

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P. No. 32187 of 2018
and
W.M.P. No. 37441 of 2018

1. Union of India,
Rep. By the Superintendent,
RMS CB Division,
Coimbatore - 641 001.
2. The Sub-Record Officer,
RMS CB Division,
Tirupur - 641 601. ...Petitioners

Vs.

1. The Central Administrative Tribunal,
Rep. By its Registrar,
Madras Bench, Chennai - 600 104.
2. K. Mahesh ...Respondents

Prayer: Writ Petition filed under Article of 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the order dated 28.07.2016 made in O.A. No. 727 of 2014 on the file of the first respondent herein and quash the same.

For Petitioners : Mr. C. V. Ramachandramurthy

For Respondents : R1 - Tribunal.

O R D E R

(Order of the Court was made by M.M.SUNDRESH, J.)

The second respondent while working as Gramin Dak Sevak, Mail Man (GDS MM) appeared for examination to the promotional post of Mail Guard on 16.12.2012. He has been declared as successful in the examination held on 11.01.2013. Thereafter, he was posted as Mail Guard by the order of the 1st petitioner dated 31.1.2013 and then was transferred to the office of 2nd petitioner.

2. After having worked for more than one and half years, he was issued show cause notice dated 01.05.2014 to show cause as to why promotion should not be canceled, as he had secured only 9 marks as against the minimum required marks of 10, though, on an overall consideration he has secured sufficient marks. After finding that the reply was not satisfactory, the order was passed canceling his promotion.

3. The Tribunal by placing reliance upon the order passed by the Karnataka High Court in the case of P. Shiva v. Union of India and others in WP No. 20665/2003 dated 01.09.2003, allowed the application, inter alia, holding that it is not the mistake of the second respondent. Challenging the same, the present writ petition has been filed.

4. Learned counsel appearing for the petitioners submitted that the second respondent has secured only 9 marks as against the required mark of 10, though, he has secured overall qualifying marks cumulatively and as there was no qualification, the impugned order was passed.

5. We do not find any merit in this writ petition. Admittedly, it was not the fault of the second respondent. It is the petitioners' who declared him as promoted. Not only that, for the mistake committed by the petitioners, the second respondent cannot be made to suffer. Had he been declared as not qualified, he would have written the examination in the next selection. Now, at least two examinations were over in the interregnum. This selection was made in the year 2013. Now, we are in the year 2018. If the contention of the petitioners is accepted, then the second respondent will have to write the examination once again in the year 2018. Therefore, for the mistakes committed by the petitioners, second respondent will be affected by not getting promotion for five years. All juniors would have been promoted in the interregnum. Therefore, the principle of estoppel would certainly come into play. As of now, the second respondent has been working from the year 2013

onwards for over five years. Therefore, looking from any angle, we are not inclined to interfere with the order of the Tribunal.

Accordingly, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ssm

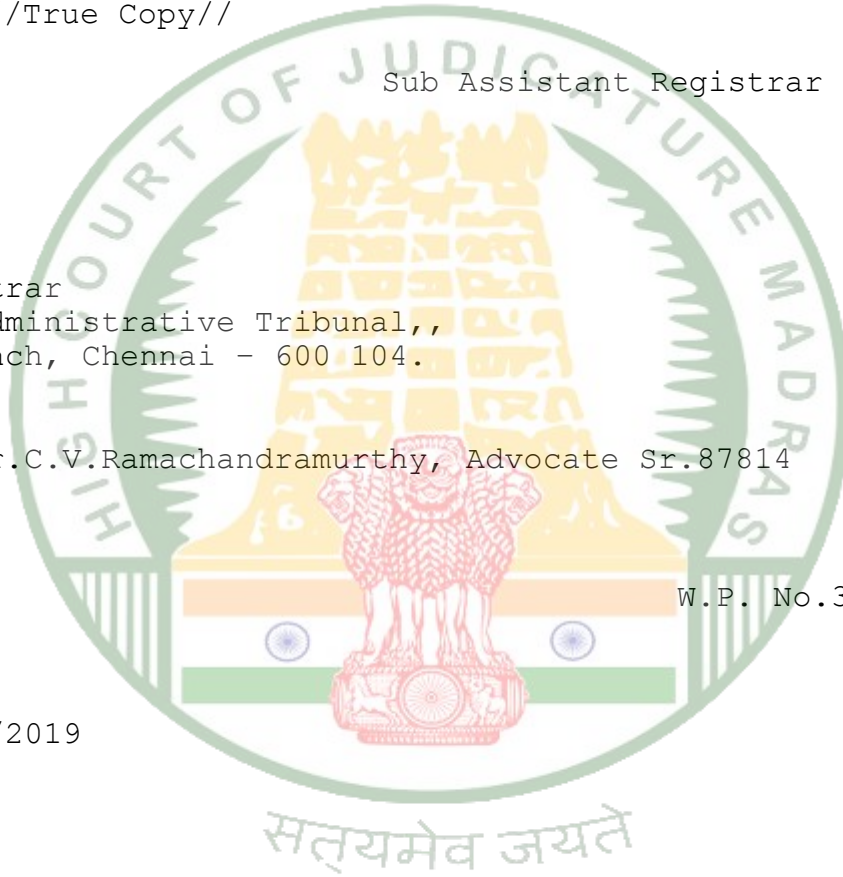
To

The Registrar
Central Administrative Tribunal,,
Madras Bench, Chennai - 600 104.

+lcc to Mr.C.V.Ramachandramurthy, Advocate Sr.87814

W.P. No.327 of 2018

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