



W.P.(MD).No.22662 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 28.11.2024

ORDER PRONOUNCED ON : 03.12.2024

**CORAM:
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P.(MD).No.22662 of 2023
and WMP(MD).Nos. 18897 of 2023 & 4261 of 2024**

Dr.L.Balaji Saravanan

....Petitioner

Vs

1.The Principal Secretary
Government of Tamil Nadu
Home (Police.2) Department
Chennai

2.The Director General of Police
Tamil Nadu
Mylapore
Chennai 600 004

3.The Secretary
Tamil Nadu Public Service Commission
TNPSC Road
V.O.C.Nagar, Park Town
Chennai 600 003

4.K.Prabhakar
Superintendent of Police
The Nilgiris District
Near Government Hospital
Udhagamandalam 643 001



W.P(MD).No.22662 of 2023

5.C.Shyamala Devi
Superintendent of Police
Perambalur District
District Police Office
Perambalur 621 212

6.K.Adhiveera Pandiyan
Superintendent of Police
Coastal Security Group CID
Marine Police Station
Velipalayam (GH Opposite)
Nagapattinam District

7.M.Kingshlin
Superintendent of Police -II
Crime against Women and Children
No.3, Dr.Natesan Road
Police Training College Campus
Ashok Nagar, Chennai 600 083

8.V.Shyamala Devi
Superintendent of Police – North Range
Vigilance & Anti-Corruption
No.293, MKN Road
Chennai – 16

....Respondents

Prayer : This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, by calling for the records of the impugned G.O.Ms.No.353 dated 11.07.2023 issued by the 1st respondent and quash the same as illegal in so far as the fixation of seniority of respondents 4 to 8 in Sl.Nos.9 to 13 and consequently direct the 1st respondent to place the petitioner in Sl.No.9 in the seniority list.



W.P(MD).No.22662 of 2023

For Petitioner : Mr.K.Govindarajan
for Mr.A.Balaji

For Respondents : Mr.Veera.Kathiravan
Additional Advocate General
Assisted by Mr.A.Baskaran
Additional Government Pleader for R1 & R2

:Mr.J.Anandkumar
Standing Counsel for R3

: Mr.A.K.Amaravel Pandian
For M/s.Kannan Alagar Law Firm for R4

ORDER

The instant writ petition has been filed a serving Superintendent of Police challenging G.O.Ms.No.353 dated 11.07.2023 issued by the first respondent wherein a revision of seniority orders have been passed in which the petitioner has been placed under Serial No.14. According to the petitioner, he should have been placed in Serial No.9 on the basis of TNPSC marks obtained by him. Hence, the present writ petition.

(A)Facts leading to the filing of this writ petition are as follows:

2.The third respondent namely Tamil Nadu Public Service Commission had issued a notification on 27.12.2000 calling for applications for Group-I services. The petitioner having cleared the screening test namely preliminary examination, had appeared for the main written examination. After written examination and the interview, the final selection list was published on



W.P(MD).No.22662 of 2023

25.08.2004 in which the petitioner was selected in the main list for appointment by direct recruitment to the post of Deputy Registrar of Co-operative Societies. However, his name was also included in the reserved list for the post of Deputy Superintendent of Police (Grade-I).

3.The Tamil Nadu Public Service Commission had sent a list of 20 candidates who had been selected for the post of Deputy Superintendent of Police to the Home Department on 25.08.2004 wherein the name of the petitioner was not found in the main list.

4.The TNPSC had also selected 33 candidates for the post of Deputy Registrar of Co-operative Societies and sent a communication to the Co-operation, Food and Consumer Protection Department on 25.08.2004 in which the name of the petitioner as shown in the main list in Serial No.9. Pursuant to the said communication of TNPSC, the Co-operation, Food and Consumer Protection Department had issued G.O.(Ms).No.83, Co-operation, Food and Consumer Protection Department, dated 16.05.2005 wherein appointment orders were issued to the writ petitioner and 32 others. However, the petitioner has not joined in the said post awaiting posting orders as Deputy Superintendent of Police ,

5.One of the candidates namely Mr.M.S.Manivannan who was selected in the main list for the post of Deputy Superintendent of Police Category-I, had expressed his unwillingness to join the said post. Therefore, on



W.P(MD).No.22662 of 2023

31.01.2005, the petitioner's name who was ranked first in the reserved list was moved to the main list for the post of Deputy Superintendent of Police and allotment orders were issued by TNPSC on 31.01.2005. However, on 07.07.2005, when the appointment orders were issued under G.O.(Ms).No. 573, Home (Police.2) Department, dated 07.07.2005 to other selected Deputy Superintendent of Police (whose name were found in the main list), the name of the petitioner was not included. The petitioner has sent a representation on 11.07.2005 requesting for inclusion of his name for training which commenced on 21st July 2005.

6.On 24.08.2005 under G.O.(Ms).No.166, Co-operation, Food and Consumer Protection Department, the name of the petitioner was deleted from the approved list for the post of Deputy Registrar of Co-operative Societies based upon the letter issued by TNPSC on 10.08.2005. Thereafter, G.O.(Ms).No.830 was issued by the Home Department on 19.09.2005 appointing the writ petitioner as Deputy Superintendent of Police Category -I. The petitioner has participated in the training programme and passed out along with his other batchmates who received appointment order on 07.07.2005 under G.O.Ms.No.573, Home (Police.2) Department.

7.Under impugned Government Order dated 11.07.2023, the first respondent herein has issued the seniority list of Deputy Superintendent of Police who was recruited for the year 2000-2001 in compliance with the



W.P(MD).No.22662 of 2023

order of the Hon'ble Supreme Court in Contempt Petition(Diary).No.6415 of

2021. In the said seniority list, the name of the petitioner is shown at Sl.No.

14. It is the grievance of the petitioner that the petitioner having secured more marks than the private respondents 4 to 8 ought to have been placed above them. In other words, the petitioner should have been placed at Sl.No.9 instead of Sl.No.14. According to the petitioner, the impugned seniority list is clearly in violation of the order of the Hon'ble Supreme Court reported in **2003 (5) SCC Page 604 (Bimlesh Tanwar Vs. State of Haryana).**

(B)Submissions of the learned counsels appearing on either side are as follows:

8.According to the learned counsel appearing for the writ petitioner, since one Mr.M.S.Manivannan who was selected in the main list for the post of Deputy Superintendent of Police had expressed his unwillingness, he has been issued with then allotment order to the post of Deputy Superintendent of Police by TNPSC as early as on 31.01.2005. In such circumstances, while issuing G.O.(Ms).No.573, Home (Police.2) Department dated 07.07.2005 for appointment as Deputy Superintendent of Police, the name of the petitioner should have been included. They wantonly excluded the name and issued a separate Government Order in G.O.(Ms).No.830, Home (Police.2) Department, dated 19.09.2005 granting appointment orders.



W.P(MD).No.22662 of 2023

9.The learned counsel for the petitioner had further contended that the petitioner has expressed his willingness to join the service as Deputy Superintendent of Police as early as on 30.12.2024 relinquishing his right of appointment as Deputy Registrar of Co-operative Societies and therefore, the Co-operative Department was not right in issuing a Government Order on 16.05.2005 including the name of the writ petitioner for the post of Deputy Registrar of Co-operative Societies. As soon as the said Manivannan has expressed his unwillingness to join as Deputy Superintendent of Police, the name of the petitioner ought to have been included in the Government Order for appointment as Deputy Superintendent of Police which was issued on 07.07.2005. The said Manivannan who was selected under the Backward Class Quota, once relinquished his appointment, the petitioner would get automatically accommodated in the said place. Therefore, the authorities were not right in placing the writ petitioner at the bottom of the seniority list.

10.The learned counsel for the petitioner had further contended that the judgment of the Hon'ble Supreme Court in *Bimlesh Tanwar Case* has been violated and he had been placed at the bottom of the seniority list even though he had secured more marks than the private respondents. The learned counsel had further contended that while issuing G.O.(Ms).No.573, Home (Police.2) Department on 07.07.2005 appointing others as Deputy



W.P(MD).No.22662 of 2023

Superintendent of Police in reference No.4, the communication of TNPSC dated 31.01.2005 is being referred to. The said communication is nothing but the order of allotment of the writ petitioner to the post of Deputy Superintendent of Police. In such circumstances, the authorities were not right in excluding the name of the petitioner at the time of issuing Government Order on 07.07.2005.

11.The learned counsel for the petitioner had further contended that the petitioner herein was working as Civilian Establishment Officer in Indian Navy under Ministry of Defence. The petitioner had undergone the training along with his other batchmates who were appointed by an order dated 07.07.2005. That apart, the petitioner had excelled in the said training and he had stood first. He had further pointed out that, the petitioner was leading the passing out parade for the Deputy Superintendent of Police. In such circumstances, the authorities were not right in issuing the impugned seniority list downgrading the petitioner to the rank of 14 instead of placing him in Serial No.9 based upon his TNPSC marks.

12.Per contra, the learned Additional Advocate General appearing for the respondents 1 and 2 extensively relying upon their counter had contended that the petitioner was initially was not selected in the main list for the post of



W.P(MD).No.22662 of 2023

Deputy Superintendent of Police and he was only in the reserve list. The petitioner's name was found in the main list only for the post of Deputy Registrar of Co-operative Societies. Only because of the fact that one of the selected candidates for the post of Deputy Superintendent of Police had expressed his unwillingness to join the said post, the petitioner whose name was found in the reserve list, was moved to the main list and appointment order was issued. The learned Additional Advocate General had relied upon 6th proviso to Rule 22(d) of Tamil Nadu State and Subordinate Service Rules and contended that, where a candidate is appointed from the reserve list, he shall be placed below all the candidates appointed from the regular list. The petitioner having been moved from the reserve list to the main list/regular list, cannot claim any seniority on the basis of his alleged higher marks.

13.The learned Additional Advocate General had contended that one Mr.M.S.Manivannan was selected and allotted to the post of Deputy Superintendent of Police. However, he had expressed his unwillingness to join in the said post and has addressed a communication to TNPSC. Based upon the said letter, TNPSC has accepted the unwillingness in their communication dated 31.01.2005 and deleted the name of Manivannan from the approved list of candidates and thereafter, sent a communication to the Government requesting them to accept the views of TNPSC. The Government



W.P(MD).No.22662 of 2023

had accepted the said view and deleted the name of Mr.M.S.Manivannan from the approved list of candidates selected for appointment as Deputy Superintendent of Police only under G.O.Ms.No.573, dated 07.07.2005.

14.The learned Additional Advocate General had further contended that after the name of Mr.M.S.Manivannan was deleted from the approved list, thereafter the request of the writ petitioner to delete the name from the approved list of Co-operative Sub Registrar was accepted by the Government and a Government Order was issued on 24.08.2005. Thereafter, the Government Order was issued on 19.09.2005 in favour of the writ petitioner appointing him as Deputy Superintendent of Police. Therefore, the petitioner cannot complain that his name should have been included in the Government Order issued on 07.07.2005. Unless the name of the petitioner is deleted from the approved list of candidates for Co-operative Sub Registrar, the name of the petitioner cannot be considered for appointment as Deputy Superintendent of Police. Therefore, the contentions of the petitioner are not factually correct. The petitioner having moved from the reserve list to the main list after deleting the name of Mr.M.S.Manivannan, cannot claim seniority on the basis of his alleged higher marks secured by him in the competitive examination. Hence, he prayed for dismissal of the writ petition.



W.P(MD).No.22662 of 2023

14(A).The learned Standing Counsel appearing for the third respondent, relying upon the 6th Proviso to Rule 27(f) of Tamil Nadu Government Servants (Conditions of Service) Act, 2016 had contended that, the petitioner having been appointed from the reserve list, can only be placed below the candidates who were appointed from the regular list. He further relied upon the judgment of the Hon'ble Division Bench in ***W.P.No.410 of 2024 dated 20.02.2024 (K.S.Arun Sabhapathy Vs. The Registrar General, Hon'ble High Court, Madras and others)*** wherein in paragraph No.16, the Hon'ble Division Bench was pleased to hold that, if a candidate is moved from the reserve list to the regular list, he cannot claim seniority on par with other candidates whose name were found in the original selection list.

15.I have considered the submissions made on either side and perused the material records.

(C).Discussion:

16.As from the facts narrated above and the submissions made on either side, it is clear that the primary grievance of the writ petitioner is that his name should have been included for appointment as Deputy Superintendent of Police in the Government Orders issued on 07.07.2005 along with others and he should have been ranked on the basis of the marks obtained by him in TNPSC examination.



W.P(MD).No.22662 of 2023

17.Now let as consider whether the petitioner's name was wantonly or mistakenly left out in the Government Order issued on 07.07.2005 or not.

18.The petitioner's name was in the main/regular list only for the post of Co-operative Sub Registrar and his name was found only in the reserve list for the post of Deputy Superintendent of Police. This fact is not in dispute. Unless any one of the candidates who was selected as Deputy Superintendent of Police did not join, the petitioner would not have any right to move from the reserve list to the regular list of Deputy Superintendent of Police. In such circumstances, it should be analysed when the right of the writ petitioner to get into the regular list of Deputy Superintendent of Police would arise.

19.One Mr.M.S.Manivannan was selected in the main list for the post of Deputy Superintendent of Police. He had expressed his unwillingness to join the said post by way of certain communication to TNPSC. As per Rule 26 of TNPSC Rules of Procedure, where an approved list of candidates for appointment has been prepared in consultation with the Commission and the candidate had not joined, his name can be removed from the said list. The Commission shall either *suo moto* or on the information of the department concerned, may delete the name of the candidate from the approved list.

Thereafter, the Commission has to instruct the Department not to make



W.P(MD).No.22662 of 2023

regular appointment. After Commission has taken a decision, the view has to be accepted by the Government so as to delete the name of the candidate who had expressed his unwillingness.

20. In the present case, the unwillingness expressed by one Mr.M.S.Manivannan was accepted by TNPSC on 31.01.2005 and the said decision was approved by the Government only on 07.07.2005. Though name of the petitioner could have been included under the Government Order on 07.07.2005 itself, unless the petitioner's name is deleted from the approved list of candidates for the post of Co-operative Sub Registrar, his name cannot be included in the approved list of candidates for Deputy Superintendent of Police. The Co-operative Department had issued a Government Order only on 24.08.2005 deleting the name of the petitioner from the approved list of Co-operative Sub Registrar. In such circumstances, the Home Department cannot be found fault with, for not including the name of the writ petitioner for appointment under Government Order dated 07.07.2005. After the name was deleted by the Co-operative Department, appointment orders have been issued to the writ petitioner on 19.09.2005. It is to be noted that the petitioner has not chosen to challenge G.O.Ms.No.573, Home Department dated 07.07.2005 for not including his name. Only after the seniority list is published under the impugned order on 11.07.2023, the petitioner had



W.P(MD).No.22662 of 2023

contended that erroneously his name was not included in G.O.(Ms).No.573,

Home Department dated 07.07.2005, after a lapse of 18 years.

21.As pointed out earlier, the petitioner's name was not included in the main list for the post of Deputy Superintendent of Police initially. One of the selected candidates to the post of Deputy Superintendent of Police namely Mr.M.S.Manivannan had expressed his unwillingness to join the said post. The petitioner was informed by TNPSC on 31.01.2005 that he is being moved from reserve list to the regular list to the post of Deputy Superintendent of Police. In such circumstances, as rightly pointed out by the learned Additional Advocate General, 7th proviso of Rule-22 (d) of Tamil Nadu State and Subordinate Service Rules comes into operation. As per 7th proviso, if a candidate is appointed from the reserve list, he shall be placed below all the candidates appointed from the regular list in the same year in which the vacancies have arisen. In such circumstances, in view of the application of the 7th proviso to Rule 22(d) of Tamil Nadu State and Subordinate Service Rules, the petitioner cannot seek any seniority based upon his alleged higher marks secured by him in TNPSC examination.

22.It is the further contention of the learned counsel for the petitioner that though the petitioner has secured higher marks than the private



W.P(MD).No.22662 of 2023

respondents namely the respondents 4 to 8, he had been placed below them in violation of the orders of the Hon'ble Supreme Court in *Bimlesh Tanwar Case*. As per the judgment of the Hon'ble Supreme Court, the communal reservation has to be followed only up to the stage of selection and once the selection is completed, the seniority has to be assigned to the selected candidates only based upon the marks secured by them in the competitive examination. This judgment would be applicable only if the petitioner's name was initially included in the regular list of candidates for the post of Deputy Superintendent of Police.

23.It is an admitted case that one of the candidates from the regular list had expressed his unwillingness and the petitioner's name was moved from the reserve list. That apart, the order of appointment of the private respondents is dated 07.07.2005 whereas the order of appointment of the writ petitioner is dated 19.09.2005. When the petitioner has not chosen to challenge these two appointment orders and admittedly, when the petitioner has been moved from the reserve list to the regular list, he cannot take advantage of the judgement of the Hon'ble Supreme Court as referred supra.

24.The contentions of the petitioner that he had stood in the first training for selection would not have any relevance whatsoever in deciding



W.P(MD).No.22662 of 2023

the interse seniority of the selected candidates which depends upon the marks secured by him for TNPSC Examination. In such circumstances, there are no merits in the writ petition and the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

03.12.2024.

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

To

1.The Principal Secretary
Government of Tamil Nadu
Home (Police.2) Department
Chennai

2.The Director General of Police
Tamil Nadu
Mylapore
Chennai 600 004



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W.P(MD).No.22662 of 2023

R.VIJAYAKUMAR, J.

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Pre-delivery order made in

W.P.(MD).No.22662 of 2023 and
WMP(MD).Nos. 18897 of 2023 &
4261 of 2024

03.12.2024