**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 28/04/2010**

**CORAM**

**THE HONOURABLE MR.JUSTICE P.JYOTHIMANI**

**W.P.(MD)No.5998 of 2010**

**and**

**W.P.(MD)No.5999 of 2010**

**and**

**M.P.(MD) Nos.1 and 1 of 2010**

**N.Ponnulingam** **... Petitioner in**

**W.P.No.5998/2010**

**S.Ponniah**  **... Petitioner in**

**W.P.No.5999/2010**

**Vs**

**1.The Director General of Police,**

Tamil Nadu,

Chennai - 4.

**2.The Commissioner of Police,**

Tirunelveli City,

Tirunelveli District.  **... Respondents**

**PRAYER**

**Writ Petitions are filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to promote the petitioners for the post of Sub-Inspector of Police with effect from January 2008 and 2010 respectively.**

**For Petitioner** ... Mr.S.Ramasamy

**For Respondents** ... Mr.R.Manoharan, G.A.

**COMMON ORDER**

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Mr.R.Manoharan, learned Government Advocate takes notice on behalf of the respondents. By consent, the main writ petitions itself are taken up for final disposal.

2. The case of the petitioners is that they are appointed as Police Constables in the year 1975 and 1977 respectively, by direct recruitment in the Tamil Nadu Police Department and they were promoted as Grade-I Police Constable in the year 1993 and 1995 respectively and subsequently as Head Constable in the year 1998 and 1999 respectively. It is stated that the petitioners have completed 35 years and 33 years of service in the police department and according to them, they are eligible for consideration for promotion to the post of Special Sub Inspectors of Police as per G.O.Ms.No.15 Home (Pol.V) Department dated 07.01.2010, which contemplates a scheme of upgradation as a Special Sub- Inspectors of Police in respect of a person, who is having experience of 25 years of service and 10 years of service as Head Constable in the police department, by fixing 1st June of every year as crucial date. The relevant portion of the said Government Order is as follows:

"The Director General of Police has now stated that the Government, in their order in G.O.Ms.No.844, Home (Police V) Department, dated 03.06.97 have commenced the upgraded scheme in a time bound manner in respect of Police Personnel and those Grade-II Police onstables who had completed 10 years of service, were ordered to be upgraded as Grade-I Police Constables and Grade-I Police Constables who had completed 5 years of service to be upgraded as Head Constables and similarly in G.O.Ms.No.937, Home (Police 3) Department, dated 21.07.1998, the Government have introduced the scheme of upgradation as Special Sub-Inspectors of Police, for which Police Personnel appointed as Grade-II Police Constable should have completed 25 years of service, out of which for 10 years they should have served as Head Constable, and 1st June of every year was fixed as crucial date."

3. It is the further case of the petitioners that as per the said Government Order, they are eligible for the upgradation under the Scheme as Special Sub-Inspectors of Police and the petitioners have made representations dated 15.03.2010 and 08.02.2010 respectively, for conferment to the benefit of the said Government Order.

4. It is an admitted case that there was a departmental proceedings initiated against the petitioners, which resulted in the order of punishment dated 15.02.2008, by which, the petitioner have been inflicted punishment of stoppage of increment for a period of two years, which shall not operate to postpone their future increments and also on the pensionary benefits upon the delinquents.

5. It is also an admitted case that as on the crucial date, the currency of the said punishment is ineffect. Under similar circumstances, the Division Bench of this Court in Subramanian Vs. Government of Tamilnadu represents by its Secretary, Chennai and others reported in 2008(5) MLJ 350, while refusing to interfere with the punishment of stoppage of increment of 2 years with cumulative effect held that the punishment of stoppage of increment for two years with cumulative effect can only be termed as minor punishment. On that basis, the petitioners could not be denied promotion and such punishment would not stand in the way of giving promotion while considering their past service records. If they are otherwise eligible, taking note of the fact that by the time, the petitioner has attained the age of superannuation to consider their promotion on supernumerary basis for the purpose of conferment of the retirement benefits. The portion of the said judgment is as follows:

"The petitioner was admittedly imposed punishment of stoppage of increment for two years without cumulative effect, as per G.O.(2D) No.49, dated 16.10.2000. As contended by the learned counsel for the petitioner, it could be construed only as a minor punishment and solely based on the same, he could be denied further promotion. It is seen further that stoppage of increment was given effect by order, dated 16.10.2000 for two years. The respondents have not denied that the petitioner had to attain superannuation only on 30.04.2003. In such circumstances, he was eligible to be considered for promotion along with his junior, prior to the date of superannuation. If he is otherwise fir for promotion along with his juniors, he would be eligible for national promotion and based on which, eligible for corresponding retirement benefits."

6. Applying the ratio laid down by the Division Bench to the facts and circumstances of the present cases, wherein, the punishment suffered and which is in currency by the petitioners is stoppage of two increments without cumulative effect and taking note of the fact that as per the G.O.Ms.No.15 Home (Pol.V) Department dated 07.01.2010, the petitioners are eligible to be considered for the upgradation to the next post of Special Sub-Inspectors of Police under the scheme of the Government enumerated above.

7. Accordingly, these writ petitions are disposed of with a direction against the 1st respondent to consider the representation of the petitioners' dated 15.03.2010 and 08.02.2010 and to pass appropriate orders regarding the conferment of the upgradation of the petitioners as Special Sub- Inspectors as per the G.O.Ms.No.15 Home (Pol.V) Department dated 07.01.2010, if there are no other legal impediment and such order shall be passed within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

**Arul**

To

1.The Director General of Police,

Tamil Nadu,

Chennai - 4.

2.The Commissioner of Police,

Tirunelveli City,

Tirunelveli District.