



W.P.(MD).No.24834 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.09.2023

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.24834 of 2022

Jegadeesh

... Petitioner

Vs.

1.The Director General of Police,
O/o. Director General of Police,
Mylapore,
Chennai-600 004.

2.The Superintendent of Police,
District Police Office,
Sivagangai.

... 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 of the 2nd respondent in C.No.A3/5182/33/2022, dated 02.04.2022 to quash the same as unconstitutional and consequently to direct the respondents to fix petitioner's seniority on par with petitioner's batch mates selected in year of 2012-2013 in the service of the Tamilnadu Police Department within the time stipulated by this Court.

For Petitioner : Mr.D.Balamuruga Pandi



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For Respondents : Mr.D.S.Neduncheliyan
Government Advocate

ORDER

The present writ petition has been filed to call for the records pertaining to the impugned order of the 2nd respondent in C.No.A3/5182/33/2022, dated 02.04.2022 to quash the same as unconstitutional and consequently to direct the respondents to fix petitioner's seniority on par with petitioner's batch mates selected in year of 2012-2013 in the service of the Tamilnadu Police Department within the time stipulated by this Court.

2. The petitioner has applied for the Grade-II Police Constable recruitment in the year 2012 and was informed vide proceedings, dated 25.07.2013 that he was eligible for joining the service of Grade II Police Constable. He was given with an appointment order, dated 19.05.2015. Though it was informed by the Superintendent of Police, Madurai that the petitioner was tested in the re-medical examination and was even eligible for joining the service of Grade-II Police Constable, he was initially rejected as medically unfit. While so, the petitioner came to know that a similarly placed person like



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him, namely one M.Pandiyaraja PC 1236, Dindigul District, who was selected to the post of Grade-II Police Constable in the year 2012-13 and joined training on 05.10.2015 due to administrative delay was considered for revision of seniority on par with his batchmates vide proceedings, dated 04.03.2021. Yet another person, namely Chellapandi PC No.277 Armed Reserve, Coimbatore and another person, namely P.Rajeev Gandhi, Armed Reserve, Coimbatore, who were also the similarly placed persons like the petitioner were considered for revising their seniority and got favourable orders. Hence, the petitioner made a representation to the 1st respondent seeking to revise his seniority on par with his batchmates who were selected during the year 2012-13. However, the 2nd respondent vide impugned proceedings, dated 02.04.2022 has rejected the petitioner's request for the reason that the petitioner has made a representation after a lapse of 3 years from the date of the appointment. Challenging the said impugned order, this writ petition came to be filed.

3. The learned Government Advocate vehemently submitted that in terms of Section 40 (6) of the Tamil Nadu Government Servant (Condition of Services) Act, 2016, the petitioner's application seeking revision of seniority



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after a lapse of 3 years from the date of appointment cannot be acted upon and on that basis, he pressed for dismissal of the writ petition.

4. Heard the learned counsel on either side and perused the materials available on record.

5. This is a case of medical re-examination wherein the petitioner was found medically unfit at the first instance and was further subjected to re-medical examination and declared medically fit, on the basis of which he was given an appointment to the post of Grade-II Police Constable. The delay of 3 years in issuing appointment order occurred only because of the mistake committed by the appointing authorities. The limitation prescribed under Section 40 (6) of the Tamil Nadu Government Servant (Condition of Services) Act, 2016 will not be applicable in the case of rectifying orders, resulting from mistake of facts committed by the appointing authorities.

6. This Court has already held in more than couple of cases in favour of persons placed similarly like the petitioner. The learned Single Judge of this Court in ***W.P(MD)No.25132 of 2018 (M.Karuppasamy Vs. The Director***



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General of Police & Another), dated 03.01.2019 has passed a favourable order to the petitioner therein and the relevant portion of which is extracted as follows:

“6.In view of the above, this writ petition is allowed and the respondents are directed to fix the seniority of the petitioner with effect from 01.03.2008, i.e., the date on which the other candidates selected in the same batch were appointed. It is made clear that the petitioner will not be entitled to any salary for the said period.”

7. The learned Single Judge of this Court in **W.P(MD)No.5356 of 2023 (M.Mohan Vs. The Director General of Police & Others)**, dated 06.06.2023 has passed another order in similar lines. The relevant portion of which is extracted as follows:

“5. I carefully considered the rival contention and went through the materials on record. The issue raised in the writ petition is no longer res integra. An identical issue arose for consideration in W.P.No.22454 of 2021 vide order dated 27.10.2021. The writ petition was allowed in the following terms:-

“7. This is the case where the petitioner has successfully cleared examinations and the mile stone prescribed for qualifying himself to the post of Grade II Police Constable in the recruitment since during 2001-2003. However, the petitioner was not selected on the ground that the petitioner was medically unfit on account of



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bilateral flat feet which has been considered and not to be a qualifying for appointing the petitioner as Grade II Police Constable. The delay in getting appointed with the respondents was not on account of the fault of the petitioner but on account of the stand taken by the respondents. As a matter of fact under similar circumstances in W.P.(MD)No.33479 of 2016 by an order dated 02.09.2021, the appointment was directed to be given pursuant to the order of this Court in W.P.No.3273 of 2016, dated 25.01.2008. The issue is no longer res-integra and the issue is squarely covered in favour of the petitioner. There the petitioner had sought for refixing of seniority to include his name in the appropriate list and selection list during the year 2001-2003 for the post of Police Constable with effect from the date of training.

8. In view of the above, the writ petition stands allowed with consequential relief to the petitioner. The respondents are therefore directed to carry out the necessary corrections in the Service Register of the petitioner by refixing the seniority of the petitioner along with the batchmates who participated in the Recruitment called for during the year 2001-2003. The above exercise shall be carried out by the respondent within a period of twelve weeks from the date of receipt of a copy of this order.”

6. I am inclined to adopt the very same approach. As rightly pointed out by the learned counsel appearing for the petitioner, the petitioner was not at all at fault. Only because the recruiting agency proceeded on misconception that the petitioner's vision was defective, he was not appointed. If everything had taken place in the appropriate time sequence, the petitioner would have been sent for training in the year 2012 itself. Therefore, for the fault committed



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by the respondents, the petitioner cannot be made to suffer. Lost of three years seniority will definitely have serious civil consequence. The question that arises for consideration is whether the petitioner's application should be rejected as barred by limitation. Section 40(6) of the Tamil Nadu Government Servant (Condition of Service) Act, 2016 is as follows:- “Application for the revision of seniority of a person in a service, class, category or grade shall be submitted to the appointing authority within a period of three years from the date of appointment to such service, class, category or grade or within a period of three years from the date of order fixing the seniority, as the case may be. Any application received after the said period of three years shall be summarily rejected. This shall not however be applicable to cases of rectifying orders, resulting from mistake of facts.” The provision itself makes it clear that limitation will not be applicable to cases of rectifying orders resulting from mistake of facts. The case on hand would fall under such category. Non-inclusion of the petitioner in the seniority list of the year 2012 is a mistake of fact.

7. In this view of the matter, the orders impugned in the writ petition are set aside.”

8. I am fully in consonance with both the orders mentioned supra and the proviso itself makes it clear that limitation will not be applicable to the case of rectifying orders, resulting from mistake of facts. The case in hand also would



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fall under such category and non inclusion of the petitioner in the seniority list for the year 2012 is a clear case of mistake of fact.

9. In this view of the same, the impugned order dated 02.04.2022 is hereby quashed and the respondents are directed to fix the petitioner's seniority on par with a recruitment batch of the year 2012-2013 within a period of twelve (12) weeks from the date of receipt of a copy of this order. However, this Court makes it clear that the petitioner will not be entitled to any arrears of pay for the said period 2012-2015.

10. Accordingly, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

08.09.2023

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

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To

- 1.The Director General of Police,
O/o. Director General of Police,
Mylapore,
Chennai-600 004.
- 2.The Superintendent of Police,
District Police Office,
Sivagangai.



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L.VICTORIA GOWRI, J.

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