



W.P.No.12819 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.No.12819 of 2011

and

M.P.No.2 of 2011

A.Ansar Basha

...Petitioner

Vs

- 1.The Secretary to Government,
Home (Prison 1) Department,
Fort St.George, Chennai – 9.
- 2.The Additional Director General of Police,
Inspector General of Prisons,
Chennai – 8.
- 3.M.Senthil Kumar,
Jailor, Central Prison,
Vellore.
- 4.G.B.Senthamarai Kannan,
Jailor,
Central Prison,
Trichy.
- 5.V.Rukmani Priyadarshini,
Jailor,
Central Prison-1,
Puzhal, Chennai.



W.P.No.12819 of 2011

6.M.Urmila,
Jailor, Central Prison,
Salem.

7.Nigila Nagendran,
Jailor,
Central Prison-II,
Puzhal, Chennai.

8.M.Andal,
Jailor,
Central Prison,
Palayamkottai.

9.C.Krishnakumar,
Jailor,
Central Prison,
Madurai.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the respondents in connection with the impugned order issued by the first respondent in Letter No.80488/Prison 1/2010-3 dated 30.12.2010 and the second respondent in No.2614/CS2/2011 dated 21.01.2011 and Letter No.2614/CS.2/2011 dated 15/04/2011 and quash the same in so far as the petitioner and the respondents 3 to 9 is concerned and direct the respondents to regularize the service of the petitioner in the cadre of Jailor with effect from 08.12.07 and consequently place him over and above the respondents 3-9 and grant him all consequential service and monetary benefits.

For Petitioner : Mr.K.Venkataramani, Senior Counsel
for Mr.M.Muthappan



W.P.No.12819 of 2011

For Respondents :Mr.D.Gopal, Government Advocate (for R1&2)
Mr.V.Vijay Shankar (for R3 to R6 &9)
[R8 dismissed vide court order dated
05.03.2020]

ORDER

The Writ Petition is filed calling for the records of the respondents in connection with the impugned order issued by the first respondent in Letter No.80488/Prison 1/2010-3 dated 30.12.2010 and the second respondent in No.2614/CS2/2011 dated 21.01.2011 and Letter No.2614/CS.2/2011 dated 15/04/2011 and quash the same in so far as the petitioner and the respondents 3 to 9 is concerned and direct the respondents to regularize the service of the petitioner in the cadre of Jailor with effect from 08.12.07 and consequently place him over and above the respondents 3-9 and grant him all consequential service and monetary benefits.

2.The case of the petitioner in brief is that, petitioner joined service as Assistant Jailor by Direct recruitment through a selection conducted by the Tamil Nadu Public Service Commission and was appointed to the post on 01.12.1985. Later, he was promoted as Deputy Jailor as per G.O.Ms.1767, Home (Prison) Department, dated 07.12.2007 and petitioner assumed the office on 08.12.2007. He is fully qualified for promotion as Jailor by seniority and



W.P.No.12819 of 2011

merit in 2007 itself. Based on the recommendation of 2nd respondent,

Government issued orders in G.O.1718, Home (Prison II) Department, dated 21.11.2007 ordering promotion to the petitioner and 6 others as Jailors on temporary basis under Rule 10(a)(1) of the General Rules for Tamil Nadu State and Subordinate Service. G.O.965, Home (Prison) Department, dated 18.11.2010, the panel of Deputy Jailor fit for promotion as Jailor by recruitment by transfer for the year 2007-08 was issued and petitioner's name was included in Sr.No.4. Petitioner was serving as temporary Jailor from 08.12.2007 and his service was regularized on 18.11.2010. Petitioner is entitled to count the services rendered by him from the date of temporary appointment as Jailor from 08.12.2007 for the purpose of seniority and further promotion to the post of Additional Superintendent. Meanwhile, Government invited applications for appointment to the post of Jailors through direct recruitment for 8 vacancies. Thereafter, respondents 3 to 9 were appointed as Jailors by direct recruitment and they were sent for training in the Prison Training School, Vellore on 31.07.2010. They have commenced probation only on 31.07.2010 and yet to become a full member of the service. Respondents 3 to 9 were appointed by direct recruitment for the vacancies of the year 2007-08 on 31.07.2010 are to be arrayed only as juniors to the petitioner in the cadre of Jailors. 2nd respondent through communication dated 28.01.2011 published a list, wherein petitioner



W.P.No.12819 of 2011

was placed below the direct recruits. In the said circumstances, this Writ

Petition is filed.

3.It is stated by the learned counsel for the petitioner that there were about 7 vacancies earmarked for recruitment by transfer to the post of Jailor in 2006-07. Petitioner and 6 others were promoted temporarily. This deprived them their seniority. Had the seniority been fixed from the date of his temporary promotion as Jailor on 08.12.2007, petitioner would have been placed above the respondents 3 to 9 and would have earned further promotions as well.

4.In response, learned Government Advocate appearing for respondents 1 and 2 submitted that the proceedings were issued in G.O.Ms.No.1767, Home (Prison-I) Department, dated 07.12.2007, and on that basis, petitioner and 6 others were promoted temporarily under Rule 10(a)(i) of the General Rules for Tamil Nadu State and Subordinate Service Rules. It was specifically informed that this promotion will not confer them any right for regular promotion as Jailor in future. The appointment to the post of Jailor in Tamil Nadu Jail Service is governed by Rule 5 of the Special Rules for the Tamil Nadu Jail Service. There were vacancies from 2002-03 in the post of Jailor by “direct recruitment and by “recruitment by transfer” to the post of Jailor. The exact vacancies were



W.P.No.12819 of 2011

9 for “direct recruitment” and 14 for “recruitment through transfer”. The

Government of Tamil Nadu clubbed the 9 vacancies for 'direct recruitment' from 2002-03 to 2007-08 and issued notification for filling up these vacancies in 2009. Respondents 3 to 9 were selected for the post of Jailor against these vacancies. Petitioner name was included for Sr.No.4 of the regular panel for the post of Jailor for the year 2007-08 and he was appointed as Jailor in Central Prison, Cuddalore. He joined there on 07.01.2011. Petitioner contention that he should have been given seniority from the date of temporary promotion i.e., from 08.12.2007, is not correct. Thus, he prays for dismissal of this petition.

5.Learned counsel for the respondents 3 to 9 concurred with the submissions of the learned Government Advocate. He further submitted that, respondents 3 to 9 were appointed by 'direct recruitment' by following necessary procedure. The vacancies for “direct recruitment” started from 2002-03 and it culminated to 9 vacancies in the year 2007-08. Therefore, they are entitled to be placed ahead of the petitioner.

6.Considered the rival submissions and perused the records.



W.P.No.12819 of 2011

7. From the materials produced and submissions of the learned counsel for the parties, it is not in dispute, petitioner along with 6 others were temporarily promoted as Jailors by G.O.Ms.No.1767, Home (Prison-I) Department, dated 07.12.2007. Petitioner joined duty on 08.12.2007. From the counter affidavit and information supplied, it is seen that the following vacancies are available for posting by “direct recruitment” and “recruitment by transfer”. It is extracted in tabular column as follows,

Panel year	Vacancy apportioned for direct recruitment	Vacancy apportioned for recruitment by transfer
2002-2003	1	2
2003-2004	Nil	Nil
2004-2005	3	4
2005-2006	1	1
2006-2007	4	7
2007-2008	Nil	Nil
TOTAL	9	14

8. From the vacancy position elicited from the tabular column, it is apparent that, there were 4 vacancies during 2004-2005, 1 vacancy during 2005-2006, 7 vacancies during 2006-2007 for considering promotion to the post of Jailor from the post of Deputy Jailor under “recruitment by transfer”. When the vacancies were available, this Court is not able to understand why petitioner and 6 others were promoted temporarily. The crucial date for panel



W.P.No.12819 of 2011

for the post of Jailor is 15th February of every year. Why the respondents waited for the accumulation of 9 vacancies in the cadre of “direct recruitment” and allowed the “direct recruitment” to take place and then made temporary promotion of the petitioner as a regular promotion. There were sufficient vacancies available in the year 2006-07 for the post of Jailor under “recruitment by transfer”. Petitioner ought to have been promoted as a regular Jailor in the year 2007 itself.

9.(Therefore, this Court finds merits in the claim of the petitioner that his seniority should go back to the date of his promotion as Jailor on temporary basis as per G.O.Ms.No.1767, Home (Prison-I) Department, dated 07.12.2007. Thus, this Court quashes the orders issued by the first respondent in Letter No.80488/Prison 1/2010-3 dated 30.12.2010 and the second respondent in No.2614/CS2/2011 dated 21.01.2011 and Letter No.2614/CS.2/2011 dated 15/04/2011 and directs the 1st and 2nd respondents to place the petitioner above respondents 3 to 9 and regularise his service as Jailor with effect from 08.12.2007 on permanent basis and grant him all the consequential service benefits notionally and monetary benefits notionally in actual.



W.P.No.12819 of 2011

Now that petitioner is retired from service, this Court is of the view that after receiving the service and monetary benefits from 08.12.2007, petitioner shall be paid pensionary benefits on the basis of it. It is made clear that petitioner is not entitled for backwages from 08.12.2007. Necessary orders shall be passed within a period of three (03) months from the date of receipt of a copy of the order.

10. With the above directions, this Writ Petition is allowed. Consequently, the connected Miscellaneous Petition is closed. No costs.

22.03.2024

Index: Yes/No
Speaking order/Non-speaking order
gd

To

1. The Secretary to Government,
Home (Prison 1) Department,
Fort St. George, Chennai – 9.
2. The Additional Director General of Police,
Inspector General of Prisons,
Chennai – 8.



WEB COPY



W.P.No.12819 of 2011

G.CHANDRASEKHARAN, J.

gd

W.P.No.12819 of 2011

22.03.2024