

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2016

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH

W.P. No.17635 of 2015

S.Sivalingam

...Petitioner

Vs.

1. The Principal Commissioner and
Commissioner of Survey and Settlements,
Chepauk, Chennai.

2. The Additional Director
Department of Survey and Land Records
Chepauk, Chennai.

3. The Settlement Officer,
Office of Commissioner of Survey and Settlements,
Chepauk, Chennai.

4. The Personal Assistant to the Director
of Survey and Settlements,
Office of the Commissioner of Survey and Settlements
Chepauk, Chennai. ... Respondents

Prayer : Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the records relating to the proceedings of 1st respondent in Na.Ka No. A1/289/2013 dated 27.02.2015 and to quash the same and consequently to direct the respondents to treat the period of service from 23.02.2013 to 17.06.2014 as duty period with all consequential and other attendant benefits, awarding of selection grade in the post of Junior Assistant on completion of ten years of service and arrears of salary as well as revision of pensionary benefits with arrears within a stipulated time frame.

For Petitioner

: Mr.G.Sankaran

For Respondents

: Mr.M.E.Raniselvam,

Addl. Govt. Pleader

O R D E R

By consent, the main writ petition itself is taken up for final disposal.

2. The petitioner herein was initially appointed as a night watchman on a contract basis. Thereafter, he was appointed on regular basis as per the order dated 23.03.1993. The petitioner was given promotion to the post of Record Clerk and thereafter, to the post of Junior Assistant in the Settlement Wing. An order was issued on 04.01.2013, transferring the petitioner from Settlement Wing to Survey Wing. The said order was put into challenge in the writ petition No. 708 of 2013, in which, the following order was passed.

"A careful reading of the above said Rule would show that only in special cases and on the ground of administrative necessity with the mutual consent of the concerned appointing authorities, transfer from one Wing/Unit to another Wing/Unit could be done. But, in the instant case, the reason assigned by the respondents in the counter for transferring the petitioner from settlement Wing to Survey Wing is that the petitioner is having a habit of not following the office procedures and was found violating the Rules and therefore, they decided to transfer the petitioner from Settlement Wing to survey Wing. The said reason assigned by the respondents cannot be construed as a special circumstances to invoke the provisions under Rule 20(a) of the Tamil Nadu Ministerial Service Rules. Further, if any such order of transfer is passed on that allegation, it will be against the ratio laid down by the Hon'ble Supreme Court reported in 2009 (2) SCC 592 (Somesht Tiwari Vs. Union of India and others), wherein it has been held that if any order is passed in lieu of punishment without providing any opportunity the same would be liable to be set aside as wholly illegal. Therefore, from the reason assigned by the respondents to transfer the petitioner, it could be construed that the transfer of the petitioner from Settlement Wing to Survey Wing is a transfer of punishment. But, there cannot be any punitive transfer without providing an opportunity to the concerned person. Therefore I am not inclined to accept the submission made by the learned Additional Government Pleader that the transfer of the petitioner from settlement Wing to Survey Wing is only in accordance with the Rules 20(a) of the Tamil Nadu Ministerial Service Rules. Further, I am of the opinion that in the absence of any special circumstance, the transfer of the petitioner from Settlement Wing to Survey Wing is not sustainable in law.

14. With regard to the submission made by the learned counsel for the petitioner that the petitioner was only reverted to the parent department, I am of the opinion that the petitioner was absorbed in Settlement Wing as office Assistant as early as on 22.11.1995., and his services were regularised in the category of promotions to the posts of Record Clerk and Junior Assistant were also in the Settlement Wing only. Thus, the petitioner has become a regular member of service in the Settlement Wing. Therefore the contention of the learned Additional Government Pleader that the petitioner was reverted back to his parent department cannot be accepted and the said contention is totally contrary to the fact. When these two different wings are governed by two different service Rules the transfer of the petitioner from one Wing to another Wing is against the Rules and it would effect his service rights."

3. Thus on merits, the order in W.P. No. 708 of 2013 was passed setting aside the transfer of the petitioner, holding that it was passed contrary to the Rules. It was also held that enforcing such transfer will effect the service conditions of the petitioner. Therefore, the said order has become final.

4. However, the interregnum period, i.e. between the order under challenge which is the subject matter of the writ petition No. 708 of 2013, till the final order was passed in the writ petition on 04.02.2014, was treated as break in service apart from treating the period between 23.02.2013 to 17.06.2014 as permissible leave. Challenging the said order dated 27.02.2015, the present writ petition is filed by the petitioner before this Court.

5. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

6. It is rightly submitted by the learned counsel for the petitioner that the order passed in W.P.No. 708 of 2013 has become final. Learned counsel for the petitioner fairly submitted that the petitioner has attained the age of superannuation therefore, at least the period between 23.02.2013 to 17.06.2014 may be treated as on service and resultantly, retirement benefits may be calculated. This Court is of the view that the prayer of the petitioner is reasonable and fair, more so, when the order passed by the court has attained finality.

7. Considering the above facts and circumstances, the order dated 27.02.2015 is set aside. The respondents are directed to treat the period between 23.02.2013 to 17.06.2014 as on duty and compute the same. Accordingly, the retirement benefits due to

the petitioner shall be paid within a period of eight weeks from the date of copy of this order.

8. With the above direction, the writ petition is disposed of. Consequently, connected miscellaneous petition are closed. No costs.

rms

s/d-

Assistant Registrar(CS-VI)

True Copy

Sub-Assistant Registrar

To

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