

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2018

CORAM

THE HON'BLE MR. JUSTICE V.PARTHIBAN

W.P.No. 19206 of 2015
and M.P.No.2 of 2015
and WMP.No.2270 of 2018

V.Jayanthi

...Petitioner

Vs.

1. The Government of Tamil Nadu
Rep.by its Secretary to Government,
Revenue Department,
Secretariat, Chennai 600 009.
2. The Special Commissioner/Director of
Survey and Settlement, Chepauk,
Chennai 600 005.
3. The Additional Director of Survey and
Land Records,
Chepauk, Chennai 600 005.
4. The Assistant Director of Survey
and Land Records, Thanjavur. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the fourth respondent relating to Na.Ka.A8/1413/15-1, dated 26.02.2015 to quash the same and to issue consequential direction to the respondents to desist him from giving effect to the proposed revision of the dates of petitioner's regularisation in the post of senior Draftsman for the year 1988 and consequential promotions as Head Draftsman, Mananger (Technical) and Technical Officer.

For Petitioner : Mr.K.Sudalaikannu
for Mr.Kaviveerappan

For Respondents: Mr.S.R.Rajagopal
Addl. Advocate General IX Assisted by
Mr.K.Ravikumar, Addl. Govt.Pleader
for R1 to R4

O R D E R

The prayer in the writ petition is for issuance of a writ of certiorarified mandamus calling for the records of the fourth respondent relating to Na.Ka.A8/1413/15-1, dated 26.02.2015, to quash the same and to issue consequential direction to the respondents to desist him from giving effect to the proposed revision of the dates of petitioner's regularisation in the post of senior Draftsman for the year 1988 and consequential promotions as Head Draftsman, Manager (Technical) and Technical Officer.

2. The petitioner joined the service of the respondent as Draftsman on 21.10.1981. On completion of probation period on 24.10.1983 and after passing the required Departmental test she was promoted as Senior Draftsman. The petitioner was also sent for Survey Training for 28 days from 08.07.1987 to 04.08.1987, on the basis of her seniority. Thereafter she was promoted as Head Draftsman with effect from 09.12.1998 and was regularised from the said date. Subsequently, she was promoted as Manager (Technical) on 31.07.2006 and further promoted as Technical Officer on 21.11.2013 and has been working as such till date.

3. While so, the fourth respondent issued a proceedings dated 26.02.2015 stating that the promotion given to the petitioner as Senior Draftsman on 02.06.1984 was invalid and the promotion was granted to her without completing Survey Training successfully. The training period was stated to be 28 days. According to the petitioner, notice has been issued to her after 30 years of service, when the petitioner was at the verge of retirement in May 2018. The said show cause notice dated 26.02.2015 is challenged in the present writ petition.

4. The learned counsel for the petitioner contented that on merits the petitioner had completed the Survey Training successfully and the Show Cause Notice to the petitioner cannot be countenanced both in law and on facts. More over, even assuming that the training was not attended by the petitioner, such proceedings cannot be issued after a period of 30 years, particularly in view of the fact that the petitioner had got more than three promotions since 1984 and has been working as Technical Officer as on date. Such notice after a period of 30 years would unsettle the settled position in respect of the long career advancement of the petitioner. Even assuming there was mistake in granting promotion to the petitioner in 1984 the administration cannot be allowed to undo its mistake after a period of 30 years.

5. In addition to the submission, the learned counsel would draw attention of this Court to a recent decision passed by this Court, vide order dated 06.02.2018 in W.P.No.1113 of 2014, wherein the Court had considered the similar grievances of the petitioner therein and allowed the writ petition and quashed the Show Cause Notice. The observation and the finding of the Court as found in the order at paragraph Nos.5 & 6 which reads as under:-

" 5. It is not in dispute that after the promotion given to the petitioner in the post of Senior Draftsman on 29.03.1984, which is questioned in the present impugned show cause notice dated 09.01.2015, the petitioner was further given three promotions as Head Draftsman, Manager (Technical) and Technical Officer on 30.10.1998, 01.08.2006 and 21.11.2013 respectively. While such being the admitted position, the present impugned show cause notice dated 09.01.2015 issued by the fourth respondent, that too, on the verge of her retirement, to explain why the promotion given to her 30 years ago i.e., on 29.03.1984 should not be recalled cannot stand to legal scrutiny in view of undue delay.

6. Therefore, this Court by considering the fact that despite several opportunities the respondents have never turned up to file their counter affidavit and also taking note of the undue delay as stated supra in issuing the present show cause notice is of the considered view that the impugned show cause notice is vitiated on the ground of undue delay. On this count, in my view, the present impugned show cause notice issued by the fourth respondent cannot be sustained in the eye of law, hence, the same is quashed".

6. Therefore, the learned counsel would request that the Show Cause Notice served on the petitioner is per se unreasonable, arbitrary, unjust and illegal and therefore, the same has to be interfered with.

7. Per contra, the learned Additional Advocate General, Mr.S.R.Rajagopal, would vehemently oppose grant of relief to the petitioner herein. He would submit that as far as the order passed by the learned Judge of this Court vide order dated 06.02.2018 the Government had failed to file its response to the

writ petition and therefore, the learned Judge did not have the benefit of views of the Government vis-a-vis the claim of the petitioner therein. However, as far as this case is concerned a counter affidavit has been filed and he would submit that as per the Government Rule the person seeking promotion to the post of Senior Draftsman, has to complete the Survey Training for 28 days successfully but the petitioner did not complete and therefore, her promotion as Senior Draftsman is invalid and therefore, the entire promotion of the petitioner has to be reviewed. However, as regards the delay of nearly 30 years in issuing the show cause notice by the fourth respondent, the same has not been explained in the counter affidavit.

8. Heard the learned counsel for the petitioner as well as the learned Additional Advocate General for the respondents.

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.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1. The Government of Tamil Nadu
Rep.by its Secretary to Government,
Revenue Department,
Secretariat, Chennai 600 009.
2. The Special Commissioner/Director of
Survey and Settlement, Chepauk,
Chennai 600 005.
3. The Additional Director of Survey and
Land Records,
Chepauk, Chennai 600 005.
4. The Assistant Director of Survey
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+1 CC to Mr.K. Govindaraj, advocate sr 28408.

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and M.P.No.2 of 2015
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SP(28/04/2018)