

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.11.2017

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP.No.21669 of 2015

G.Geetha

...Petitioner

Versus

1. The Commissioner of Archeology,
Chennai-600 008.

2. Tmt.S.Saraswathi,
Compositor,
Office of the Commissioner of Archeology,
Chennai-600 008.

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records relating to the impugned orders of the first respondent in Na.Ka.No.A1/1026/2013-I dated 30.06.2015 and Na.Ka.No.A1/1026/2013-2 dated 30.06.2015 and quash the said orders and direct the 1st respondent to continue him as Proof Reader with all consequential benefits.

For Petitioner : Mr.P.Manoj Kumar

For Respondents : Mr.A.Rajaperumal, AGP for R1
Mr.L.Chandrakumar for R2

ORDER

The relief sought for in this writ petition is to quash the two separate orders issued by the 1st respondent in proceedings dated 30.06.2015 and to direct the 1st respondent to continue the petitioner in the post of Proof Reader and to grant all consequential benefits.

2. The learned counsel appearing for the petitioner made a submission that the writ petitioner is working as Proof Reader in the office of Commissioner of Archeology, Chennai-600 008. He was initially appointed as Compositor on 08.05.1992. The petitioner has completed National Trade Certificate, National (Hand Composing) Apprenticeship Certificate, Desk Top Publishing (DTP) certificate. At the time of appointment, the writ petitioner was possessing the certification of Higher Secondary

Course and thereafter, passed M.A., (Tamil) in 1995 and accordingly, she is fully qualified for promotion to the post of Proof Reader.

3. The Principal Commissioner of Archeology published the panel for promotion to the post of Proof Reader from amongst the eligible candidates working in the cader of Compositor for the year 2008-2009. The name of the petitioner was placed in SI.No.2, and the 2nd respondent Smt.Saraswathy, who is junior to the writ petitioner, was appointed as Compositor on 12.05.1992 and she was placed in SI.No.4 below the name of the writ petitioner. The learned counsel appearing for the writ petitioner made a submission that the 2nd respondent did not raise any objection in relation to her seniority. However, both the petitioner as well as the 2nd respondent were not promoted at that particular point of time for want of vacancy.

4. The Principal Secretary and the Commissioner of Archeology in proceedings dated 19.05.2011 published the seniority list for effecting promotion to the post of Proof Reader for the year 2011-12. In the said seniority list, the petitioner was placed in SI.No.1 and the 2nd respondent was placed in SI.No.3. Even at that point of time, the 2nd respondent had not submitted any objection. Pursuant to the panel prepared by the 1st respondent, the writ petitioner was promoted as Proof Reader on 11.07.2011 and the services of the petitioner in the post of Proof Reader was also regularised with effect from the date of promotion on 11.07.2011.

5. The learned counsel appearing for the petitioner states that all along, the petitioner is continuing in the post of Proof Reader with effect from 11.07.2011. While so without any showcause notice, the respondent issued the impugned order of cancelling the promotion given to the writ petitioner to the post of Proof Reader and another order was passed imposing recovery in respect of the salary paid to the writ petitioner. This apart, the seniority of the writ petitioner was also revised. Thus, the petitioner was constrained to move this writ petition.

6. The learned counsel appearing for the 2nd respondent opposed the contention by stating that the 2nd respondent is the senior most person and the promotion granted in favour of the writ petitioner was based on mistaken facts and the impugned orders were passed in order to correct the administrative error occurred in respect of the promotion. This apart, the competent authorities had invoked Section 35(f) of the Tamil Nadu State and Subordinate Service Rules, in order to correct the error taken place in the matter of preparation of seniority and panel for promotion. Thus, there is no infirmity in the impugned order and it is only a correction which was executed in accordance

with rules. The question of time limit does not arise in this regard, there is no limitation and the error took place at any point of time can be corrected irrespective of the time factor. Considering the arguments as advanced both by the writ petitioner and the respondent, this Court is of the view that basically before issuing the impugned orders no showcause notice or opportunity was provided to the writ petitioner and therefore, the impugned orders were issued in violation of the principles of natural justice.

7. Any order affecting the service rights of the Government employee shall be issued only by providing an opportunity under the rules. Thus, the impugned orders suffer on account of non issuance of show cause notice and opportunity to the writ petitioner.

8. Accordingly, this Court is of the opinion that it is suffice if the matter is remitted back for fresh adjudication by the competent authority.

9. Accordingly, the writ petition stands allowed and the impugned order passed by the 1st respondent in proceedings No. Na.Ka.No.A1/1026/2013-I dated 30.06.2014 are quashed and the matter is remitted back to the 1st respondent for rehearing by affording an reasonable opportunities to all the parties concerned and take a decision and pass final orders within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Commissioner of Archeology,
Chennai-600 008.

+1 CC to Mr.P. Rajendran, Advocate sr 78888.

+1 CC to Mr.L. Chandrakumar, Advocate sr 78825.

+1 CC to The Govt. Pleader sr 80111.

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SP(05/12/2017)