

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.03.2018

Coram

THE HONOURABLE Mr. JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

W.A.No.1605 of 2012

D.Prabagaran

.. Appellant

Vs.

1.The General Manager
Personnel and Administration (R&A) Department
Chennai Metropolitan Water Supply and Sewerage Board
No.1, Pumping Station Road
Chindadripet, Chennai 2.

2.The Managing Director
Chennai Metropolitan Water Supply and Sewerage Board
No.1, Pumping Station Road
Chindadripet, Chennai 2.

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set-aside the order 25.11.2010 made in W.P.No.5711 of 2010 on the file of this Court.

W.P.No. 5711/2010:

Petition filed under Article 226 of the constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records of the 1st respondent relating to the proceedings Memo No. CMWSSB/P&A/STF/RA1/48584/2009 dated 3rd March 2010 and quash the same and direct the 1st respondent to restore the petitioner original seniority as given in the seniority list dated 1st April 2007 prepared for the post of Accounts Officer.

For Appellant : Mr.K.Radhakrishnan
For Respondents: No appearance

J U D G M E N T

[Judgment of the Court was delivered by K.K.SASIDHARAN,
J.]

The appellant was denied promotion to the post of Accounts Officer in 2007 on account of the currency of punishment which

got expired in 2008. The appellant was later given promotion to the post of Accounts Officer in 2009. The writ petition filed by the appellant in W.P.No.25209 of 2007 challenging the promotion given to his juniors was dismissed by this Court.

2. The appellant long after his promotion to the post of Accounts Officer submitted a representation on the strength of a judgment of the Hon'ble Supreme Court in Shiv Kumar Sharma vs. Haryana State Electricity Board, Chandigarh and others [1988 (Supp) SCC 669] contending that his earlier seniority should be restored, notwithstanding the currency of the punishment. The representation was rejected. The related writ petition filed by the appellant was dismissed. Feeling aggrieved, the appellant is before this Court.

3. The learned counsel for the appellant contended that failure on the part of the respondents to restore the original seniority would amount to a double jeopardy and as such, the learned single Judge was not correct in quashing the order impugned in the writ petition.

4. None appeared for respondents.

5. The factual matrix indicate that the appellant was punished by the Chennai Metropolitan Water Supply and Sewerage Board [hereinafter referred to as "the Board"] by order dated 08 February, 2005 on account of misconduct. The punishment was stoppage of increment for three years without cumulative effect. During the currency of the punishment, the Board prepared a panel for promotion in 2007. Since there was currency of punishment, the name of the appellant was not considered for promotion to the post of Accounts Officer. The Board, after the expiry of the period of punishment, promoted the appellant to the post of Accounts Officer.

6. The writ petition filed by the appellant challenging the promotion panel for the year 2007 was dismissed by the learned single Judge on the ground that there was no justifiable claim on account of the currency of the punishment. It was long thereafter, the appellant adopted a novel device of overcoming the order passed by this Court by giving a representation that his original seniority should be restored. There is absolutely no merit in the contention taken by the appellant, for the simple reason that as on the date on which the panel was drawn in 2007, he was undergoing the punishment. The name of the appellant was considered for promotion to the post of Accounts Officer immediately after the expiry of the punishment.

7. The employees who got promotion overlooking the case of the appellant would definitely be seniors in the promoted post of Accounts Officer. The appellant in his writ petition in

W.P.No.5711 of 2010 wanted a direction from this Court to restore the original seniority, which include seniority in the post of Accounts Officer, notwithstanding the fact that he was not eligible for the promotion, when the promotion panel for the year 2007 was drawn. We are therefore of the view that there is absolutely no merit in the contention taken by the appellant.

7. The judgment of the Hon'ble Supreme Court in Shiv Kumar Sharma (supra) would not come to the aid of the appellant, for the simple reason that his name was not included in the panel on account of the currency of the punishment. This case would not amount to a double jeopardy on account of the fact that the reason for denial of promotion in 2007 was only on account of the currency of the punishment. The appellant was given promotion after the expiry of the punishment and as such, non restoration of his original seniority would not amount to double jeopardy.

8. We are therefore, of the view that the intra court appeal deserves to be dismissed.

In the upshot, we dismiss the intra court appeal. No costs.

s/d-
Assistant Registrar (CS VII)

True Copy

Sub-Assistant Registrar

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+1 CC to Mr.S. Raghavan, advocate sr 18684.

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