

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 6.2.2015

CORAM:

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

Writ Petition No.19926 of 2013

1. P.S.DEVANATH

... PETITIONER

Vs

1. THE PRINCIPAL SECRETARY TO GOVERNMENT
TOURISM, CULTURE AND RELIGIOUS
ENDOWMENTS DEPARTMENT
FORT ST. GEORGE, CHENNAI 9

2. THE COMMISSIONER
DIRECTORATE OF ART AND CULTURE
THENDRAL, GREENWAYS ROAD, CHENNAI 28

3. D. MATHIYAZHAGAN

... RESPONDENTS

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari to call for the records relating to the impugned order passed by the 1st respondent herein in his proceedings G.O. Ms. No. 189 and G.O.Ms. No. 190 (Tourism Culture and Religious Endowments (Pan 1-1) Department) dated 17.7.2013 and quash the same.

For Petitioner : Mr.G.Bala for
M/s.G.Bala and Daisy

For Respondents : Mr.M.S.Ramesh, AGP for R1 & R2
Mr.P.P.Shanmugasundaram for 3rd respondent

O R D E R

This Writ Petition is directed against the order dated 17 July 2013 in G.O.Ms.No.189 and G.O.Ms.No.190, whereby and whereunder the order granting promotion to the petitioner as Head of the Department was recalled and the third respondent was appointed in his place.

2. The petitioner joined the service of Government College of Fine Arts, Chennai as Assistant Instructor on 6 April 1987. Thereafter, he was promoted as Instructor with effect from 29 June 1994. This was followed by a further promotion to the post of Lecturer and Senior Lecturer. The Government have issued an order in G.O.Ms.No.191, Tourism and Culture Department dated 28 September 2012 including the name of the petitioner, the third respondent and another person in the regular panel fit for promotion to the post of Head of Department in the order of seniority. The name of the petitioner was shown at Serial No.2. The third respondent was shown in Serial No.3. Thereafter, the petitioner was promoted and posted as Head of Department in College of Fine Arts, Chennai vide order dated 28 September 2012.

3. While the petitioner was functioning as Head of Department, the first respondent passed orders in G.O.Ms.No.189 and G.O.Ms.No.190 dated 17 July 2013 recalling the order of promotion given to the petitioner and appointing the third respondent as Head of Department in the place of the petitioner. The two orders are challenged in this Writ Petition primarily on the ground that notice was not issued before recalling the order of promotion.

4. The first respondent filed a counter affidavit contending that the petitioner was junior to the third respondent. However, his name was inadvertently shown as senior and accordingly he was given promotion as Head of Department. Subsequently, the third respondent preferred an appeal and based on the said appeal, the impugned orders were issued, cancelling the promotion given to the petitioner and appointing the third respondent as Head of Department in the place of the petitioner.

5. The third respondent in his counter affidavit justified the impugned orders. According to the third respondent, the petitioner was junior to him and as such the promotion given to him was rightly recalled by the Government.

6. Heard the learned counsel for the petitioner, the learned Additional Government Pleader appearing on behalf of respondents 1 and 2 and the learned counsel for the third respondent.

7. There is no dispute that the petitioner was promoted to the post of Head of Department by order dated 28 September 2012. The petitioner joined the promoted post as Head of the Department. It was only thereafter, the third respondent submitted the appeal. The first

respondent without issuing notice to the petitioner, cancelled his appointment.

8. Since the petitioner has been holding the post for a considerable period, the first respondent should have issued notice to him before passing the impugned order which involves civil consequences to him. There is no point in saying that even after issuing notice, very same order would be passed and as such, issuance of notice would be an empty formality.

9. The theory of empty formality has no relevance to the case on hand. Here is a teacher, who worked as Head of the Department for several months. The third respondent armed with the order passed by the first respondent, claimed that he is the Head of the Department pursuant to the order dated 17 July 2013. The petitioner is therefore perfectly correct in his contention that he was put in darkness and the impugned order was passed behind his back. I am therefore of the view that the first respondent violated the principles of natural justice while passing the impugned order. The Writ Petitioner must therefore succeed.

10. In the result, the impugned order dated 17 July 2013 is set aside and the matter is remitted to the first respondent for fresh consideration. The first respondent is directed to issue notice to the petitioner and the third respondent and pass appropriate orders on merits and as per law. Interim protection given by this Court vide order dated 14 March 2014, which is in operation, will continue to be in force till the disposal of the matter by the first respondent.

11. The Writ Petition is allowed to the extent indicated above. No costs.

Sd/-

Asst. Registrar

/true copy/

Sub Asst. Registrar.

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AJR/TAR

To

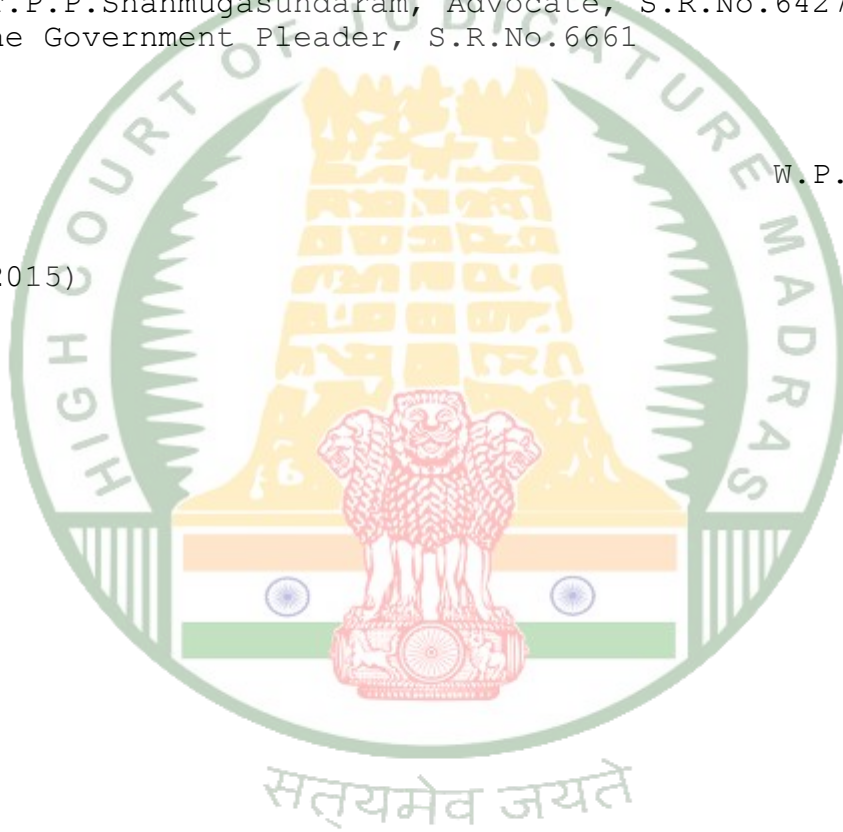
1. THE PRINCIPAL SECRETARY TO GOVERNMENT
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DIRECTORATE OF ART AND CULTURE
THENDRAL, GREENWAYS ROAD, CHENNAI 28

+1cc to Mr.G.Bala and Daisy, Advocate, S.R.No.6417
+1cc to Mr.P.P.Shanmugasundaram, Advocate, S.R.No.6427
+1cc to the Government Pleader, S.R.No.6661

W.P.No.19926 of 2013

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CA(03/03/2015)



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