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W.P.No.19428 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.19428 of 2014

and

M.P.No.1 of 2014

V.Asokan

... Petitioner

Vs.

The Inspector General of Prison-cum-
Additional Director General of Police,
Prison Department,
Egmore, Chennai 8.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondent in connection with the impugned order passed by him in Ref.No.3409/EW2/2014 dated 11.03.2014 and quash the same and direct the respondent to revise the seniority of the petitioner in the cadre of Chief Head Warder based on his seniority and grant him further promotion at par with his juniors.

For Petitioner : Mr.K.Venkataramani
Senior Advocate
For Mr.M.Muthappan

For Respondent : Mrs..R.L.Karthika
Government Advocate



ORDER

The order of rejection, rejecting the claim of the writ petitioner to revise the seniority of the writ petitioner in the cadre of Chief Head Warder is under challenge in the present writ petition.

2. The writ petitioner was appointed as Grade-II Warder in the Prison Department. He was promoted as Grade-II Warder and now serving as Chief Head Warder in Central Prison, Chennai. The petitioner while serving at Central Prison, Trichy, he made a request application to transfer him to Central Prison, Chennai. During the relevant period of time, the District was the unit for the appointment, transfer and promotion. But subsequently, the Government modified the service rules and brought the entire State in one unit in respect of Warders and prepared seniority list.

3. When the seniority list was prepared in the year 2010, the name of the petitioner did not found place. The petitioner made a representation and requested to remove his name from the employees list of Central Prison, Trichy and to include his name in the employees list of the Central Prison, Chennai. Accordingly, the name of the petitioner was removed from the seniority list at Central Prison, Trichy and included in seniority list at Central Prison, Chennai by the proceedings dated 09.01.2010. The



State wise seniority list for the year 2011-2012 was prepared by the respondent on 14.10.2010, wherein, the name of the petitioner was not included in the appropriate place. Numbers of juniors to the petitioner have been arrayed as seniors and they have given further promotion to the post of Assistant Jailors.

4. The petitioner states that the persons in S.No.479 C.R.Manokaran, 553 Palraj, 567 Gangadaran, 614 Pitchandi, 662 Kumar, 752 Israel and 878 Nedunchezian were included in the State wise seniority list and they were promoted as Grade-I Warders and subsequently, promoted to the post of Assistant Jailors.

5. The petitioner earlier filed writ petition in W.P.No.5665 of 2004 and this Court passed an order on 26.02.2014, directing the respondents to consider the representation and consequently, the respondent rejected the representation in the impugned order dated 11.03.2014. Thus, the petitioner has chosen to file the present writ petition.

6. The learned Senior Counsel appearing on behalf of the petitioner mainly contended that no doubt, the District was the unit during the relevant point of time, when the petitioner submitted a request transfer



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application to transfer him to Chennai. However, thereafter, the State became the unit and therefore, the petitioner's name ought to have been placed in an appropriate place. However, in the seniority list at Chennai, the name of the writ petitioner was included as a last candidate, which resulted in denial of seniority and consequential promotion to the writ petitioner. Many of his juniors at Chennai were promoted. Thus, the order impugned is liable to be set aside.

7. The learned Government Advocate appearing on behalf of the respondent objected the said contention by stating that the petitioner has made a representation on 14.07.2010 for deletion of his name in the seniority list of Grade-II Warder of Central Prison, Trichy, in which, he was originally appointed. On acceptance of the request of the petitioner dated 13.11.2010, his name was deleted from the seniority list of Grade-II Warder of Central Prison, Trichy by the Superintendent of Prisons, Central Prison, Trichy in proceedings dated 30.11.2010 and his name was included in the seniority list of Central Prison, Chennai (now Central Prison-II, Puzhal) has been fixed by the Superintendent of Prisons, Central Prison-II, Puzhal as per proceedings dated 09.12.2010, subject to conditions that he was willing to fix the seniority at the bottom of the list of persons appointed during the year and he waived his seniority place in



Grade-II Warder list in Trichy unit and considered to take place in Grade-II Warder list in Puzhal unit. The revised seniority in respect of his name was fixed below Thiru.C.R.Manoharan, (S.No.8) and above Thiru.G.Gangadharan (S.No.9) Grade-II Warder for the year 2010-2011 by the Superintendent of Prisons, Central Prison-II, Puzhal. Therefore, his name was found in the revised unit seniority of Central Prison-II, Puzhal.

8. A general guidelines were issued by the respondent vide memo dated 02.12.1999 to the effect that in the event of transfer of the employees from one prison to another, their unit seniority would be, where the individual was originally appointed in the prison. Therefore, their seniority never been changed in the event of the transfer or any other reasons unless the individual forego the seniority of the original place of appointment.

9. In the context of the proceedings dated 09.12.2010 of the Superintendent of Prisons Central Prison, Puzhal and the general guidelines issued by the respondent in memo dated 02.12.1999, even after the transfer of the writ petitioner from Central Prison, Trichy to Central Prison, Chennai, his seniority was maintained in Central Prison, Trichy.



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10. Only if an employee made a request to change his seniority to the transferred place, then the seniority will be re-fixed. In the present case, at the time of submission of request transfer application, unit seniority was maintained and the name of the writ petitioner was maintained in Central Prison, Trichy. He was transferred to Central Prison, Puzhal, Chennai and thereafter, in proceedings dated 09.12.2010, at the request of the petitioner, his seniority was fixed at the bottom of the list of persons appointed during the year and the petitioner waived his seniority place in Grade-II Warder list in Trichy unit.

11. The employee at the time of request to transfer his seniority from Trichy to Chennai, had waived his original seniority in Trichy unit. When the original seniority in Trichy unit has been waived and thereafter, the petitioner's name was considered in the transferred place for fixing seniority, the authorities have fixed the revised seniority by placing the writ petitioner in the appropriate place.

12. No doubt, the petitioner has not forgone his seniority at the time of request of transfer, because even after the request of transfer to Chennai, the seniority of the writ petitioner was maintained in Central Prison, Trichy, which was the District unit during the relevant point of



time. When the petitioner made a request to withdraw the seniority from Trichy unit and re-fix his seniority in Central Prison, Puzhal, thereafter, the Superintendent initiated action and deleted the name of the petitioner from the seniority list of the Central Prison, Trichy and included the name of the petitioner in the Central Prison, Chennai. At that point of time, the petitioner agreed to fix his seniority by waiving his seniority position as Grade-II Warder in Trichy unit. That exactly is the reason why the seniority of the writ petitioner has been re-fixed appropriately in the seniority list maintained by Central Prison, Puzhal.

13. The proceedings dated 09.12.2010 was very clear that the petitioner waived his seniority position in Grade-II Warder list in the Central Prison, Trichy unit and the said proceedings were not challenged by the writ petitioner and thereafter, he made a separate representation and filed a writ petition and based on the direction, the impugned order has been passed 11.03.2014 and he filed the present writ petition thereafter.

14. Therefore, the petitioner has accepted the waiver of his seniority position in Grade-II in Trichy unit and made a request to reconsider his name to re-fix his seniority in Central Prison, Puzhal, Chennai and his request was accepted and accordingly, the Superintendent of Prisons



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issued proceedings dated 09.12.2010, which remains unchallenged.

Thereafter, he made a representation to revise his seniority, which was not considered.

15. This being the factum, the petitioner now cannot turn around and seek re-fixation of seniority in counter to the seniority fixed by the Superintendent of Central Prisons, Puzhal in proceedings dated 09.12.2010, based on his own request.

16. Thus, the Writ Petition is devoid of merits and stands dismissed.

No costs. Consequently, connected Miscellaneous Petition is closed.

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Jeni/Kak

Index : Yes

Speaking order : Yes

To

The Inspector General of Prison-cum-
Additional Director General of Police,
Prison Department,
Egmore, Chennai 8.



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S.M. SUBRAMANIAM, J.

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