



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WEB COPY

W.P. (MD) No.7529 of 2014

and

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

T.Tamil Selvan

.. Petitioner

Vs.

The Principal Secretary to Government,
Home (Pri-I) Department,
Government of Tamil Nadu,
Fort St.George, Chennai. 600 009.

.. Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the respondent in G.O. (2D).No.667/Home(Pri-I) Department, dated 04.11.2013 and quash the same and consequently direct the respondent to consider the promotion of the petitioner to the post of the Superintendent of Prisons, on par with his juniors without referring to the impugned proceedings of the respondent.

For petitioner : Mr. Veerakathiravan
Senior Counsel for M/s.C.Jegannathan

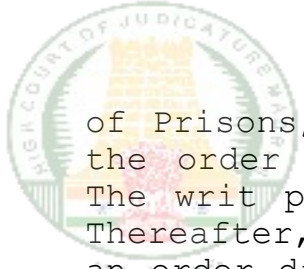
For respondents : Mr.M.Jeyakumar
Additional Government Pleader

O R D E R

Heard Mr.C.Jegannathan, learned Senior Counsel for the petitioner and Mr.M.Jeyakumar, learned Additional Government Pleader appearing for the respondents.

2.By consent of both parties, the main writ petition is taken up for final disposal at the stage of admission itself.

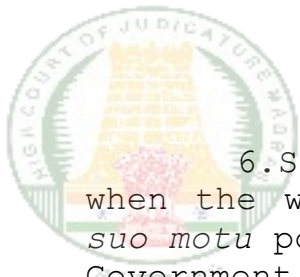
3.The writ petitioner is presently working as a Additional Superintendent of Prisons, Central Prison at Palayamkottai. When he was working as a Jailer, he was issued with a charge memo on 13.06.2005. After a detailed enquiry, the Superintendent of Prisons, Central Prison, Vellore, passed the final order on 07.06.2006, exonerating the writ petitioner from the aforesaid charges. One year and 4 months later, the Deputy Inspector General



of Prisons, Chennai initiated *suo motu* action proposing to review the order dated 07.06.2006, passed by the disciplinary authority. The writ petitioner submitted his explanation in response thereto. Thereafter, the Deputy Inspector General of Prisons, Chennai passed an order dated 05.12.2006, imposing the penalty of reduction of pay by one stage for a period of one year. The writ petitioner preferred an appeal before the Additional Director General of Prisons, Chennai, who by order dated 09.08.2007, set aside the order of the Deputy Inspector General of Prisons, Chennai and directed the disciplinary authority to frame a fresh charge memo and proceed against the writ petitioner. The writ petitioner thus faced the domestic enquiry for the second time, but again came out successful. The disciplinary authority passed an order dated 07.12.2007, exonerating the writ petitioner from the aforesaid charges. On account of the pendency of the disciplinary proceedings the writ petitioner's promotion was stalled. His juniors had stole a march over him. Therefore, he seeks promotion from the date when his immediate junior was granted promotion. The writ petitioner preferred an appeal to the Government. While considering the said appeal, the Government chose to invoke the *suo motu* power conferred under Rule 36(1) of Tamil Nadu Civil Services (Disciplinary and Appeals) Rule. The Government by impugned order dated 04.11.2013, chose to set aside the order 09.08.2007 passed by the Additional Director General of Prisons, Chennai and directed the Competent Authority to proceed with the departmental proceedings initiated against the writ petitioner once again. The Government now held that the second charge memo issued against the writ petitioner should be set aside and he should face disciplinary action on the strength of the first charge memo. It is this order which is impugned in this Writ petition.

4. The learned Additional Government Pleader appearing for the respondents wanted this Court to sustain the impugned order in the light of the stand taken in the counter affidavit.

5. The learned Senior Counsel appearing for the writ petitioner placed reliance on two decisions of this Court in W.A.No.775 of 2014, dated 29.09.2015 and W.A.No.604 and 720 of 2016, dated 16.09.2016. The Hon'ble Division benches of this Court had held that the power of *suo motu* review can be exercised only once. There cannot be a *suo motu* review one after another order. In this case the order passed against the writ petitioner was already reviewed by the Deputy Inspector General of Prisons who was acting as the appellate authority. When the proceedings attained finality thereafter, there has been a second *suo motu* review at the instance of the Government. It is clearly impermissible in law. The impugned order deserves to be set aside for two other reasons. An employee cannot be successively vexed. In this case, the writ petitioner was exonerated on two occasions. On both occasions, the orders were set aside. He was to face disciplinary proceedings on two occasions for the same cause of action. This can only be characterised as an arbitrary exercise of power at the hands of the authority.



6. Secondly, the cause of action dates back in the year 2005, when the writ petitioner was first issued with charge memo. The *suo motu* power was exercised for the second time on 04.11.2013. The Government, while exercising *suo motu* power, chose to set aside the earlier order dated 09.08.2007. In other words the *suo motu* power was exercised after a lapse of seven long years after all the proceedings attained finality. It is true that there is no limitation in fettering the *suo motu* power by the Government. But then this power will have to be exercised within a reasonable period of time. In this case the power has been exercised belatedly after unreasonably a long period of time and that too when the writ petitioner wanted to ventilate his service grievances. Looked at from any angle, this Court can only characterise the impugned order as an unreasonable and arbitrary exercise of power. The order impugned in this writ petition is set aside.

7. It is submitted that many of the writ petitioner's juniors are working as Superintendent of Prisons. Only on account of the subject disciplinary proceedings the writ petitioner remains as an Assistant Superintendent of Prisons. If there is no other impediment for granting promotion to the writ petitioner, the respondent is directed to promote the writ petitioner to the post of Superintendent of Prisons and placed above his immediate junior. Such an order shall be issued within a period of eight weeks from the date of a receipt of a copy of this order.

8. This Writ petition is allowed accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub-Assistant Registrar

To:

The Principal Secretary to Government,
Home (Pri-I) Department,
Government of Tamil Nadu,
Fort St. George, Chennai. 600 009.

+One cc to M/s. Veera Associates, Advocate, SR.No.44181
+One cc to The Special Government Pleader, SR.No.44604

kmi

RL/4C/3P/SV/MMS/SAR1/15/2/2018