

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 12.07.2017

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.31083 of 2013
& M.P.No.1 of 2013

S.Selvakumar

.. Petitioner

versus

Assistant Director of Survey and Land Records,
Namakkal.

... Respondent

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the respondent dt 14.12.2012 in his proceedings in N.A.Ka.A4/3801/12 and consequent order of recovery dated 28.2.2013 in his proceedings in N.A. Ka./3801/2012 and quash the same and consequently, direct the respondent to disburse all pensionary and other retirement benefits to the petitioner with an interest of 14% from the date of 30.9.2010 retirement of the petitioner herein.

For petitioner : Mr.R.Nalliyappan

For respondent : Mr.R.A.S.Senthilvel, AGP

ORDER

The petitioner has approached this Court, seeking the following relief:

"To issue Writ of Certiorarified Mandamus, to call for the records of the respondent dt 14.12.2012 in his proceedings in N.A.Ka.A4/3801/12 and consequent order of recovery dated 28.2.2013 in his proceedings in N.A. Ka./3801/2012 and quash the same and consequently, direct the respondent to disburse all pensionary and other retirement benefits to the petitioner with an interest of 14% from the date of 30.9.2010 retirement of the petitioner herein."

2. According to the petitioner, he was appointed as Field Surveyor in 1983 initially on contract basis and in 1986, he appeared for written test for the purpose of regularization of his appointment and passed the same and consequently, he came to be regularized as Field Surveyor in 1986. Subsequently, in 1998, the petitioner was promoted as Firka Surveyor. Pursuant to the order of this Court, the services of the petitioner came to be regularized as Field Surveyor in 2005 with effect from 01.07.1984 by order dated 24.5.2005. While passing the order of probation, the respondent seemed to have directed the petitioner to produce the records in respect of Surveyor and departmental test which the petitioner undertook while working as Field Surveyor. However, the petitioner was unable to produce the records sought for by the respondent since nearly two decades have lapsed by then. Therefore, he was constrained to approach Tamil Nadu Public Service Commission (TNPSC) for getting the details of the examination in which, the petitioner appeared. The Service Commission has replied that they have no records in respect of the said examination. However, the petitioner has furnished his Roll No.44578 which was allotted to him for appearing the written examination and requested the Service Commission to furnish the details. The Service Commissioner, has in turn, initially stated that the said Roll was belonging to one Srinivasan, Thanjavur District and not belonging to the petitioner.

3. In view of the statement given by the TNPSC, the respondent charge sheeted the petitioner on 9.1.2008 alleging that he had given false details to the respondent. An enquiry was conducted into the charges. The enquiry report held that the charges were proved against the petitioner and consequently, he was imposed with the punishment of stoppage of increment for 12 months with cumulative effect and also recovered a sum of Rs.3,08,178/-. The petitioner was also reverted from the post of Firka Surveyor to the post of Field Surveyor by order dated 14.12.2007. All these orders were put to challenge by the petitioner in W.P.Nos.8461 & 8462 of 2009. This Court, by order dated 20.07.2012, disposed of the Writ Petitions, directing the respondent to pass orders on the representation of the petitioner. The operative portion of the order passed by this Court in para 6 is extracted below:

"6. Heard the learned counsel appearing on either side and perused the materials available on record. There is no dispute that the petitioner has sent a representation dated 14.05.2010 to the respondent and, later, the TNPSC vide letter dated 03.09.2010 has rectified the error clarifying the position that the petitioner has appeared in the examination and

his name has been wrongly mentioned in the Tamil Nadu Public Service Commission Bulletin No.7 dated 16.03.1987 as S.Srinivasan instead of S.Selvakumar. Considering the facts and circumstances of the case, it is suffice to direct the petitioner to send a representation to the respondent enclosing the letter dated 03.09.2010 sent by the TNPSC clarifying the position that his name was wrongly mentioned in the Tamil Nadu Public Service Commission Bulletin No.7 dated 16.03.1987 as S.Srinivasan instead of S.Selvakumar, within a period of one week from the date of receipt of a copy of this order. On receipt of the same, the respondent is directed to consider the same and pass orders in accordance with law as expeditiously as possible, preferably, within a period of four weeks thereafter, after giving opportunity to the petitioner to substantiate his case."

4. While dealing with the case, this Court apprised the subsequent development that the Service Commission has retracted its earlier version that the Roll number which was furnished to the petitioner was actually belonging to one Srinivasan was totally incorrect and it affirmed the assertion of the petitioner that the Roll number was belonging to the petitioner only.

5. In the said circumstances, the learned Judge has directed the respondent to pass orders afresh on the basis of subsequent development, in favour of the petitioner. In response to the direction passed by this Court, the respondent passed orders on 14.12.2012 and 28.2.2013, rejecting the representation of the petitioner. The rejection order dated 28.2.2013 does not spell out any reasons and the same is non-speaking, which in any event, cannot be sustained in law. As far as the order passed on 14.12.2012 is concerned, it has to be seen that no proper appreciation has been seen at the hands of the respondent in regard to subsequent communication by the Service Commission, affirming the claim of the petitioner that the so-called Roll number assigned to him was proper and correct. It ought to be seen from the facts and circumstances set out that the entire disciplinary action which initiated against the petitioner was on the basis of the initial information furnished by the Service Commission, i.e. the Roll number was actually belonging to one Srinivasan of Thanjavur District and not the petitioner. However, the said statement has been subsequently retracted by the Service Commission itself. In the meanwhile, the respondent had initiated the disciplinary action against the petitioner, which culminated in the order of penalty and recovery and also

reversion to the lower post. Once the Service Commission has retracted its earlier version, the natural effect of such retraction would be to restore the status quo ante as prevailed before the disciplinary action initiated against him.

6. In the circumstances, this Court is of the view that the impugned rejection order passed by the respondent cannot be countenanced both in law and on facts. Accordingly, the impugned orders passed by the respondent are set aside.

7. In light of the above, the Writ Petition is allowed. No costs. The respondent is directed to disburse all pensionary and other benefits as admissible to the petitioner with effect from the date of petitioner's retirement and grant him all attendant benefits to the petitioner, if he is otherwise entitled to after restoring his original position as if no punishment has been imposed on him. The said exercise shall be carried out within a period of two months from the date of receipt of a copy of this order. Consequently, the connected MP is closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

suk

To

Assistant Director of Survey and Land Records,
Namakkal.

+lcc to M/S.R.Nalliappan, Advocate Sr. 48483

+lcc to Government Pleader, Sr. 49360

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W.P.NO.31083 OF 2013

AK (CO)
VR(01/09/2017)