



W.P.No.17644 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 11.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.P.No.17644 of 2010

R. Krishnamoorthy

....Petitioner

Vs.

1. The Commissioner of Police,
Egmore,
Chennai – 600 008.
2. The Director General of Police,
Chennai – 600 004.
3. State of Tamil Nadu
Rep. by its Secretary to Government,
Home Department,
Fort St. George,
Chennai – 600 009.

....Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India, pleaded to issue a Writ of Certiorari Mandamus by calling for the records pertaining to the proceedings of the first respondent made in Na.Ka.No.Pa.P.5(1)/65/3650/2010, quash the same in so far as the petitioner is concerned and direct the respondents to revise the seniority of the petitioner herein in the post held by the petitioner by taking into consideration the date of appointment as the crucial date for further or



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subsequent or any promotion with consequent revision of pay scales with all attended benefits on par with juniors.

For Petitioner : Mr. C. Karthick
for Mr.K.Rajasekaran

For Respondents : Mr.Stalin Abimanyu
Additional Government Pleader

ORDER

The Writ Petition has been filed challenging the order of the first respondent made in Na.Ka.No.Pa.P.5(1)/65/3650/2010, dated 12.02.2010 and for consequential direction to revise the seniority and considering the date of appointment as a crucial date for further or subsequent promotion.

2. It is the case of the petitioner that he was appointed as Police Constable Grade II on 25.05.1988 in Armed Reserve Wing and on 24.09.1991, he was posted to Mounted Branch and he was upgraded as Grade I Police Constable on 25.10.1999 and thereafter as Head Constable on 28.10.2004. Along with the petitioner, several others were recruited and appointed as Police Constable Grade II in May 1988. Some of them were posted to Armed Reserve of Chennai City. Even though, the petitioner was



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initially posted to Armed Reserve Wing, thereafter he was transferred to Mounted Branch. Even though there are different units like Armed Reserve, Motor Transport, Mounted Branch, Local Police etc., only a common seniority is maintained among the police constables and there is no seniority with regard to a particular unit. To prepare 'C' list for promotion, only police constable posted to Armed Reserve Unit were alone called to appear for the test and leaving out the petitioner and others who are posted in the Mounted Branch.

3. In view of all these, it resulted in serious discrimination whereby the batch-mates and juniors of the petitioner were promoted as Head Constables, Sub Inspectors and Inspectors whereas the petitioner even though senior, he was not given promotion based on the seniority. Therefore, two of the police constables who are working in the Motor Transport Wing had approached this Court in W.P.No.25043 of 2002, wherein this Court by order dated 18.09.2007 directed the respondents to consider the date of recruitment as the basis for fixing seniority and to effect promotion. Based on which the petitioner had made a representation seeking similar relief which came to be rejected through the impugned



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order. Aggrieved against the impugned order, the petitioner had preferred the present writ petition.

4. Mr.C.Karthick, learned counsel appearing for the petitioner submitted that there are several units like Armed Reserve, Motor Transport, Mounted Branch, Local Police etc,. However in so far as considering the promotion, only common seniority list based on the date of enlistment alone is to be considered and the impugned order of the respondents stating that the service of the constables only in the concern units will be considered, is erroneous.

5. The learned Counsel for the petitioner further contended that this issue has been gone into and several orders have been passed holding that the date of appointment alone will be taken for purpose of seniority and based on which alone, the promotion has to be effected.

6. Per contra, Mr.Stalin Abimanyu, the learned Additional Government Pleader appearing for the respondents by relying on the counter affidavit particularly in Paragraph Nos. 8 and 9 submitted that



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pursuant to the order passed by the Hon'ble Division Bench of this Court dated 18.09.2007 in W.P.No. 25043 of 2002, the Government have accepted the judgment and issued G.O.Ms.No.1623, Home dated 12.12.2008 whereby the seniority of the persons were re-fixed and further even for certain persons who were eligible to participate, pre-promotional tests were conducted by the Range Promotion Board and based on the willingness of the candidates, they have participated in the test and they have been included in the C-list and they are also subsequently promoted.

7. He further submitted that when the petitioner was provided with such an opportunity, he failed to utilize the same and without the appearance in pre-promotional test conducted by the Range Promotion board, the request for consideration for the promotion of Sub Inspector of Police cannot be considered and therefore rejected, sought for dismissal of the writ petition.

8. Heard the rival submissions and perused the materials available on records.



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9. Admittedly, the petitioner had been appointed as Police Constables Grade II in Armed Reserve Wing on 25.05.1988. Subsequently, he had been posted to the Mounted Branch on 24.09.1991 where he was upgraded as Grade I Police Constables and later as Head constable. It is the claim of the petitioner that irrespective of the candidates working either under the Armed Reserve, Motor Transport, Mounted Branch or local Police, the common seniority list based on the appointment of the candidates alone is to be considered in the matters of promotion, entry of service into the units cannot be separately taken into account for the promotion.

10. When these issues came up for consideration, the Hon'ble Division Bench of this Court by order dated 18.09.2007 in W.P.No.25043 of 2002 directed the respondents to consider the date of recruitment as a basis for fixing seniority and effect promotion and the relevant portion of the judgment is extracted hereunder:-

“4. Though ample opportunity was given to the learned Additional Government Pleader, by adjourning the matter for several hearings, to explain under what Special Rules the three department, viz., Motor Transport Wing of the



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City Police, Chennai, Armed Reserve Police and Local Police are treated as distinct departments for the promotional avenues, he is not in a position to place before this Court, the relevant Rules. Therefore in the absence of any Special Rules, this Court is constrained to pass order based on the materials placed on record.

5. A perusal of the order passed by the Tribunal discloses that what has been stated in paragraphs 5, 6, 7 and 8 of the counter has been extracted in the order and the claim of the petitioners has been rejected without looking into the relevant Rules. We are not satisfied with the reasoning given by the Tribunal in dismissing the application filed by the petitioners. Therefore in the absence of Special Rules and information regarding how these three departments, namely, Motor Transport Wing of the City Police, Chennai, Armed Reserve Police and Local Police are being treated as distinct department, for promotional avenues to the persons, who are appointed under one recruitment and posted in the above three departments, we are unable to understand why the petitioners' name have not been included in the 'C' List. To a specific



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question put forth by this Court as to how the personnel in the Armed Reserve are getting promotion prior to the persons working in Motor Transport Wing of the City Police, Chennai, the only explanation offered by the Department is that the persons working in the Motor Transport Wing of the City Police, are being paid Special pay of Rs. 40/- initially and then Rs.60 and now Rs.120/-. The said ground cannot be a criteria for denying the promotion to the persons working in the Motor Transport Wing of the City Police, Chennai. The right to promotion should be only based on the Principle of seniority. Except saying that these three departments are distinct, no materials whatsoever has been placed before this Court under what circumstances and what Special Rules these Departments are treated as distinct. Therefore, we are satisfied that to meet the ends of justice, it is appropriate to direct respondent 1 to 3 to consider the date of recruitment as the basis for fixing seniority and effect promotion and to include the names of the petitioners in the 'C' List and give promotions to them. Accordingly, the order passed by the Tribunal is set aside and writ petition is allowed.”



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11. Though, it is the contention of the learned Additional Government Pleader appearing for the respondents that though the order of the Hon'ble Division Bench has been acted upon, but only since the petitioner had not appeared before the Board and passed the test, his name has not been considered for subsequent promotion. This cannot be taken into account as this could be only an improvement subsequently made in counter affidavit.

12. The impugned order dated 12.02.2010 does not contain any of these reasons and as per the impugned order, since the petitioner was working in Mounted Branch and the relief which he claims is on par with the other persons who are working under the Armed Reserve, his claim cannot be considered alone is stated in the impugned order. As per the decision in the case of *Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi and others* reported in (1978) 1 SCC 405, the impugned order cannot be improved by filing counter affidavit.

13. It is also brought to the notice of this Court, the Hon'ble Division Bench by order dated 26.06.2024 in Writ Appeal Nos. 1118 to 1122 of



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2022, having found that the petitioners therein may have opted for to undertake the Range Promotion Test, but however they have belatedly approached this Court seeking of the benefits by which the settled Seniority list has to be unsettled dismissed their claim. The relevant paragraphs is extracted hereunder:

“6. With reference to the said ground, we found that the respondent have already retired from service. More so, their batch mates were promoted in the year 2000 to the post of Sub Inspector of Police. The respondents were promoted as Sub Inspector of Police in the year 2005. The seniority dispute is to be raised by the employees within a period of three years as per the rules in force. The respondents have not raised the seniority dispute within a period of three years. Belated claim to revise the seniority would unsettle the settled seniority and result in an anomalous situation. Therefore, the Courts have consistently held that the settled seniority cannot be unsettled after several years.

7. Pertinently, when the batch mates of the respondents were promoted to the post of Sub Inspector of Police in the year 2000, the Range Promotion Board Test was in existence. The



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respondents have not opted to challenge the said promotion during the relevant point of time. They have opted to retrospective promotion only after cancellation of the Board Test by the Government with effect from 01.11.2006.

8. Even now their claim is that they should be retrospective promoted to the post of Sub Inspector of Police without subjected to Board Promotion Test. The question at this length of time would not arise, since the respondent have already retired from service and several years lapsed. Now unsettling the settled seniority would result in larger repercussions. Merely to secure monitory benefits at this length of time, the seniority cannot be revised. Admittedly, the respondents in the year 2000 had not undergone the Board Test. For all these reason, we are inclined to interfere with the writ order.”

14. However, since as it is already been held by the Hon'ble Division Bench that irrespective of units where the candidates are working, the date of recruitment shall be taken as basis for fixing of seniority and promotions have to be effected, the reason adduced in the impugned order cannot be sustained and in such circumstances, the impugned order is quashed.



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15. The matter is remitted back to the respondents to consider the claim of the petitioner in the light of the decision of the Hon'ble Division Bench dated 18.09.2007 in W.P.No.25043 of 2002 and also order dated 26.06.2024 in W.A.Nos. 1118 to 1112 of 2022 and pass appropriate orders on merits within a period of eight weeks from the date of receipt of a copy of this copy.

16. The Writ petition is disposed of with the above observations. No costs.

11.09.2024

Index : Yes/No
Neutral Citation : Yes
Speaking order : Yes
nsl

To

1. The Commissioner of Police,
Egmore, Chennai – 600 008.
2. The Director General of Police,
Chennai – 4.
3. The Secretary to Government,
Home Department,
Fort St. George,
Chennai – 600 009.



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G.ARUL MURUGAN, J

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