

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. Nos. 9048 of 2016
and W.P. Nos. 1668 to 1670 of 2017
and
WMP.Nos.19074, 19075, 19080 19081,
19092 and 19104 of 2022

W.P.No.9048 of 2016

R.Muthukumaran
S/o. M.Renganathan ... Petitioner

-vs-

1. State of Tamil nadu rep. by its Secretary,
(Home - III Police) Department,
The Secretariat, Chennai - 600 009.

2. The Director General of Police (L & O)
Dr.Radhakrishnan Road,
Mylapore, Chennai - 600 004. .. Respondents

PRAAYER : Writ Petition filed Under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the respondents to consider the case of the petitioner for granting conversion to him to category one (Law and Order) from his present category two (Armed Reserve) by way of age relaxation along with their batch mates of the year 2008, while implementing the G.O.No.249 dated 2.3.2016, as

per the past practice and in the light of the G.O.Ms.No.312 dated 4.4.2003, G.O.Ms.No.397, dated 3.11.2014 and G.O.Ms.No.398 dated 3.11.2014 by holding that the currency of punishment imposed on the petitioner towards postponement of increment for 3 years without cumulative effect shall not be treated as a legal embargo while making such consideration of the petitioner's case.

W.P.No.1668 of 2015

Mr.M.Parthiban,
S/o.M.Parthiban

... Petitioner

-vs-

1. State of Tamil nadu rep. by its Secretary,
(Home - III Police) Department,
The Secretariat, Chennai - 600 009.
2. The Director General of Police (L & O)
Dr.Radhakrishnan Road,
Mylapore, Chennai - 600 004.
3. The Additional General of Police, (L & O),
Dr.Radhakrishnan Road,
Mylapore, Chennai - 600 004. .. Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the 2nd respondent to grant conversion to the petitioner to Law and Order / Category - I from his present Armed Reserve / Category - II on a par with his batchmates appointed as S.I of Police in the year 2008 with all benefits within time frame.

W.P.No.1669 of 2017

P.Ramesh
S/o. Pachaiyappan ... Petitioner

-vs-

1. State of Tamil nadu rep. by its Secretary,
(Home - III Police) Department,
The Secretariat, Chennai - 600 009.

2. The Director General of Police (L & O)
Dr.Radhakrishnan Road,
Mylapore, Chennai - 600 004. .. Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the 2nd respondent to grant conversion to the petitioner to Law and Order / Category - I from his present Armed Reserve / Category - II on a par with his batchmates appointed as S.I of Police in the year 2008 with all benefits within time frame.

W.P.No.1670 of 2017

C.Venkatesh ... Petitioner

-vs-

1. State of Tamil nadu
rep. by its Secretary to Government,
(Home - III Police) Department,
The Secretariat, Chennai - 600 009.

2. The Director General of Police
Dr.Radhakrishnan Road,
Mylapore, Chennai - 600 004. .. Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the 2nd respondent to grant conversion to the petitioner to Law and Order / Category - I from his present Armed Reserve / Category - II on a par with his batchmates appointed as S.I of Police in the year 2008 with all benefits within time frame.

For Petitioner : Mr.K.Ravi Anantha Padmanaban
[in all W.Ps.]

For Respondents : Mr.B.Vijay
[in all W.Ps.] Additional Government Pleader

COMMON ORDER

The writ petitioners were initially recruited as Grade II Police Constables and subsequently, participated in the process of direct recruitment and appointed as Sub-Inspectors of Police during the year 2008.

2. The petitioners state that they are entitled for conversion from Armed Reserve to Law and Order category as per the Government Policy. The cases of similarly placed persons working in the cadre of Sub-Inspectors were considered positively by the respondents and now

they are serving as Sub-Inspectors in the Law and Order category and the cases of the writ petitioners were not considered merely on the ground that they have crossed the age of 40 years and suffered certain punishments in departmental disciplinary proceedings.

3. The learned counsel for the petitioners contended that the respondents have considered the persons, who have crossed the age of 40 years and granted conversion to the Law and Order category. On several occasions such orders were passed by the Government and many such persons are now working in the Law and Order category. Thus, similar benefit is to be extended to the petitioners also. Regarding the unblemished record of service, the learned counsel for the petitioners reiterated that none of the punishment is in currency as of now and the punishments awarded expired long back and thus, there is no impediment for considering the cases of the writ petitioners for grant of conversion to the Law and Order category.

4. The learned Additional Government Pleader appearing on behalf of the respondents objected the said contention by stating that the terms and conditions stipulated in the Government Orders are to be complied with for conversion of the Armed Reserved Police to Law and Order category. Such terms and conditions if not complied with, then those cases were not to be considered for conversion. The learned Additional Government Pleader relied on the counter affidavit filed by the respondents and stated that five conditions are to be complied with, which are fixed as eligibility criteria for appointment as Sub-Inspector (Taluk) falling under Law and Order category.

- (1) Must be a graduate.
- (2) Should not have completed 40 years of age
- (3) Should have put in five years of service as Sub-Inspector of Police (Armed Reserve/Tamil Nadu Special Police)
- (4) Who have unblemished record of service
- (5) Eligibility, selection, training, internal assessment etc.,

5. It is contended that the writ petitioners have completed the age of 40 years and further suffered with punishments in the departmental

disciplinary proceedings. Therefore, the writ petitioners were not considered for conversion to the Law and Order category.

6. It is contended by the respondents that cut off date has been fixed for transfer of Sub-Inspectors (AR/TSP) recruited for the year has been fixed as 01.07.2013 as per Government Order in G.O. Ms. No. 1598, Home Department dated 05.11.1997 and they should have unblemished record of service. Therefore, the second respondent, viz., Director General of Police called for the details of the eligible Sub-Inspectors of Police, Tamil Nadu Armed Reserve for conversion to the Sub-Inspectors of Police (Taluk) by transfer vide memo dated 02.03.2016. The writ petitioners have not fulfilled the conditions of 40 years of age and no unblemished service.

7. It is contended that the writ petitioners suffered with earned punishments in the departmental disciplinary proceedings and therefore, the cases of the writ petitioners were not considered.

8. The learned counsel for the writ petitioners relied on the judgment of the Division Bench of this Court dated 13.09.2017 passed in W.A. No. 1186 of 2017, wherein the following observations are made:-

"24. Material on record further discloses that, even the Director General of Police, Government of Tamil Nadu, has thought if fit not to initiate disciplinary proceedings, for any alleged misconduct, pending disposal of the criminal case. On the other hand, it is the categorical admission that disciplinary proceedings would be deferred till the conclusion of criminal case, which decision of the authority only indicates that other than the criminal case registered against him, respondent has not committed any serious misconduct, in the discharge of his duties.

25. As per the version of Mr. V. Jayaprakash Narayanan, learned Special Government Pleader, only one witness, PW1 alone has to be cross examined. Even taking for granted that the respondent is transferred to any one of the Taluk Police, in the State of Tamil Nadu, we are of the view that there would not be any impediment in the trial, as examination of all the witnesses is almost over. No doubt, the respondent has been charged under Section 406 and 420 IPC, but as per the law of jurisprudence, until a person found guilty, he is presumed to be innocent.

26. Unblemished record of service, may be one of the

factors to be considered, for transferring persons from Tamil Nadu Special Police to local police, as one time measure, but on the facts and circumstances of this case, we have to consider as to whether, the gravity of the offence, say for instance, murder, rape, and such other heinous offences, whether the offence is against the State, or inter se between private parties, whether the same are in the stage of accusation or attained finality. Needless to state that on the facts and circumstances of this case, the department has not even chosen to suspend the respondent."

9. Relying on the observation made by the Division Bench of this Court, the learned counsel for the petitioners contended that even the Sub-Inspectors faced criminal case, were granted conversion to the Law and Order category. The over aged persons were also granted the benefit of conversion to the Law and Order category. While so, the case of the writ petitioners are to be considered.

10. In reply, learned Additional Government Pleader drew the attention of this Court with reference to the observations made by the Division Bench of this Court, where the facts and circumstances of that

case is different for granting the relief. The principles were not diluted or set aside by the Division Bench in the case cited supra. In the case relied on by the petitioners, the disciplinary proceedings are deferred till the conclusion of the criminal case, and the writ petitioner therein was not even placed under suspension. Considering the peculiar facts and circumstances of that case, the Division Bench of this Court granted the relief and therefore, the said judgment cannot be considered as a precedent for the purpose of complying with the mandatory terms and conditions stipulated for conversion of Sub-Inspector Armed Reserve to Sub-Inspector Law and Order category.

11. It is not in dispute that the Government Orders contemplates criterias for conversion to Law and Order category. Accordingly, a person should not have exceeded the age of 40 years and must have unblemished record of service.

12. Post or status, at no circumstances, be claimed as a matter of right by the public servants. It cannot be the choice. Conversion from one wing to another wing of the Department on similar service

conditions could not cause any infringement of service rights of the public servants. Certain wings are considered as sensitive in Police Department and women and men of integrity with additional skills are engaged to perform such sensitive duties. Law and Order Wing is an important wing in the Police Department, dealing with the public directly. Thus, women and men of skills and additional ability are considered for conversion and posting in Law and Order category. Conversion from one wing to another wing is an additional avenue provided to the employees and such conversion would not confer any right. While undertaking the process of conversion, the Competent Authorities are bound to follow the eligibility criteria, so as to ensure that women and men of ability are posted in Law and Order category. The assessment of suitability and eligibility must be made in accordance with the guidelines issued by the Government in this regard and such an assessment made in accordance with the guidelines by the Competent Authority cannot be interfered with by the High Court in a routine manner. If at all the conversion to Law and Order category is tainted with the allegations of *mala fides* or an act of unfairness is found, then alone, the Court would interfere, but not otherwise. It is within the domain of

the Competent Authorities to assess the suitability and eligibility of the Police personnel for conversion to Law and Order category. It is an administrative propagative, which cannot be interfered with in normal circumstances. The High Court would not interfere with the routine administration of Police Department and other Government Departments. The Authorities Competent are the best persons to assess the ability and suitability of the Police Personnel for the purpose of grant of conversion to the Law and Order category. Personal assessment, working ability, talent etc., are the subjective satisfaction of the Competent Authorities, and the power in this regard are expected to be exercised in accordance with the guidelines issued by the Government. The Government prescribed certain norms for the purpose of conversion. It is not in dispute that the norms contemplated are that the Police Personnel must be a graduate, should not have completed 40 years of age and should have put in 5 years of service and have unblemished record of service. That apart, eligibility, selection, training, internal assessment etc., are also to be considered for the purpose of conversion of Police personnel to Law and Order category.

13. Service Conditions stipulated for the posts of Sub-Inspector of Police, Armed Reserve and Sub-Inspector of Police (Taluk) are one and the same. Both the posts are carrying the identical scale of pay. Thus, the service conditions are one and the same and in the event of conversion, there is no additional service benefits are provided. This exactly is the reason why, this Court formed an opinion that posts or status can never be claimed as a matter of right. The principles in this regard are settled by the Hon'ble Supreme Court of India in E.P.Royappa's case. Since the posts are interchangeable and certain additional criterias are prescribed for conversion to Law and Order category to maintain the efficiency in Police Administration, the assessment of ability and suitability to be made by the Competent Authorities cannot be interfered with by the High Court in a writ proceedings. In the event of any such interference, it will cause an adverse effect in maintaining the efficiency level in Police administration, more specifically, in Law and Order category.

14. The Police Personnel posted in Law and Order category have more responsibility and accountability. They have to exercise the

Statutory powers directly towards the public at large and therefore, additional ability and talent is certainly essential. That exactly is the reason why, the Government thought fit and prescribed certain additional criterias for the purpose of conversion of Armed Reserve Police Personnel to Law and Order category. Since there is no change of service conditions, the conversion cannot be claimed as an absolute right.

15. Regarding the assessment of suitability and eligibility, the Honourable Supreme Court of India in the case of ***Commissioner of Police Vs. V.S.Rajkumar*** by judgment dated 25.08.2021 in C.A.No.4960 of 2021, held as follows:

"Public service - like any other, pre-supposes that the state employer has an element of latitude or choice on who should enter its service. Norms, based on principles, govern essential aspects such as qualification, experience, age, number of attempts permitted to a candidate, etc. These, broadly constitute eligibility conditions required of each candidate or applicant aspiring to enter public service. Judicial review, under the Constitution, is permissible to ensure that those norms are fair and reasonable, and applied fairly, in a non-discriminatory manner. However, suitability is entirely different; the autonomy or choice of the public employer, is greatest, as long as the

process of decision making is neither illegal, unfair, or lacking in bona fides."

16. Thus, the assessment of suitability and eligibility are the prerogative of the Competent Authorities, which cannot be interfered with by the High Court, while exercising the powers of judicial review under Article 226 of the Constitution of India. Such an interference may be required, if the power is exercised in an unfair manner or the assessment is tainted with *mala fides* or Favouritism and Nepotism.

17. It is brought to the notice of this Court by the learned counsel for the petitioner that the Police Department has violated the guidelines and granted conversion in favour of some Police Personnel and therefore, the case of the writ petitioners are to be considered. Illegality cannot be a ground to claim equality. If at all any error or improper assessment has been made in violation of the Government guidelines, the same cannot be considered as a precedent nor such erroneous or irregular orders can be allowed to continue in perpetuity. Under all circumstances, the guidelines for conversion is to be scrupulously followed by the Competent Authorities. If at all certain violations are noticed on earlier

occasions, such violations cannot be repeated nor any other persons can claim the said violation as a matter of right. The Article 14 of Indian Constitution is a positive concept and cannot be implemented in negativity. Any irregularity or illegality or improper selections cannot be followed as precedent, so as to allow the illegality or irregularity to continue in perpetuity. Thus, the Courts are bound to examine the facts independently with reference to the claim for conversion by the Police Personnel. It is needless to state that the Competent Authorities of the Police Department, while calling for the names of the eligible persons for conversion from Armed Reserve to Law and Order category have to adopt a transparent procedure and bound to follow the eligibility criteria scrupulously and the assessment of suitability are to be made strictly in accordance with Service Records and other norms fixed by the Government for the purpose of conversion to Law and Order category.

18. High Discipline, Honesty and Integrity are the need of the hour in Police Department, more specifically, in Law and Order wing. There are large scale allegations from the public against the Police Personnel working in the Law and Order category. There are common allegations

of collusion, receiving Mamul (Bribe) by the Police personnel in Police Stations and in Law and Order wing. If the Police personnel with lack of integrity is posted in Law and Order wing, then it will have a direct implication on the maintenance of Law and Order in the society. Effective control over the Law and Order wing by the Higher Police Authorities are of paramount importance and is a Constitutional mandate. The Fundamental Rights ensured under Part III of the Constitution is to be protected by the Law and Order wing of the Police Department as they are the law enforcing authority in the society.

19. In recent times, prevention of crimes are lacking. Prevention of crimes in the society is far more important than developing an efficiency in investigation after the commission of crime. Indian Constitution enumerates protection of Fundamental Rights, including Right to Life under Article 21 of the Constitution, which is an integral part of Article 21. Thus, the Law and Order wing of the Police Department plays a pivotal role in protracting the Fundamental Rights of the citizen of our great Nation. Therefore, Prevention of crime is far more important and is a right of every citizen of this great Nation. The Police Department has to

thrive hard to ensure prevention of crimes in the society. This is the right time to work out modalities for effective prevention of crimes in the society. No doubt, investigation skills are also an important factor, but if prevention is effectively made, then commission of crime and investigation would be minimized.

20. Amongst the police personnel in the same category, no personnel should feel that he is discriminated or unfairly dealt with by the higher officials. Equality clause enunciated in the Constitution is to be preserved amongst the uniformed personnel working in various categories and more so, while providing an opportunity for conversion to Law and Order Wing. Any kind of discrimination in this regard would cause demorale amongst the uniformed personnel working in the same category. Therefore, non discrimination is directly connected with the maintenance of high discipline in the police force.

21. Any misplaced sympathy towards any police personnel in the matter of conversion by any higher authority is directly in violation of the Constitutional provisions as the same will result in unfairness and

would create heart burning issues amongst the other similarly placed police personnel. Thus, the maintenance of equality, non-discrimination, fairness in assessment of eligibility and suitability are of paramount importance for the purpose of maintaining the Law and Order Wing intact. Thus, the criterias fixed for conversion to Law and Order category is an absolute necessity and such guidelines issued by the Government are to be scrupulously followed, while undertaking the process of conversion, more specifically, by the Director General of Police.

22. Regarding the violations of Government guidelines issued for conversion by the Police Department on earlier occasions, the learned Additional Government Pleader reiterated that the respondents are following the eligibility criteria and assessment of suitability in accordance with the guidelines and certain irregularities and illegalities if at all occurred on earlier occasions, such orders will not be followed as a precedent by the Police Department, while undertaking the process of conversion to Law and Order Wing.

23. In this regard, it is relevant to rely on the judgment of the Hon'ble Supreme Court of India in the case of ***Basawaraj & Anr. Vs. Special Land Acquisition Officer*** reported in ***2013 14 SCC 81***, made an observation that “*it is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/ benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a Judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order.*”

24. The power of judicial review of the High Court under Article 226 of the Constitution of India is to ensure the processes, through which, a decision is taken by the competent authorities in consonance with the Statutes and Rules and the guidelines issued by the Government in force, but not the decision itself. Therefore, in the absence of any violation of the Rules or guidelines issued by the Government or infringement of a right of an employee, the High Court would not issue any direction to convert any police personnel from Armed Reserve to Law and Order Wing. Such conversion is the administrative exercise to be made by the competent authorities and interference in such exercise by the High Court in a writ proceedings would cause serious repercussion in the matter of maintenance of high discipline in police force. In simple terms, High Court cannot sit as a selection authority or an authority to assess the suitability and eligibility for the purpose of effecting conversion of police personnel from Armed Reserve to Law and Order Wing. High Court cannot usurp the powers of an expert body consisting the competent Police authorities.

25. As far as the writ petitioners on hand are concerned, they earned punishments in departmental disciplinary proceedings. Assessment of eligibility and suitability in consonance with the guidelines issued and the requirement of unblemished record of services are the subjective satisfaction of the competent authorities concerned. Such assessments if made in a fair manner and in accordance with the rules and guidelines issued, then High Court would not interfere by exercising the powers of judicial review under Article 226 of the Constitution in a writ proceedings. When the petitioners herein suffered punishments in departmental disciplinary proceedings and admittedly, crossed the age of 40 years, the decision taken by the competent authorities cannot be construed as perverse. Thus, the rejection of the claim of the writ petitioner for conversion is in order and there is no infirmity.

26. Considering the importance of the issue regarding the conversion of Armed Reserve Police Personnel to Law and Order category, this Court emphatically reiterate that the procedures as contemplated and the eligibility criterias fixed including the suitability of

Police Personnel are to be assessed in the interest of the Law and Order to be maintained in the society at large, which is the public interest and a constitutional mandate to be performed by the Police Departments. Since the Law and Order is having direct implication on the protection of Fundamental Rights of the citizen under Part III of the Constitution of India, the Director General of Police is directed to ensure that the women and men of high discipline, integrity and honesty are converted to Law and Order wing for the purpose of upholding the Constitutional Directives.

27. In view of the facts and circumstances and the principles elaborately considered, the relief as such sought for in the present writ petitions cannot be granted and consequently, the writ petitions are devoid of merits and stand dismissed. No costs. Connected miscellaneous petitions are closed.

06.09.2022

Index : Yes
Speaking Order : Yes
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To

1. The Secretary,
State of Tamilnadu,
(Home - III Police) Department,
The Secretariat, Chennai - 600 009.
2. The Director General of Police (L & O)
Dr.Radhakrishnan Road,
Mylapore, Chennai - 600 004.
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