



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.01.2019

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Reivew Application (MD).No.152 of 2018

and

C.M.P. (MD) No.9005 of 2018

in

W.A.(MD) No.899 of 2015

and

WP(MD)11882 of 2012

1.The Additional Director General of Police/
Inspector General of Prisons,
Chennai-8.

2.The Chairman, Promotion Board,
Deputy Inspector General of Prisons,
Chennai Range.

3.The Superintendent of Prisons,
Central Prison, Palayamkottai,
Tirunelveli District.

... Petitioners/Appellants/
Respondents

-vs-

P.Jeyakumar

... Respondent/Petitioner

Prayer: Review Application under Order 47 Rules 1 and 2 read with Section 114 of Civil Procedure Code, to review the judgment dated 04.04.2017, passed by this Court in W.A.(MD) No.899 of 2015.

Prayer in WA(MD). 899/ 2015 :

To prefer the Memorandum of Grounds of Writ Appeal before this Honble Court against the order dated 30/10/2012 made in WP(MD) NO. 11882 of 2012 on the file of this court.

Prayer in WP(MD). 11882/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 1st respondent in his proceedings NO. 23632/ES 3/2012 dated 22.08.2012 and quash the same in respect of the petitioner alone as illegal and consequently directing the 1st respondent to include the name of the petitioner in the state wide



panel in the order of seniority and pass such further or other orders.

For Applicants : Mr.D.Muruganantham,
Special Government Pleader

For Respondent : Mr.B.Saravanan

ORDER

(Order of the Court was made by T.S.Sivagnanam, J.)

This review application has been filed by The Additional Director General of Police/Inspector General of Prisons; The Chairman, Promotion Board; and The Superintendent of Prisons, Central Prison, Palayamkottai, Tirunelveli District, who were the appellants in Writ Appeal (MD) No.899 of 2015, dated 04.04.2017.

2.The applicants seek for review of our judgment dated 04.04.2017 by raising a few contentions. The principal submission being, the Division Bench while dismissing the writ appeal, referred to a decision of another Division Bench of this Court in W.A.No.983 of 2013, dated 14.09.2016, but the said judgment was subsequently withdrawn by the Division Bench and the appeal is now pending, therefore, our judgment dated 04.04.2017 has to be reviewed.

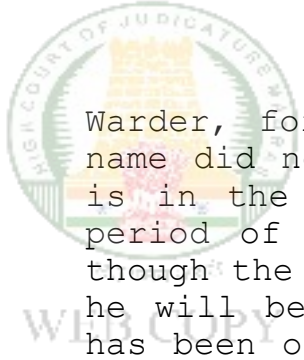
3.To be noted that, the review applicants have filed Special Leave Petition before the Hon'ble Supreme Court against our judgment dated 04.04.2017, which was dismissed by order dated 21.02.2018.

4.The question before us is whether the applicants have made out a ground to review the judgment, have they pointed out any error, which is apparent on the face of our judgment.

5.We have heard Mr.D.Muruganantham, learned Special Government Pleader for the review applicants and Mr.P.Saravanan, learned counsel appearing for the respondent/writ petitioner.

6.The following dates and events will clearly demonstrate that the review applicants have not made out any case for interference with our judgment dated 04.04.2017. The writ petitioner was appointed as Grade II Warder in the Central Prison, Palayamkottai on 20.02.1985; promoted as Grade I Warder on 04.07.2006. While serving as Grade I Warder, a charge memo was issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. This charge memo ended in a punishment order dated 16.12.2009, whereby, the applicants imposed a punishment on the respondent of stoppage of one increment for one year with cumulative effect.

7.The currency of punishment would come to an end on 15.12.2010. On 22.08.2012, a panel for the post of Chief Head



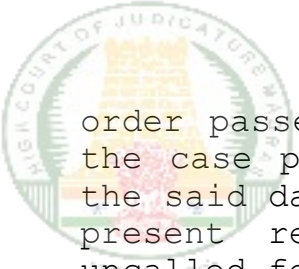
Warder, for the year 2012-13, was drawn and the writ petitioner's name did not find place citing the reason that the writ petitioner is in the check period. The check period would mean that for a period of five years, the person, who has suffered a punishment, though the currency had expired or he had served the punishment, yet he will be disqualified for being considered for promotion. This has been on account of an administrative instruction issued by the Government in letter dated 07.10.2005. Thus, the review applicants would contend that till December, 2014, the respondent/writ petitioner would not be eligible for being considered for promotion to the post of Chief Head Warder.

8.The respondent herein filed a writ petition in the year 2012 challenging the proceedings dated 22.08.2012, by which, his name was deferred from the promotion panel. The writ petition was allowed by order dated 30.10.2012, by following the decision of the Hon'ble Full Bench of this Court in the case of **The Deputy Inspector General of Police, Thanjavur Range vs. V.Rani, 2011 (3) CTC 129**. It appears that the applicants/respondents had filed the writ appeal only in the year 2015, or even if filed earlier, it was numbered only in the year 2015 as W.A.(MD) No.899 of 2015. We dismissed the said writ appeal by our judgment dated 04.04.2017.

9.The review applicants' case is that the executive instruction issued by the Government dated 07.10.2005 imposing a check period was quashed on the ground of lack of jurisdiction, as it lacked statutory backing. Consequently, the Government has amended the Tamil Nadu State and Subordinate Services Rules, vide G.O.Ms.No.22 dated 24.02.2014, thereby, introducing a new Rule and giving retrospective effect with effect from 18.10.1993. The said amendment was put to challenge and the writ petition was dismissed and the matter was carried on appeal before the Hon'ble Division Bench and the same being W.A.(MD) No.983 of 2015. The said appeal was allowed by judgment dated 14.09.2016. The review applicants' would contend that the said decision dated 14.09.2016 was re-called by the Division Bench and as on date, Rule 4(a) (newly introduced Rule) subsists.

10.As pointed out by us earlier, the question would be whether this would be a ground for review. Our answer to this question is in the negative for more than one reason. Firstly, on the date when W.P.(MD) No.11882 of 2012 was allowed by order dated 30.10.2012, the decision of the Full Bench held the field. Therefore, there was no error in the order. The correctness of this order was tested by us in the Division Bench and we dismissed the writ appeal on 04.04.2017 and on the said date, the decision of the Full Bench held the field, inasmuch as the amended Rule was struck down and was not in existence as on 04.04.2017.

11.Be that as it may, we did not solely rely upon the judgment of the Division Bench in W.A.(MD) No.983 of 2015, which struck down the newly introduced Rule 4(a). We tested the correctness of the



order passed by the Single Bench on the facts and circumstances of the case prevailing as on 30.10.2012 and the legal position as on the said date. Therefore, there is no error in our judgment and the present review application filed by the review applicants is uncalled for and not maintainable.

12.Thus, for the above reasons, this review application is dismissed.

13.The learned counsel appearing for the respondent/writ petitioner submitted that the benefit of the order will be only in financial terms and will not affect the service benefits of his colleagues, who are continuing in service. Further, we are informed that the respondent/writ petitioner is going to attain the age of superannuation in less than three months. Taking into consideration this factor, we direct the review applicants to implement the decision well before the date of retirement of the respondent/writ petitioner. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (ADI)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Additional Director General of Police/
Inspector General of Prisons,
Chennai-8.

2.The Chairman, Promotion Board,
Deputy Inspector General of Prisons,
Chennai Range.

3.The Superintendent of Prisons,
Central Prison, Palayamkottai,
Tirunelveli District.

+1 CC to M/s.B.SARAVANAN, Advocate (SR-43627[F] dated 30/01/2019)

abr

Rev.Applc.(MD) No.152 of 2018
28.01.2019