



W.P.(MD)No.9975 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 19.07.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.9975 of 2021

and

W.M.P.(MD)No.7683 of 2021

T.Antony Kanmani

... Petitioner

Vs.

- 1.The State of Tamil Nadu
Rep by its Principal Secretary to Government,
Home (Police V) Department,
Secretariat,
Chennai – 600 009.
- 2.The Director General of Police and
Head of Police Force of Tamil Nadu,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai – 600 004.
- 3.The Superintendent of Police,
Ramanathapuram District,
Ramanathapuram.
- 4.The Personal Assistant (General),
to the Superintendent of Police,
Ramanathapuram District Police Office,
Ramanathapuram.
- 5.R.S.Ravi,
Personal Assistant (Administration),
Tamil Nadu Police Academy,
Oonamanchery,
Vandalur,
Chennai – 600 127.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India



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for issuance of a Writ of Certiorarified Mandamus, call for the records relating to the Order Na.Ka.No.F3/Tha.Pa.15/2007, dated 14.11.2007, passed by the 4th respondent Order Na.Ka.No.F.3/Me.Mu.12/2008 dated 22.04.2008, passed by the third respondent, order Rc.No. 101734/AP.I(2)/2008 dated 13.06.2008, passed by the 2nd respondent and G.O.(3D)No.69, Home (Pol.V) Department, dated 22.09.2008, passed by the 1st respondent and quash the same and consequently, direct the respondents 1 to 3 to promote the petitioner as Superintendent in the year 2008 - 2009 on par with her Junior - 5th respondent herein, duly placing the petitioner between P.Muthusamy (Sl.No.452) and R.S.Ravi (Sl.No.453) i.e. as Sl.No.452A and consequently to appoint the petitioner by recruitment "by recruit by transfer" as Personal Assistant (Administration) (re-designated as Administrative Officer) from 23.05.2017 on par with her Junior - 5th respondent herein, duly placing the petitioner between T.Ramsamy (Sl.No.35) and R.S.Ravi - 5th respondent (Sl.No.36) I.e., as Sl.No.35A in the panel of Superintendents fit for promotion by recruitment by transfer as Personal Assistant (Administration) for the year 2016-2017 approved in G.O.Ms.No.153, Home (Pol.V) Department, dated 27.02.2017, issued by the 1st respondent and grant all the service and monetary benefits within a time limit to be fixed by this Court.

For Petitioner : Mr.Anada Padmanabhan,
Senior Counsel
For Mr.P.Janarthanan
For Respondents 1 to 4 : Mr.D.Gandhiraj
Special Government Pleader
For 5th Respondent : No Appearance

ORDER

This Writ Petition has been filed to quash the order in Na.Ka.No.F3/Tha.Pa.15/2007, dated 14.11.2007, passed by the 4th respondent's, order in Na.Ka.No.F.3/Me.Mu.12/2008 dated 22.04.2008,



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passed by the third respondent and order in Rc.No.101734/AP.I(2)/2008 dated 13.06.2008, passed by the 2nd respondent and G.O.(3D)No.69, Home (Pol.V) Department, dated 22.09.2008, passed by the 1st respondent and consequently, direct the respondents 1 to 3 to promote the petitioner as Superintendent in the year 2008 - 2009 on par with her Junior - 5th respondent herein, duly placing the petitioner between P.Muthusamy (Sl.No.452) and R.S.Ravi (Sl.No.453) i.e. as Sl.No.452A and consequently, to appoint the petitioner by recruitment "by recruit by transfer" as Personal Assistant (Administration) (re-designated as Administrative Officer) from 23.05.2017 on par with her Junior - 5th respondent herein, duly placing the petitioner between T.Ramsamy (Sl.No.35) and R.S.Ravi - 5th respondent (Sl.No.36) I.e., as Sl.No.35A in the panel of Superintendents fit for promotion by recruitment by transfer as Personal Assistant (Administration) for the year 2016-2017 approved in G.O.Ms.No.153, Home (Pol.V) Department, dated 27.02.2017, issued by the 1st respondent and grant all the service and monetary benefits within a time limit to be fixed by this Court.

2.The petitioner was appointed as a Junior Assistant on 06.12.1985, on compassionate ground. While she was working as a Assistant in J1 seat in District Police Office, Ramanathapuram, she was transferred to M1 seat on 02.12.1999 and files of M1 were handed over to her on 05.01.2000, including File no.M1/29413/99, which related to an accident



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of a Police vehicle bearing registration No.TN-65-G-0086, which happened on 30.08.1995, resulting in the death of escort duty Police Constable, namely, Karuppusamy. The legal heirs of the deceased police Constable have filed a Claim Petition in M.C.O.P.No.526 of 1997, before the Motor Accident Claims Tribunal (I Additional District Court), Tirunelveli, claiming compensation and the same was allowed on 05.07.1999, by an award of compensation of Rs.2,65,500/- with 12% interest from the date of filing of the petition and cost. As against the award of compensation, an Appeal was filed before this Court in C.M.P. (MD)No.2347 of 2005 in C.M.A.(MD)No.SR16515 of 2004. On 16.04.2004, this Court dismissed the Appeal, by an order dated 22.03.2005, on the ground that no satisfactory reason was disclosed for the abnormal delay of period of 5½ years in filing the Appeal. Alleging that no concrete follow up action was taken up by the petitioner and her colleagues who were impleaded as co-delinquents in filing Appeal petition as against the order in M.C.O.P.No.526 of 1997 dated 05.07.1999, before this Court, the petitioner was visited with a charge memo under Rule 17A of Civil Service (Appeal and Disciplinary) Rules, 1955, in P.R.No.15 of 2007 on 09.02.2007, for “gross neglect of duty in having abnormally delayed the filing of Appeal in M.C.O.P.No.526 of 1997 for 5½ years, which resulted in dismissal of the Appeal before this Court on 22.03.2005, causing heavy loss to the Government by way of pay of compensation to the victims.” Following which, the Departmental



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Ramanathapuram District and Director General of Police, Chennai, in her Appeal petition dated 22.04.2008 and 13.06.2008 respectively and the order passed by the Government in G.O.(2D).No.69, Home (Pol.V) Department, dated 22.09.2008 and consequently direct the respondents 1 to 3 to promote the petitioner as Superintendent in the year 2008-2009 on par with fifth respondent, who is her Junior.

3.The learned Senior Counsel appearing for the petitioner submitted that the impugned order ought not to have been passed as against the petitioner imposing the punishment of censure for no fault on her part. She was visited with show cause notice dated 09.02.2007, claiming that while she was incharge of M1 seat in between 06.07.1999 to 15.07.2004, she had committed the delinquency of gross neglect of duty in having abnormally delayed the filing of Appeal in M.C.O.P.No.526 of 1997 for 5 ½ years, which resulted in dismissal of the Appeal by this Court, on 22.03.2005, causing heavy loss to the Government by payment of compensation to the victims.

4.The learned Senior Counsel categorically contended that the preamble portion of the show cause notice itself is patently erroneous for the reason that, the petitioner never been incharge of seat of M1 till 15.07.2004, but she has been incharge of the said seat from 06.07.1999 to 15.07.2004. The petitioner was working as a J1 Assistant in the



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District Police Office, Ramanathapuram, during 1999 and she was transferred to M1 Assistant Seat, by an order dated 02.12.1999 and one M.Sundaram, who served in the said seat, had handed over the files dealt by him in M1 seat to the petitioner on 05.01.2000, including the file No.M1/29413/99 and she continued to be incharge of the said seat till 04.01.2002. She was transferred from M1 seat on 04.01.2002, on which date she handed over all the files including the said file in No.M1/29413/99, to her successor in M1 seat for continuing further action. Thus, the petitioner was incharge of M1 seat only during the tenure from 05.01.2000 to 04.01.2002 and during this period of time, she took necessary action and proper sanction was accorded in G.O.2D.No. 29, Home Department, dated 09.02.2000 and a sum of Rs.25,000/- was deposited under the Head of account "Civil Courts deposit", in the State Bank of India, Ramanathapuram vide Challan No.156, dated 30.03.2000 and the challan was sent to the second respondent. Following which, in the letter dated 25.04.2000, the Government Pleader called for the Original deposit receipt issued by Motor Accident Claims Tribunal, Tirunelveli. Hence, the third respondent requested the State Bank of India and the Treasury Officer, Ramanathapuram, to inform the deposit of Rs.25,000/- in "Civil Court Deposit" account, so as to get acknowledgement of Motor Accident Claims Tribunal, Tirunelveli. Hence, the Treasury Office, Ramanathapuram, in the letter dated 05.10.2000, requested the Treasury Officer, Tirunelveli, to credit the amount of Rs.



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25,000/-, under the account "Civil Court Deposit, Principal Sub Judge, Tirunelveli – M.C.O.P.No.526 of 1997" and the third respondent in the letter dated 16.05.2001, reminded the Treasury Officer, Tirunelveli, in this regard, so as to get deposit receipt from Motor Accident Claims Tribunal, Tirunelveli, at the earliest. At this point of time, she was further transferred from M1 seat on 04.01.2002 and she had handed over the file to her successor. She had nothing to do with the Appeal filed in M.C.O.P.No.526 of 1999, which came to be dismissed by this Court in the year 2005. it is only after the lapse of five year after being relieved from M1 seat and also after a lapse of 2 years, after the dismissal of the Appeal by this Court, the fourth respondent had visited her with a show cause notice dated 09.02.2007 under Rule 17(a) of Civil Service (Appeal and Disciplinary) Rules, 1955, directing her to submit her explanation within 15 days falsely alleging that she was incharge of M1 seat between 06.07.1999 to 15.07.2004. The petitioner had duly submitted her explanation on 02.05.2007, denying the allegation that she was incharge of M1 till 15.07.2004 and submitting that she was incharge of seat from 05.01.2000 to 04.01.2002. That apart, she elaborated the various proposals and letters/communications sent to various Officers during her period as M1 Assistant. However, without application of mind, rejecting her explanation, the impugned order of censure came to be passed by the fourth respondent. Following the order of the respondents 1 to 3, confirming the same, the said punishment of censure has adversely



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affected her promotion.

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5.He further submitted that a provisional seniority list of Superintendent came to be drawn, as per the order of this Court dated 03.04.2006, in W.P.No.21654 of 2004 for the year 2008 – 2009, in which the petitioner's name has been placed in serial No.465A and her Junior, the fifth respondent has been placed in serial No.478. While so, her Junior i.e., the fifth respondent was promoted as a Superintendent during the year 2008 – 2009 and he was further included in the panel of Superintendent fit for promotion by recruitment by transfer as Personal Assistant (Administration) (redesignated as Administrative Officer) for the year 2016 – 2017 as approved in G.O.Ms.No.153, Home (Pol. V) Department, dated 27.02.2017. Following which, the fifth respondent was promoted as Personal Assistant (Administration) on 23.05.2017 and was posted at Trichy Range Police Office and currently, he is working at Tamil Nadu Police Academy, Moonachery, Vandaloore, Chennai. However, due to imposition of punishment of censure on 14.11.2007, the petitioner was not promoted as Superintendent in the year 2008 – 2009 and not promoted as Personal Assistant (Administration) for the year 2016 – 2017 on 23.05.2017 along with her Junior. The petitioner was promoted Superintendent only in the year 2010 - 2011 and Personal Assistant (Administration) (redesignated as Administrative Officer) only in G.O.Ms.No.332, Home (Pol. V) Department, dated 27.06.2019. However,



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she is entitled to have been promoted on par with her Junior i.e., fifth respondent. Relying upon the Government letter dated 10.06.1998, the learned Senior Counsel contended that there is no currency of punishment for censure and on that basis, pressed for allowing the Writ Petition.

6.Per contra the third respondent has filed a counter and the learned Special Government Pleader appearing for the respondents 1 to 4 submitted that the sanction of Rs.25,000/- was accorded by the Government vide G.O.2D.No.39, Home Department, dated 09.02.2000 and the amount was deposited in State Bank of India, Ramanathapuram, vide challan no.156, dated 30.03.2000. The original deposit receipt issued by the Motor Accident Claims Tribunal, Tirunelveli, has to be submitted before the Court for expediting the Appeal process. But the petitioner had callously sent only reminders to various officers, but had not acted specifically to expedite the Appeal process. The petitioner was well aware of the consequences of delay in filing Appeal, but failed to take any concrete steps to file the Appeal on time and without taking efforts to file the required documents for Appeal, the petitioner handed over the file to her successor on 01.01.2002 before getting relieved from M1 Assistant seat. Hence, wanton delay and lapses were noticed on the part of the petitioner during her tenure in M1 Assistant seat and further in the disciplinary proceeding initiated under Rule 17(a) of Tamil



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Nadu Civil Services (Discipline and Appeal) Rules, 1955, she was awarded with a simple punishment of censure by the fourth respondent and it is not necessary to interfere with the same. He further submitted that the petitioner received the original order of punishment dated 14.11.2007, on 26.11.2007. The crucial date for consideration of preparing panel for promotion for the post of Assistant to Superintendent is 15th of March of every year and the petitioner faced currency of punishment as on 15.03.2008, as such, she was not eligible during the year 2008 – 2009. Hence, she was not promoted as Superintendent during that year and subsequently, she was promoted as a Superintendent during the year 2010 – 2011 and the Personal Assistant in the year 2021. Accordingly, the said exercise has been done in a proper manner and the same need not be interfered with and pressed for dismissal of the Writ Petition.

7. Heard the learned Senior Counsel for the petitioner, the learned Special Government Pleader for the respondents 1 to 4 and carefully perused the materials available on record.

8. The rival contention of both the parties would clearly cull out the fact that the petitioner was transferred from J1 seat in the District Police office, Ramanathapuram, to M1 Assistant seat, by an order dated 02.12.1999 and the erstwhile M1 Assistant handed over the file dealt by



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him including file No.M1/29413/99 on 05.01.2000, to the petitioner.

Thereafter, she remained in the said seat till 04.01.2002, after which she handed over the files pertaining to the said seat to her successor. As far as file No.M1/29413/99 is concerned, the same is with respect to the accident of the Trax vehicle bearing registration No.TN-65-G-0086, belonging to the third respondent, which met with an accident while on escort duty behind the vehicle of the then Tamil Nadu State Minister on 30.08.1995, by colluding against Tamil Nadu State Transport Corporation bus which came from opposite direction, thereby, causing the death of a Police Constable, namely, Karuppusamy, who travelled in the Trax vehicle during Escort duty. The Motor Accident Claims Tribunal (1st Additional District Court), Tirunelveli, in M.C.O.P.No.526 of 1999, filed by the legal heirs of the Police Constable, namely, Karuppusamy, had passed an award of Rs.2,65,500/- with 12% interest as compensation, dated 05.07.1999. The said award of Tribunal was made ready on 17.08.1999 and delivered on 24.08.1999. Hence, the Appeal should have been filed within 13 days on or before 15.09.1999. As per the letter dated 21.10.1999 of the learned Government Pleader of this Court, the Appeal papers were filed and there was no delay in filing the Appeal. However, it has been stated in the said letter that, the Registry of this Court has returned the papers for want of original certificate of deposit of Rs. 25,000/-, as per Section 173 of Motor Vehicles Act and typed set of papers.



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9.The Superintendent of Police, Ramanathapuram, vide proceedings dated 02.11.1999, had communicated the learned Government Pleader of this Court and the typed set of papers were already handed over to the Government Pleader on 29.09.1999 on his acknowledgement. However, the petitioner's erstwhile M1 seat Assistant did not make the deposit of Rs.25,000/-, till he was relieved from the said seat on 05.01.2000. The petitioner immediately on taking charge of M1 Assistant seat, took diligent steps and on her efforts, sanction was accorded in G.O.2D.No.29, Home Department, dated 09.02.2000, by which a sum of Rs.25,000/- was deposited under the Head of account "Civil Courts deposit" in the State Bank of India, Ramamathapuram, vide challan No.156, dated 30.03.2000 and the challan was sent to the second respondent. Subsequently, in the letter dated 25.04.2000, when the Government Pleader called for the original deposit receipt issued by the Motor Accident Claims Tribunal, Tirunelveli, the third respondent requested the State Bank of India and Treasury Officer, Ramanathapuram, to inform the deposit of Rs.25,000/- in "Civil Courts Deposit" account, so as to get acknowledgement from Motor Accident Claims Tribunal, Tirunelveli. Hence, the Treasury Officer, Ramanathapuram, in the letter dated 05.10.2000, requested the Treasury Officer, Tirunelveli, to credit the amount of Rs.25,000/- under the account "Civil Courts Deposit – Principal Sub Judge, Tirunelveli –



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M.C.O.P.No.526 of 1997” and the third respondent in the letter dated 16.05.2001, reminded the Treasury Officer, Tirunelveli in this regard so as to get deposit receipt from Motor Accident Claims Tribunal, Tirunelveli, at the earliest. At this juncture, the petitioner was transferred from the post of M1 Assistant seat on 04.01.2002. Following which, she handed over all the files to her successor in office.

10.A caution understanding as to the steps taken by the Department in making a Civil Court deposit of Rs.25,000/- before the Motor Accident Claims Tribunal, Tirunelveli, I am of the considered view that the role of the petitioner is limited. As soon as she took charge of M1 Assistant, she has taken diligent steps to get the sanction for the deposit of Rs.25,000/- under the head account of “Civil Court deposit” vide issuance of G.O.2D.No.29, dated 09.02.2000. Thereafter, she was promoted to the post of Superintendent in the year 2010 – 2011 and Personal Assistant on 27.06.2019. After a lapse of 5 years, from being relieved from M1 Assistant seat, the show cause notice dated 09.02.2007, came to be issued by the fourth respondent as against the petitioner for the alleged lapses between 06.07.1999 to 15.07.2004. It is needless to state that the petitioner was incharge of M1 seat from 05.01.2000 to 04.01.2002. Hence, the delay in filing the Appeal as against the award of M.C.O.P.No.526 of 1997 before this Court, all along the period from 15.09.1999 to 16.07.2004 i.e., date of filing of C.M.P.(MD)No.2347 of



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2005 in C.M.A.(MD)No.SR16515 of 2004 cannot be attributed to the petitioner because during the short span of 2 years in charge of M1 seat from 05.01.2000 to 04.02.2002, she had taken necessary action for the deposit of Rs.25,000/- before the “Civil Courts deposit” account – Principal Sub Judge, Tirunelveli – M.C.O.P.No.526 of 1997 and in view of her transfer from the said seat, she was not able to proceed with the same but she was left with no other opinion rather handing over the same to the successor in the office.

11.Considering the patent error in the show cause notice itself, I am of the considered view that the impugned order of censure imposed by the fourth respondent vide punishment order dated 14.11.2007 and further order of confirmation of the said punishment by the respondents 1, 2 and 3 by orders dated 22.04.2008, 13.06.2008 and 22.09.2008 respectively, are *per se* illegal.

12.It is needless to state that the punishment of censure do not have any currency. It is an admitted fact that the punishment of censure was imposed on 14.11.2007 and the same was communicated to the petitioner on 26.11.2007. The panel was prepared for the year 2007 - 2008. The crucial date for preparing panel for the promotion of post of Assistant for the year 2008 – 2009 is 15.03.2008. The contention of the respondents is that since the censure punishment was imposed on



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14.11.2007, as on the crucial date on 15.03.2008, there was a currency of punishment and hence, the promotion for the year 2008 - 2009 was postponed and subsequently, she was promoted as a Superintendent during 2010 - 2011. It is the contention of the respondents that she is not entitled to promotion in view of subsisting currency of punishment during the panel year 2008 - 2009. It is considered opinion of this Court that the respondents for the punishment of censure cannot impose any check period as currency of punishment.

13.The learned counsel for the petitioner drew my attention to the letter No.50643/S/2003-4 of Personal and Administrative Reforms (S) Department, dated 17.03.2004, with respect to the clarification as to the effect of punishment of censure on inclusion in the panel and on promotion in the Police Department and the relevant portion of the said letter is extracted as follows:-

“Since the punishment of censure is one of the condified punishments, the aforesaid provisos will apply to censure also. The punishment of censure imposed within one year prior to the crucial date or the punishment of censure imposed after the crucial date but before actual promotion, should be held against the Officer. However, the punishment of censure imposed with a period of one year preceding the crucial date need not be held against the Officer, if the delinquency had occurred prior to five years preceding the crucial date. I am also to clarify that the same censure need not be held against



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the Officer more than once as per the aforesaid second proviso in para 411(2) of the Government letter first cited."

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14.The learned Senior Counsel drew my attention to yet another letter No.25165/S/98-1 of Personal and Administrative Reforms (S) Department, dated 10.06.1998, with respect to the preparation of panel for appointment by promotion/recruitment, by transfer issuing guidelines in that regard and the relevant portion of the same is as follows:-

"The punishment of censure has no currency. Whenever an officer is undergoing any punishment, other than censure, on the crucial date or on the date of consideration, then irrespective of the time of occurrence of the irregularity, his name should be passed over for the panel. If the currency of punishment continues at the time of subsequent consideration for the next panel(s), he should still be passed over on the grounds that an Officer should not be considered for promotion or promoted during the currency of any punishment. After the completion of its currency, no punishment should be held, once again, against an official even it falls within the check period of any panel, if it has already been held against the official on any earlier occasion."

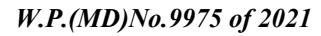
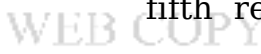
15.A careful perusal of the extracted portions of the letters dated 10.06.1998 and 17.03.2004 of Personal and Administrative Reforms (S) Department, would throw light on the fact that punishment of censure has no currency and that a punishment of censure imposed within a



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period of one year preceding the crucial date, need not be held against the Officer, if the delinquency had occurred prior to 5 years preceding the crucial date. Even in the instant case, though show cause notice has been issued for the lapses on the part of the petitioner, which she is alleged to have committed in the post of M1 Assistant for the period between 06.07.1999 – 15.07.2004, beyond doubt even in terms of the counter affidavit filed by the third respondent, it is pertinent to mention here that the petitioner served in the post of M1 Assistant with effect from 05.01.2000 to 04.01.2002, i.e., clearly before a period of six years two months and eleven days before the crucial date. Hence, in terms of the clarification letter of the Personal and Administrative Reforms (S) Department, I am of the considered view that there was no currency of punishment as on the crucial date of promotion to the post of Superintendent during the year 2008 – 2009 i.e., on the crucial date 15.03.2008 and that even assuming that there had been a punishment of censure i.e., only for the alleged lapses, which had alleged to have been happened while she was incharge of M1 Assistant post till 04.01.2002.

16.In view of the above, the impugned orders dated 14.11.2007, 22.04.2008, 13.06.2008 and 22.09.2008 are quashed and consequently, the respondents 1 to 3 hereby directed to promote the petitioner as Superintendent in the year 2008 – 2009 on par with her Junior i.e., fifth respondent and further promote her to the post of Personal Assistant



17. Accordingly, the Writ Petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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

1. The Principal Secretary to Government,
State of Tamil Nadu,
Home (Police V) Department,
Secretariat,
Chennai – 600 009.

2.The Director General of Police and
Head of Police Force of Tamil Nadu,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai – 600 004.

3.The Superintendent of Police,
Ramanathapuram District,
Ramanathapuram.

4.The Personal Assistant (General),
to the Superintendent of Police,
Ramanathapuram District Police Office,
Ramanathapuram.



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L.VICTORIA GOWRI, J.

Mrn

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