



W.P.No.14427 of 2015

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :16.05.2024

CORAM

THE HON'BLE MRS. JUSTICE **R.KALAIMATHI**

W.P.No.14427 of 2015

and

M.P.No.1 of 2015

M.Udayasooriyan

... Petitioner

Vs.

1.The Additional Director General of Police and
Inspector General of Prisons,
Egmore, Chennai-8.

2. The Superintendent of Prisons,
Central Prison,
Salem.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondents in connection with the impugned order passed by the first respondent in Memo No.30693/ES 3/2014 dated 11.11.2014 and No.36804/ES.3/2013 dated 21.04.2015 and the second respondent in No.Ki.C.1/7167/2015 dated 22.04.2015 and quash the same and further direct the respondents to regularise the service of the petitioner in the cadre of Assistant Jailor in pursuance of inclusion of his name in the panel of the year 2013-14 and grant him all consequential service and monetary benefits.



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For Petitioner : Mr.C.Vigneshwaran

For Respondents : Mr.S.Rajesh,
Government Advocate

ORDER

Being aggrieved by the order passed by the 1st respondent in Memo No.30693/ES 3/2014 dated 11.11.2014 and No.36804/ES 3/2013 dated 21.04.2015 and the order of the respondent in Ki.C.No.1/7167/2015 dated 22.04.2015, the petitioner herein has sought to quash the same and to direct the respondents to regularise his service in the cadre of Assistant Jailor by including his name in the panel for the year 2013-14 and to grant him all consequential service and monetary benefits.

2. The petitioner entered service as a directly recruited Gr.II Warder by direct recruitment on 15.12.1983. He was upgraded as Gr.I Jail Warder on 01.07.2006. He was promoted as Chief Head Warder on merit cum seniority basis on 16.08.2013. The petitioner was found eligible and his name was placed in the panel of Chief Head Warder fit for the post of Assistant Jailor for the panel year 2013-14 and the list was published on 10.12.2013. He was promoted as Assistant Jailor as per the proceedings



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of the 1st respondent dated 13.01.2014 and he assumed Office as Assistant Jailor on 22.01.2014.

3. The petitioner further submits that while serving as Assistant Jailor, at Omalur Sub-Jail, he was issued with charge memo by proceedings of the 2nd respondent in KC1/4036/2014 dated 26.03.2014 under Rule 17(a) of TNCS(D&A) Rules and after due enquiry, punishment was imposed. While so, the 1st respondent prepared temporary list of Assistant Jailors for the year 2014-15, wherein, the name of the petitioner was not found in the list on the ground of currency of the punishment, by a proceedings dated 11.11.2014. When he preferred an appeal to the Deputy Inspector General of Prisons, Coimbatore, his appeal was rejected by his proceedings dated 03.12.2014. His review petition was also rejected by the 1st respondent.

4. Mr.C.Vigneshwaran, the learned counsel for the petitioner would vehemently contend that while the petitioner was serving in the promoted post, he faced disciplinary proceedings and suffered punishment. That cannot be a subject matter for preparing the temporary panel for the year 2013-14. He would further contend that any subsequent punishment after



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the promotion of the petitioner cannot stand in the way of deferring his claim for promotion for a post, which he was already holding and sought to quash the proceedings. To buttress his arguments, the judgment of this Court in W.P.No.9447 of 2017 dated 27.07.2017 was referred to. Wherein this Court held that the departmental proceedings is ordinarily said to be initiated only when charge memo is issued.

5. Mr.S.Rajesh, learned Government Advocate appearing for the respondents would strenuously argue that the crucial date for drawing of the list for promotion to the post of Assistant Jailor is 15th July of every year and for the year 2013-14, the crucial date is 15.07.2013. Consequent to the disciplinary action initiated against him under Rule 17(a) of TNCS(D&A) Rules, he was awarded the punishment of stoppage of increment for 6 months without cumulative effect by order dated 07.05.2014. It is his further argument that while preparing the temporary list for the promotion to the post of Assistant Jailor for the year 2014-15, his name was considered and due to currency of punishment as he was not eligible for inclusion in the said list, his name was passed over under intimation to him and he was reverted as Chief Warder by Memo No. No.36804/ES3/2013, dated 21.04.2015, issued by the 1st respondent which



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is under challenge.

6. It is relevant to note that in case of promotion, as per Rule 4(a) of Tamil Nadu Jail Subordinate Service Rules, as amended in G.O.Ms.No.22 Personnel & Administrative Reforms(S) Department, dated 24.02.2014 would apply. The said rule is extracted hereunder:

"(I-J) No member of service shall be promoted or appointed to a post, if the member is undergoing any punishment imposed under rule 8 of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, either on the crucial date or on the date of consideration for actual promotion."

"(I-K) Any punishment imposed on a member of service under rule 8 of Tamil Nadu Civil Services (Discipline & Appeal) Rules shall take effect from the date on which the said punishment order is served to the member of service concerned and the name of such member of service shall not be considered for inclusion in the approved list until the said punishment is over".

"(I-H) Any punishment other than Censure imposed on a member of service within a period of five years prior to the crucial date and a punishment of Censure imposed within a period of one year prior to the crucial date shall be held against the member of the service and his name shall not be considered for inclusion in the approved list. Any punishment including



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Censure imposed on a member of service after the crucial date but before actual date of promotion or appointment shall be held against the number of service and he shall not be given promotion or appointment."

7. As per Rule 2(b) (iii), the crucial date for drawing for promotion to the post of Assistant Jailor shall be the 15th July of every year. As per Rule 4(a)(I-K), the name of the member of service shall not be considered for inclusion in the promotion list until the currency of punishment is over. Therefore, currency of punishment is the crucial aspect. In this case, the petitioner was imposed with a punishment of stoppage of increment for 6 months without cumulative effect by a proceedings dated 12.05.2014 and on the next day, the order should have been served to the petitioner. But the promotion panel for the post of Assistant Jailor was issued by the Additional Director General of Police / Inspector General of Prisons by way of Memo dated 11.11.2014.

8. More so, in the proceedings of the Additional Director General of Police, No.36804/ES3/2013, dated 21.04.2015, it has been clearly indicated that in paragraph No.3, the temporary promotion as Assistant



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Jailor will not confer on them any right to claim regular appointment in the promotional post of Assistant Jailor at the time of preparation of regular panel for the year 2013-14.

9. How the currency period is to be reckoned is clarified by the below letter No.13400/S/2007-6, dated 11.09.2009 issued by the Personnel and Administrative Reform(s) Department. The said letter is extracted hereunder:

Annexure



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Personnel and Administrative
Reforms (S) Department,
Secretariat, Chennai-600 009.

Letter No.13400/S/2007-6, Dated 11.09.2009

From
K.N. Venkataramanan, I.A.S.,
Secretary to Government,

To
All Secretaries to Government, Chennai-8.
All Departments of Secretariat, Chennai-9.
All Heads of Departments including District Collectors/
District Judges and District Magistrates.
The Secretary, Tamil Nadu Public Service
Commission, Chennai-2.
The Registrar, High Court, Chennai-104.

Sir,

Sub: Public Services – Preparation of Panel for Promotion
Guidelines – Effect of punishment of stoppage of
increment – Clarification issued – Amendment to the
clarification – Reg.

- Ref: 1. Letter No.28790/S/2001-1, Personnel and
Administrative Reforms (S) Department,
dated 05.07.2001.
2. From the Secretary, Tamil Nadu Public Service
Commission, Chennai-2, Letter No 5215/DPD-
A5/2004, dated.27.12.2004.
3. Government Letter No.18667/S/2007-1,
Personnel and Administrative Reforms (S)
Department dated.28.04.2006.
4. From the Secretary, Tamil Nadu Public Service
Commission, Letter No.4267/DPD-A4/2007,
dated 22.10.2007.

The clarifications issued in the Government letter third cited
regarding the effect of punishment on stoppage of Increment are hereby
cancelled.

2. It has been clarified in the Government letter first cited, that an
order imposing any punishment including withholding of Increment takes effect
from the date on which the said order is communicated to Government servant

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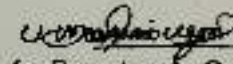
concerned. In that case, this does not mean that the punishment will be over after expiry of the period reckoning from the date of receipt of the orders of punishment. The punishment will continue till the actual period of punishment is completed. Currency of punishment is therefore continued till the punishment is over.

3. With a view to make the intention clear, it is hereby clarified that the currency of punishment (including withholding of increment) begins when the punishment order is communicated to the concerned Government servant and concludes when the actual period of punishment is over.

"For example, an official was awarded with a punishment of stoppage of increment for one year on 10.04.2005 and the order was communicated to the individual on the same day. Since his normal increment is first day of April, the punishment can be implemented only from 01.04.2006. He is eligible to attain his next increment only on 01.04.2007. However the currency of punishment begins on 10.04.2005 and concludes on 31.03.2007".

4. The above procedure may be followed uniformly in all such cases.

Yours faithfully


for Secretary to Government
25/1/09

Copy to:

All Officers / All Sections of Personnel and Administrative
Reforms Department, Secretariat, Chennai -9.



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10. paragraph No.3 of the above said letter explains as to how the currency period is to be reckoned. The petitioner is awarded punishment of six months stoppage of increment without cumulative effect on 07.05.2014. The currency period commences from the date of communication of the order to the delinquent. The said order is signed on 12.05.2014 and a copy is marked to the Assistant Jailor, Omalur as well as to the delinquent. Therefore, the currency period from 13.05.2014 (date of receipt of copy of order) to 13.11.2014 - six months.

11. From a perusal of the memo No.30693/ES 3/2014, it appears that the temporary list of approved candidates selected among the Chief Head Warder by promotion as Assistant Jailor for the period 2014-15 approved by the Additional Director General of Police / Inspector General of Prisons was published through proceedings No.30693/ES 3/2014 dated 18.10.2014. During the currency period, he is not entitled to be considered for the promotion. In Jail Services as mentioned supra, as per Rule (2)(b)(iii), preparation of annual list of the approved candidates for the appointment to the posts by promotion and recruitment by transfer, the crucial date on which the candidate should be qualified shall be 15th July of every year. Temporary list of approved candidate was drawn as per the said rule. At the time of preparation of temporary list, he was under



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currency period for the post of Assistant Jailor, and he is reverted back to Chief Head Warder.

12. During the currency period, petitioner's name cannot be considered for his next promotion. In the facts and circumstances of the case, the impugned orders do not suffer from any infirmity.

13. In the result, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

16.05.2024

Encl:Annexure
ssn
Index: Yes/No
Speaking Order/Non Speaking order

R.KALAIMATHI, J.,

ssn

To

1.The Additional Director General of Police and
Inspector General of Prisons,
Egmore, Chennai-8.



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2. The Superintendent of Prisons,
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