

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.1.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.1661 of 2017
and
C.M.P.No.21527 of 2017

- 1 The Assistant Director of
Survey and Land Records
Coimbatore District.
 - 2 The Director of
Survey and Land Records
Chennai 600 005.
- Appellants

Versus

T.A.Joseph Respondent

Prayer: Writ Appeal filed filed under Clause 15 of the Letters
Patent against the order dated 28.11.2016 passed in W.P.No.41395
of 2005

Prayer in W.P.No.41395/2005 : Petition has been filed for
issuance of a Writ of Certiorarified mandamus calling for the
records pertaining to the order passed by the first respondent
in his proceedings in Na.Ka.No.16815/2005 dated 16.12.2005 and
quash the same and direct the respondents to regularise the
services of the petitioner with effect from the date of his
initial appointment as surveyor cum draftsman i.e. with effect
from 1.2.1983

For appellants : Mr.P.S.Sivashanmugasundaram,
Special Government Pleader
For respondent : Mr.R.Baskaradoss

JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned Special Government Pleader appearing for
the appellants and Mr.R.Baskaradoss, learned counsel, who takes
notice on behalf of the respondent.

2. What is not in dispute is that the candidate was selected through the employment exchange on the consolidated pay for the post of Surveyor on 1.2.1983. It is further noted that he applied for leave on medical grounds and overstayed without returning to duty and as a consequence, his services has been terminated and subsequently, he had been reinstated on 21.12.1990 in view of the order dated 26.11.1990 issued by the Government on the appeal filed by him.

3. The contention of the learned counsel appearing for the candidate is that without issuing show cause notice, his services had been terminated. It transpires from the order of the learned Single Judge that the first respondent suffered a chronic disease and therefore, he could not attend the duty.

4. However, except the stand that show cause notice had not been issued prior to termination of his services, and his original appointment was based on selection through employment exchange, no other valid ground is raised by the respondent-employee and it appears that he had not evinced any interest to return to duty on expiry of his medical leave. Moreover, his initial appointment appears to be only on the consolidated basis. Even his reinstatement as Surveyor cum Draftsman was only with effect from 24.12.1990 and it was on humanitarian grounds. While so, it appears that the respondent-employee had claimed for regularisation of his services from the original date of his appointment which was restricted from the date of 24.12.1990 viz., the date of his reinstatement. It is no doubt, the respondent-employee cannot seek for a direction for regularisation of his service from the date of his initial appointment. However, it appears that on reinstatement, he was placed last in the seniority list viz., after one K.K.Kamalakshmi, who joined duty on 1.11.1990 and therefore, so far as the question of regularisation of his services is concerned, it can be if at all from 13.2.1998 on which date, the said K.K.Kamalakshmi was absorbed.

5. Therefore, we do not find any error in the finding rendered by the learned Single Judge except with regard to the benefits of regularisation from 24.12.1990, which we are of the view can only be from 13.2.1998 and not earlier to that. The respondent cannot take advantage of the mistake in fixation alleged to have taken place earlier to claim that his services should be regularized earlier to 13.2.1998, on which date alone, the services of his immediate senior was regularised. The respondent is said to have retired from service now. Therefore, the appellants are directed to work out the terminal benefits and settle the same within a period of two months from the date of receipt of a copy of this judgment.

6. The writ appeal is allowed to the limited extent as indicated above. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

ssk

To:

1 The Assistant Director of
Survey and Land Records
Coimbatore District.

2 The Director of Survey
and Land Records
Chennai 600 005.

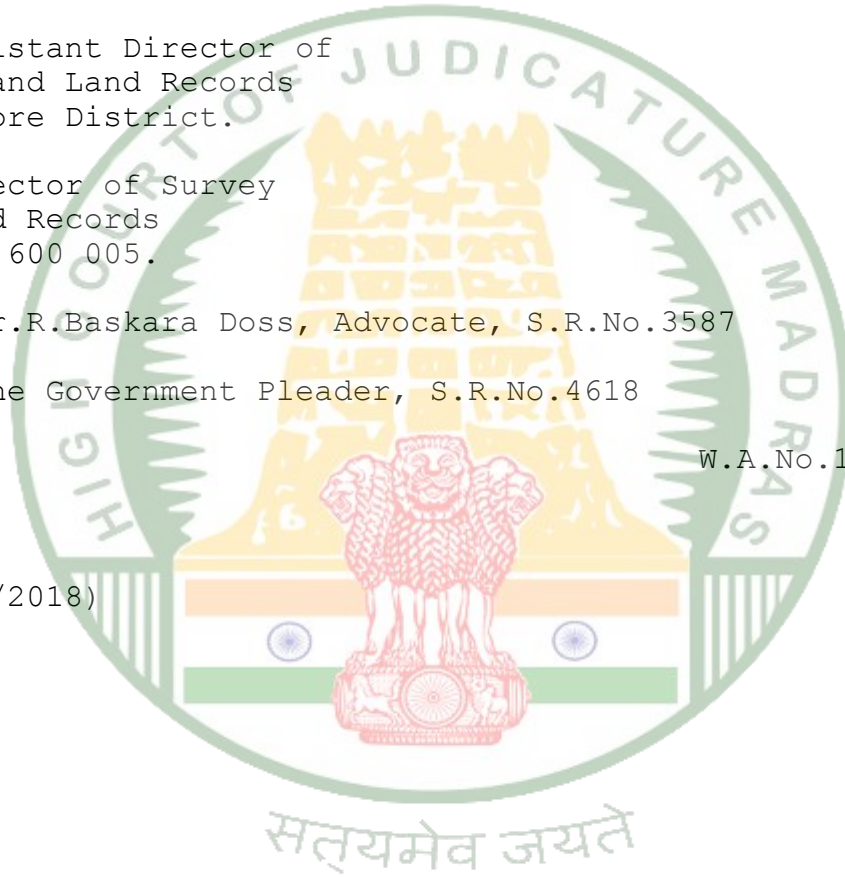
+1cc to Mr.R.Baskara Doss, Advocate, S.R.No.3587

+1cc to the Government Pleader, S.R.No.4618

W.A.No.1661 of 2017

NRI (CO)

RRK(21/03/2018)



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