

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.11782 of 2007
(O.A.No.5715 of 2002)

P.Arumugam

.. Petitioner

-vs-

1. The Additional Director of Survey
and Land Records
Chepauk
Chennai 600 005

2. The Assistant Director of Survey
and Land Records
Thanjavur

.. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records of the first respondent in Na.Ka.No.N2/14318/2002 (LS) dated 23.7.2002 and quash the order passed therein and directing the respondents to promote the petitioner to the post of Firka Surveyor with effect from 5.7.2001, the date on which the petitioner's junior got promoted with all consequential monetary and other service benefits.

For Petitioner :: Mr.R.Ravi

For Respondents :: Mr.R.Govindasamy
Additional Government Pleader

ORDER

Mr.P.Arumugam, aggrieved by the impugned order dated 23.7.2002 passed by the Additional Director of Survey and Land Records, the first respondent herein, filed O.A.No.5715 of 2002 before the Tamil Nadu Administrative Tribunal seeking to quash the same with a further direction to promote him to the post of Firka Surveyor with effect from 5.7.2001, the date on which his junior got promoted with all consequential monetary and other service benefits. After sometime, the matter came on transfer to this Court and renumbered as the present writ petition.

2. Learned counsel for the petitioner, finding fault with the reasons shown in the impugned order for refusing promotion to the post of Firka Surveyor, submitted that when the petitioner was appointed as Surveyor-cum-Draughtsman on 24.3.83 on consolidated pay, within three years, he was brought under the time scale of pay with effect from 30.9.86. Subsequently, the Government issued G.O.Ms.No.60, Revenue Department dated 9.2.2001 giving the benefit of regularisation with effect from 30.9.88 along with the group of 1936 persons, wherein the name of the petitioner has been shown in Serial No.376 in the annexure attached to the said Government Order. Therefore, it was the claim of the petitioner that after the retrospective regularisation given to him, he became eligible for promotion to the post of Firka Surveyor, as such, after the drawal of panel by the second respondent on 5.7.2001 to give promotion to the fit person as Firka Surveyor, the name of the petitioner should have been included in the said panel, below the name of Mr.R.Sugumaran at Serial No.7 and above the name of M.Somuraj at Serial No.8. As the petitioner's name was left out and the panel was also not communicated to him as required under Rule 4(a) of the General Rules, he gave a representation on 13.7.2001 to the second respondent against his non-inclusion in the panel. On receipt of the said representation, the second respondent also issued a reply on 26.7.2001 taking a peculiar stand that the petitioner having been working as temporary hand was liable to be ousted at any point of time. However, in the said order, it was stated that they were also awaiting orders from the first respondent for his promotion. In view of that, the petitioner gave another representation on 10.8.2001 to the first respondent against his non-inclusion in the panel. But no order was passed by the first respondent. In the meanwhile, the second respondent granted promotion to three juniors, namely, M.Somuraj, V.Easwaran and P.Asokan. When the name of the petitioner was not considered, on the other hand, the juniors of the petitioner were given promotion, the petitioner approached the Tribunal by filing O.A.No.335 of 2002. The said original application was allowed by order dated 28.2.2002 holding that the ground on which the petitioner's name came to be rejected was erroneous, on this basis, a direction was given to consider his representation with reference to the seniority. Once again the first respondent has rejected by the impugned order dated 23.7.2002. Therefore, the approach adopted by the first respondent in the impugned order is against the direction given by the Tribunal in O.A.No.335 of 2002 dated 28.2.2002.

3. A detailed counter affidavit has been filed by the respondents. The learned Additional Government Pleader appearing for the respondents, in support of the impugned order, submitted that the prayer made by the petitioner has become infructuous, since the grievance of the petitioner to give him promotion to the post of Firka Surveyor has been acceded to on 7.11.2005. On this basis, he further stated that nothing survives in the writ petition.

4. However, the learned counsel for the petitioner submitted that once the G.O.Ms.No.60, Revenue Department dated 9.2.2001 was issued giving the benefit of regularisation with retrospective effect to the petitioner in relaxation of Rule 5 of the Tamil Nadu Survey and Land Records Subordinate Service Rules, once again taking a consistent stand that the petitioner was not entitled for promotion, since he had not passed the departmental test within five years, is absolutely untenable and unjustified. When the services of the petitioner were regularised in G.O.Ms.No.60 dated 9.2.2001, it goes without saying that the petitioner had become a full member of the service. Thereafter, for any promotion, his name should be considered on par with his juniors. Without doing so, by passing the impugned order, denying the request of the petitioner on the ground that he had not passed the departmental test, as a result, his probation was not declared, is wholly unjustified.

5. This Court finds it difficult to accept the arguments of the learned counsel for the petitioner. No doubt, a reading of G.O.Ms.No.60 dated 9.2.2001 clearly shows that the services of the petitioner were regularised in relaxation of Rule 5 of the Tamil Nadu Survey and Land Records Subordinate Service Rules. But a reading of the next part of the said Government Order also clearly shows that although he was given the benefit of regularisation, he was denied the monetary benefits. That shows that he had not passed the departmental test as per the rules for the State and Subordinate service. As a matter of fact, the period of probation can be extended only upto a maximum period of five years by the appointing authority, as provided under Rule 27 of the General Rules for the State and Subordinate Service. In the present case, the petitioner had passed the departmental test in May, 1998 only, namely, after five years from the date of commencement of probation. Since he had passed the departmental test after five years, his probation was not declared immediately, since the order of the Government was required therefor. However, as rightly pointed out by the learned Additional Government Pleader for the respondents, the completion of probation was declared by the competent authority on 24.6.2005. Subsequently thereafter, on 7.11.2005, within about five months, he was given promotion to the post of Firka Surveyor. Therefore, when the petitioner has been given promotion to the post of Firka Surveyor, this Court finds no merits in the writ petition. Accordingly, the writ petition fails and it is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

SS

To

1. The Additional Director of Survey
and Land Records

Chepauk
Chennai 600 005

2. The Assistant Director of Survey
and Land Records

Thanjavur

+ 1 cc to M/s. A.K.R. Ravi, Advocate SR.7219

+ 1 cc Government Pleader Sr.7301

CA(CO)

EU 23.03.2015

W.P.No.11782 of 2007
(O.A.No.5715 of 2002)



WEB COPY

10.02.2015



WEB COPY