



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.26047 of 2010
and M.P. No.1 of 2010

K.Gangadharan

... Petitioner

Vs.

1.The Additional Director General of Police and
the Inspector General of Prisons,
Chennai-600 008.

2.The Superintendent,
Central Prison-1,
Puzhal, Chennai-600 066.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the 1st respondent in Mu.Mu.No.49417/W2/2009 dated 30.06.2010 and quash the same and direct the 1st respondent to promote the petitioner as Regular I Grade Warder by including his name in the 2009-2010 Panel at the appropriate place with reference to his seniority and grant him all consequential benefits and render justice.

For Petitioner : Mr.A.R.Suresh

For Respondents : M/s.R.L.Krithika
Government Advocate

ORDER

This writ petition is filed to issue of Writ of Certiorarified mandamus calling for the records relating to the impugned order of the 1st respondent in Mu.Mu.No.49417/W2/2009 dated 30.06.2010 and quash the same and direct the 1st respondent to promote the petitioner as Regular I Grade Warder by including his name in the 2009-2010 Panel by assigning the appropriate rank/place with reference to his seniority and grant him all consequential benefits and render justice.



2. Brief facts:

The petitioner was initially appointed as Grade-II Warder at Central Prison, Coimbatore on 21.06.1985. Admittedly, the petitioner was transferred to Central Prison, Chennai on "administrative grounds" on 13.11.2002. On 18.11.2002, the petitioner was relieved from Central Prison, Coimbatore and he joined in Central Prison, Chennai. Consequently, petitioner's seniority ought to have been fixed in the seniority list of Central Prison, Chennai from the date of his appointment in Central Prison, Chennai i.e., on 18.11.2002, which was not done. The petitioner was upgraded as Grade-I Warder with one increment on 13.07.2007. Regular panel was prepared for the year 2009-10 and the crucial date was fixed as 15.07.2009.

3. It is the submission of the learned counsel for the petitioner that the petitioner's seniority ought to have been fixed in the seniority unit of Central Prison, Chennai on 18.11.2002, but the same was not carried out for close to 7 years. Further, fixation in the seniority unit of Chennai Prison is automatic, once he is appointed by way of transfer to Central Prison, Chennai. For failure on the part of the respondents to discharge its obligations, the petitioner cannot be denied the benefit of promotion. The petitioner's name has subsequently been included in the panel in the year 2010-2011.

4. This writ petition has been filed challenging the rejection of the petitioner's request to include his name in the seniority list prepared for the year 2009-2010. On going through the impugned order, this Court finds that the only reason for non-inclusion of the petitioner's name in the seniority list was that on the crucial date i.e., 15.07.2009, the petitioner's name was retained in Central Prison, Coimbatore list, thus, his name was not included in the Central Prison, Chennai. The impugned order thus states that the petitioner shall be considered on merit basis for inclusion in the seniority list of Central Prison, Chennai from the year 2010-11.

5. Mr.Suresh, learned counsel for the petitioner would submit that a duty was cast on the respondents to add the petitioner's name in the seniority list of the Central Prison, Chennai, if that had been discharged / carried out the petitioner name would have been included in the panel list for the year 2009-10. Failure to discharge the obligation on the part of the respondents has resulted in the petitioner not being included in the promotion panel for the year 2009-10, and consequent non-consideration for promotion.



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6. Reliance is sought to be placed by the learned counsel for the petitioner on the rules relating to maintenance of service book, in particular Rule 2 and Rule 7 which reads as under:

"2. Duty of the head of the office:

Except in the case of members of the Police force of rank not higher than that of head constable and Basic Servants of all sorts, a service book in Fundamental Rule Form No.10 should be opened for every Group C and D Government Servant at his own cost, as soon as he is regarded as selected for admission to a Government service and as on probation for that service. It should be kept in the custody of the head of the office in which he may be serving and transferred with him from office to office. It is the duty of the head of the office to see that all entries are duly made and attested."

.....

7. Transfer to another office: When a Group C and D Government Servant is transferred, whether permanently or temporarily from one office to another, the necessary entry of the nature and reason of the transfer should be made in his service book in the office from which the Government servant is transferred, and the book, after being duly verified to date and attested by the head of that office, should be transmitted to the head of the office to which the Government Servant has been transferred, who will thence forward the book maintained in his office. If he should find any error, or omission in the book on receipt, he should return it to the forwarding officer for the purpose of having the error rectified or the omission supplied before the book is taken over by him. The service book should not be made over to the Group C and D Government Servant who has been transferred."

(emphasis supplied)

7. It is submitted by the learned counsel for the petitioner that the petitioner is a Grade II Warder and would be covered by Rule 2 and Rule 7 of maintenance of Service books. A reading of the above rules would indicate that whenever a Government Servant is transferred from one office to another, the necessary entry of the nature and reason of the transfer



should be made in his service book in the office from which the Government servant was transferred, and the book, after being duly verified to date and attested by the Head of that Office, should be transmitted to the Head of the Office to which the Government Servant has been transferred, who will thence forward the book maintained in his office.

8. It is thus submitted on the strength of the above that the petitioner having been transferred from Central Prison, Coimbatore to Central Prison, Chennai on 18.11.2002, the Service Register / Book / records ought to have been transferred to Chennai Central Prison and failure to do so has resulted in the petitioner's denial for inclusion in the seniority panel prepared for the 2009-2010, thereby affecting/denying his right to be considered for promotion which has been held to be a fundamental right. In this regard it may be relevant to refer to the following Judgments of the Supreme Court:

1. Ajay Kumar Shukla and others vs. Arvind Rai and others reported in 2021 SCC Online SC 1195:

"36.....Right to promotion is not considered to be a fundamental right but consideration for promotion has now been evolved as a fundamental right.

37. This Court, time and again, has laid emphasis on right to be considered for promotion to be a fundamental right...."

2. Union of India v. Sangram Keshari Nayak, reported in (2007) 6 SCC 704 :

"11. Promotion is not a fundamental right. Right to be considered for promotion, however, is a fundamental right. Such a right brings within its purview an effective, purposeful and meaningful consideration."

3. Union of India vs. Manpreet Singh Poonam reported in 2022 SCC Online SC 272:

"14. No officer has a vested right to a promotional post, which is restricted to that of consideration according to law. The law on this aspect is settled by this Court in the case of Ajay Kumar Shukla vs. Arvind Rai, 2021 SCC Online SC 1195:

37. This Court, time and again, has laid emphasis on right to be considered for promotion to be a fundamental right, as was held by K.Ramaswamy, J., in the case of Director, Lift Irrigation Corporation Ltd., vs. Pravat Kiran Mohanty, [(1991) 2 SCC 295] in paragraph 4 of the report which is reproduced below:



"4.... There is no fundamental right to promotion, but an employee has only right to be considered for promotion, when it arises, in accordance with relevant rules..."

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38. A Constitution Bench in case of Ajit Singh v. State of Punjab, [(1999) 7 SCC 209], laying emphasis on Article 14 and Article 16(1) of the Constitution of India held that if a person who satisfies the eligibility and the criteria for promotion but still is not considered for promotion, then there will be clear violation of his/her's fundamental right. Jagannadha Rao, J. speaking for himself and Anand, CJI., Venkataswami, Pattanaik, Kurdukar, JJ., observed the same as follows in paragraphs 21 and 22 and 27:

22The word "employment" being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the stage of initial level of recruitment. Article 16(1) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be "considered" for promotion. Equal opportunity here means the right to be "considered" for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be "considered" for promotion, which is his personal right...."

9. We see merit in the submissions of the learned counsel for the petitioner since right to promotion is a valuable right as consistently held by various Courts. Furthermore, the petitioner cannot be denied nor lose his right to promotion for failure on the part of the respondents to transfer the service register/ records despite the mandate contained in Rule 2 and 7 of the Maintenance of Service Rules. Therefore, in view of the above, this Court directs the respondents to include the petitioner's name in the promotion panel for the year 2009-2010 and if eligible the petitioner shall be promoted notionally, any other consequential benefits viz., monetary or other benefits shall also be extended to the petitioner notionally.



10. The writ petition stands disposed of. No costs.
Consequently, the connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

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To:

1.The Additional Director General of Police and
the Inspector General of Prisons,
Chennai-600 008.

2.The Superintendent,
Central Prison-1,
Puzhal, Chennai-600 066.

+1 cc to Mr.A.R.Suresh Advocate sr23323
+1 cc to Government Pleader sr24293

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