

(2009) 08 MAD CK 0193

Madras High Court

Case No: Writ Petition No. 4257 of 2006 and O.A. No. 477 of 2002

P. Meenambal

APPELLANT

Vs

The Deputy Inspector General of
Police, Madurai Range and The
Superintendent of Police

RESPONDENT

Date of Decision: Aug. 6, 2009

Acts Referred:

- Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 - Rule 17

Hon'ble Judges: S. Rajeswaran, J

Bench: Single Bench

Advocate: K. Venkataramani, for the Appellant; Edwin Prabhakar, A.G.P., for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S. Rajeswaran, J.

The facts are as follows:

The petitioner entered the service as Grade I Police Constable by direct recruitment in Madurai City on 28.07.1997. She was promoted as Head

Constable on 16.09.1988 and she was promoted temporarily as Sub Inspector of Police by the orders of the Director General of Police, Chennai

in his proceedings dated 10.10.1994. The petitioner has been serving as temporary Sub Inspector of Police continuously from 13.11.1994 and

without any break.

2. The petitioner had suffered two punishments namely in P.R. No. 81/89, dated 19.11.1990 and another in PR No. 244/89 dated 22.01.1991

imposed by the Superintendent of Police at Sivaganga, for minor delinquencies. Because of the punishments, the probation of the petitioner as

Head Constable was extended twice and finally she completed her probation on 23.03.1991.

3. The Range promotion Board was conducted in Madurai Range by the Chairman and Superintendent of Police, Madurai District during the year

1988 for the regularisation of the temporary Women Sub Inspector of Police who are already serving in that Range.

4. The petitioner appeared before the Board and she was selected and included in the list in Sl. No. 2. The petitioner was informed to appear

before the Principal, Police Training School, Coimbatore on 20.12.1998 and to undergo nine week pre-promotional Institutional Training from

21.12.1998. Unfortunately, the petitioner was not sent for training for reasons best known to the respondents. The petitioner was made to believe

that as she suffered punishments in 1990 and 1991, she was not regularised. According to the petitioner, the punishment suffered by her during the

years 1990 and 1991 could not be relied upon to defer her promotion.

5. Another Range of Promotion Board was conducted in Madurai Range by the Superintendent of Police on 27.03.2001. The petitioner

participated again and came out successful in all stages of selection. She was sent for nine weeks Pre-Promotion Course conducted for the Sub

Inspector of Police as well as the promotion as Sub Inspector of Police on 17.06.2001 and she completed the course and now serving in

Tiruparankundram Police Station.

6. It is the case of the petitioner that as she has been serving as temporary Sub Inspector of Police from 13.11.1994 her services ought to have

been regularised from that date only. When similarly placed persons who were promoted temporarily as Sub Inspector of Police on and from

13.11.1994 were regularised from that date, she was alone discriminated and therefore, she filed O.A. No. 477 of 2002 praying for a direction

directing the respondents to regularise her services from the initial appointment i.e. 13.11.1994 and grant her all consequential service and

mandatory benefits. On the abolition of the tribunal, O.A. No. 477 of 2002 was transferred to this Court and re-numbered as W.P. No. 4257 of

2006.

7. A reply affidavit has been filed by K.P. Mahendran, Deputy Inspector General of Police on 12.8.1992 wherein it was stated that she was

promoted as Woman Sub Inspector of Police on temporary basis as per the order dated 24.10.1994 and also as per the orders of the Director

General of Police dated 10.10.1994 and she joined the post on 15.11.1994. In the orders issued on 10.10.1994, it was specifically mentioned

that the petitioner has been promoted as Woman Sub Inspector of Police under Order 15(a) of sub-rules of Tamilnadu Police Subordinate

Services read with Adhoc Rules governing the Women Police Wing. It was clearly stated in the order that their services shall be liable to be

terminated at any time without notice and they are not entitled to claim any preference in future promotions. An undertaking was also sought for

from them that they would not claim any seniority or pay fixation for the temporary promotion being ordered. Therefore, it was contended in the

reply affidavit that the petitioner cannot claim any seniority, regularisation, etc. as in the case of others who are qualified by all aspects and got

regularisation with retrospective effect.

8. It is further stated that in the Memo dated 15.09.1998 issued by the Director General of Police, Chennai-4 there are certain conditions

stipulated and according to condition No. 5(v) of the Memo dated 15.09.1998, the Women Constables (presently working as Woman Sub

Inspector of Police) who are otherwise eligible for being considered for promotion as Woman Sub Inspector of Police should not have suffered

any statutory punishment under Tamilnadu Police Subordinate Services (Discipline and Appeal) Rules during five years preceding their date of

promotion as temporary Woman Sub Inspector of Police. In the case of the petitioner, she was promoted as temporary Sub Inspector of Police

on 15.11.1994, but the punishment was awarded in PR. No. 81/89 on 24.11.1990 and the period of 5 years from the date of awarding the

punishment expired only on 24.11.1995, i.e., before the expiry period of five years. Hence, with reference to the conditions prescribed by the

Director General of Police, the petitioner is not eligible for regularisation of her temporary services as Sub Inspector of Police. With regard to

others who have been regularised with retrospective effect, it was stated that they have satisfied the norms prescribed in the Memo dated

15.09.1998 and therefore, there is no question of discriminating the petitioner.

9. Heard Thiru K. Venkataramani, the learned Senior counsel for the petitioner and Thiru Edwin Prabhakar, learned Additional Government

Pleader for the respondents. I have also gone through the entire documents available on record.

10. The only question that arises for consideration in this writ petition is that whether the petitioner is entitled to regularise her services from

13.11.1994 as claimed by her.

11. It is not in dispute that on 13.11.1994, the Director General of Police, Madurai Range, Madurai ordered that the petitioner on promotion as

temporary Woman Sub Inspector of Police was posted to Women Police Wing, Tiruparankundram, Madurai Rural District. As per office Memo

dated 29.09.1998, a Promotion Board was convened in Madurai Range and the board on 22.10.1998 recommended the case of the petitioner for

regularisation. She was also directed to report before the Principal, Police Training School to undergo nine weeks Pre-promotion Institutional

Training from 21.12.1998. It is an admitted fact that she was not sent for Police Training and therefore, she appeared before the Board once again

in the year 2001 and became eligible for the Drill Test and Viva voce examination. On 7.8.2001, she was asked to undergo three months Practical

Training in her Parent Unit. It is also an admitted fact that thereafter her services were regularised with effect from 28.11.2001.

12. The contention of the petitioner is that having been promoted temporarily as Sub Inspector of Police on and from 13.11.1994 and having been

successfully selected by the Promotion Board on 22.10.1998 itself, her services ought to have been regularised on and from 13.11.1994 as the

respondents regularized the services of other similarly placed persons. This argument was sought to be rejected by the respondents by contending

that when her case was first considered by the Board, a memo dated 15.09.1998 was issued by the Director General of Police prescribing certain

conditions for regularising the temporarily promoted Women Constables. As per the Memo, dated 15.09.1998, the petitioner ought not to have

suffered any statutory punishments during five years preceding her date of promotion as temporary Sub Inspector of Police. As she is to be promoted from 13.11.1994 and she suffered a punishment on 24.11.1990, i.e. well within the period of five years, she was not promoted and her case was duly considered in the year 2001 and consequently, she was properly regularised on and from 28.11.2001. The learned Senior counsel for the petitioner submitted that the Memo dated 15.9.1998, in para 5(vii) states that other Guidelines prescribed in G.O.Ms. No. 368 dated 18.10.1993 would be followed for promotion of the temporary Woman Sub Inspector of Police as regular Sub Inspector of Police. If that being so, the learned Senior counsel points out that G.O.Ms. No. 368 dated 18.10.1993 will have a bearing in the present case. But, the same was not at all considered by the respondents resulting in wrongly applying the principles to reject the case of the petitioner. He produced a copy of G.O.Ms. No. 368 dated 18.10.1993 wherein in Chapter II/VI(2)(a), it is stated that in the case of selection category post, the inclusion of names in the Panel from promotion will be based on ability and seniority being considered only when merit and ability of the contesting candidates are nearly equal. Therefore, strict comparison of the cases of the individuals offered a specified period of service (say for five years) taken up for analysis is quite necessary before deciding upon the question of inclusion or exclusion as the scope for subjective satisfaction and interpretation is limited. For the purpose of comparison, the proved irregularities which took place during the said specified period of service have to be taken into consideration whether or not the person concerned was proceeded against under Rule 17(a) and (b) of the Tamilnadu Civil Services (Classification Control and Appeal) Rules.

13. Relying on the above said para, the learned Senior counsel submitted that what was contemplated in G.O.Ms. No. 368 dated 18.10.1993 is the date on which the proved irregularities took place and not the date on which the punishment was awarded. He further adds that if the proved irregularities are taken into consideration in the case of the petitioner that related to the period from 28.10.1989 which occurred well before the

five years period contemplated in the Government Order and in that case, she is very much eligible to be regularised as claimed by her.

14. The learned Senior counsel further produced a letter dated 28.06.1996 issued by the Secretary to Government to all other Departments

wherein the norms being adopted by the Director General of Police as per G.O.Ms. No. 368 were clarified and according to which if any

punishment ordered is within a period of five years as on crucial date, but, the date of occurrence falls beyond the period of five years, then it is not

held against the officer. Relying on these norms, the learned Senior counsel urged that in the petitioner's case also, even though the punishment

ordered is within the period of five years as on crucial date, the date of occurrence falls beyond the period of five years and therefore, that

punishment should not be held against her.

15. Per contra, the learned Additional Government Pleader relied on a letter dated 20.10.1997 issued by the Chief Secretary to all other

Departments wherein it was stated that any punishment other than Censure imposed on an Officer within a period of five years to the crucial date

and a punishment of Censure within a period of one year prior to the crucial date should be held against the Officer. Relying on this letter dated

20.10.1997, the learned Additional Government Pleader submitted that as the date of punishment fell within the period of five years prior to the

crucial date, the petitioner is not entitled to be regularised her services as claimed by her.

16. The learned Senior counsel relying on another letter dated 01.10.1999 issued by the then Chief Secretary to all other departments wherein it

was stipulated that if the Officer was imposed with any of the punishment within the check period for irregularities/delinquencies which occurred

five years prior to the crucial date, such punishment need not be held against the Officer.

17. Against this letter relied on by the learned Senior counsel, the learned Additional Government Pleader has also relied on another letter dated

1.10.1999 issued by the Chief Secretary to the other departments stating that whenever an Officer is undergoing any punishment and the crucial

date on the date of consideration, then irrespective of the time of the occurrence of the irregularity, his name should be passed over for the panel.

Relying on this letter, the learned Additional Government Pleader has submitted that the case of the petitioner has been rightly rejected.

18. But, yet another letter dated 19.10.2001 was relied on by the learned Senior counsel wherein once again it was stated that if the Officer was

imposed with any of the punishments within the check period for irregularities/delinquencies which occurred five years prior to the crucial date,

such punishment need not be held against him, if such punishment is not in the current year in the crucial date and also on the date of consideration

of the Panel.

19. I have considered the submissions of both the learned Counsel carefully and I have also gone through the Government orders and the letters.

20. A close reading of those Government Orders and letters will make it very clear that the respondents themselves are not very sure about

considering the date of punishment or the date of occurrence prior to the crucial date and therefore, different orders and different letters were

issued time and again stipulating to be the yardstick while considering the case of an officer who was imposed with a punishment.

21. Considering the fact that the respondents themselves are not sure about applying the correct condition, I am of the considered view that the

Writ petitioner can be given the benefit of regularisation as claimed by her on the basis of G.O.Ms. No. 368 dated 18.10.1993 and the norms

issued by the Chairman, TNPSC, according to which if any punishment ordered is within a period of five years as on crucial date, but the date of

occurrence falls beyond the period of five years, then it is not held against the Officer. A copy of these norms were enclosed with the letter of the

Secretary to Government, dated 28.06.1996, stating that they are to be followed, so that the suitability of the candidates could be assessed

uniformly without giving room for discrimination from one department to another while finalising the panels either through Departmental Promotion

Committee or Committee of Promotion. This letter dated 28.6.1996 was also sent to the Secretary, T.N.P.S.C., Chennai 2.

22. It is also not in dispute that even in the Memo dated 15.9.1998 issued by the Director General of Police which was relied on by the

respondents for rejecting the claim of the petitioner, it was stipulated that the guidelines prescribed in G.O.Ms. No. 368 dated 18.10.1993 would

be followed. This G.O.Ms. No. 368 dated 18.10.1993 was interpreted so many times by the Government by issuing different guidelines.

Therefore, I have no hesitation in holding that the case of the petitioner could be considered on the basis of the norms/guidelines adopted by

TNPSC and if considered on the basis of the above norms, it is very clear that the petitioner has to be regularised on and from 13.11.1994 as the

date of occurrence of the irregularity was on 28.10.1989, which is beyond the period of five years as on the crucial date.

23. In the result, the writ petition is allowed as prayed for and the respondents are directed to regularise the services of the petitioner in the cadre

of Sub Inspector of Police from 13.11.1994 and grant all consequential benefits within a period of four months from the date of receipt of a copy

of this order. No cost.