



W.P.No. 15176 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 17.03.2025

CORAM:

THE HONOURABLE MR JUSTICE C.V. KARTHIKEYAN

W.P.No.15176 of 2024 and
W.M.P. No.16498 of 2024

A. Ponselvan
S/o. Iyyam Pillai,
Grade-II Police Constable
T-3, Korattur Police Station,
Chennai City Police, Chennai

....Petitioner

Vs

1. The Secretary to Government,
Home (Police II) Department,
Fort St. George, Chennai 9.
2. The Director General of Police,
Dr. Radhakrishnan Salai,
Mylapore, Chennai 4
3. The Commissioner of Police,
Chennai City Police, Chennai.
4. The Commandant,
TSP II Battalion,
Avadi, Chennai 600 054

...Respondents

PRAYER:



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The Writ Petition is filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus or any other appropriate writ on Order or Direction in the nature of a Writ, calling for the records of the 2nd respondent in connection with the impugned order passed by him in Rc.No. 2800487 / Rect.1 (2) / 2022 dated 26.10.2022 and quash the same, in so far as the petitioner is concerned and direct the respondents to re-fix and restore the seniority of the petitioner, along with those who were selected and appointed in the process of selection for the year 2012 - 13 as grade II PC on 18.02.2013 and grant him all consequential service and monetary benefits.

For Petitioner : Mr. R. Venkataramani
Senior Counsel,
for Mr. M. Muthappan

For Respondents : Mr. V. Nanmaran
Additional Government Pleader

ORDER

This Writ Petition has been filed in the nature of a certiorarified Mandamus seeking records relating to an order of the second respondent dated 26.10.2022 and to quash the same insofar as the petitioner is concerned and to direct the respondents to re-fix and restore the seniority of the petitioner along with those who were selected and appointed in the process of selection for the year 2012-13 as Grade-II Police Constable on 18.02.2013 and grant consequential service and monetary benefits.

2. The petitioner had applied for the selection for Grade-II Police constable in notification issued by the Uniformed Services Recruitment Board in 2012-13. The petitioner appeared for medical examination. He



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was disqualified on the ground of deficiency in the eye sight and was not selected. Thereafter, the petitioner was directed to appear before the Medical Board constituted by the Government Institute of Ophthalmology. The petitioner was found fully qualified and fit and an order was issued on 30.09.2013. In the meanwhile, those who had been initially selected had been sent for training and the petitioner could not join duty and thereafter, after a lapse of two years, he received a communication on 19.09.2015 stating that he had been selected in the selection process of 2012-13 and would be sent for training. He reported for training and his services were then regularised and he is still functioning under the respondent.

3. The petitioner then gave a representation on 17.05.2022 seeking restoration of seniority on par with his batchmates. This was rejected by the impugned order holding that the representation was given after a period of three years and therefore, the representation could not be considered.

4. A counter affidavit had been filed on behalf of the third respondent again contending that the representation had been given by the petitioner after a period of three years. In this connection, a reference



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was made to Section 40(6) of the Tamil Nadu Government Servants

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"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."

Reference had also been made to Rule 35(f) of Tamil Nadu State and Subordinate Services Rules, which reads 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."



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It is thus contended that since petitioner had given representation belatedly, the request of the petitioner could not be considered. It was in those circumstances, the respondents sought that the present Writ Petition should be dismissed.

5. The learned Senior Counsel for the petitioner pointed out the facts that the petitioner had been initially disqualified from selection owing to his alleged deficiency in the eye sight. Thereafter, the petitioner had been referred to the Medical Board, who found the petitioner fit and certified that the petitioner could discharge his duties as Grade-II Police Constable. The petitioner, however, could not join on the same day as his other batchmates since the training had started. The petitioner, thereafter, received a communication after two years calling upon him to come over for training. The petitioner completed the training and he has also been given posting and is now functioning under the respondent.

6. The petitioner had given representation in the year 2022 seeking to re-fix his seniority. The same had been rejected by the respondent on the ground that it had been given after a period of three years, which was



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in violation of Section 40(6) of the Tamil Nadu Government Servants (Condition of Services) Act, 2016. Further it was also contended that it was in violation of Rule 35(f) of Tamil Nadu State and Subordinate Services Rules. The learned Senior Counsel, however, pointed out that in similar matters, the respondents had themselves, while issuing appointment orders belatedly after clearance had been obtained from the Medical Board, determined the seniority and had placed those candidates in the seniority list alongwith their batchmates. That is the order which should have been passed in the first instance by the respondents. The petitioner stood disqualified owing to an alleged deficiency in his eye sight. But later, when the Medical Board had examined the petitioner, they found that the petitioner was fully qualified and fit to join the police force. Naturally, the respondents themselves should have placed the petitioner in the same seniority list as that of his batchmates. This view had been consistently taken by this Court. ***In W.P.(MD) No.15958 of 2023 (R. Veerapandian vs. The Director General of Police (Law & Order), Chennai, and another)***, while considering a similar issue on candidates being initially disqualified and later had been found fit by the Medical Board and the issue of seniority, a learned Single Judge had held as follows:



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6. *This Court has already held in more than couple of cases in favour of the persons, similarly placed like the petitioner. The hesitation of the respondents to revise the petitioner's seniority on par with his batchmates of the year 2012-13 is unwarranted. In few cases wherein the request of revising seniority of a similarly placed person was rejected by the appointing authority, this Court has categorically held that the delay in appointing the petitioner has resulted from the mistake of fact committed by the appointing authority. Hence, the petitioner is entitled for revision of his seniority on par with his batchmates of the year 2012-13.*

7. *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 an order in 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



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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 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.”



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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 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.



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7. In this view of the matter, the orders impugned in the writ petition are set aside."

8. In fully consonance to the order passed by the learned Single Judge of this Court discussed supra, I hereby direct the respondents to fix the petitioner's seniority with the recruitment batch of the year 2012-13 within a period of twelve (12) weeks from the date of receipt of a copy of this order. However, this Court makes it clear that the petitioner will not be entitled to any arrears of pay for the said period 2012-2015.

9. Accordingly, this Writ Petition stands allowed. No costs."

7. The same order also applies to the petitioner herein. A direction is given to the respondents to determine the seniority of the petitioner along with the recruitment batch of 2012-13 within a period of twelve (12) weeks from the date of receipt of a copy of this order. The petitioner would not be entitled for any arrears of pay, but, however, his seniority would be considered on and from the date on which his batchmates had joined duty, for the purpose of pension.



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8. With the above directions, this Writ Petition stands allowed. No

costs. W.M.P. No.16498 of 2024, which was filed to dispense with the production of the original impugned order passed by the respondent, stands allowed.

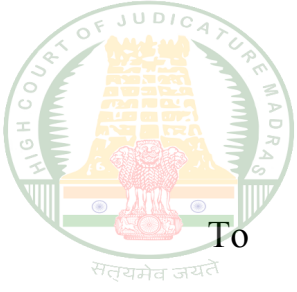
17.03.2025

Internet : Yes / No

Index: Yes / No

Speaking order / Non speaking order

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To

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Home (Police II) Department,
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C.V. KARTHIKEYAN, J.

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