



W.P.No.31432 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.07.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.31432 of 2014

&

M.P. Nos. 1 & 2 of 2014

S.Rajendran

...Petitioner

Vs.

The State of Tamilnadu
Rep. by the Principal Secretary
to Government
Home (Pri I) Department,
Secretariat
Chennai 600009.

...Respondents

Prayer: Writ Petition is filed under Article 226 to issue a Writ of Certiorarified Mandamus to call for the records of the respondent in G.O.(2D).No.224 dated 30.06.2014 quash the same and consequentially direct the respondent to promote the petitioner to the post of Deputy Inspector General of Prisons on par with his juniors with all service benefits including seniority and arrears of pay.



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For Petitioner : Mr. G.Rajkumar
for M/s. S.Ramasamy Law
Associates

For Respondent : Mr. V.Jeevagiridharan.
Additional Government Pleader.

ORDER

Challenging the punishment of recovery of money imposed upon him and consequently seeking promotion to the post of Deputy Inspector General of Prisons on par with his juniors with all attendant benefits, the petitioner has filed this Writ Petition. The factual matrix is herein below set out and it also sets out how the inaction on the part of the authorities has caused a person a post to which he was entitled to.

Petitioner's case:

2. The petitioner was appointed as an Assistant Jailer on 01.02.1989 and was promoted and posted as Superintendent of Prisons, Puzhal on 27.05.2005 and thereafter transferred to Central Prison,



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Coimbatore on 25.09.2012 and was holding fully additional charge of post of Deputy Inspector General, Prisons, Coimbatore Range. The petitioner would submit that he has rendered continuous and unblemished service for over 28 years and he is the senior most Superintendent of Police in the Department and ought to have been promoted as DIG, Prisons in the year 2008 itself.

3. The petitioner would submit that the Central Prison, Coimbatore had several Industrial activities like weaving, soap making, tailoring etc., which is part of the reformatory process of the prisoners and the entire activities are done by the inmates. The weaving industry in the prisons produce terry cotton clothing and caters to the uniform requirement of the police, fire man and prison department personnels. The raw materials that are required for manufacturing of terry cotton clothing was purchased through tenders.

4. For the year 2005 – 2006 an annual tender was called for supply of 2/30 S Polyester cotton yarn as directed by the ADGP,



Prisons, Coimbatore. The successful tenderer was one Jafarullah Khan who had been awarded the contract by proceedings dated 09.05.2005. The orders were placed upon the successful tenderer and he was informed that he had sufficient time to procure and supply requisite raw materials.

5. As per order of the ADGP, Prisons, Chennai dated 17.05.2005 the pending order for 73,089 mts of Khakhi terry cotton cloth was to be supplied on or before 31.08.2005 since there was enormous pressure on the Central Prison, Coimbatore to complete the weaving so as to fulfill the requirement of the police department. Further, the raw materials for stitching the uniform for the year 2004 was also not supplied by the contractor causing serious problems for maintaining the very weaving unit of the Prison.

6. The contractor had been directed to effect supply on or before 07.07.2005. On 04.07.2005, the petitioner had sent a phonogram to the contractor reminding him of the obligation under clause 9. The



contractor requested time till 01.08.2005 which was refused since the contractor while participating in the tender was fully aware that the raw materials and the yarn were required on a war footing basis. Further, the contractor was already a successful bidder of earlier tender and had been supplying to the department and therefore aware of the urgency.

7. On 08.07.2005 yet another phonogram was sent by the petitioner as a reminder directing the tenderer to supply raw materials before 12.07.2005. On 12.07.2005, he was finally given time upto 20.07.2005 and he was also informed that if he fails to supply by 20.07.2005, action would be taken and local purchase would be made at his cost.

8 Meanwhile, the tenderer had written to the ADGP Chennai on 15.06.2005 asking to pay the sales tax to him which was turned down by the ADGP Prisons, Chennai, by his memo dated 27.06.2005 and a warning was also issued by the ADGP himself that if raw materials were not effected as undertaken then raw materials would be procured



from the open market and the amount would be claimed from the contractor as per clause 9 of the agreement.

9. The petitioner would submit that on account of non supply of the raw materials by the tenderer the weaving department of the prison was kept idle. Therefore, the petitioner resorted to the local purchase on the oral instructions of the then DIG. On 22.07.2005 orders were placed for various raw materials including 2/30 S polyester cotton yarn for manufacturing terry cotton clothing and supply the same. The same was also supplied to the department. The tenderer who had quoted very low price was evading supply to avoid loss and further he had been insisting on the demand of the sales tax. Therefore, it became clear that he would not be fulfilling the obligation under the tender conditions.

10. The petitioner would submit that as per clause 9, 15 and 17 of the tender conditions discretion was given to the Superintendent to go for local purchase in case contractor fails to supply raw materials



within the specified time at the risk and cost of the contractor. Hence, the decision to purchase from the local market had been taken. Before resorting to purchasing from the local market quotations were called from the open market on 01.07.2005. Though the price quotations were obtained on 01.07.2005 however orders for supply was placed on 22.07.2005 giving ample time to the contractor to effect supply. The petitioner would submit that already there were pending orders for manufacturing 397875 meters of terry cotton cloth since the raw materials were not supplied.

11. The petitioner would further submit that he had initiated action against the contractor as per condition of the contract to recover difference amount. However, this order was kept in abeyance by the ADGP, Prisons Chennai. The petitioner however was slapped with the charge memo consisting of 5 charges. Thereafter, proceedings were also initiated against the petitioner and the four others by order dated 30.10.2006.



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12. The Enquiry Officer held the 1st and 4th charges as not proved and other 3 charges as proved. The respondents by order dated 25.01.2010 accepted the report of the enquiry officer and opportunity was given to the petitioner to offer further explanation which explanation was given on 03.03.2010. Thereafter, there was no further movement. The petitioner had sent two reminders to the respondent on 20.05.2011 and 16.2.2012 to pass final orders as the petitioner's promotional avenue were being closed in the light of the pendency of the proceedings and persons junior to the petitioner was being promoted.

13. By letter dated 19.10.2012, the petitioner was asked to attend the personal hearing before the respondent on 22.10.2012 and 08.02.2013. There was no final orders passed despite the petitioner giving written submissions to the respondent on 08.02.2013.

14. The petitioner would submit that the alleged delinquency had taken place in the year 2005 and the disciplinary proceedings which



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had commenced in the end of 2005 had stretched for over 9 years.

During this time the petitioner had been discharging his duties.

However, he was denied the promotion and was stagnated in the post of Superintendent from 2003 though in the year 2008 he ought to have been promoted as Deputy Inspector General, Prisons. The lethargy shown by the respondent deeply affected the petitioner. Therefore, the petitioner filed W.P.No.19433 of 2013 to quash the letter dated 30.10.2006 of the respondent, the report of the enquiry officer dated 19.09.2009 and consequential letter of the respondent dated 25.01.2010.

15. By order dated 17.07.2013 this Court directed the respondent to pass final orders in the proceedings pursuant to the charge memo dated 30.10.2006 within a period of 8 weeks. The petitioner has supplied the copy of this order to the respondent on 25.07.2013. Despite receiving the same, orders were not passed constraining the petitioner to file contempt petition in C.P.No.3100 of 2013 and from January 2014 the respondent took adjournments for complying with the



earlier orders in W.P.No.19433 of 2013. When the matter was listed on 02.07.2014, the impugned order was served by the respondent on the basis of the same the contempt petition was closed. This order is totally vitiated as there appears to be a complete non application of mind and the respondent has not even gone through the facts properly.

16. The petitioner would submit that long pendency of the proceedings appear to be made with the malafide intention of depriving the petitioner of his promotion. The petitioner would submit that the charges are totally misplaced. The enquiry officer who had found the first charge which is the main charge not proved has declared the other charges as having been proved though all these charges are part of the main charge. The petitioner would submit that despite his explanation and the report of the TNPSC who had stated that there was no materials to prove the charges against the petitioner and requested the respondent to drop all further action, the punishment of increment cut and recovery of a sum of Rs.64,540/- was imposed. The petitioner preferred a review to the appellate authority which was also turned down.



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Counter of the Respondent:

17. A counter affidavit has been filed by the respondent which would primarily set out the following. The respondent would submit that though an extension had been granted to the successful tenderer till 20.07.2005 for the supply of the items which was 65 raw materials and also supply of 2/30 polyester cotton yarn, the petitioner had on the very next day placed an indent with the local trader one Duraisamy to supply raw materials even before the expiry of the extended date i.e., 20.07.2005. The local purchase was to the tune of Rs.9,79,320/-. The respondent would submit that this was in violation of Rule 33 of the Tamil Nadu Transparency in Tender Rules, 2000 and violating rule 20(1) of the Tamil Nadu Government Servants' Conduct Rules, 1973.

18. They had also charged the petitioner for not having brought the same to the notice of the ADGP / IG of prisons thereby incurring loss to the tune of Rs.2,79,680/-. The respondent admitted the fact that by letter dated 17.05.2005 instructions were given by the ADGP / IG of



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Prisons to the petitioner to complete the pending uniform orders placed by the Police Department immediately. This does not mean that the same could be resorted to without bringing the lapse on the part of the successful tenderer to the notice of the ADGP and IG Prisons. The respondent would submit that the action had caused monetary loss of Rs.2,79,680/- to the Government.

19. The respondent would submit that the contention of the petitioner that prior approval was not required for local purchase of raw materials cannot be accepted since as per Rule 1033 (2) of the Tamil Nadu Prisons Rules, 1983, the Superintendent could procure raw materials to the tune of Rs.2000/- per month. Therefore, he was entitled to purchase raw materials to the tune of Rs.24,000/- per annum. However, he has purchased for Rs.9,79,320/-. Therefore, the purchase without the sanction of the ADGP is against the rules.

20. The respondent would further submit that the ADGP / IG of prisons in their memo dated 01.09.2005 had given directions only to



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take action against the contractor and not for making local purchase. In the light of the above violations and the report of the ADGP / IG, Prisons it was decided to initiate preliminary proceedings on the petitioner and the others under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and the 5 charges were framed against the petitioner. The counter does not touch upon the delay on the part of the respondent in processing enquiry except what is stated in paragraph no.18. Since charges were proven punishment of stoppage of increment for 3 months without cumulative effect and order of recovering a sum of Rs.64,540/- had been imposed by order dated 30.06.2014.

21. With reference to delay in imposing punishment, the respondent would submit that they were waiting for the enquiry report in respect of the then Deputy Inspector General of Prisons Mr.B.M.Ezra. It is also stated that the review petition which is filed before the respondent had been turned down by them. The respondent would admit that there were 4 vacancies in the category of DIG,



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Prisons.

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Discussion:

22. Heard the learned counsels and perused the records.

23. The following were the 5 charges leveled against the petitioner herein and the entirety of the charge is set out to bring a completion to the discussion.

Charge No.1:

Thiru.S.Rajendran was appointed as Assistant Jail Officer in Prison Department on 01.02.1985. After Serving on various categories in this department, he has been working as Jail Superintendent, since 20.10.2003. He was working as Jail Superintendent in Coimbatore Central Prison, from 27.05.2005 to 13.12.2007. As per the Orders of the Additional Director General of Police / Inspector General of Prisons, as per the Coimbatore



Central Prison's Demand List No.11882 to 11890, dated 28.06.2005 issued to one Thiru.V.M.Jafarullahkhan, Contractor, for supplying 107 variety of raw materials to the Production Unit of Coimbatore Central Prison for the year, 2005-2006, Thiru.S.Perumalsamy, Assistant has taken steps for supply of 65 variety of raw materials including 2/30S Polyester Cotton Yarn, within 07.07.2005 and prepared Demand List and the approval of delinquent officer Thiru.S.Rajendran, Superintendent of Prison, was obtained and sent to the Contractor through Registered Post. In the letter dated 06.07.2005 sent by this Contractor to the Superintendent of Prisons, central Prison, Coimbatore, he has stated that he received the above said demand List on 01.07.2005 by Way of post and accordingly he has taken steps to supply Cotton Yarn from Spinning Mills and that the said materials will be supplied to the Coimbatore Central Prison before 01.08.2005 and requested for time. For which, a letter was sent by the



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delinquent Thiru. S.Rajendran, Superintendent of Prison, to the Contractor granting time till 20.07.2005. But on 01.07.2005, on the next of 30.06.2005, on which date, the Demand List dated 28.06.2005 was sent to the Contractor Thiru.V.M.Jafarullahkhan, by way of Registered Post, to supply the materials within 07.07.2005, without giving sufficient opportunity to Thiru.V.M.Jafarullahkhan, Contractor; to supply the raw materials, up to 07.07.2005, steps were taken by the delinquent to purchase 13 kinds of raw materials by way of local purchase through the Contractor and tender was called for, which was against Contract Rules. Thus, his act of not mentioning any reason in the file for his sudden decision for local purchase is considered as an irresponsible act.

Charge No.2:

Though time limit has been fixed up to 07.07.2005 by the delinquent to the authorized Contractor



Thiru.V.M.Jafarullahkhan for supply of the materials sought for by way of Demand Lists, steps were taken suddenly by the delinquent to purchase the said materials by way of local purchase and on 01.07.2005 itself minimum tenders were called for from other companies and contractors for local purchase. The tenders which were received as such were opened on 07.07.2005. Immediately, on 08.07.2005, without obtaining the Market Price List as Per Rules Negotiated Rate was sought for from one Thiru.N.Duraisamy as to whether he can supply Cotton Yarn for the year, 2005-2006 and the reply was received from him on 12.07.2005. There was no such letter communication made with the other three persons, who have given their quotation forms, regarding the minimum price quoted by them in respect of other items. Therefore, it is clear that he has acted with malafide intention in hasty manner for local purchase. After the receipt of Market Price Particulars on 19.07.2005,



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Comparative List was prepared on 22.07.2005 and it was ordered by the delinquent to local purchase the materials from Thiru.N.Duraisamy, who has quoted minimum price in respect of 2/30s Cotton Yarn and accordingly Demand List was prepared and approval of the delinquent Superintendent of Prison was obtained and Demand List was sent for supply of 10,000/- Kilograms of 2/30s Polyester Cotton Yarn. There was no time limit fixed to Thiru.N.Duraisamy, for the supply of the said materials. As such, the delinquent has acted arbitrarily by not purchasing the raw materials from the authorized contractor and purchased it locally from other person for Rs.9,79,320/- beyond his jurisdiction and thereby caused a loss of Rs.2,79,680/- to the Government. His act is against rule 33 of the Transparent Contract Rules and against Rule 20(1) of the Tamil Nadu Government Servants' Conduct Rules.



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Charge No3:

As per Section 33 of the Tamil Nadu Transparent Contract Rules 2000, when purchasing the goods required by the Government department, local purchase can be done up to Rs.5,00,000/- under the stipulated Tender Rules for low Value purchase. But the act of Purchasing raw materials worth Rs.9,79,320/- violating this rule, is an act of beyond his jurisdiction. His act is against rule 33 of the Tamil Nadu Transparent Contract Rules, 2000 and rule 29(1) of the Tamil Nadu Government Servants' Conduct Rules.

Charge No.4:

Without starting the production work by sending 5000 Kilograms of 2/30s Polyester Cotton Yarn, which was purchased from the authorized Contractor Thiru.V.M.Jafarullahkhan, on 25.07.2005, to the Factory, he had purchased 5.74 lakhs worth Yarn, which was



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purchased from the Contractor on 25.07.2005 stating that yarn was required urgently and kept it till 03.08.2005 unnecessarily in stock and thereby it is clear that this purchase was made unnecessarily. As the authorized Contractor Thiru.V.M.Jafarullahkhan had supplied 2/30s Polyester Cotton Yarn on 25.07.2005 and sent it to Industrial Unit, there was no step taken to reject 5000 Kilograms of Yarn, which was excessively priced and received through Local Purchase from Thiru.N.Duraisamy, on 04.08.2005 and that was purchased on higher price and kept till 1.9.2005 in stock unnecessarily and thus the act of the delinquent in permitting the same is against the Rules and caused loss to the Government. The above said act of the delinquent is against rule No.1032(1) of the Tamil Nadu Jail Rules and rule 20(1) of the Tamil Nadu Government Servants' Conduct Rules.



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Charge No.5:

As Local Purchase was made in Coimbatore Central Prison in respect of the raw materials in the month of August 2005, in this regard after particulars were sought from the Head of Department, i.e., after about six months, in the month of February 2006, Finance concurrence was sought for by the delinquent from the Head of Department. There was no step taken as a Superintendent of Prison to inform the Head of Department in this regard, prior to the purchase or after the purchase. Therefore, the Superintendent of Prison, not only acted beyond his jurisdiction and violating the stipulated contract Rules and acted against Transparent Contract Rules, but also delayed the financial concurrence for more than six months. His acts are against rules 20(1) of the Tamil Nadu Government Servants' Conduct Rules.



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The first of the charges constitutes the substantive charge and the others are off-shoots of the same. A reading of the charges by itself shows that it is loaded in favour of the contractor.

24. The 1st charge has been held to be not proved and held in favour of the petitioner. This charge relates to the petitioner resorting to local purchase without giving sufficient opportunity to the successful contractor to supply raw materials. The enquiry officer has found that sufficient reasons have been given for placing orders through local purchase despite granting time to the successful contractor to effect supply. The reason being that the contractor was demanding the payment of sales tax to him which request has been turned down by the ADGP. That apart, though the process for local purchase had started on the very next day after the extension of time, however, the orders have been placed only after the time granted to the contractor had expired. Therefore, the enquiry officer has clearly found the 1st charge as not having proved.



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25. The 2nd charge is that the petitioner has not procured the open market rate before resorting to the local purchase. As regards 3rd charge that the petitioner has caused loss of Rs.2,79,680/- by virtue of local purchase, the same has been held against him only on the ground that he has not resorted to open tender. The 4th charge is also not proved as it could not be individually decided. The 5th charge was that the petitioner had not kept his superior informed. Ultimately, the petitioner has been found guilty of the charges 2, 3 and 5.

26. The grievance of the petitioner is primarily on the inordinate delay that had taken place from the date of the charge memo to the imposition of the punishment which has deprived the petitioner of a promotion to which he is rightfully entitled in the year 2008, itself. This delay is in two phases. The first phase is with reference to the enquiry proceedings and the second is relating to imposition of the punishment.



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27. With reference to the delay, the only reason given is the statement made in paragraph no.18 of the counter which is extracted herein below:

“18] With regard to the averments made in Grounds (d) and (e) of the affidavit, it is submitted that other than the petitioner 4 others were involved in the matter and before passing final orders, the Government had to consult various advisory department like Personnel and Administrative Reforms Department and Law Department and have to follow all the procedures laid down under the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Hence, there is no delay on the part of the Government in passing final orders in the matter and till finalization of the disciplinary proceedings initiated against the petitioner his name shall not be considered for promotion to the post of Deputy Inspector General of Prisons.”



28. A mere perusal of the above statement would clearly shows that it does not explain as to why it took nearly 3 years for the enquiry officer to submit his report. That apart, from the papers it is clear that after the enquiry report was received by the respondent, the respondent had called for further explanation on 25.01.2010 and the explanation had been offered on 03.03.2010. However, thereafter no orders were passed and it is only after the contempt notice was issued, the impugned order came to be passed on 30.06.2014.

29. From the year 2006 to 2009 and from 2010 till 2014, there has been an inordinate delay which has not been explained by the respondents. There appears to be a malafide in the conduct of the respondents in not proceeding with the enquiry. Apart from the delay in disciplinary proceedings, no action has been initiated against the contractor who has not challenged the local purchase. The loss which has now been mulcted on the petitioner has to be recovered only from the tenderer even as per the terms of the contract, which is evident from a reading of Condition No.9. Condition No.9 reads as follows:



“9.In case of any failure, neglect or refusal got the part of 1 the contractor to supply and deliver any of the said quantity, size and description as at such time or times and in such manner as herein before provided and often as any such failure, neglect of refusal shall happen it shall be lawful for the superintendent of any person authorized by him in this behalf to purchase else where and from any person or person whomsoever other than the contractor such quantities of the articles or materials .supplied and delivered by the contractor or as may be required in lieu of any article or materials which have been rejected as aforesaid In such event the superintendent is entitled to charge the difference between the price of the article or materials purchased and the price payable under this contractor for such article or materials.”

Further, the authorities have not taken steps to proceed against the contractor as already observed the very framing of the charges was favouring the contractor.



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30. A Learned Single Judge of this Court in W.P.No.17931 of 2014 had an occasion to consider a similar case of delay. The learned Judge has observed as follows:

“33. There is no dispute that it is the prerogative of the disciplinary authority to initiate disciplinary proceedings against an employee in case it is made out that such employee has committed misconduct. However, enquiry should be completed as expeditiously as possible. In case considerable time is taken even to initiate enquiry, it would cause substantial prejudice to the delinquent. The employee would not be in a position to defend the proceedings after a particular point of time. Every employee has got a right to claim promotion. The chance of promotion would be denied to the employee who is facing disciplinary proceedings . The chance of promotion would also be denied in case punishment is imposed on the employee. Therefore, both pendency of proceedings as



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well as currency of punishment would cause serious prejudice to the employees.

34. The factual matrix clearly shows that the first respondent has no regard to the direction issued by this Court with respect to completion of disciplinary proceedings. The proceedings continued even after the expiry of time limit prescribed by this Court. The conduct of disciplinary proceedings in the subject case even after dismissal of the application for extension is nothing but illegal. The continuation of proceedings by the first respondent in spite of fixing outer time limit by this Court should be considered in the light of the judgment in the case of co-delinquent, compliance of the said order by the first respondent and the consequential order giving promotion to the said employee. The petitioner being similarly situated is perfectly correct in her contention that she should also be treated similarly. I am therefore of the view that the petitioner must succeed.”



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31. There is no explanation on the side of the respondent as to why action had not been taken against the contractor. It is seen that the petitioner had addressed ADGP on 17.08.2005 setting out in detail the conduct of the contractor and the reasons for resorting to local purchase. In the said letter, it has been clearly stated that the local purchase had been only made on 22.07.2005 after the time granted finally to the contractor for effecting supply (i.e., 20.07.2005) had lapsed. Despite this letter dated 17.08.2005 the respondent has framed charge No.1.

32. Infact, in response to the above letter, on 01.09.2005 the ADGP Prisons had directed the petitioner to take action against the contractor which action was also initiated. By his letter dated 27.09.2005 addressed to the respondent the ADGP prisons had informed the respondent that the petitioner has acted well within the conditions stipulated in condition No.9 of the contract and that the contractor had been given sufficient time. Despite this, the petitioner



has been issued with the charge memo and enquiry conducted against him. Had the respondent initiated action against the contractor, they could have recovered the excess amount incurred in the local purchase. Infact the observation that the petitioner should have resorted to a second tender is to say the least absurd as it would render condition No.9 otiose.

33. The respondent had failed to appreciate that the petitioner was instructed to ensure the production is not delayed / stopped by his superiors as they had to meet the supply deadlines. If the petitioner did not resort to open tender then this supply to the third parties would have been delayed and there is a possibility of these third parties initiating action which could have led to further loss. Once again the respondent would have held the petitioner liable. In fact, the petitioner by resorting to local purchase has mitigated the loss. The TNPSC had also advised the Government to drop the charges, despite which the respondent has proceeded with vehemence and with the great deal of delay to find the petitioner guilty of charges.



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34. The two glaring omissions on the part of the respondent is their not having initiated action against the contractor and they having delayed the entire enquiry proceedings leading upto the punishment for over 8 years. The entire case appears to be a case of witch hunting.

35. In view of the above, the Writ Petition is allowed. The order of the respondent in G.O.(2D).No.224 dated 30.06.2014 is quashed and the respondent is directed to promote the petitioner notionally to the post of Deputy Inspector General of Prisons on par with his juniors with all service benefits including seniority and arrears of pay. Consequently, the connected miscellaneous petitions are closed. No costs.

11.07.2024

Index : Yes/No
Internet : Yes/No
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To

The State of Tamilnadu
Rep. by the Principal Secretary
to Government
Home (Pri I) Department,
Secretariat
Chennai 600009.



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