



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated:- 02.09.2016

Coram:-

The Hon'ble Mr. Justice T.Raja

WP (MD) Nos.13910 & 11875 of 2014

and

MP(MD) No. 1 of 2014

and

M.P. (MD) Nos.1 and 2 of 2014

P.Mariappa

... Petr. in both the WPs

vs.

- 1.The Secretary,
Department of Home (Prison 1),
St. George Fort,
Chennai.
 - 2.The Additional Director General of Police Cum
Inspector General of Prison,
Egmore, Chennai.
 - 3.M.Senthilkumar
 - 4.G.B.Senthamaraikannan
 - 5.V.Rukmani Priyadarshini
 - 6.M.Urmila
 - 7.G.Nigila Nagendran
 - 8.M.Andal
 - 9.C.Krishnakumar
- ... Respts. in both W.Ps.

W.P.MD. No.13910 of 2014:- Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorarified mandamus to call for the records pertaining to the impugned seniority list, dated 04.01.2012 in No.365/CS2/12, published by the 2nd respondent and to quash the same and consequently, direct the 1st respondent to place the petitioner name above Respondent Nos.3 to 9.

W.P.MD. No.11875 of 2014:- Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorarified mandamus to call for the records pertaining to the impugned seniority list of jailors, dated 09.01.2014, published by the 2nd respondent, to quash the same and consequently direct the 2nd respondent to revise the seniority list of Jailors and place the petitioner above respondent Nos.3 to 9.

For Petitioner : Mr.S.Chellapandian

For Respondents-1 & 2 : Mrs.S.Bharathi,
Government Advocate



For Respondents-3 to 9 : Mr.Isaac Mohanlal,
Senior Counsel.

For Mr.I. Cibi Chakraborty

WEB COPY

COMMON ORDER

In a feud between two groups of Jailors, namely, Direct Recruits and Promotees, over fixation of seniority between them, the petitioner herein, who is a promotee Jailor, has come up with these Writ Petitions, challenging the impugned Seniority Lists, wherein, he was ranked below the Direct Recruit Jailors/Respondents-3 to 9 and for a direction to Respondents-1 and 2 to place him above those respondents.

2. Mr.S.Chellapandian, learned counsel appearing for the petitioner, highlighting the facts of the case at the first instance, would submit that the petitioner, after his appointment as Assistant Jailor on 01.02.1985, was promoted as Sub Jailor. He was thereafter, further promoted as Deputy Jailor in the year 1997 with posting at Singanallur Prison. While serving in the above cadre at Trichy Central Prison, he was further promoted on provisional basis as Jailor and transferred to Central Prison, Cuddalore, on 07.12.2007. Learned counsel would submit that though the petitioner was fully qualified to hold the post of Jailor in the light of Rule-5 of the Special Rules for the Tamil Nadu Jail Service, arbitrarily, he was awarded only a temporary promotion to the said post. Learned counsel would specifically say that even though the Jail Service Rules obligate the Respondents-1 and 2/Department to draw the Seniority List for every year against the existing vacancies, they never came forward to prepare the Panel for the post of Jailors from 2002 to 2007. While so, it was only by way of G.O.Ms.No.157, Home (Prison-II) Department, dated 17.02.2009, the first respondent sanctioned 1842 permanent posts and, five months thereafter, ie., on 20.07.2009, the said Authority estimated the total vacancy of Jailor as 14 and informed the same to the Tamil Nadu Public Service Commission (TNPSC). However, only 9 posts of Jailor were notified during April, 2009, to be recruited directly through the TNPSC. Through such direct recruitment, Respondent Nos.3 to 9 came to be selected provisionally and appointed as Jailors on 29.07.2010. After completion of training for 6 months, they were regularized only on 28.07.2011. Even prior to them, the service of the petitioner in the post of Jailor was regularized with effect from 07.01.2011. Thus, when the regularization of Respondents-3 to 9 on 28.07.2011 was admittedly later to that of the petitioner, whose service as Jailor was regularised on 07.01.2011, Respondents-1 and 2 ought to have placed the petitioner above Respondents-3 to 9 in the ranking lists. They miserably failed to draw the Panel for the promotional post in Jail Service on the fixed cut-off date, ie., 15th day of February, every year. Had they regularly drawn the Panel for the promotional post based on the fixed cut-off date every year, the service of the petitioner would have been regularised even much prior to the appointment of Respondents-3 to 10. That being so,

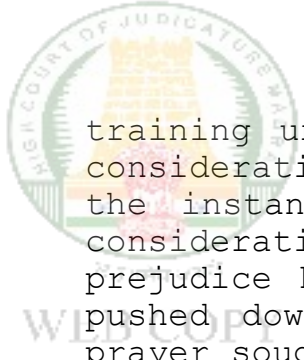


after directly recruiting Respondents-3 to 9 on 29.07.2010, the service of the petitioner was wilfully and deliberately regularized only on 07.01.2011 for the sole purpose of pushing down his name below respondents-3 to 10.

3. Learned counsel repeated to highlight that the Panel for the post of Jailor was not prepared from the year 2002-2007 for the reasons best known to Respondents-1 and 2. Although the Jail Service Rules dictate the said respondents to draft the seniority list for every year against the existing vacancy treating the 15th February as the cut-off date, it was only during 2009, the respondents estimated the vacancy for the post of Jailor from the year 2002 to 2007 as 23, out of which, 9 posts were assigned to be filled by direct recruitment and the remaining 14 by recruitment from Deputy Jailor. After so estimating, the TNPSC was requested to recruit the eligible candidates for the post of Jailor. It was only based on the request of the Department through a letter dated 20.07.2009, the TNPSC had selected 7 candidates to the post of Jailor and recommended their names to the first respondent for further action. Consequently, based on the recommendation by the TNPSC, on 29.07.2010, the 2nd respondent selected those direct recruits/R3 to R9 for appointment to the post of Jailor. In the appointment proceedings, it was made clear that their appointment would be made permanent only after completion of the training and probation period. While so, the Government issued G.O. Ms.No.965, dated 18.11.2010, in respect of appointment through transfer to the post of Jailor for the year 2007-2008, placing the petitioner at Sl. No.5. His name was recommended along with 8 others and finally, he was permanently promoted as Jailor on 07.01.2011.

3-A. In the above scenario, the grievance of the petitioner is, when he was promoted and posted as Deputy Jailor in the existing vacancy on 07.12.2007 and subsequently was made permanent in the post of Jailor on 07.01.2011, Respondent Nos.3 to 9, who came to be regularized after the training period only on 28.07.2011, cannot be placed above him. Therefore, the impugned seniority list relating to Additional Superintendent of Prison, showing the name of the petitioner as Junior to Respondents-3 to 9, clearly calls for interference by this Court since the same is unreasonable and unjustified.

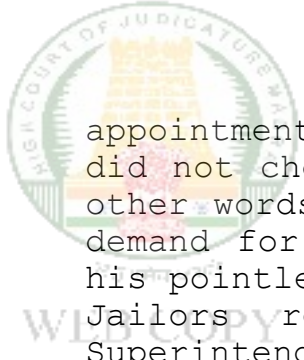
4. Placing reliance upon a Division Bench decision of this Court in **M.Ashok Kumar v. The Secretary to Government and others (Judgment dated 29.04.2008)**, he would submit that the Division Bench had already held that when a person joins the cadre post, seniority has to be reckoned from that date, for, if a promotee SI of police joins as regular SI on a particular date after finishing his training, his seniority has to be reckoned from the date when he took charge as SI of police. It was further held that the period of training cannot be taken into consideration and only the date on which they are appointed to the post can be taken for the purpose of reckoning seniority. It was ultimately observed in the said decision that, in the matter of regular appointment to the post of SI of Police, the promotees even otherwise are entitled to be placed on top of directly recruited SIs. At any rate, the period of



training undergone by the Direct Recruits can never be taken into consideration for the purpose of reckoning seniority, while so, in the instant case, such irrelevant aspect having been taken into consideration in respect of Respondents-3 to 9 and thereby, great prejudice has been caused to the petitioner, in that, he has been pushed down below the Direct Recruits, this Court may grant the prayer sought for, he pleaded.

5. Per contra, supporting the impugned proceedings, learned Government Advocate would contend that G.O.Ms.No.157, Home (Prison-II) Department, dated 17.02.2009, is attempted to be misquoted by the petitioner with reference to his regular appointment as Jailor. According to her, by virtue of the said Government Order, certain temporary posts in the Prison Department came to be made permanent and the same does not pertain to the temporary services of the petitioner. In other words, a Jailor can be made permanent only by way of regular selection through the Departmental Promotion Committee subject to eligibility and not by permanent retention of posts as contended by the petitioner. When the petitioner was appointed originally on temporary basis under clause 10(a)(i)(1) of the General Rules for the Tamil Nadu State and Subordinate Service Rules, he shall not be regarded as a probationer or entitled in such service by reason only of such appointment to any preferential claim for further appointment. By stating that, at any rate, the impugned seniority list, dated 09.01.2014, has nothing to do with the petitioner for the reason that already, he was moved to the post of Additional Superintendent of Prisons as on 01.01.2014, it is stated that there is no issue or point for consideration in these writ petitions and hence, the same may have to be dismissed.

6. Learned Senior Counsel appearing for Respondents-3 to 9 would submit that, of course, in the year 2009, the Secretary to Government/R1 determined the vacancies in the cadre of Jailors and, as per the Special Rules for the Tamil Nadu Jail Service, the post of Jailors shall have to be filled up both by way of Direct Recruitment as well as recruitment by transfer from among the Deputy Jailors in Central Prisons and from other equivalent cadres. Ratio also was fixed between the two Categories, namely, Direct Recruitment and Transfer as 1:2 respectively. Consequently, out of the 23 vacancies determined, 9 and 14 vacancies were divided between the two Categories, as per the ratio. Through the Direct Recruitment Mode, 9 persons were selected including respondents-3 to 9, who joined duty as Jailors on 29.07.2010 subsequent to the orders issued by R-1 in G.O.Ms.No.629, Home (Prison-I) Department, dated 14.07.2010. As regards the Vacancies to be filled up by way of Recruitment by Transfer, based on the recommendations of the Departmental Promotion Committee, the 1st respondent drew the list of eligible candidates in G.O. (Ms) No.965 (Home-Prison-I) Department, dated 18.11.2010, wherein, the petitioner was placed at Serial No.2 and, along with 10 other Deputy Jailors, he was promoted as Jailor with effect from 07.01.2011. By pointing out the above chain of events, learned Senior Counsel would argue that the petitioner has no locus standi to challenge the present Seniority Lists for the simple reason that he never challenged the fixation of his date of

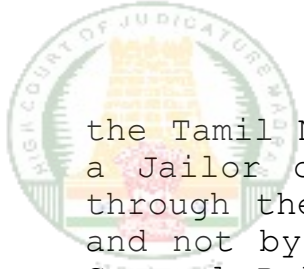


appointment as Jailor with effect from 07.01.2011 and similarly, he did not choose to question the Seniority List of the year 2011. In other words, without even challenging the rejection of petitioner's demand for higher seniority by the 2nd respondent on 16.06.2011, his pointless effort in questioning the subsequent seniority List of Jailors relating to 2012 and Seniority List of Additional Superintendent of Prison pertaining to 2014 must be deprecated. At any rate, the petitioner having been appointed as Jailor only on temporary basis under clause 10(a)(i)(1) of the General Rules for the Tamil Nadu State and Subordinate Services and whose service as Jailor came to be regularized only on 07.01.2011 cannot claim any preferential treatment over the Direct Recruits, who joined service as Jailor even on 29.07.2010. Based on the relevant rules governing promotion, respondents-3 to 7 have been further promoted to the next cadre ie., Superintendent of Prisons and respondents-8 and 9 are serving in the same position as that of the petitioner viz., Additional Superintendent of Prison. By referring to a decision of the Apex Court in **Direct Recruit Class II Engineering Officers' Assn. v. State of Maharashtra (1990-2-SCC-715)**, Mr. Isaac Mohanlal would contend that one of the issues holding that once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of confirmation, has been reconsidered by the Apex Court in the Madalaimuthu's case holding that any temporary appointment made under Section 10(a)(i)(1) of the General Rules for the Tamil Nadu State and Subordinate Services cannot be taken into account for counting the seniority, therefore, in the light of the said ratio laid down by the Supreme Court, the petitioner cannot have any grievance against Respondents-3 to 9 with reference to Seniority. The impugned Seniority Lists are perfectly in order, hence, there is no scope for interference by this Court, he pleaded.

7. This Court, after considering the rival submissions advanced on either side, is fully in agreement with the points made on the side of the respondents. Before proceeding to record the findings, it is necessary to refer below Rule 35 (aa) of the General Rules of the Tamil Nadu State and Subordinate Service,

" The seniority of a person in a service, class or category or grade shall, where the normal method of recruitment to that service, class, category or grade is by more than one method of recruitment, unless the individual has been reduced to a lower rank as a punishment, be determined with reference to the date on which he is appointed to the services, class, category or grade."

In the light of the above Rule, if the petitioner's case is looked into, it could be seen that, as per Rule 10(a)(v), a person appointed under clause 10(1)(i)(1) of the General Rules for the Tamil Nadu State and Subordinate Services shall not be regarded as a probationer or entitled in such service by reason only of such appointment to any preferential claim for further appointment. Admittedly, the petitioner came to be appointed as Jailor on temporary basis, as per clause 10(a)(i)(1) of the General Rules for



the Tamil Nadu State and Subordinate Services. That being so, when a Jailor can be made permanent only by way of regular selection through the Departmental promotion Committee subject to eligibility and not by permanent retention of posts, as per Rule 35(aa) of the General Rules, the directly recruited Jailors/R-3 to R9 who joined the service way back on 29.07.2010, that is, well before the petitioner was made permanent as Jailor, are seniors to him. One more aspect needs to be adverted to is, as rightly pointed out by the learned Senior Counsel for respondents-3 to 9, the petitioner did not submit any representation to the 2nd respondent expressing his grievance over the proceedings, dated 21.01.2011, wherein, the names of R-3 to R-8 were shown as Senior Jailors as on 01.01.2011 and the petitioner was shown only as Temporary Jailor as on 01.01.2011. The said List having been accepted by the petitioner, rightly, it was argued by the other side that the petitioner has no locus standi to question the consequential proceedings viz., the present impugned seniority lists.

8. At this juncture, it is relevant to refer to a decision of the Apex Court in **K.Madalaimuthu and another vs. State of T.N. & Others (2006-6-SCC-558)**, wherein, it is observed that a person, who is appointed temporarily to discharge the functions in a particular post without recourse to the recruitment rules, cannot be said to be in service till such time his appointment is regularised; or in other words, it is only from the date on which, his services are regularised such appointee can count his seniority in the cadre. The Apex Court, in the said decision, referring to its earlier decision in **State of Tamil Nadu v. E.Paripoornam reported in 1992 Supp (1) SCC 420** dealing with the law relating to inter se seniority, has crystallized as follows:-

"18. In support of such proposition, reliance was placed on the decision of this Court in the case of **V.Sreenivasa Reddy and Ors. vs. Government of Andhra Pradesh and Ors.**, 1995 Supp. (1) SCC 572, wherein this Court was called upon to consider the dispute involving inter se seniority between persons temporarily appointed as Assistant Executive Engineers de hors the rules, to fill emergent vacancies as against direct recruits. It was held that since the appointment of the concerned appellants were under Rule 10 (a) (i) (1), they were not made part on the basis of selection by the Public Service Commission and, therefore, their appointments were made otherwise than in accordance with the Special Rules. They cannot, therefore, be members of the service till they were appointed to the service in accordance with the Special Rules. It was also held that a direct recruit takes his seniority from the date on which he starts discharging the duty of the post borne on the cadre while a temporary appointee appointed de hors the rules or on ad hoc basis or to a fortuitous vacancy gets seniority from the date



of regular appointment. Considering further the effect of Rule 4, 23 (a) and 33(a) of the Rules and Rule 5 of the sub-rules, this Court went to hold that a Public Service Commission candidate gets his seniority from the date on which he starts discharging his duties on the post borne on the cadre and his seniority shall be determined with effect from that date while in respect of temporary appointees under Rule 10 (a) (i) (1) who are subsequently appointed in accordance with the Rules, the temporary service rendered prior to their appointment would not be counted towards their seniority.

19. Reliance was also placed to another decision of this Court in the case of **State of Tamil Nadu and Ors. vs. E. Paripoornam and Ors.**, 1992 Supp (1) SC 420, wherein also the provisions of Rule 10 (a) (i) (1) of the Tamil Nadu State and Subordinate Services Rules were under consideration in respect of Junior Professors who were later appointed on a regular basis on the basis of an approved list prepared by the Public Service Commission. Even though the order or regularization of the services of such temporary appointees were intended to be regularized with effect from the dates of their original appointments on a temporary basis, this Court held that they would not be entitled to count their temporary service for the purpose of seniority and that the services rendered by the appointees under Rule 10 (a) (i) (1) could not be considered for the purpose of seniority as such appointment was a stop-gap arrangement, emergency or fortuitous arrangement.

20. A later decision of this Court in the case of **Sanjay K. Sinha-II and Ors. vs. State of Bihar and Ors.**, (2004) 10 SCC 734 was referred to by Mr. Rao regarding promotions against non-existing posts and its effect on inter se seniority with direct recruits. This Court held that appointments made contrary to rules were merely fortuitous and did not confer any benefit of seniority on appointees over and above the regular/substantive appointees to the service.

24. ...Apart from the above, the law is well settled that initial appointment to a post without recourse to the rules of recruitment is not an appointment to a service as contemplated under Rule 2 (1) of the General Rules, notwithstanding the fact that such appointee is called upon to perform duties of a post borne on the cadre of such service. In fact, Rule 39(c) of the General Rules



indicates that a person temporarily promoted in terms of Rule 39(a) is required to be replaced as soon as possible by a member of the service who is entitled to the promotion under the Rules. It stands to reason that a person who is appointed temporarily to discharge the functions in a particular post without recourse to the recruitment rules, cannot be said to be in service till such time as his appointment is regularized. It, therefore, follows that it is only from the date on which his services are regularized that such appointee can count his seniority in the cadre."

If the said ratio is applied to the case of the petitioner, the argument of the petitioner that the appointment date of respondents-3 to 9 shall not be taken into account for the purpose of reckoning seniority has to be watered down.

9. Coming to the case on hand, the petitioner's temporary appointment under Rule 10(a)(i)(1) was on 07.12.2007, therefore, on his permanent appointment in the post of Jailor on 07.01.2011, he is not entitled to count his service from 07.12.2007. Inasmuch as the Apex Court also considered a similar argument like the one advanced on behalf of the petitioner to the effect that "*if the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules, the period of officiating service should be counted*", and straight away rejected the said argument, the case of the petitioner has to be negatived. When the law is well settled that the initial appointment to a post without recourse to the rules of recruitment is not an appointment to a service, as contemplated under Rule 2(1) of the General Rules, it goes without saying that a person who is appointed temporarily to discharge the functions in a particular post without recourse to the recruitment rules cannot be said to be in service till such time his appointment is regularised. It follows that it is only from the date on which his services are regularised, that such appointee can count his seniority in the cadre.

10. For the foregoing reasons, both the writ petitions are dismissed, however, there will be no order as to costs. Connected Miscellaneous Petitions stand closed.

Sd/-

Assistant Registrar (Writs)

/TRUE COPY/

Sub Assistant Registrar



To

1. The Secretary, Department of Home (Prison 1),
St. George Fort, Chennai.

WEB COPY

2. The Additional Director General of Police Cum
Inspector General of Prison, Egmore, Chennai.

+1cc to MR.S.CHELLAPANIAN,ADVOCATE, SR NO: 49877
+1cc to M/S.T.CIBI CHAKRABORTHY, ADVOCATE SR NO:52108
+1cc to M/S.THE SPECIAL GOVERNMENT PLEADER, SR NO: 50199

JA-GSV-PM-21.09.2016/9P-6C

Common Order in
W.P.MD.Nos.13910 & 11875/2014
02.09.2016