IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2017

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE V.PARTHIBAN

W.P.No.2826 of 2012 and
MP.No.1 of 2012

1.The Union of India,
Represented by
The Chief Commissioner of Central Excise,
(Cadre Controlling Authority)
26/2, Mahatma Gandhi Road,
Nungambakkam, Chennai -600 034.

2.The Commissioner of Central Excise,
Chennai I, Commissionerate,
Chennai - 600 034.

3.The Assistant Commissioner of Central Excise
Madurai I Division,
Madurai. ...Petitioners

vs.

J.John Wincent Jacob ...Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of Certiorari, to quash the order dated 21.10.2011 passed in O.A.No.1483 of 2010 by the Central Administrative Tribunal.

For Petitioners: Mr.T.R.Senthilkumar
Senior Standing Counsel

For Respondent : Mr.P.Venugopal

O R D E R

(delivered by K.K. SASIDHARAN,J.)

The High Court passed an order dated 27 April 2006 in W.P.No.38241 of 2005, directing the petitioners to consider the case of the respondent for promotion to the post of Inspector of Central Excise and Customs, if he is otherwise entitled to and pass appropriate orders within two months. The order was unsuccessfully challenged before the Supreme Court in SLP (C) No.18820 of 2006. Thereafter, the first petitioner passed an order dated 21 May 2008, promoting the respondent to the post of Inspector of Central Excise. Since the related benefits were not given, the respondent filed original application in O.A.No.1483 of 2010. The Tribunal allowed the original application and directed the petitioners to pay the arrears of pay and allowances. The order is under challenge in this writ petition.

2. We have heard the learned Senior Standing Counsel for the petitioners and the learned counsel for the respondent.

3. The respondent earlier filed original application in O.A.No.136 of 20025 before the Central Administrative Tribunal, claiming promotion to the post of Inspector of Central Excise and Customs. The original application was dismissed by the Tribunal by order dated 7 October 2005. The respondent challenged the said order in W.P.No.38241 of 2005. The Division Bench found that pursuant to the direction issued by the Tribunal earlier, the case of persons with disability were considered by the Central Excise and Customs Department for promotion to the post of Inspector. However, without any rhyme or reason, the case of the respondent was rejected solely on the ground that he did not possess the prescribed height. The Division Bench, therefore, directed the petitioners to consider the case of the respondent. The petitioners filed SLP (C) No.18820 of 2005 before the Hon'ble Supreme Court of India, challenging the order dated 27 April 2006 in W.P.No.38241 of 2005. There was no stay throughout the proceedings before the Hon'ble Supreme Court. The Special Leave Petition was ultimately dismissed by order dated 9 January 2008. The Chief Commissioner of Central Excise, Chennai, passed an order dated 21 May 2008, four months after the dismissal of the Special Leave Petition, promoting the respondent to the grade of Inspector of Central Excise. The respondent claimed arrears of pay and other benefits. The claim was rejected. The said order was challenged before the Central Administrative Tribunal in O.A.No.1483 of 2010.

4. The Tribunal followed the judgment of the Supreme Court in State of Kerala and others v. E.K.Bhaskaran Pillai [(2007) 6 SCC 524], and directed the petitioners to pay the arrears of pay and allowances from 13.06.2003, the date on which, the respondent ought to have been notionally promoted to the post of Inspector of Central Excise. The present writ petition is directed against the said order.

5. There is no dispute that the employees junior to the respondent were all promoted in 2013. The respondent was not given promotion on the ground that he did not possess the prescribed height. The communication issued by the Government of India, dated, 27 January 2004 directed the authorities to permit the physically handicapped persons to undertake the physical endurance test and promote them as per Reservation quota, if they qualify the test till an exemption is received from the Ministry of Social Justice and Empowerment. The respondent appears to have performed successfully in the endurance test. The prescription with regard to height alone made the authorities to deny him promotion. The order passed by the first petitioner was set aside by the High Court and a direction was issued. The petitioners were given two months' time to consider the case of the respondent. The petitioners challenged the order before the Supreme Court. There was no stay of the order passed by the High Court. It is a matter of record that it was only after the dismissal of the Special Leave Petition, the case of the respondent was considered.

6. The petitioners are right in their contention that there is no question of giving benefits to the respondent with effect from 13 June 2003. The direction at the first instance to consider the case of the respondent was made only on 27 April 2006. The petitioners are therefore justified in their contention that the Tribunal erred in directing them to give benefits to the respondent with effect from 13 June 2003.

7. The other question is as to whether the petitioners were correct in denying the benefits to the respondent at least from the date of the order passed by the High Court in W.P.No.38241 of 2005.

8. Even though the Division Bench by order dated 27 April 2006 directed the petitioners to consider the case of the respondent within two months, the fact remains that there was absolutely no action taken to give him promotion. Since there was no stay of the order passed by the High Court during the currency of the Special Leave Petition before the Supreme Court, the petitioners cannot be heard to say that the pendency of the matter stood in the way of considering the case of the respondent. It is a matter of record that the respondent was given promotion by order dated 21 May 2008 within four months from the date of dismissal of the Special Leave Petition. Therefore, it is clear that the petitioners belatedly considered the case of the respondent, pursuant to the direction in W.P.No.38241 of 2005. Since the High Court fixed outer time limit for consideration, the petitioners ought to have considered the case of the respondent within the said period. We are therefore of the view that the respondent is entitled to claim arrears of pay and allowances from 27 June 2006, taking

into account the deadline fixed by the High Court.

9. We therefore modify the order passed by the Tribunal, by directing the petitioners to pay the arrears of pay and allowances to the respondent with effect from 27 June 2006. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

10. The writ petition is allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Chief Commissioner of Central Excise,
(Cadre Controlling Authority)
26/2, Mahatma Gandhi Road,
Nungambakkam, Chennai -600 034.

2.The Commissioner of Central Excise,
Chennai I, Commissionerate,
Chennai - 600 034.

3.The Assistant Commissioner of Central Excise
Madurai I Division,
Madurai.

+1 cc to Mr.T.R.Senthilkumar Advocate sr 5720
+1 cc to Mr.P.Venugopal Advocate sr 6039

W.P.No.2826 of 2012

pvs(co)
aa20/02/2017