

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2017

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

W.A No.1501 of 2011,
M.P.Nos.1 of 2011 and 1 of 2012

The Commissioner,
Trichirappalli City Municipal Corporation,
Trichirappalli.Appellant/3rd Respondent
Vs

1.A.N.Soundarajan

2.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai -9.

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

4.S.PonnusamyRespondents 1,2,4/
Petitioner/Respondents

Prayer:- Writ Appeal filed under clause 15 of the Letter Patent
against the order made in W.P.No.14743 of 2002 dated 15.02.2010.

WP.No.14743/2002:Petition under Article 226 of the Constitution
of India praying for a Writ of Certiorarified Mandamus to call
for the entire records relating to the issue of orders in G.O.
(3D) No.82, MAWs dated 15/08/93 on the file of the 1st
respondent and quash the same regularising the services of the
4th respondent respectively from 22.01.1972, after a period of
21 years, without giving any notice to the Petitioner and to
direct the respondents to promote the petitioner as Executive
Engineer(Planning) in the third respondent Municipality w.e.f
26.03.99 with all benefits.

For Appellant : Mr.J.Raja Kalifulla

For Respondents: Mr.Vijay Narayan,
Senior Counsel for
Mr.T.Ranganathan for R1

Mr.K.Dhananjeyan,
Spl.Govt.Pleader for R2 and R3

J U D G M E N T

K.K. SASIDHARAN,J.

This intra court appeal is directed against the order dated 15 February, 2010 in W.P.No.14743 of 2002, allowing the writ petition filed by the first respondent in view of the earlier order dated 18 December, 2007 in W.P.No.25988 of 2006.

2. The Government of Tamil Nadu, as per orders in G.O.(3D) No.82 Municipal Administration and Water Supply Department, dated 15 August, 1993 regularised the service of the 4th respondent retrospectively. The first respondent contended that retrospective regularisation was given after a period of 21 years and that too without giving notice to him.

3. The first respondent filed a writ petition in W.P.No.14743 of 2002 directing the appellant to promote him to the post of Executive Engineer (planning) in the Trichy City Municipal Corporation with effect from 26.03.2009 with all consequential benefits. The learned single Judge found that the impugned G.O.(3D) No.82 Municipal Administration and Water Supply Department, dated 15 August, 1993 was the subject matter in W.P.No.25988 of 2006. Since the impugned order has already been quashed in W.P.No.25988 of 2006, the writ petition filed by the first respondent was allowed. The said order is under challenge at the instance of the Tiruchirapalli City Municipal Corporation.

4. The learned Senior Counsel for the appellant contended that the prayer in W.P.No.14743 of 2002 was not confined to quashing the G.O.(3D) No.82 Municipal Administration and Water Supply Department, dated 15 August, 1993. It was a comprehensive writ petition filed by the first respondent to give him promotion after quashing the order giving retrospective regularisation to the 4th respondent. According to the learned Senior Counsel, other material aspects were not taken note of by the learned Judge while allowing the writ petition on the basis of the order dated 18 December, 2007 in W.P.No.25988 of 2006.

The order is therefore bad in law.

5. The learned Senior Counsel for the first respondent contended that the name of the 4th respondent was included in the select list for Executive Engineer on the basis of the order giving him retrospective regularisation. Since the said order was quashed by the writ court, the first respondent should have been given promotion. The learned Senior Counsel contended that though there was a prayer to give promotion to the first respondent as Executive Engineer, there was no positive direction given by the writ court. The learned Senior Counsel further contended that the Government had to consider the case of the first respondent in view of the order quashing retrospective regularisation to the 4th respondent.

6. The documents available on record indicates that the services of the 4th respondent was regularised retrospectively from 22.01.1972 as per the order in G.O.(3D) No.82 Municipal Administration and Water Supply Department, dated 15 August, 1993. The said Government Order was quashed by the learned Judge in W.P.No.25988 of 2006. The order quashing the retrospective regularisation in G.O.(3D) No.82 dated 15 August, 1993 has become final. The appellant is aggrieved on account of allowing the writ petition with a prayer to promote the first respondent as Executive Engineer (Planning) in the Tiruchirappalli City Municipal Corporation. The appellant proceeded as if the learned single Judge directed the Corporation to promote the first respondent. There was no such direction given by the learned single Judge.

7. Since the order giving retrospective regularisation to the 4th respondent has already been quashed, the first respondent is prima faice correct in his contention that he should be considered for promotion to the post of Executive Engineer in the Tiruchirappalli City Municipal Corporation. We are therefore of the view that the matter requires consideration by the second respondent.

8. We direct the second respondent to consider the case of the first respondent for promotion to the post of Executive Engineer in the Tiruchirapalli City Municipal Corporation, taking into account the order quashing the retrospective regularisation in G.O.(3D) No.82 dated 15 August, 1993. It is needless to point out that reasonable opportunity should be given to respondents 1 and 4 before taking a decision in the matter. Such exercise shall be completed within a period of four months from the date of receipt or production of a copy of this judgment.

9. The intra court appeal is disposed of with the above direction. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

svki

To

1.The Secretary to Government,
The State of Tamil Nadu,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai -9.

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

3.The Commissioner
Tiruchirappalli City Municipal Corporation
Tiruchirappalli

+1 cc to M/s.J.Jayendran Krishnan Advocate sr 44257

+1 cc to Mr.T.Ranganathan Advocate sr 44261

+1 cc to the Government Pleader sr 44502

सत्यमेव जयते

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