

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.11486 of 2014

and

M.P.No.2 of 2014

N.Bharathi

...Petitioner

Vs.

1. The Additional Director General of Prison,
Egmore, Chennai - 8.
2. The Deputy Inspector General of Prison,
Chennai Range, Egmore,
Chennai - 8.
3. The Superintendent of Prison,
Central Prison, Vellore.
4. The Deputy Secretary to Government,
Home (Prison-II) Department,
Secretariat, Chennai - 9.

...Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for records relating to the order of the second respondent made in No.17217/ EW.1/ 2012 dated 16.04.2013 and the enclosure of the 4th respondent in Government Letter No.57856/Pri.II/2012-4 dated 19.12.2012 quash the same and consequently direct the respondents to rectify the seniority of the petitioner on par with his batch mates and to extend benefits of pension scheme, GPF contribution and other service benefits arising thereto forthwith.

For Petitioner : Mr.L.Chandrakumar

For Respondents: Ms.R.L.Karthika,
[R1 to R4] Government Advocate.

ORDER

The writ petition has been filed challenging the order dated 19.12.2012, fixing the seniority of the writ petitioner from the date of appointment / commencement of probation which is under

challenge in the present writ petition.

2.The writ petitioner participated in the process of selection for appointment to the post of Grade-II Warder in the year 1997. He was provisionally selected and during the verification of antecedents, the Superintendent of Police, Tirunelveli, submitted an adverse report on 27.11.1997. The report states that a criminal case in Crime No.188 of 1997 was registered against the writ petitioner and the petitioner was facing trial in C.C.No.177 of 1997, on the file of the learned Judicial Magistrate, Nanguneri. Based on the report, the selection of the writ petitioner was not considered further for issuance of appointment.

3.The Learned counsel for the petitioner made a submission that the criminal complaint registered against the writ petitioner was withdrawn subsequently and therefore, he filed O.A.No.7562 of 2001 before the Tamil Nadu Administrative Tribunal for issuing posting orders. The Administrative Tribunal passed an order dated 20.12.2001, directing the Inspector General of Prison to issue posting order within a specified period. The department preferred a writ petition against the order passed by the Tamil Nadu Administrative Tribunal, which was dismissed on 05.04.2007 and thereafter, filed Special Leave Petition (SLP) before the Hon'ble Supreme Court of India, which was also dismissed on 09.07.2008, confirming the order passed by the Tribunal. Consequently, posting order was issued and the writ petitioner reported for duty on 23.12.2009.

4.The learned counsel for the petitioner contended that though the posting order was issued and the petitioner joined duty on 23.12.2009, his selection was of the year 1997 and therefore, seniority must be fixed along with his batch mates. The delay occurred on account of continuous litigation before the High Court and the Hon'ble Supreme Court and such a delay by the respondents would not be a ground to deny seniority of the writ petitioner along with his batch mates from the year 1997. The writ petitioner submitted a representation in this regard on 22.05.2012 and the said representation was rejected on 19.12.2012 and thereafter, on 16.04.2013. Challenging the said orders, the present writ petition has been filed.

5.The learned counsel for the petitioner is of an opinion that the Tamil Nadu Administrative Tribunal issued an order of direction, directing the Authorities Competent to issue posting orders. Thereafter, the Department filed writ petition and SLP, which took time, for which the petitioner cannot be penalised. Thus, petitioner is entitled to claim seniority along with his batch mates from the year 1997 onwards.

6.The learned Government Advocate appearing on behalf of the respondents made a submission that the case of the petitioner was not considered for appointment during the relevant point of time, on account of the adverse report submitted by the Superintendent of Police, Tirunelveli, wherein, it was found that the petitioner was involved in a Criminal Case in Kalakkadu Police Station in Crime No.188 of 1997, under Sections 147, 148, 341, 427, 506 (ii) read with Section 149 of IPC. The petitioner was arrayed as accused No.14 out of 25 and he was facing trial in the Court of the Judicial Magistrate, Nanguneri in C.C.No.177 of 1997. Further, during the verification roll dated 08.11.1997, the Inspector of Police, Kalakkadu had stated that the character of the individual was not satisfactory. The character and antecedents of a person are to be verified before final selection and appointment. The Authorities Competent are empowered to verify the character and antecedents before appointing the petitioner.

7.In the present case, the involvement of the petitioner in a Criminal Case was noticed during verification and the Inspector of Police also submitted a report that the character of the writ petitioner was not satisfactory. Under those circumstances, the Authorities have not issued the appointment order. However, the petitioner approached the Tamil Nadu Administrative Tribunal and the Tribunal issued an order and the Department preferred an appeal mainly on the ground that the character of the writ petitioner was not satisfactory, but the writ petition and the SLP filed before the Hon'ble Apex Court of India, were dismissed and thereafter, the posting order was issued to the writ petitioner in the year 2009. Therefore, for all purposes, the petitioner has joined his service only on 23.12.2009 and the date on which his probation commenced and from that date alone the seniority is to be fixed in accordance with the Rules in force.

8.As per General Rule 35 (a) of the Tamil Nadu State and Subordinate Services Rules, the seniority of a person in a service, class or category or Grade shall, unless he has been reduced to a lower rank as a punishment, be determined by the rank obtained by the individual in the list of approved candidates drawn up by the Appointing Authority, subject to the rule of reservation wherever applicable. The date of commencement of the probation shall be the date on which he joins duty irrespective of his seniority. Further, as per the said Rule 4, in Sub Rule (C) of the Tamil Nadu State and Subordinate Services Rules as amended by the Government in G.O.Ms.No.275 P&AR Department dated 04.05.1988, the candidates who are allowed to join duty beyond the maximum time limit of six months, their seniority in that post shall be fixed below the junior most candidates appointed to the post in that service

on the date of joining duty.

9. Following the above Rule, the seniority of the petitioner was fixed below one Mr. C. John Christopar (Serial No. 277) in the seniority list of Grade-II Warder published for the year 2008-2009 vide Office Memo dated 25.04.2011 issued by the first respondent.

10. Moreover, the petitioner was appointed as Grade-II Wader on the basis of order of this Court. In the said case, he has not prayed for to restore his seniority accorded in the Tamil Nadu Uniform Service Board's Seniority List and he has not filed any writ petition even subsequent to his appointment to the post of Grade-II Warder by the third respondent. He is not eligible for recovery of G.P.F subscription and Pension Scheme as he has joined duty during the year 2009. A person, who is appointed after 01.04.2003, cannot seek recovery of G.P.F subscription to the retrospective effect. However, the petitioner is eligible under the Contributory Pension Scheme as per existing Government orders and the the third respondent is also effecting recovery of subscription under the said scheme.

11. This Court is of the considered opinion that the verification of character and antecedents are of paramount importance in prison services. The Rule contemplates such verification during the process of selection and eligibility and suitability are to be ascertained by the Competent Authorities and they are empowered to do so. During the process of verification of character and antecedents, the Superintendent of Police filed a report that a Criminal Case was registered against the writ petitioner and he was facing criminal trial in C.C.No.177 of 1997 in the Court of Judicial Magistrate, Nanguneri. Thus the case of the petitioner was not considered.

12. In the present case, based on the adverse report of the Superintendent of Police, Tirunelveli, the selection of the writ petitioner was not further preceded and no appointment order was issued.

13. The petitioner approached the Tamil Nadu Administrative Tribunal and the Tribunal issued a direction. The Department filed a writ petition before this Court and thereafter, SLP before the Apex Court and both the petitions were dismissed and thereafter, they have issued the posting order to the writ petitioner on 23.12.2009. Therefore, the petitioner joined in service pursuant to the orders of the Court. None of the Court orders provide restoration of seniority from the date of selection along with his batch mates. Contrarily, the Tribunal directed the authorities to issue posting order, which was issued by the authorities only after reaching finality in

respect of the order passed by the Tribunal.

14. Pertinently, the petitioner has not claimed seniority even after his appointment on 23.12.2009 and he remained silent about the seniority. The date of probation was declared in the appointment order. The appointment order dated 23.12.2009 reads as under:

"In continuation of the reference 1st and 2nd cited above, the following newly appointed Grade II Warder recruited by Tamil Nadu Uniform Service Recruitment Board has been joined duty at Central Prison, Vellore on the forenoon of 23.12.2009 in the existing vacancy post. Warder's number allotted is noted against his name.

Sl.No	Name of Candidate	Warder Numbers	Allotted
1.	Thiru.N.Bharathi		219

The above Grade II Warder will be paid pay and eligible allowances in the time scale of Rs.5200-20200 Grade pay.1800 per month.

The Services of the above candidate in the post of Grade II Warder is regularised w.e.f 23.12.2009 forenoon. The above candidate is placed on Probation for a period of two years within a continuous period of three years w.e.f. 23.12.2009 forenoon."

15. The order of appointment in unambiguous terms states that the services of the petitioner in the post of Grade-II Warder is regularised with effect from 23.12.2009 Forenoon. Thus, the date of regularisation and the date of commencement of probation was specifically mentioned in the appointment order. Retrospective regularisation was not granted. The petitioner accepted the order of appointment in the year 2009, joined duty and continued in service.

16. After a lapse of about 3 years the petitioner submitted a representation dated 22.05.2012 stating the the petitioner may be conferred with the seniority on par with his batch mates and G.P.F account is also to be opened in favour of him. The said representation was considered by the Authorities and impugned orders are passed rejecting the same.

17. The question arises, whether a candidate facing an adverse report from the Superintendent of Police can be considered for appointment to the post of Grade-II Warder. Even recently, the Hon'ble Supreme Court of India in the case of Commissioner of Police vs. Raj Kumar in C.A.No.4960 of 2021 dated 25.08.2021 [MANU/ SC/ 0565/ 2021] held as follows:-

26. Courts exercising judicial review cannot

second guess the suitability of a candidate for any public office or post. Absent evidence of malice or mindlessness (to the materials), or illegality by the public employer, an intense scrutiny on why a candidate is excluded as unsuitable renders the courts- decision suspect to the charge of trespass into executive power of determining suitability of an individual for appointment. This was emphasized by this court, in M.V. Thimmaiah v. Union Public Service Commission⁷ held as follows:

"21. Now, comes the question with regard to the selection of the candidates. Normally, the recommendations of the Selection Committee cannot be challenged except on the ground of mala fides or serious violation of the statutory rules. The courts cannot sit as an Appellate Authority to examine the recommendations of the Selection Committee like the court of appeal. This discretion has been given to the Selection Committee only and courts rarely sit as a court of appeal to examine the selection of the candidates nor is the business of the court to examine each candidate and record its opinion...

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30. We fail to understand how the Tribunal can sit as an Appellate Authority to call for the personal records and constitute Selection Committee to undertake this exercise. This power is not given to the Tribunal and it should be clearly understood that the assessment of the Selection Committee is not subject to appeal either before the Tribunal or by the courts. One has to give credit to the Selection Committee for making their assessment and it is not subject to appeal. Taking the overall view of ACRs of the candidates, one may be held to be very good and another may be held to be good. If this type of interference is permitted then it would virtually amount that the Tribunals and the High Courts have started sitting as Selection Committee or act as an Appellate Authority over the selection."

29. Public service ~ like any other, pre-supposes that the state employer has an element of latitude or choice on who should enter its service. Norms, based on principles, govern essential aspects such as qualification, experience, age, number of attempts permitted to a candidate, etc. These, broadly

constitute eligibility conditions required of each candidate or applicant aspiring to enter public service. Judicial review, under the Constitution, is permissible to ensure that those norms are fair and reasonable, and applied fairly, in a non-discriminatory manner. However, suitability is entirely different; the autonomy or choice of the public employer, is greatest, as long as the process of decision making is neither illegal, unfair, or lacking in bona fides.

30. The High Court's approach, evident from its observations about the youth and age of the candidates, appears to hint at the general acceptability of behaviour which involves petty crime or misdemeanour. The impugned order indicates a broad view, that such misdemeanour should not be taken seriously, given the age of the youth and the rural setting. This court is of opinion that such generalizations, leading to condonation of the offender's conduct, should not enter the judicial verdict and should be avoided. Certain types of offences, like molestation of women, or trespass and beating up, assault, causing hurt or grievous hurt, (with or without use of weapons), of victims, in rural settings, can also be indicative of caste or hierarchy-based behaviour. Each case is to be scrutinized by the concerned public employer, through its designated officials~ more so, in the case of recruitment for the police force, who are under a duty to maintain order, and tackle lawlessness, since their ability to inspire public confidence is a bulwark to society's security."

18. The assessment of suitability and eligibility, verification of character and antecedents are of paramount importance, which all are contemplated under the Special Rules for the selection to the post of Grade-II Warder. When the adverse report was submitted by the Superintendent of Police, Tirunelveli, the Authorities Competent had not proceeded with the selection of the writ petitioner and therefore, there is no infirmity, as such, in respect of non-issuance of appointment order to the writ petitioner during the relevant point of time. However, the petitioner approached the Tamil Nadu Administrative Tribunal and the Tribunal passed an order of direction to issue posting order and the matter went upto the Hon'ble Supreme Court of India and thereafter, the appointment order was issued by the Competent Authority on 23.12.2009.

19. The appointment order also categorically states that the services of the writ petitioner was regularised with effect from 23.12.2009 i.e., from the date of his appointment. Therefore,

the Authorities cannot be held responsible for the delay in issuing the posting orders. As per the Competent Selection Committee, the petitioner was found ineligible and not suitable for appointment to the post of Grade-II Warder during the relevant point of time. Only by virtue of the Court order, the petitioner was issued with a posting order. However, the petitioner has not sought for any further direction from the Court for the restoration of his seniority from the date of his selection. Contrarily, the direction was issued only to issue posting order, which was issued after the orders of this Court and the Hon'ble Supreme Court of India. Thus, there is no infirmity as such.

20. That apart, the seniority of the writ petitioner has been fixed as per the rules in force and the said position was communicated to the writ petitioner and the writ petitioner has not challenged the appointment order, which states that the petitioner's services are regularised with effect from 23.12.2009. The representation itself was submitted after a period of 3 years from the date of joining in the post of Grade-II Warder.

21. This being the factum, the petitioner has not established any acceptable ground for the purpose of granting the relief as such sought for in the present writ petition.

22. Accordingly, the Writ Petition stands dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is also dismissed..

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

Jeni/Svn

To

1. The Additional Director General of Prison,
Egmore, Chennai - 8.
2. The Deputy Inspector General of Prison,
Chennai Range, Egmore,
Chennai - 8.

3. The Superintendent of Prison,
Central Prison, Vellore.
4. The Deputy Secretary to Government,
Home (Prison-II) Department,
Secretariat, Chennai - 9.

+1cc to Mr.L.Chandrakumar, Advocate, S.R.No.41581

+1cc to the Government Pleader, S.R.No.42319

W.P.No.11486 of 2014

RSV(CO)
RGA(19/07/2022)