



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving Judgment 12.12.2017	Date of Pronouncing Judgment 12.02.2018
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THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P (MD) .No.9910 of 2014

P.Vasu

... Petitioner

Vs.

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

2. The Superintendent of Prison,
Central Prison, Trichy - 20

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order No.21895/EW2/2013-2, dated 18.10.2013 passed by the first respondent and the intimation Mu.Mu.No.21265/Kicioo/2013, dated 18.11.2013 passed by the 2nd respondent and quash both the orders and consequently direct the respondents to give promotion to the petitioner as Grade I warder for the year 2013 - 2014 from November 2013 onwards.

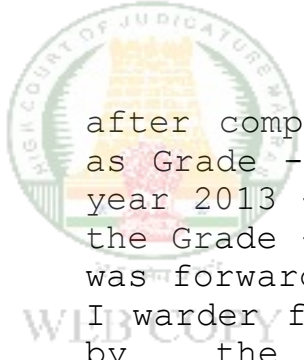
For Petitioner : Mr.R.Murugappan

For Respondents : Mr.S.Kumar
Additional Government Pleader

ORDER

This Writ Petition has been filed to call for the records pertaining to the order No.21895/EW2/2013-2, dated 18.10.2013 passed by the first respondent and the intimation Mu.Mu.No.21265/Kicioo/2013, dated 18.11.2013 passed by the 2nd respondent and quash both the orders and consequently direct the respondents to give promotion to the petitioner as Grade I warder for the year 2013 - 2014 from November 2013 onwards.

2. The brief facts of the case as per the petitioner's
<https://hcservices.ecourts.gov.in/hcservices/> averment is that the petitioner claims that he joined as Grade II warder in the respondent's Prison Department on 15.04.2002 and



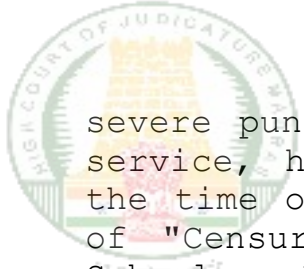
after completing 12 years of service, he is eligible to promoted as Grade - I warder in the Tamil Nadu Prison Department, for the year 2013 - 2014, and further he claims that his name was found in the Grade - II warder 1999 - 2000 seniority list and also his name was forwarded to the first respondent for promoting him as Grade - I warder for the year 2013 - 2014. However, his name was removed by the first respondent's proceedings vide order No.21895/EW2/2013-2, dated 18.10.2013 and the same was intimated to him by the second respondent through his order Mu.Mu.No.21265/Kicioo/2013, dated 18.11.2013. Challenging the same, the present Writ petition has been filed by the petitioner.

3. The petitioner has also contended that while he was working as Grade II warder at Borstal School, Pudukkottai, there was a proceeding against him under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, alleging that, on 26.02.2013 three released preventive detention prisoners came to his house and met him, and a punishment of "Censure" was given to him on 19.10.2012 in No.5857/Po.1/2012 by Superintendent of Borstal School and District Prison, Pudukkottai.

4. The petitioner would submits that "Censure" is not a punishment and on the basis, promotion cannot be denied to anyone, and hence, he claims that his name to be recommended for promoting him as Grade - I warder as he is entitled for the same after completing 12 years of service. He would also submit that the punishment of "Censure" passed against him by the first respondent dated 19.10.2012 in Order No.5857/PO.1/2012, in which, there was no order about the stoppage of his promotion from Grade - II warder to Grade - I warder for the year 2013 - 2014.

5. On contrary to the submissions made by the petitioner, the respondents filed a counter stating that the petitioner was dealt with charges under Rule 17(a) of Tamil Nadu Civil Services (Discipline and Appeal) Rules by the Superintendent of Prisons, District Jail and Borstal School, Pudukkottai, for the delinquencies committed by him of illegal contact with released preventive detenu prisoners and allowed them to stay in his (Jail) Quarters and when on direct inquiry by the Jailor, revealed that he used harsh words against the Jailor and non-disclosure of fact that who were coming to his house and finally, the Jailor himself found those persons who were in his house which is in violation of Rule Nos.126,127,147 and 149 of the Tamil Nadu Prison Rules read with Section 54 of Prisons Act 1894 (Central Act 9 of 1894) and Rule 20(1) of the Tamil Nadu Government Servant Conduct Rules.

6. It is further stated in the counter affidavit filed by the respondents that the petitioner ought to have been awarded a



severe punishment, however, taking into consideration of his long service, he has been awarded only a punishment of "Censure". At the time of recommendation for further promotion, the punishment of "Censure" awarded by the Superintendent of Prisons, Borstal School, Pudukkottai, vide his Pro.No.5857/G1/2013, dated 19.10.2012 was pending during the period of the said panel year 2013-2014. The respondents further contended that the crucial date for the preparation of panel to the post of Grade - I warder shall be 15th July of every year. The reason that the petitioner name not being considered to the said post for the year 2013-2014 is, the punishment of "Censure" awarded to him was pending during the said year i.e., from 15.07.2013 to 14.07.2014.

7. The learned counsel for the petitioner urge before this Court by placing various Judgments, and the Judgment reported in 2011 (3) CTC page 129 and another Judgment rendered by the bench of this Court in the batch of appeal in W.A.No.938 of 2015 whether the currency of punishment has to be treated as a bar for promotion.

8. Heard learned counsel for the petitioner and learned counsel for the respondents.

9. On perusal of the documents furnished by the petitioner and on perusing the type set of papers, it is categorically made clear that, the proceedings dated 19.10.2012 signed by the Superintendent of Prisons, Borstal School, Pudukkottai, on 20.11.2012 was served on the petitioner on 26.11.2012. As far as the recommendation of the Grade I warder, it is seen that the crucial date for preparation of the panel to the said post is 15th July of every year. As far as the order of "Censure" is concerned, which is ordered on 19.10.2012, the Superintendent signed it on 21.11.2012 which the petitioner has not challenged, the crucial date, falls before completion of one year from the date of proceedings i.e., on 19.10.2012. As per the law, the punishment of "Censure" which is imposed on the Government servant within a period of one year prior to the crucial date, their name shall not be considered for inclusion in the approved list.

10. The punishment awarded by the Superintendent to the petitioner will be valid for one year i.e., from 19.10.2012 and expires only on 18.10.2013. The petitioner has completed 12 years of service as Grade II warder and he is entitled to be promoted as Grade 1 warder on 15th July every year, but on the said date, he has not completed one year from the date on which the "Censure" was awarded on him. Hence, the respondents rightly has not recommended his name in the preparation of panel to the post of Grade I warder for the year 2013 - 2014, and the petitioner



becomes eligible for promotion only during the year 2014 - 2015, and not in the year 2013 - 2014 and not otherwise.

11. The petitioner counsel relied on the Judgment reported in 2011 (3) CTC 129 and, on going through the Judgment relied on by the learned counsel for the petitioner, wherein the full bench of this Court has dealt with certain issues pertaining to promotion, wherein, the promotion has been denied to any person beyond the period of one year from the date of "Censure". Hence, the above case referred by the petitioner cannot be applied for his case.

12. The Judgment relied on by the petitioner, even that case decided by the Hon'ble bench, was dealing with the denial of promotion even after the expiry of the currency of punishment on the ground of check period or treating Censure as an embargo for granting promotion.

13. In view of the above, it is clear that there is an order of "Censure" as against the petitioner from 19.10.2012 for the delinquency committed by him of illegal contact with released preventive detenu prisoners and allowed them to stay in his (Jail) Quarters, which is a grave error on the part of the said officer. Such Act is not warranted from the prison warden for permitting the released preventive prisoner detenu to stay with him that too in the Jail quarters. It was also found from the enquiry report signed by the Superintendent of Borstal School, Pudukkottai, that the petitioner did not agree and he did not accept the said charge even though he committed mistakes and used harsh words against the Jailer. But while considering the mistake committed for the very first time, the Superintendent of Borstal School, Pudukkottai, has given him only a punishment of "Censure" as a chance to correct himself.

14. In the above circumstances, it would be pertained to the case reiterated in (2011) 14 Supreme Court Cases 235, State of Rajasthan Vs. Shankar lal parmar, which is as follows:

"20. However, we need to clarify that during the interregnum period between the first office order, issued on 25.01.1992 and the subsequent clarificatory Office Order/Letter dated 24.07.1995, some of the employees were granted the benefit of selection grade. The appellant State would not be entitled to claim refund from such employees who have already been granted benefit in this period. The subsequent officer order/letter further makes it clear that all those employees who have earned censure in service shall also be entitled for the selection grade but the



grant of selection grade to them would be deferred by one year. This appears to be an absolutely reasonable and perfect classification as otherwise every employee who has a clean image and another employee, who has earned censure would be treated on a par. This is not permissible in the service jurisprudence and is also violative of Article 14 of the Constitution.

21. It is a settled principle of law that "like should be treated alike". This is the mandate and command of Article 14 of the Constitution, which we are required to follow. In any case, those who have earned censure cannot be treated on a par with those who have had a clean service record. As mentioned hereinabove, an employee with blemished, polluted, tainted, unclean service record cannot be equated with other employee who has enjoyed clean, unblemished, unpolluted, untainted and impeccable service record. Such differentiation would not be violative of Article 14 while dealing with the principles of equality.

22. Since the appeals are to be decided on the touchstone of Article 14 of the Constitution, in short we would like to deal with it. This article has two essential ingredients:

- (i) Equality before law,
- (ii) Equal protection of law.

The Forefathers of our Constitution in their wisdom incorporated the provision of equality before law to attain justice: social, economic and political. While equal protection of law was incorporated so that amongst equals, the law could be equally administered and similarly placed persons could be placed in a similar manner. But this has a caveat. The State still has the power to differentiate amongst different classes of people. That is to say, it can positively discriminate on the basis of reasonable classification and distinction but this must be based upon an intelligible differentia, which inherently separates such persons from the others.

23. In the case in hand, it is a question of grant of selection grade. A selection grade has higher pay but in the same post. A promotion post is a higher post with higher pay. A selection grade is intended to ensure that capable employees who may not be able to get a chance of promotion on account of limited outlets of promotion,



should at least be placed in the selection grade to prevent stagnation at the maximum of the scale. Selection grade was created to remove stagnation in service and consequently leading to greater efficiency. The State has permitted grant of selection grade to those who had good service record but for those who had earned censure, the same has been deferred by one year. Thus, according to us, it would clearly fall in the category of reasonable classification which is permissible in accordance with the mandate of the Constitution and also on account of various judgments pronounced by this Court on this topic from time to time.

24. Thus, in our opinion, there is a basic and fundamental difference between the two categories of the employees. The appellant State was fully justified in issuing the subsequent Office Order/Letter dated 24-07-1995, putting all controversies at rest. We do not find that any case of discrimination has been made out against the respondent employees. The subsequent office order/letter cannot be said to be illegal, arbitrary, unconstitutional or without authority of law. We find merit in the arguments advanced by Dr. Manish Singhvi, Advocate for the appellants and thus, have no hesitation in allowing these appeals.

25. It is also pertinent to mention here that the respondent employees had not challenged the subsequent office order/letter dated 24-07-1995, as being illegal, unconstitutional, arbitrary or without jurisdiction. As long as this office order/letter holds good, it is to be implemented in the same manner and spirit in which it was issued."

15. This Court is of the view that the above Judgment rendered by the Hon'ble Supreme Court, squarely applies to the case of the petitioner, and the petitioner having suffered this punishment of "Censure" cannot be equated to be considered for promotion along with those persons who had clear record. In the above circumstances, this Court finds no infirmity in the impugned order passed by the respondents. Accordingly, this Writ petition stands dismissed. No Costs.

Sd/-

Assistant Registrar (CS-III)

/True Copy/



To

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

2. The Superintendent of Prison, Central Prison, Trichy - 20.

+ 1 cc TO Mr.R.Murugappan , Advocate in SR No. 48132

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AE/JC/SAR4/05.03.2018/7P/4C

Order in

W.P (MD) .No.9910 of 2014

12.02.2018