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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.Nos.1694, 13632 of 2010 and 18686 of 2011
and
M.P.Nos.1, 1, 1, 1, 2, 2, 3, 4, 5 of 2010 and 1 and 2 of 2011

W.P.No.1694 of 2010

1.J.Jayakaran
2.A.Natarajan
3.K.Baskaran
4.S.Murugaraj
5.B.Ettiappan
6.M.Purusothaman
7.B.Narasimhan
8.M.Srinivasan
9.A.Amaldoss
10. A.Thirumalai Kumar
11. A.Julius Christopher
12. S.Johnson
13. M.Vigneswaran
14. R.Hitler
15. C.Kodi Selvam ... Petitioners

Vs.

1. The State of Tamil Nadu,
   Represented by its Secretary to Government,
   Home Department, Fort St. George,
   Chennai – 9.

2. The Director General of Police,
   Kamarajar Salai, Mylapore,

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Chennai – 4.

3. The Commissioner of Police,
Chennai City Police,
Chennai – 600 008.

4. Thiru. S.Megakumar

5. G.Maanavalan

6. N.Anandan

7. A.Rathinam

8. P.Rajan

9. M.Petchimuthu

10. T.Krishnaraj

11. S.Sorimuthu ... Respondents
[R5 to R11 impleaded vide order dated 27.06.2010 passed in M.P.No.4 of 2010]

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the proceedings of the first respondent in G.O (Ms) No.349, Home (Police-3) Department, dated 14.03.2008 and the proceedings of the third respondent passed in RC.No.Estt.V(1)/ 88/27236/2008/CPO No.1231/2008 dated 11.04.2008 and the proceedings of the second respondent passed in RC.No.100352/NGB.V(2)/ 2008 dated 10.10.2008 and quash the same.

For Petitioners : Mr.R.K.Sathishkumar
for Mr.V.Ravikumar

For R1 to R3 : Mr.P.Kumaresan,
Additional Advocate General
assisted by Mr.Vadivelu Deenadayalan

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Additional Government Pleader

For R4 : Mr.L.Chandrakumar

For R5 to R11 : Mr.R.Prem Narayanan

W.P.No.13632 of 2010

1. J.Jayakaran
2. A.Natarajan
3. K.Baskaran
4. S.Murugaraj
5. B.Ettiappan
6. M.Purusothaman
7. B.Narasimhan
8. M.Srinivasan
9. A.Amaldoss
10. A.Thirumalai Kumar
11. A.Julius Christopher
12. S.Johnson
13. M.Vigneswaran
14. R.Hitler
15. C.Kodi Selvam ... Petitioners

Vs.

1. The State of Tamil Nadu,
   Represented by its Secretary to Government,
   Home Department, Fort St. George,
   Chennai – 9.

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

3. The Commissioner of Police,
   Chennai City Police,
   Chennai – 600 008.

4. Thiru. S.Megakumar ... Respondents

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Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the Proceedings of the first respondent in Home (Police-2) Department Police Note No.13 dated 19.06.2010 and quash the same in so far as the fourth respondent is concerned.

For Petitioners : Mr.R.K.Sathishkumar
for Mr.V.Ravikumar

For R1 to R3 : Mr.P.Kumaresan,
Additional Advocate General
assisted by Mr.Vadivelu Deenadayalan
Additional Government Pleader

For R4 : Mr.L.Chandrakumar

W.P.No.18686 of 2011

1. K.Baskaran
2. A.Natarajan
3. J.Jayakaran
4. S.Murugaraj
5. B.Ettiappan
6. M.Purusothaman
7. B.Narasimhan
8. M.Srinivasan
9. A.Amaldoss
10. A.Thirumalai Kumar
11. A.Julius Christopher
12. S.Johnson
13. M.Vigneswaran
14. R.Hitler
15. C.Kodi Selvam ... Petitioners

Vs.

1. The State of Tamil Nadu,
   Represented by its Secretary to Government,

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Home Department, Fort St. George,
Chennai – 9.

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

3. The Commissioner of Police,
Chennai City Police, Chennai – 600 008.

4. G.Maanavalan

5. N.Anandan

6. A.Rathinam

7. P.Rajan

8. M.Petchimuthu

9. T.Krishnaraj

10. S.Sorimuthu

11. A.Jayabalan ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the proceedings of the first respondent issued in G.O.Ms.82 Home (Police-3) Department dated 03.02.2011 and quash the same with the consequential direction, directing the respondents 1 to 3, not to relax the Rule 3(d) of Special Rules for Police Subordinate Rules in favour of any candidates, as it was done in favour of contesting respondents, with effect from the year 1991, based on mere appearance in the Range Promotion Board to enable them for inclusion in the C List of Head Constables (Armed

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Reserve), for the year 1991-1992.

For Petitioners : Mr.R.K.Sathishkumar
for Mr.V.Ravikumar
For R1 to R3 : Mr.P.Kumaresan,
Additional Advocate General
assisted by Mr.Vadivelu Deenadayalan
Additional Government Pleader
For R5, R7 to R10 : Mr.R.Prem Narayanan

COMMON ORDER

The issue that arise for consideration in these three writ petitions is identical in nature and hence, they are taken up for consideration together and are being disposed of by this common order.

2. Reference is made to the respective parties by taking into consideration the array of cause-title in W.P.No.1694 of 2010 for the sake of convenience.

3. All the petitioners in these three Writ Petitions were directly recruited as 'Sub-Inspector of Police' in the Tamil Nadu Police Sub-ordinate Services in the year 1997 and thereafter, they were further promoted to the post of 'Inspector of Police' during the years 2004-2006. The Respondent No.4 herein, was initially appointed as 'Constable, Grade-II' in the year 1981 in Chennai City Armed

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Reserve and thereafter, promoted to the post of 'Head Constable' in the year 1984. Subsequently, he was also temporarily promoted as 'Sub-Inspector of Police' with effect from 01.01.1998 and then reverted from the said post as 'Head Constable' and again he was promoted to the post of 'Reserved Sub-Inspector' on 19.06.2001 on temporary basis. The method of appointment and promotion to the post of 'Sub-Inspector of Police' or 'Sub-Inspector (AR)' is governed by Rule 3(d) of the Special Rules for Tamil Nadu Police Subordinate Service Rules (hereinafter referred to as 'the Special Rules' for short). It is only in terms of the said Rule 3(d) of the Special Rules, the case of the 'Head Constables' can be considered for promotion to the post of 'Sub-Inspector of Police' in their respective stream. When the respondents intended to conduct the Range Promotion Board for considering the cases of the 'Head Constables', who are eligible for consideration for promotion, by issuing a Memorandum dated 21.02.2003, the Respondent No.4 herein, filed O.A.No.977 of 2003, claiming for regularization of his services in the post of 'Sub-Inspector of Police', on the ground that he has been working as 'Sub-Inspector of Police' for quiet some time and therefore, he should not be required to undergo the process of Range Promotion Board. The said Original Application was considered along with several other batch of matters by the then Tamil Nadu Administrative Tribunal, Chennai and was dismissed by a common order dated 01.06.2004. Aggrieved by the said common order passed in O.A.No.968 of 2003

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and batch, several applicants have approached this Court by filing a batch of Writ Petitions vide W.P.No.16294 of 2004 and batch and the said writ petitions were also dismissed by this Court by an order dated 21.04.2006. However, an observation was made in the said order stating that the Government may consider exercising its power under Rule 39 of the Special Rules in Paragraph No.11 of the said order. The said paragraph No.11 reads as under:-

> *"11. In such view of the matter, while not interfering with the order of the Tribunal, this Court feels that the petitioners may have a case on enquiry for consideration of their claim as has been done on the earlier occasional when more than 600 Head Constables were regularized as Sub-inspector of Police. The Government has power under Rule 39 of the Rules to relax the condition. Therefore, it is appropriate to observe that the Government should consider whether its power under Rule 39 of the Rules should be exercised to extend the benefit of the regularization of temporarily promoted Sub-inspector of Police, the petitioners herein, taking into consideration all relevant facts and circumstances as narrated above."*

4. The Respondent No.4 herein also filed another writ petition vide W.P.No.16765 of 2004 and the said writ petition was also disposed of by a separate order dated 21.04.2006 on the same lines as the above batch of writ petitions. It is pursuant to the said order passed by this Court, the Government issued G.O (Ms) No.263, Home (Police-3) Department, dated 27.04.2007, rejecting the request of the Respondent No.4, and refusing to exercise its powers

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under Rule 39 relaxing Rule 3(d) of the Special Rules. However, thereafter once again the Government issued G.O (Ms) No.349, Home (Prisons-3) Department dated 14.03.2008, purportedly pursuant to the order passed in W.P.No.16765 of 2004 dated 21.06.2006 and relaxed the Rule 3(d) of the Special Rules relating to the selection made by the Range Promotion Board in favour of Respondent No.4 to enable him for inclusion of his name in the 'C-List' of 'Head Constable (AR)' fit for promotion as 'Sub-Inspector of Police (AR)' for the years 1991-1992 for the Chennai Police at the appropriate place and promoted the Respondent No.4 notionally as 'Sub-Inspector of Police (AR)' on par with his immediate junior with monetary benefits from the date of actual promotion.

5. It is aggrieved by the said G.O (Ms) No.349 dated 14.03.2008, the petitioners filed W.P.No.1694 of 2010, contending that the petitioners are the persons who were appointed as 'Sub-Inspector of Police (AR)' in the year 1997 and by virtue of the impugned Government Order, the Respondent No.4 herein is conferred with the benefit of promotion from the year 1991-1992, thereby adversely affecting the interest of the petitioners. The Respondents 5 to 11 herein got themselves impleaded as party respondents, as they are similarly placed like the Respondent No.4 and secured the similar benefit on par with the Respondent No.4.

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6. When the case of the Respondent No.4 herein was considered for further promotion to the post of the 'Superintendent of Police' and was promoted through proceedings bearing proceedings in Home, (Police-2) Department, Police Note No.13 dated 19.06.2010, the petitioners herein questioned the said proceedings by filing W.P.No.13632 of 2010. When the similar benefit, as was granted in favour of Respondent No.4 in W.P.No.1694 of 2010 was extended in favour of certain others by issuing G.O (Ms) No.82, Home (Police-3) Department, dated 03.02.2011, W.P.No.18686 of 2011 came to be filed questioning the said G.O (Ms) No.82 dated 03.02.2011. The basis for issuing the said G.O (Ms) No.82 dated 03.02.2011 is the Government Order that was issued in favour of the Respondent No.4 in W.P.No.1694 of 2010 vide G.O (Ms) No.349 dated 14.03.2008.

7. In the light of the above factual background, the only issue that needs to be considered in this batch of writ petitions is as to whether the respondent/ State is justified in issuing G.O (Ms) No.349 dated 14.03.2008, relaxing Rule 3(d) of the Special Rules in exercise of its power under Rule 39 of the Special Rules or not.

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8. As already noted above, a learned Division Bench of this Court only expressed its view that the grievance of the Respondent No.4 may be a case for consideration by the Government under Rule 39 of the Special Rules. The said claim of the Respondent No.4 was admittedly considered by the Government and rejected the same by issuing G.O (Ms) No.2D, 263 dated 27.04.2007 on various points. The relevant portion from the said Government Order reads as under:-

> *"5. In the letters second read above the Director General of Police, Chennai has stated that Rule 39 of the Tamil Nadu Police Subordinate Service envisages that the Government can relax, for the reasons to be recorded in writing in the case of any person serving in a Civil capacity or any candidate for appointment to the service, in which the State Government are satisfied that a strict application of rule would cause hardship to the individual concerned. He has also added the following points deserve consideration:-*
>
> *(i)There is no record to show that this writ petitioner had either appeared or came out successful in the promotion test held in 1991. Asxx per Government instructions, the panel for Head Constables to Sub-Inspectors of Police is drawn only for the actual vacancies existing on the crucial date of the panel and*

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no waiting tk list is maintained as contended by the writ petitioner. His averments in this regard are totally baseless.

(ii)When the promotion test was held in 2003, the Writ petitioner and certain others moved the High Court and obtained interim orders to desist from making the writ petitioners to appear for promotion test held at that time and also from reverting them to the lower rank. Therefore, non-zsa participation of the writ petitioner in the promotion test held in 2003 was not the fault of the department.

(iii)The Hon'ble Tribunal had categorically held that promotion tests were held strictly in accordance with rule and there was no reason to interfere.

(iv)The orders of the High Court are to consider invoking rule 39 of the Special Rules of Tamil Nadu Police Subordinate Service in favour of the Writ petitioner and to regularise hisservice as Sub-Inspector of Police (Armed Reserve).

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(v)The writ is acting Temporary Sub- Inspector of Police (Armed Reserve) from 1998. Promotion test for drawal of "C" list of Head Constables (Armed Reserve) fit for promotion as Sub-Inspectors of Police (Armed Reserve) are being held regularly every year from 2000 onwards. It is the fault of the writ petitioner in not having partici- pated inthe promotion test and secure inclusion in the regular panel. There are no specific or special reasons to recommend his case for relaxation of relevant rules invoking the powers vested with the Government under Rule 39 of the Special Rules.

6. The Government have carefully examined the recommendation of the Director General of Police. Accordingly they see that no specific or special reason to relax Rule 39 of the Tamil Nadu Police Subordinate in favour of Thiru. S. Megakumar, Sub-Inspector of Police, security Wing, Chennai for the regularisation of his services (Armed Reserve) with effect from 23.01.98 with all consequential benefits without prejudice to his claim for promotion with retrospective effect from 1991 and accordingly the request of Thiru. S.Megakumar, Sub-Inspector of Police be rejected".”

9. The Government, having issued such an elaborate order by assigning

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various reasons for rejecting the claim of the Respondent No.4, surprisingly issued the impugned Government Order dated 14.03.2008, purportedly on considering the representation said to have been submitted by the Respondent No.4 dated nil. Though, a reference was made to G.O (2D), 263 dated 27.04.2007 in the impugned Government Order, but there was no discussion in the entire body of the Government Order as to why the Government has decided to deviate from its previous view and what made the Government to re-consider the case of the Respondent No.4 for relaxation of the Rules.

10. When the claim of the petitioner was already rejected by assigning detailed reasons, it is not understandable as to how the case of the Respondent No.4 was considered once again by the Respondent/ State. Further, the orders issued in G.O (Ms) No.263 dated 27.04.2007, rejecting the claim of the petitioner is also neither cancelled nor re-called and the said order of rejection was also allowed to stand. Once the power under Rule 39 of the Special Rules was exercised by the State, in the case of Respondent No.4, the power of the Government under Rule 39 in respect of the said person under the same facts and circumstances stood exhausted and there is no power of review conferred on the State in terms of the Special Rules for re-considering the case of the Respondent No.4 once again.

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11. Further, the power under Rule 39 of the Special Rules is required to be exercised by the State sparingly and in special circumstances and for the reasons to be recorded in writing on satisfying that a strict application of Rule would cause hardship to the individuals concerned. But in the instant case, the grievance that is sought to be agitated by the Respondent No.4 is not an individual grievance, but it is the grievance of large number of 'Head Constables', who could not cross the Range Promotion Board either for want of conducting test at the relevant point of time or because of their failure in the test. Hence, it is not a case where a solitary individual is subjected to hardship. On the other hand, there is no satisfaction, as required under Rule 39 is recorded by the State.

12. As already noted above, the power under Rule 39, once exercised in a particular fact situation in respect of the person/ individual, the question of exercising the very same power under the same fact situation in favour of the very same individual once again does not arise.

13. Yet another ground on which the impugned Government Order cannot be sustained is that the earlier order issued by the G.O (Ms) No.263 dated 27.04.2007 was allowed to stand and operate and therefore, it is not open for the respondents to issue another order contrary to its own earlier order. Further, from

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the fact that the Government, having referred to G.O (Ms) No.263 dated 27.04.2007, at the beginning of the Government Order, failed to advert to the said Government Order, while issuing the impugned Government Order and nothing is indicated as to what made the Government to retract from the reasons that were assigned in G.O (Ms) No.263 dated 27.04.2007.

14. Sri.Kumaresan, learned Additional Advocate General appearing for the Respondents 1 to 3 also fairly conceded that the impugned Government Order cannot be sustained for want of sufficient reasons for exercise of powers under Rule 39 of the Special Rules and also for want of re-calling or cancelling the previous Government Order vide G.O (Ms) No.263 dated 27.04.2007.

15. Sri.L.Chandrakumar, learned counsel appearing for the Respondent No.4, though made an attempt to support the impugned Government Order, could not substantiate the same on any sustainable reason.

16. In the light of the above, the impugned Government Order is liable to be declared as one issued for extraneous consideration at the instance of Respondent

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No.4 without there being any legal entitlement for extending such benefit, especially in the context of the fact that the claim of the Respondent No.4 was negatived by the then Tamil Nadu Administrative Tribunal and the same was confirmed by the learned Division Bench of this Court as already noted above.

17. In the light of the above, the impugned Government Order issued in G.O (Ms) No.349 dated 14.03.2008 is liable to be quashed. Consequently, the benefits that are derived by the Respondent No.4 by virtue of the said impugned Government Order, including the promotion that was given to him under the impugned order bearing Home (Police-2) Department Police Note No.13 dated 19.06.2010, which was impugned in W.P.No.13632 of 2010 is also liable to be quashed. As the Government Order vide G.O (Ms) No.82 dated 03.02.2011, which was impugned in W.P.No.18686 of 2011 was issued only based upon the G.O (Ms) No.349 dated 14.03.2008, in the light of the conclusion arrived at by this Court as above, the G.O (Ms) No.82 dated 03.02.2011 is also liable to be quashed.

18. At this stage, it is brought to the notice of this Court that the Respondent No.4 has already retired from service long back. In such view of the matter, it is left open to the Respondents 1 to 3, whether to withdraw all the

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financial benefits that were extended in favour of the Respondent No.4 by virtue of the impugned G.O (Ms) No.349 dated 14.03.2008 or not.

19. Accordingly, the Writ Petitions are allowed and the impugned orders in the respective writ petitions are quashed. There shall be no order as to costs. Consequently, the connected Miscellaneous Petitions, if any shall stand closed.

10.09.2024

skr (1/2)
Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No

To

1. The Secretary to Government of Tamil Nadu,
   Home Department, Fort St. George, Chennai – 9.

2. The Director General of Police,
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3. The Commissioner of Police,
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MUMMINENI SUDHEER KUMAR, J.

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10.09.2024

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