



W.P.No.27640 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 01.03.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.27640 of 2013

S.Ramachandran

.. Petitioner

Versus

1. The Principal Secretary to Government,
Home (Pol.1A) Department,
Fort St. George, Chennai - 9.

2. The Director General of Police,
Dr.Rdhakrishnan Salai,
Mylapore, Chennai - 4.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent in connection with the impugned order passed in Letter (D) No.674 Home (Pol.1A) Dept, dated 26.08.2013 and quash the same and further direct the respondents to fix the petitioner's pay notionally from the date of his promotion and posting w.e.f. 26.11.04 in the cadre of Superintendent of Police (non-cadre) and consequently, fix his pay and pension within a reasonable time.

For Petitioner : Mr.K.Venkataramani,



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Senior Counsel,
for Mr.Muthappan

For Respondents : Mr.R.U.Dinesh Rajkumar
Additional Government Pleader

ORDER

This Writ Petition is filed challenging the order, dated 26.08.2013, in and by which, the petitioner's request to fix his pay on par with his junior in the post of Superintendent of Police is rejected.

2. The brief facts leading to the filing of this Writ Petition are that the petitioner was originally appointed as Sub-Inspector of Police under the respondents with effect from 01.04.1970. He was thereafter promoted as Inspector of Police with effect from 01.04.1982. The petitioner's turn for further promotion as Deputy Superintendent of Police came in the panel 1994-1995. However, the petitioner's case was passed over on account of the Disciplinary Proceedings pending against him vide charge memo, dated



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16.06.1995. However, the petitioner was promoted temporarily as Deputy Superintendent of Police with effect from 03.06.1997. Thereafter, in the year 2001-2002, the petitioner came within the zone of consideration for promotion as per seniority to the next higher post of Additional Superintendent of Police. Because the Disciplinary Proceedings were pending, again the petitioner was not considered.

3. On 15.09.2003, the petitioner was exonerated of the charges. Similarly the second set of proceedings ended in the petitioner being exonerated in the year 2009. The petitioner's immediate junior was promoted as Superintendent of Police by an order, dated 25.09.2004, the petitioner's services were not regularised both in the cadre of Deputy Superintendent of Police and in the Additional Superintendent of Police and as such, he was not granted any of the benefits pursuant to his exoneration in the Disciplinary Proceedings. The petitioner retired from service upon his



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superannuation with effect from 30.11.2004. Since the petitioner's services were not at all regularised as Deputy Superintendent of Police and further regular promotions to the post of Additional Superintendent of Police and Superintendent of Police were not granted to the petitioner, the petitioner approached the respondents. Since there was no positive response from the respondents, the petitioner filed W.P.No.35361 of 2004 and by an order, dated 21.08.2008, this Court directed the respondents to consider and pass orders.

4. Pursuant thereto, the respondents, by G.O.Ms.No.1016, dated 30.11.2009, passed orders granting benefits of regularisation to the petitioner in the cadre of Deputy Superintendent of Police and further notional promotion as Additional Superintendent of Police and Superintendent of Police from the respective dates of promotion of his junior. It is essential to extract paragraph No.7 of the said Government Order which reads as hereunder :-



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" 7. The Government after careful examination have decided to accept the proposal of the Director General of Police and direct that the name of Thiru S.Ramachandran temporary Additional Superintendent of Police (Retired) be included in the panel of Deputy Superintendent of Police (Category-I) fit for promotion as Additional Superintendent of Police (Category-I) for the year 2001-2002 approved in G.O.Ms.No.429, Home department, dated: 22.05.2002 as Sl.No.19B i.e. below his Senior Thiru K.R. Balaiah (Sl.No.19A) and above his Junior Thiru B. Sundararajan (Sl.No.20) and the name of Thiru S. Ramachandran temporary Additional Superintendent of Police (Retired) be included in the panel of Additional Superintendent of Police (Category-I) fit for promotion as Temporary Superintendent of Police (Non Cadre) for the year 2004-2005 approved in G.O.Ms.No.1162, Home Department, dated 25.09.2004 as Sl.No.1 above his Junior Thiru P.S Krishnan (who is at Sl.No.1 in the panel) and the Sl.No. of Thiru P.S. Krishnan be re-assigned as Sl.No.1A. Accordingly, Thiru S. Ramachandran is eligible for notional fixation in the post of Additional Superintendent of Police and Temporary Superintendent of Police (NC) as per ruling 17 under FR 7 and his is not eligible for any arrears."

5. Even though the petitioner was granted the benefit of notional fixation in the post of Additional Superintendent of Police and temporary Superintendent of Police (NC), while implementing the said order, the respondents granted the fixation only as Additional Superintendent of Police and the next higher fixation in the cadre of Superintendent of Police was not



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granted to the petitioner. The petitioner therefore made a representation on 03.08.2010 to the respondents. Even though the said representation was forwarded to the Director General of Police by the communication of the Superintendent of Police, Tiruvallur, dated 23.09.2010, no further orders were passed and therefore, the petitioner once again approached this Court by way of W.P.No.20577 of 2012. By order, dated 27.08.2012, this Court directed the respondents to consider the representation, dated 03.08.2010 and passed orders thereon. In reply thereof, the impugned order is issued denying the benefits. The entire impugned order reads as follows:-

" I am directed to invite attention to the references cited and to state that your immediate junior Thiru P.S.Krishnan (Sl.No.1A) has officiated in the post of Superintendent of Police on 1.12.2004 ie., after your retirement on 30.11.2004.

2. As per the first proviso to rule 35 of General Rules of Tamil Nadu State and Subordinate Services Rules, fixation of your pay on par with your junior who has officiated in the promoted post on 1.12.2004 ie., after your retirement (30.11.2004) is not feasible of compliance."

Thus, it can be seen that even though the benefit of fixation as Superintendent of Police is granted to the petitioner since the same is



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ordered to be granted above his junior of the petitioner, *P.S.Krishnan*, it seems that the said *P.S.Krishnan* assumed charge in the post of Superintendent of Police only with effect from 01.12.2004 i.e., after the superannuation of the petitioner as on 30.11.2004.

6. It is pertinent to state here that the panel was formed on 25.09.2004 and the consequent promotion order promoting the petitioner's junior was passed on 26.11.2004.

7. The respondents rely upon the Ruling 17 under F.R.27. The Ruling 17 issued vide G.O.Ms.No.977, dated 06.10.1986 reads as follows :-

"(17) In case where a Government servant has been overlooked for promotion/appointment to the next higher post but subsequently promoted/appointed to that higher post after restoration of his original seniority on appeal, his pay shall be fixed on the date of assumption of charge in the higher post on par with the pay of his junior provided he has drawn the same rate of pay as his junior in the lower post from time to time. If he has not drawn the same rate of pay as his junior in the lower post, his pay shall be fixed, on the date of assumption of charge, at the stage at which he would have drawn pay on that date had



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he been promoted/appointed to the higher post along with his junior. In cases where seniority has been restored on or after 19th September 1981, arrears of pay and allowance consequent of fixation of pay shall be admissible with effect from the date of assumption of charge in the higher post; in cases where seniority has been restored prior to 19th September 1981, arrears shall be admissible only with effect from the above date.

[G.O. Ms. No. 977, Personnel and Administrative Reforms (FR.III), dated 6th October, 1986.]”

Therefore, it is now the contention of the respondents that since the junior of the petitioner did not assume charge in the post of Superintendent of Police till the superannuation of the petitioner, the petitioner is not entitled to fixation.

8. Heard *Mr K.Venkataramani*, learned Senior Counsel for the petitioner and *Mr. R.U.Dinesh Rajkumar* learned Additional Government Pleader for the respondents.

9. *Mr.K.Venkataramani*, learned Senior Counsel for the petitioner, taking this Court to F.R.27 and the Ruling 17, would submit that the same



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would not at all be applicable in the case of the petitioner. On the other hand, the principles laid down by the Hon'ble Supreme Court of India in ***Union of India and Ors. Vs. K.V.Jankiraman and Ors.***¹ will be squarely applicable to the facts and circumstances of the case. When the petitioner is ultimately exonerated, he will definitely be entitled to the consequential notional promotion and fixation. Only the grant of arrears or back wages alone is left to the discretion of the respondents. Admittedly, the respondents have not granted any arrears and have allowed only the fixation of pay. The same cannot be denied on the grounds that the junior did not join the post.

10. As a matter of fact, the panel was formed in September, 2004 itself. It is the administrative delay that they issued the promotion order only in November, 2004. Even then, before the superannuation of the petitioner on 30.11.2004, the promotion order to the junior was issued on 26.11.2004. Merely because the said junior took his joining time and joined

¹ [1991] 4 SCC 109
<https://www.mhc.tn.gov.in/judis>



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the post on 01.12.2004, that cannot be the determinative factor to deny the benefit to the petitioner when he has been exonerated of the charges. Had the charge memo not been there, the petitioner would have been included in the panel, dated 25.09.2004 and the promotion order would have been issued to him as of 26.11.2004. Therefore, the said benefit granted on the one hand by the order, dated 30.11.2009 cannot be taken away by the respondents by the impugned order.

11. Per *contra*, *Mr.R.U.Dinesh Rajkumar*, learned Additional Government Pleader for the respondents would submit that the respondents were not at fault in denying the petitioner. All along, Disciplinary Proceedings were pending against the petitioner. He was not even regularised in service in the post of Deputy Superintendent of Police. Therefore, the very question of promotion to the post of Additional Superintendent of Police and further, as Superintendent of Police never arose. Very belatedly i.e., only after the superannuation, he made



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representation and therefore, notional benefits were allowed by the order, dated 30.11.2009. However, the said notional benefits would only be conditional upon his junior being promoted. His junior assumed office only on 01.12.2004 and therefore, by rightly relying upon Ruling 17 under F.R.24, the fixation of pay has been denied by the impugned order. There was delay on the part of the petitioner at every stage of the proceedings and therefore, the Writ Petition is to be dismissed on the very ground of delay and laches.

12. I have considered the rival submissions made on either side and perused the material records of the case.

13. The question which is to be considered in the present Writ Petition is whether or not the petitioner is entitled to fixation of notional pay in the cadre of Superintendent of Police (temporary) with effect from 26.11.2004.



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14. The rights of the petitioner are already decided by the Government vide G.O.Ms.No.1016, dated 30.11.2009. Given the exoneration of the Disciplinary Proceedings, by the said order the petitioner was substantially promoted and regularised in the post of Deputy Superintendent of Police. Apart from the same, by the relevant portion of the order extracted *supra*, it can be seen that he has been declared to be eligible for notional fixation in the post of Additional Superintendent of Police and temporary Superintendent of Police (NC) and is not eligible for any arrears. The order of grant of notional promotion as Additional Superintendent of Police and further as temporary Superintendent of Police (NC) from the date of his junior namely, *P.S.Krishnan*, is in order and is as per the dictum of the Hon'ble Supreme Court of India in *Union of India and Ors. Vs. K.V.Jankiraman and Ors.* (cited *supra*). It is relevant to extract the relevant portion of paragraph No.23 which reads as follows:-

" 23. There is no doubt that when an employee is completely exonerated and is not visited with the penalty even of censure indicating thereby that he was not blameworthy in the least, he should not be deprived of any



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benefits including the salary of the promotional post....."

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15. Now, while carrying out the above-said Government Orders, it is seen that the petitioner's last drawn pay was not fixed in the cadre of temporary Superintendent of Police (NC) as of 30.11.2004. Therefore, the petitioner made a representation. Since there was no decision made, this Court directed the respondents to pass orders, according to which, the impugned order is passed. The entire impugned order is extracted *supra*. The only reason which is mentioned in the impugned order is that the junior has not officiated in the promoted post on 01.12.2004. The said criterion is tried to be deduced from Ruling 17. Ruling 17 only says that when a Government servant has been overlooked for promotion for a higher post, but, is subsequently promoted to the higher post after restoration of original seniority on appeal, his pay should be fixed on the date of assumption of the charge in the higher post on par with the pay of his junior, provided he has drawn the same rate of pay as his junior in the lower post from time to time.



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16. That fact situation does not arise here as even before the implementation of the notional promotion order, the petitioner superannuated from the service. The basic principle is that when the petitioner's case is passed over for promotion on account of the pendency of the Disciplinary Proceedings, if the Disciplinary Proceedings ultimately end in the exoneration of the petitioner, then the petitioner should be granted the benefit of promotion from the date of promotion of his junior. In the instant case, his junior, *P.S. Krishnan*, was promoted with effect from 26.11.2004 i.e., before the date of superannuation. Merely because the said individual joined the post after five days i.e., on 01.12.2004 and in the meanwhile on the fourth day i.e., on 30.11.2004, the petitioner's date of superannuation falls, the petitioner cannot be deprived of the benefit. Virtually, the impugned order takes away the benefit that is already granted to the petitioner by G.O.Ms.No.1016, dated 30.11.2009 and as such, is not sustainable.



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17. Now, considering the question of delay, it is seen that even though in one of the charges, the petitioner was exonerated in the year 2003, ultimately, only in the year 2009, he was exonerated from the other proceedings by an order, dated 20.07.2009. Therefore, there was no question of the petitioner asking for the relief at an earlier point in time. Immediately thereof, on 30.11.2009 itself, the reliefs have been granted by the petitioner by the said G.O.Ms.No.1016. Thereafter, when the scale of pay was not fixed, the petitioner made a representation dated 03.08.2010 and again, the same was not considered by the respondents despite the recommendation of the Superintendent of Police on 23.09.2010.

18. The petitioner had again approached this Court by way of W.P.No.20577 of 2012, according to which, the impugned order is passed. Even after his retirement, the petitioner had to approach this Court in the year 2004 and only after the order of this Court in the year 2008, the original proceedings were passed. Therefore, all along the petitioner has been



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vigilantly pursuing his remedies and it cannot be said that there was any

delay or laches on the part of the petitioner to disentitle him of the relief.

However, it can be seen that the delay occurred partly on account of the pendency of the proceedings against the petitioner and in view thereof, I am of the view that the petitioner can be granted the relief of fixation and his pension should be periodically fixed in the correct stage, but the arrears can be granted prospectively.

19. As a result, this Writ Petition is allowed on the following terms:-

(i) The impugned order, dated 26.08.2013 bearing Letter (D) No.674

Home (Pol.1A) Department shall stand quashed;

(ii) The respondents are directed to notionally fix the pay of the petitioner in the post of "temporary Superintendent of Police (NC)" with effect from the date of promotion of his junior namely, *P.S.Krishnan*, i.e., with effect from 26.11.2004 and accordingly, the last drawn pay of the petitioner shall be reckoned and his pension be fixed;



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(iii) However, the petitioner will not be entitled to any arrears;

(iv) The petitioner shall be paid arrears based on the re-fixed pension from the ensuing month of March 2024 onwards;

(v) The said exercise shall be carried out by the respondents within three months from the date of receipt of a copy of this order;

(vi) There shall be no order as to costs.

01.03.2024

Index : yes

Speaking order

Neutral Citation : yes

grs

To

1. The Principal Secretary to Government,
Home (Pol.1A) Department,
Fort St. George, Chennai - 9.

2. The Director General of Police,
Dr.Rdhakrishnan Salai,
Mylapore, Chennai - 4.



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D.BHARATHA CHAKRAVARTHY, J.

grs

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