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W.P.No. 30660 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No. 30660 of 2018
and WMP.No.35759 of 2018

S.Nataraja Perumal

..Petitioner

Vs.

1. The Additional Director General of Police/
Inspector General of Prisons,
Whannels Road,
Egmore, Chennai – 8.

2. The Superintendent,
Central Prison,
Palayamottai.

3. The Superintendent,
Central Prison – II (Remand),
Puzhal, Chennai – 66.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for Writs of Certiorarified Mandamus, calling for the records relating to the impugned order passed in Memo No. 33349/E.S 3/2012, dated 01.02.2018 passed by the 1st respondent and quash the same and consequently direct the 1st respondent to restore his seniority on par with his junior Thiru.J.Joseph John Milton and allow all consequential promotion and benefits.



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For Petitioner : Mr.C.Vigneswaran

For Respondents : Mr.R.U.Dinesh Raj Kumarn
Additional Government Pleader

ORDER

The prayer sought for herein is for issuance a writ of certiorarified mandamus, to quash the impugned order passed in Memo No. 33349/E.S 3/2012, dated 01.02.2018 and consequently direct the 1st respondent to restore his seniority on par with his junior Thiru.J.Joseph John Milton and allow all consequential promotion and benefits.

2. The petitioner was working as Grade-II Warder at the respondent Corporation, which is Tamil Nadu Jail Subordinate Service. During the year 2009, pursuant to the disciplinary proceedings against the petitioner, a punishment was awarded against the petitioner by order dated 16.12.2009, under which, stoppage of increment of one year with cumulative effect was inflicted against the petitioner. However, when he filed revision before the Revisional Authority, that was modified into without cumulative effect, anyhow that was the only punishment



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awarded against him on 16.12.2009. The currency of the said punishment is for one year upto 15.12.2011.

3. Subsequently, when the promotion to the post of Warder Grade -I had come for the panel year 2009-2010 and 2010-2011, the name of the petitioner was deferred by citing the reasons that there was a currency of punishment from 16.12.2009 till 15.12.2010 and accordingly he was considered for the year 2011-2012 on 25.10.2012. Hence he was promoted as Warder Grade – I with effect from 25.10.2012 for the year 2011-2012.

4. Thereafter, for further promotion for the year 2012-2013 to the post of Chief Warder, though the petitioner's name had been initially included for the purpose of giving promotion to the post of Chief Warder for the year 2012-2013, the same once again has been deferred by stating that the five years check period, pursuant to the punishment, that was awarded against the petitioner and he was considered only for the next panel year i.e., 2013-2014 and he was given promotion as Chief Warder only on 23.10.2014.



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5. When this was questioned or appealed to the respondents, the same was rejected through the impugned order on 01.02.2018 passed by the Additional Director General of Police/Inspector General of Prisons, Chennai, the first respondent herein that is under challenged in this writ petition.

6. Heard Mr.C.Vigneswaran, learned counsel appearing for the petitioner, who would submit that insofar as the check period of five years is concerned, that has been done away pursuant to the order passed by the Full Bench of this Court in the case of ***The Deputy General of Police, Thanjavur Range Vs. V.Rani [2011 (3) CTC 129]*** and subsequent to that, in order to over come the Full Bench decision even though the Government had come forward to issue G.O.Ms.No.22, Personnel and Administrative Reforms (S) Department dated 24.02.2014. Even that Government Order was also set aside by this Court in W.P.No.243 of 2015 and W.A.No.983 of 2015 by judgment and order dated 14.09.2016. Therefore, the five years Rule first of all cannot be imposed.



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7. He would also submit that, in fact the petitioner candidature was considered and included originally in the panel list fit for promotion from the post of Warder Grade – I to Chief Warder. Subsequently by proceedings of the first respondent dated 22.08.2012, his name was not considered by citing the reason that there was a punishment during the check period. Therefore, the promotion that should have been given to the petitioner for the year 2012-2013 since has been deferred for 2012-2013 and was given only on 22.10.2014, by thus, the petitioner lost the promotion of Chief Warder for one year. Therefore, now he seeks for notional promotion from that period and all service and attendant benefits as a consequential reliefs.

8. *Per contra*, Mr.R.U.Dinesh Raj Kumar, learned Additional Government Pleader appearing for the respondents has submitted that insofar as the punishment awarded against the petitioner dated 16.12.2009 is concerned, that currency of punishment was there that is upto 15.12.2010 only thereafter his name was considered taking the crucial dated as 15.07.2011 and accordingly he was promoted as Warder Grade – I from Warder Grade -II. Till such position it was based on the



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District-wise seniority. However, further promotion to the Chief Warder is concerned, since it is a state wide seniority, a state wide panel has been prepared, wherein the name of the petitioner could not be considered because there was a check period of punishment and therefore it was excluded. However subsequently after completing the said check period, the petitioner was considered for the panel year 2013-2014 and was promoted accordingly on 23.10.2014. Therefore, the petitioner cannot seek for any retrospective promotion or earlier promotion for the years 2012-2013.

9. I have considered the said submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

10. As has been rightly pointed out by the learned counsel appearing for the petitioner that the five years check period has been done away by the authoritative pronouncement of this Court i.e., Full Bench judgment in *V.Rani's* case stated supra.



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11. Subsequently even though G.O.Ms.No.22 of the Personnel and Administrative Reforms (S) Department dated 24.02.2014 was issued that was also set aside by the orders of this Court in W.A.No.983 of 2015 by order dated 14.09.2016. Therefore, the said five years Rule or whatever the Rule that is check period cannot be put against the petitioner.

12. Only with regard to the currency of punishment, the petitioner is not entitled for any such promotion, which was offered on 15.12.2010. Thereafter, by taking the crucial date as 15.07.2011, for the period 2011-2012 he was considered for promotion and for the year 2012-2013 is concerned, when such next promotion to the post of Chief Warder though the name of the petitioner had been included initially subsequently, it has been excluded by citing the reasons that punishment and during check period. The proceedings dated 22.08.2012 in this regard is extracted hereunder for easy understanding the issue:

An approved list of 444 numbers of Chief Head Warders selected from among the regular 906 First Grade & Second Grade Warders fit for promotion to the post of Chief Head Warders was published vide this officer



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reference second cited. The names included in the said approved list for the reasons noted against each as per the consolidated guidelines issued by the Government in their Letter No.18824/P&AR/S 105-2, dated 07.10.2005.

S.No.	Name & Designation Thiruvallur	Present Situation	Reason
1	K.Dhandapani Grade I Warder.	Special Sub Jail, Chengalpet	Punishment during check period
xx	xxxxxx	xxxxxx	xxxxxx
31	S.Natarajaperumal Grade I Warder.(UG)	District Jail, Srivaikundam	Punishment during check period
xx	xxxxxx	xxxxxx	xxxxxx
82	M.Velusamy Grade I Warder (UG)	Sub Jail, Tenkasi	Punishment during check period

3) The Superintendent of Prisons, is directed to communicate the same to the individual under proper acknowledgement.

4) The receipt of this communication should be acknowledged.

*Sd.S.K.Dogra,
Additional Director General of Police /
Inspector General of Prisons.”*

13. Had the petitioner been considered for the year 2012-2013 for the next promotion that is Chief Warder he would have been given promotion but for the pendency of the check period cited by the respondent.



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14. If the said reason has not been taken into account, such promotion could have been given to the petitioner for the year 2012-2013, for which, since the petitioner had become eligible, his name was initially included but for the aforesaid reason that has been subsequently excluded. Therefore, the said plea raised by the petitioner to seek for a promotion for the year 2012-2013 to the post of Chief Warder is to be accepted and therefore, he shall be entitled to get notional promotion to the post of Chief Warder from 2012-2013 taking the crucial date for that panel year unmindful of the myth that was declared stating that there is a check period, which stands in the way of the petitioner's promotion.

15. In view of the above stated, this Court is inclined to dispose of this writ petition with the following orders:

- ◆ That the impugned order is set aside and as a sequel there shall be a direction to the respondents to consider the request of the petitioner for giving him promotion to the post of Chief Warder, instead of the year 2013-2014 with effect from 23.10.2014, for the year 2012-2013 and accordingly, he shall be given such promotion of Chief Warder on notional basis since the petitioner has already



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been retired during the pendency of the writ petition and accordingly his pay and other service benefits including the pensionable benefits shall be calculated. However for the backwages to the promoted post for the said period 2012-2013 and 2013-2014 shall be treated only as notional, for which, the petitioner is not entitled to but all other benefits including continuity of service in the promotion post the petitioner shall be entitled to.

- ◆ The revised order to that effect as indicated above shall be made by the respondents especially, the first respondent within a period of eight (8) weeks from date of receipt of a copy of this order.

With these directions, this writ petition is ordered accordingly. No costs. Connected miscellaneous petition is closed.

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Index : Yes/No
Internet: Yes/No
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