test, but the petitioner’s valuable right was deprived. The respondents have granted promotion to one Mr.K.Nagendran, who was appointed as Grade II Police Constable and inspite of the fact he was non-attendance from the post of Grade I Constable on 28.12.1995 to 29.03.2000 as his service was no longer required. After that on 30.03.2000 again he joined duty as Grade I



W.P.(MD)No. 20978 of 2016

WEB COPY

Constable, thereafter on 17.03.2003, he was promoted as the Head Constable and his probation period was completed on 17.03.2005 and on 30.09.2005 the next promotion for the post of Sub-Inspector of Police was given to him and the said K.Nagendran was given promotion as Inspector of Police in March 2015 and transferred to Erode District. The petitioner after passing the test eligible for promotion and requested to grant promotion as granted to the said K.Nagendran was promoted to the post of Inspector of Police, but the respondents have declined the same, hence, the petitioner has filed W.P(MD)No.5393 of 2007 for Mandamus and this Court, vide order, dated 21.07.2011, directed to consider and promote the petitioner as Head Constable with effect from 01.09.2000 with consequential benefits and the respondents have fixed the pay from 01.09.2000 in the post of Head Constable vide proceedings, dated 04.08.2003. As per order, dated 31.08.2000, he was also promoted as Head Constable, with effect from 01.09.2000, inspite of specific order by the parent department, the order of promotion was not given by the Telecommunication Department. The respondents have no authority to deny such promotion. Therefore, the petitioner has submitted a representation, dated 11.07.2015. The above writ petition was finally disposed of, by stating that the respondents stand is perverse and the petitioner is entitled



W.P.(MD)No. 20978 of 2016

WEB COPY

for promotion. In spite of the same, the respondents have rejected the petitioner's claim, hence the petitioner has filed W.P(MD)No.13569 of 2015 and this Court directed the respondents to consider the petitioner's representation properly, but the respondents have passed the impugned order. Aggrieved over the same, the present writ petition is filed.

4. The respondents have filed counter stating that the Telecommunication Branch was renamed as Police Radio Branch. Earlier, the petitioner was recruited in the Armed Reserve, subsequently, based on his qualification he was transferred to Telecommunication Unit. Since the petitioner was transferred from the earlier department, the petitioner was placed as junior most in the new department on 09.08.1995. Thereafter, from 1995-1999 there was no panel preparation in the said unit. When the first panel was prepared in the year 1998-1999, since the petitioner was placed in the junior most place on transfer, he was not granted any promotion in the year 1998-1999. However, subsequently, in the year 1999-2000 based on the available vacancy, the panel was prepared and the petitioner was granted promotion to Grade I Police Constable. Since the panel was not prepared from 1995-1998, the petitioner was



W.P.(MD)No. 20978 of 2016

WEB COPY

not considered for promotion. Moreover, the promotion is not right, the same would be granted based on the available vacancy. Since there was no available vacancy from 01.05.1998 the respondents have not prepared any panel list. As and when the panel was prepared based on the seniority and merit, the available candidates were granted promotion to the Grade I Police constable and the petitioner was granted promotion in the year 1999-2000. Therefore, there is no infirmity in granting promotion in the year 1999-2000 and therefore, the respondents pray to dismiss the writ petition.

5. Heard Mr.G.Karthick, learned counsel appearing for the petitioner and Mr.D.Lingadurai, learned Special Government Pleader, appearing for the respondents. Perused the material documents available on record.

6. The first contention of the petitioner is, as per G.O.Ms.No.329-A/ Home Department, dated 25.01.1950, qualification that was prescribed for promotion to Grade I Police Constable is passed in the Class III test and the petitioner has passed the above test in the year 1983 itself. On 23.01.1992 he had passed the Class II test. This fact was not denied by the respondents, even



W.P.(MD)No. 20978 of 2016

WEB COPY

according to the respondents' records the petitioner has passed Class III test in the year 1983 and has passed Class II test in the year 1992. In such circumstances, even though the petitioner was transferred from another unit and placed as junior most, if the respondents had prepared a panel in the year 1995, then the only candidate available with the prescribed qualification is the petitioner alone. Then, he would get promotion in the year 1995 itself. Therefore, the respondents cannot deny promotion by stating that the panel was not prepared. More so the reasons cited by the respondents is that since there was no available candidates, hence the panel was not prepared cannot be accepted, when the petitioner is available with all qualification. If the respondents are of the opinion that there is no available candidates with the prescribed qualification, then the respondents ought to have prepared NIL panel, which would indicate that the respondents have considered the petitioner's case and thereafter had prepared Nil panel. On the other hand, if the respondents had prepared panel in the year 1995, then the respondents would have taken note of the petitioner's case who is available with all qualification and included in panel and granted promotion to the petitioner. Therefore, panel was not prepared cannot be a reason to deny promotion to the petitioner.



W.P.(MD)No. 20978 of 2016

WEB COPY

7. The next contention that was raised by the petitioner is that the respondents have deliberately not prepared the panel and had waited for other candidates to pass in the Class III test, that is why the respondents had prepared panel in the year 1999 and not prior to 1999. But the same was refuted by the respondents stating that it is not a deliberate act. The inaction of the respondents may not be deliberate, but as stated supra the respondents failed to prepare panel and thereby the petitioner had lost the opportunity of promotion, which otherwise the petitioner is eligible for promotion, hence the petitioner is in advantageous position.

8. As stated supra the deliberate act was not established, however, the respondents have failed in preparing NIL panel. The respondents ought to have been vigilant to grant promotion to the employees, because promotion is a valuable right. The panel should be prepared every year based on the vacancy, for promoting the candidates, but failure in preparing panel cannot be accepted. The Judgment dated 19.03.2018 of the Hon'ble Division Bench rendered in *W.A. (MD)No.594 of 2018* has held that when a person was found eligible for promotion on the day when consideration of the vacancies in the post arose, then



W.P.(MD)No. 20978 of 2016

WEB COPY

Article 14 and 16 of the Constitution of India would require his being appointed unless he suffered any disqualification. The Hon'ble Division Bench had relied on the Judgment rendered in ***Major General H.M.Singh, VSM Vs. Union of India and another***, reported in **2014 (3) SCC 670**, wherein in paragraphs 28 and 33 it is held as follows:

.....

“28. The question that arises for consideration is, whether the non- consideration of the claim of the appellant would violate the fundamental rights vested in him under Articles 14 and 16 of the Constitution of India. The answer to the aforesaid query would be in the affirmative, subject to the condition, that the respondents were desirous of filling the vacancy of Lieutenant General, when it became available on 1.1.2007. The factual position depicted in the counter affidavit reveals, that the respondents indeed were desirous of filling up the said vacancy. In the above view of the matter, if the appellant was the senior most serving Major General eligible for consideration (which he undoubtedly was), he most definitely had the fundamental right of being considered against the above vacancy, and also the fundamental right of being promoted if he was adjudged suitable. Failing which, he would be deprived of his fundamental right of equality before the law, and equal protection of the laws, extended by Article 14 of the Constitution of India. We are of the view, that it was in order to extend the benefit of the fundamental



W.P.(MD)No. 20978 of 2016

WEB COPY

right enshrined under Article 14 of the Constitution of India, that he was allowed extension in service on two occasions, firstly by the Presidential order dated 29.2.2008, and thereafter, by a further Presidential order dated 30.5.2008. The above orders clearly depict, that the aforesaid extension in service was granted to the appellant for a period of three months (and for a further period of one month), or till the approval of the ACC, whichever is earlier. By the aforesaid orders, the respondents desired to treat the appellant justly, so as to enable him to acquire the honour of promotion to the rank of Lieutenant General, (in case the recommendation made in his favour by the Selection Board was approved by the Appointments Committee of the Cabinet), stands affirmed. The action of the authorities in depriving the appellant due consideration for promotion to the rank of the Lieutenant General, would have resulted in violation of his fundamental right under Article 14 of the Constitution of India. Such an action at the hands of the respondents would unquestionably have been arbitrary.

.....

33. Insofar as the present controversy is concerned, there is no doubt whatsoever, that a clear vacancy against the rank of Lieutenant General became available with effect from 1.1.2007. At that juncture, the appellant had 14 months of service remaining. It is not as if the vacancy came into existence after the appellant had reached the age of retirement on superannuation. The present case is therefore, not covered by the technical plea canvassed at the hands



W.P.(MD)No. 20978 of 2016

WEB COPY

of the learned senior counsel for the respondents. The denial of promotion to the appellant mainly for the reason, that the appellant was on extension in service, to our mind, is unsustainable besides being arbitrary, specially in the light of the fact, that the vacancy for which the appellant was clamouring consideration, became available, well before the date of his retirement on superannuation. We have, therefore, no hesitation in rejecting the basis on which the claim of the appellant for onward promotion to the rank of Lieutenant General was declined, by the Appointments Committee of the Cabinet.”

In the present case the vacancies were available, the petitioner is the eligible candidate, then the respondent employer is bound to prepare panel and grant promotion. This Court is of the considered opinion that the respondents had deprived the petitioner's valuable right.

9. The respondents submitted that the petitioner was granted upgradation in the parent department and hence the petitioner is not entitled to promotion in the present department and the petitioner cannot ride two boats at one time. Moreover, the petitioner has passed Class I test in the year 1999 only, then the petitioner is entitled to promotion from 1999 onwards and the same was



W.P.(MD)No. 20978 of 2016

WEB COPY

granted. The respondents produced the service particulars and the same is stated in the tabulation below:

Events	Petitioner Tr.Selvasubramanian, SI 1607 (Retd) of PTB	One place senior to the petitioner in PTB Tr.Kathamuthu HC 1311	One place junior to the petitioner in PTB Tr.Gnanasundaram, HC 1609
Date of Birth	03.05.1960	03.03.1965	15.02.1958
Date of enlistment	03.05.1982	27.05.1988	26.12.1985
Date of joining into PTB	09.08.1995	08.07.1995	23.05.1998
Upgradation as Gr.I P.C.	07.11.1995	NA	NA
Promotion as Gr.I P.C.	05.08.1999	11.08.1999	11.07.1999
Upgradation as H.C.	01.09.2000 (Parent Unit – MDU City AR)	NA	NA
Promotion as HC	04.10.2002	NA	NA
Upgradation as SSI	NA	NA	NA
Promotion as Sub-Inspector	Voluntarily retired on 30.11.2015	12.07.2018	NA
Date of Superannuation retirement if any.	31.05.2018 (Does not apply as he voluntarily retired on 30.11.2015)	31.03.2023	29.02.2016

But the petitioner submitted that the qualification prescribed is that the candidate should have passed at Class III test and relied on the rules. On perusing the same it is seen that the candidate should possess the Class III test for considering



W.P.(MD)No. 20978 of 2016

WEB COPY

promotion and the petitioner is possessing the same in the year 1992 itself. Therefore, this Court is of the considered opinion that the petitioner is entitled to be considered for promotion in the year 1995 itself.

10. The next contention that was raised by the respondents is that the petitioner was upgraded in the post of Head Constable by the parent department in the year 1995 and given monetary benefits. This Court is of the considered opinion that the upgradation granted in parent department is based on the rules applicable to the parent department. Since the petitioner had served in the parent department from 03.05.1982 onwards, based on the same the upgradation/promotion was granted on 07.11.1995. In the meanwhile, the petitioner was transferred to the present department on 09.08.1995. The same cannot be a reason for depriving promotion to the petitioner in the transferred department. Moreover, the respondents have not cited any provisions to substantiate this plea. Hence the contention of the respondents that the petitioner is trying to sail in two boats cannot be accepted.



W.P.(MD)No. 20978 of 2016

WEB COPY

11. Even if the plea of respondent is accepted, then the promotion in the present department is more beneficial to the petitioner rather than upgradation in the parent department, the same ought to be considered. Therefore, the petitioner shall be granted promotion in the year 1995 in the present department and is entitled to subsequent consequential promotion and the same shall be conferred on the petitioner. Since the petitioner has voluntarily retired from service the petitioner is entitled to notional promotion. However as far as the monetary benefits is concerned, the petitioner is not entitled to the same but the effect shall be given in the pensionary benefits.

12. The Learned Special Government Pleader submitted that this order if implemented then several persons would seek the same benefit. Hence his order is granted to the petitioner since he was possessing qualification as on the date of available of vacancies and hence this order shall not be cited as precedent by others.

13. For the reasons stated supra this Court is inclined to allow the writ petition and hence the impugned order, dated 14.12.2015 is hereby quashed.



W.P.(MD)No. 20978 of 2016

WEB COPY

The above directions shall be complied with a period of 12 weeks from the date of receipt of the copy of the order.

14. With these observations and directions, this Writ Petition is allowed. No Costs.

Index : Yes / No
Internet : Yes
ksa

13.04.2023

To

- 1.The Secretary,
State of Tamil Nadu,
Home Department,
Fort St.George,
Chennai -600 009.
- 2.The Inspector General of Police,
Technical Services,
i/c Deputy Inspector General of Police,
Technical Services,
Chennai – 4.



WEB COPY



W.P.(MD)No. 20978 of 2016

S.SRIMATHY, J

ksa

**Order made in
W.P.(MD)No. 20978 of 2016**

13.04.2023