



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.04.2022
Pronounced on : 20.06.2022

Coram

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.16168 of 2010

V.Sangar

... Petitioner

Vs.

- 1.The Government of Tamil Nadu,
rep. by the Secretary to the Government,
Home (Prisons-2) Department,
Fort St.George, Chennai-600009.
2. The Director General of Prisons,
Chennai-600008.
- 3.The Additional Director General of Prisons,
Chennai-600008.
- 4.The Deputy Inspector General of Prisons,
Trichy-20.

... Respondents

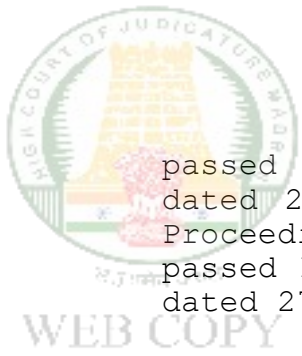
Prayer: Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the first respondent in G.O.(D) No.619, Home (Prisons-2) Department, dated 14.07.2009 confirming the orders passed by the second respondent in proceedings No.40759/EW 2/2008 dated 20.10.2008 and the order passed by the third respondent in Proceedings No.45697/EW-2/2006 dated 02.01.2007 and the order passed by the fourth respondent in Proceedings No.2045/Mu.U/2005-4 dated 27.06.2006 and quash the said orders and grant all consequential benefits to the petitioner.

For Petitioner : Mr.P.Rajendran

For Respondents: Mr.R.L.Karthikaa
Government Advocate

O R D E R

This writ petition is filed praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the 1st respondent in G.O. (D) No.619, Home (Prisons-2) Department, dated 14.07.2009 confirming the orders



passed by the 2nd respondent in Proceedings No.40579/EW 2/2008 dated 20.10.2008 and the order passed by the 3rd respondent in Proceedings No.45697/EW-2/2006 dated 02.01.2007 and the order passed by the 4th respondent in Proceedings No.2045/Mu.U/2005-4, dated 27.06.2006.

2. Brief facts:

i) The petitioner was working as Grade-II Warden of the Central Prison, on 25.03.1998, thereafter, he was transferred from Central Prison, Trichy to Sub-Jail, Tirukoilur on 28.06.2006 and to Central Prison, Palayamkottai on 30.09.2007.

ii) A charge memo dated 14.07.2005 was issued in terms of Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules against the petitioner. The charge was that, when the petitioner was on duty at the Visitors checking room, the Anti-corruption Police, Trichy conducted a surprise check on 20.04.2005 and a sum of Rs.1,930/- received from the visitors and a ten rupee note bearing No.79B472410 sent by the said police for identification was recovered from the petitioner.

iii) The petitioner responded to the charge memo by way of an explanation dated 17.08.2005 denying the charges. The Enquiry Officer was appointed and enquiry commenced from 23.02.2006. Further, it is the case of the petitioner that the Enquiry Officer exceeded his jurisdiction inasmuch as he cross examined the petitioner on a number of aspects thereby effectively donning the role of Presiding Officer, which is impermissible and would vitiate the entire proceedings.

iv) The Enquiry Officer submitted his report holding that the charges against the petitioner were proved. The same was communicated to the petitioner on 09.05.2006. An additional explanation was offered by the petitioner on 29.05.2006. However, the 4th respondent vide proceedings No.2045/Mu.U/2005-4, dated 27.06.2006 imposed a punishment of reduction of pay to the minimum pay scale for 5 years with cumulative effect.

v) Aggrieved by the same, the petitioner preferred an appeal before the 2nd respondent primarily on the ground that the Enquiry Officer has acted in excess of his jurisdiction. The Appeal was rejected on the ground that it is barred by limitation inasmuch as the appeal should have been preferred on or before 20.08.2006, however, the appeal was filed belatedly on 04.10.2006. Aggrieved by the order of the Appellate Authority, the petitioner preferred an appeal before the 2nd respondent / Director General of Prisons, Chennai, who in turn rejected the appeal stating that the Additional Director General of Police/3rd respondent had already rejected the appeal and there is no



5. On consideration of the arguments on both sides, this Court is of the view that the petitioner having filed the appeal beyond the statutory period of limitation, the writ petition may not be maintainable, inasmuch as, it is trite law that Courts would come to the rescue of only those who are vigilant about their rights which I am afraid the petitioner is not. In this regard, it may be relevant to refer to the following judgments:

"It has been consistently held that relief under Article 226 of the Constitution of India is only to those who are vigilant and not those who sleep over their rights. The maxim "Vigilantibus, et non Dormientibus, Jura Subveniunt" - the law assists who are vigilant, not those who sleep over their right is relevant and has been consistently applied by the Apex Court in a catena of cases. Some of them being:

- i) Delhi Airtech Services (P) Ltd. v. State of U.P., reported in (2011) 9 SCC 354.
- ii) Dohil Constructions Co. (P) Ltd. v. Nahar Exports Ltd., reported in (2015) 1 SCC 680.
- iii) State of U.P. v. Dayanand Chakrawarty, reported in (2013) 7 SCC 595.

6. Secondly, the challenge to the order of the State Government/ 1st respondent is without any basis inasmuch as there is no reason nor ground challenging the said order except to state that the Government have passed the impugned order dated 14.07.2009 in a mechanical manner. As stated above the power under Rule 37 is very limited and narrow in scope and exercise of power is warranted only if new material or evidence is produced, which the petitioner was unable to produce earlier i.e., at the time of the passing of the impugned order, in the absence of even a pleading to the said effect, I find no reason to interfere with the impugned order dated 14.07.2009.

7. For all the above reasons, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Psa



To :

1. The Secretary to the Government,
Government of Tamil Nadu,
Home (Prisons-2) Department,
Fort St.George, Chennai-600009.

2. The Director General of Prisons,
Chennai-600008.

3. The Additional Director General of Prisons,
Chennai-600008.

4. The Deputy Inspector General of Prisons,
Trichy-20.

+1cc to Mr.P.Rajendran, Advocate, S.R.No.37351
+1cc to the Government Pleader, S.R.No.37628

W.P. No.16168 of 2010

SSI (CO)
CT/01/07/2022