

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH

AND

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Writ Appeal No.953 of 2011

1.The Commissioner and
Director of Survey and Settlement
Chennai-600 005

2.The Assistant Director of Survey
and Land Records
Cuddalore

..Appellants/Respondents

Vs

R.Sundararajan

..Respondent/Petitioner

Prayer : Writ Appeal filed against the order dated 07.10.2009
made in W.P.No.36249 of 2006.

Prayer in WP.36249 of 2006: dated 7.10.2009 O.A. NO.7632 of 1998
filed before the Tamil Nadu ADministrative Tribunal, stood
transferred to this court and re-numbered as W.P.36249 of 2006,
which was tiled praying to call for the records relating to the
impugned order of the second respondent in Na.Ka.A1/3536/96 (1)
dated 26/2/1997 and quash the same in so far as the applicant
is concerned and direct the second respondent to place the
petitioner in th ecategory of Surveyors and grant him all
attendant benefits.

For Appellants :: Mr.P.S.Sivashanmugasundaram
Special Government Pleader

For Respondent :: Mr.P.Rajendran

JUDGMENT

(Judgment of the Court was made by
HULUVADI G.RAMESH, J.)

Heard the learned Special Government Pleader, appearing for
the appellants and Mr.P.Rajendran, learned counsel appearing for
the respondent/Writ Petitioner.

2. It appears that the petitioner was appointed as Surveyor on 01.12.1982 on consolidated pay under the UDR scheme. After completion of the said scheme, the post of surveyor become surplus and the persons, who were employed as surveyor under the UDR scheme were re-posted in other department either as surveyor or as draughtsman.

3. By the order dated 26.02.1997, integrated seniority list was prepared for the South Arcot District in which the writ petitioner's name/respondent herein, finds place in Serial No.114 and he was posted as Draughtsman. The writ petitioner challenged the re-designation as Draughtsman and filed O.A.No.7632 of 1998 before the Tamil Nadu Administrative Tribunal. During the pendency of the Original Application, the Writ Petitioner did not have the benefit of any interim order. In view of the abolition of the Tamil Nadu Administrative Tribunal, the matter stood transferred to this Court and renumbered as W.P.No.36249 of 2006 and by order dated 07.10.2009, the learned Single Judge, allowed the prayer of the Writ Petitioner as prayed for. Challenging the said order of the learned Single Judge, this Writ Appeal is preferred at the instance of Appellants/Survey and Settlement and Land Records Department.

4. It is the submission of the learned counsel for the respondent herein that the writ petitioner/respondent herein, continued as Surveyor in the Department till 1997 and on 26.02.1997, he has been categorized as Draughtsman by the Assistant Director of Survey and Land Records, Cuddalore. It is further submitted that the grievance of the writ petitioner/respondent herein is that even though he has completed all the Department Examinations required for the post of Surveyor, when he has been categorized as Draughtsman by the Assistant Director of Survey and Land Records, Cuddalore, on the ground of not passing of Departmental Examinations, increments are withheld and so far, he has not been paid any arrears of such withheld increments, that too, even after, the learned Single Judge of this Court, directed the first respondent to regularise the services of the petitioner in the category of Surveyor in the Survey and Land Records Department, by order dated 07.10.2009.

5. It is seen that the learned Single Judge, by following the order of the Division Bench of this court passed in W.P.No.23874 of 2004 dated 28.04.2008 [M.Natarajan and others Vs. Secretary to Government, Revenue Department] held that the order passed by the Division Bench is squarely applicable to the claim made by the writ petitioner. The learned Single Judge, by quoting Paragraph 13 of the said order, allowed the case of the

writ petitioner/respondent herein. For better appreciation, paragraph 3 of the order of the Single Judge, is extracted hereunder:-

"3. Mr.Mohanraj, learned counsel for the petitioner brought to the notice of this court the order passed by the Division Bench of this court in M.Natarajan and others Vs. Secretary to Government, Revenue Department, Fort St.George, Chennai-600 009, passed in w.P.No.23874 of 2004 dated 28.04.2008 and states that the order passed by the Division Bench is squarely applicable to the claim made by the petitioner. In para No.13 of the order, the Division Bench, presided by Justice P.K.Misra (as he then was) held thus:-

"13. Hence, we are of the considered opinion that the proposed action to regularise the service of the petitioners as draughtsman would cause undue hardship and prejudice to the petitioners. By virtue of the proposal, the petitioners, who are fairly senior in the survey line would become junior most in the draughtsman category. In the said circumstances, we are inclined to set aside the order of the Tamil Nadu Administrative Tribunal dated 30.10.2003 in O.A.No.3626 of 1992. The Writ Petition is allowed. The first respondent is directed to regularise the services of the petitioners in the category of Surveyors in the Survey and Land Records Department. "

6. As submitted by the learned counsel for the writ petitioner/respondent herein, the respondent has worked in the cadre of Surveyor, from the date of his initial appointment on 01.12.1982 till 26.02.1997, i.e, for 14 years and he has also completed the Departmental examinations that were required to be completed for the said post, however, on re-designation, he has been categorized as Draughtsman. But as observed by the Division Bench of this court, which judgment has been quoted by the learned Single Judge, the said proposal of redesignation was found to create undue hardship and prejudice to the said employees and thus the Commissioner and Director of Survey and Settlement was directed to regularise the services of the petitioners in the category of surveyors in the Survey and Land Records Department. In such circumstances, the action of the respondents in withholding the increments of the respondent herein, is not justified. In the stated circumstances, we are of the considered view that while confirming the order of the learned Single Judge, the arrears of the increments, if any unpaid, to be released in favour of the respondent.

7. It is submitted that the respondent has retired from the service in the year 2012. Hence, the appellants are directed to pay all arrears of withheld increments eligible to be paid to the respondent herein, within three months from the date of receipt of a copy of this order.

In the result, the Writ Appeal is dismissed with the above direction. The order of the learned Single Judge dated 07.10.2009 passed in W.P.No.36249 of 2006 is confirmed. No costs.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Commissioner and
Director of Survey and Settlement
Chennai-600 005.

2.The Assistant Director of Survey
and Land Records, Cuddalore.

+ 1 cc to Mr. P. Rajendran, Advocate SR.79490

+ 1 cc to the Special Government Pleader Sr.80141

Writ Appeal No.953 of 2011

MR(CO)

EU(19/12/2017)

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