

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

WP.No.682 of 2016

WMP.Nos.500, 501, 4766 and 4713 of 2016

A.Allirani, Superintendent (i/c)
Special Prison for Women, Puzhal
Chennai-66 ...Petitioner

Vs

- 1.The State of Tamil Nadu by Principal Secretary to Government
Home Department, Fort St.George, Chennai-9
- 2.The Additional Director General of Police and
Inspector General of Prisons, Chennai-8
- 3.V.Rukmani Priyadarshini, Additional Superintendent of Prisons
Central Prison-I, Puzhal, Chennai-66
- 4.M.Urmila, Additional Superintendent of Prisons
Special Prison for Women, Vellore
- 5.G.Nigila Nagendran, Additional Superintendent of Prisons
Central Prison, Salem
- 6.M.Andal, Additional Superintendent of Prisons
District Jail, Dindigul. ...Respondents

Prayer:- This Writ Petition is filed to issue a Writ of Mandamus to direct the Respondents 1 and 2 to promote the Petitioner as Superintendent of Prison in the Special Prison for women with effect from 1.5.2011 the date on which the Petitioner was appointed as superintendent in-charge with all monetary and service benefits.

For Petitioner : Mr.A.R.Suresh

For Respondent : Mr.A.Kumar, Special Government
Pleader-RR1&2
Mr.A.Thiyagarajan, SC for
Mr.V.Vijay Shankar-RR3to6

ORDER

This Writ Petition is filed to issue a Writ of Mandamus to direct the Respondents 1 and 2 to promote the Petitioner as Superintendent of Prison in the Special Prison for women with effect from 1.5.2011, the date on which the Petitioner was appointed as superintendent in-charge with all monetary and service benefits.

2. The case of the Petitioner is as follows:-

a. The Petitioner was originally selected as Matron on 6.5.1994 through Tamil Nadu Public Service Commission. Since there was no promotion, by virtue of GO.Ms.No.1066, dated 12.11.2003, the said post was upgraded as Female Deputy Jailor. Pursuant to this, by proceedings dated 23.12.2003, the Petitioner was appointed as Female Deputy Jailor and thereafter, by GO.Ms.No.954 dated 9.11.2009, the Petitioner was appointed as Jailor on adhoc basis and she was posted at Special Prison for Women, Puzhal and she had joined duty on 13.11.2009. Since the post of Superintendent of Special Prison for Women at Puzhal was vacant, the Petitioner was appointed as Superintendent In-charge from 1.5.2011. Thereafter, she had completed more than 21 ½ years of service. For the post of Superintendent of Special Prison for Women, the selection process is different and candidates are treated separately and separate seniority list maintained and promotions are granted to them based on the said list. Service conditions of the employees in the prison services upto to the post of Deputy Jailor are governed by Special Rules for Tamil Nadu Jail Subordinate Service Rules and from the post of Jailor, the service conditions are governed by the Special Rules for Tamil Nadu Jail Service Rules. In the state of Tamil Nadu, there are only three Special Prisons for Women, in which sanctioned posts are available.

b. In the year 1997, new prison at Madurai was shifted to Trichy and the newly created post of Deputy Superintendent of Special Prison (Women) was upgraded as as Superintendent of Prison (women) by GO.Ms.No.1060 dated 31.8.2004. One D.Vijayalakshmi Pandit, who was working as Matron, was appointed as Deputy Superintendent of Special Prison for Women by recruitment by transfer. She was upgraded as Superintendent and worked till 13.04.2005 and thereafter, the said post was vacant. Since the Petitioner is senior most Deputy Jailor and fully eligible for promotion to the post of Superintendent, she made a representation to the Respondents 1 and 2 on 31.12.2007. As it was not considered, she filed WP(MD) No.1230 of 2009 and by order dated 16.02.2009, this court directed the authority to consider the representation.

c. By another GO.Ms.No.958 dated 29.9.2003 even if a new post of Jailor (women) among others for Special Prison for women at Puzhal was created, relevant rules to fill up the said post have not been framed by the Government so far. The 2nd Respondent also sent proposals to the Government for creation of one post of Jailor each in the Special Prison for women at Trichy and Vellore and also for the creation of one post of Additional Superintendent of Prisons (women) in each of the three women Prisons on par with the male counter parts in the men Central Prisons. But, the said proposals are kept pending. In view of not creating post, the Petitioner has been stagnated for the past 12 years. But, for filing of the Writ Petition, she would not have been promoted as Jailor that too on adhoc basis. The post has to be filled up only by eligible candidates from among the candidates appointed exclusively for the special prisons for women. Further, the persons who were appointed as Jailors, even though they are juniors, were promoted as Additional Superintendent of Prisons in 2006 and further promoted as Superintendent of Prison in 2009 and further as Deputy Inspector General of Prisons in 2015. The Respondents 3 to 6, who were appointed as Jailors through Tamil Nadu Public Service Commission on 29.7.2010 were promoted as Additional Superintendents of Prisons on 2.7.2013 and are likely to be promoted as Superintendents of Prison any time when they are all juniors to the Petitioner. In such circumstances, the Petitioner, seeking for a direction to the Respondents 1 and 2 to promote her as Superintendent in the existing vacancy at least temporarily, has filed this Writ Petition.

3. In the counter filed in the vacate stay petition by the 6th Respondent, it is stated that as per the Tamil Nadu Jail Service Rules, the category of Superintendent of Central Prison is to be filled by promotion from Additional Superintendent of Central Prison. The 6th Respondent is working as the Additional Superintendent of Prison and therefore, she is entitled to get promotion as Superintendent of Central Prison and similarly, the Respondents 3 to 5 are also working as Additional Superintendents and are therefore eligible to get promotion as Superintendent of Central Prison. There is a separate category of posts called Superintendent of Special Prison for women. For this post promotion is from the cadre of Deputy Superintendent of Prison and therefore a person seeking promotion as Superintendent in the Special Prison for women has to be in the feeder cadre of Deputy Superintendent of Prison. But, the Petitioner is only a Jailor and that too on adhoc basis. Therefore, she has to first seek promotion to the post of Deputy Superintendent of Prison which is the feeder cadre and after getting promotion to the said post only, she will be eligible for promotion to the post of Superintendent of Special Prison

for women as per the rules and the Petitioner is holding a post two stages below. Regarding the claim of the Petitioner to hold the post of Superintendent of Prison on in charge basis, it is only a working arrangement that she has been asked to be in charge of the said post and such a working arrangement cannot give any right to the Petitioner to seek regular promotion as Superintendent of Prison. The Petitioner, who is not eligible to seek promotion, by virtue of this Writ Petition cannot seek to stall the deserving right of the Respondents 3 to 6.

4. Even though the Government has not filed a counter, the learned Special Government Pleader for the Respondents has submitted that the Petitioner will not be entitled to be promoted as Superintendent of Special Prison for women, as she is not in the feeder cadre and only on adhoc basis, promotion was given to her. The learned Special Government Pleader further submitted that only pursuant to the directions of this court she was appointed as temporary Jailor that too on adhoc basis. It is only a temporary one and can be regularised only after amending the relevant rules to the Tamil Nadu Jail Service Rules. Even after regularisation, first she has to be promoted as Additional Superintendent as feeder category and thereafter only she will be eligible for the post of Superintendent. In so far as the Respondents 3 to 6 are concerned, they were originally appointed as Jailors in 2004 through Tamil Nadu Public Service Commission and then promoted as Additional Superintendent of Prisons in 2006 and as Superintendent of Prisons in 2009 and some of them have been promoted as Deputy Inspector General of Prisons in 2015 as these persons were appointed as Jailors under category 5 under Class I under Branch I "General" and the Petitioner comes under only Class II Branch I "General" under the Special Rules for Tamil Nadu Jail Service and therefore, these persons could not be treated as juniors to the Petitioner nor the Respondents 3 to 6 herein.

5. This court heard the learned counsel on either side and considered their submissions and also perused the materials placed on record.

6. One of the main arguments of the Petitioner is that the Petitioner was working for the past 22 years and right now she is working as Superintendent In-charge. When a vacancy has arisen, definitely she must be considered to be eligible to be given this post especially in the light of the earlier orders of this court. In so far as D.Vijayalakshmi Pandit is concerned, she was also given the post on adhoc basis and was appointed to post of Deputy Superintendent and thereafter, Superintendent and hence, she should also be treated equally.

7. In the counter of the 6th Respondent, it has been specifically stated that those persons were appointed directly by the employment exchange as Deputy Jailor, but the Petitioner herein was originally appointed as Matron. Further, because of the long period of 12 years when there is no chance of promotion, on adhoc basis the post was re-designated as Deputy Jailor and thereafter, she has been given the post of Deputy Superintendent of Prison in view of the vacancy that too on adhoc basis. In the mean while, since there was a vacancy she has been appointed as Superintendent of In-charge. Therefore, she could not be equated with the services of Vijayalakshmi Pandit, in which case, this court gave direction and accordingly, it was also given on adhoc basis.

8. Be that as it may. One another important aspect is that for promotion of the Superintendent of Prison, the basic category or the feeder category will be the post of Deputy Superintendent of Prison. As on date, the actual category which the Petitioner holds only is a Jailor post. Because it is non existent as of now, it has been now reclassified as Superintendent. As per the Tamil Nadu Jail Service Rules, the post of Superintendent has to be filled up by promotion from the post of Additional Superintendent and the promotion is only from the feeder cadre of Deputy Superintendent. The post of Superintendent in-charge is only a temporary working arrangement and hence, the Petitioner cannot seek regular promotion. Amendment to the Rules is also pending consideration and even after amendment for regularisation, the Petitioner has to first seek for promotion as Additional Superintendent.

9. According to the Petitioner, in view of the order passed in the case of Vijayalakshmi Pandit, the very post of Jailor has been re-designated into Deputy Superintendent of Prisons, which has been further classified as a loan post which has been available as Superintendent and therefore, the post now she holds even though as in-charge should be considered as post of Superintendent, which argument cannot be accepted for the simple reason that admittedly the Petitioner was given to the post of superintendent as in-charge post only as a working arrangement and in so far as the post of Deputy Superintendent is concerned, it was given only on adhoc basis. Therefore, this argument at this stage cannot be considered. In any event, that cannot stall the present appointment or the promotion of others. At this stage, this court cannot interfere as to whether the post is equivalent to that. In such view of the matter, the interim order granted has got to be vacated because that will affect those persons' right, but it is always open for the Petitioner to make a representation to be considered by the concerned authority and it is for the authority before promotion to those persons to consider the representation of the Petitioner and pass appropriate orders.

10. In the result, this Writ Petition is dismissed. No costs. Consequently, the connected MP are also dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

- 1.The State of Tamil Nadu by Principal Secretary to Government Home Department, Fort St.George, Chennai-9
- 2.The Additional Director General of Police and Inspector General of Prisons, Chennai-8
- 3.V.Rukmani Priyadarshini, Additional Superintendent of Prisons Central Prison-I, Puzhal, Chennai-66
- 4.M.Urmila, Additional Superintendent of Prisons Special Prison for Women, Vellore
- 5.G.Nigila Nagendran, Additional Superintendent of Prisons Central Prison, Salem
- 6.M.Andal, Additional Superintendent of Prisons District Jail, Dindigul.

+1cc to M/S.A.R.Suresh, Advocate Sr.45390
1cc to M/S.V.VijayShankar, Advocate Sr.45487
+1cc to the Government Pleader Sr.45585

WEB COPY

WP.No.682 of 2016

nm[co]
srg 08/09/2016