



W.P.No.18284 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.No.18284 of 2011

Manokaran

...Petitioner

Vs

1.The Commissioner of Police,
Coimbatore City,
Coimbatore.

2.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai – 4.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the respondents 1 and 2 in connection with the impugned order passed by the 1st respondent in C.No.A2/ 53882/2010 dated 5.8.2010 and by the 2nd respondent in RC No.105420/ API(1)/ 2011 dated 12.6.2011 and quash the same and direct the respondents to treat the period of out of employment as duty period and further direct the respondents to upgrade the petitioner as Gr-1 PC w.e.f. 25.7.95, as Head Constable w.e.f. 25.7.2000 and further upgrade him as Special Sub-Inspector w.e.f. 1.1.10 with all consequential service and monetary benefits.



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For Petitioner : Mr.M.Muthappan

For Respondents : Mr.V.Ramesh

ORDER

This Writ petition has been filed for quashing the impugned order passed by the 1st respondent in C.No.A2/ 53882/2010 dated 05.08.2010 and by the 2nd respondent in RC No.105420/ API(1)/ 2011 dated 12.06.2011 and for directing the respondents to treat the period of out of employment as duty period and to upgrade the petitioner as Grade-I Police Constable with effect from 25.07.1995, as Head Constable with effect from 25.07.2000 and further upgrade him as Special Sub-Inspector with effect from 01.01.2010 with all consequential service and monetary benefits.

2.It is the submission of the learned counsel for the petitioner that petitioner was falsely implicated in a criminal case in connection with the escape of an under trial prisoner, while he was in police custody. Petitioner was placed under suspension on 16.10.1997. A criminal case was registered against the petitioner and that ended in acquittal.



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Departmental proceedings was initiated against the petitioner in P.R.No.17 of 1994 and he was awarded a punishment of removal from service by Director General of Police, Head quarters, Coimbatore on 27.09.1994. Petitioner filed an Appeal to the Additional Director General of Police (L&O). After considering the materials, the Additional Directorate General (L&O) modified the punishment of removal from service into one of reduction in pay by two stages for one year with cumulative effect by his proceedings in C.No.6700/API(2)/95 dated 11.11.1995. Petitioner was reinstated into service and reported to duty on 01.09.1995. Petitioner filed a mercy petition to the Director General of Police against the modified punishment. The Director General of Police after considering the merits of the case cancelled the punishment imposed on him in his proceedings in Rc.No.27082/AP.I(1)/2003 dated 09.06.2003. His period of out of employment was also treated as eligible leave including EOL to the extent necessary, compulsory waiting and joining time. In view of the cancellation of that punishment, the period of out of employment has to be considered as duty period for all purposes.



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3.It is further submitted by the learned counsel for the petitioner that petitioner made a representation dated 23.07.2010 stating that, his batchmates were promoted as Grade-I Police Constable with effect from 22.07.1995, as Head Constable with effect from 22.07.2000 and Special Sub-Inspector with effect from 01.01.2010. The 1st respondent rejected the petitioner's representation stating that he has not completed 10 years of service on account of his out of employment with effect from 02.04.1994 to 15.03.1995 for 348 days.

4.It is further submitted that petitioner suffered a punishment of blackmark imposed by Assistant Commissioner of Police, AR, Coimbatore dated 20.05.1997 in PR.No.14/96, which is a bar for considering for upgradation. Petitioner was granted upgradation as Grade-1 Police Constable only on 28.09.1999 and Head Constable on 28.09.2004. Petitioner filed an Appeal to the 2nd respondent on 21.09.2010. 2nd respondent rejected the petitioner's Appeal by an order dated 12.06.2011. In the said circumstances, the Writ Petition is filed for quashing the impugned order passed by the 1st respondent in C.No.A2/53882/2010 dated 05.08.2010 and by the 2nd respondent in RC



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No.105420/ API(1)/ 2011 dated 12.06.2011 and for directing the respondents to treat the period of out of employment as duty period and to upgrade the petitioner as Grade-I Police Constable with effect from 25.07.1995, as Head Constable with effect from 25.07.2000 and further upgrade him as Special Sub-Inspector with effect from 01.01.2010 with all consequential service and monetary benefits.

5.In response, learned counsel for the respondents submitted that though the petitioner's punishment was modified, later cancelled, petitioner was not exonerated from the charges. Therefore, his request to revise the out of employment period as employment period cannot be considered. Consequently, his claim for upgradation and promotion cannot be considered as well.

6.Considered the rival submissions and perused the records.

7.From the records made available and submissions of the learned counsel appearing for the parties, it is seen that petitioner was imposed punishment of removal from service, for the charge under Rule 3(b) in



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PR.No.17/94. On a petition dated 26.09.1995 filed by the petitioner, his punishment of removal from service was modified to penalty of reduction in pay by two stages for one year with cumulative effect. For a better understanding, the proceedings in C.No.6700/API(2)/95 dated 16.03.1995 dated 11.11.1995 is extracted herein,

“Thiru R.Manoharan of LNK 418 of Coimbatore City who was removed from service in P.R.No.17/94 under Section 3(b) of TNPSS (D&A) Rules 1989 by the Commissioner of Police Coimbatore City has been reinstated into service with the modified penalty of reduction in pay by 2 stages for one year with cumulative effect.

2. Since he was not fully exonerated of the charge and reinstated into service only with the Modified penalty. Suspension period/out of employment period are ordered to be treated as follows.

- Eligible leave including

*From 16.10.93 to 28.9.94 - E.O.L. to the extent
necessary*

From 29.9.94 to 15.3.95 -

From 16.3.95 to 29.4.95 - Compulsory Wait.

*From 30.4.95 to 1.5.95 - Joining time
- Joined duty.*



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8. Not satisfied with the modification, petitioner filed mercy petition before the Director General of Police. The Director General of Police in his proceedings in RC.No.27082/AP.I(1)/2003 dated 09.06.2023 after thoroughly examining the matter, took a lenient view of the matter and ordered for cancellation of punishment of reduction in pay by two stages for one year with cumulative effect.

9. Consequent to this order, cancellation of punishment order was passed by the Commissioner of Police, Coimbatore City in C.No.F3/AP.1/2003 dated 31.07.2003, which reads as follows,

"CANCELLATION OF PUNISHMENT ORDER ISSUED.

Gr.1.PC.418 R.Manoharan of B-1 Traffic Police Station Coimbatore City was dealt with on a charge U/r 3(b) and awarded the Punishment of 'Removal from Service' by the Dy. Commissioner of Police, (Headquarters) Coimbatore city on 29.9.94 in PR.17/94. His appeal petition has rejected by the Commissioner of Police Coimbatore city in Proceedings No.F3/AP.41/94, dated. 22.12.94. Again he preferred a Review Petition in which the Punishment of "Removed from Service" was



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modified in to that of reduction in pay by two stages for one year with cumulative effect by Addl. Director General of Police (L&O) Chennai in Proceedings No.6700/AP 1(2)/95, dt.16.3.95.

2) His mercy petition, was considered and the punishment of "Reduction in pay by two stages for one year with cumulative effect" is cancelled by the Director General of Police, Chennai in his Proceedings No.27082/AP 1(1)/2003, dt.09.06.2003.

3) Consequent on the cancellation of the punishment his arrears of pay and allowances if any will be drawn and paid separately."

10.In fact, the punishment of removal from service was modified as reduction reduction in pay by two stages for one year with cumulative effect and that was also subsequently cancelled and petitioner was paid the arrears of pay and allowances, if any during the period of his non-employment.

11.The order of Director General of Police in D.Dis.No.6700/A.P.I(2)/95 dated 11.11.1995 shows that petitioner's period of absence from 16.10.1993 to 28.09.1994, from 29.09.1994 to



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15.03.1995 were treated as eligible leave including E.O.L. to the extent necessary, from 16.03.1995 to 29.04.1995 was treated as compulsory wait period and from 30.04.1995 to 01.05.1995 was treated as joining period. Thus, effectively petitioner's absence, that is out of employment period, was regularized as above. He was also paid pay and allowances for this period. Therefore, it is not open to the respondents to contend that petitioner was not exonerated of the charges, but only his punishment was cancelled and therefore, his period of absence cannot be considered for upgradation and promotion.

12. In this view of the matter, this Court set aside the impugned orders in C.No.A2/ 53882/2010 dated 5.8.2010 passed by the 1st respondent and RC.No.105420/ API(1)/ 2011 dated 12.6.2011 passed by the 2nd respondent and directs the respondents to consider the petitioner's representation dated 21.09.2010 favourably i.e., his out of employment period as duty period and upgrade the petitioner as Grade-1 Police Constable with effect from 25.07.1995, as Head Constable with effect from 25.07.2000 and further upgrade him as Special Sub-Inspector with effect from 01.01.2010 with all consequential service and monetary



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benefits as per rules.

13.With the above direction, this Writ Petition stands allowed. No costs.

03.01.2024

Index:Yes/No
Speaking order/Non-speaking order
gd

To

- 1.The Commissioner of Police,
Coimbatore City,
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Mylapore, Chennai – 4.

G.CHANDRASEKHARAN, J.



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