

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.A.No.843 of 2018
and
C.M.P.No.7363 of 2018

The Principal Secretary to Government,
Public Works (E1) Department,
Secretariat, Chennai-600 009. Appellant

-vs-

A.P.Jayaprakash Respondent

Appeal filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.No.10482 of 2011 dated 17.08.2017.

Prayer in WP.10482 OF 2011:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the order of the respondent herein passed in G.O.(D) No.114, Public Works (E1) Department, dated 13.04.2009 imposing a punishment of withholding of increment for a period of six months without cumulative effect and the order passed by the respondent herein in his Letter No.7421/A1/2010-2 dated 24.06.2010 and the order passed in Letter No.23306/A1/2010-3 dated 01.11.2010 and QUASH the same and consequently direct the respondent herein to promote the petitioner notionally as Special Chief Engineer with effect from 30.06.2010 from the date of promotion of immediate juniors and direct the respondent herein to revise the petitioners pensionary benefits with all service and monatory benefits.

For Appellant :: Mr.R.Govindasamy, Spl.GP

For Respondent :: Mr.Ravi Shanmugam

JUDGMENT

(Delivered by HULUVADI G.RAMESH, J.)

The case of the respondent herein is that he was directly recruited as Assistant Engineer through the Tamil Nadu Public Service Commission in 1978. Thereafter, he was promoted as Assistant Executive Engineer in 1996 and as Executive Engineer in 2004 and he was further promoted to the post of Superintending Engineer in 2008. After attaining the age of superannuation, he retired from service on 31.12.2010.

2.While the respondent was working as Executive Engineer, one Shanmugam, Junior Draughting Engineer (JDO) was convicted by the Special Judge, Krishnagiri in a criminal case relating to bribery. The said Shanmugam filed an appeal before this Court and this Court has suspended the sentence of imprisonment. In view of the conviction of the said Shanmugam (JDO) by the Criminal Court, the respondent herein, who was the disciplinary authority at that time and acting as Superintending Engineer-Incharge, imposed the punishment of reduction in rank in seniority for a period of three years vide order dated 10.07.2006, on the said Shanmugam. However, the said order came to be set aside by the Chief Engineer on 21.12.2006 and a de novo enquiry was initiated against the said Shanmugam.

3.In the light of the order passed by the respondent against the said Shanmugam, show cause notice was issued to the respondent on 21.12.2006 calling for his explanation for allowing the said Shanmugam in service. In the meanwhile, the said Shanmugam approached this Court in W.P.No.1454 of 2007 and obtained an interim order staying the disciplinary proceedings initiated against him by the Chief Engineer.

4.While so, the respondent submitted his explanation on 22.10.2007 to the show cause notice dated 21.12.2006 that he had originally passed orders against the Shanmugam (JDO) on the basis of humanitarian consideration and there cannot be any motive attributed to him for passing such order. However, charge sheet was issued under Section 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules against the respondent on 02.06.2008, which finally culminated in the issuance of G.O.(D) No.114 Public Works (E1) Department dated 13.04.2009 against the respondent, imposing a punishment of withholding of increment for a period of six months without cumulative effect. The respondent was also due for promotion in June 2010 and a representation was also submitted by him on 14.06.2010 claiming promotion as Special Chief Engineer. However, the said representation was rejected on 24.06.2010, due to the currency of punishment. While so, on 30.06.2010, some of the respondent's juniors came to be promoted as Chief Engineer and Special Chief Engineer, as the case may be.

5. Thereafter, the conviction imposed by the Criminal Court has been set aside by this Court in the Criminal Appeal filed by the said Shanmugam in CrI.A.No.521 of 2005 and the writ petition filed by him in W.P.No.1454 of 2007 was allowed by this Court on 18.04.2011.

6. The respondent herein filed a writ petition in W.P.No.10482 of 2011 challenging the said proceedings dated 13.04.2009 in G.O.(D)No.114 Public Works (E1) Department, and for a consequential direction to promote him notionally as Special Chief Engineer with effect from 30.06.2010 from the date of promotion of his immediate juniors and to revise the pensionary benefits with all service and monetary benefits. The said writ petition was allowed by this Court by order 17.08.2017 with a direction to the appellant herein to consider the claim of the respondent to the post of Chief Engineer or Special Chief Engineer as the case may be, from the date on which his juniors were promoted, if he was otherwise eligible in all other respects.

7. Challenging the said order, the State has come up with this appeal.

8. The main argument that has been put forth by the learned Special Government Pleader appearing for the appellant is that the learned single Judge has erred in allowing the writ petition by not appreciating the fact that if a convicted person, that too in a trap and arrest case for demand and acceptance of bribe, is allowed to continue in his post, it will not be in the interest of healthy administration and further it is contrary to the established norms and procedures.

9. The learned counsel for the respondent has submitted that the learned single Judge has considered the matter in proper perspective and has passed the impugned order, which does not require any interference in the hands of this Court.

10. Heard the learned counsel on either side and perused the materials available on record.

11. It appears that in the Criminal Appeal filed before this Court in CrI.A.No.521 of 2005 by the said Shanmugam (JDO), the conviction imposed by the Criminal Court was set aside and the writ petition filed by him in W.P.No.1454 of 2007 was allowed by this Court on 18.04.2011. This Court, in the said writ petition, set aside the order passed by the Chief Engineer dated 21.12.2006, which is actually a show cause notice. In fact, from the writ proceedings, it could be seen that thereafter the said Shanmugam (JDO) himself had consented to the punishment

imposed i.e., reduction of seniority status for three years. Thus the punishment imposed by the respondent herein on the said Shanmugam has been sustained, since he himself had consented to the same.

12. In view of the above stated circumstances, since already the conviction imposed by the Criminal Court in respect of the said Shanmugam has been set aside by this Court in the Criminal Appeal on appreciating the entire facts and circumstances, and finally the punishment imposed by the respondent herein on the said Shanmugam has been sustained, the basis on which the disciplinary action initiated against the respondent by issuing charge sheet under Section 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, cannot sustain in the eye of law and in the circumstances, the contention of the learned Special Government Pleader appearing for the appellant that the punishment imposed by the respondent herein on the said Shanmugam is not commensurate with the gravity of the offence committed by the said Shanmugam, will not hold good.

13. In the result, the impugned order dated 17.08.2017 is confirmed and the writ appeal stands dismissed. No costs. Consequently the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

KM

To

The Principal Secretary to Government,
Government of Tamil Nadu,
Public Works (E1) Department,
Secretariat, Chennai-600 009.

+1cc to Mr. RAVISHANMUGAM, Advocate, S.R.No. 36838

W.A.No.843 of 2018
and
C.M.P.No.7363 of 2018

BS (CO)
TR(02/07/2018)