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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2025

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THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No. 2162 of 2024

S.Durai

... Petitioner

..Vs..

The Superintendent of Police
Villupuram District
Villupuram.

... Respondent

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus to call for the records of the respondent in its Na.Ka.No.A3/21325/2023 dated 18.11.2023 and quash the same and consequently direct the respondent to promote the petitioner as Special Sub Inspector with effect from the year 2019 on par with his colleagues and refix his pay and allowances on par with them and grant arrears and all attendant benefits.

For Petitioner

:: Mr. V.Vijayashankar

For Respondent

:: Mr. S.Yashwanth
Additional Government Pleader



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ORDER

The Writ Petition has been filed in the nature of a Certiorarified Mandamus seeking a direction to call for the records of the order of the respondent dated 18.11.2023 in Na.Ka.No.A3/2125/2023 and quash the same.

2. The petitioner seeks a direction that he should be promoted as Special Sub Inspector of Police with effect from October 2019 on par with his colleagues. The petitioner consequently seeks a direction for refixation of pay and allowances and to also be paid arrears and attendant benefits consequent to such refixation of pay determination of promotion.

3. In the affidavit filed in support of the Writ Petition, it had been contended that the petitioner had joined service as Grade-II Constable in March 1994 and thereafter was promoted as Grade-I Constable in March 2004 and he was eligible to be promoted as Head Constable. However, between 28.06.1996 and 07.08.1996 in two spells, he was absent from duty for a period of 46 days. An order of removal from service was passed on 01.04.1997. The petitioner had



filed O.A.No. 4547 of 1997 before the Tamil Nadu Administrative Tribunal wherein by an order dated 11.12.2001, the matter was remanded back to the disciplinary authority. It was held that the punishment of removal from service was disproportionate. Thereafter, further orders were passed by imposing a penalty of postponement of increment for a period of one year without cumulative effect. Orders were passed on 18.12.2002 notifying that the period of absence from 28.06.1996 till 28.01.2002 would be treated as non employment and adjusted as eligible leave including extraordinary leave. It was thereafter contended that the petitioner was then promoted as Head Constable on and from 12.03.2012 with effect from October 2009.

4. The respondent then issued orders on 15.10.2015 once again determining the promotion of the petitioner as Grade-I from 2009 instead of October 2004. The petitioner filed W.P.Nos. 646 and 647 of 2016 and thereafter, both the Writ Petitions were allowed setting aside the impugned orders. It is thus seen that the promotion of the petitioner was recognised to be in effect from October 2004 as Grade-I Constable and as Head Constable with effect from 2009. The present Writ Petition has been filed consequent to an order passed by the respondent on 18.11.2023 with respect to the period between



06.07.1996 till 27.01.2002 for a total period of 2095 days for which the respondent had refused to accommodate the same as being one of duty. Questioning that particular order, the present Writ Petition has been filed.

5. A counter affidavit had been filed on behalf of the respondent wherein it had been contended that the out of employment period spent by the petitioner between 08.05.1994 to 27.01.2002 was settled by the competent authority / Commandant TSP II Battalion as 2095 days as one of out of employment and cannot be treated as duty. But however, the respondent had also considered the fact that this Court in W.P.Nos. 646 and 647 of 2016 and had restored the promotion of the petitioner herein to be in effect from 2004 with respect to Grade-I Constable and from 2009 with respect to Head Constable.

6. It is to be noted that the Tribunal had interfered with the punishment of dismissal from service and had remanded the matter back to the disciplinary authority for reconsideration of the punishment to be imposed since it was considered that the punishment of dismissal from service was disproportionate to the charge which was alleged against the petitioner herein. Thereafter, the respondent had passed an order of postponement of increment for



a period of one year without cumulative effect. That cannot be considered as a major punishment and it is a minor punishment. It has a specific time within which it is operative. That would not also mean that the petitioner could not and should not be considered for promotion. It is on those grounds that the earlier Writ Petitions filed by the petitioner in W.P.Nos. 646 and 647 of 2016 had been allowed restoring the promotion and the date of effect of such promotion of the petitioner. Once that is restored, it only naturally follows that the period during which the petitioner was out of promotion which was the reason why the petitioner's promotion was postponed in the first instance, which reason had been set aside by this Court should be considered as on duty. It is thus seen that the impugned order suffers from not considering that basic fact that since the Court had allowed W.P.Nos. 646 and 647 of 2016, which automatically means that the period during which the petitioner was not in duty should have been considered as one on duty as only on that basis could the promotion be considered with effect from 2004 for the post of Grade-I Constable and from the year 2009 for the post of Head Constable. If the promotion to the post of Head Constable is to be considered from the period 2009, then the petitioner would have certainly completed 10 years of service as Head Constable and therefore be eligible to be considered for promotion as Special Sub Inspector of Police.



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C.V.KARTHIKEYAN, J.,

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7. In view of these reasons, the Writ Petition stands allowed. The impugned order is set aside. The petitioner is directed to be considered as promoted to the post of Special Sub Inspector of Police from 2019 and necessary monetary benefits in that regard should be paid and disbursed to the petitioner herein. The period during which the petitioner was not on duty is directed to be considered as on duty. This clarification is issued. No order as to costs.

17.02.2025

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Index: Yes/No
Internet: Yes/No
Speaking / Non Speaking Order

To

The Superintendent of Police
Villupuram District
Villupuram.

W.P.No. 2162 of 2024