



W.A.(MD) No.560 of 2018

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.07.2024

CORAM:

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

**W.A.(MD) No.560 of 2018
and
C.M.P(MD)No.3164 of 2018**

1.The State of Tamilnadu represented by
the Principal Secretary to Government,
Home Department,
Secretariat,
Chennai-600 002.

2.The Director General of Police,
Chennai.

3.The Superintendent of Police,
Theni.

....Appellants/Respondents

-VS-

N.Sridhar, HC 322,
B, 14 Police Quarters,
AR Complex,
Theni-625 531.

...Respondent/Petitioner



W.A.(MD) No.560 of 2018

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Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 27.11.2014, passed in W.P.(MD) No.5341 of 2011.

For Appellants : Mr.A.Kannan
Additional Government Pleader
For Respondent : Mr.K.Sathishkumar

J U D G M E N T

[Judgment of the Court was made by K.RAJASEKAR, J.]

This intra-Court appeal has been preferred by the Government challenging the order of the learned Single Judge passed in W.P.(MD) No.5341 of 2011, dated 27.11.2014, whereby the petitioner's claim for awarding promotion of the petitioner with retrospective effect from 2001 and to consider him for next level promotion as Special Sub-Inspector with consequential benefits has been ordered.

2. The case of the writ petitioner is that originally he joined as Grade-II Police Constable in the 'C' Grade Armed Reserve Constabular, Madurai on 17.01.1986 and promoted as LNK Police Constable with effect from 12.12.1988 and he was promoted as Grade-II NK with effect from 16.03.1989 and as Grade-I Naik as per D.O.1326/93, dated 27.08.1993. Thereafter, while he was acting as a

Page 2 of 10



W.A.(MD) No.560 of 2018

WEB CAM

Grade-I Police Constable, he was placed under suspension for the misconduct and subsequently, he was removed from service on 17.12.1993, pursuant to the orders issued by the Deputy General of Police. Thereafter, the petitioner had approached the Tamil Nadu Administrative Tribunal, Chennai by filing O.A.No.805 of 1994. The Tribunal has set aside the order of removal from service and remanded the matter to the appointing authority to conduct an enquiry from the stage of charge memo and based on the remand, the appointing authority has completed the process of disciplinary proceedings and imposed punishment of stoppage of increments of two years without cumulative effect. This order has not been challenged by the writ petitioner and it become final. Subsequently, he has submitted a representation on 07.02.2009 to the respondents to regularize the period of suspension and non-employment from 07.12.1993 to 29.09.1998 has to be treated as duty. The petitioner has also approached this Court by way of W.P(MD)No.9541 of 2009 seeking a direction to the respondents to consider his representation for promotion to next level. This Court, by order dated 18.09.2009 directed the respondents to consider the representation of the petitioner in accordance with law. However, the petitioner's request was rejected by the first respondent by order dated 04.02.2010. Thereafter, the petitioner was promoted as



W.A.(MD) No.560 of 2018

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3. In the meantime, in the year 2011, the petitioner approached this Court by way of writ petition seeking for writ of mandamus challenging the 'C' list of Head Constables (AR) fit for promotion as Sub-Inspectors (AR) of Police in D.O.No.1306/2011 in C.No.A33609 /2011, dated 28.02.2011, wherein the list of upgradation of Head Constables (AR) as Special Sub-Inspectors (AR) was drawn and to quash the same insofar as non-inclusion of petitioner on par with his junior and consequently directing the third respondent herein to include the name of the petitioner and place him above the name of his just junior and also consequently promote him as Special Sub-Inspector (AR) with concomitant monetary and other benefits without considering the penalty imposed against the petitioner by the Superintendent of Police, Madurai District.

4. This Court after considering the case of the petitioner by relying on the Full Bench Judgment of this Court in ***Deputy Inspector General of Police***



W.A.(MD) No.560 of 2018

WEB

v. V.Rani, reported in **(2011) 4 MLJ 1**, wherein this Court has held that after the period of minor punishment is over, in the name of 'check period' viz., one year in the case of censure and five years in the case other than minor punishments is illegal and impermissible under the statutory rules denying promotions are illegal. The petitioner relying on this judgment to seek promotion on the ground that after completion of punishment period of two years ie., withholding the increment of two years, is entitled for promotion since he has completed the mandatory period.

5. The Writ Court has also ordered that the petitioner is eligible for promotion for the post of Head Constable with retrospective effect from 2001, immediately after the period of punishment of stoppage of increment is over, and to consider him for next promotion as Special Sub-Inspector of Police (AR) after completing 10 years of service as Head Constable with consequential service benefits for the earlier period but without monetary benefits.

6. Aggrieved over the said order passed by the learned Single Judge, the respondents in the writ petition have filed this appeal.

7. The learned Additional Government Pleader appearing for the



W.A.(MD) No.560 of 2018

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appellants would submit that it is true that the petitioner was suffered with punishment of withholding the increment of two years and thereafter, he has applied for settlement of suspension period which falls between from 18.12.1993 to 29.09.1998. The appointing authority has considered his request and rejected the request for treating the suspension period as duty. This suspension period was suppressed before the writ Court and order has been obtained. He has been given all the eligible promotions and ordering promotion in retrospective effect is not valid and prays to set aside the order of the learned Single Judge.

8. Per contra, the learned counsel for the writ petitioner would submit that the petitioner was promoted as Grade-I Constable on 31.08.1993 and after completion of 5 years, in the year 1998 though he was eligible to be promoted as Head Constable, by relying on the punishment imposed for the period of two years the respondents have not awarded promotion and he was granted promotion only on 28.10.2004 hence, he is entitled from the year 2001 and the learned Single Judge has considered the same and rightly allowed the writ petition and prays for confirming the order of the learned Single Judge.



W.A.(MD) No.560 of 2018

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9. We have heard the learned Additional Government Pleader appearing for the appellants and the learned counsel appearing for the respondent and perused the materials available on record.

10. Admittedly, the petitioner has submitted his application for settlement of suspension period which falls between 18.12.1993 to 29.09.1998. He has also suffered with punishment for two years ie., withholding of increment for two years and the same has not been challenged and it become final. As per order dated 15.11.1998, Disciplinary authority has refused to regularise the suspension period from 13.01.1994 to 29.08.1998, though he regulated the period between 13.12.1993 to 12.01.1994 as Earned Leave. This punishment period for 2 years coupled with the un-regularised suspension period between 13.01.1994 to 29.09.1998, shows that the petitioner is not eligible for promotion as on 2001 as claimed by him and the appointing authority has chosen to promote him only on 28.10.2004 as upgrade post of Head Constable. Thereafter, he was promoted as a Special Sub-Inspector of Police on 01.04.2015 on the basis of the completion of 25 years of service and thereafter, he has attained the superannuation on



W.A.(MD) No.560 of 2018

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30.06.2017. Before the learned Single Judge, the respondents have not placed the facts relating to the settlement of suspension period which invited the order of the learned Single Judge to state that the petitioner was eligible for the post of Head Constable in the year 2001 itself.

11. We are of the view that since the petitioner suffered loss of suspension period as indicated above, the petitioner is not entitled as claimed by him and we have noted that the promotions have been properly awarded as per the norms followed by the respondents. We find no merits in the order of the learned Single Judge and the interference is required.

12. Accordingly, the order of the learned Single Judge dated 27.11.2014, passed in W.P.(MD) No.5341 of 2011 is set aside and the writ appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

[A.D.J.C., J.] [K.R.S., J.]

02.07.2024

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

Page 8 of 10



W.A.(MD) No.560 of 2018

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To:

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Home Department,
Secretariat,
Chennai-600 002.
- 2.The Director General of Police,
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W.A.(MD) No.560 of 2018

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AND
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