

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.07.2018

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THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.Nos.17135 & 17136 of 2015

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W.P.No.17135 of 2015:

B.Gopu ... Petitioner in W.P.No.17135
of 2015

T.Chandrasekaran ... Petitioner in W.P.No.17136
of 2015

versus

1. The Principal Secretary to Government,
Revenue Department,
Fort St. George,
Chennai-9.
2. The Director of Survey & Settlement,
Chepauk, Chennai-5.
3. The Additional Director of Survey &
Land Records,
Survey House, Chepauk, Chennai-5.
4. The Assistant Director of Survey
& Land Records Department,
Collectorate, Nagapattinam District.
5. The Joint Director/Principal,
Tamil Nadu Survey Training Centre,
Orathanadu, Thanjavur District. ... Respondents in
both WPs

Prayer in both WPs : This Writ Petition is are filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the 3rd respondent in connection with the impugned order passed by him in Na.Ka.No.N3/45531/2014 (Sy) dated 18.12.2014 and the consequential order of the 4th respondent in Na.Ka.No.A1/5432/2014 dated 04.02.2015 and quash the same in so far as reverting the petitioner from the post of Senior Draftsman to the post of Land Record Draftsman and direct the

respondents to send the petitioner to undergo training for 28 days in the same cadre in the 5th respondent Training Centre and further direct the respondents to regularize the service of the petitioner in the cadre of Senior Draftsman from 26.06.2013 FN with all consequential service and monetary benefits and grant such other further relief as this Court may deem fit in the circumstances of the case.

For petitioners : Mr.K.Venkatramani,
in both WPs Senior Counsel for
M/s.M.Muthappan

For respondents : Mr.J.Pothiraj,
in both WPs Spl. Govt. Pleader

COMMON ORDER

Both these writ petitions raise common issues and grounds as against the impugned action taken against the petitioners, hence, both these writ petitions are taken up together and disposed of by this common order.

2. The petitioners herein were Post Graduate Degree Holders and came to be appointed as Draftsman having been selected by Tamil Nadu Public Service Commission on 21.10.2009. In 2011, their probationary period was declared in the said post and they have also passed necessary departmental tests. In 2013, the petitioners' names were included in the regular panel for promotion to the post of Senior Draftsman from the feeder category post of Land Records Draftsman and they were promoted on the basis of the empanelment on 14.06.2013. The petitioners have also joined the promotional post viz., Senior Draftsman on 26.06.2013.

3. According to the petitioners, before granting promotion as Senior Draftsman, employees need to undergo basic survey training at Tamil Nadu Survey Training Centre, situated at Orathanadu, Thanjavur District, for a period of 28 days, in accordance with the service rules. However, without sending the petitioners for training, they were promoted as Senior Draftsman.

4. On 18.12.2014, the 3rd respondent issued a communication, calling for particulars from the Subordinate Officers in regard to the promotion as Senior Draftsman, of all persons including the petitioners herein, who were promoted as such, without undergoing the basic survey training as stipulated above. In response to the communication, the 4th respondent by letter, dated 03.02.2015, informed the 3rd respondent about the petitioners' promotion without undergoing the basic training and requested the 3rd respondent that the petitioners have to be reverted to lower post and to be sent for training.

5. Thereafter, it appears that the 4th respondent by communication, dated 04.02.2015, deputed two Senior Draftsman from other District and accommodated them in the place where the petitioners were working thereby indirectly reverted the petitioners to the lower post of Land Record Draftsman, to enable the petitioners to undergo training. The said communication which is adverse to the promotion of the petitioners is impugned in the present writ petition.

6. Upon notice, Mr.J.Pothiraj, learned Special Government Pleader entered appearance and filed a detailed counter affidavit.

7. Shri.K.Ventramani, learned Senior Counsel appearing for the petitioner would submit that by virtue of interim orders passed by this Court dated 17.06.2015, the petitioners continued to work as Senior Draftsman and also in 2015, they were sent for training while working as Senior Draftsman and completed the training successfully. Therefore, he would submit that the impugned communication cannot be sustained, since these petitioners have satisfied the norms provided under the rules for promotion to the post of Senior Draftsman.

8. Even otherwise, the learned Senior Counsel appearing for the petitioners would submit that it was not the case of the Department that the petitioners were directed to undergo basic training but they did not attend such training. It was not the fault on the part of the petitioners for not having undergone the requisite training before they were promoted as Senior Draftsman. The learned Senior Counsel would also draw the attention of this Court that there were instances available to show that the persons who were promoted as Senior Draftsman had been sent for training when they were holding the post of Senior Draftsman. He would draw the attention of this Court to one such instance wherein one Mr.Rajkumar, who was working as Senior Draftsman like the petitioners, has been sent for training when he was working as such. Therefore, it is not open to the respondents to insist on the petitioners for reversion to the lower post for sending them to basic survey training. In any event, today, the petitioners completed the basic survey training successfully and therefore, the respondents cannot require them to undergo training nor any such action would be taken against the petitioners for not undergoing training before they were promoted as Senior Draftsman.

9. At this, the learned Special Government Pleader would submit that the petitioners' promotion was in 2013 as Senior Draftsman and the said promotion was not as per service rules and therefore, they cannot be given attendant benefits, as the petitioners have undergone training only in 2015. The petitioners have been working as Senior Draftsman because of the interim order passed by this Court and the fact of the matter was that they had successfully completed the training only in

2015 and therefore, they are not entitled to succeed in the writ petition.

10. This Court is unable to appreciate the arguments advanced on behalf of the learned Special Government Pleader for the reason that once the petitioners have been promoted in 2013, as Senior Draftsman on the basis of their seniority and it was not the fault on the part of the petitioners that they were not sent for training, they cannot be sought to be reverted for not completing the training. The opportunity of being sent for training is entirely in the hands of the Department and therefore, the petitioners having earned rightful promotion on the basis of their seniority and qualification, cannot be sought to be reverted to the lower post merely because they did not undergo the basic training.

11. Even otherwise, it is an admitted fact that the petitioners have successfully completed training in 2015. Having completed their training successfully in 2015, the original promotion in 2013 as Senior Draftsman gets automatically validated, even assuming the original promotion was not in order.

12. This Court in similar circumstances, allowed the writ petition in W.P.No.19206 of 2015, dated 16.04.2018, by considering the petitioner, wherein the promotion of the petitioner therein was questioned on the ground that she had not undergone survey training. In the circumstances, this Court has passed the order as found in paragraphs 9 to 11 which are reproduced below:

"9. As submitted by the learned counsel for the petitioner even assuming that the petitioner did not complete the training as required as per the Rule, yet the fact of the matter is that the impugned notice was issued after 30 years when the petitioner was originally granted promotion as Senior Draftsman in the year 1984. Such long and inordinate delay in issuing the notice for recalling the order of promotion cannot be countenanced in law under any circumstances. As rightly contended by the learned counsel for the petitioner that for no fault on the part of the petitioner, her promotion which had taken place in the year 1984 can be set aside after a period of 30 years. More particularly in the present case the petitioner had got more than three promotions since 1984 and has been working as Technical Officer as on date.

10. Finally the learned Additional Advocate General would rely upon the decision of the

Hon'ble Supreme Court of India reported in (2008) 7 SCC 153 in the case of Pramod Kumar Vs U.P.Secondary Education Services Commission and others, wherein it has been held that illegality cannot be cured and only irregularity can be cured. According to the learned Additional Advocate General it was an illegal promotion granted to the petitioner and therefore the same needed to be set right. Though the argument advanced by the learned Additional Advocate General appears to be valid at threshold, however if the same is examined in the facts and circumstances of the present case, it could be seen that the promotion of the petitioner was effected as early as 1984 and the only fact against the promotion was that the petitioner did not successfully undergo the Survey Training for 28 days. Such training is always a part of the Government service and the experience gained all these years by the Government servant is more than the knowledge acquired through the so called training that too for a short duration of 28 days. Completion of training in the circumstances of the case can only be construed as procedural formality. Therefore this Court finds that the reliance placed by the learned Additional Advocate General on the judgment of the Hon'ble Supreme Court cannot be applied to the facts of the present case.

11. In view of the aforesaid reasons, the impugned show cause notice Na.Ka.A8/1413/15-1, dated 26.02.2015 has to be held as not sustainable in law and therefore, the same is set aside and the writ petition is allowed. No costs. Consequently connected miscellaneous petitions are also closed.

13. At this, learned Special Government Pleader would submit that in the above case, the show cause notice issued by the authority was held unwarranted in regard to the promotion granted 30 years ago and therefore, this Court considered that such action by the respondents was considerably belated and not sustainable. But in this case, the petitioners were sought to be reverted at the earliest point of time to the lower post of Land Records Draftsman.

14. This Court does not find the said argument is tenable for the reason that the petitioners were given promotion without undergoing the basic training by the Department and subsequently, they have admittedly undergone the training during

the pendency of the present writ petition and even serving the post without actually being reverted to the lower post. That being the case, this Court does not find as to how today the authorities can insist to revert the petitioners when the petitioners satisfied the norms for promotion as Senior Draftsman. There is practically nothing left for adjudication in this case except to allow the writ petition as prayed for.

15. In fact, the learned Senior Counsel for the petitioner has pointed out that an instance where another employee who was employed as Senior Draftsman like the petitioners without subjected to training has been sent for training when he was working as Senior Draftsman is a point in favour of the petitioners herein. When such is the fact, treating these petitioners differently and attempting to revert them to the lower post would only show lack of bona fide, on the part of the respondents and such act cannot stand the touchstone of the principles of equality enshrined in Article 14 of the Constitution of India.

16. For the aforesaid reasons, the impugned order dated in Na.Ka.No.N3/45531/2014 (Sy) dated and the consequential order of the 4th respondent in Na.Ka.No.A1/5432/2014, dated 04.02.2015, are hereby set aside. The petitioners are entitled to all consequential and attendant benefits as prayed for.

17. With the above direction, both the Writ Petitions are allowed on the above terms. No costs. Consequently, connected MPs closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary to Government,
Revenue Department,
Fort St. George,
Chennai-9.
2. The Director of Survey & Settlement,
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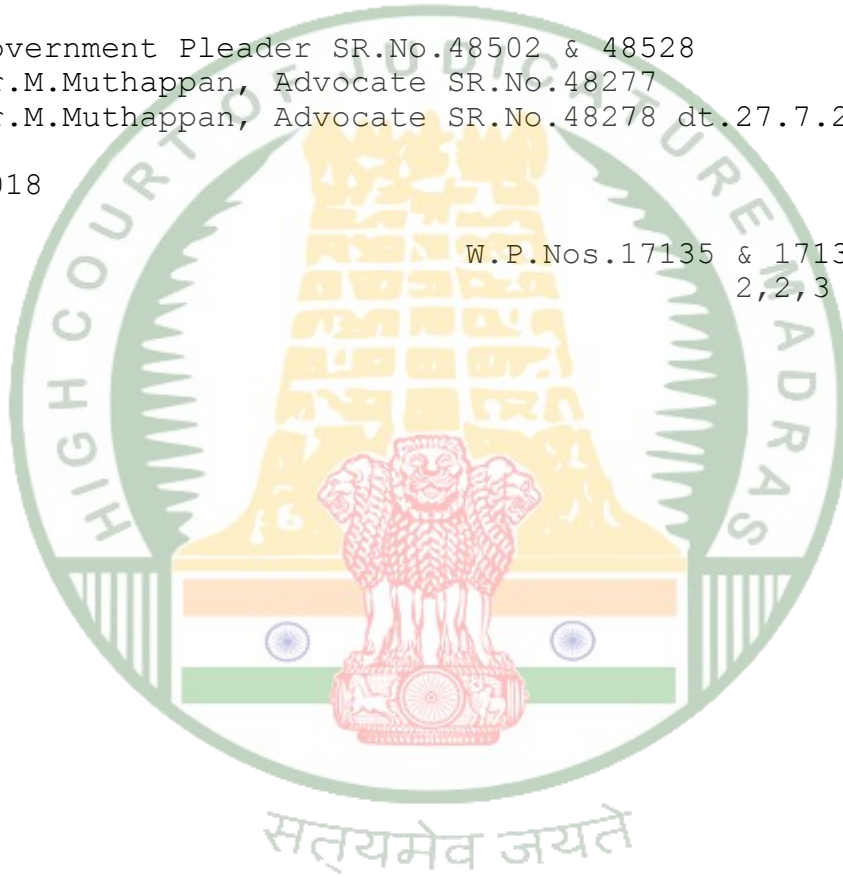
+1cc to Government Pleader SR.No.48502 & 48528

+1cc to Mr.M.Muthappan, Advocate SR.No.48277

+1cc to Mr.M.Muthappan, Advocate SR.No.48278 dt.27.7.2018

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