

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2018

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

Writ Appeal No.295 of 2013

1.The Secretary,
Labour Department,
Fort St. George,
Secretariat, Chennai - 9.

2.The Commissioner of Labour,
D.M.S Complex,
Teynampet,
Chennai 6.

3.The Inspector of Labour,
Sainathapuram,
Vellore - 632 001.

... Appellants/Respondents
Vs.

Tmt.J.Suguna

... Respondent/Petitioner

Prayer:- Writ Appeal has been filed under Clause 15 of the Letters Patent against the order dated 13.03.2012 of passed in W.P.No.27076 of 2009 on the file of this Court.

WP.No.27076/2009 : Writ Petition filed under Article 226 of the constitution of India to issue a Writ of Certiorarified mandamus calling for the records of the 3rd respondent in connection with the impugned orders passed by him in the DO:A/2887/2009 -2 & A/4222/2009 dated 1/10/2009 and quash the same and direct the respondents to fix the revised pay scale of the petitioner on the basis of her persent designation & seniority and grant her all the consequential service and monetary benefits.

For Appellants : Mr.C.Kathirvelu,
Special Government Pleader

For Respondent : Mr.N.V.Prasanna,
for M/s.Sai Bharath

JUDGMENT

(Judgement of the Court was delivered by M.M.Sundresh.J)

This Writ Appeal has been preferred by the appellants against the order of a learned Single Judge of this Court in W.P.No.27076 of 2009 dated 13.03.2012 and who was pleased to allow the writ petition in part.

2. There were two issues raised before the learned Single Judge of this Court. One is, with respect to the re-fixation done and the other is consequential recovery. The learned Single Judge was pleased to set aside the order by which, recovery was sought for and directed the appellants herein to issue notice to the respondent herein for the re-fixation of the pay scale and pass further order in the light of the order passed by the Division Bench of this Court in W.P.No.18861 of 2001 etc., batch dated 28.02.2005.

3. The learned Special Government Pleader appearing for the appellants would submit that the re-fixation of seniority itself has been done after compliance of the order passed by the Division Bench. The respondent herein has been promoted wrongly and since, the respondent herein was given higher scale of pay, recovery has been made.

4. The learned counsel for the respondent would submit that the re-fixation of pay scale has been done without notice to the respondent and as it was done not at the instance of the respondent and inasmuch as the respondent infact worked in the said capacity after re-fixation of the seniority, the order of recovery cannot be sustained, in the eye of law and therefore, no interference is required.

5. As rightly submitted by the learned counsel for the respondent, it is not as if the respondent has entered herself to the promotional post by making false representation and further, the re-fixation of seniority itself has been done by the appellants themselves. In pursuant to the same, the respondent has also worked in the said capacity. Therefore, the recovery as sought for by the appellants cannot be sustained in the eye of law. In such view of the matter, we do not find any error in the order of the learned single Judge.

6. Coming to the other issue, i.e., with respect to the re-fixation of pay scale of the respondent, though it is contended by the learned Special Government Pleader that it has been done in pursuant of the order of the Division Bench referred supra, the learned Single Judge merely directed the appellants herein

to issue notice to the respondent herein and hear her and thereafter, pass appropriate orders. Now, the appellants cannot be stated to be aggrieved by the said order. In such view of the matter, we do not find any infirmity in the order passed by the learned Single Judge.

7.In the result, the Writ Appeal is dismissed. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

jbm

To

1.The Secretary,Labour Department,
Fort St. George, Secretariat, Chennai - 9.

2.The Commissioner of Labour,
D.M.S Complex,Teynampet,Chennai 6.

3.The Inspector of Labour,
Sainathapuram,Vellore - 632 001.

+1cc to Mr.Sai Bharath, Advocate SR.No.77160

+2cc to Government Pleader SR.No.77039 & 77048

W.A.No.295 of 2013

KK(CO)

GMV (24/12/2018)

सत्यमेव जयते

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