

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.Nos.24129 to 24131 of 2015

B.Malady .. Petitioner in W.P.No.24129/2015
R.Sujatha .. Petitioner in W.P.No.24130/2015
K.Murugadoss .. Petitioner in W.P.No.24131/2015

- Vs -

1. Chairman (Appointing Authority)
Puducherry Housing Board,
Anna Nagar, Nellithope,
Puducherry.
2. Puducherry Housing Board,
Represented by Secretary,
Anna Nagar, Nellithope,
Puducherry.
3. Union of India,
Represented by Secretary to Government,
Housing Department, Chief Secretariat,
Goubert Avenue, Puducherry. ... Respondents in all the WPs.

Prayer in W.P.No.24129 of 2015:- Writ Petition has been filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the second respondent Board to dispose of the review petition dated 11.04.2012 read with letters dated 16.05.2012, 17.11.2014, 20.02.2015, 14.05.2015, 08.07.2015 against the order ref.No.630/PHB/Estt./E-6/2011-12/836 dated 17.02.2012.

Prayer in W.P.No.24130 of 2015:- Writ Petition has been filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the second respondent Board to dispose of the review petition dated 11.04.2012 read with letters dated 13.12.2012, 16.05.2012, 20.02.2015, 14.05.2015, 08.07.2015 against the order ref.No.630/PHB/Estt./E-6/2011-12/838 dated 17.02.2012.

Prayer in W.P.No.24131 of 2015:- Writ Petition has been filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the second respondent Board to dispose of the review petition dated 11.04.2012 read with letters dated 16.05.2012, 20.11.2014, 20.02.2015, 02.06.2015 against the order ref.No.630/PHB/Estt./E-6/2011-12/837 dated 17.02.2012.

For Petitioner : Mrs.D.Nagasaila

For Respondents 1 & 2 : Mr.T.P.Manoharan

For Respondent 3 : Mr.R.Sreedhar
Government Advocate (Pondy)

C O M M O N O R D E R

By consent, the writ petitions are taken up for final disposal.

2. The petitioners were appointed as Draughtsman Grade II in the first respondent Board on temporary basis for a period not exceeding three months with effect from 27.11.2009 and thereafter it was extended for a further period of three months with effect from 02.03.2010 and they were placed in the scale of pay of Rs.9,300 - 34,800 with grade pay of Rs.4,200/- in Pay Band - 2. It is claimed by the petitioners that even at the time of appointment, they were fully qualified to hold the post of Draughtsman Grade II as they were holding diploma in civil engineering and they have also worked for a period of seven years as site engineer in a private construction company. The petitioners would further state that the first respondent who is the appointing authority, has also recommended for absorption of their services vide his proceedings dated 22.03.2010 and accordingly the case of the petitioners have been placed before the Selection Committee for Group B posts for filling up the post of Junior Engineer by absorption and the Selection Committee also made a recommendation for petitioners' absorption by its proceedings dated 25.03.2010 which is subject to the rectification of the Board. Though the subject relating to absorption was placed before the Board, decision was deferred and thereafter through newspaper reports petitioners came to know that their service as well as the services of other junior engineers were terminated. The petitioners filed writ petitions in W.P.Nos.23063 to 23065 of 2011 respectively. This Court issued interim injunction restraining the respondents from terminating their services and ultimately their writ petitions as well as the writ petitions filed by other persons were disposed of by this Court by a common order dated 22.11.2011, wherein, this Court has set aside the impugned order dated 06.10.2011, granting liberty to the respondents to afford an opportunity to the petitioners and to pass final orders if, in their opinion, the same is warranted. Accordingly, the respondents considered the claim of the petitioners and rejected the same vide proceedings dated 17.02.2012. Challenging

the same, the petitioners filed review petitions and to dispose of the said review petitions dated 11.04.2012, they have come forward to file these writ petitions.

3. The learned counsel appearing for the petitioners would submit that challenging the order of the respondents dated 17.02.2012, review applications have been filed and since it has not been disposed of, the petitioners were constrained to approach this Court. The learned counsel for the petitioners has also drawn the attention of this Court to the Pondicherry Housing Board (Classification, Control and Appeal) Regulations, 1985 and would submit that as per Regulation No.12, the power of review is conferred upon the Board. The learned counsel has also drawn the attention of this Court to Regulation 27 of the Pondicherry Housing Board Service Regulations, 1985 and would submit that there is no legal impediment on the part of the respondents to review its order dated 17.02.2012 and prays for appropriate orders.

4. Per contra, Mr.T.P.Manoharan, learned counsel appearing for respondents 1 and 2 would contend that unless and until the power of review is specifically provided under the Statute, it is not open to the respondents 1 and 2 to review its own order dated 17.02.2012 and the remedy open to the petitioners are to file a writ petition before this Court challenging the said order. It is further submitted by the learned counsel that the power to review provided in Regulation 12 of the Pondicherry Housing Board (Classification, Control & Appeal) Regulations, 1985 pertains to disciplinary proceedings initiated against the concerned employee and the said regulation is not applicable to the present case and prays for dismissal of the writ petitions.

5. This Court has carefully considered the rival submissions and the materials placed before it. It is relevant to extract Regulations 12 of the Pondicherry Housing Board (Classification, Control & Appeal) Regulations, 1985, which reads as follows:

"12. Power to review -- Notwithstanding anything contained in these regulations, the Board may on its own or otherwise, after calling for the record of the case, review any order by any subordinate authority; and

(a) confirm, modify or set aside the order;
(b) impose any penalty or set aside, reduce, confirm or enhance the penalty imposed by the order;

(c) remit the case to the authority which made the order or to any other authority directing such further action or inquiry as they consider proper in the circumstances of the case; or

(d) pass other orders as it may deem fit provided that an order imposing or enhancing a penalty shall not be passed unless the person

concerned has been given an opportunity of making any representation which he may wish to make against such enhanced penalty." (emphasis added)

6. Thus Regulation 12 starts with a non obstante clause and it says that the Board after calling for the records of the case, review any order by any subordinate authority; and (a) confirm, modify or set aside the order; (b) impose any penalty or set aside, reduce, confirm or enhance the penalty imposed by the order; (c) remit the case to the authority which made the order or to any other authority directing such further action or inquiry as they consider proper in the circumstances of the case.

7. The contention put forth by Mr.T.P.Manoharan is accepted, there is no necessity for clause 12(a) as clause 12(b) would meet the situation in hand. Regulation 12 has been provided with power to review any order passed by any subordinate authority confirming, modifying or setting aside the order.

8. In the light of the said provision, this Court is of the considered view that the respondents have power to review the order dated 17.02.2012. It is also made clear that this Court has not touched upon the merits of the review petitions submitted by the petitioners as it is for the respondents to consider the same while dealing with the review petitions filed by the petitioners dated 11.04.2012.

9. In the result, the writ petitions are disposed of and the respondents are directed to consider the review petitions submitted by the petitioner dated 11.04.2012 respectively on merits and in accordance with law and pass orders within a period of ten weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioners. The writ petitions are disposed of accordingly. No costs.

-s/d-
सत्यमेव जयते
Assistant Registrar

True Copy

WEB COPY
Sub-Assistant Registrar

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To

1. The Chairman (Appointing Authority)
Puducherry Housing Board,
Anna Nagar, Nellithope,
Puducherry.

2. The Secretary,
Puducherry Housing Board,
Anna Nagar, Nellithope,
Puducherry.

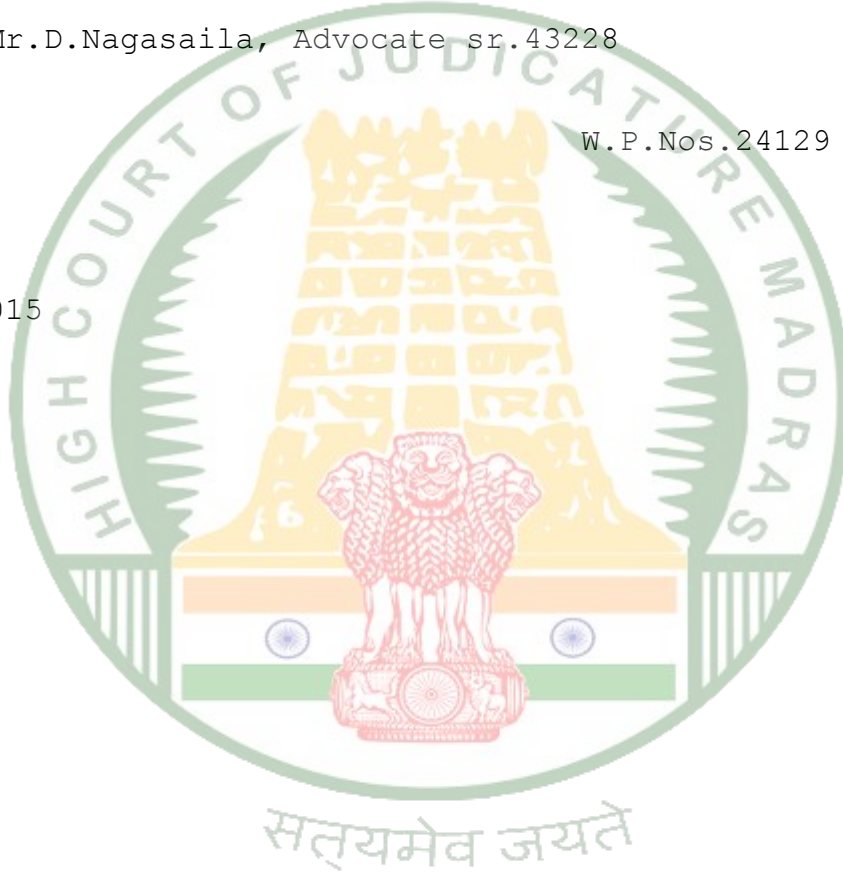
3. The Secretary to Government,
Housing Department, Chief Secretariat,
Goubert Avenue, Puducherry.

+3 ccs to Mr.T.P.Manoharan Advocate sr.43174,
43175,43176

+1 cc to Mr.D.Nagasaila, Advocate sr.43228

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