

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.7.2017

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

Writ Appeal No.1504 of 2015

The Director of Rural Development and
Panchayat Raj
Saidapet
Chennai 15.

... Appellant

Vs.

Thangam Ambrose

... Respondent

Appeal under Clause 15 of the Letters Patent directed against the order dated 18.8.2014 made in W.P.No.14163 of 2008.

W.P.No.14163 of 2008 : To issue a Writ of Certiorarified Mandamus, to call for the records of the Respondent in connection with the impugned order passed by him in ROC.No.2172/07/EE2, dated 02.12.2007 and quash the same and direct the respondent to consider the claim of the petitioner for promotion as Assistant Engineer (Rural Development) by including his name in the panel of the year 1999-2000 and promote him notionally and grant him all consequential service and monetary benefits on par with his junior.

For Appellant : Mr.V.Jayaprakash Narayanan,
Special Government Pleader

For Respondent : Mr.M.Muthappan

J U D G M E N T
(Delivered by Huluvadi G.Ramesh, J)

This appeal is directed against the order dated 18.8.2014 made in W.P.No.14163 of 2008.

2. Heard the learned Special Government Pleader appearing for the appellant and the learned counsel appearing for the respondent.

3. The facts which led to the filing of the writ appeal are as under.

According to the respondent, after his appointment as Overseer in Highways and Rural Works Department in the year 1980, he was deputed to Rural Development Department (Panchayat Union). In the year 1999, all the persons who were deputed to that Department, were absorbed, including the respondent. In the panel for promotion to the post of Assistant Engineer for the year 1999-2000, published on 02.9.2002, the name of the respondent was not included in view of pendency of disciplinary proceedings. Even in the panel for the year 2000-2001 also, the name of the respondent was included in view of the currency of punishment. However, the respondent's name was included in the panel for the year 2007-2008. Therefore, the respondent requested the appellant to include his name in the panels for the year 1999-2000 and 2000-2001 and the same was rejected. Hence, the respondent filed writ petition.

4. The learned single Judge, taking note of the fact that the punishment was imposed in 2003, for the misconduct that took place during 1986-1987, that the period of punishment was over by 2004, that the crucial date for the inclusion of the name of the respondent in the panel for the years 1999-2000 and 2000-2001 were 01.3.1999 and 01.3.2000 respectively and that the delinquency had taken place beyond than five years to the crucial date, set aside the order of the appellant rejecting the claim of the respondent and directed the appellant to consider the respondent for promotion notionally for the year 1999-2000 and to place him above his junior and to grant monetary benefits from the date on which the respondent's junior assumed charge in the promoted post. Hence the writ appeal.

5. Admittedly, the delinquency alleged to have taken place in the year 1986-1987, for which the charge memo had been issued in the year 1996. But, the punishment of stoppage of increment for one year without cumulative effect was imposed only on 20.02.2003. The panels for the year 1999-2000 and 2000-2001 were published on 02.9.2002 and 01.11.2006 respectively.

6. At this juncture, it would be apt to refer to the guidelines and the amendment issued in G.O.Ms.No.368 Personnel and Administrative Reforms Department dated 28.10.1983 from time to time and also the amendment issued to the guidelines in the years 1996 and 1999 in a proper perspective, as referred to in the order of the learned single Judge, which reads as under:

"1. In letter No. 27336/S/96/1 P & AR (S)
Department dated 28.06.1996, it is stated that,
"If any punishment ordered is within a period

of 5 years as on the crucial date but the date of occurrence falls beyond the period of 5 years then it is not held against the officer."

2. In letter No. 248 P & AR (S) Department dated 20.07.1997, it is stated that,

"II(2) provided that if the officer was imposed with any of the punishments within the check period as mentioned above for the irregularities/delinquencies which occurred 5 years prior to the date of punishment such punishment need not be held against him."

3. In letter No. 52511/S/99-1 P & AR Department dated 1.10.99 wherein the existing first proviso to paragraph 4 (II) (2) is substituted as follows:

"provided if the officer was imposed with any of the punishments within the check period as mentioned as above for irregularities/delinquencies which occurred 5 years prior to the crucial period, such punishment need not be held against him."

7. A reading of the above amendment to the guidelines would make it clear that if the date of occurrence falls beyond the period of five years of crucial date, then, the delinquent should not be ignored for inclusion in the panel. In the case on hand, the panel for promotion for the year 1999-2000 was prepared in the year 2002, for which the crucial date is 01.3.1999. The delinquency had taken place in the year 1986-1987, namely 12 years before the crucial date. Therefore, the appellant ought to have included the name of the respondent in the panel for the year 1999-2000. Thus, it is apparent that the appellant had committed an error in not including the name of the respondent and consequently, rejecting the claim of the respondent for inclusion of his name in the panel for the year 1999-2000.

8. That apart, the Supreme Court in P.V.Mahadevan v. M.D., T.N. Housing Board [(2005) 6 SCC 636], has held that inordinate delay in the initiation of the departmental disciplinary proceedings would cause unbearable mental agony and distress to the officer concerned and the protracted disciplinary proceedings would be much more than the punishment and that for the mistakes committed by the Department in the procedure for initiating the disciplinary proceedings, the officer concerned should not be made to suffer.

9. In view of the above, we are of the considered opinion that the learned single Judge is right in setting aside the

order of the appellant rejecting the claim of the respondent. Accordingly, the writ appeal is dismissed upholding the order of the learned single Judge. However, there shall be no order as to costs. Consequently, M.P.No.1 of 2015 is also dismissed.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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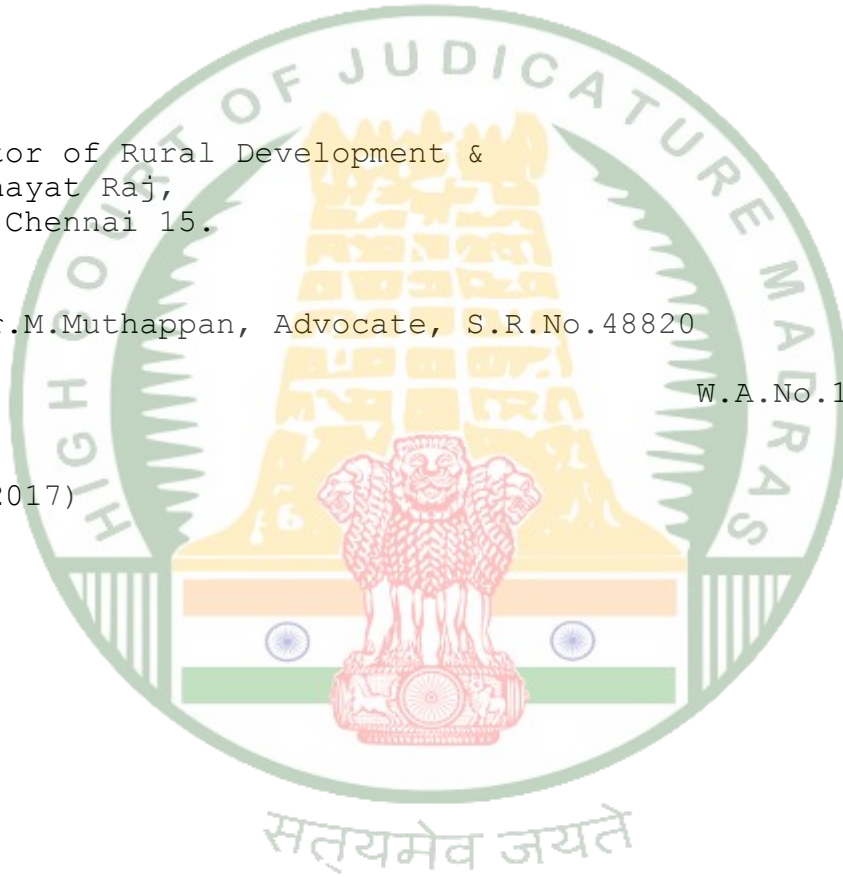
To

The Director of Rural Development &
Panchayat Raj,
Saidapet, Chennai 15.

+1cc to Mr.M.Muthappan, Advocate, S.R.No.48820

W.A.No.1504 of 2015

PVS (CO)
CA(04/08/2017)



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