

Saroja, and anr. Vs. the Inspector General of Prison, and ors.

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Court : Chennai

Decided On : Aug-13-2010

Judge : T.Raja, J.

Appeal No. : W.P.No.1024 of 2007 (T) O.A.No.2804 of 2000

Appellant : Saroja, and anr.

Respondent : The Inspector General of Prison, and ors.

Advocate for Def. : Mr.S.Gopinathan, Adv.

Advocate for Pet/Ap. : Mr.V.Kathiravan, Adv.

Judgement :

1. The petitioners 1 and 2 had approached the Tamil Nadu Administrative Tribunal, by filing Original Application No.2804 of 2000. The said Original Application had been transferred to the file of this Court on abolition of the Tribunal and renumbered as W.P.No.1024 of 2007.

2. The petitioners, Saroja and Varathammal joined service on 05.04.82 and 03.07.82 respectively as Grade II Warder. Both the petitioners were granted Selection Grade on completion of their 10 years of unblemished service. When they were waiting for a promotional post of Grade I Warder, which is generally filled up from the post of Grade II Warder, the qualification prescribed by the Rule says that the promotion to the category of Grade I Warder shall be made on the ground of merit and ability and the seniority will be considered only when the merit

and ability are approximately equal. However, the petitioners 1 and 2 participated in the year 1985 and 1998 selection, but, unfortunately, though the petitioners were senior in service, the 3rd respondent, S.Shanthi, was given promotion as Grade I Warder. When the petitioners were directed to participate in the oral test, they appeared for the oral test and answered all the questions. In spite of the fact that they performed well, they were not found selected.

3. The only grievance made by the learned counsel appearing for the petitioners 1 and 2 is that when the merit and ability were already decided and their names were already included in the promotional panel for the post of Grade I Warder, the respondents 1 and 2 were not correct in conducting further examination for testing their merit and ability, because once the name of the petitioners 1 and 2 are included in the promotional panel considering the merit and ability, the conduct of test by the respondents 1 and 2 are totally illegal. In his further submission, it was contended that under the Jail Subordinate Service Rules, there is no condition or stipulation to conduct test among the Grade II Warders for filling up the post of Grade I Warder. On that basis, prayed for setting aside the impugned order by giving a direction to the respondents to promote the petitioners as Grade I Warder.

4. Per contra, learned counsel appearing for the respondents submits that the post of Grade I Warder is a promotional post. As per the circular memo No.35345/B3/69, dated 31.07.1969 issued by the 1st respondent to conduct tests for promotion to the post of Grade I Warders, test was conducted. In the above said test, several candidates were participated in the test including the petitioners 1 and 2 and the 3rd respondent. But, the marks secured by the petitioners 1 and 2 and the 3rd respondent indicates that the petitioners secured very less marks compared to the 3rd respondent. The records show that the 1st petitioner, who was appointed on 05.04.82, secured only 63.5 marks and also the 2nd petitioner, who was appointed on 03.07.82, secured very less marks, namely 57 out of 100, whereas the 3rd respondent, who was appointed on 31.12.85, secured 65 marks out of 100. In that view of the matter, the 3rd respondent was promoted as Grade I Warder. Since the promotion given to the 3rd respondent is based on Rule 2(b)(I) under Branch I Class II of the Tamil Nadu Jail Subordinate Service Rules r/w General Rule 36(b)(1) of Tamil Nadu State and Subordinate Service Rules, the

petitioners cannot object their non selection. On that basis, prayed for dismissal of the writ petition.

5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. The promotional post of Grade I Warder has to be filled up on the basis of Rule 2(b)(I) under Branch I Class II of the Tamil Nadu Jail Subordinate Service Rules r/w General Rule 36(b)(1) of Tamil Nadu State and Subordinate Service Rules. The petitioners 1 and 2 and the 3rd respondent were included in the promotional list for the post of Grade I Warder. When the test was conducted, the petitioners 1 and 2 secured less marks namely 63.5 and 57 respectively, whereas the 3rd respondent secured 65 marks. Since the marks secured by the 3rd respondent being higher than the marks secured by the petitioners, the respondents 1 and 2 promoted the 3rd respondent. Therefore, the contention raised by the learned counsel for the petitioner that atleast first petitioner should be considered, who has secured more or less equal marks, namely 63.5, cannot be accepted by this Court.

7. In that view of the matter, this Court, for the reasons said above, is not inclined to interfere with the impugned order and accordingly, the present writ petition is dismissed. No Costs.

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