

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A.No.528 of 2013
and M.P.No.1 of 2013

The Secretary to Government
Home (Prison-I) Department
Fort St.George
Chennai 600 009.

...Appellant/Respondent

Vs

P.Govindarajan

...Respondent/Petitioner

Prayer:- Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order of this Court passed in W.P.No.15958 of 2010 dated 08.11.2011.

W.P.No.15958 of 2010:

Petition filed under Article 226 of the constitution of India to issue a Writ of Certiorarified Mandamus or any other appropriate writ or order or direction in the nature of Writ, Calling for the records of the respondent in connection with the impugned order passed in Lr.No.67282/Pri.I/09-2 dated 23.10.2009 and quash the same and further direct the respondent to grant monetary benefits in the post of Superintendent of Prisons w.e.f.20.10.2003 and in the post of Deputy Inspector General of Prisons w.e.f. 02.05.2008 and forthwith draw and disburse the arrears of salary to the petitioner.

For Appellant : Ms.A.Sri Jayanthi
Special Government Pleader
For Respondent : No appearance

JUDGMENT

(Judgment of the Court was delivered by K.K.SASIDHARAN, J.)

The claim made by the respondent for payment of monetary benefits, taking into account the promotion given to his junior was rejected by the Government on the ground that there was no direction to that effect given by the Writ Court in W.P.No.7257 of 2008, while quashing the punishment imposed by the

disciplinary authority or in the order in W.P.No.8990 of 2008 dated 12 March, 2009 directing consideration of his claim for promotion to the post of Superintendent of Prisons and thereafter, as Deputy Inspector General of Prisons, on par with his junior, who was promoted as Deputy Inspector General of Prisons. Feeling aggrieved by the direction given for payment of the monetary benefits, the appellants have come up with this intra court appeal.

2. Heard the learned Special Government Pleader on behalf of the appellants. None appeared on behalf of the respondent.

3. The respondent entered into the Government service as Assistant Jailor. He was promoted to the post of Deputy Jailor in the year 1989. He was given further promotion as Jailor and thereafter, Additional Superintendent of Prisons on 27 March, 1998. The name of the respondent was not considered for further promotion as Superintendent of Prisons from 1999-2008 on account of the pendency of disciplinary proceedings. Though the respondent was eligible for promotion, his name was not included in the panel for the year 2003-2004.

4. The punishment imposed by the disciplinary authority after conducting the enquiry was challenged by the respondent in W.P.No.7257 of 2008. The learned Single Judge, by following the earlier orders, including the judgment of the Division Bench, quashed the impugned orders dated 29 March 2006 and 11 March, 2008. The Writ Petition was allowed. The learned Single Judge observed that in identical circumstances, this Court has taken a view that the employee is entitled to continuity of service, but not back wages.

5. Since promotion was not given to the respondent, he filed a Writ Petition in W.P.No.8990 of 2008. The said Writ Petition was disposed of by the Writ Court directing the appellants to consider the case of the respondent for promotion. It is a matter of record that the respondent was given promotion initially as Superintendent of Prisons and thereafter, as Deputy Inspector General of Prisons, taking into account the promotion given to his immediate junior. The claim made by the respondent for back wages was rejected on the ground that there was no direction given by the Court either in W.P.No.7257 of 2008 or in W.P.No.8990 of 2008.

6. The order dated 23 October, 2009 declining to grant back wages to the respondent was challenged in W.P.No.15958 of 2010. The learned Single Judge by following the judgment of the Hon'ble Supreme Court in Union of India and others vs. K.V.Jankiraman and others [AIR 1991 SC 2010], allowed the writ petition and issued a mandamus to grant monetary benefits to the respondent. It is the said order which is put in issue at the

instance of the appellants.

7. The respondent initially filed a Writ Petition in W.P.No.7257 of 2008 challenging the punishment imposed by the disciplinary authority. The learned Single Judge quoting the earlier orders passed by the Writ Court as well as the Division Bench, set aside the punishment imposed on the employee without liability to pay back wages. The order is very clear that the prayer for back wages was not granted by the Court. The Writ Petition was allowed with an observation that under similar circumstances, orders were passed to quash the disciplinary proceedings without back wages. Therefore, it is clear that there was no specific direction to grant back wages to the respondent.

8. The respondent subsequently filed a Writ Petition in W.P.No.8990 of 2008. Even in the said writ petition, there was no direction to pay back wages. The respondent was promoted to the post of Superintendent of Prisons and thereafter, Deputy Inspector General of Prisons, pursuant to the orders passed by the Court and more particularly, the order dated 12 March, 2009 in W.P.No.8990 of 2008. It is trite that "no work no pay" is the Rule and work for the period during which the employee has not worked is an exception. The respondent claimed promotion in the earlier writ petitions with continuity of service including back wages. Even though such a claim was made, there was no order directing the appellants to pay back wages to the respondent. Such being the factual position, the learned Single Judge was not correct in directing the appellants to pay back wages to the respondent. We are therefore, of the view that impugned order is liable to be set aside.

9. In the result, the order dated 08 November, 2011 is set aside. The Writ Petition in W.P.No.15958 of 2010 is dismissed.

In the upshot, we allow the intra court appeal. No costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

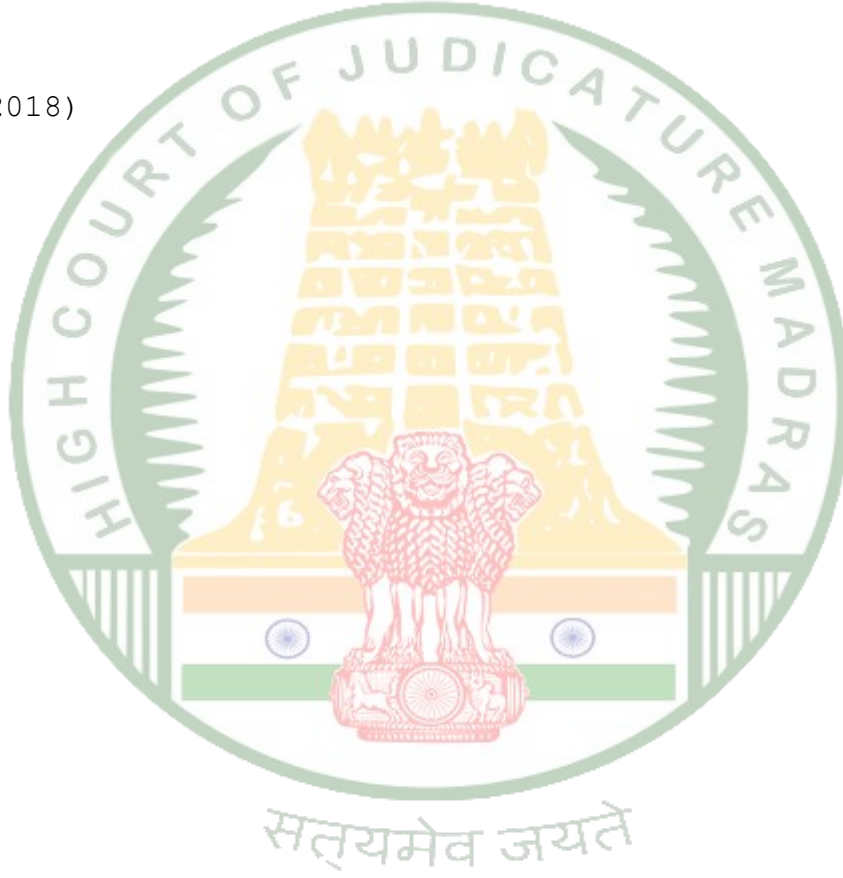
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To

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Home (Prison-I) Department
Fort St.George
Chennai 600 009.

W.A.No.528 of 2013

KK (CO)
SP (16/02/2018)



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