

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.4103 of 2011 and
M.P.No.1 of 2011

P.Kaliappan

... Petitioner

Vs

- 1.The Government of Tamil Nadu,
Rep by Secretary to Government,
Revenue Department,
Fort St.George,
Chennai 600 009.
- 2.The Principal Commissioner and Director,
Survey and Settlement,
Survey House,
Chepauk,
Chennai 600 005.
- 3.The Special Commissioner and
Director of Survey and Settlement,
Survey House,
Chepauk,
Chennai 600 005.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent and 3rd respondent issued in relation to their proceedings in Na.ka.No. Gna3/46255/07-01 (நா.கா.நா. 3/46255/07-01) dated 28.01.2008, issued by the second respondent in Na.Ka.No. Gna3/21574/07-01 (நா.கா.நா. 3/21574/07-01) dated 02.10.2007, issued by the third respondent and quash the same and issue a consequential direction to the respondents to give a regular promotion to the petitioner for the post of Assistant Director, Maps or Assistant Director, Drawing from 01.04.2004, when the petitioner was holding full charge of the post of Assistant Director, Drawing and Assistant Director - Maps and grant the scale of pay attached to the above said post and grant all the monetary benefits including pensionary benefits.

For Petitioner : Mr.R.Saseetharan
For Respondents : Mr.T.M.Pappiah,
Special Government Pleader

O R D E R

Heard Mr.R.Saseetharan, learned counsel for the petitioner and Mr.T.M.Pappiah, learned Special Government Pleader appearing for the respondents.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent and 3rd respondent issued in relation to their proceedings in Na.ka.No. P3/46255/07-01 (epm). dated 28.01.2008, issued by the second respondent in Na.Ka.No. P3/21574/07-01 (epm). dated 02.10.2007, issued by the third respondent and quash the same and issue a consequential direction to the respondents to give a regular promotion to the petitioner for the post of Assistant Director, Maps or Assistant Director, Drawing from 01.04.2004, when the petitioner was holding full charge of the post of Assistant Director, Drawing and Assistant Director - Maps and grant the scale of pay attached to the above said post and grant all the monetary benefits including pensionary benefits."

3. The case of the petitioner is as follows:-

The petitioner was originally appointed as Clerk on 01.02.1967, in the Department of Land Survey and Settlement at Resurvey Party at Erode. Thereafter, he was appointed as Draftsman on 01.11.1970, in the office of the Assistant Director of Survey, Coimbatore. He was thereafter promoted as Technical Manager on 11.06.1999 and further promoted as Technical Officer on 31.03.2004. On attaining the age of superannuation, he retired from service on 30.06.2005.

4. According to the petitioner, the next avenue of promotion for the post of Technical Officer is the post of Assistant Director (Maps/Drawing) as per the ad-hoc rules framed in G.O.Ms.No.268, dated 08.03.1988. The petitioner was the senior most, working in the feeder category of the post of Technical Officer. By order dated 31.03.2004, the second respondent posted the petitioner to hold an additional charge of Assistant Director (Maps/Drawing) in the vacancy which arose on 31.03.2004, due to the retirement of then incumbent. After being given the additional charge as Assistant Director (Maps/Drawing), the petitioner submitted a representation to promote him as regular Assistant Director (Maps/Drawing). But, however, his representation was not considered and in the mean while, the petitioner stood retired from service on 30.06.2005, on attaining the age of superannuation.

5. After retirement, the claim of the petitioner for promotion to the post of Assistant Director, came to be rejected on 02.10.2007, on the ground that the estimation for the vacancies for the post of Assistant Director was obtained only on 17.08.2005 and before the date, the petitioner stood retired on 30.06.2005. Moreover, it was also stated that the petitioner by the time crossed the age of 57 years when the sanction was obtained from the Government on 01.07.2004.

6. Upon notice, learned Special Government Pleader appearing for the respondents, entered appearance and filed a detailed counter affidavit. In the counter affidavit, two reasons were spelt out for not granting promotion to the petitioner. Firstly, it was stated that when the crucial date for drawal of panel for the post of Assistant Director (Maps/Drawing) for the year 2004-05, was 22.02.2004. On that crucial date, the petitioner was not working in the category of Technical Officer which was a feeder category for promotion to the post of Assistant Director (Maps/Drawing). Subsequently, on 01.07.2004, the petitioner has crossed the age of 57 years. Secondly, when the panel was prepared for the subsequent year 2005-06, the petitioner was working as Technical Officer in the feeder category on the crucial date i.e., 22.02.2005, but, he had crossed the age of 57 years as on 22.02.2005. Therefore, the petitioner was not considered for promotion and stood retired from service on 30.06.2005.

7. The learned counsel for the petitioner would submit that several persons who were promoted as Assistant Director (Maps/Drawing) had been given relaxation and despite they crossing the age of 57 years, had been considered for promotion as Assistant Director (Maps/Drawing). In the case of petitioner alone, the said reason has been cited for denying him promotion. The said statement made on behalf of the petitioner, has not been disputed by the learned counsel appearing for the respondents.

8. This Court has considered the rival submissions of the learned counsel on either side and also perused the pleadings placed on record. Admittedly the petitioner had come within the zone of consideration for promotion to the post of Assistant Director (Maps/Drawing) for the panel year 2005-06. The only reason which was held against the petitioner was he had crossed the age of 57 years. As rightly contended by the learned counsel for the petitioner that when the respondents have granted relaxation in respect of similar promotion to other officers, this Court does not see any justification in not granting such relaxation to the petitioner herein. Such action on the part of the respondents is to be held as per se discriminatory, arbitrary and violative of the Article 14 of the Constitution of

India.

9. Though this Court is conscious of the fact that the petitioner was due for retirement immediately after the preparation of the panel for the year 2005-06, yet, promotion to the post of Assistant Director (Maps and Drawing) would make a significant difference in the pension payable to the petitioner after his retirement on 30.06.2005. In any event, this Court finds that the non-grant of relaxation to the petitioner and denying him promotion at the appropriate time, cannot be countenanced both in law and on facts. It is particularly so when admittedly the petitioner was fully qualified for consideration for promotion except the age factor.

10. For the above said reasons, this Court has no hesitation in allowing the writ petition. Therefore, the impugned orders in Na.ka.No. P3/46255/07-01 (epm). dated 28.01.2008 and Na.Ka.No. P3/21574/07-01 (epm). dated 02.10.2007, are set aside and there shall be a consequential direction to the respondents to grant regular promotion to the petitioner to the post of Assistant Director (Maps/Drawing) for the panel year 2005-06, notionally and grant him all service benefits as admissible to the post of Assistant Director (Maps/Drawing) and also calculate the pensionary benefits as admissible to the said post. The respondents are directed to comply with the direction, within a period of eight weeks from the date of receipt of a copy of this order.

11. With the above direction, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True copy// सत्यमेव जयते

Sub Assistant Registrar

gsk

To

1.The Secretary to Government,
Revenue Department,
Fort St.George,
Chennai 600 009.

2.The Principal Commissioner and Director,
Survey and Settlement,
Survey House,
Chepauk,
Chennai 600 005.

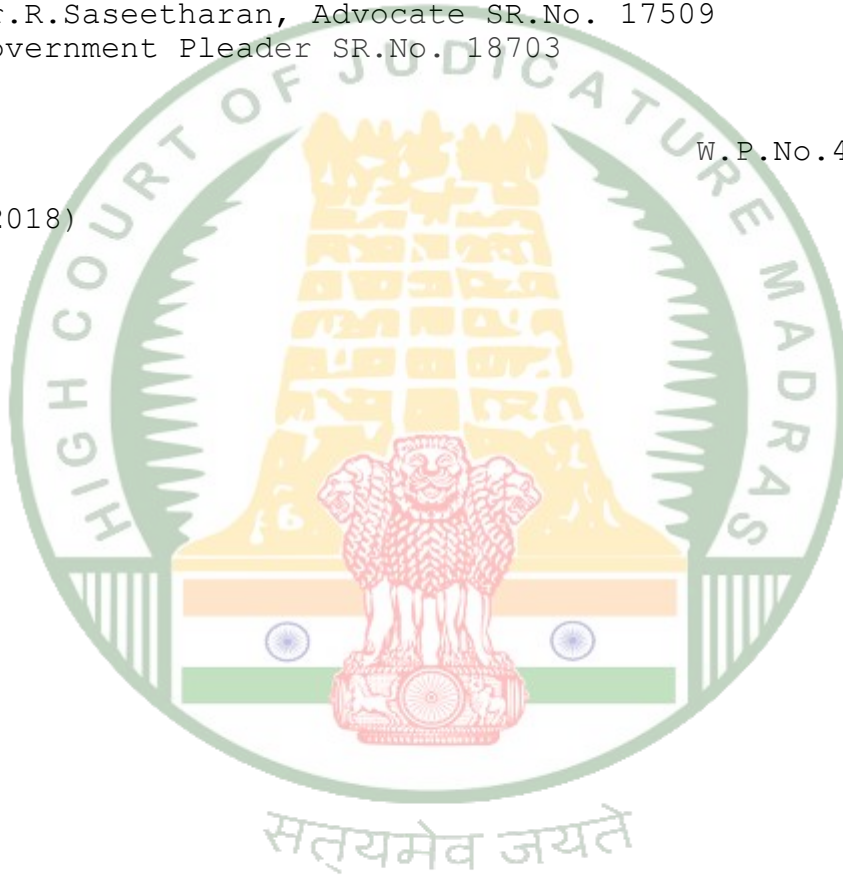
3.The Special Commissioner and
Director of Survey and Settlement,
Survey House,
Chepauk,
Chennai 600 005.

+1cc to Mr.R.Saseetharan, Advocate SR.No. 17509

+1cc to Government Pleader SR.No. 18703

W.P.No.4103 of 2011

GN(23/03/2018)



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