



W.P.(MD)No.3917 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.02.2025

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THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

W.P.(MD)No.3917 of 2019

M.Bhuvaneshwari

... Petitioner

Vs.

1.The Director General of Police,
Chennai.

2.The Commissioner of Police,
Madurai City, Madurai.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned memorandum issued by the first respondent bearing Rc.No.147155/NGB 2(2)/2018 dated 04.12.2018 and quash the same and consequently direct the first respondent to grant pay protection and selection grade pay to the petitioner with continuity of service by taking into consideration of the service rendered by the petitioner in the post of Grade II Police Constable and direct to pay the monetary benefits to the petitioner.

For Petitioner : Mr.M.Gnanagurunathan

For Respondents : Mr.G.V.Vairam Santhosh,
Additional Government Pleader.



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ORDER

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This writ petition has been filed to quash the impugned memorandum issued by the first respondent bearing Rc.No.147155/NGB 2(2)/2018 dated 04.12.2018 and to direct the first respondent to grant pay protection and selection grade pay to the petitioner with continuity of service by taking into consideration of the service rendered by the petitioner in the post of Grade II Police Constable and direct to pay the monetary benefits to the petitioner.

2.It is the case of the writ petitioner that the petitioner was selected and appointed by the Tamil Nadu Uniform Service Commission as Grade II Police Constable on 15.02.2005. When she was working as Woman Police Constable in Tamil Nadu Special Police VI Battalion, there was a law and order problem at Vilampatti Muthalamman Kovil Festival, at the time of opening Temple Hundial and there was an agitation by villagers and the Police Constable on duty were attacked by the mob by throwing stones. In the above said incident, the petitioner had lost his vision in the right eye since a stone had hid her right eye. She was taken to Nilakkottai Government Hospital for treatment along



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with other injured. She was referred to further treatment to the Government Rajaji Hospital at Madurai. The Doctor certified that the injury in her right eye is a grievous one. Further, she had undergone surgery in the Aravind eye Hospital, Madurai. Even after the surgery, she could not continue her service as Police Constable. Due to the same, she was transferred from Tamil Nadu Uniform Service to Ministerial Service by appointing her as Junior Assistant in the Office of the Commissioner of Police, Madurai. The Government vide G.O.Ms.No. 557 dated 04.10.2011 had issued an order posted her as Junior Assistant in the Office of the Commissioner of Police, Madurai and joined as Junior Assistant on 02.03.2012. Her basic pay as well as her last drawn pay was not protected and her service in the post of Grade II Police Constable was not taken into consideration for the purpose of granting selection grade in the post of Junior Assistant. As per Section 47 of the Persons with Disabilities (Equal Opportunity, Protection of Right and Full Participation) Act, 1995, she is entitled to get the benefit of promotion. She had submitted a detailed representation to the first respondent herein on 14.06.2018 and the same was not considered. Hence, she filed a writ petition in W.P.(MD)No.17142 of 2018 before this Court. This Court vide order dated 14.06.2018, directed the



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respondents to consider her representation on merits. The first respondent herein had rejected her request by memorandum dated 04.12.2018. Hence, this writ petition.

3.The learned counsel appearing for the petitioner would submit that the petitioner had suffered disabilities during her service and hence, in order to provide alternate employment, she was appointed as Junior Assistant. The first respondent not even considered Section 47 of the Rights of Persons with Disabilities Act, 2016 which contemplates to provide alternative employment with continuity of service and pay protection. The serving employee should be shifted to some other post with same pay scale and service benefits. To support his contention, he has relied upon the following decisions of the Hon'ble Supreme Court of India reported in 2003 (2) Supreme 102, Kunal Singh Vs. Union of India & Anr to show that once the employee has acquired disability during his service and if not found suitable for the post, he was holding, he could be shifted to some other post with same pay scale and service benefits; it is not not possible to adjust him against any post, he could be kept on a supernumerary post until a suitable post was available or he attains the age of superannuation. He has relied upon the judgment of this Court



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reported in 2006 (5) CTC 413, G.Muthu Vs. The Management of Tamil Nadu State Transport Corporation (Madurai) to show that “as per Section 47, an employee is entitled for the benefit of alternative employment with pay protection, continuity of service, back wages and all attended benefits, which he is legally entitled to”

4.Per contra, the learned Additional Government Pleader appearing for the respondents would submit that the service of the petitioner was converted into Ministerial service and appointed her as Junior Assistant, on her request only. The Tamil Nadu Public Service Commission have given their concurrence for appointing the petitioner as Junior Assistant as a Special Case subject to the condition to relax the Rule 3(g) of the Special Rules for the Tamil Nadu Ministerial Services in her favour. The Government, in G.O.(Ms)No.557, Home (Pol VI) Department, dated 04.10.2011, have relaxed the Rule 3(g) of the Special Rules for the Tamil Nadu Ministerial Services in favour of the petitioner and ordered to be appointed as Junior Assistant. He would further submit that the petitioner was not appointed as Junior Assistant for her disability and she was appointed as Junior Assistant only on her request. For moving selection grade, she has to complete 10 years of qualifying



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service, then only, she will be considered for selection grade. He would draw attention of this Court to the paragraphs 9, 11 and 13 of the counter affidavit filed by the respondents and prayed for dismissal of the writ petition.

5.This Court considered the submissions made on either side and perused the materials available in the record.

6.It is not in dispute that the petitioner had lost her vision in her right eye, when she as attending panthopasth duty. Even after surgery, she was unable to perform her duty as Police Constable. Therefore, the petitioner was transferred from Tamil Nadu Uniform Service to Tamil Nadu Ministerial Service by appointing her as Junior Assistant, as per G.O.(Ms)No.557, Home (Pol VI) Department, dated 04.10.2011. The petitioner had preferred a writ petition in WP.(MD)No.17142 of 2018 seeking a direction to the respondents to consider her representation dated 14.06.2018 seeking grant of pay protection, to grant Selection Grade in the post of Junior Assistant and for consideration of past service of the petitioner in the post of Grade II Police Constable along with service of the petitioner in the post of Junior Assistant for the purpose of



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pensionary benefits. This Court vide order dated 02.08.2018, directed the respondents to consider the representation of the petitioner dated 14.06.2018, on merits and in accordance with law. As per direction of this Court, the order impugned came to be passed.

7.In the order impugned, it is stated that in the Tamil Nadu Government Fundamental Rule FR 22(B) ruling 6 it has been stated that “In case a Government Servant already in service in a post is appointed to another post through the Tamil Nadu Public Service Commission by Direct recruitment, or when the mode of his appointment to the new post is by direct recruitment, the Government servant concerned should be allowed to draw the minimum of the scale pay or as provided in the service rules relating to such appointments and fixation of pay under Fundamental Rules FR 22 (or) FR 22(B) is not admissible. Further it has been stated that the Selection Grade will be given to the individual, if he/she serves in the same post for ten years without getting any promotional opportunity. In this case, the petitioner, Junior Assistant, City Police Office, Madurai has been appointed to a new post as Junior Assistant on 02.03.2012 and she had completed only 6 years in the post of Junior Assistant. Therefore, the request of the petitioner has not been considered.

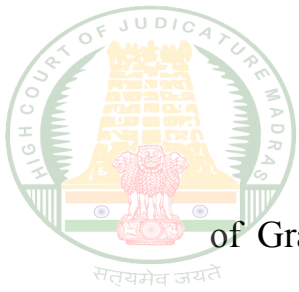


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8. Section 20(4) of the Rights Of Persons With Disabilities Act, 2016 enumerates that no Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service:— Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits, provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

9. The learned counsel appearing for the petitioner strongly relied on the decision in W.P.(MD)No.26560 of 2024 dated 07.01.2025 and submitted that the proviso to Section 20(1) of the Rights of Persons With Disabilities Act, 2016 is also applicable to the Uniform Service also and as per Section 20(4) of the Act, the Government establishment cannot dispense with the services of an employee, who had acquired disability during his service. In the present case, admittedly the writ petitioner has acquired disability while she was in service. Even though, the writ petitioner was provided with alternative employment as Junior Assistant, she has not been provided with pay protection and her service in the post



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of Grade II Police Constable was not taken into consideration for the purpose of granting selection grade in the post of Junior Assistant.

10. In view of the above said circumstances, the order impugned in the present writ petition is set aside and the respondents are directed to comply with the provisions of Section 20(4) of the Rights of Persons with Disabilities Act, 2016 and to grant pay protection and selection grade pay to the petitioner with continuity of service by taking into consideration of the service rendered by the petitioner in the post of Grade II Police Constable, along with other benefits and pass orders, within a period of twelve weeks (12) from the date of receipt of a copy of this order.

11. With the above observations, this writ petition stands allowed.

No costs.

NCC : Yes / No

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Index : Yes / No

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To

1. The Director General of Police,
Chennai.

2. The Commissioner of Police,
Madurai City, Madurai.



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M.JOTHIRAMAN, J.

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