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**(2013) 06 MAD CK 0148**  
**In the Madras High Court**  
**Case No : Writ Petition No. 19988 of 2008**

S. Akbar

APPELLANT

Vs

The Director General of Police

RESPONDENT

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**Date of Decision :** 07-06-2013

**Acts Referred:**

**Citation :** (2013) 06 MAD CK 0148

**Hon'ble Judges :** T. Raja, J

**Bench :** Single Bench

**Advocate :** K. Venkataramani, for Mr. M. Muthappan, for the Appellant; S.V. Duraisolaimalai, Additional Government Pleader, for the Respondent

**Final Decision :** Allowed

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## Judgement

T. Raja, J.—The petitioner has come to this Court challenging the correctness of the impugned order passed by the Deputy General of Police, Chennai 600 004 in Rc. No. 64520/NGBIV(1)/2008 dated 11.7.2008 under which the request of the petitioner to revise his seniority in the cadre of Sub-Inspector of Police with effect from 05.12.1984 in pursuance to the order passed by the Tamil Nadu Administrative Tribunal in O.A. No. 773/1989 etc dated 22.12.1989 was refused. He further prayed for quashing the same and to revise the seniority in the cadre of Inspector of Police and promote him as Deputy Superintendent of Police, Category I with all consequential service and monetary benefits.

(i) Mr. K. Venkataramani, learned senior counsel appearing for the petitioner submitted that the petitioner was directly recruited as Grade-I Police Constable on 1.2.1972. After 6 years, he was promoted as Head Constable on 22.9.1978. Thereafter, He was further promoted as Sub-Inspector of Police on out of seniority basis on 5.12.1984. He continued to hold the said post till he was further promoted as Inspector of Police on 08.11.2002. His service has to be regularized with effect from 5.12.1984 for the purpose of seniority as Sub-Inspector of Police by taking into consideration his service from 5.12.1984 as Sub-Inspector of Police.

(ii) The learned senior counsel further pleaded that when he was issued with an order dated 6.5.1989 in D.O. No. 849/89 reverting him as Head Constable, he approached the Tamil Nadu Administrative Tribunal by filing O.A. No. 773/1989 and obtained an order of stay of reversion on 24.5.1989. Subsequently, the Tribunal has also passed an order directing the Government to regularize his service as Sub-Inspector of Police by placing him at the bottom of the C list of the year 1985 and thereafter, to regularize the said promotion. Therefore, when the case of the petitioner in O.A. No. 773/1989 was accepted by the department that his services should be regularized from 5.12.1984 for the purpose of seniority as Sub-Inspector of Police, again fixation of seniority in the cadre of Sub-Inspector of Police on the basis of another order passed by the Tribunal in O.A. No. 2176/1991 etc dated 7.8.1992 is totally incorrect.

(iii) The learned senior counsel also pleaded that when the order made by the Tamilnadu Administrative Tribunal in O.A. No. 773/1989 dated 22.12.1989 should be made applicable to the petitioner by placing him below to those who were regularly included in the C list of Head Constables found fit for promotion as Sub-Inspectors, giving lesser benefit is unfair and unjustified.

(iv) Finally, the learned senior counsel pleaded that when a similarly placed person, namely, Mr. N. Padmanabhan was granted the benefit of seniority on the basis of the order passed by this Court in Review Application No. 33 of 2010 dated 25.05.2010 fixing the seniority in the cadre of Sub-Inspector of Police, from 1985, the year in which the C list was published, as per the order made in O.A. No. 694 of 1989 etc., dated 22.12.1989 with all consequential benefits, the respondent cannot discriminate the petitioner alone.

(v) One another order passed by this Court in W.P. No. 32785/2006 dated 5.7.2010 in favour of A. Chinnathambi was also brought to the notice of this Court. The order passed by this Court in N. Padmanabhan's case has been followed consistently in A. Chinnathambi's case also and that order was also accepted by the respondent department after the dismissal of the W.A. No. 1353/2011 on 10.12.2011. Therefore, the respondent has no case to oppose the prayer of the petitioner.

2. (i) However, a counter affidavit has been filed by the respondent. Mr. S.V. Duraisolaimalai, learned Additional Government Pleader appearing for the respondent submitted that the writ petitioner Mr. S. Akbar, formerly Sub-Inspector of Police, recruited as Grade I Police Constable on 01.12.1972, subsequently promoted as Head Constable from 22.7.1978, was given temporary promotion as Sub-Inspector of Police purely on temporary basis. Accordingly, he served as out of seniority Sub-Inspector of Police from 05.12.1984 to 08.11.2002 till he got promotion as Inspector of Police. While serving as out of seniority Sub-Inspector of Police, he appeared for the Range Promotion Board of Tiruchirappalli Range for the year 1985 and secured 67 = marks. However, on joining the direct recruitment Sub-Inspector of Police in the year 1987 he was reverted as Head Constable for want of vacancy while he served in Thanjavur District. However,

when he approached the Tamil Nadu Administrative Tribunal by filing O.A. No. 773/1989, he obtained an order of stay against the order of reversion. By virtue of the order of stay, he continued as temporary Sub-Inspector of Police without any reversion. However, when the Tribunal disposed of the said O.A. No. 773/1989 by order dated 22.12.1989 to place him at the bottom of the C list, he was placed at the bottom of the C list in Serial No. 52. Subsequently, some of the similarly placed persons also filed O.A. No. 2176/1991 wherein another direction was also given by the Tamil Nadu Administrative Tribunal to place all those temporary Sub-Inspector of Police at the bottom of C list by order dated 7.8.92. The respondent has obeyed the said order by placing the petitioner at the bottom of C list drawn in Trichy Range at Serial No. 52. When the cases of the petitioners were duly considered by the respondent and they were absorbed in the existing vacancies by proper regularization with effect from 7.8.1992 in all ranges, the writ petitioner who has not passed the promotion test for regular promotion as prescribed in rule 3 of the Special Rules for Tamil Nadu Police Subordinate Service, cannot have any grievance.

(ii) Further, the learned Additional Government Pleader pleaded that in the impugned order the respondent has considered the case of the petitioner on the basis of the order passed by this Court in W.P. No. 7345/2008 dated 26.03.2008. Therefore, when the temporary service of the petitioner was regularized with effect from 7.8.1992 along with others, no preference can be given to the petitioner for his regularization with retrospective effect.

3. Heard the learned senior counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondent.

4. (i) Admittedly, the petitioner was a directly recruited Grade I Police Constable who came into police service on 1.12.1972. Subsequently, he was promoted as Head Constable on 22.9.1978. Thereafter, he was further promoted to the post of Sub-Inspector of Police (temporary) from 5.12.1984 to 8.11.2002. In the meanwhile, he participated in the Range Promotion Board of Tiruchirappalli Range in the year 1985 and secured 67 = marks. But his name was not included due to want of vacancy. As a result, he continued to hold the post of Sub-Inspector of Police till the Superintendent of Police, Thanjavur West issued an order on 6.5.89 in D.O. No. 849/89 reverting him as Head Constable, when the directly recruited batch of Sub-Inspectors of the year 1987 assumed the office. Therefore, the petitioner approached the Tamil Nadu Administrative Tribunal in O.A. No. 773/1989 and obtained an order of stay against the reversion order on 24.5.1989 and in the light of the order of stay he continued in the post of Sub-Inspector of Police. However, when the learned Tribunal had disposed of the petitioner's O.A. No. 773/1989 by order dated 22.12.1989, passed the following order:

Viewing the special circumstances in the proper perspective we direct that such of the applicants who have appeared before the Range Promotion Board, though failed to get the minimum marks, by the conduct of the respondents in posting

them as Sub-Inspectors, and by their long officiation as Sub-Inspectors become entitled to be retained as Sub-Inspectors and they need not wait for their turn for inclusion in the C list as stated above. They will enblock be placed below those who were regularly included in the last C list of Head Constables found fit for promotion as Sub-Inspectors in the respective units. Among them, the seniority will be on the basis of the feeder category seniority. The applications are allowed in part as stated above.

The above order clearly shows that the petitioner and other similarly placed persons would enblock be placed below those who were regularly included in the last "C" list of Head Constables found fit for promotion as Sub-Inspectors in the respective units. In the light of the above order, a question arises as to whether the petitioner is entitled to get seniority with effect from 5.12.1984 or from the date of judgment, namely, 22.12.1989 passed in O.A. No. 773/1989. To find an answer to this question, the two orders passed by this Court in W.P. No. 21457/2007 dated 16.2.2010 followed by another order in Review Application No. 33 of 2010 dated 25.05.2010 filed by N. Padmanabhan who is a similarly placed person like the petitioner, go to show that the seniority of the petitioner shall be from the publication of the "C" list of the year 1985. Because, the order passed by the Division Bench in W.A. No. 1353/2011 dated 10.12.2011 in the Writ Appeal filed against the Review Application No. 33/2010 dated 25.5.2010 clearly shows that the petitioner is entitled to ask for revision of seniority in the cadre of Sub-Inspector of Police based on the "C" list published in the year 1985 and not from the date of the order made in the Original Application O.A. No. 2176/1991 etc dated 7.8.92.

(ii) Further, a perusal of the order passed in W.A. No. 776/2011 dated 3.8.2012 in N. Padmanabhan's case shows that the Hon'ble Apex Court also affirmed the judgment passed by learned Tribunal in O.A. No. 694/1989 etc batch dated 22.12.1989 giving a direction to regularise the services of similarly placed persons like the petitioner as Sub-Inspector of Police. In the light of the above, when the respondent department has accepted the order passed by this Court in N. Padmanabhan's case to revise the seniority of the similarly placed persons in the cadre of Sub-Inspector of Police from the date of judgment i.e., 22.12.1989 made in O.A. No. 694/1989 etc batch with all consequential benefits, the case of the petitioner also needs to be given the same treatment for the reasons highlighted above, particularly, when he was promoted as Sub-Inspector of Police on out of turn seniority basis on 5.12.1984 and he continued to hold till he was further promoted as Inspector of Police on 8.11.2002. In the meanwhile, he participated in the Range Promotion Board of Tiruchirappalli Range in the year 1985 and secured 67= marks. But his name was not included due to want of vacancy. On that basis, when he continued to hold the post of Sub-Inspector of Police and the further order of reversion to the post of Head Constable having been also stayed by the Tribunal in O.A. No. 773/1989 dated 24.5.1989, he was continuously serving as temporary Sub-Inspector of Police, therefore, there is no impediment for the respondent department to take into account his services from

5.12.1984 as Sub-Inspector of Police for the purpose of fixing his seniority in the same cadre. On this basis, the respondents are directed to grant the consequential benefits to the petitioner, preferably within 8(eight) weeks here from.

Accordingly, W.P. No. 19988/2008 is allowed. No costs.