



W.P.(MD).No.23865 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.09.2023

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.23865 of 2023

D.Sahadevan

... Petitioner

Vs.

**1.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai-600 004.**

**2.The Superintendent of Police,
Thoothukudi District,
Thoothukudi.**

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the second respondent in C.No.A5/25529/2021, dated 28.10.2021, quash the same and direct the respondents to fix the petitioner's seniority on par with his batchmates selected along with him as Grade-II Police Constable in the year 2012 as per Rule 24 of Tamilnadu Special Police Subordinate Service Rules, 1978.

**For Petitioner : Mr.M.Saravanan
For Respondents : Mr.D.S.Nedunchelian
Government Advocate**



WEB COPY



W.P.(MD).No.23865 of 2023

ORDER

The present Writ Petition has been filed for a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the second respondent in C.No.A5/25529/2021, dated 28.10.2021, quash the same and direct the respondents to fix the petitioner's seniority on par with his batchmates selected along with him as Grade-II Police Constable in the year 2012 as per Rule 24 of Tamilnadu Special Police Subordinate Service Rules, 1978.

2. Heard the learned Counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents and carefully perused the materials available on record.

3. The case of the petitioner is that he should have been included in the selection list held for the recruitment batch of the year 2012. He was disqualified on the ground that his vision was defective. Further the petitioner was sent for re-examination to the Medical Board, in which he was certified as



W.P.(MD).No.23865 of 2023

fit for being appointed as Police Constable Grade-II. In furtherance to the same, the second respondent issued appointment order on 21.09.2015 and he was permitted to join duty for training on 05.10.2015. The question which has been raised before me for consideration is as to whether the petitioner's seniority has to be reckoned along with his batch mates of the year 2012. However, by the impugned memorandum, the petitioner's request was rejected.

4. The learned Government Advocate appearing for the respondents vehemently submitted that for the purpose of fixing the seniority of the petitioner on par with his batch mates, who were sent for basic training in the year 2015, it is necessary that such an application for revision of seniority of a person ought to have been submitted to the appointing authority within a period of three years from the date of appointment. However, in the instant case, the petitioner had approached the respondents only after a lapse of five years, which clearly violated the provisions of Rule 24(d) and 25(a)(7) of the Tamil Nadu Police Subordinate Service Rules. In view of the same, the learned Government Advocate pressed vehemently to dismiss this Writ Petition.



W.P.(MD).No.23865 of 2023

WEB COPY

5. However, this issue is no more *res integra* and a similar case arose for consideration before this Court in ***W.P.No.22454 of 2021, dated 23.11.2021 [V.Jagadeeswaran Vs. the Director General of Police and another]***, wherein this Court has passed a favourable order to the petitioner and the relevant portion of which is extracted as follows:-

“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 bilateral flat feet which has been considered and not to be a disqualifying 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.No.33749 of 2016 by an order dated 2/9/2021, 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.



W.P.(MD).No.23865 of 2023

WEB COPY

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. No costs. Consequently, connected miscellaneous petition is closed.”*

6. In yet another case in ***W.P(MD)No.5356 of 2023, dated 06.06.2023*** [***M.Mohan Vs. The Director General of Police (Law and Order) and others***], this Court has decided in similar lines and the relevant portion of which is extracted as follows:-

“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 by the respondents, the petitioner cannot be made to suffer. Lost of three years seniority will definitely have serious civil consequence. The question that



W.P.(MD).No.23865 of 2023

WEB COPY

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. I am fully in consonance with the decision of this Court in the orders mentioned *supra*, as clearly pointed out by the learned Counsel appearing for the petitioner, it is not at the fault of the petitioner and the delay caused in sending the petitioner for training is only because of the administrative delay of



W.P.(MD).No.23865 of 2023

the respondents themselves and hence, the delay in submitting the application seeking re-fixation of the seniority of the petitioner is not attributable to the petitioner and the non-inclusion of the petitioner in the seniority list of the year 2012 is a mistake of fact which had occurred due to the administrative lapses on the part of the respondents. Section 40(6) of the Tamil Nadu Government Servant (Condition of Service) Act, 2016 clearly mandates that the limitation set out in the aforesaid Section shall not be applicable to the cases of rectifying orders resulting from mistake of fact, and this case would fall under such category.

8. In view of the same, the impugned order, dated 28.10.2021 passed by the second respondent is set aside and the respondents are directed to fix the petitioner's seniority in the recruitment batch of the year 2012 at the appropriate place, within a period of twelve (12) weeks from the date of receipt of a copy of this order.

9. With the above direction, this Writ Petition stands allowed. There shall be no order as to costs.



WEB COPY



W.P.(MD).No.23865 of 2023

29.09.2023

NCC : Yes
Index : Yes
Internet : Yes
BTR

To

- 1.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai-600 004.
- 2.The Superintendent of Police,
Thoothukudi District,
Thoothukudi.



WEB COPY



W.P.(MD).No.23865 of 2023

L.VICTORIA GOWRI, J.

BTR

W.P.(MD).No.23865 of 2023

29.09.2023



WEB COPY



W.P.(MD).No.23865 of 2023