

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 07-02.2017

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THE HONOURABLE MR.JUSTICE K.K SASIDHARAN

and

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.32371 of 2015

1. P. Premkumar,
S/o, D.Perumalsamy,
No.54, Elango Salai, Teynampet,
Chennai - 600 018.
2. K. Amirthalakshmi,
D/o M.N.Parthasarathy,
G-2, KGEYES DEEPIKA FLATS,
Z-1007, 21st Main Road,
Anna Nagar West,
Chennai - 600 040.
3. K.R. Meerabai,
D/o, K.Ramankutty Nair,
No.346/2, Flat No.15,
Lloyds Road, Gopalapuram,
Chennai - 600 086.
4. R.Ramyaa Perundevi,
D/o, V.R. Rajagopalan,
No.225/5, Rohini Flats,
Anna Nagar West Extension,
Chennai - 600 101.
5. Jayanthi Siva,
D/o, late G.Raja,
No.1/I, Happy Home,
Pallavan Salai, Nesapakkam,
West K.K.Nagar, Chennai - 600 078.

6. Vrinda Sundar,
D/o, E.K.Venugopalan,
Plot No.98, Chidambaranar Street,
Ramakrishna Nagar,
Chennai - 600 087.

.... Petitioners

versus

1. Central Administrative Tribunal,
Madras Bench, Rep. By its Registrar,
City Civil Court Buildings,
Chennai - 600 104.

2. Union of India rep. by the
The Comptroller and Auditor,
General of India,
10, Bahadur Shah Zafar Marg,
New Delhi - 110 002.

3. The Principal Accountant General (A & E),
Tamilnadu,
Chennai - 600 018.

... Respondents

Prayer: Petition filed under Article 226 of The Constitution of India, praying for the issuance of a Writ of Certiorarified to call for the records in O.A.No.310/01495/2014 on the file of the first respondent Tribunal, dated 24.8.2015 and quash the same insofar as the direction to the 2nd respondent to issue show cause notice to the petitioners.

For Petitioners : Mr.S.Sadashram

For Respondents : Mr.V.Vijay shankar, CGSC

ORDER

(Order of the Court was delivered by V.PARTHIBAN, J.)

This Writ Petition has been filed against the order passed by the Central Administrative Tribunal, Madras Bench (in short, 'the Tribunal') in O.A.No.310/01495 of 2014, dated 24.08.2015, disposing the Original Application filed by the petitioners herein.

2. The case of the petitioners is that they were employed in the Principal Accountant General Office and they were eligible for promotion to the post of Assistant Accounts Officer (ad hoc) having passed Section Officer Grade Examination (in short, "SOGE"), a departmental examination in 2007. Since promotion was not granted, the petitioners were constrained to approach the Tribunal by filing an application in O.A.No.830 of 2009, challenging Clause 5 of the Circular dated 08.07.2009. A similar application was also filed in O.A.No.775 of 2009 praying for the same relief by certain other Officers. The Original Application in O.A.830 of 2009 along with other O.A., was allowed by the Tribunal on 19.11.2009, which was confirmed by this Court by order, dated 16.09.2009, passed in W.P.Nos.8269 and 8270 of 2010, and the orders were also confirmed by the Hon'ble

Supreme Court in SLP (Civil) Nos. 5809 & 5810 of 2012, by order dated 13.04.2012. Thereafter, the official competent authority, namely, the Controller and Auditor General of India/the second respondent herein has passed order on 19.10.2012 directing the third respondent herein to implement the order of this Court. Accordingly promotion was given to the petitioners with effect from 07.09.2009 and arrears of pay and allowances were also paid.

3. While the matter stood thus, without any prior notice, the second respondent issued order dated 16.07.2014 declaring promotion given to the petitioners with effect from 07.09.2009 as invalid as the applicants in O.A.830 of 2009 are different from the applicants in O.A.No.775 of 2009. According to the authority concerned, the petitioners herein/applicants in O.A.No.830 of 2009 have cleared only one set of examination namely, SOGE, whereas the applicants in O.A.No.775 of 2009 have cleared both SOGE(Civil Audit) in regular stream as well as SOGE. Since the petitioners herein, who were applicants in O.A.No.830 of 2009, have cleared only one part of SOGE examination and not cleared SOGE (Accounts), they could not be equated with the applicants

in O.A.No.775 of 2009. Hence their promotion which was originally granted could not be continued and therefore, the same was withdrawn.

4. The Tribunal, after adverting to the submissions of the parties, ordered the original application on the ground that when the impugned order passed on 16.7.2014, no notice was issued to the petitioners and the principles of natural justice demand that show cause notice should be issued and an opportunity of being heard should be provided to the persons concerned before passing any order detrimental to them and only on that ground, Original Application came to be ordered. Against the said order, the present writ petition has been filed.

5. Shri Sadasharam, learned counsel appearing for the petitioners would strenuously contend that the Tribunal ought to have allowed the original application as prayed for instead of ordering the same on the simple ground of no prior notice was issued before the adverse order came to be passed. He emphasized the fact that the Tribunal ought to have appreciated the grounds raised in the original application and need not have

disposed of the O.A only on the ground of non-issuance of prior notice before the impugned order came to be issued.

6. On the other hand, Shri V.Vijay Shankar, learned Central Government standing counsel appearing for the official respondents would contend that no prejudice would be caused to the petitioners if the order of the Tribunal is implemented and notice is issued to them and it is always open to the petitioners to submit their explanation and justify their promotion, which was originally granted to them in 2009. In such view of the matter, he prayed for dismissal of writ petition.

7. We have given our anxious consideration to the rival submissions of the parties and we are of the view that there is considerable force in the contention raised by Shri V.Vijay Shankar, learned counsel appearing for the official respondents that no prejudice would be caused to the petitioners if the order of the Tribunal is adhered to and notice is given to the petitioners for submission of their representation against the impugned adverse order. We are, therefore, of the view that *per*

se the order passed by the Learned Tribunal does not suffer from any infirmity and as rightly contended by the learned counsel that no prejudice would be caused to the petitioners if they are called upon to give their explanation, justifying the promotion originally granted to them.

8. In these circumstances, we do not find any case for interference in the order passed by the Tribunal and therefore, we dispose of the Writ Petition, confirming the order passed by the learned Tribunal. The competent authority is directed to issue show cause notice to the petitioners and obtain explanation from them before any order to be passed on their representation.

With the above direction the writ petition is disposed. No costs.

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Index: Yes/No
Internet: Yes/No

(K.K.S.,J.) (V.P.N.,J.)
07-02-2017

To

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Central Administrative Tribunal,
Madras Bench,
City Civil Court Buildings,
Chennai - 600 104.
2. The Comptroller and Auditor General of India,
Union of India
10, Bahadur Shah Zafar Marg,
New Delhi - 110 002.
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K.K.SASIDHARAN, J.

AND

V.PARTHIBAN, J.

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