

(2007) 10 MAD CK 0094

In the Madras High Court

Case No : Writ Petition No. 23525 of 2005 and W.P.M.P. No's. 25673 of 2005 and 2371 of 2007

M. Manickam

APPELLANT

Vs

The Govt. of Tamil Nadu

RESPONDENT

Date of Decision : 24-10-2007

Acts Referred:

Citation : (2007) 10 MAD CK 0094

Hon'ble Judges : M. Chockalingam, J

Bench : Single Bench

Advocate : P.I. Thirumoorthy, for the Appellant; S. Gopinathan, Addl. Govt. Pleader, for the Respondent

Judgement

M. Chockalingam, J.—Invoking writ jurisdiction of this Court, the petitioner sought for a writ of certiorarified mandamus, to call for the

records relating to the proceedings of the respondent in letter No. 98451/Prison 1/2003-2 dated 28.4.2004 and quash the same and consequently

to direct the respondent to include the name of the petitioner at the appropriate place in the regular panel of Jailor for the year 1993-1994 and

award all consequential benefits.

2. Affidavit filed in support of the writ petition is perused. The Court heard the learned Counsel appearing on either side.

3. The case of the petitioner in short is that he joined service in the Prison Department as Grade II Warder in the year 1975. Thereafter, he was

promoted as Chief Head Warder in 1981 and also as Assistant Jailor in 1983 temporarily and his services were regularized with effect from

19.3.1985. Though he was promoted in 1985, his seniority was fixed on 4.2.1987 by the Inspector General of Prison by placing him below the

direct recruitees of Assistant Jailors, who came to service only on 1.2.1985. Most of the juniors of the petitioner were promoted as Deputy Jailors

in the year 1989 based on the seniority. Aggrieved by the same, the petitioner made representations to the higher Authorities, but they were not considered.

4. Under such circumstances, the petitioner challenged the seniority dated 4.2.1987 before the Tamil Nadu Administrative Tribunal in O.A. No.

126 of 1991, whereby an order was passed on 19.6.1996, setting aside the seniority dated 4.2.1987 and directed the department to refix the

seniority by giving the petitioner's seniority above the direct recruitees of Assistant Jailors, which was not accordingly done. Aggrieved by the

Tribunal's order, review application was filed, but the same was also dismissed. Aggrieved over the same, W.P. No. 9666 of 1998 was filed, but

no stay was granted by this Court and thus the order passed by the Tribunal in O.A. No. 126 of 1991 is final and the same is binding on all the

parties.

5. While the matter stood thus, the seniority of the Assistant Jailors was refixed on 20.7.1998 by proceedings No. 4016/E2/91 and thus, he was

placed above the direct recruitees. Thereafter, the petitioner was included in the regular panel of Assistant Jailors, fit for promotion to the post of

Deputy Jailors for the year 1988-89 by the respondent in G.O.Ms. No. 46 Home Prison Department dated 18.1.2000, since he had no charges

as well as punishment at the crucial date of 15.7.1988, after the delay of 17 months from the date of refixation of seniority of the Assistant Jailors.

Thus, his position was restored correctly in the cadre of Assistant Jailor as well as Deputy Jailor.

6. While the matter stood thus, the petitioner was promoted as Deputy Jailor with effect from the date on which his junior was promoted in 1989

and thus his name was to be included in the appropriate place in the regular panel of Jailors for the year 1993-94 as per the orders passed in O.A.

No. 126 of 1991 referred to above. Though there was no punishment or charges as on 15.2.1993, which was the crucial date for 1993-1994

panel, the respondent issued the revised regular Jailor panel only on 7.8.2003, excluding his name on the ground that TNPSC in its advice dated

13.3.2003 have conveyed that DPC has found that he was not fit for inclusion in

the list of Jailor for 1993-1994 in view of punishment. Under the circumstances, challenging the same, the instant writ petition has been brought forth by the petitioner.

7. Advancing his arguments, learned Counsel appearing for the petitioner inter alia would submit that the panel was for the year 1993-94 and the crucial date for the same was 15.2.1993. The petitioner was neither facing any charge nor awarded with punishment. When it was considered in 2003, the process was delayed by the department, for which, the petitioner cannot be found fault. Learned Counsel would further add that when the panel was prepared in 2003, his name was excluded on the ground of punishment. The petitioner had no punishment till 2001. Thereafter, three punishments were imposed on the petitioner. In respect of two punishments, the period is over and in respect of third punishment, the same was quashed by this Court. Hence there was no punishment and his name should be included in the panel and the order passed by the respondent has got to be set aside.

8. In reply to the above contention, learned Counsel for the respondent would submit that in respect of preparation of panel 1993-1994, the delay was due to rival claim between the regular promotees and direct recruitees. Thus the delay was not caused by the Department. In the instant case, when the panel was prepared in the year 2003, the name of the petitioner was considered, but his name could not be included in view of punishments and it has been rightly excluded and the writ petition has no force and the same has got to be dismissed.

9. Learned Counsel for the petitioner would submit that it is true, at the time of consideration of the petitioner's name in March, 2003, there were three punishments, but the period was over in respect of two punishments and one punishment, though in force, was also subsequently set aside. Under the circumstances, the petitioner's name was to be included in the panel and the writ petition has got to be ordered.

10. The Court paid its anxious consideration on the submissions made by either side. It is not in controversy that pursuant to the order passed by the Tribunal in O.A. No. 126 of 1991, the petitioner's name was to be included in the regular panel of 1993-1994. The panel was actually prepared in 2003. As rightly pointed out by the learned Counsel for the

respondent, the delay was not caused by the Department, but due to the rival war between the regular promotees and direct recruitees. When the panel was prepared in March, 2003, admittedly, the petitioner suffered punishment twice and one punishment was in force. The contention put forth by the learned Counsel for the petitioner that the punishments already suffered by the petitioner should not be taken into consideration and third punishment was also set aside by this Court cannot be countenanced.

11. The Tribunal has already passed an order in O.A. No. 126 of 1991 to include the name of the petitioner in the panel and refix the seniority.

Hence, it is fit and proper to permit the petitioner to submit a representation before the Department in view of the fact that no punishment was

suffered by the petitioner and he is free from punishment at the time of preparing the panel. Accordingly, the petitioner is permitted to give a

representation to the Department within a period of two weeks from today and on such representation, applying the Rules and Regulations, the

Department can consider the said representation and pass orders as expeditiously as possible preferably with a period of twelve weeks from the

date on which representation was made by the petitioner. With these observations, the writ petition is disposed of. Consequently, the connected

W.P.M.Ps. are closed. No costs.