
(2010) 09 MAD CK 0245
In the Madras High Court
Case No : Writ Petition No. 45340 of 2006

R. Ezhumalai

APPELLANT

Vs

The Superintendent of Police

RESPONDENT

Date of Decision : 24-09-2010

Acts Referred:

Citation : (2010) 09 MAD CK 0245

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : Ilamvaludhi, for the Appellant; V. Viswanathan, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

D. Hariparanthaman, J.—The Petitioner was promoted as Head Constable on 09.12.1978. He moved to selection grade in the rank of Head Constable on 09.12.1988 by an order dated 31.07.1992. He was further promoted as Sub-Inspector of Police with effect from 14.05.1986 by the proceedings dated 21.02.1995. While so, the impugned order dated 09.02.2000 was passed by the Respondent stating that his fixation in selection grade in the post of Head Constable with effect from 09.12.1988 was erroneous and it should have been from 27.06.1989. Accordingly, re-fixation and recovery was ordered.

2. In these circumstances, the Petitioner has filed the Original Application in O.A. No. 4979 of 2000 (W.P. No. 45340 of 2006) to quash the aforesaid order dated 09.02.2000 of the Respondent.

3. The Tamil Nadu Administrative Tribunal, while admitting the Original Application, granted interim stay.

4. Heard Mr. Ilamvaludhi, learned Counsel for the Petitioner and Mr. V. Viswanathan, learned Government Advocate for the Respondents.

5. The learned Counsel for the Petitioner submits that the 3impugned order was

passed after 12 years, when the Petitioner was granted selection grade with effect from 09.12.1988. Further, it is submitted that the Petitioner retired from service on 30.06.2006. The learned Counsel for the Petitioner heavily relies on a judgment of the Division Bench of this Court in D. Palavesamuthu Vs. The Tamil Nadu Administrative Tribunal, .

6. On the other hand, the learned Government Advocate for the Respondent submits that based on the audit report referred to in the impugned order, the error was sought to be corrected and there is no infirmity in the impugned order.

7. I have considered the submissions made on either side and perused the materials available on records.

8. As rightly contended by the learned Counsel for the Petitioner, the Petitioner was granted selection grade in the post of Head Constable with effect from 09.12.1988 by an order dated 31.07.1992. After 8 years, it was sought to be re-fixed on the ground that the selection grade should have been given only from 27.06.1989 and not from 09.12.1988. It is based on the audit report dated 24.02.1993 and it is also based on the G.O.304, Finance (PC) Department dated 28.03.1990. It is not known as to why the Respondent took 8 years to pass these orders, if there was a report in the year 1993, pointing out certain mistakes in fixation of pay. Further, the Petitioner also retired from service on 30.06.2006.

9. In these circumstances, as rightly contended by the learned Counsel for the Petitioner, the Division Bench judgment of this Court in D. Palavesamuthu Vs. The Tamil Nadu Administrative Tribunal, squarely applies to the facts of this case also. The following passage from para 6 of the said judgment is extracted here-under:

6. ...We are of the view that the course and method adopted by the Tribunal cannot be appreciated in the case of the Petitioner. Even if it is accepted for the argument sake that salary of the Petitioner is fixed in a wrong scale of pay, it is the fault committed by the Department and their Officers, for which the Petitioner should not be penalized after a lapse of number of years that too after retirement of the Petitioner.

10. As rightly contended by the learned Counsel for the Petitioner, the fixation in selection grade in 1988 was not pursuant to any misrepresentation made by the Petitioner and therefore the recovery under the impugned order is not furnished.

11. Taking into account, all the aforesaid facts and particularly the Petitioner's retirement in the year 2006, the impugned order is liable to be quashed and the same is quashed.

12. Accordingly, the writ petition is allowed. No costs.