

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2015

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.1474 of 2015

and

M.P.No.1 of 2015

1. State of Tamil Nadu
rep. by Secretary to Government,
Revenue Department,
Fort St. George, Chennai-9.
2. The Commissioner,
Survey and Settlement,
Chepauk, Chennai-5. ... Appellants/Respondents

Vs.

K.Madhanagopal ... Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, against the order of this Court dated 25.03.2015 and made in W.P.No.23288 of 2014.

W.P.No.23288 of 2014 : Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in Letter No.39760/SS 3(1)/2013-2, dated 30.4.2014 quash the same and consequently direct the 1st respondent herein to promote the petitioner to the post of Deputy Director Survey and Settlement in the panel for the year 2010-2011 by implementing the G.O.(1D) No.312, dated 31.10.2011 and consequently revise the pay of the petitioner notionally for the purpose of pension.

For Appellants : Mr.I.Arokiasamy
Government Advocate

J U D G E M E N T

[Judgment of the Court was made by M.VENUGOPAL, J.]

The Appellants/Respondents have preferred the instant Writ Appeal as against the order dated 25.03.2015 in W.P.No.23288 of 2014 passed by the Learned Single Judge.

2.The learned Single Judge while passing the impugned order in W.P.No.23288 of 2014 on 25.03.2015 (filed by the Respondent/Writ Petitioner) at paragraph 8 among other things had observed the following:

"...The First Respondent rejected the request of the Petitioner for promotion only on the ground that case of Thiru.Venkatachalam cannot be compared with his case. Even other wise, the Petitioner is eligible to be promoted for the year 2010-11 in view of the availability of post and the Government order in G.O.(1D) No.312, dated 31 October 2011. I am therefore of the view that the Petitioner is entitled to succeed."

and resultantly, set aside the order of the First Appellant/First Respondent dated 30.04.2014 in Letter No.39760/SS 3(1)/2013-2 and further, directed the First Appellant/First Respondent to promote the Respondent/Petitioner to the post of 'Deputy Director' notionally with effect from on 31.10.2011 in the light of G.O.(1D) No.312, dated 31.10.2011, within a period of two months from the date of receipt of copy of this order.

3.Challenging the validity and legality of the order dated 25.03.2015 in W.P.No.23288 of 2014 passed by the Learned Single Judge, the Learned Government Advocate for the Appellants/Respondents contends that the panel for the post of 'Deputy Director of Survey and Land Records' for the year 2010-2011 was published in G.O.(1D) No.312, Revenue Department, dated 31.10.2011 and proposals recommending the eligible persons for promotion to the post of 'Deputy Director of Survey and Land Records' were to be sent to the Government and that the Respondent/Writ Petitioner attained the age of superannuation on the same date i.e., on 31.10.2011 and that he was permitted to retire from service on superannuation, on the afternoon of 31.10.2011 as 'Assistant Director of Survey and Land Records' by virtue of order in G.O.(1D) No.313, Revenue SS 3((1), Department, dated 31.10.2011 and therefore, he could not be promoted as 'Deputy Director of Survey and Land Records'.

4.The Learned Government Advocate for the Appellants proceeds to submits that the impugned order passed by the Learned Single

Judge dated 25.03.2015 in W.P.No.23288 of 2014 if implemented, then, it will create precedence to other similar officials.

5.Lastly, it is contended on behalf of the Appellants/Respondents that the impugned order passed by the Learned Single Judge in the Writ Petition is not sustainable either on facts or in Law.

6.At this juncture, this Court pertinently points out that the crystalline case of the Respondent/Petitioner is that the Appellants/Respondents had failed to consider a very vital fact that the Government Order in G.O.(1D) No.312, dated 31.10.2011 was issued to include his name in the panel for promotion to the post of 'Deputy Director', Survey and Settlement and consequently, promote him to the said post. Further, the date of issuance of Government Order was the date of superannuation of the Respondent/Petitioner. As such, it is the plea of the Respondent/Petitioner in the Writ Petition that for the delayed issuance of Government Order, he could not be found fault with. Added further, G.O.(Ms).No.368, visualises that the estimate of vacancies and the panel of eligible candidates ought to be sent simultaneously for Government's approval. However, the stand of the Respondent in the Writ Petition was that, the Second Appellant/Second Respondent had sent the number of vacancies to be approved by the Government as per proceedings dated 11.02.2011 and the name of the candidates (including the name of the Respondent/Petitioner) for approval by the Government only on 16.08.2011. In fact, the benefit extended to the Respondent/Petitioner through Government Order was issued on 31.10.2011 in G.O.(1D) No.312.

7.In effect, the core plea of the Respondent/Petitioner in the Writ Petition was that the administrative delay ought not to have prejudice his right for promotion to the post of 'Deputy Director', Survey and Settlement, for no fault of his.

8.Yet another fact is that the Respondent/Petitioner is similarly situated like that of one Venkatachalam who was extended the notional benefit for being promoted to the post of 'Deputy Director' even after his retirement as per G.O.(1D) No.207, dated 02.07.2013, in as much as the said Venkatachalam attained the age of superannuation as on 31.07.2012.

9.It comes to be known that the Respondent/Petitioner made a representation dated 22.10.2013 addressed to the Secretary to Government, Revenue Department, Chennai, praying for promotion notionally, based on the inclusion of his name in the panel for the post of 'Deputy Director of Survey and Land Records' for the year

2010-11 and fix his pay notionally and to grant all pensionary benefits to him as in the case of one Venkatachalam.

10. In reality, the Respondent/Petitioner in his representation dated 22.10.2013 had categorically averred that he had served in the Department in various capacities for the past 37 years without any punishments and charges through out his career and had rendered meritorious services with integrity, loyalty and honesty.

11. The Appellants/Respondents in their counter to the W.P.23288 of 2014 (filed by the Respondent) had stated that the case of the Respondent/Petitioner and the case of one Venkatachalam are different in nature and they cannot be compared with. Moreover, the Appellants had also further stated that one A.Venkatachalam filed W.P.No.16303 of 2011 before this Court seeking for issuance of directions to promote him to the post of 'Deputy Director of Survey and Land Records' and that this Court in its interim order in M.P.No.1 of 2011 dated 21.07.2011 had issued directions to the Appellants/Respondents to keep one post of 'Deputy Director of Survey and Land Records' vacant pending disposal of the Writ Petition. As such, it is the stand of the Appellants/Respondents that one post of 'Deputy Director of Survey and Land Records' kept vacant for the said Venkatachalam and subsequently on 05.03.2012, this Court had directed the Government to consider the case of said Venkatachalam for promotion, if he is otherwise qualified in the panel for the year 2010-11 within a period of eight weeks and therefore, orders were issued in G.O.(1D) No.207, Revenue [SS3(1)] Department, dated 02.07.2013, by including the said Venkatachalam's name in the panel for the post of 'Deputy Director of Survey and Land Records' for the year 2010-11 and that he retired from service on superannuation as 'Assistant Director of Survey and Land Records' on 31.07.2012, before issuance of G.O.(1D) No.207, Revenue Department, dated 02.07.2013, his pay was to be fixed notionally as per first proviso to ruling 17 of Fundamental Rule 27, on par with his junior M.Manogaran, who was promoted as 'Deputy Director of Survey and Land Records', in the next panel for the year 2011-12 for the purpose of pension and other monetary terminal benefits.

12. As far the present case is concerned, the indisputable fact is that the Appellants/Respondents in their counter to the W.P.No.23288 of 2014 (filed by the Respondent/Petitioner) had clearly mentioned that the Respondent/Petitioner was eligible to be promoted for the year 2010-11 but the Second Appellant/Second Respondent had failed to act prior to the retirements of the Respondent/Petitioner, notwithstanding the fact that the Government had approved the panel. As such, the Respondent/Petitioner could not be found fault with for the delay that had occurred in the

subject matter in issue. Further, the Second Appellant/Second Respondent made the proposal on 11.02.2011 as regards to promotion to the post of 'Deputy Director' and that the Government had approved the list only on 31.10.2011. Apart from that, it cannot be brushed aside that although the First Appellant/First Respondent had turned down the request of the Respondent/Petitioner for promotion based on the reason that Venkatachalam's case could not be compared with his case, yet this Court is of the considered view that the Respondent/Petitioner was rightly eligible to be promoted in respect of the year 2010-11 by means of availability of post coupled with the Government Order in G.O.(1D) No. 312, dated 31.10.2011.

13. In the up-shot of aforesaid qualitative and quantitative discussions, this Court is in complete agreement with the view taken by the Learned Single Judge in allowing the Writ Petition No.23288 of 2014 (filed by the Respondent/Petitioner) by directing the First Appellant/First Respondent to promote the Respondent/Petitioner to the post of 'Deputy Director', notionally with effect from 31.10.2011 in the light of Government Order in G.O.(1D) No.312, dated 31.10.2011 etc. Consequently, the Writ Appeal fails.

14. In the result, the Writ Appeal is dismissed leaving the parties to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS IV)

//True Copy//

DP
To

Sub Assistant Registrar

1. The Secretary to Government,
State of Tamil Nadu
Revenue Department,
Fort St. George, Chennai-9.
2. The Commissioner,
Survey and Settlement,
Chepauk, Chennai-5.

+1cc to the Government Pleader, S.R.No.53033

W.A.No.1474 of 2015
and M.P.No.1 of 2015

GR(CO)
CA(13/10/2015)