

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.02.2019

CORAM

THE HON'BLE MR JUSTICE M. VENUGOPAL
AND
THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

W.P.No.2097 of 2019
and WMP No.2350 of 2019

K. Mohankumar Petitioner

Vs

1. The Registrar General,
Madras High Court,
Chennai - 600 104

2. The Principal District Judge,
Salem District, Salem

..... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorari to call for the records pertaining to the impugned show cause notice in D.No.9524/A/2018 dated 06.12.2018 issued by the second respondent and quash the same.

For petitioner : Mr.R. Neelakandan

For Respondents : Mr.Kaithamalai Kumaran

ORDER

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

Heard Both sides.

2. No counter is filed on behalf of the Respondents
1 and 2.

3. The Petitioner in the present Writ Petition, is assailing the validity, legality and correctness of the Impugned Official Memorandum dated 06.12.2018 issued by the Second Respondent/Principal District Judge, Salem, requiring him to offer his Explanation within a period of two weeks from the date of receipt of the Official Memorandum dated 06.12.2018.

4. A cursory perusal of the Official Memorandum of the Second Respondent/Principal District Judge, Salem dated 06.12.2018, latently and patently indicates that it was noticed that the promotion given to K. Mohankumar (Writ Petitioner) and M. Boopathiraja well ahead of their probation, which was declared in breach of Rule 36 (a) of the Tamil Nadu State and Subordinate Service Rules and placed well before the Seniors and further promotions were given without considering the facts.

5. It is not in dispute that the Petitioner had received the Official Memorandum of the Second Respondent/Principal District Judge, Salem and submitted his Reply dated 19.12.2018 and in the said Reply, the Petitioner, had, among other things, mentioned that as per G.O.Ms.No.80, P&AR Department dated 02.03.2016 the Government of Tamil Nadu had regularised the services of all the appointees under compassionate appointment in all the Departments of the State and therefore, his service was deemed to have been made as per the ingredients of the aforesaid Government Order.

6. More importantly, the Petitioner, in his Explanation dated 19.12.2018, had come out with a plea that after conferring the benefits of higher post and pay scale, he cannot be reverted back belatedly when there is no fault on his part and the declaration of probation is in the hands of Appointing Authority.

7. The other plea taken on behalf of the Petitioner is that if his appointment was temporary or irregular in any manner, he should have been reverted within a reasonable period and after serving for 7 years and after getting several promotions and that too, he is at the verge of promotion to the post of Head Clerk, Judicial Magistrate Court, the action initiated now is highly improper one besides the same is against the Principles of Natural Justice.

8. Lastly, the Petitioner in his Explanation, has taken a stand that if present action is initiated against him, it is double loss to him by losing his two years service in the post of 'Office Assistant' and he will be loosing his seniority.

9. Continuing further, the Petitioner in fact had referred to the Order dated 01.03.2017 in W.P.(MD) No.18879 of 2016 between N. Rajesh Khanna vs The State of Tamil Nadu and three others, passed by the Madurai Bench of Madras High Court and enclosed a copy for consideration of the Second Respondent/Principal District Judge, Salem.

10. It is to be pointed out that in Law, as against the issuance of Show Cause Notice (An Official Memorandum), filing of Writ Petition 'Ex facie' is not maintainable.

11. In view of the fact that no order has been passed by the Second Respondent/Principal District Judge, Salem in respect of the Explanation offered by the Petitioner dated 19.12.2018 to the Official Memorandum dated 06.12.2018, issued by the Second Respondent and this Court, at this stage, without traversing upon the merits and demerits of the Explanation and also not expressing any opinion one way or other simpliciter directs the Second Respondent/Principal District Judge, Salem to look into the Explanation of the Petitioner dated 19.12.2018 in a fair, free, just, unbiased and dispassionate manner and to pass reasonable speaking order outlining the process of reasoning in a qualitative and quantitative fashion, of course, after providing an opportunity to the Petitioner and also adhering to the Principles of Natural Justice. It is open to the Petitioner to raise all factual and legal pleas before the Second Respondent/Principal District Judge, Salem who shall at the time of passing order, shall meet out the same and if the Petitioner is aggrieved against any order, to be passed by the Second Respondent, then it is open to him to assail the same before the Competent Forum, of course, in the manner known to Law and in accordance with Law. The exercise of passing Orders, in the subject matter in issue shall be carried out by the Second Respondent/Principal District Judge, Salem, within a period of four weeks from the date of receipt of copy of this Order.

12. With the above observation and direction, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

sr

To

1. The Registrar General,
Madras High Court,
Chennai - 600 104

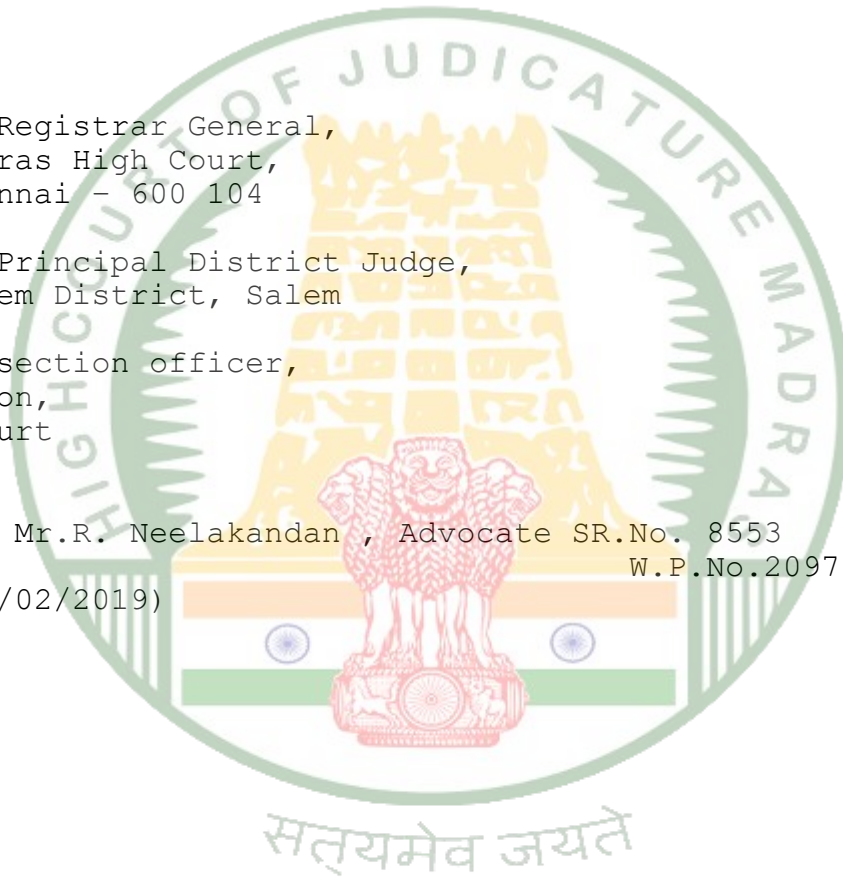
2. The Principal District Judge,
Salem District, Salem

3. The section officer,
B Section,
High court
Madras

+1cc to Mr.R. Neelakandan , Advocate SR.No. 8553

W.P.No.2097 of 2019

A.SK(21/02/2019)



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