



W.P.(MD).Nos.25023, 23284,
23362, 23369 and 23381 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 23.11.2023

ORDER PRONOUNCED ON : 05.12.2023

**CORAM:
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P.(MD).Nos.25023, 23284, 23362, 23369 and 23381 of 2023
and
W.M.P(MD).Nos. 21224, 19556, 19567 & 19552 of 2023**

- | | |
|---------------------|--|
| 1.C.Ovuraj |Petitioner in W.P(MD).No.25023 of 2023 |
| 2.A.Sathishkumar | ...Petitioner in WP(MD).No.23284 of 2023 |
| 3.A.Senthil Murugan | ...Petitioner in W.P(MD).No.23362 of 2023 |
| 4.C.Prasath | ...Petitioner in W.P(MD).No.23369 of 2023 |
| 5. S.Syed Mohamed | ...Petitioner in W.P(MD).No.23381 of 2023 |

Vs

1.The Director General of Police
(Law and Order)
Office of the Director General of Police
Beach Road, Chennai -41st Respondent in all the petitions

2.The Superintendent of Police
Thoothukudi District
Thoothukudi 2nd Respondent in WP.(MD).Nos.25023
& 23362 of 2023



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3.The Deputy Commissioner of Police
Madurai City Police Commissionerate
Madurai

...2nd Respondent in W.P.(MD).Nos.23369
& 23284 of 2023

4.The Superintendent of Police
Madurai District
Madurai

...2nd Respondent in WP.(MD).No.23381 of 2023

Prayer in WP(MD).No.25023 of 2023 : This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records on the file of the second respondent's impugned proceedings in C.No.A3/25344/2021 dated 13.06.2022 and quash the same as illegal as devoid of merits and direct the respondents to fix the seniority of the petitioner in the post of Grade-II Police Constable along with their recruited batch in the year of 2012 in the appropriate place with attendant monitory and service benefits.

Prayer in WP(MD).No.23284 of 2023: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the respondents to fix the seniority of the petitioner in their recruited batch in the recruitment year 2012 in the appropriate place as per Rule 25(a) of Tamil Nadu Police Subordinate Service Rules (TNPSS) with attendant monitory and service benefits.

Prayer in WP(MD).No.23362 of 2023 : This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records on the file of the second respondent's impugned proceedings in Na.Ka.A3/E-1852649/2021 dated 24.08.2022 and quash the same as illegal as devoid of merits and direct the respondents to fix the seniority of the petitioner in the post of Grade-II Police Constable along with



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their recruited batch in the year of 2012 in the appropriate place with attendant monitory and service benefits.

Prayer in WP(MD).No.23369 of 2023 : This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records on the file of the second respondent's impugned proceedings vide C.No.BII(1)37321/457/2021 dated 08.09.2021 and quash the same as illegal as devoid of merits and direct the respondents to fix the seniority of the petitioner in their recruited batch in the year of 2012 in the appropriate place with attendant monitory and service benefits.

Prayer in WP(MD).No.23381 of 2023 : This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records on the file of the 1st respondent's proceedings vide No. 1349524/Rect.1(2)/2021 dated 24.11.2021 insofar as the petitioner and consequential impugned order passed by the second respondent vide C.No.B2/15012/119/2020 dated 03.02.2022 and quash the same as illegal as devoid of merits and direct the respondents to fix the seniority of the petitioner in the post of Gr.II Police Constable in his recruited batch in the year of 2012 in the appropriate place with attendant monitory and service benefits.

(In all the writ petitions)

For Petitioners : Mr.Raja Karthikeyan

For Respondents : Mr.R.Sureshkumar
Additional Government Pleader



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COMMON ORDER

All these five writ petitions have been filed by Grade-II Police Constables who were recruited in the year 2012 challenging the order passed by the Superintendent of Police of their respective Districts wherein the request of the petitioners for fixing their seniority along with their batch-mates from the year 2012 has been rejected.

2.(A).The undisputed facts are as follows:

(i).All the petitioners herein have appeared for selection to the post of Grade-II Police Constable which was conducted in the year 2012 and all of them got selected. After selection, the petitioners were sent for medical examination. They were found to be medically unfit by the concerned authorities. Thereafter, the petitioners have approached the authorities for re-medical examination. On such re-examination, the test reports declared that the petitioners are medically fit to be appointed as Grade-II Police Constable. Before medical reports could reach the authorities concerned, the training for the said batch has already taken. The authorities have not permitted the petitioners to join training in 2012 batch on the ground that there is a delay of 15 days. Thereafter, the petitioners were permitted to join the training along with those recruited in the year 2015. The petitioners herein have made a request to the concerned authorities that they should have



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been conferred with seniority on par with their batch-mates who were recruited in the year 2012. The delay in issuing appointment order is not due to the fault of the petitioners. Such a representation was rejected by the authorities on the ground that the representations have been made beyond the period of three years from the date of appointment. Challenging the said individual orders issued to the writ petitioners, the present writ petitions have been filed.

3(B).Contention of the parties:

(i).Considering the common issue involved in all the writ petitions, all the petitions are tagged together and a common order is passed.

(ii).According to the learned counsel appearing for the writ petitioners, all the writ petitioners were selected in the year 2012, but appointment orders were not issued to the writ petitioners on the ground that they were declared unfit in the first medical examination. However, in the second examination, they were found to be fit. Hence, there is no fault on their part. Therefore, their seniority should have been restored to the year 2012. The learned counsel had further contended that neither for the year 2012 nor for the year 2015, a seniority list has been published by the department. Only when a seniority list is published, the question of three years limitation for raising objection to such a seniority list would arise. Therefore, the concerned



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authorities are not right in rejecting the request of the petitioners.

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(iii).The learned counsel appearing for the writ petitioners had relied upon a judgment of this Court in ***W.P(MD).No.25132 of 2018 (M.Karuppasamy Vs. The Director General of Police and another)*** dated 03.01.2019. The petitioner has also relied upon another judgement of this Court in ***W.P(MD).No.26590 of 2022 (M.M.Muthumari Vs. The Director General of Police (Law & Order) and another)*** dated 30.06.2023 to contend that in all those cases where there was a delay in issuing appointment order, this Court had proceeded to confer the seniority on par with other batch-mates especially when there is no fault on the part of the candidates.

4.Per contra, the learned Additional Government Pleader appearing for the respondents herein had relied upon Rule – 40(6) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and contended that any application for revision of seniority shall be submitted to the appointing authority within a period of three years from the date of appointment. Any application received after the said period of three years, shall be summarily rejected.

5.According to the learned Additional Government Pleader, all the petitioners have been appointed in September 2015 and their representations



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are beyond a period of three years. Therefore, the authorities have rightly rejected their request. He had further contended that the authorities have also relied upon Rule 35(f) of Tamil Nadu State and Subordinate Service Rules wherein it has been held that the application for revision of seniority should be filed within a period of three years.

6.The learned Additional Government Pleader had further relied upon the following decisions:

(i) The judgment of the Hon'ble Supreme Court reported in **2020 SCC Online Mad 25524(D.Damuraj Vs. Director General of Police and another)**;

(ii) The judgment of our High Court in **W.P.No.9024 of 2023 (K.Naresh Vs. The Director General of Police and another)** dated 24.03.2023;

(iii) An another judgment of our High Court in **W.P(MD).No.5595 of 2023 (M.Ramachandran Vs. The State represented by the Additional Chief Secretary to Government and others)** dated 22.06.2023 and;

(iv) The judgement in **W.P.No.23708 of 2023 (P.Irulandi Vs. The Director General of Police and others)** dated 11.08.2023



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7.The learned Additional Government Pleader had contended that the seniority could be reckoned only from the date of the appointment and it cannot be notionally fixed from a retrospective date. He had further contended that if an application seeking the revision of seniority is filed beyond a three years from the date of appointment, the same has to be rejected. Hence, he prayed for dismissal of the writ petitions.

8.I have considered the submissions made on either side and perused the materials records.

(D).Discussion:

9.The undisputed facts which have been narrated above will clearly establish that the petitioners were erroneously declared as medically unfit during the first medical examination. During the second medical examination, they were declared to be fit. Since training had already commenced, the petitioners had to wait till 2015 for issuance of appointment order. Therefore, it is clear that the delay in issuance of appointment orders to the writ petitioners is attributable only to the department and there is no fault on the part of the the petitioners.

10.The Hon'ble Supreme Court in a judgment reported in **(2008) 3 SCC 222 (State of Haryana and others Vs. Dinesh Kumar)** while considering the issue of suppression of material facts while applying to the



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post of Constable-Drivers has held that there is no suppression of fact relating to the criminal case. After arriving at such a finding, the Hon'ble Supreme Court had issued a direction to the authorities to issue appointment orders with effect from the date ,persons lower in merit to them were appointed.

11.The Hon'ble Supreme Court in a judgment reported in **(2020) 5 SCC 230 (C.Jayachandran Vs. State of Kerala and others)** while considering a case of selection of District Judges, found that some of the candidates got excluded from appointment only due to the fact that the High Court adopted moderation of marks. The Hon'ble Supreme Court found that the candidates have been wrongfully excluded from the process of appointment on account of illegal and arbitrary grant of moderation of marks. After arriving at such a finding, the Hon'ble Supreme Court was pleased to grant notional seniority from the date, the other candidates were appointed in pursuance of the same select list prepared on the basis of the common appointment process.

12.Two Learned Single Judges of this Court in **W.P(MD).No.25132 of 2018 (M.Karuppasamy Vs. The Director General of Police and another)** dated 03.01.2019 and in **W.P(MD).No.26590 of 2022 (M.M.Muthumari Vs. The Director General of Police (Law & Order) and another)** dated



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30.06.2023 have proceeded to hold that when the name of a candidate is wrongfully excluded from the selection process and ultimately, if the said error is rectified, the seniority of the candidate should be restored on the basis of the merit list prepared for the said selection process.

13. This Court has also given anxious consideration to the judgments cited by the learned Additional Government Pleader. The judgment of the Hon'ble Division Bench reported in **2020 SCC Online Mad 25524(D.Damuraj Vs. Director General of Police and another)** relates to a case where the candidate could not complete the training after being appointed. He underwent training on a later point of time and therefore, the Hon'ble Division Bench had held that he is not entitled to the seniority. The judgment of this Court in **W.P.No.9024 of 2023 (K.Naresh Vs. The Director General of Police and another)** dated 24.03.2023, **W.P(MD).No.5595 of 2023 (M.Ramachandran Vs. The State represented by the Additional Chief Secretary to Government and others)** dated 22.06.2023 and **W.P.No.23708 of 2023 (P.Irulandi Vs. The Director General of Police and others)** dated 11.08.2023 deals with the cases where after being appointed, they have not chosen to submit an application for revision of seniority within a period of three years. The said defence is also raised by the learned Additional Government Pleader in the present case.



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14.Rule 35(f) of the Tamil Nadu State and Subordinate Service Rules is extracted as follows:

“(f)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.”

15.Section 40(6) of Tamil Nadu Government Servants (Conditions and Service) Act, 2016 is extracted as follows:

“40(6). 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.”

16. A perusal of the above said provisions will clearly indicate that an application seeking revision of seniority should be filed within a period of



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three years from the date of appointment or within a period of three years from the date on which the seniority was fixed.

17.In the present case, admittedly, the seniority list has not been published for 2012 batch. That apart, the petitioners having been issued with the appointment orders in the year 2015, they are seeking to rectify an error that has happened due to non inclusion of their names in 2012 batch seniority. Therefore, the contention of the learned Additional Government Pleader is not legally sustainable.

18.In view of the above said facts, the orders impugned in the writ petitions are hereby set aside and the concerned authorities are directed to notionally fix the seniority of the writ petitioners from the date on which the candidates lower in merit to the petitioners were appointed in the year 2012. The petitioners will be entitled to the notional benefits of such continuous appointment. However, they will be entitled to salary only from the date of actual appointment order. The period between 2012 and the date of appointment order shall be taken into consideration for the purpose of seniority and pensionary benefits alone.



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19. With the above said observations, the writ petitions stand allowed to the extent as stated above. No costs. Consequently, connected miscellaneous petitions are closed.

05.12.2023

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

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(Law and Order)
Office of the Director General of Police
Beach Road, Chennai -4

2. The Superintendent of Police
Thoothukudi District
Thoothukudi

3. The Deputy Commissioner of Police
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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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