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W.P.No.14076 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.07.2024

PRONOUNCED ON : 24.07.2024

CORAM :

THE HONOURABLE **DR. JUSTICE D.NAGARJUN**

W.P.No.14076 of 2015

G.Augustine Paul Sudhakar

...Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. By its Principal Secretary to Government,
Home (Police) Department,
Fort St.George,
Chennai – 600 009.

2. The Director General of Police,
Tamil Nadu,
Chennai – 600 004.

3. P.Stephen

....Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus, directing the respondents to include the name of the petitioner in the panel of Inspectors of Police fit for appointment as Deputy Superintendent of Police (Category – I) for the year 2013-2014 and by promoting the petitioner to the post of Deputy Superintendent of Police (Category – I) for the year 2013-2014 in the available 43 vacancy in terms of the undertaking given in the additional



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affidavit dated 27.08.2014 filed by the respondents in W.P.No.2727 and 3701 of 2014 from 27.12.2014 being the date when candidates in the temporary panel were promoted.

For petitioner : Mr.Balan Haridas
For R1 and R2 : Mr.P.Kumaresan
Additional Advocate General
assisted by
Ms.S.Anita
State Government Pleader
Mr.J.Daniel,
Government Advocate
For R3 : No appearance

ORDER

This writ petition has been filed seeking to issue writ of mandamus directing the respondent to include the petitioner's name in the panel of Inspectors of Police fit for appointment as Deputy Superintendent of Police (Category – I) for the year 2013-2014 and promote the petitioner to the post of Deputy Superintendent of Police (Category – I) in the available 43 vacancies in terms of undertaking given in the additional affidavit dated 27.08.2014 filed by the respondents in W.P.No.2727 and 3701 of 2014 from 27.12.2014 being the date when the candidates in the temporary panel were promoted.



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2. The facts in brief as per the affidavit enclosed are hereunder:

2.1. The petitioner was directly recruited as Sub Inspector of Police (Taluk) in 01.05.1996 against the notification dated 01.01.1994. He was promoted as Inspector of Police (Taluk) on 04.04.2005 from the panel of Sub Inspectors of Police (Taluk) fit for promotion as Inspectors of Police (Category – I) for the year 2004-2005 and he has completed 19 years of service and awaiting for his promotion to the post of Deputy Superintendent of Police (Category – I).

2.2. As per the memorandum issued by the second respondent in RC.No.168000/GB II (1)/2013 dated 22.11.2013 recommendation rolls were called for in respect of Inspectors of Police (Category – I) promoted from the panel of Sub Inspectors of Police (Taluk) upto the year 2004-2005 for drawing of the panel of Inspectors of Police (Category – I) fit for appointment by recruitment by transfer as Deputy Superintendent of Police (Category – I) for the year 2013-2014. The petitioner and 43 persons of his batch were in the zone of consideration and therefore their recommendation rolls were also collected by the office of the second respondent.



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2.3. In the meanwhile, on February 14 certain Inspectors of Police who were juniors to the petitioner as well as to his batch and those who were recruited as Sub Inspectors of Police on 02.06.1997 from the rank of Pcs/HCs against 20% quota *vide* notification dated 18.10.1995 filed W.P.Nos.2727, 3701, 7142, 8944, 24500 and 24576 of 2014 before this Court claiming seniority over and above the petitioner's batches and also to quash the second respondents memorandum referred above. The said writ petitions were filed without arraying any of the persons of the petitioner's batch mates as respondents and this Court by on 03.02.2014 ordered status quo. Thereafter counter affidavit was filed by the Government/respondents therein on 10.03.2014 however, status quo order continued to prevail. In the meanwhile the government in its letter dated 15.04.2014 bearing (MS). No.287, Home (Pol.2) Department has arrived at the estimate of vacancies for the posts of Deputy Superintendent of Police (Category – I) to be filled by recruitment by transfer for the year 2013-2014 as 141 and approved the same.

2.4. During August 2014 the petitioner and his batch mates came to know about the pendency of the writ petitions referred above as they



were stalling the promotions of the petitioner and his batchmates. The petitioner and some others have filed impleading petition in the said writ petition and also a petition to vacate the stay. Impleading petition were ordered on 27.08.2014 and on the very same day additional affidavit was filed by the Government/respondents therein and sought for modification of the status quo order and to permit the Government to draw the panel for the year 2013-2014. In the said affidavit it is *inter alia* stated that the Government has sanctioned 141 posts of Deputy Superintendent of Police (Category – I) by transfer of service in the panel year 2013-2014 and that 57 persons who were appointed on 01.03.1996 *vide* notification dated 01.01.1994 were in the zone of consideration. It is further mentioned that, the Government may be allowed to consider the case of only those officers senior to those selected in pursuance to the notification dated 01.01.1994 for promotion and that the promotion of those recruited *vide* notification dated 01.01.1994 will be done only after the disposal of the pending writ petition. Accordingly, the status quo orders passed was modified by an order dated 27.08.2014.

2.5. After modification of the orders the writ petitions were taken up for final hearing and ultimately they were dismissed by an order dated



24.11.2014. On receipt of the copy of the order dated 24.11.2014 the petitioner and his batch mates who were in the zone of consideration for promotion to the post of Deputy Superintendent of Police (Category – I) in the panel 2013-2014 submitted representation dated 28.11.2014 to the Government to include them in the panel which was under preparation stating that the modification order dated 27.08.2014 earlier issued by this Court was subsequently nullified by its final judgment referred above. Though, writ appeals were preferred writ appeals were in W.A.Nos.1599 and 1600 of 2014 by the aggrieved parties they were not admitted and were dismissed on 11.03.2015.

2.6. In the meanwhile, the first respondent issued G.O.Ms.No.907, Home (Pol.2) Department dated 05.12.2014 quoting earlier interim orders of this Court dated 27.08.2014 and published a temporary panel (partial manner) containing only 98 persons for promotion to the post of DSP Category – I without including the petitioner and 43 eligible persons though, total admitted vacancies were 141. As on the date of publishing of the temporary panel (partial manner) the writ petitions were dismissed. However, reference was made in respect of the orders dated 24.11.2014 which was nullified by the final order dated 24.11.2014.



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2.7. A detailed representation was submitted on 06.12.2014 to the first and second respondents requesting their intervention to include the petitioner and his batch mates and also to draw a full panel for 141 vacancies which were already sanctioned by the Government. Similarly placed persons to that of the petitioner have also given representation on 18.03.2015 to the respondent after dismissal of the writ petitions referred above to draw a full panel including their names and to promote them. However, the respondents without considering the representation of the petitioner and his batch mates promoted 96 persons *vide* police note No.16, Home (Pol.2) Department dated 27.12.2014. And though, vacancies were available the respondents have not drawn full panel therefore, sought for the relief as stated in the opening paragraph.

3. The respondents have filed counter affidavit stating that the Government in letter (Ms) No.287, Home (Pol.2) Department dated 15.04.2014 has approved the estimate of vacancies for the post of Deputy Superintendent of Police (Category – I) to be filled up by direct recruitment and by recruitment by transfer on promotion for the panel year 2013-2014



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3.1. The crucial date for the panel year 2013-2014 is 01.06.2013 and the panel period started from 11.11.2013 and completes on 10.11.2014. The recommendation rolls for the drawl of panel of Inspectors of Police (Taluk) fit for appointment as Deputy Superintendent of Police (Category – I) in respect of Inspectors of Police (Taluk) whose names were included in the 'C' list of Sub Inspectors of Police fit for promotion as Inspectors of Police (taluk) up to the year 2004-2005 have been called for from the subordinate unit officers.

3.2. As per Government letter dated 14.08.1995, 270 vacancies were notified by Government on 18.10.1995 for departmental in service candidates and 267 persons were selected from the in service candidates. This Court in W.P.Nos.2727,7142,3701 and 8944 of 2014 has passed status quo orders on 26.03.2014. Additional counter affidavit was filed by the Government. Considering the same, this Court has passed the following orders:

“Hence the status-quo passed on 26.3.2014, is modified to the extent that the respondents are permitted to consider the candidates, who were selected prior to the



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notification dated 1.01.1994 and the respondents' undertaking made in paragraphs 10 and 12 of the additional affidavit filed in W.P.2727 of 2014 is recorded”

3.3. The Police Establishment Board met on 13.09.2014 has considered the names of the Inspectors of Police who were seniors of Sub Inspectors of Police appointed as per the notification dated 01.01.1994 and necessary proposal were sent to the Government on 26.09.2014 for approval of temporary panel of Inspectors of Police (Taluk) fit for appointment as Deputy Superintendents of Police (Category – I) for the year 2013-2014. The Government has also processed the panel and the panel for the year 2013-2014 was also completed on 10.11.2014. The Government thereby, as per the G.O.Ms.No.907, Home (Pol.2) Department dated 05.12.2014 has approved the list of 98 Inspectors of Police who were appointed prior to 01.01.1994 and included their names in the temporary panel of Inspectors of Police fit for promotion as Deputy Superintendent of Police (Category – I) for the year 2013-2014 in actual vacancies, thereby, it is not possible to include the names of the petitioner and his batch mates in 2013-2014 panel after the orders of this Court dated 24.11.2014 as there were no actual vacancies for giving them



promotion.

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3.4. It is further mentioned in the affidavit that as per guidelines in G.O.No.368, Personnel and Administrative Department dated 18.10.1993, the Government has approved temporary panel only in respect of actual vacancies which were really arise in the panel period of 2013-2014. It is also mentioned that since the panel year 2013-2014 ended on 10.11.2014 and that since panel for the year 2014-2015 commenced on 11.11.2014 it is not feasible to draw another panel for the year 2013-2014 by including the names of the petitioner and his batch mates.

3.5. It is further submitted that as the litigation of fixing the seniority of the petitioner and his batch mates of departmental candidates was sub judice before this Court in W.A.Nos. 1599 and 1600 of 2014 till the orders dated 11.03.2015 it was not possible to draw the panel for the year 2013-2014 again by including the names of the petitioner and his batch mates and further, there were no vacancies available for the post of Deputy Superintendent of Police (Category – I) as contended by the petitioner and thereby, there was no violation of constitutional rights. It is mentioned further that the 141 estimated vacancies inclusive of leave



vacancy, reserve vacancy and unexpected contingent vacancies as per the guide listed issued in G.O.MS.No.368, Personnel and Administrative Department dated 18.10.1993 and that the Government has approved temporary panel only for the actual number of vacancies which really arose during the panel period of 2013-2014 in G.O.Ms.No.907, Home (Pol.2) Department dated 05.12.2014 therefore, sought for dismissal of this writ petition.

4. The respondents have filed additional counter affidavit and the gist of the same is as under:

4.1. The crucial date for the panel of Inspectors of Police (taluk) fit for appointment by recruitment by transfer as DSP for the year 2013-2014 is 01.06.2013 and the panel period started from 11.11.2013 and completed on 10.11.2014. The Government in letter (MS.)No.287, Home (Police.2) Department, dated 15.04.2014 has approved the estimate of vacancies for the post of DSP to be filled up by recruitment by transfer for the panel year 2013-2014 is 141 including leave vacancies, reserve vacancies and unexpected contingency vacancies. As per Rule 4 (a) of the General Rules for the Tamil Nadu State and Subordinate Services, when the number of



vacancies are ranging 81 and above, the number of qualified candidates to be considered for promotion is 150% of the actual number of estimate of vacancies and for preparing promotion panel to fill up vacancies, the names of the qualified candidates in the seniority list could be considered in the following proportions and the same is extracted hereunder:

<i>No. of vacancies</i>	<i>No. of qualified candidates to be considered</i>
01-20	200% of the actual number of vacancy
21-80	175% of the actual number estimated vacancy subject to a minimum of 40.
80 and above	150% of the actual number estimated vacancy subject to a minimum of 140

4.2. Accordingly, 211 cases have to be considered as per the above ratio. If the qualified candidates are found not suitable for the post, the names of the next qualified candidates to the extent necessary shall be considered. To proceed with the drawl of the DSP panel for the year 2013-2014, the details of the batches of Inspectors of Police who are promoted to Inspections of Police upto the year 2004-2005 have been called for and the details are extracted hereunder:

<i>Sl.No.</i>	<i>Batch</i>	<i>Persons to be considered</i>
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1	1979 batch	1
2	1981 batch (Women direct SI)	2
3	1987 batch	236
4	1981 batch (Women HCs) promoted as SI during the year 1991	6
5	Rank Promotes (Promoted as SI 6 During the year 1991)	6
6	1996 batch (Appointed as SI as per notification dated 01.01.1994)	57

4.3. In the meantime, the Sub Inspectors of Police under 20% departmental quota have filed W.P.No.2727 of 2014 and etc., and this Court has directed to maintain status quo in respect of the seniority. As per Rule 4 (a) of the General Rules for Tamil Nadu State and Subordinate Services, 211 eligible cases have to be considered for the panel but only 251 Inspectors of Police who were appointed prior to 01.01.1994. The additional affidavit was filed before this Court giving an undertaking that only those seniors selected in pursuance of the notification dated 01.01.1994 and later notifications will be considered and promoted as DSP for the year 2013-2014 according to their seniority. This Court as per order dated 27.08.2014 has recorded the undertaking and modified the status quo order passed on 26.03.2014 to the extent that the respondents are permitted to consider the candidates who are selected prior to the notification dated 01.01.1994. Accordingly, proposal was sent to the



Government for drawl of temporary panel of Inspectors of Police (Taluk) fit for appointment by recruitment by transfer as DSP (Category – I) for the year 2013-2014 and finally, G.O.Ms.No.907, Home (Police.2) Department was issued. In the meanwhile W.P.No.2727 of 2014 and ors were dismissed on 24.11.2014.

4.4. Before the approval of temporary panel of Inspectors of Police (Taluk) for appointment to the post of DSP for the year 2013-2014 the panel period expired on 10.11.2014. However, the vacancies which are likely to arrive after the panel year should not be considered. Such vacancies should be reckoned only in the next year panel year. The preparation of DSP panel for the year 2013-2014 was done based on the seniority list of Inspectors of Police as on 01.06.2013 in which the petitioner's name was in Sl.No.251. Since the actual number of vacancies available for promotion to the rank of DSP after reserving for those DSPs who are under suspension, at that time was only 100, the senior most eligible Inspectors were included in G.O.Ms.No.907, Home (Police.2) Department, dated 05.12.2014 and they were promoted as DSPs. It is further mentioned in the affidavit that the petitioner who is junior to those 98 persons could not have been included in the promotion panel for the



year 2013-2014 for want of vacancy. However, in the panel year 2014-2015 which was approved on 28.12.2015 the name of the petitioner was included at Sl.No.26 and he was promoted as DSP on 13.01.2016. Similarly, those who are promoted as DSPs in the panel and also those who are promoted as DSP for the panel year 2014-2015 have been included in the panel of DSP for promotion to the post of ADS.

4.5. Therefore it is finally mentioned in the affidavit that the petitioner who is at Sl.No.251 as on 01.06.2013 could not have reached the DSP panel for the year 2013-2014 considering the actual number of vacancies as only 98 and thereby no prejudice is caused to the petitioner. On the otherhand, if the prayer is allowed and if the respondents are required to re draw the DSP panel for the year 2013-2014, it will cause huge hardship to the administration as much time has been passed and several of those individuals were either retired from service or promoted to higher ranks.

5. In response to the additional counter affidavit reply affidavit was filed by the petitioner stating that the petitioner and two others have



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already filed W.P.No.34108 of 2014 with similar prayer and relief which is pending and few more persons of their batch have been specifically targeted and purposefully detached from the 2013-2014 panel of Inspectors fit for promotion as DSPs and pushed down to the next year panel.

6. The other points mentioned in the affidavit are not directly connected to the issue before this Court and therefore, they are not relevant to mention here.

7. Heard both sides and perused the materials available on record.

8. The petitioner and his batch mates who were recruited as Sub Inspectors of Police (Taluk) as per the notification dated 01.04.1994 and later were promoted as Inspectors of Police (Taluk) on 04.04.2005. In the meanwhile, certain Inspectors of Police who were juniors of the petitioner as well as to his batch mates who were recruited as Sub Inspectors of Police on 02.06.1997 from the rank of Pcs/HCs have filed W.P.Nos.2727 and batches., wherein status quo was granted by this Court on 26.03.2024.



However, this Court has modified the said orders on 27.08.2014 to the extent that the respondents were permitted to consider the candidates who were selected prior to notification dated 01.01.1994 and also that the undertaking of the respondent to that extend made in paragraph 10 to 12 of the affidavit in W.P.Nos.2727 and batches was also recorded. Subsequently, final hearing was taken up and all the writ petitions were dismissed.

9. The petitioner and his batch mates have submitted representations dated 28.11.2014 to include them in the panel under preparation stating that the modified orders dated 27.08.2014 was nullified on the dismissal of the writ petition on 27.11.2014, the Government however, ignored the representation and issued G.O.Ms.No.907, Home (Pol.2) Department dated 05.12.2014 quoting the earlier impugned order dated 27.08.2014 and published temporary panel containing the names of only 98 persons without including 43 eligible persons, as the total number of vacancies estimated was 141. The petitioner and his batch mates were deprived for the panel year 2013-2014 therefore, injustice was committed. It is finally submitted that to include the petitioner and his batch in the panel of Inspectors for the post of DSP for appointment for the year 2013-



2014 and to issue consequential orders.

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10. The learned Additional Advocate General on the other hand submitted that the DSP panel for the year 2013-2014 was prepared basing on the seniority list of Inspectors of Police as on 01.06.2013 in which the petitioner's name was in Sl.No.251. Since the actual number of vacancies available for promotion after reserving the posts for DSPs who are under suspension were only 100 thereby, senior most 98 eligible persons were included as per G.O.907 *ibid*. Therefore, it is submitted that even after dismissal of W.P.Nos.2727 of 2014 and batches, the petitioner who is junior to 98 persons and his batchmates whose names were included in G.O.907, *ibid* could not have been included in the promotion panel for the year 2013-2014 for the want of vacancies and submitted further that in case if the writ petition is allowed the respondents have to re draw the DSP panel for the year 2013-2014, it will cause huge hardship to the administration as much time has been passed and several of those individuals were either retired from service or promoted to higher ranks and sought for dismissal of this writ petition.

11. The reason for non inclusion of the petitioner and his batchmates in the panel for promotion to the post of DSP is the status quo



granted by this Court on 26.03.2015 in W.P.No.27271 of 2014 and batch file by the Sub-Inspectors of Police remitted under 20% departmental quota, questioning the seniority. On account of staus quo orders passed by this Court the promotion of the petitioner and his batchmates was affected. Further, the Government has given undertaking that only those seniors selected as per notification dated 01.01.1994 and later notification will be considered and promoted as DSPs for the year 2013-2014 according to the seniority. However, this Court having recorded the undertaking by the Government on 27.08.2014 has modified the staus quo orders granted on 26.03.2014, permitting the respondents to consider the candidates who were selected prior to notification dated 01.01.1994. The orders passed by this Court on 27.08.2014 are as under:

“Hence the status-quo passed on 26.3.2014, is modified to the extent that the respondents are permitted to consider the candidates, who were selected prior to the notification dated 1.01.1994 and the respondents’ undertaking made in paragraphs 10 and 12 of the additional affidavit filed in W.P.2727 of 2014 is recorded”.

12. Subsequently, W.P.No.2727 of 2014 and batch were taken up



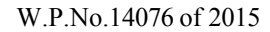
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for hearing and were dismissed on 24.11.2014. Appeal preferred by the petitioner there in W.A.Nos.1599 and 1600 of 2014 were also dismissed.

Once writ petitions and writ appeals were dismissed, the status quo orders dated 26.03.2014 and modified order dated 27.05.2014 becomes non est, thereby, the respondents could have prepared the panel in respect of all the notified vacancies. The petitioner and his batch mates have submitted a representation dated 28.11.2014 by enclosing a copy of dismissal of writ petition in W.P.No.2727 of 2014 and batch and requested to include their names for the promotion of DSPs. By that time time since the respondent has not issued the Government Orders giving promotions as DSPs, certainly the names of the petitioner and his batch mates should have been considered in respect of all the notified vacancies.

13. However, the respondent has issued G.O.No.907 dated 05.12.2014, quoting the interim orders (which were not in existence) and published temporary panel only for 98 persons though the number of vacancies notified are 141. Publishing of temporary panel with only 98 persons is irregular.

14. According, to the learned Additional Advocate General even if



15. Further, there no no clarity as to how the panel is prepared
98 candidates only leaving a balance of 43 vacancies. It is very
ult to visualize as to whether the petitioner and his batch would not
into the zone of consideration. If at all, in case of re drawl of the
for the year 2013-2014, if the petitioner or any one his batch mates
etting the benefits, certainly injustice caused to them will be rectified.



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if fresh panel is drawn for the post of DSP for the year 2013-2014. In view of the above, this Court is of the opinion that the mistake committed apparent on the face has to be rectified.

16. Considering the discussions above and on perusal of materials on record, this writ petition is allowed directing the respondents to consider the name of the petitioner and his batch in the panel for the year 2013-2014 for the post of DSP (Category – I) in the 43 vacancies as per the undertaking given in the additional affidavit filed by the respondent in W.P.No.2721 of 2014 and 3701 of 2014 and to issue consequential proceedings as quickly as possible not later than twelve weeks from the date of receipt of a copy of this order. No costs.

24.07.2024

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Index : Yes/No
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Citation : Yes/No



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To

1. The Principal Secretary to Government,
Home (Police) Department,
Fort St.George,
Chennai – 600 009.
2. The Director General of Police,
Tamil Nadu,
Chennai – 600 004.

DR. D.NAGARJUN,J.

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Pre-Delivery order made
in
W.P.No.14076 of 2015

24.07.2024