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W.P.No.20011 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2024

CORAM :

THE HONOURABLE MR.JUSTICE **J.SATHYA NARAYANA PRASAD**

W.P.No.20011 of 2013

M.Johnson

...Petitioner

Vs.

1.The Commissioner of Police,
City Police Office,
Salem City, Salem.

2.The Assistant Commissioner of Police (Armed Reserve),
Salem City Police, Salem.

...Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus or any other appropriate Writ or order or direction in the nature of Writ calling for the records on the file of the first respondent herein in C.P.O.No.674/2013/C.No.A1/16261/2013 dated 14.07.2013 and quash the same to the limited extent of non-inclusion of the name of the petitioner in the appropriate place therein and to consequently direct the Respondents therein to include the name of the petitioner in the appropriate place in the 'C' List of Hcs (AR) fit for promotion as Sis (AR) for the year 2013 and to promote the petitioner as Sub-Inspector of Police with all consequential benefits.



W.P.No.20011 of 2013

For Petitioner : M/s.Apoorva
for M/s.M.Ravi

For Respondents : Mr.P.Kumaresan, AAG
Assisted by Mr.M.Rajendiran, AGP

ORDER

The petitioner challenging the validity of the order of transfer issued to him by the first respondent in CPO.367/2008/C.N.A3/134/7854/2008 dated 23.06.2008 ordering his transfer from Armed Reserve Unit to local police and view of the transfer, the petitioner would be deprived of his right to be empanelled and promoted as Sub Inspector of Police however the Writ Petition No.15398 of 2008 was dismissed by this Court on 06.06.2011 it was made clear that the dismissal of the Writ Petitions does not bar the petitioners to claim their service benefits when they were served under the local police.

2. Learned counsel for the petitioner would submit that despite such protection of the service rights by the learned single Judge, there was an attempt to misconstrue the same and that we should be deprived of our promotion in accordance with our seniority in Armed Reserve Unit. The



W.P.No.20011 of 2013

Writ Petitioners preferred Writ Appeals No.1852 and 1853 of 2011 and the apprehension of the petitioners were conveyed to the Division Bench that they may not be considered for promotion in Armed Reserve Unit in accordance with their seniority once they are transferred to local police and that their juniors would be promoted as Sub-Inspector of Police leaving the petitioners in lurch on the pretext that they will be no longer working in Armed Reserve Unit and they will transferred to local police. The petitioners' apprehension is that though their seniority is protected they may not be considered for promotion. The Division Bench of this while confirming the order of the learned Single Judge with regard the transfer holding that the appellants are appointed in a transferable post specifically referred with the learned single judge also took note of the seniority protection given to the appellants. It is pertinent that the apprehension raised on their behalf that they would not be considered for promotion as Sub-Inspector of Police in Armed Reserved unit after their transfer to local police was specifically addressed by the Division Bench as under:-



“3. The apprehension expressed by the learned counsel for the Appellants is that the Appellants may not be considered, though their seniority is to be protected. The said apprehension has no basis in view of Rule 25(b) of Tamil Nadu Police Subordinate Service Rules and the Division Bench Judgment of this Court made in W.A.No.500 of 2008 dated 16.06.2008.....”

In this regard, for ready reference, the relevant provisions of Rule 25(b) and the relevant portion of the Division Bench judgment and quoted above is reproduced as hereunder:

Rule 25(b) OF TAMIL NADU POLICE SUBORDINATE SERVICE RULES:

“25(b) The transfer of a person from one class category of the service to another class or category carrying the same pay or scale of pay shall not be treated as first appointment to the latter for purposes of seniority and the seniority of a person so transferred, shall be determined with reference to the rank in the class or category from which he was transferred. Where any difficulty or doubt arises in applying this sub rule, seniority shall be determined by the appointing authority.”

Relevant portion of Division Bench Judgment:

“ Heard the learned Government Pleader for the appellants. This appeal has been filed by the State of Tamil Nadu, represented by the Home Secretary, seeking to impugn an order dated 13.04.2006 passed by the learned Judge of a Writ Court. The Writ Petition was filed by the first Respondent for a mandamus directing the Deputy Inspector General of Police, Tirunelveli Range (the further appellant herein) to include the name



of the Writ Petitioner in the list of Head Constable (Armed Reserve) by granting him seniority in terms of G.O.844, Home Department dated 03.06.1997 by placing him above respondents 2 to 15 herein, in the seniority list of head constables. The learned Judge of the Writ Court allowed the said prayer.”

3. The learned counsel would further submit that despite clear and categorical statements of the Division Bench of this Court as it was learned with an attempt was made by the respondents to overlook their as they have already been transferred to local police in implementation of the earlier order of transfer as upheld by this Court. The first respondent not only clear violation of the statutory rules and the judgment rendered by the Division Bench of this Court had issued 'C' List HC 's' (AR) fit for promotion as Sub Inspector of Police (AR) for the year 2013 name of the petitioner who was transferred to local police has been omitted to be included even while their juniors have been included namely Venkatachalam, S.Palanisamy, Ramakrishnan, Sekar and A.Palanisamy.

4. He further submitted that the said order is out and out illegal and if allowed to be implemented would expose the petitioner to great hardship



W.P.No.20011 of 2013

and mental agony. Aggrieved by the above order prepared for promotion as Sup Inspector of Police (AR) for the year 2013 omitting the name of the petitioner he has come forward with the present Writ Petition.

5. Learned counsel would further submit that the name of the petitioner in the 'C' List of HC's 9AR) fit for promotion as Sub Inspector of Police (AR) for the year 2013 is violative of Rule B of the Tamil Nadu Police Subordinate service Rules and the impugned order is also in violation of the ratio laid down by the Division Bench of this Court in the Judgment rendered in W.A.No. 500 of 2008 dated 16.06.2008.

6. Learned counsel would further submit that the act of the first respondent in omitting to include the name of the petitioner 'C' list HC's (AR) fit for promotion of Sub Inspector of Police for the year 2013 is in clear violation of the specific findings rendered by the Division Bench of this Court in Judgment dated 07.02.2013 in W.A.No.1852 of 2011 filed by the petitioner. Hence, the petitioner prays to set aside the impugned order of the first respondent dated 14.07.2013 and allow the Writ Petition.



W.P.No.20011 of 2013

7. Learned Additional Advocate General appearing for the respondents would submit that Armed Reserve Police and Local Police in Cities and in Districts are separate Branches and their nature duties also differ. Local Police can register and investigate the cases in Police Stations whereas Armed Reserve Police personnel are not entitled to register the case and to investigate. Separate Seniority Lists are maintained for the Police personal serving in Armed Reserve and for Local Police. Police personnel serving in Armed Reserve cannot claim the seniority in Local Police and the Local Police cannot claim the seniority in Armed Reserve. Further a Police Constabel is once transferred from Armed Reserve to Local Police, on his option, he will forgo his seniority in Armed Reserve and his seniority will be accounted for in Local Police only along with his batchmates. These are the statutory orders in Tamilnadu Police.

8. He further submitted that the Writ Petitioner is transferred to Local Police, his Seniority is maintained at the appropriate place of his batchmates in Local Police only. The petitioner has filed the Writ Petition praying directions to order include his name in the seniority of Armed Reserve,



W.P.No.20011 of 2013

Salem City and give effect of his promotion which he is not entitled since he was transferred to Local Police of his option only. For the above foregoing reasons, the request of the writ petitioner could not be considered, as his name is being maintained in Local Police.

9. learned additional advocate general drew the attention of this court to the instructions vide C.No.199297/NG BIII (3)/86 dated 24.01.1987 in regard to the constables in the armed reserved police transferred to Taluk police and the relevant portion of the same is extracted here under :-

“If an armed Reserve Person is retransferred from local to Armed Reserved at his request, his retransfer will lead to petitions by persons who remain in the Armed Reserve. All Superintendents of Police are therefore requested not to permit such retransfer unless as a punishment. Even as a punishment it should be for a specific period not exceeding 2 years.”

10. Learned counsel appearing for the petitioner relied on the order passed by this Court in W.P.No.27036 of 2005 dated 13.04.2006 in case of ***A.Subbiah Pandian Vs The State of Tamil Nadu rep by its Home Secretary & 4 others.*** The relevant portion of the order is extracted herein:-



WEB COPY



W.P.No.20011 of 2013

“The respondents are directed to place the petitioner above the respondents 6 to 19 in the appropriate promotion post and give him all service benefits and other further promotions. This order shall be complied by the respondents within a period of six weeks from the date of receipt of a copy of this order.”

11. Learned counsel also relied on another Judgment of this Court in W.P.(MD).No.10924 of 2016 dated 22.11.2023 in case of **“K.Jalendran Vs. The State of Tamil Nadu rep by its Home Secretary & 2 others** and the relevant portion of the order is extracted hereunder:-

“5. In obedience of the order of this Court dated 24.07.2015, personal hearing was afforded to the petitioner on 28.12.2015. During the time of hearing, the petitioner pointed out the order of the Tamil Nadu Administrative Tribunal in O.A.Nos.5856 and 6035 of 1997 dated 29.10.1999, whereunder, his batchmate, namely, one S.Irulandi was granted the benefit in the following terms:

“5. .. The reason given in the reply, for rejecting their claim is that their transfer is on their own requests, on their relinquishing the claim for the same rank after transfer. In the earlier case, dealt with by this Tribunal in O.A.Nos.3666/90



WEB COPY



W.P.No.20011 of 2013

etc dated 17.07.1991 , such an argument was advanced. In that case also, the applicants were staed to have relinquished their rights, when they opted for transfer. But, inspite of it, the Tribunal has observed that the rank should be protected. Therefore, in the light of the existing rules, the Memorandum and the Government order that I am not in a position to agree with the contention that since the applicants were posted as Grade II Police Constables, they should continue to serve as Grade II Police constables in the District Armed Reserve. They are entitled to be posted as Head Constables , when the vacancies arise. Though the applicants have given some particulars about the vacancies on 15.12.1993 and 17.12.1993. I am not in a position to accept that they should be given promotion from those dates. However, it is made clear that they are entitled to be posted immediately as Head Constables. If there are vacancies available. If there are no vacancies, as and when vacancies arise in future, they



WEB COPY



W.P.No.20011 of 2013

should be given priority and should be posted as Head Constables. As regards the seniority, they will be governed by the provisions contained in Rule 24 (b) of the Tamilnadu Special Police subordinate Service Rules.

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

13. In the case on hand, the petitioner was transferred from Armed Reserve Unit to local police and their promotion was deprived in accordance with their seniority in Armed Reserved Unit apprehension of the petitioners is that they would not be considered for promotion as Sub-Inspector of Police in Armed Reserve Unit after their transfer to local police was addressed by the Division Bench of this Court while passing order in Writ Appeal No.500 of 2008 dated 16.06.2008 and the relevant portion of the judgment is extracted here under:-

“3. The apprehension expressed by the learned counsel for the Appellants is that the Appellants may not be considered for promotion, though their seniority is protected. The said apprehension has no basis in view of Rule 25(b) of Tamil Nadu Police Subordinate Service Rules and the Division Bench Judgment of this Court made in W.A.No.500 of 2008 dated 16.06.2008.....



W.P.No.20011 of 2013

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Relevant portion of Division Bench Judgment:

“ Heard the learned Government Pleader for the appellants. This appeal has been filed by the State of Tamil Nadu, represented by the Home Secretary, seeking to impugn an order dated 13.04.2006 passed by the learned Judge of a Writ Court. The Writ Petition was filed by the first Respondent for a mandamus directing the Deputy Inspector General of Police, Tirunelveli Range (the further appellant herein) to include the name of the Writ Petitioner in the list of Head Constable (Armed Reserve) by granting him seniority in terms of G.O.844, Home Department dated 03.06.1997 by placing him above respondents 2 to 15 herein, in the seniority list of head constables. The learned Judge of the Writ Court allowed the said prayer.”



W.P.No.20011 of 2013

WEB COPY

14. It is also pertinent to note the Rule 25(b) of the Tamil Nadu Police

Subordinate Service Rules and the same is extracted hereunder:-

***Rule 25(b) OF TAMIL NADU POLICE
SUBORDINATE SERVICE RULES:***

“25(b) The transfer of a person from one class category of the service to another class or category carrying the same pay or scale of pay shall not be treated as first appointment to the latter for purposes of seniority and the seniority of a person so transferred, shall be determined with reference to the rank in the class or category from which he was transferred. Where any difficulty or doubt arises in applying this sub rule, seniority shall be determined by the appointing authority.”

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W.P.No.20011 of 2013

15. In view of the above factual matrix of the case and the ratio laid down by the Division Bench in W.A.No.500 of 2008, W.P.No.27036 of 2005 & W.P.No.10924 of 2016, the impugned order passed by the first respondent in C.P.O.No.674/2013/C.No.A1/16261/2013 dated 14.07.2013 is liable to be set aside and the same is hereby quashed to the limited extent of non inclusion of the name of the petitioner in the appropriate place.

16. In the result, the Writ Petition is allowed and the respondents are directed to include the name of the petitioner in the appropriate place in the 'C' list HC's(AR) fit for promotion as SI's (AR) for the year 2013 and to promote the petitioner as Sub Inspector of Police with all consequential benefits within a period of eight (8) weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

13.03.2024

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Index : Yes (or) No
Neutral Citation : Yes (or) No
Speaking Order : Yes (or) No

14/16



W.P.No.20011 of 2013

WEB COPY

To

- 1.The Commissioner of Police,
City Police Office,
Salem City, Salem.
- 2.The Assistant Commissioner of Police (Armed Reserve),
Salem City Police, Salem.



WEB COPY



W.P.No.20011 of 2013

J.SATHYA NARAYANA PRASAD, J.

Nhs

W.P.No.20011 of 2013

13.03.2024