



W.P.(MD) No.23375 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD) No.23375 of 2023

E.Mayilvaganan

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Petitioner

-VS-

1. The Additional Chief Secretary,
Government of Tamilnadu,
Home Department,
Secretariat,
Chennai.
2. The Director General of Police,
Head of Police Force,
Tamilnadu,
Chennai.
3. The Deputy Inspector General of Police,
Madurai Range,
Madurai.
4. The Superintendent of Police,
Madurai District,
District Police Office,
Alagarkoil Road,
Madurai.

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Respondents



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PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of mandamus, directing the respondents to consider the petitioner for granting upgradation of SSI on completion of 10 years of service as Head Constable as on 01.11.2020 by considering petitioner's representation, dated 06.07.2023.

For Petitioner : Mr.R.Narayanan

For Respondents : Mr.Shaji Bino,
Spl. Govt. Pleader.

ORDER

The instant Writ Petition has been filed by a Grade-II Police Constable, seeking a mandamus, directing the respondents to consider the request of the petitioner for granting upgradation to the post of Special Sub-Inspector on completion of 10 years of service as Head Constable as on 01.11.2020, by considering his representation, dated 06.07.2023.

2. The petitioner herein was appointed as a Grade-II Police Constable on 01.11.1995 and he was promoted as Head Constable on



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01.11.2010. The petitioner's extended probation was completed on 02.02.2013.

3. According to the learned counsel for the petitioner, the petitioner has completed 10 years of service as Head Constable on 31.10.2020 and, therefore, he is eligible for the next avenue of upgradation into the official service as Special Sub-Inspector with effect from 01.11.2020.

4. The petitioner was issued with a charge memo under Rule 3 (b) of the Tamil Nadu Police Subordinate Service Rules and imposed with a punishment of postponement of annual increment for two years with cumulative effect on 17.03.2020. According to the petitioner, the crucial date for upgradation to the post of Special Sub-Inspector is 01.11.2020 and, on the said date, his juniors were granted upgradation. However, the petitioner's name was overlooked, on the ground that a charge memo was pending as against him. It is the contention of the learned counsel for the petitioner that once a punishment of postponement of annual increment for two years is imposed, it relates back to the crucial date, namely, 01.11.2020, and, therefore, on completion of two years' period from 01.11.2020 i.e., from 01.11.2022 onwards, he becomes eligible to be upgraded as Special Sub-Inspector. Hence, he has filed the present Writ Petition.



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5. Per contra, learned Special Government Pleader appearing for the respondents has contended, that, on the crucial date of 01.11.2020, a charge memo under Rule 3 (b) of the Tamil Nadu Police Subordinate Service Rules was pending against the petitioner and, therefore, his name was not considered. According to him, the petitioner was imposed with a punishment of postponement of annual increment for two years with cumulative effect. The petitioner's increment falls on the first of October every year. Therefore, the first postponement of annual increment was implemented in October, 2023, and the next postponement is to be implemented in October, 2024. As such, as on today, the petitioner is under the currency of punishment and hence the question of considering the name of the petitioner for upgradation to the post of Special Sub-Inspector does not arise at this moment.

6. I have carefully considered the submissions on either side and perused the material records.

7. The petitioner has been issued with a charge memo on 24.11.2017. The crucial date for being considered for upgradation to the post of Special Sub-Inspector was 01.11.2020 and the petitioner's juniors were



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promoted from the said date onwards. A perusal of Clause 8 of Schedule XI of the Tamil Nadu Government Servants (Condition of Service) Act, 2016, indicates that where charges are pending under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules against a member of a service, it shall be a bar for inclusion of his or her name in the approved list. Therefore, overlooking the name of the petitioner on 01.11.2020 for upgradation cannot be found fault with.

8. The petitioner was imposed with punishment on 17.03.2023 with postponement of annual increment for a period of two years with cumulative effect. As stated earlier, the punishment of the writ petitioner would get culminated only in October, 2024. As per Clauses 15 and 17 of Schedule XI, the name of a member of a service shall not be considered if he is undergoing any punishment. Therefore, it is clear that the name of a member of a service cannot be considered for promotion during the currency of punishment.

9. In the present case, admittedly, the petitioner is undergoing punishment and it would get culminated only in October, 2024. Therefore, it is clear that until 31st October, 2024, the name of the petitioner cannot be considered for any upgradation.



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10. The prayer in the writ petition is for upgradation of the services of the petitioner from the post of Head Constable to Special Sub-Inspector with effect from 01.11.2020 onwards. Since the petitioner is undergoing punishment until 31st October,2024, the respondent authorities are at liberty to consider the request of the petitioner for upgradation after 31.10.2024, if he is otherwise eligible.

11. With the above said observation, this Writ Petition is dismissed. No costs.

29.08.2024

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

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R.VIJAYAKUMAR, J.

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