

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.07.2015

Coram

The Honourable Mr.Justice T.S.SIVAGNANAM

W.P.No.1357 of 2012
and M.P.No.1 of 2012

G.Gnanasekar

.. Petitioner

-vs-

The Director of Public Health
and Preventive Medicine,
Chennai.

... Respondent

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari to call for the records on the file of the respondent in his proceedings R.No.60384/E4/2011/S1-1 dated 26.11.2011 and R.No.60384/E4/2011/S1-2 dated 26.11.2011 and R.No.60384/E4/2011/S1-3 dated 26.11.2011 and quash the same.

For Petitioner : Mr.S.Selvathirumurugan

For Respondent : Mr.R.Vijayakumar,
Addl. Govt. Pleader.

O R D E R

Heard Mr.S.Selvathirumurugan, learned counsel for the petitioner and Mr.R.Vijayakumar, learned Additional Government Pleader for the respondent and with the consent of either side, the writ petition itself is taken up for final disposal.

2.The petitioner challenges the order dated 26.11.2011, by which the petitioner's seniority has been revised and he is deemed to have been reverted to the post of Assistant with effect from 28.09.2006. The petitioner would state that he was initially appointed as a Junior Assistant on 27.07.1981 and his period of probation is stated to have been declared on 24.06.1984 and his name was included in the seniority list in the post of Junior Assistant and was assigned Sl. No.380. The petitioner was promoted as Assistant on 17.12.1993, during which stint, he suffered a minor penalty of stoppage of increment for a period of six years without cumulative effect by an order dated 09.03.1994. After the expiry period of punishment, the petitioner was allowed to join in the promoted post on 29.03.1994 and his seniority was assigned in Serial No.136. Thereafter, the petitioner was promoted as Superintendent on 28.09.2006 and his

seniority is stated to be in Serial No.148. While so, by the impugned notices, the petitioner was informed that consequent upon revision of seniority, he is deemed to have been reverted as Junior Assistant with effect from 29.03.1994; as Assistant with effect from 28.09.2006; as Superintendent with effect from 01.04.2011, and his pay has been revised and re-fixed to his detriment. These orders are questioned in this writ petition.

3.Learned counsel for the petitioner submitted that the impugned orders are in violation of principles of natural justice, since the petitioner was not afforded any opportunity to show cause against the deemed reversion and the impugned orders have to be held to be bad in law. Further, it is submitted that the impugned orders have been passed after a long lapse of 18 years and that is also one more ground to hold that the impugned orders are illegal. By placing reliance on the decision of the Hon'ble Supreme Court in Balco Captive Power Plant Mazdoor Sangh and another vs. National Thermal Power Corporation and others, (2007) 14 SCC 234, it is submitted that alteration of service condition would cause prejudice to the employees and unilateral change of status should not be made. Therefore, it is submitted that the impugned orders are liable to be set aside.

4.Though the respondent has been served and has entered appearance, he has not filed counter-affidavit. This Court heard the submissions of the learned Additional Government Pleader for the respondent.

5.On a perusal of the impugned orders, it is seen that consequent upon revision of seniority of the petitioner working as Superintendent, he has been reverted to a lower post with effect from a retrospective date, viz., 29.03.1994. The impugned orders do not refer to the basis of revision of seniority as to why for 18 years, nothing had happened and all in a sudden, he has to be reverted with retrospective effect. The impugned orders further state that the petitioner's name is deemed to have been included in the regular panel for promotion as Superintendent with effect from 2010-2011, whereas he was promoted as Superintendent in 2006 and as a consequence thereof, his seniority has been fixed above his junior, G.Kumaresan.

6.The petitioner has already attained the age of superannuation and he has retired from service and his pension proposals have not been processed. Learned counsel for the petitioner further relied upon an unreported decision of this Court in the case of P.Shanmugasundaram vs. The Director of Public Health & Preventive Medicine, Chennai, in W.P.No.7556 of 2009 dated 16.09.2013. In the said case, the reversion order was passed after 15 years and this Court allowed the writ petition and set aside the order of reversion.

7.Considering the above referred facts and taking note of the long lapse of time after which the petitioner's seniority is sought to be altered, that too without notice, this Court has no hesitation to hold that the petitioner is being put to disadvantageous position, that too when action was initiated on the verge of his retirement and as on date, he has already retired from service.

8.In the light of the above, the impugned orders are held to be unsustainable in law and it is, accordingly, quashed. The writ petition is allowed. No costs. Consequently, connected M.P. is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sra

To
1. The Director of Public
Health and preventive Medicine,
Chennai.

+1cc to Mr.S. Selvathirumurugan, Advocate, S.R.No.36702

PUR(CO)
EU(31/07/2015)

W.P.No.1357 of 2012

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