

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2015

CORAM

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

W.A.No.1671 of 2014
and
M.P.No.1 of 2014

- 1.Government of Tamil Nadu,
rep by the Secretary to Government,
Home (Prison-II) Department,
Fort St. George,
Chennai-600 009.
2.The Inspector General of Prisons,
Thalamuthu Natarajan Maligai,
Egmore, Chennai-600 008. .. Appellants/Respondents

Vs.

- 1.P.Packianathan .. Respondent/Petitioner
2.K.Sadasivam .. Respondent/Respondent

This writ appeal is preferred under Clause 15 of the Letters Patent against the order of this court dated 30.03.2012 made in W.P.No.7380 of 2007. This petition came to be numbered by transfer of O.A.No. 1307 of 2002 from the file of the Tamil Nadu Administrative Tribunal, for issuance of a writ in the nature of Certiorari, to quash the G.O.(D) No.202 issued by the first respondent, dated 15.03.2001 with consequential relief of issuance of a writ in the nature of mandamus, directing the respondents 1 and 2 to relax the provision of Rule 6 read with Annexure I in branch I under Part II of the Special Rules for the Tamil Nadu Jail Subordinate Service relating to the physical qualification in favour of Thiru P.Packianathan, so as to be enable him to be appointed regularly in the post of II Grade Warder with effect from 1.8.1967 in modification of 28.9.1984 the date of issue of G.O.Ms.No.2235, Home (Prisons II) Department, dated 28.09.1984; and to direct the respondents 1 and 2 to give regular promotion and appointment to the petitioner in the posts of Chief Head warder/ Assistant Jailor/Deputy Jailor from the respective dates on which the petitioner's junior, Thiru K.Sadasivam was regularly promoted and appointed to the post of Chief Head Warder/Assistant Jailor/Deputy Jailor/Jailor with attendant service and monetary benefits.

For Appellants : Mr.P.S.Shivashanmugasundaram,
Spl.G.P.

For Respondents: Mr.Govinda Prasad for R-1

JUDGMENT

(Judgment of the Court was made by SATISH K. AGNIHOTRI, J.)

Indisputably, the writ petitioner / first respondent herein joined the service in the Central Prison, Chennai as Warder Grade-II on 15.3.1966. The writ petitioner's appointment was made against reserved category as on that day, the writ petitioner belonged to Scheduled Caste (Pallan community). His appointment was regularised with effect from 1.8.1967. It is stated that during service, the petitioner adopted the Christianity religion. There is no dispute that a Scheduled Caste candidate on conversion does not continue to be the Scheduled caste, but is treated as Backward Class community in the State of Tamil Nadu.

2. At the time of appointment, the writ petitioner's height was 160 cm and 79-84 cm chest measurement, as required. However, for the member of Backward class, the height requirement is 168 cm and chest is 81-86 cm. The writ petitioner was promoted to the post of Warder Grade-I with effect from 2.9.1976. Thereafter, he was appointed temporarily on the post of Chief Head Warder. It was discovered by the authorities that after joining the service, he had converted to Christianity and as such, it was observed that the writ petitioner did not possess the requisite physical qualification for regularisation and also for further promotion to the higher post.

3. The writ petitioner made a representation dated 16.8.2000 for regularisation after relaxing the rules on the basis of the initial appointment, which was rejected on the ground that even the writ petitioner's appointment on the post of Warder Grade II was not proper as the writ petitioner did not have the requisite physical qualification, i.e., 168 cm height and 81-86 cm chest measurement meant for the employee belonging to backward class. The writ petitioner questioned the legality of the said order in the writ petition, which was considered by the learned Single Judge and it was held that the writ petitioner being Scheduled Caste by birth and also at the time of joining the service and as such, the benefit with regard to the physical requirement cannot be altered on the basis that he had converted to Christianity subsequently and the writ petitioner was entitled to all benefits on that basis.

4. Mr.P.S.Shivashanmugasundaram, the learned Special Government Pleader would submit that after conversion to Christianity, the writ petitioner was removed from the category of scheduled caste and was included in the backward class community and as such, he did not possess the requisite physical qualification, as aforesaid. Thus, the writ petitioner was rightly denied

regularisation and further promotion on the basis of his appointment against the scheduled caste category.

5. We have examined the case very carefully and perused the documents and pleadings. The documents available before us do not indicate that there is any prohibition for conversion from one religion to another religion. It is also not brought to the notice that under any provisions of law or the executive instructions or government circulars, if an employee converts to other religion, he has to attain requisite physical qualification on the basis of converted community in the course of his service.

6. The physical requirement of a person is to effectively perform the duties assigned to him on the basis of the nature of job. The writ petitioner was appointed on 15.3.1966 on having found that he had requisite height and chest required for scheduled caste candidate. In that capacity, he was allowed to continue and there is no grievance that his functioning, at any point of time, was deficient and as such, he was not entitled to be considered for further promotion on the basis of his working seniority. After a period of working for about 16 years, the writ petitioner could not have been denied the benefit of working experience by way of seniority for further promotion.

7. Needless to state that the writ petitioner was temporarily promoted to the post of Chief Head Warder and there also, no complaint about his working on the said post was noticed. Thus, subsequently, on discovery that he had converted to some other religion, he cannot be denied the benefit, to which he is entitled to.

8. As a sequel, we do not find any irregularity or irrationality in the view taken by the learned Single Judge while allowing the writ petition. We confirm the same and consequently, dismiss the writ appeal. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vvk

To

1.The Secretary to Government,
Government of Tamil Nadu,
Home (Prison-II) Department,
Fort St. George,
Chennai-600 009.

2.The Inspector General of Prisons,
Thalamuthu Natarajan Maligai,
Egmore, Chennai-600 008.

+ 1 cc to Mr.K.S.Govindaprasad, Advocate Sr.1157

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BR(CO)
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