



W.P.(MD)No.8082 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.12.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.(MD)No.8082 of 2020
and
W.M.P.(MD)No.7508 of 2020**

B.Sheik Ismail

... Petitioner

Vs.

1. The Additional Director General of Police,
Inspector General of Prisons,
Chennai.

2. The Accountant General Officer, (A&G) Department,
Account General Office,
No.6, Annasalai, Tenampet,
Chennai - 600 018.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records pertaining to the orders passed by the first respondent in the impugned orders in No.34803/ES.3/2017, dated 22.04.2020 and the order passed in the proceedings No.21826/ES/3/2009-2 dated 14.08.2009 and to quash the same further to direct the respondents to provide relaxation based



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on G.O.(Ms)No.1120, Personnel and Administrative Reforms (M) Department, dated 30.10.1984 in the light of the order passed in respect of similarly placed person by the Home (Prison-II) Department, in his proceedings in G.O.(D)No.70, Home (Prison-II) Department, dated 21.01.2020 and thereby, provide increments in the post of Assistant Jailor from 2002 onwards.

For Petitioner : Mr.J.Imran Khan
For Respondents : Mr.A.K.Manikkam
Special Government Pleader for R1
Mr.P.Gunasekaran for R2

ORDER

Challenging the impugned orders of the first respondent dated 14.08.2009 and 22.04.2020 and for a direction to the respondents to provide relaxation to the petitioner based on G.O.(Ms)No.1120, Personnel and Administrative Reforms (M) Department, dated 30.10.1984 and provide increments in the post of Assistant Jailor from 2002 onwards, the petitioner is before this Court with this writ petition.



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2. The case of the petitioner is that the petitioner was appointed as Grade-II Warder in the year 1970 and subsequently, he was promoted as Head Warder, Chief Head Warder and Temporary Assistant Jailor in the year 1994, 1999 and 2002 respectively. He retired from service as Temporary Assistant Jailor on 30.06.2008 and he was not regularised as regular Assistant Jailor. After retirement, the petitioner made an application on 23.08.2017 for seeking exemption for passing Departmental Test and for granting annual increments in the post of Assistant Jailor and the same was rejected vide impugned order, dated 22.04.2020. Challenging the same, the present Writ Petition.

3. The learned counsel appearing for the petitioner would submit that admittedly the petitioner was appointed as Temporary Assistant Jailor in the year 2002 from the post of Chief Head Warder. However, the pay was not fixed in the post of Assistant Jailor, which is injustice and the petitioner is entitled to receive salary from 2002 till his retirement for the post of Assistant Jailor. Accordingly, he prays for appropriate orders.



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4. The learned Special Government Pleader appearing for the first respondent would submit that the requests of the petitioner for giving relaxation was rejected on the ground that the petitioner has not passed the departmental test/account test for subordinate officers-Part I based on G.O. (Ms)No.1120, Personnel and Administrative Reforms (M) Department, dated 30.10.1984, by which, the Government may relax the relevant special rules in favour of the individuals, who has not passed the tests on the condition that he/she should have completed 53 years, he ought to have appeared for the examination at least for 5 times by producing hall tickets and his service records should be proved to be satisfactory to avail the same. The learned counsel however submitted that the petitioner has not submitted the hall tickets showing that he appeared for the examination for five times so as to get the annual increments for the post of Assistant Jailor. As per the rules, the petitioner has to pass the test, namely, account test, jail test part I, Indian Penal Code, Criminal Procedure Code and Laws, Rules, regulations relating to Jail management. However, in the present case, the petitioner has passed three tests, except Account test and Laws, Rules, regulations



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relating to Jail management. He would further submit that when the petitioner has not passed the subjects and he has not even submitted the hall tickets to show that he has appeared the examination for five times, there is no question of giving relaxation to the petitioner. Hence, he prayed for dismissal of the Writ Petition.

5. Heard the learned counsel appearing for the parties and perused the materials placed before this Court.

6. Admittedly, the petitioner was appointed as Grade-II Warder in Prison Department through Employment Exchange during the year 1970 and his service was regularised in the post of Grade-II Warder in the year 1985 as per G.O.(Ms).No.2274, Home (Prison II) Department, dated 11.09.1985 relaxing the relevant rules in favour of him in respect of physical measurement, as his height is 166 cm instead of the required height of 168 cm. Though the petitioner was not fit for uniformed service in view of lack in physical measurement, however the Government has issued orders relaxing the relevant rules in favour of him in respect of physical



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measurement. Thereafter, he was promoted as Grade-I Warder, Chief Head Warder and Temporary Assistant Jailor and he retired from service on 30.06.2008. Further, he had not rendered unblemished service, since he was awarded the punishment in his service vide order, dated 01.12.1976 that "his next increment was postponed for a period of one year without cumulative effect." However, the petitioner has not submitted the Hall Tickets or other relevant records to sustain his request that he appeared five times for the Departmental Examinations, which are necessary to grant relaxation so as to get annual increments in the post of Assistant Jailor. As per Rule 9(b) of the Tamil Nadu Jail Subordinate Rules, the petitioner has to pass the Account Test for Subordinate Officers-Part-I, The Jail Test-Part-I, (i) Indian Penal Code, (ii) Criminal Procedure Code and (iii) Laws, Rules, Regulations relating to Jail Management to the post of Assistant Jailor. However, the petitioner has passed only the Jail Test Part-I (i) Indian Penal Code and (ii) Criminal Procedure Code. In view of lack of qualifications, the petitioner is not entitled to be confirmed in the post of Assistant Jailor.



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7. It is pertinent to note here that as per G.O.Ms.No. Dated 21.01.2020, relaxation has been given to one Nallathambi and it is the contention of the petitioner that since he is also similarly placed, his case may also be considered. However, with regard to Nallathambi, his case was considered for relaxation, since he has enclosed all the hall-tickets to show that he appeared for the examination for five times, however, he could not complete. In the present case on hand, the petitioner has not enclosed the hall-tickets to show that he appeared. One more point is that relaxation was given to Nallathambi, when he was about to retire. However, the fact remains that though the petitioner retired in the year 2008, he made an application in the year 2017 for claiming salary on par with the Assistant Jailor Post by relaxing the qualifications, which is not sustainable. Already, the Government has relaxed the petitioner's height at the time of appointment and further relaxation is impermissible and the claim made by the petitioner is also hit by delay and laches. Hence, the prayer sought for in the Writ Petition cannot be granted.



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8. For all these, this Writ Petition is dismissed. No costs.

Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No

Speaking Order : Yes / No

vji/RR

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