

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2007

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

W.P.No.5343 of 2007

M.P.No.2 of 2007

- 1.P.Jhon Rose
- 2.S.Jayamani
- 3.K.Boj
- 4.M.Meenakshisundaram
- 5.M.Subramaniam
- 6.G.Bojarajan
- 7.V.Swaminathan
- 8.K.Saleem
- 9.N.Kabali
- 10.A.Khaleel
- 11.A.Hafiz jan
- 12.G.Ramachandran
- 13.S.Chandran
- 14.V.Subramaniam
- 15.R.Viswanathan
- 16.D.Inbasekaran
- 17.R.Gunasekaran
- 18.C.Ramasamy
- 19.S.K.Radhakrishnan
- 20.M.Loganathan ... Petitioner

vs.

The Director General of Police,
Chennai-4. ... Respondent

Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for and quash the order of the respondent passed in proceedings R.C.No.264421/NGB IV (i) 2006, dated 22.01.2007 and direct the respondent herein to fix the date of promotion of the petitioners on 22.11.1996, the date on which they were selected and promoted as Sub Inspector of Police.

For Petitioner : Mr.R.Shanmugham,
Senior Counsel
for Gopinath

For Respondents : Mr.A.Arumugam
Addl. Govt. Pleader

O R D E R

Aggrieved by the order of the Director General of Police, Chennai, dated 22.01.2007, in fixing the date of promotion to the post of Sub-Inspectors of Police as 25.06.1997, the petitioners have preferred the present Writ Petition for a Mandamus to the respondents to fix their date of promotion as 22.11.1996, on which date, they were selected and promoted as Sub Inspectors of Police.

2. The petitioners have submitted that they joined the police service as Grade I Police Constables in the year 1974 and promoted as Head Constables in 1982. They became qualified to be considered for promotion as Sub-Inspectors of Police in the year 1985-86. No Range Promotion Board was convened for empanelling 'C' list of Head Constables fit for promotion from the year 1986 to 1995 and the petitioners were working as Head Constables for a long period. In the year 1995, the respondent called them for selection for filling up of the vacancies notified for the year 1994, in which 600 vacancies were filled up as a one time measure.

3. The petitioners have further submitted that they attended the tests prescribed under the Tamil Nadu Police Subordinate Service Rules and declared as selected for promotion to the post of Sub-Inspector of Police for the year 1994. The promotion list was published on 11.12.1996 and thereafter, the petitioners were sent for Institutional Training. Instead of declaring the date of selection in the post of Sub Inspector of Police, as the date of promotion, the department declared that they were selected for the post only on the date of completion of their training. The petitioners have contended that while regularising the services of 600 qualified Head Constables as Sub-Inspectors of Police, by order dated 16.04.1999, the respondent issued an order declaring the date of 'B' list, which reads as follows:

a) 12 TYS is acted in the post of SI for 6 years and more as on the date of impugned Memorandum 21.02.1995 the date of Chief Office Memorandum against which O.As., were preferred.

b) 90 TY.S is acted in the post of SI for 3 years to 6 years as on the date of memo and prior to the 319 H.Cs., who got benefit under judgment dated 13.11.1995

13.11.1995 the date of judgment in O.A.No.1565/95 (Batch)

c) 319 Hcs promoted consequent on the orders of TAT dated 13.11.1995 made in O.A.No.1565/95 batch

13.11.1995 the date of judgment. However they will be placed below the 90 Tys, is mentioned at (b) above (who have already acted as Tys. Is on the date of judgment.

d) 168 Hcs (out of the 174 'C' listed)

12.11.1997 that is the date next to the date of completion of training.

4. As per the order dated 16.04.1999 issued by the respondent, the petitioners were placed at the send of the above group of sub Inspectors of Police and they were regularised with effect from 12.11.1997. Whereas, in the case of their batch mates, the respondent has regularised their appointments with effect from 13.11.1995. The petitioners have further submitted that the panel for promotion to the post of Inspectors of Police for the year 2005-06, was drawn and their names have not been included. Therefore, they filed Writ Petitions for a Mandamus directing the respondents therein to consider the petitioners for promotion as Inspectors of Police for the year 2004-05, taking into account of their promotion as Sub-Inspectors of Police for the year 1994. Similar Writ Petitions were also filed.

5. The respondent in the above Writ Petitions contended that as per rule 18(e)(iii) of Special Rules for Tamil Nadu Police Subordinate Service, Head Constables selected by the Range Promotion

Boards will be entitled for promotion to the next higher rank of Sub-Inspectors of Police, only on completion of the prescribed training. Therefore, it was contended that the Head Constables who were selected and successfully completed the pre-promotional institutional training from 21.04.1997 and the practical training in the districts on 11.11.1997 would be eligible for promotion as Sub-Inspectors of Police with effect from 12.11.1997.

6 By order dated 16.12.2006, in W.P.No.9800 of 2005 etc., batch of Writ Petitions, this Court directed the respondents therein to examine the issue and pass necessary orders strictly in accordance with the rules. While doing so, this Court observed that, "When a person has been selected by way of promotion to the next higher rank and his selection was declared it is the clear case that he is promoted and thereafter even if he was asked to undergo training the date of selection and promotion is to be taken into consideration but not the date on which he had completed the prescribed training. If a person is found unfit to be posted in the promotional post after training, necessary orders can be issued canceling his promotion. In the circumstances stated above, this Court is of the considered opinion that in case if the petitioners are called for selection to fill the vacancies that arisen in the year 1994 and when their selection was commenced in 1995 and they were selected after subjecting to written test, drill test and viva voce test etc., the petitioners normally and legitimately can expect the postings from the date of their appointment. If there is delay in this process the petitioners should not suffer."

7 It is the further case of the petitioners that though impugned orders are contrary to the positive directions of this Court, the respondent has erroneously fixed the date of promotion as 25.06.1997, instead of 11.11.1995, i.e., the date from which the petitioners commenced their district training, after completion of institutional training. It is further submitted that that as a matter of fact, the respondent in his earlier proceedings dated 16.04.1999 issued orders declaring the date of regularisation of 319 Head Constables promoted as Sub-Inspector of Police as on 13.11.1995. They attended the promotion test along with the petitioners in the year 1996 and were declared as selected in November 1995. As far as the petitioners are concerned, orders issued stating that they were promoted as Sub-Inspectors of Police only on 12.11.1997, i.e., the date of completion of training. It is submitted that the petitioners are similarly placed to that of 317 persons and the respondents ought to have fixed the date of regularisation of the petitioners as 13.11.1995. It is further submitted that the respondent has purposefully fixed the date of promotion of the petitioners as on 25.06.1997 and placed them below the directly recruited Sub-Inspectors of Police. Aggrieved by the date of fixation to the post of Sub-Inspectors of Police, the petitioners have preferred the present above Writ Petition for the relief as stated above.

8. The respondent in his counter affidavit has submitted that the promotion from the rank of Head Constable to that of Sub-Inspector of Police in the Department is governed by Special Rules for Tamil Nadu Police Subordinate Service. As per the Special Rules, Range Promotion Boards have to be convened for selection of eligible Head Constables for promotion to the next higher rank of Sub-Inspector of Police. The eligible Head Constables have to be subjected to promotion tests. Based on the performance of the Head Constable a selection list would be drawn. It is submitted that when a communication dated 21.02.1995 was issued directing the Deputy Inspectors General and Commissioners of Police to convene Range Promotion Boards for the year 1994, a large number of Original Applications were preferred before the Tamil Nadu Administrative Tribunal, Chennai for promotion to the rank of Sub-Inspector of Police, without subjecting the the applicants/Head Constables to the promotion tests prescribed under the Special Rules.

9 The respondents have further submitted that by order dated 13.11.1995 made in O.A.No.1565 of 1995 etc., batch (Batch of 102 cases), the Tribunal has passed the following orders,

"i) Those Head Constables who were acting as Temporary Sub-Inspectors of Police for 6 years and above as on the date of impugned memorandum (21.02.1995) without any black mark or punishment should be regularised as Sub-Inspector of Police.

- ii) The cases of those head Constables who have acted as Sub-Inspectors for 3 years and more as on the date of impugned order (21.02.1995) and eligible persons who are seniors to them would be screened and that there will be no promotion tests for them.
- iii) Other cases should be called upon to participate in the promotion tests to be conducted as per the guidelines prescribed in orders of the Tamil Nadu Administrative Tribunal."

10. The respondents have further submitted that as per the directions of the Tamil Nadu Administrative Tribunal, Chennai dated 13.11.1995 in the above batch of cases, in O.A.No.1565 of 1995, Range Promotion Boards were convened for selection of Head Constables fit for promotion as Sub-Inspectors of Police for the year 1995. The Range promotion Boards for the year 1994 were convened on 26.10.1996 (Written), 01.11.1996 (Drill) and 02.11.1996 (Viva-voce) respectively.

11 The respondents have further submitted that as per Rule 18(e)(iii) of the Special Rules for Tamil Nadu Police Subordinate Service, the Head Constables selected by the Range Promotion Boards will be entitled for promotion to next higher rank of Sub-Inspectors of Police, only on completion of prescribed training. The Head Constables so selected have attended the pre-promotional institutional training from 21.04.1997 and completed the district training on 11.11.1997 and therefore, the Head Constables selected during 1996 became eligible for promotion as Sub-Inspectors of Police with effect from 12.11.1997, that is, the date next to the date of their completion of training. Accordingly, the date of 'B' list of those who had attended the Range Promotion tests in the year 1996 were declared as 12.11.1997. Aggrieved by the fixation of 'B' list, the petitioners herein preferred W.P.No.538 of 2005. This Court, while disposing of the Writ Petition, directed the respondent to examine the cases of the Petitioners therein and pass necessary orders strictly in accordance with the rules and give all reliefs as per Rule 18 of the Special Rules for Tamil Nadu Police Subordinate Service and dispose of the grievance of the petitioners. The prayer of the petitioners is that their date of promotion as Sub Inspectors of Police be reckoned from 1994, since the 'C' list drawn in 1996 was for the vacancies of the year 1994 and based on 1994 seniority, they should be promoted as Inspector of Police from the year 2004-05. Pursuant to the directions in W.P.No.538 of 2005 etc., the request of the petitioners was examined and orders were issued.

12 The respondent has further submitted that the petitioner do not fall in anyone of the groups covered by the orders of the Tribunal for regularising the services of the Sub Inspectors of Police. The respondent has further submitted that this Court while disposing of the above Writ Petitions, has clarified that the initial date of selection has no criteria and that the date of posting is the only criteria and therefore, while determining the date of promotion of the petitioners to the post of Sub Inspectors of Police, the date on which, they commenced their practical training, i.e., the date of posting was fixed as the date of promotion.

13. The respondent has further submitted that the petitioner have taken advantage of a portion of the observation regarding the reversion of the Sub Inspectors of Police, if they had not successfully completed the training and conveniently omitted to incorporate the latter part, wherein this Court has expressed that it was only a suggestion. The respondent has further submitted that contention that the services of 319 Head Constables who had attended the promotion tests along with Petitioners in 1996 have been regularized with effect from 13.11.1995 is incorrect and untrue. Referring to Rule 18(e) of the Special Rules, the respondent has submitted that as per rule, institutional training and passing of the Written and Drill tests held at the end of the training are preconditions for promotion from Head Constables to Sub-Inspectors of Police. The respondent has further submitted that the 'C' list of Sub-Inspectors of Police fit for promotion as Inspectors of Police for 2006-2007 was issued on 14.09.2006 prior to the orders passed in W.P.No.538 of 2005 etc., on 16.12.2006 and therefore, none of the juniors of the petitioners have been promoted as Sub-

Inspectors of Police. For the above said reasons, the respondent has prayed for dismissal of the Writ Petition.

14. Mr.R.Shamugam, learned senior counsel appearing for the petitioner, placing strong reliance on the observations of this Court at Paragraph 13 of the judgment rendered in W.P.No.9800 of 2005, 16.12.2006, submitted that the respondent has erred in declaring the date of promotion of the petitioners as Sub Inspectors of Police from the date of commencement of practical training in the that post, instead of date of selection to the post of Sub Inspectors of Police. Referring to Paragraph 10 of the impugned order, learned senior counsel further submitted that the date of practical training, i.e., 25.06.1996 has been purposefully chosen only to place the petitioners below the directly recruited Sub-Inspectors of Police selected on 02.06.1997 to enable them to be promoted as Inspectors of Police for the year 2006-07. According to him, as a matter of fact in the panel of Sub Inspectors of Police fit for promotion for the year 2006-07 promotions were given to 47 directly recruited Sub-Inspectors of Police, vide proceedings dated 21.01.2007 and if the respondent had declared the date of promotion of the petitioners from the date of their selection, they would have been included in the promotional panel.

15. Referring to the words "appointed to service" as provided in the Special Rules for Tamil Nadu Police Subordinate Service (hereinafter referred to as "the Special Rules"), learned Senior counsel further submitted that the date on which, the petitioners have commenced their institutional training in the post of Sub Inspectors of Police should be reckoned as the date of promotion as Sub Inspectors of Police and therefore, the impugned order is contrary to the definition as provided in the Special Rules and liable to be set aside and prayed for a direction to the respondents to fix the date of promotion of the petitioners in the post of Sub Inspectors of Police as 12.11.1996, the date on which the petitioner was selected and promoted as Sub Inspectors of Police. Referring to the communication addressed to the petitioners as a Trainee Sub Inspectors of Police, learned Senior Counsel submitted that the respondent has accepted the promotion of Head Constables as Sub Inspectors of Police and therefore, the respondent ought to have declared the commencement date of Institutional training as the date of promotion.

16. Per contra, Mr.A.Arumugam, learned Additional Government Pleader, reiterating the averments made in the counter affidavit and drawing support from rule 18 of the Special Rules, submitted that the Head Constables, found fit for promotion as Sub Inspectors of Police, have to undergo both institutional and practical training and only after successful completion of the institutional training, they will be qualified for appointment to the post of Sub Inspectors of Police and till such time, they cannot be termed as persons appointed to the promotional post to discharge the functions of that post. He further submitted that as per the procedure followed, the date of promotion for the Head Constables selected for promotion as Sub Inspectors should be declared only from the date of commencement of their practical training in the Police Stations or at the places where they are posted as Sub Inspectors of Police. He further submitted that as between the directly recruited Sub Inspectors of Police appointed on 02.06.1997 and the promotees, who had commenced their practical training only on 25.06.1997, the directly recruited Sub Inspectors of Police are seniors and therefore, their names were rightly included in the panel of Sub Inspectors fit for promotion as Inspectors of Police 2006-07 and that there is no arbitrariness, violating Article 14 of the Constitution of India.

Heard the counsel appearing for the parties and perused the materials available on record.

17. Before advertng to facts of the case and the submissions advanced by the learned counsel appearing for both parties, it would be relevant to extract few provisions of the Special Rules for the Tamil Nadu Police Subordinate Service for proper understanding and adjudication.

18. Service conditions of Police Subordinate Service is governed by the Special Rules issued in

G.O.Ms.No.2743, Public (Service) Department, dated 30th September 1953, viz., Special Rules for the Tamil Nadu Police Subordinate Service, 1953. Rule 1(1) defines the words "Appointed to the service", which means, "a person is said to be appointed to the service' when in accordance with these rules or in accordance with the rules applicable at the time, as the case may be he discharges for the first time the duties of a post borne on the cadre of the service or commences the probation, instruction or training prescribed for members thereof.

19. 'Approved candidate' as per Rule 1(2), reads as follows:

"'Approved candidate' means a candidate whose name appears in the authoritative list of candidates approved for appointment to any class or category of the service:

Explanation: The inclusion of a candidate's name in any such list shall not confer on him any claim to appointment to the class or category of the service."

20. Rule 1(6), defines the word 'Duty' and means,

"a person is said to be 'on duty' as a member of the service:-

(a) When he is performing the duties of a post borne on the cadre of the service or is undergoing the probation, instruction or training prescribed for the service.

(b) When he is on joining time; or

(c) When he is absent from duty during vacation or on authorised holidays or on casual leave taken in accordance with instructions regulating such leave issued by the State Government, having been on duty immediately before and immediately after such absence.

(d) When has compulsorily to wait for orders of posting on return from leave."

21. Rule 1(8) defines the words "Member of the service" and it reads as follows:

"'Member of the Service' means a person who has been appointed to the service and who has not retired or resigned, been removed or dismissed been substantively transferred or reduced to another service or been discharged otherwise than for want of a vacancy. He may be a probationer, an approved probationer or a full member of the service."

22. As per Rule 1(10), "Recruited direct" means a candidate is said to be 'recruited direct' to the service, class, category or post when at the time of his first appointment thereto he is not in the service of the Government of India or the Government of the State. Rule 5 deals with the revision of list of approved candidates for appointment or promotion and it reads as follows:

"Notwithstanding anything contained in these rules the State Government shall have power to revise in any manner they consider suitable, any list of approved candidates, for appointment or promotion to any category or class of the service prepared by the Head of the Department, in exercise of the powers conferred on him by these rules."

23. Rule 18(e) of the Rules deals with the institutional training for the Head Constables found fit for promotion to the post of Sub-Inspectors of Police and it reads as follows:

"(e)(i) Head Constables selected for promotion as Sub Inspectors shall undergo a course of training for six months in the police Training College. During the period of their training each shall be paid an allowance of Rs.15/- each per memsem in addition to the pay and allowances that they would have drawn but for their training.

(ii) A written examination and a Drill test shall be held for the Head Constables considered fit for promotion as Sub Inspectors in the sixth month of their training a week prior to the expiry of the sixth month. The results of this examination shall be announced three days prior to the completion of the six months' period. After the examination is over the Head Constables under training will continue their training during the last week in all outdoor duties according to schedule.

(iii) Those Head Constables who fail in the examination shall be required to undergo training for a

further period of one month and they shall be given a second and final chance to pass the examination. Failure for the second time will entail the removal of the name from the "C" list of Head Constables fit for promotion to the rank of Sub Inspectors."

24. The definition "Appointed to the service" consists of three parts, viz., (1) A person should be appointed in accordance with the rules, (2) The date, he discharges for the first time, the duties of a post borne on the cadre of the service, and (3) commencement of probation, instruction or training prescribed for members thereof. On the face of it, the definition makes it clear that the appointment to the post should be in accordance with the statutory rules and a person cannot occupy the Office unless he is appointed to any particular post.

25. In the instant case, the petitioners were all included in the 'C' list of Head Constables fit for promotion as Sub Inspectors of Police for the year 1996 and sent for institutional training as contemplated under Rule 18(e) of the Special Rules, on and from 21.04.1997 for a period of six weeks. Persons who are included in the 'C' list of Head Constables fit for promotion to the post of Sub-Inspectors of Police fall within the definition, "Approved Candidates". It is settled legal position that an appointment to the post is said to be regular only when it is in accordance with the service Rules governing that post. As stated supra, notwithstanding anything contained in these rules, the State Government shall have power to revise in any manner they consider suitable, any list of approved candidate for appointment or promotion to any category or class of the service.

26. A conjoint reading of Rule 1(2), i.e., definition of "approved candidate" and Rule 5 of the Special Rules, makes it clear that a candidate included in the authoritative list for appointment to any class or category has no legal or statutory right for appointment to the class or category. The Supreme Court in catena of decisions, has held that the selection to the post does not confer any automatic right for appointment.

27. Rule 18 (e) of the Special Rules prescribes pre-promotional training for the Head Constables selected for promotion as Sub Inspectors of Police. On successful completion of the training, the Head Constables considered fit for promotion as Sub Inspectors, have to undergo a written examination and a Drill test in the 6th month of their training programme, a week prior to expiry of six month. On completion of the six month institutional training, the Head Constables will continue their training during the last week in all outdoor duties according to schedule. As per rule 18(e)(iii), those Head Constables, who have failed in their examination in their first attempt shall be required to undergo a further period of one month training and they are given final chance to pass the examination and on failure of such examination, their names would be removed from the 'C' list of Head Constables fit for promotion to the rank of Sub Inspectors of Police. A reading of Rule 18(e) of the Rules makes it clear that the Head Constables considered to be fit for promotion to the post of Sub Inspectors of Police are not appointed to the post of Sub Inspectors of Police and they have not discharged the duties for the first time in that post.

29. It is not disputed by the learned Senior counsel that the petitioners were not issued with any appointment orders as Sub-Inspectors of Police nor paid any salary equivalent to that post, during the period of their training and they have not started discharging their duties and functions as Sub Inspectors of Police.

30. Pre-promotional training which is compulsorily required to be undertaken by the Head Constable considered fit for promotion is a part of the process of selection to the post of Sub Inspectors of Police and they are not to be considered as appointed to the post. Scheme of the recruitment Rules clearly mandate that the Head Constables included in the 'C' list are eligible to be considered for appointment to the post of Sub Inspectors of Police only on successful completion of training and not otherwise.

31. In a given case, if some of the Head Constables who undergo the institutional training, but fail in the tests, they cannot be said to have been even qualified for promotion for the post of Sub Inspectors of Police and they cannot be placed on par with the successful candidates. Sub Inspectors of Police who are directly recruited are appointed to the service in accordance with the Rules and they commence their institutional or practical training prescribed for the members thereof. Whereas, in the case of promotees, i.e., the Head Constables considered to be fit for institutional training are not appointed to the post of Sub Inspector. To treat a Head Constable awaiting an appointment order on par with a directly recruited Sub Inspector of Police appointed to that post is totally misconceived. The process and method of selection to a promotional post in my considered view, should not be confused with direct recruitment. Appointment means, the date on which, a particular officer assumes the post pursuant to an appointment order issued to that post. Fitness or suitability to a particular post cannot be equated to promotion. In other words, a person is not appointed to the post during the process of recruitment.

32. In a batch of Writ Petitions referred above, this Court in the earlier paragraphs of the judgment, has opined that the date of selection should be taken into consideration as the date of promotion. But in the later paragraphs of the same judgment, the Court has clarified that even the date of initial selection is not the criteria and the date of posting is the only criteria. Further at the concluding Paragraph, the learned Judge has directed the second respondent therein to examine this issue and pass necessary orders strictly in accordance with the Rule 18(e) of the rules. Even the observation made at Paragraph 13, ie., "that if a person is found unfit to be posted in the promotional post after the training, necessary orders can be issued cancelling his promotion" is only a suggestion made by this Court and not the decision rendered in the Writ Petitions.

33. The definition "Appointed to service" has to be read in entirety and it is not open to the petitioners to isolate the words "instructions and training" prescribed for the members thereof from the section. A restricted meaning and narrow interpretation to suit the petitioners, would run contrary to true and proper meaning of the words, "Appointed to service". Unless a successful candidate is issued with an order of appointment, he has no legal or statutory right to claim that he has been appointed to that post and therefore, the plea of the petitioners to reckon the date of commencement of institutional training, as the date of promotion is not tenable and cannot be countenanced.

34. In the case on hand, on 02.05.2006, the directly recruited Sub Inspectors of Police were appointed to the service in terms of Rule 1(1) of the Special Rules, whereas, the petitioners have commenced their practical training only on 25.06.1997, i.e., date on which, they discharge the duties of Sub Inspectors of Police in terms of definition 1(6) of the Special Rules, which defines the word, "duty" to mean that a person is said to be 'on duty' as a member of the service, (a) When he is performing the duties of a post borne on the cadre of the service or is undergoing the probation, instruction or training prescribed for the service.

35. As between direct recruited Sub Inspectors of Police and promotees, as the date of appointment of the direct recruits to the post of Sub-Inspector of Police is earlier to the promotees, the former have an edge over the promotees in the matter of consideration to the higher post and the contention of discrimination by the respondent is not tenable. In the absence of any specific plea of mala fide and proof, the contention of the petitioners that the date has been fixed purposefully to enable the directly recruited Sub Inspector of Police to be promoted cannot be countenanced.

36. The technical plea that the petitioners were described as Sub Inspectors of Police in the Communication sent by the Commissioner of Police, does not in any way support the case of the petitioners in view of the statutory provisions.

37. Therefore, in the light of the statutory provisions and considering the clarification at Paragraph 16 of the judgment coupled with the directions of this Court to
S. MANIKUMAR, J.

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strictly follow Rule 18(3) of the Special Rules, I do not find that the respondents have acted contrary to the directions of this Court.

38. In the result, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

20.12.2007

NOTE TO OFFICE:

Issue copy on 14.03.2008

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To

The Director General of Police,
Chennai-4.

W.P.No.5343 of 2007