



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.02.2022

Pronounced on : 18.02.2022

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THE HONOURABLE MR.JUSTICE **B. PUGALENDHI**

W.P. (MD) No.23049 of 2021
and
W.M.P. (MD) No.19525 of 2021

R.King : Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by the Additional Chief Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat, Chennai - 9.
- 2.The Director General of Police /
Director General of Prisons,
Whannels Road, Egmore,
Chennai - 600 008.
- 3.The District Collector /
Head of the District Level Committee,
National Trust for Welfare of Persons with
Autism, Cerebral Palsy, Mental Retardation and
Multiple Disability,
Madurai.
- 4.The Superintendent of Prison,
Madurai Central Prison,
Madurai.
- 5.The Probation Officer,
Tamil Nadu Prison and Correctional Services Department,
Usilampatti, Madurai District. : Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorarified Mandamus calling for the records pertaining to Na.No.32046/ES/2/2021, dated 03.12.2021, passed by the second respondent and quash the same and direct the respondents 1, 2 & 4 to pass necessary orders to transfer the petitioner from the present post of 'Scavenger' in the Usilampatti Sub Jail to the post of 'Office Assistant' in the fifth respondent office.



For Petitioner : Mr.M.Karthik Kanna
For Respondents : Mr.P.T.Thiraviam,
Government Advocate

ORDER

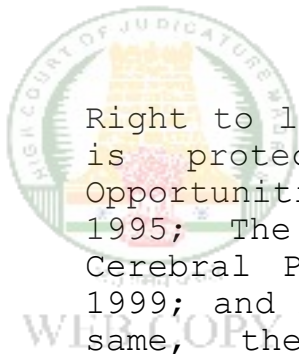
The petitioner before this Court is working as a Cleanliness Worker. His father, who worked as a Teacher in a Juvenile Home, was found missing from 1982 and he was declared dead in the year 2011. According to the petitioner, his brother and sister are mentally retarded since birth and as such, he is the sole bread winner of the family. Thereafter, on his application, he was appointed as Scavenger [present nomenclature - Cleanliness Worker], on compassionate grounds. At present, the petitioner is working as a Cleanliness Worker in the Sub Jail, Usilampatti.

2. According to the petitioner, he has to take care of his mentally retarded brother and sister, who are aged about 41 and 40 years respectively. They are having 100% mental disability and even for nature's call and personal hygiene, the petitioner has to take care of them. His grievance is that the duty hour of a Cleanliness Worker is from 06.00 am to 06.00 pm and as such, it is very difficult for him to take good care of them. In such circumstances, he has made a representation to the authorities to transfer him to the post of 'Office Assistant' in the office of the fifth respondent. Since it was not considered, he has filed a writ petition before this Court in W.P.(MD)No.16516 of 2021 and this Court, by order dated 14.09.2021, directed the Director General of Prisons to dispose of the said representation. The second respondent, accordingly, has considered the same, but has rejected the request of the petitioner vide the impugned order. Challenging the same, the petitioner has moved the instant writ petition.

3. Heard Mr.N.Karthik Kanna, learned Counsel appearing for the petitioner and Mr.P.T.Thiraviam, learned Government Advocate appearing for the respondents.

4. Learned Counsel appearing for the petitioner submitted that the second respondent has rejected the petitioner's claim on the ground that the petitioner has not completed the minimum qualification of eighth standard for the post of Office Assistant. The petitioner has appeared for Eighth Standard Public Examination (ESLC) in the year 2000 and has failed in one subject [Mathematics], out of five subjects. For the said paper, he has also attended the exam privately in the year 2021 and the results are awaited.

5. Learned Counsel further submitted that the petitioner is the registered Guardian / Care Taker of his mentally retarded siblings. He has also enclosed the photograph of the petitioner, along with his mother and mentally retarded brother and sister. The working condition of the petitioner is substantially connected with the



Right to live with dignity of his mentally retarded siblings, which is protected under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999; and Mental Healthcare Act, 2017. But, without considering the same, the second respondent has mechanically dismissed the petitioner's claim and therefore, the learned Counsel prayed for interference.

6. Taking note of the unique circumstances of the case, this Court has directed the learned Government Advocate to get instructions from the authorities as to the possibility of relaxing the reporting time of the petitioner.

7. Learned Government Advocate appearing for the respondents, in turn, has produced the written instructions received from the fourth respondent - Superintendent of Prison, Central Prison, Madurai, wherein, it is averred as follows:-

"1) The petitioner Tr.R.King was appointed as 'Scavenger' (Now the nomenclature of the post is changed to 'Cleanliness worker') in the Department of Prisons and Correctional Services on Compassionate grounds with effect from 26.11.2018 at District Jail, Dindigul, and then he was transferred to Sub Jail, Usilampatti by Director General of Police / Director General of Prison and Correctional Services by considering his own request and now he is working as such in Sub Jail, Usilampatti from 01.10.2020 onwards.

2) The Daily Unlock - up of prisoners in the sub jails is being carried out at day break at about 05.45 am to 06.00 am as routine as per rule No.256 of Tamil Nadu Prison Rules, 1983. As soon as the wards and cells are unlocked, the sweepers shall thoroughly sweep and clean every part of the wards and cells as per rule No.259 of Tamil Nadu Prison Rules, 1983. As such the concerned cleanliness workers must attend their daily duty at about 06.00 am to carry out the sweeping works as per the above rule provision.

3) Moreover in respect of sub jails, the unlocked prisoners are being allowed to be in outside of their wards and cells at about 2 hours only every time in morning, mid - day and evening, for their daily meals and other routine ablution purposes. Hence in respect of the morning time, the services of the Cleanliness workers are absolutely necessary between 06.00 am to 08.00 am in prisons, especially in sub jails.

4) The sub jails having only one post of Cleanliness Worker each, and as such the petitioner is the only incumbent of the post available in sub jail, Usilampatti.

5) Hence in the above circumstances, there is no



possibility to adjust the duty in the morning hours in respect of the petitioner, which affects the daily routine of the sub jail.

6) Moreover, it may leads to wrong precedent to claim such benefits by other various categories of staff as a special case."

8.Learned Counsel appearing for the petitioner intervened and submitted that pending this writ petition, the results for ESLC Examination, December - 2021 were published and the petitioner was declared pass in Maths subject, as such, the petitioner has now completed ESLC.

9.This Court paid it's anxious consideration to the rival submissions and to the documents placed on record.

10.It appears that the second respondent has rejected the claim of the petitioner on the ground that he is not having the required qualification. The second respondent has also referred to Rule 5(2) (a) of the Tamil Nadu Basic Service Rules, which provides for transfer of candidates from the categories in Class IV to the categories in Class III, provided they have the sufficient qualification. The said rule is extracted as under:

"5.Qualification:-

... ..

(2)Educational Qualification:-

a) No person shall be eligible for appointment by direct recruitment to any category of the service in class I, II and III unless he has passed the III form or the VIII Standard *(or the E.S.L.C.) of a recognised school (i.e.) a school maintained by or opened with the sanction of the Government of Tamil Nadu or to which recognition has been accorded by the Director of School Education under the Educational Rules of the State.

Provided that those who have passed III Form or VIII Standard or E.S.L.C. and completed probation in Class IV or served in the said class for not less than one year shall be eligible for appointment on transfer from the categories in Class IV to the categories in class III of the said service."

11.Admittedly, on the date of passing of the impugned order, the petitioner has not completed ESLC, whereas, pending the writ petition, he has completed the same. Though this Court is inclined to entertain the petitioner's claim by considering the unique circumstances and directed the learned Government Advocate to get instructions as to the possibility of relaxing the conditions of service, now that the petitioner himself has completed the required qualification, this Court is of the view that there is no bar for the second respondent to consider the petitioner's claim for



transfer from Cleanliness Worker (Class IV) to Office Assistant (Class III).

12. In view of the foregoing discussions, this writ petition stands allowed and the order impugned dated 03.12.2021, passed by the second respondent, is hereby set aside. The second respondent shall consider the petitioner's claim, taking into account the subsequent developments and pass appropriate orders, transferring the petitioner to the post of Office Assistant in the available vacancy, within a period of four weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petition shall stand closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

gk

To

1. The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition & Excise Department,
Secretariat, Chennai - 9.

2. The Director General of Police /
Director General of Prisons,
Whannels Road, Egmore,
Chennai - 600 008.

3. The District Collector /
Head of the District Level Committee,
National Trust for Welfare of Persons with
Autism, Cerebral Palsy, Mental Retardation and
Multiple Disability,
Madurai.

4. The Superintendent of Prison,
Madurai Central Prison, Madurai.

5. The Probation Officer,
Tamil Nadu Prison and Correctional Services Department,
Usilampatti, Madurai District.

+1 CC to M/s.N.KARTHIK KANNA, Advocate (SR-7177[F] dated 18/02/2022)



WP(MD)No.23049 of 2021

+1 CC to M/s.SPL GP (SR-7424[F] dated 21/02/2022)

W.P. (MD) No.23049 of 2021
18.02.2022

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