



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

WEB COPY

W.P. (MD)No.23376 of 2018
and W.M.P. (MD) No.21221 of 2018
(Through Video Conference)

S.Sivakumar

... Petitioner

Vs

1. The Additional Director General of Police cum
Chief of Prison Department,
Egmore, Chennai 600 008
2. The Superintendent of Prison,
Central Jail, Trichy 30
3. The Superintendent of Prisons,
Borstal School,
Pudukkottai.
4. The Accountant General
(A & E) of Tamil Nadu,
Annasalai, Teynampet,
Chennai- 600 018.

... Respondents

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 order No.4780/E.S.3/2009 dated 05.10.2017 passed by the 1st respondent insofar as the order passed treating "the promotion withheld /denied during the pendency of Vigilance and Anti Corruption case as a Punishment" and quash the same and consequently, to direct the respondents to promote the petitioner to the post of Grade-I Warder, Chief Head Warder and Assistant Jailor on par with his junior viz. K.Thangaraj (Date of Joining as Gr.II Warder - 11.05.1983) i.e. as Gr.I Warder with effect from 19.11.2005, as Chief Head Warder with effect from 29.10.2011 and Assistant Jailor with effect from March 2013 and grant all the service, monetary and revised pensionary benefits within a time limit to be fixed by this Court.

For Petitioner : Mr.B.Karunanithi
For RR 1 to 3 : Mr.M.Muniyasamy,
Additional Government Pleader
For R-4 : Mr.P.Gunasekaran



O R D E R

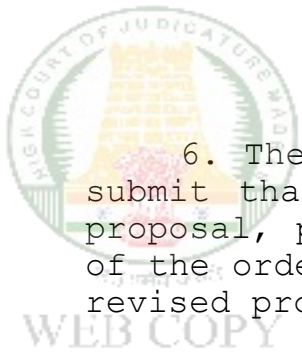
The petitioner herein, while serving as Grade II Warder at Central Prison, Trichy came to be involved in a criminal case under the provisions of the Prevention of Corruption Act, 1988, which was taken on file in Spl.Case No.7 of 2000 before the Chief Judicial Magistrate Court, Perambalur. On 31.08.2013, the petitioner has reached the age of superannuation, on which date, the respondents had permitted him to retire without prejudice to the pending criminal case and initiating of action under Rule 9 of Tamil Nadu pension Rules, 1978. On 27.02.2015, the Chief Judicial Magistrate Ariyalur had acquitted the petitioner herein from the Directorate of Vigilance and Anticorruption (DVAC) case. While that being so, on 03.10.2015, the petitioner was issued with a charge memo on the same set of charges. Pursuant to the petitioner's explanation, an enquiry came to be held and the Enquiry Officer had come to a finding that the charges against the petitioner were not proved. Consequently, the impugned order dated 05.10.2017 came to be passed by the first respondent herein, dropping the departmental proceedings against the petitioner.

2. While passing the order of dropping of departmental action against the petitioner, the first respondent, through the impugned order dated 05.10.2017, had raised objections that in view of the petitioner's involvement in the criminal case, he had been denied his promotion which cannot be deemed as a punishment. The petitioner is aggrieved against such observations made in the impugned order. Since the petitioner's monetary and service benefits have not been settled, the present writ petition has been filed.

3. Apparently, since the criminal case was pending against the petitioner, his candidature was not considered for the purpose of promotion and other service benefits. Now, that the criminal case itself had ended and the petitioner's involvement in the same has not been proved and the first respondent having dropped the departmental action against the petitioner, he would be entitled for all the service and monetary benefits that, he would otherwise be eligible, on par with his immediate juniors. There cannot be any second opinion on this factual proposition.

4. The learned counsel for the petitioner would submit that his immediate junior one K.Thangaraj, who retired as Assistant Jailor and was extended with promotion as Chief Head Warder in the panel for promotion as Assistant Jailor. It is also his submission that the judgment of the criminal Court has become final.

5. In the light of the above observations, this Court is the considered view that the petitioner is entitled for his service and monetary benefits, on par with his immediate junior K.Thangaraj.



6. The learned standing counsel for the fourth respondent would submit that though the first respondent herein, had submitted the proposal, prior to the dropping of departmental action, now in view of the order of this Court, the first respondent has to sanction the revised proposals and the same requires to be considered.

7. In the result, the impugned order dated 05.10.2017, insofar as the lapse that the promotion withheld/ denied during the pendency of the Vigilance & Anti Corruption case as 'punishment', is quashed and consequently, first respondent herein shall send a revised proposal to the fourth respondent atleast within a period of 12 weeks and on receipt of the same, the fourth respondent herein shall consider it positively within one month from the date of receipt of such revised proposal. Accordingly, the writ petition stands allowed. No costs. Consequently, connected W.M.P.(MD) No.21221 of 2018 stands closed.

Sd/-
Assistant Registrar (CS-II)

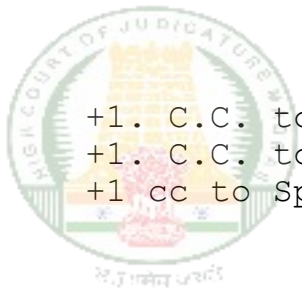
/TRUE COPY/

/ /2021
Sub Assistant Registrar

Note : In view of the present lock down owing to COVID-19 pandemic, a copy of the order may be utilized for official purposes, by ensuring that the copy of the order that is presented is a correct copy, shall be the responsibility of the Advocate/litigant concerned.

To:

1. The Additional Director General of Police cum
Chief of Prison Department,
Egmore, Chennai 600 008
2. The Superintendent of Prison,
Central Jail, Trichy 30
3. The Superintendent of Prisons,
Borstal School,
Pudukkottai.
4. The Accountant General
(A & E) of Tamil Nadu,
Annasalai, Teynampet,
Chennai- 600 018.



+1. C.C. to M/S.B.KARUNANITHI, Advocate SR.No.5441
+1. C.C. to M/S.P.GUNASEKARAN, Advocate SR.No. 5583
+1 cc to Special Government Pleader, SR.No. 5362

WEB COPY

Order made in
W.P. (MD) No.23376 of 2018

Dated:
15.02.2021

STS
JM/04.06.2021/4P/8C