

7 IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2017

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The Honourable Mr. JUSTICE K.K.SASIDHARAN,
and

The Honourable Mr.JUSTICE V.PARTHIBAN

W.P.No.19196 OF 2010
and M.P.No.1 of 2010

1. Ramaswamy
 2. Shirley Selvakumar
 3. Padmaja Swaminathan
- ... Petitioners

versus

1. The Union of India,
Rep. by its General Manager,
Heavy Vehicles Factory,
Avadi, Chennai - 600 054.
 2. The Registrar,
Central Administrative Tribunal,
Chennai - 600 104.
- ... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records on the file of 2nd respondent, relating to the impugned order dated 12.10.2009 in O.A.No.152 of 2008 and quash the same.

सत्यमेव जयते
ORDER

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

This Writ Petition has been filed against the order passed by the Central Administrative Tribunal (in short, 'the Tribunal'), Madras Bench in O.A.No.152 of 2008, dated 12.10.2008 dismissing the application filed by the petitioners herein.

2. For the sake of clarity, the parties are referred to as 'the applicants' and 'the respondents' as narrated before the learned Tribunal.

3. The applicants have approached the Tribunal, seeking the following relief:

"To call for the records from the respondent in their order dated 14.2.2008 and 18.2.2008 and set aside the same and consequently direct the respondent to restore the applicants to their posts to which they were promoted by the orders dated 21.5.2003, 26.5.2005 and 23.9.2005."

4. According to the petitioners, they were appointed and promoted to various posts prior to 23.9.2005 in the first respondent Factory under Physically Handicapped quota. Some of the applicants were also promoted to the higher grade to the post of Office Superintendent based on retrospective promotion granted to them earlier. However, entire promotion aspect of the petitioners came to scrutiny and the official respondents took a decision to cancel retrospective promotion granted to the petitioners, for which a show cause notice was issued to them on 26.10.2007 affording an opportunity to the petitioners to explain as to why their retrospective promotion cannot be cancelled. The petitioners had given a reply on 5.11.2007 and the same was rejected by order dated 14.2.2008 by cancelling the promotion. The said rejection was subject matter before the Tribunal.

5. According to the official respondents, the promotion granted to the petitioners came to be cancelled in implementation of the relevant Office Memorandum dated 9.4.1996 and the relevant portion is extracted herein below:

"While promotions will be made in the order of the consolidated select list, such promotions will have only prospective effect even in cases where the vacancies relate to earlier years(s)".

6. The learned Tribunal, relying on the Memorandum as extracted above, dismissed the application stating that no retrospective promotion was admissible and mistakenly, the petitioners were granted retrospective promotions and therefore, the same was rightly cancelled by the Administration. The Tribunal also found that the validity of the Office Memorandum was not put to challenge and also found that the Disabilities Act did not provide for any retrospective promotion and therefore, it is always open to regulate the procedure for grant of promotion. In such view of the matter, the Tribunal refused to grant the relief to the petitioners. As against the order of the learned Tribunal, the present Writ Petition has been filed.

7. Learned counsel appearing for the petitioner strenuously

contended that the Factory Administration has not followed the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (in short, 'the Act, 1995'). The Administration ought to have identified the posts provided for reservation both in the matter of direct recruitment as well as for promotion and if only the Administration had carried out such exercise, there would not have been any possibility for application of Office Memorandum dated 9.4.1996 and the retrospective promotion of the petitioners would have been upheld by the Administration. In support of his contention, the learned counsel for the petitioners cited a decision reported in "2016 SCC OnLine SC 651 (Rajeev Kumar Gupta & Others versus Union of India & others)". According to the learned counsel for the petitioners, the Tribunal has not gone into the issue of reservation of 3% posts to be filled up by Physically Handicapped persons in pursuance of the provisions of the Act, 1995. Therefore, he contended that the Tribunal overlooked the crucial issues, but merely guided by the Office Memorandum, dated 9.4.1996 which in any case, cannot be applied to the persons with the disability covered under the above said Act, 1995.

8. Per contra, on behalf of the respondents, it was contended that the decision of the learned Tribunal cannot be faulted with and it was always open to the authority to rectify their mistake and in the instant case, the petitioners have been promoted mistakenly and the same was only rectified by subsequent action. Therefore, the impugned action cannot be called on question as being invalid.

9. We have given our anxious consideration to the rival submissions of the parties and we are of the view that the question of grant of reservation to the persons with disability under the Act, 1995, has not been gone into by the Tribunal. Since the issues and points raised in the Original Application will depend on the extent of vacancies available towards quota reserved for persons with disabilities, that issue need to be addressed in proper perspective in order to arrive at just conclusion whether retrospective promotion of the petitioners was valid or otherwise. Therefore, in such view of the matter, we are of the considered opinion that the matter should be remitted back to the Tribunal for fresh consideration on the above issue. We, therefore, remand the matter to the file of the learned Tribunal for fresh consideration on the issue of reservation meant for persons with disabilities under the Act, 1995 and with reference to the same, whether retrospective promotion of appointment can be construed as valid or otherwise. The petitioners are also at liberty to raise any additional grounds. In such event, the Tribunal shall afford an opportunity to both

parties and decide the case on merits and in accordance with law on the subject issue stated supra, as expeditiously as possible.

With the above direction, the Writ Petition is disposed of.

consequently connected MP is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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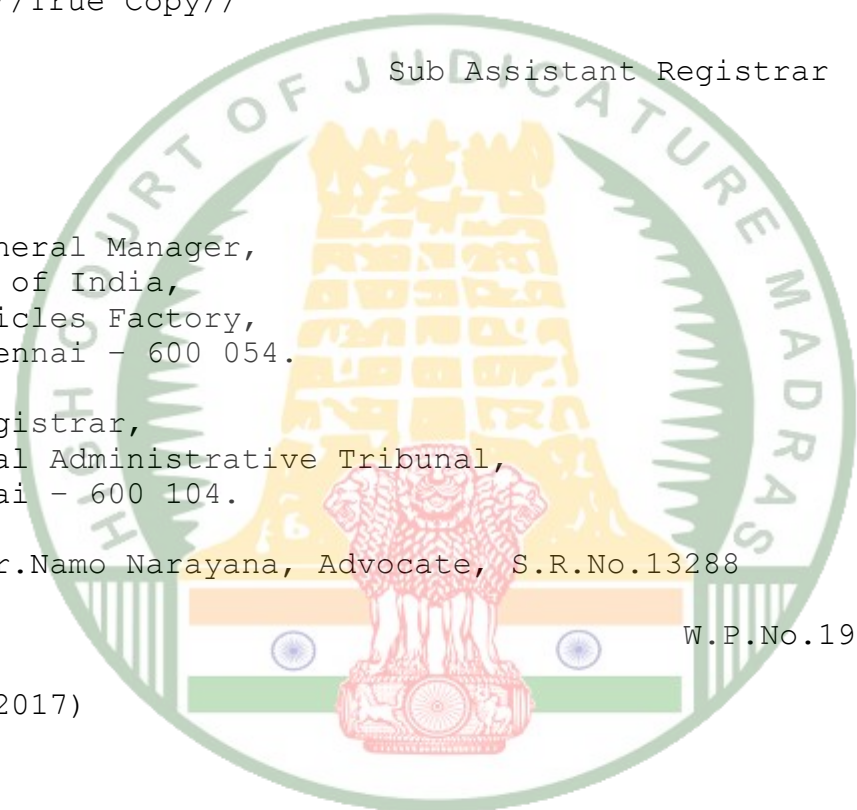
1. The General Manager,
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Avadi, Chennai - 600 054.

2. The Registrar,
Central Administrative Tribunal,
Chennai - 600 104.

+lcc to Mr.Namo Narayana, Advocate, S.R.No.13288

W.P.No.19169 of 2010

PPA(CO)
RS(09/05/2017)

The seal of the High Court of Judicature Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital of Ashoka in front of it. The gopuram is set against a green background with a white border. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a circular path around the central image. Below the seal, the motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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