

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15-4-2016

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

Rev.Appln.(Writ)No.210 of 2014

in

W.P.No.28653 of 2013

1.The Secretary to Government,
Municipal Administration & Water Supply
Department, Fort St.George,
Chennai-600 009.

2.The Commissioner of Municipal Administration,
Chepauk, Chennai-600 005.

... Petitioners/Respondents

Versus

1.R.Ravi

... Respondent/Petitioner

2.The Commissioner,
Salem City Municipal Corporation,
Salem.

..2nd Respondent/Respondent

Not necessary party

This Review petition is filed under Order 47 Rule 1 read with Section 114 of Civil Procedure Code to review the order passed in Writ Petition No.28653 of 2013 dated 05.11.2013.

For Petitioner :Mr.P.H.Aravind Pandian
Additional Advocate General
Assisted by Mrs.Jayasree
Government Advocate

For Respondents :Mr.Venkatramani
Senior Counsel for Mr.M.Muthappan

ORDER

This Court by order dated 5.11.2013 disposed of the writ petition filed by this petitioner, praying to quash the order dated 1.10.2013 and directed the respondents therein to consider the claim of the petitioner for promotion as Executive Engineer by including his name in the panel 2004-2005 on par with his Junior Thiru.R.Kamaraj with effect from 26.11.2014 and to grant him all the consequential service and monetary benefits.

2. It was challenged before the Division Bench of this Court in W.A.No.854 of 2014. The petitioner sought permission to withdraw the writ appeal with liberty to file a review petition. The Division Bench of this Court dismissed the writ appeal giving liberty to file a Review Petition, if so advised under the provisions of law. Pursuant to the said order only, the present Review Petition has been filed before this Court.

3. Mr.Aravindpandian, learned Additional Advocate General would point out that the Government framed Rules by issuance of G.O.Ms.No.22 Personal and Administrative Reforms Department dated 24.02.2014, bringing amendment to Rules (3) (b) of the General Rules for the Tamil Nadu State and Subordinate Services, which shall be deemed to have come into force retrospectively from 20.10.1997. As per Rule (3)(1-A) and (1F), the charges framed under rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules pending against a member of the service shall be a bar for inclusion of his

name in the approved list. Relying upon the said Rules, the learned Additional Advocate General would argue that the crucial date for consideration was on 1.6.2004 and on that day there was a charge pending against the petitioner. Even though it was subsequently dropped by virtue of Rule (1) (p), the petitioner is not eligible for promotion as there was a charge pending against the petitioner.

4. However, Mr.Venkatramani, learned Senior Counsel appearing for the respondent would submit that though there was a charge on the crucial date, subsequently it was dropped on 26.8.2010. When the charges were dropped, the date of framing of charges has no value and therefore, on the crucial date, there was no charge and there should not be any impediment. That was the reason why, this Court allowed the writ petition. Therefore, the petitioner should be given promotion on par with his juniors from the date of their promotion.

5. He would further submit that the amendment brought into the Rule, will not be applicable to the facts of the case and the amended Rule cannot defeat the rights of the petitioner, he would contend. He relied upon a few judgements in this regard.

6. The crucial date for promotion was on 1.6.2004 and on that date, there was a charge pending against the petitioner and therefore, the petitioner could not be considered for promotion. Subsequently on 26.8.2010, the charges framed against the petitioner were dropped and therefore, the said charges were

deemed to be not in force, even right from the framing of charges. In that event, there is no prohibition for the petitioner to claim the benefit of promotion from the date of the promotion of his junior Mr.B.Kamaraj. Hence the petitioner's right cannot be interfered with.

7. Though, these are all the points on merits, whether the review petition filed by the Government is maintainable or not, has to be seen. The only point which could be canvassed before the Division Bench as well as before this Court is that at the time of passing of original order in the writ petition, the Government was not given any chance to canvass its points either by producing records or by filing counter affidavit. Paragraph-6 of the order starts with the sentence, namely, " A perusal of the record would reveal that the promotion sought for is for the year 2004 ". From the above it is evident that the record was produced and after going through the record only, this Court passed the order.

8. Assuming for a moment, this Court did not give any opportunity either to produce records or to file counter, the Government might have sought for time two or three weeks till the end of December,2013. There is no ground for the delay in filing the present Review Petition. Even if the opportunity was given, the Government could not have produced any records defeating the rights of the petitioner, as the Rules, now relied upon in the Review Petition, were not at all available till 24.2.2014. Based on the imaginary Rule, the review petition is not maintainable. Admittedly, the Rule was framed only on 24.2.2014 and as such,

the Rule cannot help the Government to maintain the review petition.

9. Mainly relying upon the subsequent event, namely, framing of Rule on 24.2.2014, which was not available at the time of passing of the Order and even thereafter for some time, the review petition cannot be maintained by the Government. The review petition is not maintainable under Order 47 of C.P.C. against the order on which the appeal is allowed. Only from the discovery of new material evidence which could not be produced at the time when the order was passed or an error apparent on the face of the record or for any other subsequent events or invoking wrong provision of law, on limited grounds, the review petition is maintainable. The new Rule would not have been pointed out to the Court at the time of passing of the order, for the simple reason, there was no such Rule at all. Therefore, the review petition deserves to be dismissed.

10. It is no doubt, as a matter of course, the review petition has been filed by the authority suppressing the order dated 5.11.2013, which was made ready on 5.12.2013. If at all, the review petition has to be filed within one month from the date of the receipt of a copy of the order. Filing of appeal and then withdrawing the same will not be a ground to condone the limitation. By making the contention that limitation will start from the date of withdrawal of the appeal, the Government wants to frustrate the procedure of law which is being followed by the Courts. No explanation has been given as to why, the review petition could not be filed within 30 days from the date of the receipt of the copy of the

order of this Court.

11. Hence the review petition is dismissed even on the question of limitation. No costs.

15.4.2016

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N.KIRUBAKARAN.J,

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