IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2015

CORAM:

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI
and
THE HON'BLE MR. JUSTICE M. VENUGOPAL

W.A. No.921 of 2015 and M.P. No.1 of 2015

1 The State of Tamil Nadu
represented by the Secretary to Government
Home (Prisons) Department
Fort St. George
Chennai 600 009

2 The Additional Director General of Police
Inspector General of Prisons
Egmore
Chennai 600 008

3 The Superintendent
Central Prison
Coimbatore - 18 Appellants/Respondents

vs.

R. Ganesan Respondent/Petitioner

Writ Appeal preferred under Clause 15 of the Letters Patent challenging the order dated 14.09.2012 passed in W.P. No.10950 of 2012.

W.P. No.10950 of 2012:
Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records pertaining to the order passed by the Additional Director General of Police/Inspector General of Prisons, the second respondent herein, vide his proceedings number Memo No.11578/ES 3/2011-3 dated 22.02.2012 and quash same insofar as the petitioner is concerned as illegal, arbitrary, unreasonable being violative of rules and principles of natural justice and thereby direct the respondents herein to promote the petitioner as Assistant Jailor with effect from the date on which his immediate junior was promoted.

For appellants Mr. P.S. Sivashanmugasundaram
Special Government Pleader

For respondent Mr. A.R. Suresh

JUDGMENT

Questioning the legality and validity of the order dated 14th September 2012 passed by the learned Single Judge in W.P. No.10950 of 2012, the respondents in the writ petition have come up with the instant intra-Court appeal.

2 For the sake of brevity, clarity and convenience, the parties are referred to as per their litigative status in the instant appeal.

3 The learned Single Judge, by the order sought to be impugned in this appeal, allowed the writ petition, quashing the proceedings dated 22nd February 2012 of the second appellant, whereby, the respondent was not empanelled in the approved list for promotion to the post of Assistant Jailor against the vacancies available for the year 2011-2012 on the ground of currency of punishment.

4 The relevant facts giving rise to the filing of the writ petition are that the respondent, while serving as Chief Head Warder at Sub-Jail, Gudaloor, the Nilgiris, was imposed with the punishment of stoppage of increment for one year without cumulative effect by order dated 21st October 2010, which was communicated to him on 27th October 2010. The said order was to come into effect with effect from 1st July of the next year, as the increment became due only from the 1st July of the next year. Thus, the said punishment came into effect from 1st July 2011 to 30th June 2012. The case of the respondent for empanelment for promotion to the post of Assistant Jailor was taken up for consideration on 23rd January 2012. However, the same was not considered on the ground of currency of the aforestated punishment.

5 The learned Single Judge, relying on Proviso 4 to Rule 8 (iii) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, (for short "the Rules"), came to the conclusion that the respondent could not have been denied promotion on the ground of currency of punishment, instead, the Department was entitled to recover the monetary value equivalent to withholding of increments. Holding so, the proceedings dated 22nd February 2012 impugned therein was quashed with a direction to the appellants to promote the respondent as Assistant Jailor with effect from the date, his immediate junior was promoted.

6 Mr. P.S. Sivashanmugasundaram, learned Special Government Pleader appearing for the appellants/State would submit that on the relevant date, i.e. 23rd January 2012, when the case of the respondent, along with other similarly situated employees was taken up for consideration, the respondent's case could not be considered on account of currency of punishment and as such, quashing of the proceedings dated 22nd February 2012, is unsustainable in the eye of law. It is further contended that under G.O. Ms.Nos.368 and 248 of the Personnel and Administrative Reforms Department dated 18.10.1993 and 20.10.1997 respectively, there is a bar on consideration of the case of an employee during currency of punishment. The next contention of the learned Special Government Pleader is that Proviso to Rule 8(iii) of the Rules was wrongly made applicable, as it deals with only a situation, wherein, the order of withholding of increment cannot be implemented, either on account of promotion of a person or on other contingency. Thus, the same was not applicable to the facts of the case.

7 We have examined carefully, the submissions advanced by

the learned Special Government Pleader appearing for the appellants/State and perused the pleadings and documents appended thereto.

8 Indisputably, the respondent was imposed with the punishment of stoppage of increment for one year without cumulative effect. It is also not in dispute that G.O. Ms.Nos.368 and 248 of the Personnel and Administrative Reforms Department dated 18.10.1993 and 20.10.1997 respectively, prescribe that during currency of punishment on the crucial date, the case of such employees should not be considered and their case should be passed over for consideration in the next year.

9 In the case on hand, it is beyond cavil that the punishment of stoppage of increment without cumulative effect was imposed on 27th October 2010 for a period of one year. If the period of imposition of punishment commences immediately after imposition of punishment from 28th October 2010, the same would come to an end on 27th October 2011. However, since the punishment could be given effect to only on the 1st July of the next year, i.e., 1st July 2011, the same would extend till 30th June 2012. The period from 27th October 2010 till 30th June 2011, when the imposition of punishment was not given effect to, had, in fact, gone against the respondent as, during the said period, albeit the punishment was not made effective, but was taken into consideration for calculating the period of punishment.

10 At this juncture, it is beneficial to refer to Rule 8 of the Rules, which reads as under:

> "8. The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon every person who is a member of the civil service of the State and every person holding a civil post under the State specified in rule 2, namely:-
>
> i Censure
>
> ii Fine (in the case of persons for whom such penalty is permissible under the rules)
>
> iii Withholding of increments or promotion;
>
> Provided that the penalty of withholding of increment shall not be imposed on a Government servant, if the said penalty cannot be given effect to fully while in service:
>
> Provided further that in cases where the penalty of withholding of increment cannot be given effect to fully for any contingency that arose after the penalty of withholding of increment is imposed, the monetary value equivalent to the amount of such increments that cannot be given effect to, shall be recovered from the person:
>
> Provided also that in cases of withholding of increment with cumulative effect, the monetary value equivalent

to three times the amount of increments ordered to be withheld, shall be recovered."

11 On a bare perusal of proviso to Rule 8(iii) of the Rules, it is luculent that the period of withholding of increment without cumulative effect could have been compensated by recovering the monetary value equivalent to the amount of increment. In the case on hand, if the punishment commences from the next date of passing the order, that would have come to an end much before the crucial date, i.e., 23rd January 2012, on the day, the respondent's name, along with other similarly situated officers, was under consideration for promotion. There was no bar to apply the said proviso in the case on hand when the respondent is ready and willing to make the payment of the amount of increment for the period from 23rd January 2012 to 30th June 2012. Furthermore, the withholding of increment for one year without cumulative effect is, even otherwise, a minor punishment.

12 For the analysis made hereinabove, we do not find any infirmity or illegality in the impugned order rendered by the learned Single Judge.

13 As a sequel, the intra-Court appeal fails and is accordingly dismissed. Costs made easy. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

cad
To
1 The Secretary to Government
Home (Prisons) Department
State of Tamil Nadu
Fort St. George
Chennai 600 009

2 The Additional Director General of Police
Inspector General of Prisons
Egmore
Chennai 600 008

3 The Superintendent
Central Prison
Coimbatore - 18.

1 cc to Government Pleader.Sr.No.38920
1 cc to Mr. A.R.Suresh, Advocate Sr.No.39333

W.A. No.921 of 2015

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pmk.20.8.2015