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W.A. No.2970 of 2024

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**RESERVED ON: 06.11.2024**

**DELIVERED ON:19.11.2024**

**CORAM:**

**THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR**

**and**

**THE HON'BLE MR.JUSTICE P.B.BALAJI**

**W.A.No.2970 of 2024**

**and CMP. No.22295 of 2024**

M.Manickam

.. Appellant

Vs

1.The Government of Tamil Nadu,  
Rep its Secretary to Home Department,  
Fort St George, Chennai -9.

2.The Director General of Police cum  
Prisons and Correctional Services,  
Egmore, Chennai -8.

..Respondents

**Prayer:** Writ Appeal filed under Clause 15 of the Letters Patent to allow the Writ Appeal setting aside the order passed by the learned Judge made in W.P. No.23344 of 2022 dated 12.08.2024.



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For Appellant : Mr.P.I.Thirumoorthy  
For Respondents : Mr.P.Kumaresan,  
Additional Advocate General  
assisted by  
Mr.Abishek Murthy,  
Government Advocate for R1 & R2.

## **J U D G M E N T**

**(Judgment of the Court was made by MR.JUSTICE P.B.BALAJI, J.)**

The Writ petitioner, aggrieved by dismissal of W.P. No.23344 of 2022, in and by an order dated 12.08.2024 is the appellant before us.

2. The writ petitioner prayed for issuance of a writ of Certiorarified Mandamus to quash the proceedings dated 07.01.2022 in G.O.Ms.No.18 Home (Prison-I) I Department and consequently, direct the respondents to include the petitioner's name in the Regular Panel of Jailor for the years 1993-1994 and in the regular panel of Additional Superintendent of Court Prisons for the year 1997-1998, on par with his immediate juniors viz., one, Thiru.P.Govindarajan and further include the petitioner in the name of the



Superintendent of Prisons for the year 2004-2005 and corresponding regular panel for the post of Director General of Police (DIG) Prisons by applying the same yardstick that was applied in the case of his immediate junior, one Narayanamoorthy and to consequently, award all promotions on par with his immediate juniors Govindarajan and Narayanamoorthy together with all services and monetary benefits.

3. We have heard Mr.P.I.Thirumoorthy, learned counsel for the Appellant and Mr.P.Kumaresan, learned Additional Advocate General, assisted by Mr.Abhisek Murthy, learned Government Advocate appearing for the Respondents.

4. The learned counsel for the appellant would submit that the Writ Court failed to see that on the crucial date viz., 15.02.1993, there was no case pending as against the appellant and in fact, not even a charge memo had been issued on the relevant date, which the learned Writ Court has lost sight of. He would further state that the appellant has attained superannuation on 30.06.2010 and at least, the appellant would have been



entitled to all monetary benefits if the respondents had considered the petitioner for promotion to the post of Jailor on the crucial date viz., 15.02.1993.

5. The learned counsel would also place reliance on decision of the Hon'ble Supreme Court in ***Bank of India and Another vs Degala Suryanarayana***, reported in ***1999 (6) Supreme 39***, where the Hon'ble Supreme Court held that when the employee was due for promotion and on which date no Departmental enquiry was pending, then promotion could not have been withheld. He would also place reliance on decision of the Hon'ble Supreme Court in ***Delhi Jal Board vs Mahinder Singh***, reported in ***AIR 2000 SC 2767***, where the Hon'ble Supreme Court held that right to be considered for Departmental promotion is a fundamental right guaranteed under Article 16 of the Constitution of India and in a case where the first inquiry had ended in favour of the employee, another Departmental inquiry was initiated by the Department, it would come in the way of benefit of the assessment of the first Departmental Promotion Committee in his favour in the anterior selection. Relying on the said decisions, the learned counsel for



the appellant would pray for the Writ Appeal being allowed, setting aside the order of the Writ Court.

6. Per Contra, the learned Additional Advocate General appearing for the respondents would submit that the appellant was originally appointed as a Grade II Warder on 01.04.1975, he was subsequently promoted as Chief Head Warder on 30.09.1981 and as Assistant Jailor on 20.04.1983 and was subsequently promoted for the post of Deputy Jailor on 16.12.1996 and then he was promoted as Jailor temporarily on 24.01.2000. However, the appellant was not included in the panel for the post of Jailor for the year 1993-94 and 1994-1995 because of the punishment imposed at the time of consideration. According to the learned Additional Advocate General, the punishments were imposed on 29.05.2001 and 31.12.2001 when the appellant was served with a charge memo. Therefore, he prays for dismissal of the above Writ Appeal.

7. We have carefully perused the records. In fact, the original service records of the appellant were also produced by the learned Additional



Advocate General and we find that the crucial date of inclusion of the appellant's name for the post of Jailor for the year 1993-1994 was 15.02.1993. On that date, admittedly there was not even a charge memo issued to the appellant. The appellant along with other batch mates had approached the Tamil Nadu Administrative Tribunal in OA.No.126 of 1991 and the Tribunal also passed an interim order on 09.01.1991 to the effect that any promotion made during the pendency of the said Original Application would be subject to the final outcome of the main Original Application.

8. We also noticed that during the pendency of the said OA.No.126 of 1991, on 17.05.1995 a regular panel of Deputy Jailors was prepared based on the combined seniority list of Assistant Jailors dated 04.02.1987, in which the appellant's immediate junior, one Mr.P.Govindarajan was included in the regular panel of Deputy Jailor fit for promotion as Jailor for the year 1993-1994. The said Mr.P.Govindarajan was also promoted on 07.06.1995 as regular Jailor. Thereafter, in OA.No. 126 of 1991, combined seniority list of Assistant Jailors dated 04.02.1987 was quashed by the



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Tamil Nadu Administrative Tribunal on 19.06.1996 directing the Director General of Police cum Prisons to revise the seniority of Assistant Jailors by placing promoted Assistant Jailors over and above directly recruited Assistant Jailors, by regularising their service with effect from 1984. In compliance with the said order of the Tribunal, the second respondent in and by an order dated 20.07.1996 revised and published a combined seniority list of Assistant Jailors, in which the appellant's name found a place in Serial.No.47.

9. We find that only on 14.03.2001, a charge memo has been issued under Section 17(a) of the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules against the appellant and a punishment was imposed, postponing his increment for two years, without cumulative effect on 29.05.2001. Thus we find that not only on the crucial date viz., 15.02.1993, but also on the date of preparation of the revised combined seniority list on 18.01.2000 as well, there was no charge memo or Departmental Proceedings pending against the appellant. It was much later on 14.03.2001 alone, a charge memo was issued. In fact, it was also subsequently set aside by this



Court in W.P.No.27977 of 2005 on 29.03.2006. The second charge memo under 17 (b) of the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules was served on the appellant only on 07.04.2004 which again is much after the crucial date as well as the date on which the revised combined seniority list was prepared in the year 2000. It is also seen that even the second charge under section 17(b) was also dropped on 04.02.2009 and subsequently, the appellant also retired on 30.06.2010.

10. In view of the above discussion, it is clear that the appellant was not facing any criminal proceedings or Departmental Proceedings on the crucial date or even on the date of consideration of appointment in the year 2000. Unfortunately, the Writ Court has erroneously held that the appellant's name was found not fit for inclusion in the list of Jailors for the year 1993-1994, in view of pendency of charge memo. From the perusal of original records, we find that the said finding of the Writ Court is incorrect since the earliest charge memo served on the appellant was only on 14.03.2001 which is well after the crucial date as well as the date for consideration of seniority. For all the above reasons, we are inclined to



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allow the Writ Appeal.

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11. In fine, the Writ Appeal is allowed, the order of Writ Court in W.P. No.23344 of 2022 dated 12.08.2024 is set aside. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

**(D.K.K.J.,) (P.B.B.J.,)**

**19.11.2024**

Internet: Yes/No

Index : Yes/No

Speaking Order/Non Speaking Order

rkp

To

1.The Secretary to Home Department,  
The Government of Tamil Nadu,  
Fort St George, Chennai -9.

2.The Director General of Police cum  
Prisons and Correctional Services,  
Egmore, Chennai -8.



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**D. KRISHNAKUMAR. J.,**  
and  
**P.B.BALAJI, J.**

rkp

**Pre-delivery Judgment in**  
**W.A.No.2970 of 2024**  
**and CMP. No.22295 of 2024**

**19.11.2024**