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W.A.No.130 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2025

CORAM :

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

and

THE HONOURABLE MR. JUSTICE P.DHANABAL

W.A.No.130 of 2023 in W.P.No.19010 of 2017

and

CMP.No.1311 of 2023

1.The Director General of Police
Mylapore,
Chennai – 2.

2. The Superintendent of Police
Cuddalore District
Cuddalore.

...Appellants

Vs.

V.Viswanathan

... Respondent

Prayer: Writ Appeal is filed under Clause 15 of Letter Patent to set aside the Order dated 02.08.2021 made in W.P.No.19010 of 2017.

For Appellants

: Mr.P.Kumaresan
Additional Advocate General
assisted by Mrs.Yamunadevi

For Respondent

Special Government Pleader
: Mr.M.S.Soundararajan



W.A.No.130 of 2023

WEB COPY

JUDGMENT

(Judgment of the Court was made by P.DHANABAL.,J)

This Writ Appeal has been preferred as against the order passed by the Writ Court in W.P.No.19010 of 2017, wherein, the respondent herein has filed the writ petition before the Writ Court to quash the proceedings in C.No.A3/5848/2017 dated 13.03.2017 on the file of the 2nd respondent to direct the 1st respondent to include the petitioner's name at the appropriate place in the selection list along with his batch mates recruited for the year 1992-1993 and award all consequential service benefits. The Writ Court allowed the Writ Petition. Aggrieved by the said order, the Government has preferred this Appeal.

2. Before the Writ Court, the respondent filed the Writ Petition alleging that he had participated in the recruitment for the post of Police Constable in the year 1992-1993 and had cleared the exams and was not appointed due to his involvement in the case in Cr.No.597 of 1991 on the file of Minsuruti Police Station. The name of the petitioner in the charge sheet was deleted from the above said crime number. Therefore, the petitioner has sent a representation dated 10.10.1999 and the same was



W.A.No.130 of 2023

WEB COPY

not considered. Therefore, he approached the Tamil Nadu Administrative Tribunal in OA.No.7319 of 1999 and the Tribunal directed the respondent to consider the representation of the petitioner and to pass appropriate orders on merits by order dated 18.12.1999. Thereafter, the writ petitioner was issued with an appointment order dated 06.02.2002. Thereafter the petitioner sent a representation through appellant on 21.06.2017 with a request to place him in the seniority along with his batchmates who appeared in the exam during 1992-1993. Thereafter, the petitioner approached this court in WP.No.37670 of 2016 and the same was disposed of with a direction to consider and dispose of the representation of the petitioner on merits. Thereafter, the appellants have passed an order dated 13.03.2017 stating that the writ petitioner was selected in the year 1992-1993 over and above 10000 vacancies and the case of the petitioner was considered as a special case along with others on condition that his seniority will be fixed at bottom of 1997-1998 batch Grade -II Police Constable and the petitioner cannot claim any seniority with effect from 01.11.1995.

3. Challenging the said order, the writ petition was filed before the Writ Court. The Writ Court after hearing both sides observed that the

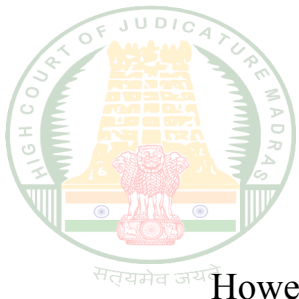


W.A.No.130 of 2023

WEB COPY

petitioner had successfully cleared all the exams in the recruitment in the year 1992-1993, but was not selected on account of his case pending in Cr.No.597 of 1991 before the Minsururiti Police Station. However, later his name was not included in the charge sheet and thereafter he was appointed pursuant to the direction of the Tamil Nadu Administrative Tribunal in OA.No.7319 of 1999 dated 18.12.1999. Therefore, the reasons given in the impugned order communication is not applicable to the petitioner. That apart, in the case of S.Sakthivel Head Constable No.568, Armed Reserve, Tiruvannamalai District, whose name was not included in the selection list to the post of Gr.III Police Constable in the year 1992-1993 due to his eyes are unfit due to the defective vision. The seniority shall be fixed with the candidates who were provisionally selected in the year 1992-1993 and were appointed on 01.11.1995 as per the Rule 24(d) of TNPSS Rules.

4. It is referred in the Judgment of the Hon'ble Supreme Court in the *State of Haryana Vs. Dinesh Kumar, (2008) 3 SCC 222*, that the appellant will be deemed to have been appointed as Constables-Drivers with effect from date persons lower in merit to them were appointed.



W.A.No.130 of 2023

WEB COPY

However, while they will be entitled to the notional benefits on such continuous appointment and they will be entitled to salary only from the date of this judgment on the basis of the notional benefits. Therefore, the appointment of the petitioner was not in terms of G.O.Ms.No.1339 dated 01.10.1999 and the petitioner is entitled to seniority on par with his batch mates as the criminal proceedings against him was not proceeded. Aggrieved by the said order, the present writ petition has been filed.

5. The learned Additional Advocate General appearing for the appellants would submit that the appellants called for applications for selection of Constables for the vacancies of 10000 posts and they selected more than 10,600. The petitioner was not selected due to criminal case pending against him. Thereafter, 329 posts which reserved for SC/ST candidates could not be filled up due to the non-availability of the SC/ST candidates. Thereafter, the Government made announcements in GO.MS.No.1339, Home (Pol-3) Department dated 01.10.1999 for appointment 329 candidates as Gr-II Police Constables by relaxing the age, communal rotation, sports quota and 30% reservation for women as one time measure.



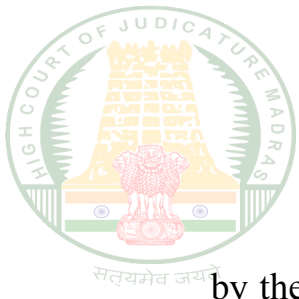
W.A.No.130 of 2023

WEB COPY

5.1. Seniority of the above said persons shall be reckoned by placing them below the Grade-II Police Constables (Men) selected for the year 1997-1998. As per the order of Tamil Nadu Administrative Tribunal, this petitioner was appointed as Grade-II Police Constable on 01.03.2002 on condition that he should not claim any seniority for the year 1992-1993 and his name was fixed at the bottom of 1997-1998 batch Gr-II Police Constables (Men) appointed on 25.04.1999. In such a situation, the petitioner has sent a representation dated 21.02.2017 with a request to fix the seniority on par with the candidates recruited for the year 1992-1993.

5.2. In the case similar to that of the petitioner, one S.Saravanan, Police Constable, Armed Reserve, Trichy City, who was provisionally selected in the year 1992-1993 and was appointed along with the petitioner, had filed Writ Petition in WP.No.4050 of 2009 before this court seeking seniority from the date on which the other candidates selected for the year 1992-1993 and appointed on 09.06.1993 and the same was dismissed on 14.07.2011.

5.3. The petitioner was informed that he was selected in the year 1992-1993 over and above the vacancy of 10000 Gr-II Police Constables



W.A.No.130 of 2023

WEB COPY

by the Tamil Nadu Uniformed Services Recruitment Board. However, he was appointed as Gr.II PC on 01.03.2002 and his seniority was fixed below the 4000 Grade-II Police Constables (Men) recruited for the year 1997-1998 as per the Government Order. Since the appointment to the petitioner was considered as a special case with condition that his seniority will be fixed at the bottom of 1997-1998 batch Gr-II Police Constables. The case of the petitioner is not relevant to Mr.S.Balakrishnan and 2 others and his request to fix the seniority with effect from 1992 is not feasible for consideration.

5.4. The writ petitioner filed this writ petition to quash the order impugned dated 13.03.2017 and to direct the 1st respondent to include his name at appropriate place in the selection list 1992-1993 and the same is baseless. However, the Writ Court allowed the said petition as the criminal proceedings were dropped and if the impugned order is not set aside, the persons who were appointed and granted benefits under G.O.MS.No.1339, Home (Pol.III) Department dated 01.10.1999 will seek seniority from the year 1992 and it would cause heavy financial burden to the Government and therefore, the petitioner is not entitled to the relief as prayed for and the order passed by the Writ Court is liable to be



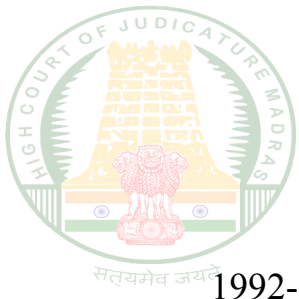
W.A.No.130 of 2023

set aside.

WEB COPY

6. Heard both sides and perused the records.

7. It is an admitted fact that the appellant recruited more than 10000 Police Constables in the year 1995-1996 and already 10000 persons were appointed and completed training. It is also admitted fact that for the post of 10000 vacancies, the authorities have selected over and above 10624 candidates. Since there was no vacancy, the remaining 624 persons were not appointed. According to the appellant, the petitioner does not come under the 10000 posts and he comes under the over and above the sanctioned posts. However, the petitioner sent a representation on 10.10.1999 for his appointment, since the criminal case was not charge sheeted against him. Thereafter, the respondent approached the Tamil Nadu Administrative Tribunal in OA.No.7319 of 1999 and thereafter he was appointed on 06.02.2002 and thereafter he sent a representation dated 21.02.2017 and the same was considered and the authorities passed the order impugned in the writ petition wherein the authorities have stated that “the petitioners were selected in the year

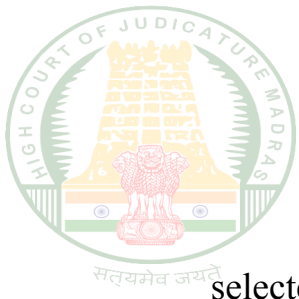


W.A.No.130 of 2023

WEB COPY

1992-1993 over and above vacancies of 10000 Gr – II Police Constables by the Tamil Nadu Uniformed Services Recruitment Board. However, later they were appointed as Gr.II Police Constable on 15.05.2000 and the seniority was fixed below 4000 Gr-II Police Constable(Men) recruited in the year 1997-1998 as per the Government Orders. Since the appointment of the petitioner was considered as a special case with condition that the seniority will be fixed at the bottom Grade-II Police Constable(Men) for the year 1997-1998. Therefore, this case is not related to the case of **Balakrishnan and others** and the request for fixation of the seniority with effect from 01.01.1995 in feasibility for consideration and fixed the seniority at the bottom of 1997-1998 batch Gr-II Police Constables with effect from 15.05.2000 i.e., date of appointment as per the Rule 2(1) of Tamilnadu State Subordinate Service Rules and G.O.MS.No.1339, Home (Pol.III) Department dated 01.10.1999 and hence the request of the petitioner is not feasible for consideration and accordingly the petitioner's request is rejected as it devoid of merits”.

9. Since the petitioner was appointed on 01.03.2002 and he was



W.A.No.130 of 2023

WEB COPY

selected provisionally in the year 1992-1993 as over and above the number of posts of 10000, he cannot claim seniority at par with the batch mates. He cannot claim seniority on par with the order passed by this court in respect of one Balakrishnan who was selected within the number of 10000 posts. It is a well settled law that as far as fixing seniority is concerned, the date of appointment is the criteria to fix the seniority. Though the petitioner was selected on par with the batch mates in the year 1992-1993, due to pending of criminal case against him, he was not appointed and thereafter, the criminal case was ended in his favour in the year 1996 itself and thereafter the petitioner till the year 1999, has not taken any steps by informing the closure of the criminal case against him and only he approached the appellants through representation dated 10.10.1999. By that time, the another batch 1997-1998 recruitment were appointed and thus the petitioner cannot seek seniority on par with the batchmates 1992-1993. When another batch in the year 1997-1998 were appointed in the year 1999 prior to the appointment of this petitioner, he cannot claim seniority above those persons.

10. However, the Government considering the petitioner as a



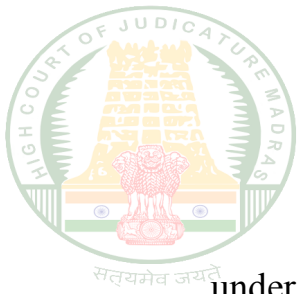
W.A.No.130 of 2023

WEB COPY

special case is ready to fix the seniority from the bottom of the batch mates of the year 1997- 1998 and above the persons who were selected along with this writ petitioner over and above the posts of 10000. Therefore, the above said proposal of the Government is acceptable and the petitioner being appointed later cannot claim seniority over and above the persons who were appointed earlier to the writ petitioner. Therefore, the writ petition can be disposed of by directing the appellants to place the writ petitioner in the seniority list between the

persons recruited in the year 1997-1998 batch and 328 persons who were appointed under G.O.MS.No.1339, Home (Pol.III) Department dated 01.10.1999. That is above 328 persons who were appointed under the G.O.Ms.No.1339 dated 01.10.1999 and below the persons appointed in the year 1997-1998 batch. Accordingly ordered.

11. The Writ Court directed the writ petitioner to fix the seniority of the respondent below the 1992-1993 batch, by holding that the respondent was not appointed based on the G.O.Ms.No.1339 dated 01.10.1999. But failed to consider that the respondent is not coming



W.A.No.130 of 2023

WEB COPY

under the 10000 vacancies and he comes under the over and above posts and the exclusion of the respondent from the charge sheet was not informed to the appointing authority immediately after the filing of charge sheet, but he waited more than 3 years and sent a representation only on 10.10.1999, by the time other batchmates of 1997-1998 were appointed.

12. In view of the above discussion, it is appropriate to set aside the order passed by the writ court by allowing this writ petition.

13. With the above said terms, this Writ Appeal is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

[R.S.K., J.]

[P.D.B., J.]

07.08.2025

Index : Yes / No

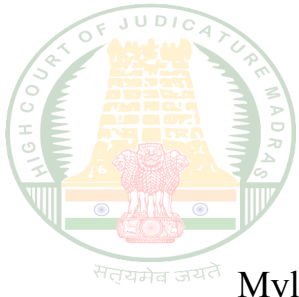
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To

1.The Director General of Police

Page 12 of 14



W.A.No.130 of 2023

WEB COPY Mylapore,
Chennai – 2.

2. The Superintendent of Police
Cuddalore District
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R.SURESH KUMAR.,J.

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WEB COPY



W.A.No.130 of 2023

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