

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.03.2024

PRONOUNCED ON : 25.04.2024

CORAM

THE HON'BLE MR. JUSTICE **BATTU DEVANAND**

W.P.Nos.5482, 5483, 17757, 30549 and 31962 of 2018

1. K.Senthamarai
2. A.Dharmaraj
3. A.Mathialagan
4. R.Palanivel
5. K.Selvaraj
6. R.Rajasekar
7. P.Srinivasan
8. K.Poovalingam
9. O.Nithiyanantham
10. G.Mathiazhagan
11. J.Dasthagir
12. V.Sivakumar
13. R.Deepan Rajkumar
14. T.Nelsonbabu
15. K.Chella Pandian

... Petitioners in W.P.Nos.5482 of 2018

1. N.Venkatesan
2. R.V.Perumal
3. K.Venkatesan
4. S.Ramasamy

... Petitioners in W.P.Nos.5483 of 2018

1. P.Govindarajan
2. S.Jayakumar
3. S.Suresh Kumar
4. R.Muthusamy
5. R.Manimaran
6. S.Ashokkumar
7. S.Anwar
8. P.Ramesh
9. R.Pandurangan
- 10.D.Sagaya Raj
- 11.P.Mani
- 12.T.Ashokan
- 13.N.Nakkeeran
- 14.R.Pandi

... Petitioners in W.P.Nos.17757 of 2018

T.Murali Rajadurai

... Petitioner in W.P.No.30549 of 2018

1. S.S.Subbiah
2. K.Thanikachalam
3. P.Annamalai
4. P.Vijayakumar
5. V.Arumugam
6. S.Raja
7. R.Pugalvendan
8. J.Paneer Selvam
9. A.Mohandas
- 10.V.Sasikumar

... Petitioners in W.P.Nos.31962 of 2018

Vs.

1. State of Tamil Nadu, Rep. By its
Secretary to Government,
Home (Police-IX) Department,
The Secretariat, Chennai 600 005.
2. The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai 600 004.

... Respondents in all the petitions

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to grant retrospective seniority to the petitioners from 02.09.1993 when their batchmates Mr.I.Sivam and 9 others were appointed vide Na.Ka.No.182/91147/R&D/93 and Na.Ka.No.182/91147/R&D (3)/93, respectively dated 02.09.1993 without back wages and arrears of salary besides granting the petitioners appropriate seniority on par with their above batchmates within time frame.

For Petitioners : Mr.K.Ravi Anantha Padmanaban

For Respondents : Mr.P.Kumaresan, Additional Advocate General
asst. by L.S.M.Hasan Faizal, AGP

COMMON ORDER

These Writ Petitions have been filed to direct the second respondent to grant retrospective seniority to the petitioners from 02.09.1993 when their batch mates Mr.I.Sivam and 9 others were appointed vide Na.Ka.No.91147/R&D/93, dated 02.09.1993 without backwages and arrears of salary besides granting appropriate seniority on par with their batchmates within a time frame.

2. A counter affidavit has been filed by the respondents.

3. Heard Mr.K.Ravi Anantha Padmanaban, learned counsel for the petitioner and Mr.P.Kumaresan, learned Additional Advocate General appearing for the respondents and perused the materials available on record.

4. Having heard the arguments of the learned counsel appearing on either side and on careful examination of the entire materials available on record, the following facts emerges for consideration:

i) Prior to formation of Tamil Nadu Uniformed Services Recruitment Board (TNUSRB), recruitment of Grade II PCs and Bugler PCs were conducted at District/City/Battalion level by the unit officers concerned.

ii) During the year 1993-94, representations received from various Police Personnel requesting appointment as Band PCs for their wards and the representations received from public, were forwarded to the unit officers for convening selection process for appointment to the post of Bugler PCs and some of them were appointed as Bugler PCs.

iii) Against such selection process and appointment to the post of Bugler PCs, one Thiru.S.Srinivasan approached the Tamil Nadu Administrative Tribunal, Madras by filing OA.No.5177 of 1993 and by order dated 05.01.1994, the Tamil Nadu Administrative Tribunal set aside the orders of the Director General of Police issued in reference No.190485/NGP.3(2)/91, dated 18.05.1993, for appointment of 7 persons as Bugler Police Constables on compassionate grounds.

iv) Consequent to the order of the Administrative Tribunal, the State Government issued G.O.Ms.No.877, Home (POL.IX) Department, dated 05.10.2005 prescribing recruitment procedures for Band PCs and directed to fill up the existing vacancies of 737 Band PCs.

v) Accordingly, selection procedures were convened during the year 2007 and out of 737 posts, only 274 candidates were selected and 459 posts remained unfilled for want of qualified persons.

vi) Subsequently, Mr.S.S.Subbiah and 7 others filed WP.No.7361 of 2009 before the High Court Madras and this Court by order dated 05.10.2009, directed to consider the claims of the petitioners for selection to the post of Band PCs based on their preference to the selection for the post of Band PCs conducted during the year 1993-94.

vii) Other 49 similarly placed persons had also approached the Court during that period.

viii) As per the said order of this Court, special selection was conducted to 57 persons duly rechecking their talent, physical fitness on 30th June 2010 and basing on the Special Band Selection, 48 qualified persons were sent for basic training with effect from 02.12.2013.

ix) Subsequently, some of the candidates had submitted their representations stating that they are also similar to the said 57 candidates, who were subjected to Special Band Selection and requested to appoint them as Band PCs and their request was rejected.

x) Aggrieved by the order of rejection, Thiru. Selvam and others filed Writ Petition No.29305/2013 before this Court. The said Writ Petition was disposed of by an order dated 26.07.2013 directing the respondents therein to consider the claim of the petitioners for appointment to the post of Band PCs in the light of the representations submitted by them on par with the similarly placed persons, if there is no distinguishing feature, except for submitting belated applications. Subsequently, the Government in their letter No.64482/Pol-9/2013-14, dated 03.01.2014 issued direction to comply with the orders of the Hon'ble High Court of Madras in Writ Petition No.29305 of

2013.

xi) Accordingly, the Special Band Selection Sub Committee conducted selection process and 82 candidates were provisionally selected subject to Police verification and Medical Examination and out of them, 74 candidates completed six months training at RC, Avadi in 2016.

xii) Subsequently, some of the similarly placed persons submitted representations stating that they had also participated in the selection process during 1993-94 for the post of Band PCs and hence, they also may be considered for appointment. On considering their request, the Government issued a letter No.37921/Pol.IX/2015-2, dated 14.03.2016. Further, IGP, Armed Police, Chennai being a member of the Special Band Selection Committee was nominated as the Coordinator to coordinate with the members of the Sub committee as it was done during the year 2014 and he was requested to call the candidates for rechecking their talent, physical fitness etc. It is also clarified in the said letter that while inviting the said persons to recheck their suitability for the post of Band PCs, they have to be informed that the said selection is proposed to be conducted on

humanitarian grounds in pursuant of the orders of the High Court of Madras by relaxing the age and qualification, if they are otherwise found qualified in the selection process.

xiii) The petitioners also approached this Court by filing Writ Petition No.29305 of 2013 and batch and this Court by order dated 26.07.2013 directed the respondents therein to consider the claim of the petitioners in the light of the representations submitted by them on various dates while considering the claim of the other similarly placed persons. In the light of the said order, the petitioners were appointed as Bugler Constable PCs and sent for training from 21.09.2015.

xiv) One M.Venkatesan and 6 others, who were recruited in the year 2013 submitted their representations dated 20.06.2016 requesting the respondents to grant for retrospective seniority from the year 1993-94. The Commissioner of Police, Chennai by a common proceedings dated 22.07.2017 informed them that as the date of appointment is 02.12.2013, their seniority will be fixed only from the date of appointment.

xv) The contention of the respondents is that the petitioners were selected to the post of Band PCs and they have been appointed on humanitarian grounds in pursuance to the orders of this Court in WP.No.8976 of 2011 by relaxing age and qualification and as such, the request of the petitioners to give seniority retrospectively with effect from the year 1993 is not feasible for consideration.

xvi) The contention of the petitioners is that number of persons, who are appointed as Bugler PCs / Band PCs even after 05.01.1994, that is the date of the order of the Administrative Tribunal, are now promoted as Sub Inspector of Police and working in Law and Order / Local Cadre in spite of their recruitment as Bugler PCs.

xvii) To substantiate this contention, the petitioners filed statements showing appointment of 37 persons of the petitioners batch as Bugler PCs during 1993-95 by DGP and their present place of posting at Page Nos.1 and 2 in a common additional typed set of papers filed on 23.02.2024.

xviii) The petitioners also filed an order dated 20th March 2010 of the Commissioner of Police, Egmore, Chennai at page No.6 of the additional typed set of papers to prove that 3 persons were appointed subsequent to the date of the order of the Tribunal. One Praveen, PC 12655 was appointed on 07.01.1994 as Bugler PC and converted as Grade II PC on 16.11.1998 and upgraded as Grade I PC on 07.01.2004 and subsequently, upgraded as Head Constable on 07.01.2009 and presently working as Sub Inspector of Police. Likewise, one Elango PC 78 was appointed as Bugler PC on 05.09.1994 and promoted as Head Constable on 05.09.2009 and presently working as Sub Inspector of Police. Similarly, one Gopi PC 2798 was appointed as Bugler PC on 06.02.1995 and promoted as Head Constable on 06.02.2010 and presently, working as Sub Inspector of Police.

xix) On perusal of the statements filed by the petitioners, number of candidates were appointed from 18.05.1993 to 06.02.1995, i.e, prior to the order of Administrative Tribunal and after the date of order of the Administrative Tribunal as Bugler PCs by the second respondent and they got several promotions and some of them are working as Sub Inspectors.

xx) Accordingly, the petitioners seeking direction from this Court to the respondents to consider their request to grant retrospective seniority on par with their batchmates.

5. The main contention of the learned counsel for the petitioners is that the second respondent appointed Thiru.Sivam and 10 others by order dated 18.05.1993 as Bugler PCs and also some other persons as shown in the statements filed along with the additional typed set of papers. They were appointed in the year 1994-95 itself and they were granted periodical promotions as Grade II PCs, Grade I PC, Head Constable and some of them are working as Sub Inspector of Police at present and as such, the respondents are not permitted to take different stand in the case of the petitioners. Though the petitioners also participated in the selection process in the year 1993 along with those candidates, the petitioners were appointed only in the year 2015 by the Government Order. The learned counsel for the petitioners would submit that since the petitioners' batchmates were appointed in the year 1993, the petitioners also entitled to retrospective seniority from the year 1993 along with their batchmates of 1993.

6. On the other hand, Mr.P.Kumaresan, learned Additional Advocate General appearing for the respondents would submit that the appointment made by the second respondent on 18.05.1993 have been set aside by the Tamil Nadu Administrative Tribunal by its order dated 05.01.1994 in OA.No.5177 of 1993 and subsequently, the Government has issued G.O.Ms.No.877, Home (POL.IX) Department, dated 05.10.2005 framing recruitment procedures for Band PCs and selection procedures were convened during the year 2007 onwards and the petitioners, who were appointed in the year 2015, cannot seek such retrospective seniority.

7. The learned Additional Advocate General also contends that this Court in Writ Petition Nos.28201 and 28313 of 2023 had dealt the identical issue raised by the petitioners therein and dismissed the said Writ Petitions by order dated 29.09.2023, stating that retrospective seniority cannot be granted.

8. The learned counsel for the petitioners contends that the Writ Petition Nos.28201 and 28313 of 2023 filed by the batchmates of the petitioners were dismissed at the stage of admission in view of the fact that

the respondents therein suppressed the facts that about 30 persons even after the Tribunal order dated 05.01.1994 were appointed during the year 1994-95 as Bugler Constables and as such the said order is not binding on the petitioners. When the facts are otherwise, the order in those Writ Petitions cannot be treated as well considered order.

9. This Court gave anxious consideration to the submissions of the learned counsel for the petitioner and carefully examined the materials available on record.

10. There is no dispute with regard to the admitted facts of the case. In the counter affidavit filed by the second respondent at paragraph No.8, it is averred as follows:

“With reference to the averments in paragraphs 7 and 8 of the affidavit, it is submitted that the contention of the petitioners that they were selected during 1993 is true, but the said selection has been quashed by the Tamil Nadu Administrative Tribunal, Chennai in its order dated 05.01.1994 in OA.No.5177 of 1993.”

11. At paragraph 9 of the counter affidavit, it is submitted that TAT

had quashed the selection process of Bugler Police Constables during the year 1993 and all of them were appointed as Band Constables during the year 2015 as per the selection procedures stipulated in G.O.Ms.No.877, Home (POL.IX) Department, dated 05.10.2005. From these averments made by the respondents at paragraphs 8 and 9 of their counter affidavit, it is clear that the petitioners participated in the selection of Bugler PCs in the year 1993 and they were selected, but in the light of the order of the Administrative Tribunal, dated 05.01.1994 in OA.No.5177 of 1993, they were not appointed at the relevant point of time.

12. Subsequently, in the year 2015, as per the order of this Court in WP.No.8976 of 2011, the petitioners were appointed by the second respondent to the post of Band PC, by way of Special Selection Procedure by the Special Band Selection Sub Committee constituted by the State Government.

13. The contention of the petitioners that number of persons were appointed prior to 05.01.1994, i.e., date of the order of the Administrative Tribunal, as Bugler Police Constables by the second respondent and they got

promoted periodically and some of them are working as Sub Inspector of Police at present, cannot be brushed aside. The documents filed by the petitioners in the additional typed set of papers prove that number of candidates were appointed prior to and after 05.01.1994 and they are all now got promotion basing on their seniority with effect from 1993 onwards.

14. In fact, during the course of hearing, this Court asked reply from the respondents to the statement of particulars and the documents filed by the petitioners to prove the appointment of some candidates during the period from 1993 to 1995. But the respondents could not place any material before this Court on this aspect to disprove the particulars submitted by the petitioners.

15. Under these circumstances, there is no other option left to this Court except to accept the contention of the petitioners that the action of the respondents in not considering their claim for retrospective seniority on par with their batchmates is discriminatory, which is in violation of Article 14 of the Constitution of India.

16. As rightly pointed out by the learned counsel for the petitioners

that this Court passed the order in Writ Petition Nos.28201 and 28313 of 2023 at the stage of admission and it appears, parties therein could not place the relevant materials before the Court for appropriate adjudication and accordingly the said order passed by the learned Single Judge, as rightly stated by the learned counsel for the petitioners it is not binding.

17. A Division Bench of the Madras High Court in ***S.Suthakar vs. Principal Secretary to Government, Home Department, Fort St. George, Chennai*** in Writ Appeal No.2771 of 2019, held that when a particular service benefits given in favour of one of the employees in the Department, such benefit had to be equally extended to all those who are entitled for the same without any discrimination.

18. The Hon'ble Apex Court in ***Surendra Narain Singh and Others vs. State of Bihar*** and others reported in 1998 5 SCC 246, held that the candidates who are selected against earlier vacancies and the candidates appointed along with others of the same batch due to certain technical difficulties when appointed subsequently, will have to be placed above those who are appointed against subsequent vacancies.

19. In *Union of India and Others vs. R.Reddappa and another* reported in 1993 4 SCC 269, the Apex Court observed as extracted hereunder:

“5.....True the jurisdiction exercised by the High Court under Article 226 or the tribunal is not as wide as it is in appeal or revision but once the court is satisfied of injustice or arbitrariness then the restriction, self-imposed or statutory, stands removed and no rule or technicality on exercise of power, can stand in way of rendering justice.”

20. For the reasons set out herein above, this Court is of the opinion that the respondents rejected the claim of the petitioners for retrospective seniority on par with their batchmates erroneously and the inaction of the respondents in considering the claim of the petitioners on par with their batchmates has to be declared as discriminatory and accordingly, it is held that the petitioners are entitled for the retrospective seniority from 02.09.1993 on par with their batchmates i.e., Mr.I.Sivam and others.

21. Accordingly, these Writ Petitions are allowed with the following

directions:

i) The respondents are directed to grant retrospective seniority to the petitioners with effect from 02.09.1993 on par with their batchmates viz., Mr.I.Sivam and others.

ii) The petitioners are entitled for notional benefits including pay, seniority and other consequential benefits.

iii) It is made clear that the petitioners will not be entitled for backwages and arrears of salary for the period during which they have not served.

iv) The respondents are directed to pass necessary orders within a period of six weeks from the date of receipt of a copy of this order.

No costs.

25.04.2024

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

pvs

To

1. The Secretary to Government,
State of Tamil Nadu
Home (Police-IX) Department,
The Secretariat, Chennai 600 005.
2. The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai 600 004.

W.P.Nos.5482, 5483, 17757, 30549 and 31962 of 2018

BATTU DEVANAND.J.,
pvs

Pre-delivery order in

W.P.Nos.5482, 5483, 17757, 30549 and 31962 of 2018

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