



WEB COPY

W.P.No.29023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.04.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.29023 of 2017

G.Selvaraj

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Department of Home (Jails),
Secretariat, Chennai 600 009.
2. The Additional Director General of Police
& Inspector General of Prisons,
Head of Prisons, Egmore, Chennai 600 008.
3. The Superintendent of Central Prisons,
Salem Central Prisons,
Salem 7, Salem District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned order dated 30.06.2017 vide in No.18914/E.S3/ 2017 passed by the 2nd Respondent herein and quash the same, consequently direct the respondents to give notional promotions and other service benefits on par with his juniors and also pay revised pension for protecting his livelihood.

For Petitioner : Mr.M.R.Jothimanian

For Respondents : M/s.E.Ranganayaki,



Additional Government Pleader

ORDER

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The petitioner herein was initially appointed as Grade II Warder on 15.07.1985 and posted at Central Prisons, Salem. Thereafter, the Government issued G.O(Ms)No.63, Home (Prison-II) Department, dated 24.01.2005, upgrading the post of Grade II Warder to that of Grade I Warder and also granting the pay scale attached to the post of Grade I Warder from the year 2004-05 onwards, over a period of 4 years duly upgrading 300 posts every year. Accordingly, through proceedings bearing எண்.4342/இடபிள்ளை3/2005 dated 10.07.2007, 300 posts of Grade II Warder were upgraded to that of Grade I Warder during the year 2007-08. In the said list of 300 Grade II Warders upgraded to the post of Grade I Warder, the petitioner is at Sl.No.51 and whereas two other persons viz., Mr.D.Ganapathy and Mr.R.Srinivasalu are at Sl.Nos.137 and 170 of the said list. The said two persons, who are at Sl.Nos.137 and 170 were initially appointed as Grade II Warder on 15.12.1986 and 19.08.1987 in Central Prisons, Chennai. However, the petitioner as well as the said two persons, who were appointed as Grade II Warders on 16.07.1985, 15.12.1986 and 19.08.1997 respectively were upgraded to the post of Grade I Warder through common proceedings dated 10.07.2007.

2. It is not in dispute that the post held by the petitioner and the said two



persons, as Grade II Warder were upgraded to that of Grade I Warder with effect from 10.07.2007 and they were treated as Grade I Warder with effect from the said date. The post of Grade I Warder is the feeder category to the post of Chief Head Warder, which is a state-wide post. In order to fill up the post of Chief Head Warder, which is a state-wide post, the seniority in the cadre of Grade I Warder is required to be prepared and accordingly, the same was not prepared by following the Rule 2b(i) and (ii) of the Tamil Nadu State and Subordinate Service Rules. But, in the instant case, the above said two persons viz., Mr.D.Ganapathy and Mr.R.Srinivasalu were promoted to the post of Chief Head Warder on 16.02.2011 and 09.02.2011, though they were appointed later to the petitioner in the cadre of Grade II Warder and all of them have become Grade I Warders with effect from 13.07.2007, ignoring the claim of the petitioner herein. Further, the said Mr.D.Ganapathy was promoted as Assistant Jailer and Deputy Jailer on 03.08.2012 and 07.04.2017 respectively and whereas, the said Mr.R.Srinivasalu was appointed as Assistant Jailer and Deputy Jailer on 03.08.2012 and 31.03.2017.

3. The petitioner, on having realised that the said Mr.D.Ganapathy, who was junior to him was promoted to the post of Assistant Jailer and Deputy Jailer and was posted as a superior officer to the petitioner, the petitioner made a claim for promotion to the post of Chief Head Warder, Assistant Jailer and Deputy Jailer on



par with his Junior viz., Mr.D.Ganapathy. The said claim of the petitioner was negatived by the respondents by passing the impugned order.

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4. From the perusal of the impugned order, it is noticed that the said two persons viz., Mr.D.Ganapathy and Mr.R.Srinivasalu, though who were initially appointed as Grade II Warders were upgraded to that of Grade I Warders with effect from 13.07.2007, they were shown to have been promoted to the very same post of Grade I Warder with effect from 03.06.2010 in their unit of appointment i.e., Chennai District and considering the said date viz., 03.06.2010 as date of their appointment as Grade I Warder, their cases were considered for further promotion to the post of Chief Head Warder, Assistant Jailer and Deputy Jailer and whereas in respect of the petitioner, it is stated that the petitioner could not get promotion to the post of Grade I Warder for want of vacancy in Salem Unit and therefore, his case could not be considered for promotion to the post of Chief Head Warder. However, it is stated that the case of the petitioner was considered for promotion to the post of Chief Head Warder directly from the post of Grade II Warder and accordingly, he was promoted on 12.01.2009. The same stand is taken in the counter-affidavit filed by the respondents before this Court also.



5. The fact is that the posts held by the petitioner and other two persons referred to above in the cadre of Grade II warder were upgraded as Grade I Warder through proceedings dated 10.07.2007 with effect from 13.07.2007 is not in dispute.

Once the posts held by the petitioner and two others were upgraded as Grade I Warder, the question of further promoting them to the post of Grade I Warder from the same post does not arise. Once the posts held by them were upgraded as Grade I Warders, they are entitled to be treated as such with effect from the date on which the posts held by them were upgraded. When this is the admitted fact situation, a mere issuance of proceedings in the unit of appointment of the above said two persons by promoting them as Grade I Warders with a subsequent date and not providing such promotion to the post of Grade I Warder in the unit of appointment of the petitioner is of no consequence. Once they were upgraded to the post of Grade I Warder with effect from 13.07.2007, the petitioner and other two persons are bound to be treated on par with each other and a State-wise seniority list is required to be drawn in accordance with law. In the instant case, admittedly the petitioner was not considered along with the above said two persons for promotion to the post of Chief Head Warder and the case of the petitioner was totally ignored on the ground that the petitioner was not promoted to the post of Grade I Warder in his unit of appointment viz., Salem District.



6. As already noted above, the question of promoting the person holding the post of Grade I Warder to the very same post of Grade I Warder does not arise. Hence, a mere promotion order issued in favour of the above said two persons, promoting them to the post of Grade I Warder on the ground that there was vacancy ariouse in the cadre of Grade I Warder in their unit of appointment will not confer any additional right on the said persons. Once the petitioner and other two persons were brought into the cadre of Grade I Warder by upgrading the posts held by them as Grade II Warders, they are all entitled to be treated on par with each other, subject to their seniority.

7. Thus, the action of the respondents in rejecting the claim of the petitioner for considering his case for promotion to the posts Chief Head Warder, Assistant Jailer and Deputy Jailer on par with the above said two persons viz., Mr.D.Ganapathy and Mr.R.Srinivasalu through the impugned proceedings is liable to be declared as illegal and accordingly, the impugned proceedings is declared as illegal and the same is hereby set aside. Consequently, the matter is remanded back to the respondents to consider the case of the petitioner for promotion to the posts of Chief Head Warder, Assistant Jailer and Deputy Jailer with effect from the dates on which the said Mr.D.Ganapathy and Mr.R.Srinivasalu or any other Juniors of the petitioner were promoted to the respective cadres and pass appropriate orders in



accordance with law without reference to the alleged promotion of the said two persons to the post of Grade I Warder by duly taking into consideration the observation made above and pass appropriate orders in accordance with law as expeditiously as possible within a period of three months from the date of receipt of a copy of this order.

8. Accordingly, the Writ Petition stands allowed. No costs. Connected Miscellaneous Petitions, if any shall stand closed.

18.04.2024

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

1. The Secretary to Government of Tamil Nadu,
Department of Home (Jails),
Secretariat, Chennai 600 009.
2. The Additional Director,
General of police & Inspector General of Prisons,
Head of Prisons, Egmore, Chennai 600 008.
3. The Sperintendent of Central,
Prisons, Salem Central Prisons,
Salem 7, Salem District.



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MUMMINENI SUDHEER KUMAR, J.

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