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W.P.(MD) No.5887 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD) No.5887 of 2021

S.Devasahayam

... Petitioner

-VS-

1.The Commissioner /
Home Secretary to the Government
Government of Tamil Nadu
St.George Fort
Chennai-600 009

2.The Director General of Police
Police Chief Office
Mylapore, Chennai-600 004

3.The Commandant
Tamilnadu Special Police
IXth Battalion
Manimuthar
Tirunelveli-627 421

4.The Superintendent of Police
Madurai District-625 007

5.The Superintendent of Police
Virudhunagar District

... Respondents



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W.P.(MD) No.5887 of 2021

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus directing the respondents to pay monetary benefits based on the seniority re-fixed by the fifth respondent in the post of Inspector of Police and Deputy Superintendent of Police by his communication C.No.L4/2561/2017, dated 24.01.2017 and consequentially to direct the respondents to give notional promotion to the post of Deputy Commandant considering the petitioner's seniority under the Category-I (Initial Appointment Seniority), based on the representation dated 2018- 2019.

For Petitioner : Mr.V.P.Rajan

For Respondents : Ms.D.Farjana Ghoushia
Special Government Pleader

ORDER

This writ petition has been filed for a mandamus seeking for a direction to the respondents to pay monetary benefits, based on the seniority re-fixed by the fifth respondent to the post of Inspector of Police and Deputy Superintendent of Police, through his communication dated 24.01.2017 and consequently to direct the respondents to give notional promotion to the post



W.P.(MD) No.5887 of 2021

WEB COPY

of Deputy Commandant, by considering the petitioner's seniority under the Category-I (Initial Appointment Seniority), based on the representation made by him during 2018 and 2019.

2. The petitioner is aggrieved by the non-payment of monetary benefits to him, despite the fact that the charges framed against him, in the disciplinary proceedings, have been set aside. According to the petitioner, since the charges have been set aside, the monetary benefits, to which he is eligible, if he was promoted in the year 2002 – 2003, ought to have been paid to him.

3. This Court, during the pendency of this writ petition, had directed the learned Special Government Pleader to get instructions as to why the petitioner is not entitled for retrospective promotion in the post of Deputy Superintendent of Police as per G.O.(D) No.228, Home (Pol.3) Department, dated 16.02.2007, since the counter affidavit already filed by the third respondent is silent with regard to the same.



W.P.(MD) No.5887 of 2021

WEB COPY

4. As directed by this Court, learned Special Government Pleader appearing for the respondents has placed on record the instructions received by her from the respondents with regard to the query raised by this Court earlier. The relevant instructions received by the learned Special Government Pleader from the Director General of Police, dated 18.07.2024, are reproduced hereunder:

“7. Now, since the Government have revised his seniority in the rank of Inspector of Police (Taluk) by including his name in the C' list of SI of Police (Taluk) fit for promotion as Inspector of Police (Taluk) for the years 1989-90 at Sl.No.8(A), he become eligible for consideration in the 'C' list of Inspectors of Police (Taluk) fit for appointment by recruitment by transfer as Deputy Superintendent of Police (Cate-I) for the year 2003-2004 at Sl.No.13(A) below his immediate senior Thiru S.P.Ramamurthy (Sl.No.13) and immediate junior Thiru K.Rathinasamy (Sl.No.14). His junior Thiru K. Rathinasamy has officiated as DSP (Cate-I) on 04.03.2004.

8. However, it is also informed that in PR.No. 32/2004, u/r 17(b) the Government have imposed a punishment of "Censure" on 27.04.2006 against



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W.P.(MD) No.5887 of 2021

Thiru.S.Devasahayam vide G.O.(2D). No.259, Home (Pol. 2 Dept., dated 27.04.2006. The said punishment will be impediment against the petitioner as per the guidelines issued in para 11 of II in Part-A under Schedule-XI of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. However, Government is the competent authority in this matter.

9. From the above said facts, it is informed that even if the seniority of Thiru S.Devasahayam is revised in the rank of DSP (Cate-I) from Sl.No.40/2003-2004 to Sl.No.13(A)/2003-2004, his date of original officiation in the rank of DSP (Cate-I) and notional fixation on par with his junior Thiru K.Rathinasamy due to revision of seniority are one and same (i.e 04.03.2004). In this matter, the Commandant, TSP IX Battalion, Manimuthar in his Order No.424/2022, in C.No.B2/7780/2021, dated 22.09.2022 has re-fixed the pay in respect of Thiru S.Devasahayam by giving effect to the cancellation of punishments and seniority revision as per G.O.(D).No.228, Home (Pol.3) Department, dated 16.02.2007 and his promotion as DSP (Cate-I) on 04.03.2004. Hence, it is informed that there is no difference in revision of pay in respect of Thiru.S.Devasahayam as per ruling 17 under FR 27.

10. Further, it is informed that one Thiru R.Murugesan (Sl.No.12/2003- 2004) who is senior to



WEB COPY

W.P.(MD) No.5887 of 2021

the petitioner Thiru S.Devasahayam was included in the 'C' list of DSP (Cate-I) fit for promotion as ADSP (Cate-I) for the year 2010-2011 vide G.O.Ms.No.65, Home (Pol. 1A) Dept., dated 25.01.2011 and promoted as ADSP (Cate-I) in the year 2011 only. Whereas, the petitioner Thiru.S.Devasahayam was retired on superannuation on 30.04.2010 itself i.e., before the crucial date of 01.06.2010 for the panel year 2010-2011. Further, it is also informed that none of the juniors to the petitioner were promoted as ADSP (Cate-I) before the date of his superannuation (i.e 30.04.2010)."

5. As seen from the aforesaid instructions, the petitioner is not entitled for monetary benefits as claimed in this writ petition. However, according to the petitioner, his junior, by name, Subban, was given promotion in the year 2002 – 2003 by the respondents. According to the learned counsel for the petitioner, since the charges framed against the petitioner have been set aside, the petitioner is also entitled for promotion in the very same year and his seniority ought to have been fixed above that of his junior Subban only for the purpose of monetary benefit, since the petitioner had already retired from service. Though the petitioner had earlier given a representation prior to the filing of this writ petition, he has not given any explanation to the



W.P.(MD) No.5887 of 2021

WEB COPY

contentions of the respondents as placed before this Court in the written instructions received by the learned Special Government Pleader from the Director General of Police, dated 18.07.2024.

6. No prejudice will be caused to any of the parties, if the petitioner is allowed to give a fresh representation stating the full facts, including explanation to the contentions of the respondents as seen from the written instructions received by the Government Pleader's Office from the Director General of Police, dated 18.07.2024 and a direction is issued to the second respondent to pass final orders on merits and in accordance with law, within a time frame to be fixed by this Court.

7. Accordingly, this Court directs the petitioner to submit a fresh representation to the second respondent with regard to his claim for monetary benefits as claimed in this writ petition by giving full facts, including explanation with regard to the contentions of the respondents as seen from the written instructions received by the Government Pleader's Office from the Director General of Police, dated 18.07.2024, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such



W.P.(MD) No.5887 of 2021

WEB COPY

representation, the second respondent shall pass final orders, on merits and in accordance with law, within a period of eight weeks thereafter.

8. With the above directions, this writ petition is disposed of. No costs.

09.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To:

- 1.The Commissioner /
Home Secretary to the Government,
Government of Tamil Nadu,
St.George Fort, Chennai-600 009.
- 2.The Director General of Police,
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W.P.(MD) No.5887 of 2021

ABDUL QUDDHOSE, J.

krk

W.P.(MD) No.5887 of 2021

09.08.2024