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W.P. No.18478 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.18478 of 2018

S.Karthikeyan

... Petitioner

Vs.

The Commissioner of Police
Salem City
Salem.

...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the entire records relating to the impugned proceedings in Na.Ka.No.A3/19429/2015 dated 06.07.2015 on the file of the respondent and quash the same consequently directing the respondent to give a promotion with retrospective effect on par with the petitioner Junior Mr.A.Palanisamy, HC 714 with all attendant benefits.

For Petitioner : M/s.R.Ezhilarasan

For Respondent : Ms.P.Kumaresan
Additional Government Pleader VII
assisted by Ms.E.Ranganayaki,
Additional Government Pleader.



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ORDER

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The petitioner herein was initially appointed as Grade II PC in Tamilnadu State Police Service and on completion of institutional training, he served in Tamilnadu Special Police, Palani. Thereafter, he was posted to Armed Reserved Force, Salem city. Subsequently, he was promoted to the rank of Grade I Police Constable on 16.06.2003 and while he was working as such, he was transferred and posted to Taluk Police as per C.No.A3/27640/2002, dated 02-12-2002 of City Police Office, Salem City. However, after the lapse of 5 years, the petitioner, at his request, was re-posted to Armed Reserve, Salem City through proceedings CPO NO.949/2007 C.No.A2/25400/2007, dated 20.12.2007. The relevant portion from the said proceeding reads as under:

“2) மேற்படி மு.நி.கா. தனது 09.12.2207த் தேதியிட்ட மனுவில் எந்த துழ்நிலையிலும் மீண்டும் தாலுக்கா காவல் நிலையத்திற்கு மாறுதல் கோரமாட்டேன் என்றும் ஆயுதப்படையில் உண்மையாக பணிபுரிகிறேன் என்றும், ஆயுதப்படைக்கு மாற்றம் செய்த பிறகு மீண்டும் முதுநிலை குறித்து எவ்வித உரிமையும் கோரமாட்டேன் என்றும் உறுதி அளித்ததின் பேரில் இவரது முதநிலை 16.06.1993ம்



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ஆண்டு இரண்டாம் நிலை காவலர்களின் முதநிலைப்
பட்டியலில் கடைசியில் சேர்க்கப்படுகிறார்."

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2. Thereafter, though he was once again re-transferred to Local Police through proceeding dated 23.06.2008, the said transfer proceeding was assailed by the petitioner by filing writ petition in W.P.No.16734 of 2008 and the operation of the said transfer was stayed by this Court and later, the said writ petition came to be allowed by final order dated 03.04.2019 quashing the said transfer order reposting the petitioner to the Local Police from Armed Reserve. Thus, the petitioner continued to serve in Armed Reserve since 20.12.2007. His case was also considered for upgradation to the post of Head Constable with effect from 16.06.2008.

3. While so, the respondents have prepared a "C" list of Head Constables (AR) fit for promotion as Sub Inspectors of Police (AR) without including the name of the petitioner. Hence, the petitioner submitted a representation dated 14.03.2015 to include his name in the seniority list, but the said request was negated by the respondents by issuing proceedings Na.Ka.No.A3/19429/2015 dated 06.07.2015. Having been aggrieved by the



said proceeding, the petitioner approached this Court by filing present writ petition.

4. The learned counsel for the petitioner contended that the grounds on which the request of the petitioner to include his name in the “C” list of Head Constables (AR) eligible for promotion to the post of Sub Inspectors of Police (AR) is totally unsustainable, as the posting of petitioner in the Police Academy on deputation cannot be deprive the petitioner of his claim for promotion in the Armed Reserve on par with his Juniors.

5. It is also further contended that though the petitioner was upgraded to the post of Head Constable subsequent to Grade II PC, who were appointed on 25.10.1993, the date of appointment to the post of Head Constable is irrelevant factor for preparing the seniority list in the cadre of Head Constable and it is only the date of entry into the service as PC is required to be taken into consideration for the preparation of seniority of Head Constables, eligible for promotion to the post of Sub Inspector of Police (AR). In support his contention, the learned counsel placed reliance



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on the decision of this Court in W.P.(MD)Nos.1554 of 2019 and batch dated 06.01.2020.

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6. He also further contended that by virtue of the order dated 20.12.2007, through which the petitioner was re-transferred to Armed Reserve on 16.06.1993, he is entitled to be placed below in the seniority list as last person as Grade II PC. Therefore, the persons who were appointed as Grade II PC on 25.10.1993 namely, A.Palanisamy (MT) HC 714 and P.Sekar (MT) HC 715 in Tamil Nadu State Police Service are bound to be treated as juniors to the petitioner in terms of the order passed by this Court in W.P.(MD)Nos.1554 of 2019 and batch dated 06.01.2020 and as such the petitioner is entitled for promotion to the post of Sub Inspector of Police(AR) on par with the said two persons.

7. The learned counsel for the petitioner also placed reliance on Rule 25(b) of Special Rules for Tamil Nadu Police Subordinate Service to contend that the petitioner is entitled only for counting of services from his initial date of appointment irrespective of his transfer from Armed Reserve to



Local Police and Local Police to Armed Reserve and also further contented that the said Rule 25(b), the petitioner was granted protection of services with effect from 16.06.1993 through proceedings dated 20.12.2007.

8. The sole respondent filed counter affidavit admitting the facts as stated in the affidavit filed in support of the writ petition. There is no dispute on the factual aspects. It is also not in dispute that the petitioner was granted benefit by placing as last person in the batch of Grade II PC appointed on 16.06.1993.

9. However, the case of the petitioner was not considered for promotion to the post of Sub Inspector of Police (AR) on the ground that at the relevant point of time, the petitioner was working in Salem Police Academy on deputation and he was posted back to the Armed Reserve only on 20.12.2007 and further on the ground that the writ petition No.16734 of 2008 filed by the petitioner questioning his re-transfer to the Local Police was pending before this Court.



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10. Further it is also placed in the counter affidavit that while the petitioner was out of Armed Reserve and working in Salem Police, department, the case of the said two persons namely A.Palanisamy and P.Sekar were considered for promotion to the post of Head Constable with effect from 15.03.2005 and by virtue of their seniority in the cadre of Head Constable. Their case were considered for promotion to the post of Sub Inspector of Police (Armed Reserve) and the “C” List of Head Constables eligible for promotion was prepared and they were promoted to the post of Sub Inspector of Police (Armed Reserve) with effect from 15.07.2013.

11. Thus, it is the contention of the respondents that the petitioner was not available in the Armed Reserve when the case of the above said two juniors were considered for promotion to the post of Head Constable and Sub Inspector of Police (AR) with effect from 15.03.2005 and 15.07.2013 and consequently on the ground that the said two persons who were promoted to the post of Head Constable on 15.03.2005 whereas, the petitioner herein was promoted to the post of Head Constable on 16.06.2008. Thus, the said two



persons have stated to be senior to the petitioner and they were rightly promoted to the post of Sub Inspector of Police ahead of the petitioner.

12. The specific contention raised by the petitioner that needs to be examined is whether the respondents are justified in taking into consideration the date of promotion of the said two persons to the post of Head Constable as criteria for the purpose of fixation of seniority in the cadre of Head Constables (AR) eligible for promotion to the post of Sub Inspector of Police or not?

13. In this connection, it would be relevant to consider the decision of this Court in W.P.(MD)No.1554 of 2019 and batch dated 06.01.2020 relied upon by the petitioner. The said decision of the learned Single Judge of Madurai Bench of this Court, considered the very same issue elaborately and the relevant portion of the said order reads as under:

“15.The issue involved in all these Writ Petitions are whether promotion to the post of Sub-Inspector of Police is to be reckoned as per seniority in entry level Police Constable Grade-II or their seniority in the post of Head



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Constable, which is the Feeder Category.

16. From the materials on record, it is seen that there are 16 Ranges in State of Tamil Nady with regard to Police Personnel. Each range consist of number of Districts. For example, Madurai range consists of Madurai District and Virudhunagar District. Similarly, Trichy range consists of Karur, Ariyalur and Perambalur Districts. The Grade II Police Constable is eligible to be promoted to the next post of Grade I based on seniority as well as availability of vacancies. Similarly, Grade I will be promoted as Head Constable based on seniority and availability of vacancy. The post of Head Constable is Feeder Category for promotion to the post of Sub-Inspector of Police. Each District in range is considered as separate unit for promotion from the post of Police Constable Grade -II to Police Constable Grade – I and Police Constable Grade – I to Head Constable. Only when the promotion to the post of Sub-Inspector of Police is taken up, the entire range is taken as a single unit. Due to vacancy that arise in a particular District in a range, the junior working in a said District is promoted to the next higher post, while a senior working in another District in same range is continued without promotion. In order to set right the stagnation of personnel in the same post and also to motivate them to discharge their duties efficiently, upgradation scheme was



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introduced in the year 1993. As per the said scheme, Police Constable Grade-II, on completion of 10 years is upgraded as Police Constable Grade-I and Police Constable Grade-I on completion of 5 years is upgraded as Head Constable. This upgradation is granted irrespective of existence of vacancies.

16(i). The issue has arise when a junior is promoted when the vacancy arises in the District where he worked or the batchmate of a personnel promoted due to vacancy in the place where he was working and the senior or batchmate are upgraded later. In view of the same, when the promotion to the post of Sub-Inspector of Police arises and considered by the respondents, the respondents have taken into account the seniority in the entry level of Police Constable Grade-II. Based on the said pre-existing seniority, the interse seniority in the post of Head Constable is fixed and the Head Constables were included in the 'C' List for promotion to the post of Sub-Inspector pf Police irrespective of seniority in the post of Head Constable. This procedure is followed by the respondents as per the Rules for number of years. In view of the said procedure, the 2nd respondent by his memorandum dated 27.03.2018, issued general instructions to the Inspector General of Police in all the ranges to prepare 'C' List of Head Constables (Armed Reserve) fit for promotion as



Sub-Inspector of Police (Armed Reserve) based on the seniority in the entry level post of Grade-II Police Constable. While Deputy Inspector General of Police prepared 'C' List based on the said instructions, the two W.P.(MD).Nos. 9115 and 9116 of 2018 were filed by one P. Lingaiah, the 5th respondent in W.P.(MD).No.3208 of 2019 and others who were promoted as Head Constables stating they are the seniors in the post of Head Constables even though they are juniors at the entry level.

16(ii). In the counter affidavit filed by the respondents, the official respondents have stated that inter-se-seniority of Head Constable is prepared as per their pre-existing seniority in Grade - II Police Constable and not based on seniority as per the promotion to the post of Head Constable. The said Writ Petitions were filed by the petitioners therein, challenging the memorandum of 2nd respondent dated 27.03.2018. This Court considering the stand taken by the respondents in the counter affidavit and recording the same, did not quash the memorandum of the 2nd respondent but disposed of the Writ Petitions based on the statement of the respondents. The 2nd respondent on misconception and misinterpretation of the order of this Court dated 29.11.2018 made in W.P. (MD). Nos. 9115 and 9116 of 2018, issued the impugned memorandum dated 21.12.2018, directing all the Deputy Inspector



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General of Police to prepare 'C' List containing names of eligible Head Constables to be promoted as Sub-Inspector of Police (Armed Reserve) based on their date of promotion to the post of Head Constable. The said instructions given by the 2nd respondent are invalid. This Court did not direct the 2nd respondent to prepare 'C' List based on the date of entry in the post of Head Constable.

16(iii). The issue whether the 'C' list containing the names of Head Constables eligible to be promoted as Sub-Inspector of Police (Armed Reserve) is based on pre-existing entry seniority or Head Constable, was not decided by this Court In W.P. (MD). Nos. 9115 and 9116 of 2018. The petitioners therein contended that if the entry level seniority is considered for inclusion in the 'C' List, the persons with blemished service and whose promotion were withheld will be given promotion rather than persons who have put in unblemished service. This Court recording the statement of learned Additional Advocate General that persons with blemished record will not be put ahead of persons with C unblemished record, declined to accept the apprehension of petitioners therein.

16(iv). From the materials on record, it is seen that in the Trichy range, the respondents 4 to 18 in W.P. (MD) No. 3528 of 2019 promoted as Head Constable within a short time of promotion as Police Constable Grade-I and



their services were regularized within a short period. This irregularity was pointed out by the Chairman of Range Promotion Committee of Trichy range and 2nd respondent instructed the 3rd respondent in the said Writ Petition to send all details about the irregular promotion. The respondents 1 to 3 have not produced any materials to show that promotion of respondents 4 to 18 are regular promotion and that there is no irregularity in the said promotion. The 3rd respondent has not produced any documents to show whether he has sent reply to the queries raised by the 2nd respondent.

16(v). It is further to be noted that in Madurai range, which is the issue in W.P. (MD). No. 3094 of 2019, the junior in Virudhunagar District was promoted earliest, than his seniors working in Madurai District who are the petitioners in W.P. (MD) Nos. 3206 to 3211 of 2019 even though both the Districts are in the Madurai range only.

16(vi). The materials referred to above clearly show that some of the juniors were promoted earlier as Head Constable in view of the vacancy that arose in the place, where they were working and seniors were either promoted or upgraded later. Only in view of avoiding seniors working under their juniors due to this unforcing circumstances, the official respondents were considering the entry level seniority to fix inter-se-seniority to the post



of Head Constable rather than fixing seniority based on the date of promotion to promotion to the post of Head Constable.

16(vii). This Court, in the order dated 20.08.2019 made in W.P. Nos. 18315 and 563 of 2018, held that entry level seniority has to be taken into consideration for giving promotion. The ratio in the said order is squarely applicable to the facts of the present case. Further one K.Shanmugamurthi filed W.P. No. 3140 of 2018, claiming promotion to the post of Sub-Inspector of Police based on entry level seniority and sought promotion when his immediate junior one P. Amutha was promoted. This Court by order dated 13.02.2018, allowed the Writ Petition. Based on the order of this Court, the 2nd respondent by the proceedings dated 07.11.2019, the revised seniority of K.Shanmugamurthi in Grade-I Police Constable and Head Constable and included in C list for promotion to the post of Sub-Inspector of Police.

16(viii). From the above materials on record, it is seen that the respondents 1 to 3 have so far given promotion to the post of Sub- Inspector of Police (Armed Reserve) based on the entry level seniority and this Court in two Writ Petitions referred to above, had held that entry level seniority is the criteria for fixing inter-se-seniority in the post of Head Constable and 'C' List must contain



eligible candidates as per the entry level seniority. In view of the same, the judgments relied on by the learned Senior Counsel appearing for the petitioners are squarely applicable to the facts of the present case.

16(ix). For the above reasons, the petitioners are entitled to the relief sought for in the Writ Petitions. The impugned Memorandum issued by the 2nd respondent, Director General of Police in RC. No. 163720/NGB V (2)/2018 dated 21.12.2018 is hereby quashed. The respondents are directed to consider the petitioners for promotion to the post of Sub-Inspector of Police (Armed Reserve) on the basis of their seniority in cadre of Grade-II Police Constable, if they are otherwise eligible.

14. From the above, it is evident that this Court has already taken a view that, while preparing a list of Head Constables eligible for promotion to the post of Sub-Inspector of Police(AR), the relevant date that is required to be taken into consideration for the purpose of preparation of seniority in the cadre of Head Constable (AR) is the date of entry into services as Police Constable Grade-II only but not the date of promotion to the post of Head Constable.



15. In the light of the above, it is obligatory on the part of the respondents to take into consideration the date of entry into Tamil Nadu State Police Service in the cadre of Police Constable Grade-II for the purpose of preparation of seniority in the cadre of Head Constable who are eligible for promotion to the post of Sub-Inspector (AR). But in the instant case, the said procedure is violated and admittedly the date of promotion of A.Palanisamy and P.Sekar were taken into consideration for promotion to the post of Sub-Inspector of Police with effect from 15.07.2013 and whereas the petitioner is continuing in the post of Head Constable only as on date, though he was granted benefit of upgradation to the post of Sub-Inspector of Police, on completion of certain length of service in the post of Head Constable.

16. Therefore, the contention of the respondents in the counter affidavit in para-8 stating that the name of the petitioner was rightly included in the seniority list of Head Constable between M.Balamurugan, HC1049 and K.Palanisamy, HC1577 cannot be said to be in accordance with law.



17. Thus, in the light of the above, this Court has no other option except to conclude that the action of respondents taking the date of promotion of A.Palanisamy and P.Sekar to the post of Head Constable as the criteria for the purpose of their preparation of 'C' List of Head Constable (AR) eligible for promotion to the post of Sub-Inspector of Police (AR) ignoring the claim of the petitioner is totally arbitrary and illegal. In view of the law declared by this Court in terms of Rule 25(b) of Special Rules for Tamil Nadu Subordinate Service, the petitioner is entitled to take the benefit of his entry into service on 16.06.1993 as last person in the said batch for the purpose of preparation of seniority list of Head Constables and the said A.Palanisamy and P.Sekar are entitled to count their entry point into services being 25.10.1993 only, but not their date of promotion to the post of Head Constable.

18. In the light of the above, the action of respondents in denying promotion to the petitioner to the post of Sub-Inspector of Police on par with the above said two persons with effect from 15.07.2013 is liable to be declared as illegal and accordingly, the writ petition is allowed directing the



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respondents to extend the benefit of notional promotion to the petitioner on par with M.Balamurugan, HC1049 and K.Palanisamy, HC1577 with effect from 15.07.2013 and extend all other consequential benefits including fixation of pay, arrears of pay etc. The entire exercise as directed above shall be completed as expeditiously as possible at any rate within a period of three (3) months from the date of receipt of a copy of this order.

19. Accordingly, the writ petition is allowed. The connected miscellaneous applications, if any, shall stand closed. No costs.

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Speaking Order : Yes/No
dpa

To:

The Commissioner of Police
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