

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.4.2016

CORAM

THE HONOURABLE MR.JUSTICE SATISH K.AGNIHOTRI
AND
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Writ Appeal No.456 of 2016

1. The State of Tamilnadu rep. by
The Secretary to Government,
Revenue Department,
Secretariat,
Chennai 600 009.
 2. The Commissioner and Director of
Land Survey and Settlement,
Chepauk, Chennai 600 005.
- Appellants

Versus

E.Durai

Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 18.4.2013 made in W.P.No.23514 of 2006.

WP.NO.23514 of 2006:Petition praying to issue a Writ of Certiorarified Mandamus to calling for the records on the file of the Secretary to Govt.Revenue Dept. Secretariat Chennai and the 1st respondent herein vide his Letter No.42792/N1A3(1) 99-23 dated 05.04.2006 and quash the same as illegal arbitrary unreasonable being violative of rules and principles of Natural Justice and there by direct the respondents herein to impement the Government order in GO (1D) No.34 Revenue Dept. dated 29.01.1999 and consider the petitioner for further promotions notionally with all consequential monetary and service benefits.

For Appellants : Mrs.A.Sri Jayanthi,
Special Government Pleader

For Respondent : Mr.A.R.Suresh

JUDGMENT

(Judgment of the court was delivered by V.BHARATHIDASAN, J.)

The instant appeal has been filed against the order passed by the learned Single Judge in W.P.No.23514 of 2006 allowing the writ petition filed by the caveator/respondent.

2. We have heard Ms.A.Sri Jayanthi, learned Special Government Pleader for the appellant and Mr.A.R.Suresh, learned counsel for the caveator/respondent.

3. The respondent filed a writ petition challenging the order passed by the first appellant dated 5.4.2006 and for a consequential direction to implement the Government Order in G.O.(1D) No.34 Revenue Department, dated 29.1.1999. The first respondent was originally appointed as a Field Surveyor, and subsequently promoted as Sub Inspector of Survey and further promoted as Deputy Inspector of Survey in the year 1991. When the panel for promotion to the post of Inspector of Survey was drawn in the year 1992, his name was not included as he did not pass the Account Test on the crucial date viz, 25.4.1992, but, he passed the same on 4.5.1992. Considering his representation, the Government passed a Government Order in G.O.(1D) No.34, Revenue (SS-III (1)) Department dated 29.1.1999, relaxing the qualification and directed to include his name in the panel of the year 1992. In the meantime, based on 1993 promotion panel, the respondent was promoted as Inspector of Survey in the year 1999, and subsequently, as Assistant Director of Survey and Settlement on 25.2.2003. Even though the Government relaxed the qualification, the petitioner's name was not included in the year 1992 panel and the G.O. dated 29.1.1999 was not implemented, hence the respondent was constrained to file an application before the Tamil Nadu Administrative Tribunal in O.A.No.1 of 2004. In the meantime, one Deenadayalan, junior to the respondent was given promotion, hence, once again, the respondent herein filed an application in O.A.No.1415 of 2004, before the Tribunal challenging the promotion given to the said Deenadayalan. The Administrative Tribunal, by order dated 5.4.2004, directed to the appellant to implement the Government Order dated 29.1.1999 and to include his name in the Panel for 1992, by placing him above the said Deenadayalan. Since the above order was not implemented the respondent was constrained to file a writ petition before this court in W.P.No.34403 of 2004 and this court, by an order dated 26.11.2004, directed the appellants to implement the order passed by the Administrative Tribunal dated 5.4.2004. In the meantime, the respondent retired from service on 31.10.2004 on attaining superannuation. Thereafter, the respondent herein approached the appellants to give notional promotion in view of the promotion given to his

immediate junior Deenadayalan, but, it was rejected by the first appellant, by order dated 5.4.2006, challenging the same, the writ present writ petition was filed by the respondent herein.

4. The learned Single Judge, after considering the rival submissions, held that as per the orders passed by the Tamil Nadu Administrative Tribunal, the respondent being senior to the above said Deenadayalan, he is entitled to get promotion to the post of Deputy Director, with effect from 10.12.2003, on which date the said Deenadayalan was promoted, thereby the learned Single Judge, while allowing the writ petition, set aside the order passed by the first appellant and directed the appellants to promote the respondent with effect from 10.12.2003 on par with his immediate junior Deenadayalan and further held that the petitioner is entitled to monetary benefits including retirement benefits based on notional promotion.

5. The learned counsel for the appellants vehemently contended that the respondent is not entitled for notional promotion and also the monetary benefit based on the notional promotion.

6. The counsel for the respondent would submit that as per the orders passed by the Administrative Tribunal dated 5.4.2004, the respondent is entitled for notional promotion from the date on which his junior Deenadayalan was promoted. however, the learned counsel for the respondent fairly conceded that he is not entitled for any monetary benefit based on the notional promotion.

7. We have carefully considered the rival submissions. As rightly pointed out by the learned counsel for the respondent, in view of the orders passed by the Tamil Nadu Administrative Tribunal and the subsequent orders passed by this court in W.P.No.3440 of 2004 dated 26.11.2004, the respondent is entitled to get notional promotion on the date on which his junior Deenadayalan was promoted. However, as fairly conceded by the counsel for the respondent, the respondent is not entitled for any monetary benefit based on the notional promotion. In the above circumstances, the order of the learned Single Judge is liable to be modified.

8. Accordingly, we modify the order passed by the learned Single Judge to the extent that the respondent is entitled to notional promotion to the post of Deputy Director of Survey from 10.12.2003, without monetary benefits based on the above said notional promotion. The writ appeal is disposed of accordingly. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssk.

To

1. The Secretary to Government of TamilNadu
Revenue Department,
Secretariat,
Chennai 600 009.
2. The Commissioner and Director of
Land Survey and Settlement,
Chepauk, Chennai 600 005.

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