



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.A.(MD) No.201 of 2014
and
M.P.(MD) Nos.1 & 3 of 2014

P.S.Mani

... Appellant / Petitioner

-vs-

The Commissioner
Madurai Corporation
Madurai

... Respondent / Respondent

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 06.01.2014, made in W.P.(MD) No.89 of 2014, on the file of this Court.

Prayer in WP(MD). 89/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, call for the records relating to the Impugned Order dated 21.12.2013 issued in the reference of the Respondent Ma.Ni.1/11409/2012 and to quash the same and to direct the Respondent to give the Petitioner the promotions due to him and to pay the salary payable to that post to the Petitioner.

For Appellant : Mr.Veera Kathiravan, Senior Counsel
for Mr.C.Jeganathan

For Respondent : Mr.Govindaraj
for Mr.R.Murali
Standing Counsel for Corporation

J U D G M E N T

[Judgment of the Court by T.S.SIVAGNANAM, J.]

Heard Mr.Veera Kathiravan, learned Senior Counsel for Mr.C.Jeganathan, learned counsel on record for the appellant / writ petitioner and Mr.Govindaraj, learned counsel appearing for Mr.R.Murali, learned Standing Counsel for the respondent - Corporation and perused the materials produced.

2. This writ appeal is directed against the order, dated 06.01.2014, made in W.P.(MD) No.89 of 2014.

3. The appellant / writ petitioner filed the writ petition in W.P.(MD) No.89 of 2014 praying for issuance of a writ of certiorarified mandamus to quash the order, dated 21.12.2013 issued in the reference of the respondent and to direct the respondent - Corporation to give promotions to the writ petitioner due to him and to pay the salary payable to that post. The communication, dated 21.12.2013, which was impugned in the said writ petition, was informing about the promotion being effected to, consequently the writ petitioner was liable for reversion. The said proceedings, dated 21.12.2013, granted an opportunity to the persons aggrieved, including the appellant / writ petitioner, to submit their objections. Thus, it was in the nature of a show-cause notice. The appellant / writ petitioner questioned the same on the short ground that it is in clear violation of the directions issued by this Court in the earlier writ petition filed by the appellant / writ petitioner in W.P.(MD) No.15146 of 2013. The said writ petition was filed challenging an Agenda passed by the respondent - Corporation, dated 04.09.2013, insofar as it relates to Item Nos.10 and 11 and to direct the respondent - Corporation to allow the appellant / writ petitioner to continue to work as Accounts Officer and to pay salary to him as has been done hitherto. The Writ Court, by order, dated 09.12.2013, considered the submission made on behalf of the respondent - Corporation that before passing order of reversion, the appellant would be heard and on consideration of the reply to be submitted by him, appropriate orders would be passed. Thus, the Writ Court, taking into consideration the submissions made on behalf of the respondent - Corporation, set aside the impugned resolution, dated 04.09.2013, insofar as it relates to Item Nos.10 and 11 and directed the respondent - Corporation, to issue notice to the appellant / writ petitioner giving reasons for the proposed reversion and thereafter, the respondent - Corporation will have to pass appropriate orders, after considering the reply to be given by the appellant / writ petitioner, on merits and in accordance with law.

4. The learned Senior Counsel appearing for the appellant / writ petitioner pointed out that though the Writ Court in the earlier writ petition has set aside the resolution, dated 04.09.2013, insofar as it relates to Item Nos.10 and 11, the

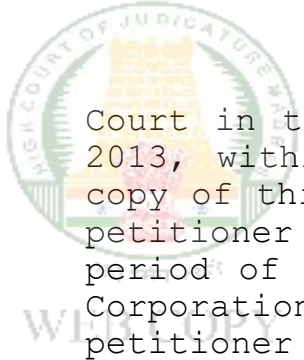


respondent - Corporation, while issuing the show-cause notice, dated 21.12.2013, has once again referred to the said resolution as reference No.2. Apart from that, in the communication sent to the appellant / writ petitioner, dated 21.12.2013, the very same resolution was referred to. Therefore, on the said short ground, the appellant / writ petitioner sought for setting as the said proceedings, dated 21.12.2013, by filing W.P.No.89 of 2014. The respondent - Corporation submitted before the Writ Court that pursuant to the earlier orders passed in W.P.(MD) No.15146 of 2013, the appellant / writ petitioner has been asked to submit explanation. Considering the said submission, the appellant / writ petitioner was directed to give suitable reply to the notice, dated 21.12.2013, within a period of six weeks from the date of receipt of a copy of that order and liberty was granted to the respondent - Corporation to pass final orders towards the proposed reversion thereafter and till the final orders are passed, the earlier reversion order shall not be given effect to and the appellant / writ petitioner shall not be disturbed.

5. The appellant / writ petitioner is on appeal before this Court against the said order contending that the Writ Court ought to have considered the fact that the resolution, dated 04.09.2013, has been set aside, therefore, the question of relying of the said resolution does not arise and consequently, the show-cause notice, dated 21.12.2013, is *ex facie* not maintainable.

6. The learned Standing Counsel for the respondent - Corporation sought to justify as to how the proposed reversion should take place and in this regard, he made certain factual submissions. However, we are not inclined to go into those factual submissions, since we are satisfied that when the Court has set aside that portion of the resolution, dated 04.09.2013, the respondent - Corporation could not have referred to the very same resolution for issuing second show-cause notice. In fact, what the respondent - Corporation should have done is to give reasons for the reversion and afford an opportunity to the appellant / writ petitioner to submit his reply and thereafter, should have passed orders towards the reversion in accordance with law. But, this has not been done by the respondent - Corporation. Therefore, the proceedings impugned in the writ petition call for interference. However, since this Court has granted such a direction and liberty in the order, dated 09.12.2013, in W.P.(MD) No.15146 of 2013, such liberty should continue in favour of the respondent - Corporation to issue fresh show-cause notice clearly indicating the reasons for the proposed reversion.

7. For all the above reasons, the writ appeal is allowed and the order, dated 06.01.2014, made in W.P.(MD) No.89 of 2014, is set aside and the matter is remanded to the respondent - Corporation for fresh consideration. The respondent - Corporation is directed to issue a show-cause notice to the appellant / writ petitioner giving reasons for the proposed reversion as directed by the Writ



Court in the order, dated 09.12.2013, made in W.P.(MD) No.15146 of 2013, within a period of two weeks from the date of receipt of a copy of this Judgment. Permission is given to the appellant / writ petitioner to submit his reply to the show - cause notice within a period of three weeks thereafter. Subsequently, the respondent - Corporation shall consider the reply of the appellant / writ petitioner and proceed further in accordance with law. It is open to the appellant / writ petitioner to raise all contentions both factually as well as legal in his response to the show - cause notice. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar(C.O)

True Copy/

Sub-Assistant Registrar

To

The Commissioner
Madurai Corporation
Madurai

+One cc to Mr.R.Murali, Advocate, SR.No.48108

+One cc to Mr.B.Saravanan, Advocate, SR.No.47955

+One cc to M/s.Veera Associates, Advocate, SR.No.48135

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RL/5C/4P/SV/MMS/SAR4/14/2/2018

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(1/2)