



W.P.No.4249 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 28.10.2024

PRONOUNCING ORDERS ON : 30.10.2024

Coram:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.4249 of 2023

and

WMP No.4299 of 2023

1.E.Satheesh Kumar (aged 32 years)
S/o.E.Elayappan
Assistant Commissioner of Police
Podanur Range
Coimbatore City.

2.S.Vinoth (aged 31 years)
S/o.S.Sudarsanam
Deputy Superintendent of Police
Organized Crime Unit, Chennai City
CBCID Headquarters
Egmore
Chennai 600 008.

3.A.Bharath (aged 33 years)
S/o.K.Asaithambi
Deputy Superintendent of Police
Collectorate Campus
Thirumeni Main Road
Chengalpet 603 001.

4.Mrs.R.Vandhana (aged 32 years)
W/o.M.Khan
Deputy Superintendent of Police
NIR Cell, O/o.DGP/HoPF
Mylapore, Chennai 600 004.



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5.Dr.B.Arun (aged 37 years)
S/o.A.Balakrishnan
Deputy Superintendent of Police
High Court Vigilance
Gondur
Cuddalore Detachment
Cuddalore District,.

.... Petitioners

-Vs-

1.The State of Tamil Nadu
Rep. By its Additional Chief Secretary
to Government
Home (Pol.2) Department, Secretariat
Fort St.George
Chennai 600 009.

2.The Director General of Police
Head of Police Force, Tamil Nadu
Dr.Radhakrishnan Salai
Mylapore, Chennai 600 004.

3.K.Annadurai

4.M.Shanmugam

5.M.Gunasekaran

6.S.Dinakaran

7.G.Annadurai

8.A.Sivarajan

9.Martin Roberts

10.M.Venkatesan

11.M.Balamurugan

12.K.Pradeep



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13.S.Krishnan

14.V.Raghupathi

15.V.K.Dheepu

16.M.Ravichandran

**(R3 to R16 are impleaded as per order dt.12.9.2024
in WMP No.9358/2023 in WP.No.4249/2023 by NAVJ)**

17.S.Selvakumar

Deputy Superintendent of Police
Organized Crime Unit II
Crime Branch CID, Egmore
Chennai 600 008 and resident of NO.5-A
Inspector of Police Quarters, Vadapalani
Chennai-26.

18.A.V.Elamurugan

Deputy Superintendent of Police
District Crime Branch, Salem-636 002
and resident of 11/18-1, Ganabathi Kattoor
Pachayampalayam
Anthiyur Taluk
Erode District 636 314.

19.T.Saravanan

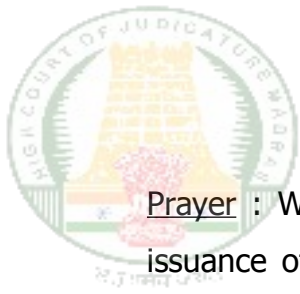
Assistant Commissioner of Police
Intelligence Section, Salem 636 006
Resident of Ammapettai Post, Harur Taluk
Dharmapuri-636 906.

20.P.Sivakumar

Deputy Superintendent of Police
Crime Branch CID, Coimbatore Range
Coimbatore and
Resident of No.1000/1, Avinashi Road
Uppilipalayam, Coimbatore-641 018.

.. Respondents

**(R17 to R20 are impleaded as per order dt.12.9.2024
in WMP No.99592 /2023 in WP.No.4249/2023 by NAVJ)**



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Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned letter issued by the 1st respondent in Letter No.60624/Pol.2/2021-4 dated 19.9.2022 and to quash the same and consequently directing the respondents to draw the seniority list in the post of Deputy Superintendent of Police (DSP) by arriving inter-se-seniority between directly recruited DSP and promoted DSP, by placing the directly recruited DSP appointed as per G.O.Ms.No.203, Home (Police) Department dated 10.03.2017 above the promotion DSP and consequently draw the panel for promotion to the post of Additional Superintendent of Police (AdSP) and to consider the petitioners for promotion to the post of Additional Superintendent of Police (AdSP) on that basis.

For Petitioners : Mr.G.Sankaran
Senior Counsel
for Mr.S.Nedunchezhiyan

For Respondents : Mr.P.Kumaresan
Additional Advocate General
Asst.by:
Mr.VP.R.Elamparthi
Additional Government Pleader
for R1 & R2

Mr.MA.Gouthaman for R3 to R16

Mr.C.K.Chandrasekar for R 17 to R20

ORDER

This writ petition has been filed challenging the impugned letter of the 1st respondent dated 19.09.2022 and for a consequential direction to the respondents to draw the seniority list in the post of Deputy Superintendent of Police (DSP), by arriving at inter-se-seniority between directly recruited DSP and promoted DSP.



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2.The very same impugned letter dated 19.09.2022, became a subject matter of challenge before the Madurai Bench in WP(MD).No.5595 of 2023 and this writ petition came to be dismissed by an order dated 22.06.2023.

3.When the matter came up for hearing on 12.09.2024, this Court passed the following order:

These petitions are filed by the respective petitioners seeking to implead themselves as party respondents in the main writ petition.

2.Heard the respective learned counsel appearing on either side.

3.This Court is satisfied with the reasons assigned in the affidavits filed in support of these miscellaneous petitions.

4.Hence, these petitions are ordered.

4.The case was once again listed for hearing on 26.09.2024 and this Court passed the following order:

Heard Mr.G.Sankaran, learned Senior Counsel for the petitioners, Mr.P.Kumaresan, learned Additional Advocate General Assisted by Mr.V.P.R.Elamparithi, learned Additional Government Pleader for respondents 1 & 2, Mr.MA.Gouthaman, learned counsel for respondents 3 to 16 and Mr.C.K.Chandrasekar, learned counsel for respondents 17 to 20.



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2. Even during the previous hearing, Mr. MA. Gouthaman, learned counsel brought to my notice the earlier order that was passed by Hon'ble **Mr. Justice G.R. SWAMINATHAN** in W.P.(MD).No.5595 of 2023 dated 22.06.2023 and he submitted that the issue involved in the present writ petition is squarely covered by that order.

3. Mr. G. Sankaran, learned Senior Counsel appearing on behalf of the petitioners submitted that the term “**date on which he is appointed**” ought not to have been understood by placing reliance upon Section 3(b) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. The learned Senior Counsel submitted that while interpreting Section 40(2) of the 2016 Act, which deals with promotion, Section 3(b) will have no role to play. He contended that the actual date on which the petitioners were appointed must be understood from the Government Order issued in G.O.(Ms).No.203 dated 10.03.2017 which clearly stated that the petitioners and others were appointed as Deputy Superintendent of Police (Category-I) on probation. Therefore, that date must be taken to be the date on which the petitioners and others were appointed to the services. The learned Senior Counsel seeks for some time to elaborate on this submission by placing reliance upon the earlier judgments of the Hon'ble Supreme Court.

4. Mr. P. Kumaresan, learned Additional Advocate General appearing on behalf of the official respondents by placing reliance upon the counter affidavit filed by the respondents, submitted that the Notification was issued by the Tamil Nadu Public Service Commission on 29.12.2013 inviting applications for filling up 33 vacancies for the post of Deputy Superintendent of Police



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(Category-I). Pursuant to the same, the selection process was commenced and G.O.(Ms).No.203 dated 10.03.2017 was issued.

The said Government Order speaks about the selection of 32 eligible candidates for appointment by direct recruitment to the post of Deputy Superintendent of Police (Category-I). The learned Additional Advocate General further submitted that the call letters were subsequently issued only on 03.04.2017 and the petitioners had reported in institutional training only on 10.04.2017. Therefore, the specific stand taken by the learned Additional Advocate General is that the date of appointment of the petitioners to the services must be reckoned only from 10.04.2017.

5.The learned Additional Advocate General further placed reliance upon paragraph No.3 of the counter affidavit which deals with the case of the persons who were considered to the post of Deputy Superintendent of Police (Category-I) by recruitment by transfer / promotion. The learned Additional Advocate General submitted that the crucial date for the panel for Inspector of Police who were fit for appointment to the post of Deputy Superintendent of Police (Category-I) was 01.06.2015 for the panel period from 11.11.2015 to 10.11.2016. The recommendation was made for 117 cases for inclusion in the temporary panel of Inspector of Police fit for appointment by recruitment by transfer as Deputy Superintendent of Police (Category-I). The proposal was sent to the Government on 27.07.2016 for approval and the Government through G.O.(3D).No.52, dated 10.11.2016 approved the temporary panel. The promotion and posting orders were issued to the first set of 73 Inspectors of Police on 27.03.2017 and for the second set of 42 Inspector of Police, it was issued on 31.03.2017.



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6.The learned Additional Advocate General submitted that when this process was going on, the petitioners who are the direct recruitees were not even in the scene and therefore, they cannot claim for seniority above the persons who occupied the post by recruitment by transfer. The learned Additional Advocate General specifically placed reliance upon the judgment of the Hon'ble Supreme Court in State of *Uttar Pradesh & Others Vs. Ashok Kumar Srivastava & Another* in *Civil Appeal No.6967 of 2013* dated **21.08.2013**.

7. Mr.MA.Gouthaman, learned counsel appearing on behalf of the private respondents submitted that the petitioners cannot attempt to re-open an issue which has already been settled by the earlier order passed in W.P.(MD).No.5595 of 2023 dated 22.06.2023. In order to further explain the term “**date on which appointed**”, the learned counsel placed reliance upon the judgment of the Hon'ble Supreme Court in *K.Meghachandra Singh and others Vs. Ningam Siro and others* reported in **(2020) 5 SCC 689**. He placed specific reliance upon paragraph Nos.42 to 46 in this judgment. The learned counsel also placed reliance upon the judgment of the Hon'ble Supreme Court in *Amit Singh Vs. Ravindra Nath Pandey and others* reported in **2022 SCC Online SC 1559**. The learned counsel placed specific reliance upon paragraph Nos.13, 20 & 21 in this judgment.

8.On carefully considering the submissions made on either side, the only issue for which clarification is required is as to whether for understanding the term “**date on which appointed to the service**”, Section 3(b) of the 2016 Act should be relied upon. As such, I am bound by the order passed by the learned Single Judge in



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W.P.(MD).No.5595 of 2023 dated 22.06.2023. Hence, unless and otherwise, the learned Senior Counsel for the petitioners is able to persuade me that the order passed by the learned Single Judge may require re-consideration, I am duty bound to follow that judgment and dispose of this writ petition. Hence, the submission shall be confined only to the limited extent which has been noted *supra*.

9.Post this case under the caption 'part heard cases' on 14.10.2024.

5.The matter was listed for hearing today and this Court heard the learned counsel appearing on either side.

6.It is now too well settled that even a judgment passed by a learned Single Judge is binding on another Single Judge who decides the same issue. The only exception is where the later Judge is not able to agree with the findings in the judgment passed earlier. In such an event, the matter has to be referred to a Division Bench.

7.The only issue that has been canvassed before me by the learned Senior Counsel appearing on behalf of the petitioners is that Section 3(b) of the 2016 Act does not have any role to play while dealing with the scope of Section 40 (2) of the Act. The learned Senior Counsel submitted that the inter-se-seniority will have to be



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decided based on the language used under Section 40(2) of the Act and to understand the term “appointed to a service”, Section 3(b) of the 2016 Act cannot be relied upon. To substantiate the same, the learned Senior Counsel relied upon various judgments.

8.Per contra, the learned counsel appearing on behalf of the private respondents and the learned Additional Advocate General appearing on behalf of the official respondents submitted that the learned Single Judge has considered the issue in detail and also the earlier order passed by the Division Bench in WA.No.879 of 2020, dated 10.12.2020 and therefore, there is no ground made out to differ with the findings of the learned Single Judge.

9.I carefully went through the judgment passed by the Hon'ble Mr.Justice G.R.Swaminathan in WP (MD).No.5595 of 2023, dated 22.06.2023. I am in complete agreement with the findings rendered by the Hon'ble Judge on the interpretation of Section 40(2) in line with Section 3(b) of the Act. In view of the same, I need not venture into various submissions that were made before me and render findings on the same.

10.In the result, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.



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Index : Yes/No

NCS : Yes/No

KP

To

1. Additional Chief Secretary
to Government
The State of Tamil Nadu
Home (Pol.2) Department, Secretariat
Fort St.George, Chennai 600 009.

2.The Director General of Police
Head of Police Force, Tamil Nadu
Dr.Radhakrishnan Salai
Mylapore, Chennai 600 004.

3.S.Selvakumar
Deputy Superintendent of Police
Organized Crime Unit II
Crime Branch CID, Egmore
Chennai 600 008 and resident of No.5-A
Inspector of Police Quarters, Vadapalani
Chennai-26.

4.A.V.Elamurugan
Deputy Superintendent of Police
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and resident of 11/18-1, Ganabathi Kattoor
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Anthiyur Taluk, Erode District 636 314.

5.T.Saravanan
Assistant Commissioner of Police
Intelligence Section, Salem 636 006
Resident of Ammapettai Post, Harur Taluk
Dharmapuri-636 906.

N.ANAND VENKATESH, J.

KP



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**Pre-Delivery Order in
Writ Petition No.4249 of 2023**

30.10.2024