



WP.(MD)Nos.25446, 25447, 25475, 25476 of 2022, 30241 of 2023, 1662 and 2904 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 27.02.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)Nos.25446, 25447, 25475, 25476 of 2022, 30241 of 2023, 1662 and 2904 of 2024

and

W.M.P.(MD)Nos.19537, 19538, 19555 and 19557 of 2022

W.P.(MD)No.25446 of 2022:-

K.Suyambu Ganesan

... Petitioner

Vs.

1.The Director General of Police,
/Head of Police Force,
Chennai – 600 004.

2.The Superintendent of Police ,
Thoothukudi District,
Thoothukudi.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order in C.No.1349524/ Rect.1(2)/ 2021 dated 24.11.2021 on the file of the 1st respondent and the consequential impugned order in C.No.A3/ 25344/2021 dated 13.06.2022 on the file of the 2nd respondent and quash the same in respect of the petitioner alone and consequently direct the respondents to refix the seniority of the



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petitioner at the appropriate place in the Select List of Grade II Police Constables in the year 2012-2013 instead of 2015 with all monetary and other attendant benefits.

For Petitioner : Mr.Raja Karthikeyan

For Respondents : Mr.J.John Rajadurai
Government Advocate

COMMON ORDER

The prayer in the Writ Petitions are as follows:-

“Writ Petitions in W.P.(MD)Nos.25446 and 25447 of 2022 have been filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order in C.No.1349524/ Rect.1(2)/ 2021 dated 24.11.2021 on the file of the 1st respondent and the consequential impugned order in C.No.A3/ 25344/2021 dated 13.06.2022 on the file of the 2nd respondent and to direct the respondents to refix the seniority of the petitioners at the appropriate place in the Select List of Grade II Police Constables in the year 2012-2013 instead of 2015 with all monetary and other attendant benefits.

Writ Petitions in W.P.(MD)Nos.25475 and 25476 of 2022 have been filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order in C.No.A3/3077/65/2020-2 dated 02.02.2022 on the file of the 2nd respondent and to direct the respondents to refix the



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seniority of the petitioners at the appropriate place in the Select List of Grade II Police Constables in the year 2012-2013 instead of 2015 with all monetary and other attendant benefits.

W.P.(MD)No.1662 of 2024 have been filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned proceedings in Na.Ka.A5/47772/701/2021 dated 24.06.2022 on the file of the 2nd respondent and to direct the respondents to fix the seniority of the petitioner in the post of Grade II Police Constable along with their recruited batch in the year 2009 in the appropriate place with attendant monetary and service benefits.

W.P.(MD)No.30241 of 2023 have been filed for issuance of a Writ of Mandamus, to direct the respondents to fix the seniority of the petitioner in the post of Grade II Police Constable along with the petitioner's recruited batch in the recruitment year 2012 in the appropriate place as per the Rule 25(a) of Tamil Nadu Police Subordinate Service Rules (TNPSS) with attendant monetary and service benefits.

W.P.(MD)No.2904 of 2024 have been filed for issuance of a Writ of Mandamus, to direct the respondents to fix the seniority of the petitioner in the post of Grade II Police Constable in the petitioner's recruited batch in the year 2009-2010 in the appropriate place as per the Rule 25(a) of



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Tamil Nadu Police Subordinate Service Rules (TNPSS) with

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attendant monetary and service benefits.”

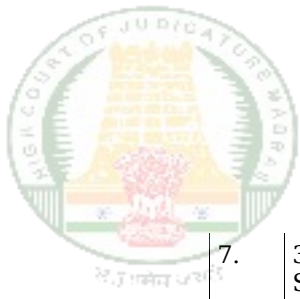
2.The petitioners herein took part in the recruitment process for the post of Grade II Post Constable during various recruitment years of the Tamil Nadu Uniform Service Recruitment Board. However, they were disqualified for one reason or other. Thereafter, on considering the petitioners' representations, the Tamil Nadu Uniform Services Recruitment Board favorably considered the cases of the respective petitioners and they were sponsored for training during various years. After completion of training, each of them were appointed in the Tamil Nadu Uniform Services. The request of the petitioners is that their seniority must be reckoned on par with their batchmates from the year of recruitment. However, their requests were negated. Challenging the same, the present Writ Petitions are filed.

3.For easy appreciation, the details of the petitioners' recruitment is tabulated as follows:-



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Sl. No.	W.P.(MD)No. And name of the petitioners	TNUSRB recruitme nt year	Summo n for basic Trainin g issued in the year	Reason for delay/cases filed	Date of representa tion/impug ned order
1.	1662/2024 K.Rajarajeswari	2009-2010	2014	Petitioner kept in waiting list despite having required cut off marks. W.P.(MD)No.3075 of 2010 W.A.(MD)No.720 of 2014, batch	29.11.2021, 24.06.2022
2.	25476/2022 Ganesa Pandiyan	2012-2013	2015	Crime No.2 of 2012 of Keelathooval P.S. Pending and later discharged by RDO proceedings dated 28.02.2013	02.02.2022
3.	25475/2022 P.Ananth Babu	2012-2013	2015	Rejected during the year 2012 due to Pulmonary Tuberculosis and after treatment directed to appear before the Joint Director, Medical and Rural Health Services on 11.12.2013 on reexamination declared fit	02.02.2022
4.	25447/2022 Jerome Gnana Prabhu.G	2012-2013	2015	Rejected during the year 2012 due to defective colour vision of eyes. Second Medical Board declared him fit	05.01.2020, 24.11.2021
5.	25446/2022 Suyambu Ganesan	2012-2013	2015	Rejected during the year 2012 for Ventricular Septal Defect. Declared fit by the II Medical Board	06.02.2021, 24.11.2021
6.	2904/2024 Gurunathan.V	2009-2010	2012	The respondent had not followed 5% reservation for Ex-serviceman in Selection in W.P.(MD)No.354 of 2011	Mandamus 13.01.2024 (Representa tion)



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7.	30241/2023 Sangilipandi.C	2012-2013	2015	Selected during TNUSRB recruitment year 2010-2011. No appointed due to pendency of Crime No.911 of 2009 of Chatrapathy Police Station. Subsequently, discharged from the said Crime. Again selected during TNUSRB recruitment year 2012-2013. But issue pertaining to suppression of facts in earlier recruitment not decided by the third respondent.	Mandamus 05.04.2020 (Representation)
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4.Heard the learned counsel for the petitioner, the learned Government Advocate appearing for the respondents and carefully perused the materials available on record.

5.It is needless to state that the issue raised in these Writ Petitions is no longer *res integra*. Relying upon Rule 35(f) of the Tamil Nadu State and Subordinate Service Rules and Section 46 of the Tamil Nadu Government Servant (Conditions of Service) Act, 2016, the respondents have rejected the claim of the petitioners requesting to refix their seniority on par with the batchmates, who were selected along with them at the first instance.

6.The contention of the respondents is that as per Rule 35(f) of the Tamil Nadu Police State and Subordinate Service Rules and



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Section 46 of Tamil Nadu Government Servants (Conditions of Service) Act, 2016, the application for the revision of seniority of a person has to be submitted to the Appointing Authority within a period of three years from the date of appointment. However, in these cases, the petitioners had approached the respondents after a lapse of five years violating the said provisions. In view of the same, the respondents claimed that the petitioners' request for refixing of seniority could not be considered. This Court has already dealt with this issue in many occasions and I have dealt with a similar issue in W.P.(MD)No.18192 of 2023, which was allowed on 08.09.2023 and the relevant portion of the said order applicable to the facts and circumstances of this case are extracted as follows:-

"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."

9.A learned Single Judge of this Court in W.P(MD)No. 5356 of 2023 (M.Mohan Vs. The Director General of Police & Others), dated 06.06.2023 has been passed another order in



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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 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



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the Service Register of the petitioner by refixing the seniority of the petitioner along with the batchmates who 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, 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



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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.”

7.The same approach has to be adopted to the present case also. The order impugned in these Writ Petitions are set aside. The respondents are directed to fix the petitioners' seniority in their respective recruitment batch as tabulated in column no.3 of the tabular in para 3 supra.

8.In view of the above, these Writ Petitions stands allowed. There shall be no order as to costs. Consequently connected miscellaneous petitions are closed.

27.02.2024

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



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To

- 1.The Director General of Police,
/Head of Police Force,
Chennai – 600 004.
- 2.The Superintendent of Police ,
Thoothukudi District,
Thoothukudi.



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L.VICTORIA GOWRI, J.

Mrn

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2023, 1662 and 2904 of 2024**

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