



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.22173 of 2024

Mr.H.Arul Raja

... Petitioner

Vs.

1. Director General of Police,
Tamil Nadu Police Department,
Mylapore, Chennai 600 004.

2. The District Superintendent of Police
[Nagapattinam],
Near New Bus stand,
Velipalayam, Elancheran,
Nagapattinam, Tamil Nadu – 611 001

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned order dated 08.02.2024 in RC No.A1/7130/2023 issued by the 2nd respondent quash the same and consequently direct the 2nd respondent to consider petitioner's candidature for promotion.

For Petitioner : Mr.M.Velmurugan

For Respondents : Mr.M.Bindran

Additional Government Pleader for
R1 and R2



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ORDER

This writ petition has been filed challenging the proceedings of the 2nd respondent dated 08.02.2024 and for a consequential direction to the 2nd respondent to consider the candidature of the petitioner for promotion to the post of Grade I Police Constable.

2. The case of the petitioner is that he applied for the post of Grade II police constable based on the notification issued by the Tamil Nadu Uniformed Service Recruitment Board (TNUSRB) and he also cleared the main examination held on 24.08.2012. Thereafter, the petitioner also cleared the fitness and medical examination. Thus, the petitioner was qualified to be appointed to the post of Grade II Police Constable from the year 2012.

3. The TNURSB did not permit the petitioner to join training since an FIR registered in Crime No.7 of 2010 dated 17.01.2010 was put against the petitioner as if he was arrayed as an accused in that case. In view of the same,



there was a delay in the petitioner joining the training and ultimately, he was given the appointment letter only in the year 2015 and he was permitted to join the training along with the 2015 batch.

4. The petitioner gave a representation dated 25.05.2022 requesting the respondents to re-fix the seniority on the ground that on the date of selection of the petitioner, he was entitled for appointment and he should have been sent for the training and whereas, due to the mistake on the part of the respondents, it was delayed up to the year 2015.

5. The above representation did not evoke any response and therefore, the petitioner filed WP No.18761 of 2023 before this Court seeking for a direction to the respondents to deal with the representation. This Court disposed of the writ petition by an order dated 27.06.2023 directing the respondents to deal with the representation and to take a decision within a period of six weeks from the date of receipt of the copy of that order.

6. Pursuant to the above order passed by this Court, the impugned



proceedings dated 08.02.2024 has been issued by the 2nd respondent rejecting the claim made by the petitioner seeking for re-fixation of his seniority. Aggrieved by the same, the present writ petition has been filed before this Court.

7. Heard Mr.M.Velmurugan, learned counsel for the petitioner and Mr.M.Bindran, learned Additional Government Pleader for respondents 1 and 2.

8. The request made by the petitioner has been rejected by citing Section 40(6) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (hereinafter referred to as the “2016 Act”). For proper appreciation, the said provision is extracted hereunder :-

Application for the revision of seniority of a person in a service, class, category or grade shall be submitted to the appointing authority within a period of three years from the date of appointment to such service, class, category or grade or within a period of three years from the date of order fixing the seniority, as



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the case may be. Any application received after the said period of three years shall be summarily rejected. This shall not however be applicable to cases of rectifying orders, resulting from mistake of facts.

9. The 2nd respondent has taken a stand that as per the above provision, the petitioner should have made a representation within a period of three years from the date of order fixing the seniority and whereas, the representation was received after lapse of 5 years. Therefore, the 2nd respondent came to a conclusion that the request made by the petitioner seeking for re-fixation of seniority cannot be entertained.

10. On a careful reading of Section 40(6) of the 2016 Act, there is one exception that has been given at the end of the provision to the effect that such limitation will not be applicable to cases resulting from mistake of facts.

11. This Court also had an occasion to deal with this provision in WP MD No.1379 of 2022 dated 08.09.2023. The relevant portions are extracted



hereunder :-

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6. According to the learned Government Advocate, in terms of Section 40 (6) of the said Act, the petitioner ought to have made an application for revising his seniority within a period of 3 years from the date of appointment. Since the same has not been made within a period of 3 years, the petitioner's claim is not at all maintainable. However, the same Section mandates that the said limitation is not applicable to the cases of rectifying orders, resulting from mistake of fact. The case in hand is a clear case of mistake of fact which occurred on the part of the appointing authority for not examining the petitioner properly at the first instance during the medical examination of the selection process and the mistake in medical examination was later on rectified by the appointing authority by subjecting the petitioner to appear in 2nd medical board, wherein he was found fit. Though there is a delay in making an application for refixing the seniority, since the case in hand falls under Section 40 (6) of the Tamil Nadu



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Government Servants (Conditions of Service) Act, 2016, the entire anomaly in pay revision has happened only from the mistake of fact committed by the appointing authority. This matter is no more res integra.

7. Heard the learned counsel on either side and perused the materials available on record.

8. This Court has already held in more than couple of cases in favour of persons placed similarly like the petitioner. A learned Single Judge of this Court in W.P(MD)No.25132 of 2018 (M.Karuppasamy Vs. The Director General of Police & Another), dated 03.01.2019 has passed a favourable order to the petitioner therein and the relevant portion of which is extracted as follows:

6. In view of the above, this writ petition is allowed and the respondents are directed to fix the seniority of the petitioner with effect from 01.03.2008, i.e., the date on which the other candidates selected in the same batch were appointed. It is made clear that the petitioner will not be entitled to any salary for the said period.?

9. A learned Single Judge of this Court in W.P(MD)No.5356



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of 2023 (M.Mohan Vs. The Director General of Police & Others), dated 06.06.2023 has been passed another order in similar lines.

The relevant portion of which is extracted as follows:

5. I carefully considered the rival contention and went through the materials on record. The issue raised in the writ petition is no longer res integra. An identical issue arose for consideration in W.P.No.22454 of 2021 vide order dated 27.10.2021. The writ petition was allowed in the following terms:~

7. This is the case where the petitioner has successfully cleared examinations and the mile stone prescribed for qualifying himself to the post of Grade II Police Constable in the recruitment since during 2001~2003. However, the petitioner was not selected on the ground that the petitioner was medically unfit on account of bilateral flat feet which has been considered and not to be a qualifying for appointing the petitioner as Grade II Police Constable. The delay in getting appointed with the respondents was not on account of the fault of the petitioner but on account of



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the stand taken by the respondents. As a matter of fact under similar circumstances in W.P.(MD)No.33479 of 2016 by an order dated 02.09.2021, the appointment was directed to be given pursuant to the order of this Court in W.P.No.3273 of 2016, dated 25.01.2008. The issue is no longer res~integra and the issue is squarely covered in favour of the petitioner. There the petitioner had sought for re-fixing of seniority to include his name in the appropriate list and selection list during the year 2001~2003 for the post of Police Constable with effect from the date of training.

8. In view of the above, the writ petition stands allowed with consequential relief to the petitioner. The respondents are therefore directed to carry out the necessary corrections in the Service Register of the petitioner by refixing the seniority of the petitioner along with the batchmates who participated in the Recruitment called for during the year 2001~2003. The above exercise shall be carried out by the respondent within a period of twelve weeks from the date of receipt of a copy of this order.

6. I am inclined to adopt the very same approach. As rightly



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pointed out by the learned counsel appearing for the petitioner; the petitioner was not at all at fault. Only because the recruiting agency proceeded on misconception that the petitioner-s vision was defective, he was not appointed. If everything had taken place in the appropriate time sequence, the petitioner would have been sent for training in the year 2012 itself. Therefore, for the fault committed by the respondents, the petitioner cannot be made to suffer. Lost of three years seniority will definitely have serious civil consequence. The question that arises for consideration is whether the petitioner's application should be rejected as barred by limitation. Section 40(6) of the Tamil Nadu Government Servant (Condition of Service) Act, 2016 is as follows:~

Application for the revision of seniority of a person in a service, class, category or grade shall be submitted to the appointing authority within a period of three years from the date of appointment to such service, class, category or grade or within a period of three years from the date of order fixing the seniority, as the case may be. Any application received after the said period of



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three years shall be summarily rejected. This shall not however be applicable to cases of rectifying orders, resulting from mistake of facts. The provision itself makes it clear that limitation will not be applicable to cases of rectifying orders resulting from mistake of facts. The case on hand would fall under such category. Non-inclusion of the petitioner in the seniority list of the year 2012 is a mistake of fact.

7. In this view of the matter, the orders impugned in the writ petition are set aside.

10. I am fully in consonance with both the orders mentioned supra and the proviso itself makes it clear that limitation will not be applicable to the case of rectifying orders, resulting from mistake of facts. The case in hand also would fall under such category and non inclusion of the petitioner in the seniority list for the year 2012 is a clear case of mistake of fact.

12. There is no dispute with regard to the fact that the petitioner had applied for the post of Grade II Police Constable during the year 2012. It is also



not in dispute that the petitioner cleared the examination and he also cleared the fitness and medical examination. The petitioner ought to have given the appointment in the year 2012. In which case, the petitioner could have joined the training batch of the year 2012. However, the TNURSB did not permit the petitioner to join by quoting an FIR registered in crime No.7 of 2010. It later came to light that this FIR was already closed by the learned Judicial Magistrate, Panruti by an order dated 29.12.2011. This means that as on the date when the petitioner had applied for the Selection, there was no FIR pending against him. This is obviously a mistake on the part of the board as well as the respondents and the petitioner cannot be made to suffer for such mistake that was committed on the part of the respondents.

13. In the above judgement that was relied upon, the matter arose under similar circumstances and this Court found that limitation will not apply to such a case resulting from mistake of facts. I am in complete agreement with the above order passed by the learned single Judge.

14. In the light of the above discussion, the impugned proceedings of



the 2nd respondent in R.No.A1/7130/2023 dated 08.02.2024 is hereby quashed.

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The matter is remitted back to the file of the 2nd respondent to consider the claim made by the petitioner in line with the observations made herein above and decide on the re-fixation of the seniority of the petitioner. This process shall be completed by the 2nd respondent within a period of eight weeks from the date of receipt of a copy of this order.

15. This writ petition is allowed in the above terms. No costs.

07.08.2024

Internet : Yes/No

Index : Yes/No

Speaking Order / Non Speaking Order

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To

1. Director General of Police,
Tamil Nadu Police Department,
Mylapore, Chennai 600 004.

2. The District Superintendent of Police
[Nagapattinam],
Near New Bus stand,
Velipalayam, Elancheran,
Nagapattinam, Tamil Nadu – 611 001



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N. ANAND VENKATESH, J.

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W.P.No.22173 of 2024



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