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W.P.No.12601 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2024

CORAM :

THE HONOURABLE **DR. JUSTICE D.NAGARJUN**

W.P.No.12601 of 2014

and

M.P.No.1 of 2014

K.Viswakumar

... Petitioner

Vs.

1. The Secretary to Government,
Home Department,
Fort St.George,
Chennai - 9.
2. The Director General of Police,
Mylapore,
Chennai - 4.
3. The Commissioner of Police,
Greater Chennai City Police,
Vepery, Chennai.

...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 in pursuant to the impugned order issued by the first respondent in G.O.(D) No.848 Home (Police 3) Department dated 17.10.2013 and quash the same and consequently direct the respondents to include the name of the petitioner in the "C" list in the year 1991-19992 immediately above the name of his junior and promote him as Sub-Inspector of Police with retrospective effect with all consequential benefits.



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For petitioner : Mr.R.Prem Narayan
For respondents : Mr.R.U.Dinesh Kumar
Additional Government Pleader

ORDER

This writ petition is filed seeking to quash the impugned order issued by the first respondent in G.O.(D) No.848 Home (Police 3) Department dated 17.10.2013 and to direct the respondents to include the name of the petitioner in the "C" list in the year 1991-19992 immediately above the name of his junior and promote him as Sub-Inspector of Police with retrospective effect with all consequential benefits.

2. The facts in brief as per the submissions of the learned counsel for the petitioner are as follows:

2.1. The petitioner was initially recruited as a Grade II Police Constable on 12.12.1977 and further, as Head Constable on 08.06.1984 and subsequently as Inspector of Police on 08.09.2011. The third respondent Commissioner of Police conducted a promotion test for the list of Head Constables (Armed Reserve) fit for promotion for the post of Sub Inspector of Police (Armed Reserve), as prescribed in Rule 3 of the Special Rules of Tamil Nadu Police State Subordinate Service (TNPSSS), for the



year 1991-1992. Though, the petitioner participated in the said test he was not successful. After this, no promotion test was conducted until the year 2000 and the vacancies accrued were filled up by temporary promotions instead of conducting regular promotion test every year. Thereafter, promotion tests were conducted in the year 2002, 2003 and 2004 and thereafter, promotions were given based on the seniority.

2.2. In the mean while, one S.Megakumar, who was junior to the petitioner filed W.P.No.16765 of 2004, wherein a direction was given by this Court to consider the claim of S.Meghakumar to include his name in the promotion list for the year 1991-1992. But his request was rejected by the first respondent as per G.O.2 (D) No.263 Home (Pol.III) Department, 27.04.2007. Subsequently, as per Rule 39 of Special Tamil Nadu Police State and Subordinate Service Rules, (TNPSS), the first respondent has relaxed Rule 3 (d) (iii) of *ibid* and ordered for inclusion of S.Meghakumar in the promotion list for the year 1991-1992.

2.3. Thereafter, the first respondent considered the case of Manavalan and seven others based on the orders passed by this Court in W.P.Nos.22766 to 22770 of 2008, 27419,27420 of 2008, 27431 of 2008



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and accordingly, issued orders in G.O.Ms.No.82, Home (Pol.3) Department dated 03.02.2011, similar to that of S.Meghakumar and their names was also included in the promotion list for the year 1991-1992.

2.4. The petitioner is senior to one S.Megakumar and other similarly placed persons to that of S.Megakumar. Hence, the petitioner gave representations on 22.06.2010 and 22.04.2011 to consider his name in the promotion list for the year 1991-1992. In the meantime, the second and the third respondents have issued orders extending the benefit of inclusion for promotion in the year 1991-1992 to R.Rajendran and four others, who were also junior to the petitioner.

2.5. Aggrieved by the same, the petitioner filed W.P.No.1173 of 2012 and this Court by an order dated 24.04.2012 issued a direction to the first respondent to consider the petitioners representation within a period of three months. However, after a delay of one year and three months, the first respondent issued G.O.)D) N0.846, Home (Police 3) Department dated 17.10.2013 rejecting the request of the petitioner. Thereby, aggrieved by the same this present writ petition is filed.



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3. Counter affidavit has been filed by the respondents and stated that the third respondent Commissioner of Police conducted a promotion test from the drawl of "C" list of Head Constables (Armed Reserve) fit for promotion for the post of Sub Inspector of Police (Armed Reserve), prescribed in Rule 3 of the Special Rules of Tamil Nadu Police State Subordinate Service (TNPSSS), for the year 1991-1992 and the petitioner participated in the said test but he was not successful. A list of 27 Head Constables was drawn and published on 31.12.1991 as per the estimated vacancy. After this, no promotion test was conducted until the year 2000 due to administrative reasons and the vacancies accrued were filled up by temporary promotions instead of conducting regular promotion test every year. Promotion tests were conducted in the year 2002, 2003 and 2004 and and thereafter, subsequent promotions were given based on the seniority.

4. It is submitted by the learned counsel for the petitioner that the orders passed by the first respondent is arbitrary and when the respondent has given similar relief to S.Megakumar and others and also to many other persons who were junior to that of the petitioner, why the same relief could not be extended to the petitioner.



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5. S.Megakumar and others attended the Range Promotion Board test for the year 1991-1992 but their names were not included in the list and the said S.Megakumar was acting as temporary Sub Inspector of Police (Armed Reserve). Further, S.Megakumar and others filed a original application before the Tamil Nadu Administrative Tribunal, Chennai, to issue a direction to regularize their services as Sub Inspectors of Police (Armed Reserve) without pre promotional test but the same was dismissed. Thereby, S.Megakumar, filed W.P.No.16765 of 2004 to issue a direction to regularize his service as Sub Inspector of Police (Armed Reserve) without appearing for the range promotion test, since he has already appeared for the said test in the year 1991-1992 and was not included in the promotion list. In accordance with the direction of this Court in order dated 21.04.2016 in W.P.No.16765 of 2004, orders were issued in G.O.MS.No.349, Home (Police-III) Department, dated 14.03.2008, relaxing Rule 3 (d) of the Special Rules for the Tamil Nadu Police Subordinate Service Rules in favour of S.Megakumar and subsequently, his name was included in the promotion list for the year 1991-1992 and was promoted as Sub Inspector (Armed Reserve). Similarly, Manavalan and seven others filed writ petitions before this Court and this Court by an



order dated 24.08.2009 issued a direction in favour of the petitioners therein by G.O.(Ms.) No.82, Home (Police.III) Department, dated 03.02.2011. Subsequently, G.Rajendiran and others also filed writ petitions and this Court by an order dated 25.06.2009 they were also promoted to the post of Sub Inspector of Police (Armed Reserve).

6. In such circumstances W.P.No.1694 of 2010 was filed by J.Jayakaran and others to quash the G.O.MS.No.349, Home (Police-III) Department, dated 14.03.2008, issued in favour of S.Megakumar and others and also W.P.No.18686 of 2011 was filed to quash G.O.(Ms.) No.82, Home (Police.III) Department, dated 03.02.2011 issued in favour of Manavalan and others.

7. Further, basing on the seniority and eligibility, the petitioner was promoted as Sub Inspector of Police (Armed Reserve) on 06.04.2004 and then Inspector of Police (Armed Reserve) on 08.09.2011.

8. The learned Additional Government Pleader representing the respondents submitted that the orders passed in favour of S.Megakumar is under challenge and is still pending for consideration. Subsequently,



S.Inbaraj has filed W.P.No.36097 of 2015, wherein this Court by an order

dated 24.11.2016 allowed the said writ petition, the relevant paragraph of

which runs as under:

"8. It is the only contention of the learned Special Government Pleader that if the claim of the petitioner is considered favourably, it would open flood gates for claiming promotion by the personnel on par with the petitioner and it would affect the merits of other eligible candidates and it would create administrative imbalance. Moreover, W.P.No.1694 of 2010 which was filed questioning G.O.(Ms).No.349, Home (Police-3) Department, dated 14.03.2008 issued in favour of Thiru.S.Megakumar and another writ petition in W.P.No.18686 of 2011 which was filed praying to quash the G.O.(Ms).No.82, Home (Police-3) Department, dated 03.02.2011 and not to relax Rule 3 (d) of the Tamil Nadu Police Subordinate Service in favour of any of the candidates, are still pending before this court. As such, according to the learned Special Government Pleader, the petitioner's claim for promotion cannot be considered.

9. But, in my considered opinion, when the respondents have chosen to give promotion to the junior to the petitioner, now the reasons assigned by the respondents for not considering the claim of the petitioner for promotion, are not legally sustainable. Therefore, I am of the opinion that the impugned order is liable to be quashed and a suitable direction could be given to the respondents.

10. Accordingly, the impugned order dated 22.10.2013 is quashed. The respondents are directed to include the name of the petitioner in the 'C' list of Head Constables (Armed Reserve)



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fit for promotion as Sub-Inspector of Police (Armed Reserve) for the year 1991-92 at the appropriate place and give consequential promotions with all monetary and other attendant benefits, subject to the result of the writ petitions in W.P.No.1694 of 2010 & W.P.No.18686 of 2011, within a period of six weeks from the date of receipt of a copy of this order. With the above terms, the writ petition is allowed. No costs. "

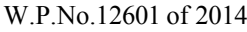
9. Aggrieved by the orders passed in W.P.No.36097 of 2015, the respondent Government has preferred W.A.No.897 of 2017 and the same was disposed on 07.03.2019. The relevant portion of which runs as under:

" 4. The question of giving the benefit to the respondent taking into account the indulgence given to Thiru.Megakumar/fourth respondent in W.P.No.1694 of 2010 would arise only after adjudication of the issue in W.P.No.1694 of 2010.

5. The learned Special Government Pleader is correct in her contention that the order passed by the learned Single Judge would be treated as precedent for claiming the benefit by others who are not eligible. We are therefore of the view that this appeal should be kept pending till the disposal of the writ petitions in W.P.Nos.1694 and 18686 of 2011.

6. The order passed by the learned Single Judge shall remain stayed till the disposal of the appeal which would be posted after the disposal of the writ petitions in W.P.Nos.1694 of 2010 and 18686 of 2011."

10. Following the orders of S.Inbaraj, many other cases were filed



15.03.2019. The relevant portion of the same runs as below:

9. In view of the above and considering the fact that several persons, who are juniors to the petitioners, have been retrospectively promoted as Sub Inspectors with effect from 1991 to 1992, there is no reason as to why the same benefit should not be extended to the petitioners herein also.

11. Considering the above submissions made by both sides and on al of records and taking into consideration the pendency of the writ ons and writ appeal, it is clear that juniors to the petitioner were led in the promotion list for the year 1991-1992 for the post of Sub ctor (Armed Reserve), there is no reason as to why the same benefit t be extended to the petitioner. It is submitted by the learned



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Additional Government Pleader the orders of S.Megakumar and similarly placed persons are subject to out come of the orders in W.P.Nos.1694 of 2010 and 18686 of 2011 and W.A.No.897 of 2017.

12. Considering the circumstances, this writ petition is allowed. However, since the petitioner has already retired from service and attended superannuation, the respondents are directed to provide notional benefits to the petitioner including revision of pay. These orders are subject to the result of W.P.Nos.1694 of 2010 and 18686 of 2011 and W.A.No.897 of 2017 which are still pending before this Court. Connected M.P is closed. No costs.

21.03.2024

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Index : Yes/No
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Citation : Yes/No

Dr.D.NAGARJUN,J.



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To,

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Home Department,
Fort St.George,
Chennai - 9.
2. The Director General of Police,
Mylapore,
Chennai - 4.
3. The Commissioner of Police,
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