



WP(MD) No.13513 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.06.2024**

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD) No.13513 of 2024
and
W.M.P(MD)No.11920 of 2024

T.Sethupathi

... Petitioner

Vs.

1.The Director General of Police,
O/o. the DGP,
Chennai - 4.

2.The Commissioner of Police
O/o. the Commissioner of Police,
Vepery,
Chennai - 7.

3.The Superintendent of Police
Madurai,
Madurai District.

...Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records related to the impugned order of the 1st respondent in his proceedings C.No.1349524/Rect.1(2)/2021 dated 24.11.2021 and quash the same in so far as the petitioner is concerned and consequently directing the respondents to refix the seniority of the petitioner on par with their batchmates of the year 2012.

For Petitioner : Mr.C.Jeganathan

For Respondents : Mr.S.Shanmugavel

Additional Government Pleader

ORDER

The present writ petition has been filed seeking a Writ of Certiorarified Mandamus to quash the impugned order of the 1st respondent in his proceedings C.No.1349524/Rect.1(2)/2021 dated 24.11.2021 and consequently directing the respondents to refix the



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seniority of the petitioner on par with their batchmates of the year 2012.

2. Heard Mr.C.Jeganathan, learned counsel for the petitioner and Mr.S.Shanmugavel, learned Additional Government Pleader appearing for the respondents.

3. By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself

4. The Tamil Nadu Uniformed Services Recruitment Board had called for the posts of Grade II Police Constable, Firemen and Grade II Jail Wardens-2012. The petitioner has applied for the said post and he has passed the written examination. While conducting the physical test, the petitioner was not considered, as the petitioner was having defects in his eyes. Thereafter, he was referred back to the second medical board and declared fit for the



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said job. The petitioner was sent for training scheduled to be held on 05.10.2015. The petitioner was appointed and now, working under the respondents 2 and 3. In the said circumstances, he came to know that the seniority of the similarly placed persons like the petitioner, was fixed on par with their batch mates of the year 2012. In view of the same, the petitioner has given a representation to the 1st respondent seeking re-fixation of seniority on par with their batch mates of the year 2012. The 1st respondent has returned the same vide proceedings, dated 24.11.2021 stating that the claim of revision of seniority after 3 years of date of appointment is barred by limitation as per Rule 35 (f) of Tamil Nadu State and Subordinate Service Rules and Section 40 (6) of the Tamil Nadu Government Servant (Condition of Service Act) Act, 2016. Challenging the said proceeding of the 1st respondent, dated 24.11.2021, the petitioner has filed the present writ petition.

5. The learned counsel for the petitioner submitted that



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the issue is no longer *res integra* and is covered by the decision of this Court in ***W.P.No.1389 of 2022 dated 08.09.2023***. While dealing with the same issue, this Court has observed in paragraph Nos.7 to 10 held as follows:-

“7. 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.”

8. A learned Single Judge of this Court in W.P(MD)No.5356 of 2023 (M.Mohan Vs. The



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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



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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 petitioner along with the batchmates who



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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,



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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.”

9. 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



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rectifying orders, resulting from mistake of facts. The case in hand also would fall under such category and non inclusion of the petitioners in the seniority list for the year 2012 is a clear case of mistake of fact.

10. In this view of the matter, the impugned order dated 24.11.2021 is quashed and the respondents are directed to fix the petitioners' seniority with the recruitment batch of the year 2012 at appropriate place. However, this Court makes it clear that the petitioners will not be entitled to any arrears of pay for the said period 2012-2015. The said exercise shall be completed within a period of twelve (12) weeks from the date of receipt of a copy of this order.”

6. Since the petitioner herein is also similarly placed as that of the petitioners in the above writ petition, this petitioner is also entitled for the same relief.

7. Following the earlier decision of this Court *supra* **(W.P.(MD)No.1389 of 2022 dated 08.09.2023)**, this Writ Petition



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is **allowed** and the impugned order of the first respondent, dated 24.11.2021 is quashed and the respondents are directed to fix the petitioner's seniority with the recruitment batch of the year 2012 at an appropriate place. However, this Court makes it clear that the petitioner is not be entitled to any arrears of pay for the said period 2012-2015. The said exercise shall be completed within a period of twelve (12) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

25.06.2024

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

RM



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To

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O/o. the DGP,
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- 3.The Superintendent of Police
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R.N.MANJULA, J.

RM

Order made in
W.P.(MD)No.13513 of 2024

Dated:
25.06.2024