



Writ Petition No.30411 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.30411 of 2023

1.Mrs.M.P.Penergi

2. X.Jenifar Rosline Mary

3.N.Anbarasan

4. I.S.Sudalai

.. Petitioners

Vs.

1. The Director General of Police (Law and Order)
O/o.Director General of Police,
Beach Road,
Chennai 600 004.

2. The Commissioner of Police,
Greater Chennai,
Police Commissionerate,
Chennai.

3. The Commissioner of Police,
Avadi Police Commissionerate,
Avadi, Chennai

.. Respondents



Writ Petition No.30411 of 2023

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorified Mandamus to call for the records on the file of the 1st respondent proceedings vide C.No.1349524/Rect.1(2) /2021 dated 24.11.2021 and consequential impugned order passed by the 2nd respondent vide R.C.No.Esstt.V(2)/768/93411/2021 dated 30.11.2021 and quash the same as illegal as devoid of merits insofar as petitioners concerned and direct the respondents to fix the seniority of the petitioners in the post of Grade II Police Constable along with their recruited batch in the recruitment year 2012 in the appropriate place with attendant and service benefits.

For Petitioner : Mr.Raja Karthikeyan

For Respondents : Mr.P.Balathandayutham
Special Government Pleader

ORDER

This writ petition has been filed challenging the proceedings of the 1st respondent in C.No.1349524/Rect.1(2) /2021 dated 24.11.2021 and the proceedings of 2nd respondent in R.C.No.Esstt.V(2)/768/93411/2021 dated 30.11.2021 and for a direction to the respondents to fix the seniority of the petitioners in the post of Grade II Police Constable along with their recruited batch in the recruitment year 2012 as per the relevant Tamil Nadu



Police Subordinate Service Rules, with attendant benefits.

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2. Heard Mr.Raja Karthikeyan, learned counsel for the petitioners and Mr.P.Balathandayutham, learned Special Government Pleader for respondents.

3. The case of the petitioners is that they have participated in the selection conducted by the Tamil Nadu Uniformed Service Recruitment Board in the year 2012. Even though, they were provisionally selected, they were not given appointment orders on the ground that they had some medical deficiencies. Ultimately, on re-examination, it was found that the petitioners were qualified to the post of Grade II Police Constable and accordingly, appointment orders were issued in the year 2015. Only thereafter, they were sent for basic training in the year 2015.

4. The petitioners want their seniority to be reckoned from the year 2012 onwards on the ground that they were appointed during this year and due to the mistake committed by the respondent, it was postponed till 2015.



5. The issue that is involved in the present writ petition is squarely covered by the several earlier orders passed by this Court.

6. It will be more beneficial to take note of the judgement of this Court in WP MD No.21385 of 2023 dated 08.09.2023. The relevant portions are extracted hereunder :-

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



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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 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 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



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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.

7. It is not necessary for this Court to once again reiterate the position of law as it was already considered by this Court in several writ petitions. Therefore, it will suffice to follow the earlier orders passed by this Court and grant the relief in this writ petition.

8. In the light of the above discussion, the impugned proceedings of the 1st respondent in C.No.1349524/Rect.1(2) /2021 dated 24.11.2021 and the proceedings of 2nd respondent in R.C.No.Esstt.V(2)/768/93411/2021 dated 30.11.2021 is hereby quashed and there shall be a direction to the respondents to notionally fix the seniority of the writ petitioners from the date of which the candidates lower in merit to the petitioners were appointed in the year 2012. The petitioners will be entitled to the notional benefits of



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such continuous appointment. However, they will be entitled to salary only from the date of actual appointment order. The period between 2012 and the date of appointment order shall be taken into consideration only for the purpose of seniority and pensionary benefits alone. This process shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

9. In the result, this writ petition is allowed in the above terms.

No costs.

16.08.2024

Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
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To

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O/o. Director General of Police,
Beach Road,
Chennai 600 004.
2. The Commissioner of Police,
Greater Chennai,
Police Commissionerate,



Chennai.

3. The Commissioner of Police,
Avadi Police Commissionerate,
Avadi, Chennai



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N.ANAND VENKATESH, J

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