

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.04.2021

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

WA.No.731/2021
& CMP.No.3982/2021

S.Ramakrishnan Appellant/Writ Petitioner
Versus

- 1.The Secretary to Government
of Tamil Nadu, Home [Prison]
Department, Fort St George
Chennai 600 009.
- 2.The Additional Director General of Prisons
Egmore, Chennai 600 008.
- 3.The Superintendent of Prisons
Central Prison, Madurai. Respondents/Respondents

Prayer:- Writ Appeal filed under Clause 15 of the Letters
Patent against the order passed in WP.No.5137/2020 dated
28.02.2020.

Prayer in WP.No.5137 of 2020: Writ Petitions filed Article 226 of
the Constitution of India praying to issue a writ of Mandamus,
directing the 1st respondent to grant all benefits to the
petitioner as extended to the co-batch mates(1984) of the
petitioner, namely Abdul Gaffoor and M.Anbalagan in
G.O.Ms.No.1494 Home(prison) department dated 04.10.1995 by
considering the petitioner's representation dated 16.03.2015
afresh by applying the doctrine of equality (Art 14) between
similarly placed co-batch mates and by invoking Sec 37 of Civil
Services & Discipline Appeal Rules 1955.

For Appellant : Mr.P.I.Thirumoorthy

For Respondents: Mrs.A.Srijayanthi
Special Government Pleader

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J., through Video Conferencing]

1. By consent, the writ appeal is taken up for final disposal and is disposed of by this judgment.
2. Mrs.A.Srijayanthi, learned Special Government Pleader accepts notice on behalf of the respondents.
3. The appellant is the writ petitioner and he filed WP.No.5137/2020 praying for issuance of a writ of mandamus directing the 1st respondent herein to grant all benefits to the writ petitioner/appellant as extended to the co-batchmates of the year 1984, viz., Tvl.Abdul Gaffoor and M.Anbalagan in G.O.Ms.No.1494, Home [Prisons] Department dated 04.10.1995 by considering the writ petitioner's representations dated 16.03.2015 afresh by applying the doctrine of equality under Article 14 of the Constitution of India and also to invoke Rule 37 of the Tamil Nadu Civil Services [Discipline and Appeal] Rules, 1955.
4. The said writ petition came to be dismissed vide final orders dated 28.02.2020 and aggrieved by the same, the present writ appeal is filed.
5. A perusal of the affidavit filed in support of the writ petition would disclose the following facts. The writ petitioner/appellant had participated in the selection process conducted by the Tamil Nadu Public Service Commission [TNPSC] for selection to the post of Assistant Jailor and in the process, the 3rd respondent has rejected five persons, including the writ petitioner/appellant herein on account of shortage of physical and chest measurement.
6. The appellant/writ petitioner in this regard, filed WP.No.12338/1985 praying for issuance of a writ of mandamus, directing the respondents to appoint him as Assistant Jailor in respect of the recruitment done in the year 1984. The writ petition was transferred to the Tamil Nadu Administrative Tribunal and renumbered as TA.NO.1480/1989 and vide final orders date 04.07.1991, the Tribunal has taken note of the submission made by the learned counsel for the petitioner and had passed an order, directing the respondents to appoint the appellant/writ petitioner as Assistant Jailor as a fresh candidate within a period of two months. The appellant/writ petitioner took a stand that such a concession was made by the learned counsel without his instructions and despite that, he joined the duty on 02.01.1992 out of frustration in the light of passage of time and after joining the post, he preferred a representation to the 2nd respondent on 31.07.1995 stating that he was not responsible for giving such an undertaking and that the learned counsel who

appeared for him, has exceeded his brief. It is also pointed out by the learned appellant/writ petitioner that the deficiency pointed in respect of the other four persons who are similarly placed as regards shortfall of physical measurement, has also been relaxed by the 1st respondent vide G.O.Ms.No.1494, Home [Prisons-II] Department dated 04.10.1995.

7. The appellant/writ petitioner preferred an appeal in this regard, before the 1st respondent and the same also came to be rejected vide order dated 02.07.1997 by citing the order of the Tribunal dated 04.07.1991 made in TA.No.1480/1989.
8. The appellant/writ petitioner, thereafter submitted a fresh representation dated 16.03.2015 followed by a reminder representation dated 11.06.2015 and since it was not considered, he was constrained to approach this Court, by filing WP.No.5137/2020, which came to be dismissed vide impugned order dated 28.02.2020 on the ground that the petitioner did not make a challenge to none of the earlier orders of rejection and in the light of the fact that all the orders had become final, there is no need or necessity to issue fresh directions.
9. The learned counsel appearing for the appellant/writ petitioner would submit that the concession given by the learned counsel who appeared for him before the Tribunal in TA.No.1480/1989, was without his instructions and in the light of the passage of time, the appellant/writ petitioner was forced to report for duty on 02.01.1992 and pointing out the concession extended to the co-batch mates, also submitted a representation which came to be rejected by the 1st respondent on 02.07.1997 and though no challenge has been made to the said order, the uncontroverted / undisputed fact remains that the co-batch mates have been treated with certain benevolence and it was extended to him, he would have gained seniority from the date of his initial appointment as that of the co-delinquent and hence, prays for appropriate orders.
10. Per contra, learned Special Government Pleader appearing for the respondents would submit that admittedly, the appellant/writ petitioner did not make any challenge to the earlier orders which went against him and that apart, he is also guilty of delay and laches and hence, prays for dismissal of this writ petition.
11. This Court has carefully considered the rival submissions and also perused the materials placed before it.
12. If the case of the appellant/writ petitioner is accepted that the learned counsel appeared for him before the Tribunal, has exceeded his brief and gave a concession, it was open to the appellant/writ petitioner at the relevant point of time to go for review of the order or at least, he would have made a challenge to the final orders dated 04.07.1991 made in TA.No.1480/1989 by filing a writ

- petition and he failed to do so.
13. It is also to be noted at this juncture that pointing out the concession extended to the co-batch mates, he submitted a representation to the 1st respondent, which also came to be rejected on 02.07.1997 and here again, he is entitled to make a challenge to the said order. The appellant/writ petitioner, after sleeping over his right for nearly 18 years, had submitted a representation dated 16.03.2015 followed by reminder representations dated 11.06.2015 and 19.12.2018 respectively and thereafter, filed the writ petition on 24.02.2020.
14. Thus, the order dated 04.07.1991 made in TA.No.1480/1989 and the order of rejection passed by the 1st respondent on 02.07.1997, has become final. The appellant/writ petitioner, under the garb of filing writ petition, want to revive a stale claim and that apart, he is also guilty of delay and laches. In the considered opinion of the Court, the learned Judge has rightly taken note of the said material and reached the conclusion to dismiss the writ petition.
15. This Court, on an independent application of mind to the entire materials placed and on appraisal of the same, is of the considered view that there is no error apparent or infirmity in the reasons assigned by the learned Judge in dismissing the writ petition and finds no merits in the writ appeal.
16. In the result, the writ appeal stands dismissed, confirming the order dated 28.02.2020 made in WP.No.5137/2020. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

AP

To

- 1.The Secretary to Government
of Tamil Nadu, Home [Prison]
Department, Fort St George, Chennai 600 009.
- 2.The Additional Director General of Prisons
Egmore, Chennai 600 008.
- 3.The Superintendent of Prisons
Central Prison, Madurai.

+1cc to Mr.P.I.Thirumoorthy, Advocate, S.R.No.24523

WA.No.731/2021

SR(CO)
CB(21/06/2021)



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