



WEB COPY

W.P.No.2900



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 21.12.2023

DELIVERED ON: 26.02.2024

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.No.29005 of 2010
and M.P.No.1 of 2010

N.Rajavelu

...Petitioner

vs.

1.The Superintendent of Police,
Villupuram District.

2.The Deputy Inspector General of Police,
Villupuram Range,
Villupuram.

3.The Director General of Police,
Tamil Nadu, Chennai – 4.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the 1st respondent in connection with the impugned order passed by him in C No.A3/14747/2010 dated 20.07.2010 and quash the same and direct the respondents to upgrade the petitioner as Grade-I PC in the year 1984 and further upgrade as Head Constable in 1994 and promote him as Sub Inspector by including his name in the C list of the year 1998 and grant him all consequential service monetary benefits on par with his juniors.



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For Petitioner : Mr.K.Venkataramani, Senior Counsel
for Mr.M.Muthappan

For Respondents : Mr.A.M.Ayyadurai
Government Advocate

ORDER

This Writ Petition has been filed challenging the order passed by the first respondent in C.No.A3/14747/ 2010 dated 20.07.2010 and to direct the respondents to upgrade the petitioner as Grade-I Police Constable in the year 1984, further upgrade him as Head Constable in the year 1994 and promote him as Sub-Inspector by including his name in the 'C' list of the year 2003-2004 and grant him all consequential service and monetary benefits on par with his juniors.

2.Heard Mr.K.Venkataramani, learned Senior Counsel appearing for Mr.M.Muthappan, learned counsel appearing for the petitioner and Mr.A.M.Ayyadurai, learned Government Advocate appearing for the respondents.

3.The learned Senior Counsel appearing for the petitioner would submit that the petitioner had entered into the service as Grade-II Police Constable in the District Armed Reserve, Cuddalore on 01.03.1972 and was transferred to



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content that the petitioner was falsely implicated in a criminal case in Crime No.596 of 1977 on the file of Tirukovilur Police Station for offences under Sections 359 and 380 of IPC. Thereafter, the petitioner was issued with a charge memo in PR No.162 of 1978 and was dismissed from service by order dated 27.01.1979. Against the order of dismissal, the petitioner preferred an appeal before the Deputy Inspector General of Police and the order of dismissal from service was set aside and the petitioner was reinstated into service on 30.06.1979.

4.He would submit that for the same allegations Disciplinary Proceedings had again revived in PR No.51 of 1985 by issuing a fresh charge memo by the first respondent and the petitioner had challenged the same before this Court in W.P.No.836 of 1987 and the Disciplinary Proceedings was stayed on 28.07.1987 and the matter was transferred to the Tribunal, which was taken on file as T.A.No.585 of 1992 and by order dated 26.06.2003, the Disciplinary Proceedings were quashed and thereby PR No.51 of 1985 was dropped on 07.01.2004 and the period of suspension of the petitioner was treated as on duty.

5.He would further submit that the petitioner was upgraded as a Grade I Police Constable with effect from 03.03.1993 and as Head Constable with effect from 16.01.1998. The grievance of the petitioner is that many of his batch mates



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who were recruited along with the petitioner were upgraded as Grade-I Police Constable in the year 1984 and subsequently they were also promoted as Head Constables in the year 1994 itself. He would further submit that petitioner's juniors were also promoted as Sub-Inspector and subsequently as Special Sub-Inspector as early as in the year 2001 to 2005. He would submit that the petitioner was not considered for upgradation due to the pendency of Disciplinary Proceedings.

6.He would submit that the petitioner should have being upgraded as Grade-I Police Constable from 1984 and as Head Constable from 1994 and also been promoted as Sub-Inspector in the year 2003-2004. He would submit that when a 'C' list of Head Constables fit for promotion as Sub-Inspector for the year 1998 was prepared in Villupuram District, the petitioner's batchmates participated and they were promoted as Sub-Inspectors from the year 1998. He would further submit that as the petitioner was exonerated from the charges his seniority and promotion rights should have to be restored from 1978 onwards and the petitioner is entitled to get promotion and other consequential benefits on par with his juniors. He would submit that the petitioner was granted with benefits in DO No.268 of 2005 dated 18.04.2005 but the same was not in accordance with his seniority.



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7.He would further submit that the petitioner has filed O.A.No. 8974 of 1998 before the Tamil Nadu Administrative Tribunal, to issue a direction to consider the claim of the petitioner and to promote his as Grade-I Police Constable, Head Constable and Sub-Inspector without reference to the pending Disciplinary Proceedings and on abolition of the Tribunal, the same was transferred before this Court and numbered as W.P.No.33733 of 2006 and this Court by order dated 08.02.2010 issued a direction to the petitioner to make a representation before the Concerned Authority. He would further submit that the first respondent by order dated 20.07.2010 rejected the claim of the petitioner on the ground that the petitioner has been rightly granted promotion as Grade-I Police Constable with effect from 03.03.1993 and as Head Constable with effect from 06.10.1998 on par with his juniors. The claim of the petitioner on par with his juniors viz., Paulraj and others was rejected on the ground that when they were promoted in the year 1994, the petitioner was facing a charge memo.

8.He would further submit that as per the guidelines issued by the Government in respect of promotion in G.O.Ms.No.368 P & AR Department dated 18.10.1993, a person's claim for promotion can be deferred pending charges and once he is exonerated from the charges, he is entitled to get promotion or upgradation on par with his juniors with all consequential service and monetary benefits. Therefore, he would submit that the order of the first respondent is liable to be set aside and the petitioner is entitled to get his



upgradation on par with his juniors with all service benefits and hence seeks to allow this Writ Petition.

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9.Countering his arguments, Mr.A.M.Ayyadurai, learned Government Advocate appearing for the respondents would submit that the petitioner was appointed as Grade-II Police Constable on 01.03.1972 and while the petitioner was working in Tirukovilur Police Station, he along with other four Police Constables and one Grade-I Police Constable conducted an unauthorized prohibition raid on 02.03.1978 and one Velayudham was arrested, who ran away to escape fell into a well and died. For which, the petitioner and others were placed under suspension, and was charged under Section 3 (b) in PR 162 of 1978 and found guilty, the petitioner was dismissed from service by the Superintendent of Police, South Arcot District on 27.01.1979. He would further contend that the petitioner had preferred an appeal before the Deputy Inspector General of Police, Chengalpattu Range and the order of dismissal was set aside and directed a fresh action would be taken on receipt on the findings of the District Revenue Officer, Cuddalore and the petitioner was reinstated and the period of suspension was treated as duty.

10.He would submit that pursuant to the findings of the District Revenue Officer, Cuddalore, the petitioner and others were issued with a fresh charge memo in PR No.51 of 1985. The petitioner had challenged the same in



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T.A.No.585 of 1992, the Disciplinary Proceedings were quashed by order dated 26.06.2003. He would further contend that the petitioner was upgraded as Grade I Police Constable with effect from 03.03.1993 and as Head Constable with effect from 16.01.1998 on par with his junior, viz., Jayaraj. He would further submit that the petitioner was not considered in the 'C' list of Grade-II Police Constable drawn in the year 1984 or in the Head Constables in the year 1994, it was because at that time the petitioner was not exonerated under the charges and it was the petitioner who had obtained stay from this Court against the Disciplinary Proceedings.

11.He would further submit that the petitioner has not appeared for the examination conducted for the promotion and the claim of the petitioner cannot be equated or treated on par with his juniors. He would contend that the process of junior and senior promotion was stopped long back. Hence those Police Constables who did not participate in the examinations from the year 1981 and those who had failed in such examinations were left over and they were given upgradation as Grade-I Police Constable from the year 1993 on the introduction of a new scheme called upgradation process without conducting any examination/test. He would further submit that when the charges against the petitioner were set aside, he was rightly considered in the year 2003 and he was given upgradation retrospectively as Grade-I Police Constable from 25.01.1993



and as Head Constable from 25.01.1998.

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12.He would further submit that as against the petitioner Disciplinary Proceedings were pending from the year 1978, which was disposed of only in the year 2003. He would contend that the individuals who got promotion were based on their seniority and they had all participated in the competitive tests and qualified. Hence, the petitioner cannot claim parity with them as he did not attend for those examinations. He would submit that the petitioner had filed a W.P.No.33733 of 2006 before this Court when the matter was taken up for final hearing on 08.02.2010, the Disciplinary Proceedings against the petitioner was dropped and he was upgraded as Grade-I Police Constable with effect from 1993 as per the guidelines issued by the Government in G.O.No.368 P & AR, dated 18.07.1993 on par with his immediate junior Jayaraj who has been similarly placed with effect from 1998, hence, this Court was pleased to pass orders directing the petitioner to make a representation and the representation made by the petitioner on 21.04.2010 was duly considered by the respondent.

13.He would further submit that the petitioner's name was considered for upgradation as Special Sub-Inspector based on the seniority but not recommended because a criminal case in PR.No.17 of 2007 in Ulundurpet



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Police Station in Crime No.159 of 2007, u/s 354 & 342 1PC r/w of Tamil Nadu Prevention of Women Harassment Act, 2002 were pending against the petitioner and he was awarded with a punishment of "Reduction of pay by one stage for one year which shall operate to postpone his future increments, however, the same was ended in acquittal by the Principal Sessions Judge, Viluppuram in S.C.No.50 of 2010 on 29.01.2011. He would further contend that the respondents did not promote any persons against whom charges were pending under punishment as per G.O.Ms.No.368 P &AR Department dated 18.10.1993 and subsequent amendments in G.O.Ms.No.937 Home (Pol-III) Department dated 21.07.1998. Hence, the petitioner is not eligible for upgradation as he was awarded with a punishment.

14.He would submit that the upgradation process came into force only in 1993 and the petitioner was rightly considered for upgradation on par with his immediate junior and that the orders issued by the first respondent are in accordance with the Rules. Therefore, the petitioner is not entitled for any promotion and he would pray this Court to dismiss this Writ Petition.

15.I have heard the submissions on behalf of the respective parties and have perused the materials available on record before this Court.



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16.The claim of the petitioner is that he had been denied opportunity to compete with his peers on the ground that the Disciplinary Proceedings had been pending against him. In the said Disciplinary Proceedings, by orders of this Court, the charges against the petitioner had been set aside. These facts are not disputed by the respondents. It is to be noted under the service jurisprudence when an employee/Government servant is denied of his rights to be promoted on the ground that certain charges against him are pending and when he is exonerated from the said charges or when a punishment that had been imposed upon on him are set aside by a Court, such employees/Government servants would be entitled for all service benefits. In the present case, after the charges have been quashed against the petitioner, the period in which he had been kept under suspension have all been treated as on duty. However, the petitioner had only been granted upgradation in the subsequent years.

17.When this matter came up for hearing on 06.12.2023, this Court had passed an order, directing the learned Government Advocate to get instructions on the following;

(a)to why the petitioner was not permitted to participate in the examination in the year 2004-2005 for the promotion to the post of the Sub Inspector?



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(b) If he had been permitted whether the petitioner was successful?

(c) After 2006, why was the petitioner not promoted to the post of Sub Inspector on the basis of ranking seniority?

18. On 16.12.2023, the first respondent/Superintendent of Police, Viluppuram District has filed the explanation on the above said queries. For better appreciation, the same is extracted hereunder:

(a) It is submitted that the Disciplinary Proceedings in PR.No.51/1985 were pending against him till 2003. Hence the petitioner was not available to sit for the competitive examination held in 1984 for junior promotion. The petitioner had failed to make himself available for the test process by his act of obtaining a stay also. Moreover the junior promotion Test process was stopped long back and the upgradation process was introduced by the Government in 1993. Though the petitioner was extended of the charges during 2003, his batch mates who were able to pass the examination got promoted as early as 1984. Based on initial promotion as Grade I Police Constable in 1984 further promotion was given to them on seniority basis as HC 1994 those persons had again appeared for tests for promotion as Sub-Inspector of Police in the subsequent years by virtue of their earlier promotion as Head Constable. Hence, the petitioner was not eligible to participate in the year 2004 & 2005 for the



promotion to the post of the Sub-Inspector of Police.

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(b)The petitioner was not eligible to participate in the test for promotion to the post of the Sub-Inspector of Police. Unless he was successful in a competitive examination held in 1984 for junior promotion.

(c)The petitioner completed his period of probation in the rank of Head Constable only on 12.01.2007 and the petitioner was placed under suspension with effect from 20.02.2007 to 18.05.2010 for his involvement in Ulundurpet P.S. Crime No.159/2007 u/s 354 & 342 IPC r/w 4 of TN Prevention of Women Harassment Act, 2002. Hence, he was not promoted.

19.The reason assigned by the respondents as aforesaid in my view cannot be accepted.

20.The initial order of punishment was set aside by the Appellate Authority in the year 1979. It is to be noted that the Tamil Nadu Appellate Tribunal by its order as early as on 06.01.2000 had passed an interim order directing the Deputy Inspector General of Police to consider the case of the petitioner for promotion without reference to the pending charges. By a further order dated 12.07.2002, a charge memo against the petitioner had been set aside and also the entitlement of all monetary and service benefits had been ordered.



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Thereafter, the upgradation orders have been passed. It is also to be noted that after the charges were quashed against him, the petitioner was not treated on par with his juniors by contending that the procedures for promotion had been altered and therefore, his case could not be considered under the original Rules since no test are now being conducted for granting junior promotion of Grade II Police Constable to Grade I Police Constable and also the post of Sub Inspector. Presently is only based upon the seniority and that he could only be upgraded on the date when the Rules came in for upgradation.

21.Be that as it may, even if the claim of the respondents are accepted, the 'C' list for promotion of Head Constable as Sub Inspector based on the seniority was initially drawn in the year 2006. He was not included on the ground that the petitioner had only completed his probation in the rank of Head Constable on 12.01.2007. Again, his name was not considered for the reason that he was involved in a criminal case. It is also brought to the notice of this Court that in the said criminal case, he had been acquitted and also the punishment imposed on him had been cancelled.

22.In view of the same, there can be no impediment in including the name of the petitioner for promotion in the 'C' list of Head Constable fit for promotion. As I have already held that the service benefits that had been



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directed to be bestowed upon him on quashing of the charges have not been bestowed upon him. Considering the various factors, I am of the opinion that the petitioner ought to have been included in the 'C' list of Head Constable fit for promotion in the year 2006 since had he been granted the service benefits, he would have been promoted as Head Constable much before the actual date of upgradation.

23.In such circumstances, the respondents are directed to include the name of the petitioner in the 'C' list of Head Constable fit for promotion in the year 2006 and grant him promotion immediately before his juniors had been promoted since the petitioner had been already superannuated, such promotion can be made notionally and the respondents are directed to fix the salary of the petitioner also only notionally and grant him all retirement and pensionary benefits based upon such notional fixation.

24.With the aforesaid directions, this Writ Petition is disposed of. There shall be no order as to costs.

26.02.2024

Index: Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No

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- 1.The Superintendent of Police,
Villupuram District.
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Villupuram Range,
Villupuram.
- 3.The Director General of Police,
Tamil Nadu, Chennai – 4.



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K.KUMARESH BABU, J.

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**A pre-delivery order in
W.P.No.29005 of 2010**