

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Orders reserved on 02.12.2016)

DATED : 06.01.2017

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.22893 of 2014
and
M.P.Nos.1 & 2 of 2014

P.Susaimanickam Petitioner

Vs.

- 1.The Principal Secretary to the Government,
Home Department,
Fort St. George,
Chennai-600 009.
 - 2.The Addl Director General of Police/IG of Prisons,
CMDA Tower-II, Egmore, Chennai-600 008.
 - 3.The Secretary,
Tamil Nadu Public Service Commission,
Chennai-600 003.
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for all the records pertaining to the impugned G.O.Ms.No.543, Home (Prison-I) Department, dated 16.08.2014 and impugned G.O.Ms.No.544, Home (Prison-I) Department, dated 16.08.2014, both issued by the 1st respondent herein and the consequential impugned order No.33095/CS2/2010 dated 19.08.2014 issued by the 2nd respondent herein and to quash the same and consequently to direct the respondents 1 & 2 herein to forthwith promote the petitioner to the post of Superintendent of Prisons with all the attendant benefits.

For Petitioner	: Mr.J.Thilagaraj
For respondents	: Mr.K.Venkataramani, AAG-VII, assisted by Mr.K.Dhananjayan, Spl GP. (For R1 & R2) Mr.M.Loganathan (For R3)

ORDER

This writ petition has been filed by the petitioner challenging the impugned three orders viz., (1) G.O.Ms.No.543, Home (Prison-I) Department, dated 16.08.2014, issued by the 1st respondent, whereby the petitioner was reverted back from the post of Jailor to the post of Deputy Jailor; (2) G.O.Ms.No.544, Home (Prison-I) Department, dated 16.08.2014, issued by the 1st respondent, in and by which the petitioner's request for promoting him to the post of Superintendent of Prisons was rejected; (3) the consequential order passed by the 2nd respondent vide his proceedings No.33095/CS2/2010 dated 19.08.2014, whereby the petitioner was reverted back as Deputy Jailor and posted at District Jail and Borstal School Pudukkottai in the existing vacancy.

2.The brief facts, which are necessary to dispose of the writ petition, as follows—

2-1.The petitioner joined the services of the Government in the year 1985 as Assistant Jailor. He was selected to the said post through the Tamil Nadu State Public Service Commission. Thereafter, he was promoted to the post of Deputy Jailor in the year 1996 and his service in the post of Deputy Jailor was regularised with effect from 15.07.1996. The petitioner was entitled to be promoted to the post of Jailor by way of inclusion of his name in the promotion panel for the year 1999-2000 and the crucial date for preparing the panel was 15.02.1999. On the crucial date, there was no currency of any punishment pending against the petitioner. But, the said panel for the period 1999-2000 was prepared very belatedly only in the year 2007. The long delay was not at all explained by the respondents, but it was simply stated by the respondents that the delay was due to administrative reasons.

2-2.According to the petitioner, though there was no pendency of any charge memo/disciplinary proceedings/punishment against the petitioner on the crucial date i.e, on 15.02.1999, the petitioner's name was not included in the promotion panel on the untenable ground that he suffered a punishment of 'censure' after the crucial date and he was under 'check period', as such he was not fit for inclusion in the promotion panel. Thus, the petitioner was denied his rightful promotion to the post of Jailor, for which he was entitled in the year 1999 itself. For 15 years he was in the same post of Deputy Jailor and he was subjected to work as a subordinate to his juniors.

2-3.Hence, the petitioner had earlier filed a writ petition in W.P.No.18458 of 2010 before this Court seeking to direct the respondents to give promotion to him to the post of Jailor and Additional Superintendent of Prisons, with all consequential benefits, by including his name in the panel for Jailor for the year 1999-2000. On 26.08.2011, this Court

allowed the said writ petition, with a direction to the Director General of Prison, Chennai to include the name of the petitioner in the promotion panel for the year 1999-2000 and to accord him promotion to the post of Jailor. Though a direction was given to the respondents to promote the petitioner to the post of Jailor by including his name in the promotion panel for the year 1999-2000, the said order of this Court was not complied with by the respondents; hence, the petitioner had filed a contempt petition in Cont.P.No.1840 of 2011.

2-4. In the interregnum period, the respondents had filed a writ appeal in W.A.No.453 of 2012 against the order dated 26.08.2011 passed by the learned Single Judge of this Court in W.P.No.18458 of 2010; however, the said writ appeal was dismissed by the First Bench of this Court by judgment dated 20.03.2012. Thereafter, the Government issued an order in G.O. (Ms).No.321, Home (Prison-I) Dept, dated 24.04.2012, by which the petitioner's name was included in the panel for the post of Jailor for the year 1999-2000. When the Contempt Petition in Cont.P.No.1840 of 2011 filed by the petitioner came up for consideration on 27.04.2012, the above said GO viz., G.O.(Ms). No.321, Home (Prison-I) Dept, dated 24.04.2012, was produced before this Court and recording the same, this Court closed the said Contempt Petition. Subsequently, on 21.06.2012, the Government issued orders, with regard to posting the petitioner as Jailor at District Jail, Ramanathapuram. Thereafter, by virtue of the proceedings No.33095/CS2/2010-1 dated 22.06.2012 issued by the ADGP-cum-IG of Prisons, the petitioner joined duty as Jailor at District Jail, Ramanathapuram on 23.06.2012. Then, he was posted as Jailor, Warder Training Centre, Central Prison Campus, Vellore. The petitioner passed the necessary tests also and he was accorded the salary of the Jailor.

2-5. It is the case of the petitioner that based upon the inclusion of his name in the panel for the post of Jailor for the year 1999-2000, he is entitled to be promoted to the post of Superintendent of Prisons, but he was not give promotion, whereas his juniors were already working in the post of Superintendent of Prisons. Hence, the petitioner made a representation dated 16.10.2012 to the 2nd respondent herein, ADGP/IG of Prisons, fervently seeking orders for promotion to the post of Superintendent of Prisons; but, the said representation was not considered. While so, the Government issued the panel dated 26.06.2013 for the post of Additional Superintendent of Prisons for the year 2013-2014 and all the persons in the said list were juniors to the petitioner and the petitioner's name was not included in the said panel. Hence, on 10.09.2013, the petitioner sent a detailed representation through proper channel to the respondents seeking to issue necessary orders for promoting the petitioner to the post of Superintendent of Prisons, based on the inclusion of his name in

the panel for promotion to the post of Jailor for the year 1999-2000. Since his representation was not considered by the respondents, again the petitioner had filed a writ petition in W.P.No.27906 of 2013 before this Court seeking to direct the respondents to promote him to the post of Superintendent of Prisons. This Court by order dated 09.10.2013 disposed of the said writ petition, directing the respondents to consider the case of the petitioner for promotion to the post of Superintendent of Prisons in the light of the G.O.Ms.No.321, dated 24.04.2012 and also taking into account the fact that his juniors have already been promoted to the post of Superintendent of Prisons. Against the said order dated 24.04.2012, no appeal was filed by the respondents. However, the said order dated 24.04.2012 passed by this Court was not complied with by the respondents; hence, the petitioner again filed a contempt petition in Cont.P.No.1066 of 2014. When the said contempt petition came up on 03.04.2014, this Court granted time till 25.04.2014 to the respondents to comply with the order; however, on 25.04.2014 the respondents did not appear, but a counter affidavit was filed on their side. Subsequently also, the respondents were seeking extension of time for complying with the order, stating that the Tamil Nadu Public Service Commission has not responded to the proposal sent in that regard. In view of the reasons stated by the respondents, on 02.07.2014 this Court suo motu impleaded the TNPSC as the 3rd respondent in the said contempt petition. When the contempt petition came up on 01.08.2014, the Government Pleader represented that TNPSC had sent its proposal and thus, sought time to comply with the order; on that basis, the contempt petition was adjourned to 28.08.2014.

2-6.While so, when the petitioner was optimistically hoping to receive positive orders, on 19.08.2014 the petitioner received the impugned order issued by the 2nd respondent in No.33095/CS2/2010, reverting the petitioner to the post of Deputy Jailor from the post of Jailor with immediate effect. Subsequently, the petitioner came to know that the 1st respondent issued an order in G.O.Ms.No.543, Home (Prison-I) Department, dated 16.08.2014, in and by which the petitioner was ordered to be reverted back from the post of Jailor to the post of Deputy Jailor and also the order in G.O.Ms.No.544, Home (Prison-I) Department, dated 16.08.2014, issued by the 1st respondent, in and by which the petitioner's request for promoting him to the post of Superintendent of Prisons was rejected.

2-7.It is the contention of the petitioner that by the impugned orders, the respondents have not only denied the promotion of the petitioner to the post of Superintendent of Prisons, but also snatched away the petitioner's earlier

promotion to the post of Jailor and pushed him down to the post of Deputy Jailor. Thus, by a single stroke, the respondents have nullified the orders passed by this Court in W.P.No.18458 of 2010, Cont.P.No.1840 of 2011 and W.P.No.27906 of 2013. Thus, it is contended by the petitioner that the impugned orders passed by the respondents are in contumacious and contemptuous nature. Hence, challenging the impugned orders, the petitioner has come forward with the present writ petition.

3. When the matter was taken up for consideration, the learned counsel appearing for the petitioner made his submissions by adverting to the averments made in the affidavit. It is submitted by the learned counsel for the petitioner that the petitioner had joined the service as Assistant Jailor in the year 1985 and subsequently, he was promoted to the post of Deputy Jailor with effect from 15.07.1996. Thereafter, the petitioner was entitled to be promoted to the post of Jailor, by including his name in the promotion panel for the year 1999-2000, for which the crucial date was 15.02.1999; however, the said promotion panel was prepared only after a lapse of 7 years i.e., only in the year 2007. But, the name of the petitioner was not included in the said panel stating that he suffered a punishment of 'censure' after the crucial date and he was under check period, as such he was not fit for promotion. Hence, the petitioner had earlier filed a writ petition in W.P.No.18457 of 2010 and this Court by order dated 26.08.2011 directed the respondents to promote the petitioner to the post of Jailor. As the order dated 26.08.2011 in W.P.No.18457 of 2010 passed by this Court was not complied with, the petitioner had filed a contempt petition in Cont.P.No.1840 of 2011. In the meantime, against the said order dated 26.08.2011, a writ appeal was filed by the Government, however, it was dismissed on 20.03.2012. After the dismissal of the writ appeal, the Government issued an order in G.O.(Ms).No.321, Home (Prison-I) Dept, dated 24.04.2012, promoting the petitioner to the post of Jailor by including his name in the panel for the year 1999-2000. Thereafter, the petitioner is entitled to be promoted to the post of Superintendent of Prisons, since his juniors were already promoted to the post of Superintendent of Prisons. Hence, the petitioner made a representation to the respondents seeking to promote him to the next post of Superintendent of Prisons. Since the same was not considered, the petitioner had again filed a writ petition in W.P.No.27906 of 2013, seeking to direct the respondents to promote him to the post of Superintendent of Prisons. This Court by order dated 09.10.2013, directed the respondents to consider the case of the petitioner for promotion to the post of Superintendent of Prisons, in the light of the G.O.(Ms).No.321, Home (Prison-I) Dept, dated 24.04.2012. Since the said order dated 09.10.2013 was not complied with by the respondents, the petitioner again

filed a contempt petition in Cont.P.No.1066 of 2014. In such situation only, the impugned orders have been passed by the respondents, not only denying the promotion to the petitioner to the next post of Superintendent of Prisons, but also reverting back to the post of Deputy Jailor from the post of Jailor, which was given pursuant to the orders passed by this Court. Thus, the 1st respondent has assumed as if the appellate authority over the three orders passed by this Court in W.P.No.18458 of 2010, Cont.P.No.1840 of 2011 and W.P.No.27906 of 2013. The act of the respondents would show, how the impugned orders passed by the respondents are contumacious and contemptuous in nature.

4. In this regard, the learned counsel for the petitioner has also invited the attention of this Court to the impugned Government Order in G.O.Ms.No.543 Home (Prison-I) Dept, dated 16.08.2014, and submitted that in the said order itself, it has been stated that earlier, the petitioner was given promotion to the post of Jailor only to avoid the contempt proceedings. Therefore, according to the learned counsel for the petitioner, it is clear that the respondents have accepted that only to wriggle out of the contempt petition, they have given promotion to the petitioner to the post of Jailor. Thereafter, since the contempt petition (Cont.P.No.1840/2011) was closed, the respondents have withdrawn the promotion given to the petitioner; such act of the respondents is ignominious and contumacious to the sanctity, supremacy and inviolability of the Court. Therefore, the impugned orders are liable to be quashed. Thus, the learned counsel appearing for the petitioner sought for quashing the impugned orders and consequentially, to direct the respondents to give promotion to the petitioner to the post of Superintendent of Prisons.

5. Per contra, the learned Additional Advocate General, appearing for the respondents (R1 & R2), by filing a detailed counter, would contend that no doubt, the petitioner came into the zone of consideration for inclusion in the panel of Deputy Jailor fit for promotion to the post of Jailor, by recruitment by transfer, in the year 1999-2000. The crucial date for the said panel is 15.02.1999. The feeder category for appointment to the post of Jailor by recruitment by transfer is Deputy Jailor. But, there was a dispute regarding fixation of interse seniority between the Assistant Jailors who were appointed by direct recruitment and those appointed by promotion. Finally, in compliance to the orders dated 19.06.1996 of the Tamil Nadu Administrative Tribunal, the Additional Director General of Police/Inspector General of Prisons revised the list of approved candidates selected for appointment as Deputy Jailor for the years from 1988-1989 to 1999-2000 vide his Proceedings No.40832/AB2/1996, dated 24.02.2000. In the said proceedings,

the name of the petitioner was included in the approved list of candidates selected for appointment as Deputy Jailor for the year 1996-1997. Subsequently, action was taken by the Government to revise the regular panel of Deputy Jailors fit for appointment as Jailor, by recruitment by transfer, for the year 1993-1994, which was already drawn based on the revised seniority list of Deputy Jailor. Accordingly, the regular panels for the post of Jailor for the years 1993-1994 and 1994-1995 were revised as per the orders issued in G.O.Ms.No.672, Home (Prison-I) Dept, dated 07.08.2003 and G.O.Ms.No.673, Home (Prison-I) Dept, dated 07.08.2003 respectively. Thereafter only, drawal of regular panel for the post of Jailor for the subsequent years ie., for the years from 1995-1996 were taken up for consideration by the Government. In view of the above said reasons only, the regular panel of Deputy Jailor fit for appointment as Jailor, by recruitment by transfer, for the year 1999-2000 was drawn on 12.10.2007 vide G.O.Ms.No.1434, Home (Prison-I) Dept, dated 12.10.2007. The delay in the drawal of panel was due to administrative reasons.

6.The learned Additional Advocate General would further submit that though there was no currency of punishment pending against the petitioner on the crucial date for the panel year 1999-2000 ie., on 15.02.1999, the petitioner was considered as 'Not Fit' by the Departmental Promotion Committee for inclusion in the regular panel of Jailor for the year 1999-2000 approved in G.O.Ms.No.1434, Home (Prison-I) Department, dated 12.10.2007, in view of the following punishment imposed on the petitioner, which fell between, after the crucial date for the panel year 1999-2000 ie., 15.02.1999 and before the date of actual promotion_

1. On 13.12.2004, the punishment of Censures was imposed on the petitioner vide Proc.No.7870/CA/2004, dated 13.12.2004 of D.I.G of Prisons, Coimbatore Range for using unparliamentary words towards subordinate staff in the tower block.

2. On 15.04.2005, the punishment of postponement of increment for six months without cumulative effect was imposed on the petitioner viz., Proc.No.1686/SJ3/2005 dated 15.04.2005 of the Superintendent of Prisons (i/c) and D.I.G. of Prisons, Coimbatore for certain lapses in Sub-Jail, Pollachi (Date of lapse 19.01.2005).

3. On 25.07.2007, the punishment of reduction of his pay by one stage for a period of one year without cumulative effect was imposed on the petitioner, as per Proc.No.13972/G1/2006, dated 25.07.2007 in connection with the escape of 2 remand prisoners from Sub-Jail, Pollachi on 24.08.2006. (It was subsequently modified as "Censure" vide

Proc.No.3547/CA/2007, dated 27.03.2008 of the D.I.G. of Prisons, Chennai Range, Chennai).

In view of the above punishments only, the petitioner's name was not included in the panel for the year 1999-2000. Since his name was not included in the said panel, the petitioner had filed a writ petition in W.P.No.18458 of 2010 before this Court seeking a direction to the respondents to promote him to the post of Jailor and this Court has also by order dated 26.08.2011 directed the respondents to give promotion to the petitioner as Jailor. The appeal filed by the Government in W.A.No.453 of 2012 was dismissed by the First Bench of this Court on 20.03.2012. In the meantime, the petitioner had filed a contempt petition in Cont.P.No.1840 of 2011 before this Court alleging non-compliance of the order dated 26.08.2011 in W.P.No.18458 of 2010 passed by this Court. Hence, the Government issued the order in G.O.(Ms).No.321, Home (Prison-I), Dept, dated 24.04.2012, accepting the proposal of the Additional Director General of Police/Inspector General of Prisons for inclusion of the name of the petitioner in the regular panel for Jailor for the year 1999-2000. The said GO was issued subject to two conditions ie., subject to the outcome of the SLP to be filed before the Hon'ble Supreme Court against the order in W.A.No.453 of 2012, dated 20.03.2012; and subject to the concurrence of the TNPSC for such inclusion of the name of the petitioner in the panel for the year 1999-2000. Only on the above said two conditions, the petitioner was promoted to the post of Jailor. In fact, when the Contempt Petition No.1840 of 2011 came up before this Court on 27.04.2012, the respondents produced the said G.O.Ms.No.321, Home (Prison-I) Dept, dated 24.04.2012, promoting the petitioner to the post of Jailor, which contained the said two conditions; recording the same, the Contempt Petition was closed on 27.04.2012. Similarly, even in another contempt petition in Cont.P.No.1066 of 2014, which was filed by the petitioner alleging non-compliance of the order dated 09.10.2013 in W.P.No.27906 of 2013 passed by this Court to consider the case of the petitioner for promotion to the post of Superintendent of Prisons, on 24.04.2014 the Government has filed an application seeking extension of three months time to pass final orders on the request of the petitioner and in the said affidavit, the Government has specifically stated that the petitioner's promotion as Jailor is subject to the above said two conditions. Therefore, according to the learned Additional Advocate General, it is incorrect to state that the respondents have committed an act of contempt in respect of the orders passed by this Court.

7.The learned Additional Advocate General would further submit that in fact, on 27.05.2014, the Government issued an order stating that the inclusion of the name of the petitioner

in the panel of Jailors for the year 1999-2000 is only provisional and yet to be confirmed. Further, the question of inclusion of the petitioner's name in the panel of Additional Superintendent of Prisons and Superintendent of Prisons on par with his Junior will be taken up for consideration after passing final orders with regard to his promotion as Jailor. Further, the Government issued the impugned order G.O.Ms.No.543, dated 16.08.2014, cancelling the name of the petitioner from the panel of Deputy Jailors fit for appointment as Jailors, by recruitment-by-transfer, for the year 1999-2000, relying upon the statutory Rules framed by the Government in respect of promotion. In the said G.O.Ms.No.543, dated 16.08.2014, it has been clearly stated that the petitioner is not eligible for inclusion in the said panel as he is not qualified for promotion to the post of Jailor in view of the two punishments earned during the period between after the crucial date but before actual promotion date. Further, the TNPSC has also not given concurrence for the inclusion of the petitioner's name in the panel for the year 1999-2000. Thus, the petitioner was reverted back to the post of Deputy Jailor. Consequently, on the same day, the Government has also issued another order in G.O.Ms.No.544, dated 16.08.2014, rejecting his request for promotion to the post of Superintendent of Prisons.

8.It is also contented by the learned Additional Advocate General, by inviting the attention of this Court to G.O.22, dated 24.02.2014, that new Rules have been framed by the Government, whereby even the punishments inflicted after the crucial date but before the actual date of promotion would disentitle a person for promotion and these Rules were brought in with retrospective effect from 18.10.1993. Hence, on this ground also the petitioner is not entitled for promotion. Thus, it is contended by the learned Additional Advocate General that the reasons stated in the impugned orders are sustainable, and sought for dismissal of the writ petition.

9.By way of reply, the learned counsel for the petitioner would contend that though in G.O.Ms.No.321, Home (Prison-I) Dept, dated 24.04.2012, granting promotion to the petitioner to the post of Jailor, two conditions have been stipulated viz., subject to the outcome of the SLP to be filed by the Government and also subject to the concurrence of the TNPSC, so far, the respondents/Government have not filed any SLP. Therefore, the order passed by this Court in W.P.No.18458 of 2010, dated 26.08.2011 and the order in W.A.No.453 of 2012, dated 20.03.2012, have become final. Hence, the conditions imposed in G.O.Ms.No.321, dated 24.04.2012 have no legal force. Moreover, the respondents have not produced any document to show that only for want of concurrence letter from the TNPSC, the petitioner was ordered to be reverted back from the post of Jailor to

Deputy Jailor. In this regard, the learned counsel for the petitioner submitted that once the order passed by this Court in a writ petition reached the finality, even a subsequent enactment by the Parliament could not have the effect of nullifying or invalidating such an order. In support of his contentions, the learned counsel for the petitioner has also relied upon the following decisions_

- (i) (1978) 2 SCC 50 [Madan Mohan Pathak Vs. Union of India]
- (ii) (1995) 6 SCC 16 [S.R.Bhagwat Vs. State of Mysore]
- (iii) (1993) 2 SCC 363 [State of Haryana Vs. Karnal Co-op Farmers' Society Ltd]

10. I have heard the submissions made by the learned counsel for the petitioner as well as the learned Additional Advocate General appearing for the respondents (R1 & R2) and also the learned counsel appearing for the 3rd respondent and perused the materials available on record.

11. Though very many contentions have been raised on either side, the only question that has to be decided in this writ petition is that after having promoted the petitioner to the post of Jailor by passing G.O.Ms.No.321, dated 24.04.2012, pursuant to the direction given by this Court, is it correct and proper on the part of the respondents to revert back the petitioner to the post of Deputy Jailor, instead of giving further promotion to the post of Superintendent of Prisons by considering his representation?

12. It is main contention of the learned counsel for the petitioner that pursuant to the direction given by this Court in W.P.No.18458 of 2010, dated 26.08.2011, promotion was given to the petitioner to the post of Jailor, subject to two conditions viz., (i) subject to the outcome of the SLP to be filed by the Government against the order passed by this Court in W.A.No.453 of 2012, dated 20.03.2012; (ii) subject to the concurrence of the TNPSC for such inclusion of the name of the petitioner in the panel for the year 1999-2000. According to the learned counsel for the petitioner, the said two conditions had been stipulated by the respondents only to nullify the orders of this Court and to wriggle out of the contempt petition filed by the petitioner.

13. But, according to the learned Additional Advocate General, the said two conditions were brought to the notice of this Court in Cont.P.No.1840 of 2011 and recording the same, the said contempt petition was closed by this Court, by order dated 27.04.2012. The order dated 27.04.2012 passed by this Court in the Contempt petition, reads as follows_

"2. The learned Special Government Pleader appearing for the respondent would submit that

the order of this Court dated 26.08.2011 was complied by the respondent/Government by passing an order dated 24.04.2012 in G.O.Ms.No.321, Home (Prison-I) Dept, by including the petitioner's name for promotion to the post of Jailor by recruitment by transfer for the year 1999-2000 above the name of Thiru.V.Karuppannan. Learned Special Government Pleader also produced a copy of the aid Government Order dated 24.04.2012 before this Court today.

3.Heard the learned counsel appearing for the petitioner on the submissions made by the learned Special Government Pleader,

4.It is pertinent to note that the Government passed an order dated 24.04.2012 in G.O.Ms.No.321, Home (Prison-I) Department, wherein it is stated in paragraph 3 as hereunder_

"3.The Government after careful examination of the case, have decided to accept the proposal of the Additional Director General of Police/Inspector General of Prisons and to include the name of Thiru.P.Susaimanickam, Deputy Jailor in the regular panel of Deputy Jailor fit for appointment as Jailor by recruitment by transfer for the year 1999-2000 above the name of Thiru.V.Karuppannan approved in the G.O. first read above, subject to the outcome of the Special Leave Petition to be filed by the Government against the orders of the High Court of Madras third read above and the concurrence of the Tamil Nadu Public service Commission for such inclusion and order accordingly."

Therefore, it is clear that the orders passed by this Court dated 26.08.2011 have been complied with by the respondent. Recording the same, the contempt petition is closed. Consequently, connected sub-application is also closed."

It is the contention of the learned Additional Advocate General that since the petitioner was suffering punishments in between the period, after the crucial date and before the date of actual promotion, the TNPSC has not given concurrence to the inclusion of the petitioner's name in the promotion panel of the year 1999-2000, for promotion to the post of Jailor; that is why, the earlier promotion given by the petitioner was cancelled and he was reverted back to the post of Deputy Jailor.

14. But, in my considered opinion, such a contention is not available to the respondents, since while passing the order in W.P.No.18458/2010, dated 26.08.2011, the learned Single Judge had taken note of the punishments awarded on the petitioner and thereafter, rejecting the stand of the respondents that the petitioner was not fit for promotion, the learned Single Judge gave a direction to the respondents to promote the petitioner to the post of Jailor. On appeal, the said order dated 26.08.2011 was confirmed by the First Bench in W.A.No.453 of 2012, vide judgment dated 20.03.2012, against which no SLP was filed by the Government before the Hon'ble Supreme Court. Thus, the order passed by this Court to give promotion to the petitioner as Jailor, has reached the finality. When the order passed by this Court reached the finality, now the respondents cannot say that the TNPSC has not given concurrence, as such the petitioner was reverted back to the post of Deputy Jailor; in fact, the respondents have also not chosen to produce any order passed by the TNPSC, with regard to denial of concurrence for the promotion of the petitioner.

15. It is a well settled legal principle that when an order of the Court has reached the finality, even a subsequent enactment by the Parliament could not have the effect of nullifying or invalidating such an order of the Court. In this regard, a reference could be placed in the decision, relied upon by the learned counsel for the petitioner, reported in (1995) 6 SCC 16 [S.R.Bhagwat Vs. State of Mysore] wherein the Hon'ble Supreme Court has held as follows—

"20. We, therefore, strike down Section 11 Sub-Section (2) as unconstitutional, illegal and void. So far as the underlined impugned portions of Section 4 Sub-Sections (2), (3) and (8) are concerned, they clearly conflict with the binding direction issued by the Division Bench of the High Court against the respondent-State and in favour of the Petitioners. Once respondent-State had suffered the mandamus to give consequential financial benefits to the allottees like the petitioners on the basis of the deemed promotions such binding direction about payment of consequential monetary benefits cannot be nullified by the impugned provisions of Section 4. "

In (1993) 2 SCC 363 [State of Haryana Vs. Karnal Co-op Farmers' Society Ltd], it has been held by the Hon'ble Supreme Court as follows—

"A legislature while has the legislative power to render ineffective the

earlier judicial decisions, by removing or altering or neutralising the legal basis in the unamended law on which such decisions were founded, even retrospectively, it does not have the power to render ineffective the earlier judicial decisions by making a law which simply declares the earlier judicial decisions as invalid or not binding for such power if exercised would not be a legislative power but a judicial power which cannot be encroached upon by a legislature under our Constitution. "

In 1986 (Supp) SCC 584 [T.R.Kapur Vs. State of Haryana], the Hon'ble Supreme Court has observed as follows—

"This Rule is however subject to a well recognised principle that the benefits acquired under the existing Rules cannot be taken away by an amendment with retrospective effect, that is to say, there is no power to make such a rule under the proviso to Article 309 which affects or impairs vested rights. Therefore, unless it is specifically provided in the rules, the employees who are already promoted before the amendment of the rules, cannot be reverted and their promotions cannot be recalled."

Therefore, it clear that when a mandamus was issued by way of judicial pronouncement and it reached the finality, the same cannot be nullified or invalidated subsequently even by an enactment by the Legislature.

16.Though it is the contention of the learned Additional Advocate General that the inclusion of the petitioner's name in the panel is subject to conditions, in my considered opinion, such a contention is not available to the respondents, since in this case the petitioner was already included in the panel with retrospective effect by virtue of the order passed by this Court. Hence, I am of the opinion that the impugned orders passed by the respondents are not sustainable in view of the orders passed by this Court. Accordingly, the impugned orders passed by the respondents are liable to be quashed.

In fine, the writ petition is allowed as prayed for and the impugned orders are quashed. The respondents are directed to forthwith give promotion to the petitioner to the post of Superintendent of Prisons. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssv

To

- 1.The Principal Secretary to the Government,
Home Department,
Fort St. George,
Chennai-600 009.
- 2.The Addl Director General of Police/IG of Prisons,
CMDA Tower-II, Egmore, Chennai-600 008.
- 3.The Secretary,
Tamil Nadu Public Service Commission,
Chennai-600 003.

+1cc to Mr.M. Loganathan, Advocate, S.R.No.1405
+3cc to Mr.J. Thilagaraj, Advocate, S.R.No.1703

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M.P.Nos.1 & 2 of 2014