

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2019

CORAM :

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.NO.9102 of 2017

S.Suresh Kumar Justin

... Petitioner

Vs.

1.The Superintendent of Prison,
Central Prison,
Coimbatore.

2.The Deputy Inspector General of Prisons,
Coimbatore Range, Coimbatore.

3.The Additional Director General of Police/
Inspector General of Prisons,
Chennai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the respondents in connection with the impugned order passed by the first respondent in No.16872/Po.4/2014 dated 08.04.2015 and confirmed by the 2nd respondent in No.1187/CA/2015 dated 15.09.2015 and the 3rd respondent in No.17316/ESI/2015 dated 11.11.2016 and quash the same and further direct the respondents to reinstate the petitioner into service with all consequential service and monetary benefits.

For Petitioner : Mr.T.Ayngaraprabhu

For Respondents : Mr.Akhil Akbar Ali
Government Advocate

O R D E R

The petitioner in this writ petition seeks a certiorari quashing the order passed by the 1st respondent/the Superintendent of Prison, dated 08.04.2015 confirmed by the 2nd respondent/Deputy Inspector General of Prisons on 15.09.2015 and the 3rd respondent/Additional Director General of Police/Inspector General of Prisons on 11.11.2016.

2. Heard Mr.T.Ayngaraprabhu, learned counsel for the petitioner and Mr.Akhil Akbar Ali, learned Government Advocate for the respondents.

3. The petitioner was appointed as a Junior Assistant on compassionate ground on 24.10.2001 at Palayamkottai Central Prison. He was subsequently transferred to Coimbatore Central Prison on 11.07.2007. While serving in the Central Prison, Coimbatore, he was posted as Junior Assistant on 12.02.2014 and placed in charge of pending proposals for the grant of pensionary benefits from the aforesaid date.

4. It was noticed that the petitioner had allegedly delayed forwarding of proposals for employees who were due for retirement and had violated Rule 112 of the Government Servants Conduct Rules. A charge memo was issued to him on 17.09.2014 on the ground that he had failed to forward the proposals for sanctioning of pensionary benefits to Government Servants to be sent to the office of the Accountant-General's, eighteen (18) months prior to the regular date of superannuation of the Government servants, as required under the Tamil Nadu Pension Rules.

5. Enquiry was conducted and the charges were held proved. The Enquiry Officer submitted a report to the disciplinary officer and the petitioner was granted an opportunity to respond to the same. He pointed out that he was in the pension seat only with effect from 12.02.2014 and was also placed in charge of other seats as additional charges. Thus, on account of pressure of work and non-availability of adequate staff, he had in fact, requested that he may be relieved from the seat or be given assistance in order to discharge his duties effectively. Being sole in charge of the said seats, he was concerned with files relating to more than 200 Sub jail employees, and he was unable to function effectively due to pressure of work.

6. Notwithstanding the submissions made, the petitioner was imposed with punishment of removal from service by order dated 08.04.2015. A statutory appeal was filed before R2 on 21.04.2015 that was also dismissed. A review was preferred against the same, before R3, which was also not considered favourably. It is in the aforesaid circumstances, that the petitioner has approached this Court with the present writ petition.

7. The case of the Government is simple, that the petitioner ought to have exercised due diligence in disposing of urgent matters upon his taking charge of the pension seat from 12.02.2014. The pensionary benefit order in question was passed only on 12.05.2014, which is in violation of the period stipulated in the Rule and as such, the petitioner has not exercised due diligence on his part. As far as the complaint of the petitioner that he had inadequate staff and was also holding several additional charges, the Government only states that he was expect to discharge all the duties, diligently, without exception.

8. Having heard both learned counsel, I am of the view that the punishment imposed upon the petitioner is harsh and not in proportion to the offence committed.

9. Rule 51 of the Tamil Nadu Pension Rules, 1978 reads as follows:

51. Preparation of list of Government servant's due for retirement.- (1) Every Head of the Department shall have a list prepared every six months that is, on the 1st January and the 1st July each year of the [self drawing and non-self drawing Government servants] who are due to retire within the next 2 to 30 months of that date.

(2) A copy of every list referred to in sub-rule (1) shall be supplied to the Audit Officer concerned not later than the 31st January or the 31st July as the case may be, of the year.

10. Though the charge memo refers to a period of 18 months as per Section 51 of the Tamil Nadu Rules, the counter filed by the 1st respondent states that the pension proposal ought to have been sent before six(6) months. This charge would fail in the present circumstances seeing as the date of superannuation of the employees concerned, in whose cases the delay was occasioned, was 15.05.2014 and the period of six (6) months prior to the same would have been 15.10.2013 when the petitioner was not even holding charge of the seat in question. Thus the application of the said Rule cannot be relied upon by the Government in the present case.

11. No doubt, there has been delay between the assumption of pension seat by the petitioner and the date of order passed by him, between 12.02.2014 and 12.05.2014 in forwarding the pension proposals. The Government is right in saying that after assumption of charge the petitioner ought to have acted promptly and not waited till 12.05.2014 to forward the necessary pensionary proposals. However, practical considerations cannot be lost sight of. The averments of the petitioner to the effect that he was holding additional charges of several other positions and was also discharging the work of several hands at one stroke without assistance, has not really been denied by the Government.

12. In the aforesaid circumstances and as a one time measure the impugned order dated 08.04.2015, confirmed by the 2nd respondent on 15.09.2015, is set aside. The petitioner is cautioned to ensure discharge of all duties effectively henceforth. Learned counsel for the petitioner confirms that the petitioner does not insist upon payment of back wages and the same is recorded. The petitioner shall be reinstated in service

forthwith in the same position from which he was terminated with continuity of service. This writ petition is allowed in the above terms. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

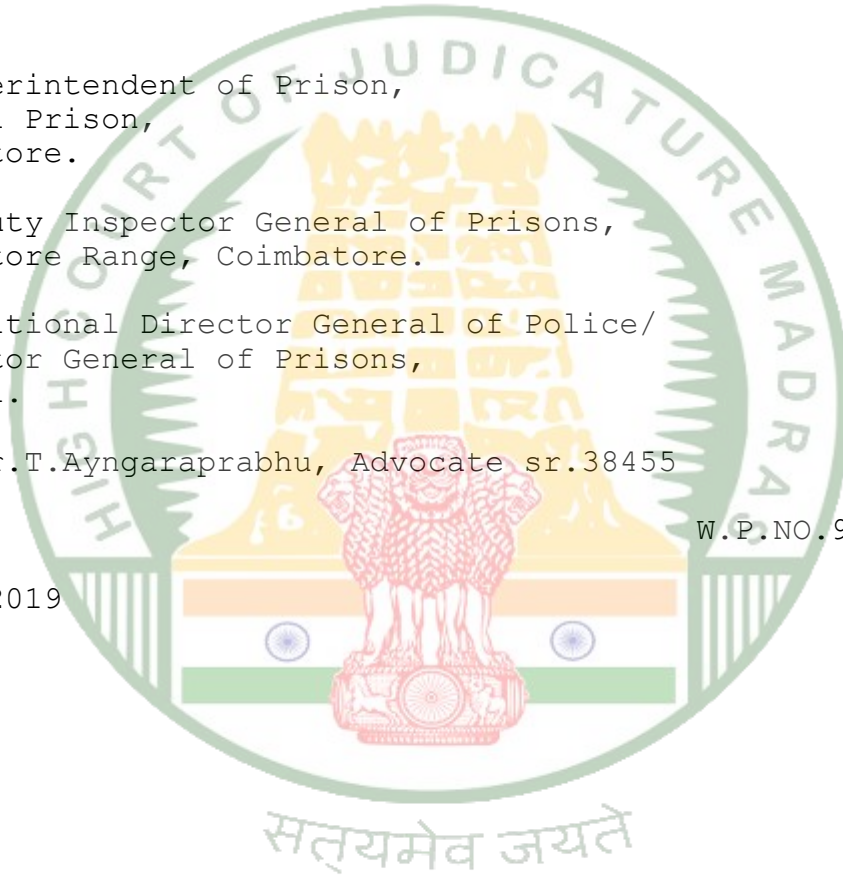
To

- 1.The Superintendent of Prison,
Central Prison,
Coimbatore.
- 2.The Deputy Inspector General of Prisons,
Coimbatore Range, Coimbatore.
- 3.The Additional Director General of Police/
Inspector General of Prisons,
Chennai.

+1cc to Mr.T.Ayngaraprabhu, Advocate sr.38455

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