

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.11.2019

Coram

The Honourable Mr. Justice D.KRISHNAKUMAR

W.P.No.36191 of 2007
and M.P.No.2 of 2007

P.Anbarasu

...Petitioner

Versus

- 1.The Secretary to Government,
Revenue Department,
Fort St.George, Chennai - 9.
- 2.The Special Commissioner and
Director of Survey and Land Records,
Chepauk, Chennai - 5.
- 3.The Assistant Director of Survey and
Land Records, Dharmapuri District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records connected with the proceedings issued in Na.Ka.Na2/37369/2006 (Land Records) dated 25.09.2007 passed by the second respondent and quash the same.

For Petitioner : Mr.S.Ilamvaludhi

For Respondents : Mr.K.S.Suresh,
Government Advocate

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O R D E R

With the consent of both sides, this writ petition is taken up for final disposal.

2. The relief sought for in the present writ petition is to call for the records connected with the proceedings issued in Na.Ka.Na2/37369/2006 (Land Records) dated 25.09.2007 passed by the second respondent and quash the same.

3. It is the case that the writ petitioner who joined in service in the Survey Department and he was promoted as Sub Inspector of Survey by the Assistant Director of Survey and Land Records, Dharmapuri vide Proceeding No.Rc.G1/21003/89 dated 28.06.1989 and he joined duty on 10.07.1989. Later, he was transferred from Dharmapuri to Pabanasam. Thereafter, he was transferred to Krishnagiri District. Then, he was transferred to Chengalpattu District.

3.1 The petitioner was frequently transferred to Pabanasam and Chengalpattu. Against such frequent transfer, he approached the Tamilnadu Administrative Tribunal and the Tribunal passed an order that the junior-most in the cadre should be reverted to the lower posts. By virtue of the Tribunal order, the petitioner had been allowed to continue as Sub Inspector Survey in Dharmapuri District on condition that he must relinquished his promotion for 3 years. Hence, the petitioner gave his option on 06.06.1995, to relinquish his transfer for 3 years. However, even before the completion of 3 years, on 18.08.1997, the petitioner had been promoted as Sub Inspector of Survey.

3.2 The panel had been prepared for the year 2006-2007 for the post of Deputy Surveyor but the petitioner's name was not included on the said panel since he had relinquished his promotion for 2 years in the post of Sub Inspector of Survey. The petitioner is entitled for promotion to the post of Deputy Surveyor as he was regularized in the post of Sub-Inspector of Survey as early as on 10.07.1989 and his seniority number is 32.

3.3 The second respondent communicated a Letter in No.Na2/37369/2006 dated 25.09.2007, to the third respondent stating that the representation made by the petitioner has been rejected to regularize his service from 18.08.1997 in the post of Sub Inspector of Survey and regularize the service from 10.07.1989 in the post of Deputy Surveyor. Thereafter, the first respondent passed an order to recover the selection grade awarded in the psst of Sub Inspector of Survey from 18.08.1997. Aggrieved by the proceedings of the second respondent, the petitioner has filed the present writ petition for the relief stated supra.

4. The learned counsel for the petitioner submitted that though the petitioner is fully qualified for promotion to the post of Deputy Surveyor and had been maintained a clean records of service, he was refused to be promoted as such on the ground that he had relinquished his promotion for 2 years in the post of Sub Inspector of Survey. He further submitted that the petitioner had been forced to give his relinquishment and the said relinquishment acts as an obstacle to him to get his

rightful promotion. He therefore prayed that the relief sought for by the petitioner may be granted to him.

5. The learned Government Advocate appearing for the respondents would submit that in the present writ petition, the petitioner has not challenged any orders or proceedings issued by the Government or the respondents herein, whereas, he has challenged a Communication viz., the Letter sent by the second respondent to the third respondent. He further drew the attention of this Court to the another writ petition filed by the petitioner in W.P.No.34979 of 2007 against the respondents 1 & 2 herein, seeking for a direction to the respondents 1 & 2 herein to include the petitioner's name in the panel for the year 2006-2007 and promote the petitioner as Deputy Inspector and dispose of the petitioner's representation dated 07.05.2007 and another representation dated nil. The said petition was dismissed by this Court vide order dated 23.02.2012.

6. The learned Government Advocate would contend that the petitioner was wrongly given promotion to the post of Sub Inspector of Survey with effect from 14.05.1998 by the third respondent, without taking into consideration of the three years relinquishment as per Rule 47 of the Tamil Nadu State and Sub Ordinate Service Rules and that the second respondent ordered to recover the Selection grade pay and allowances paid to the petitioner. He therefore submitted that the present petition is not maintainable and the same is liable to be dismissed.

7. Heard the learned counsel on both sides and perused the materials available on record.

8. In view of the submission made by the learned Government Advocate appearing for the respondents, this Court is of the opinion that had the petitioner made a representation before the respondents herein, he could have obtained a proper remedy, however, without doing so, the petitioner has approached this Court by filing the present writ petition at the premature stage itself.

9. Considering the facts and circumstances of the case, this Court issues the following directions:

(i) The petitioner is directed to make a representation before the third respondent.

(ii) On receipt of the petitioner's representation, the third respondent is directed to consider the same and pass appropriate orders on merits and in accordance with law as expeditiously as possible. It is also open to the third respondent to proceed against the petitioner and take action against him, if necessary.

10. This Writ Petition is disposed of with the above directions. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
Revenue Department,
Fort St.George, Chennai - 9.

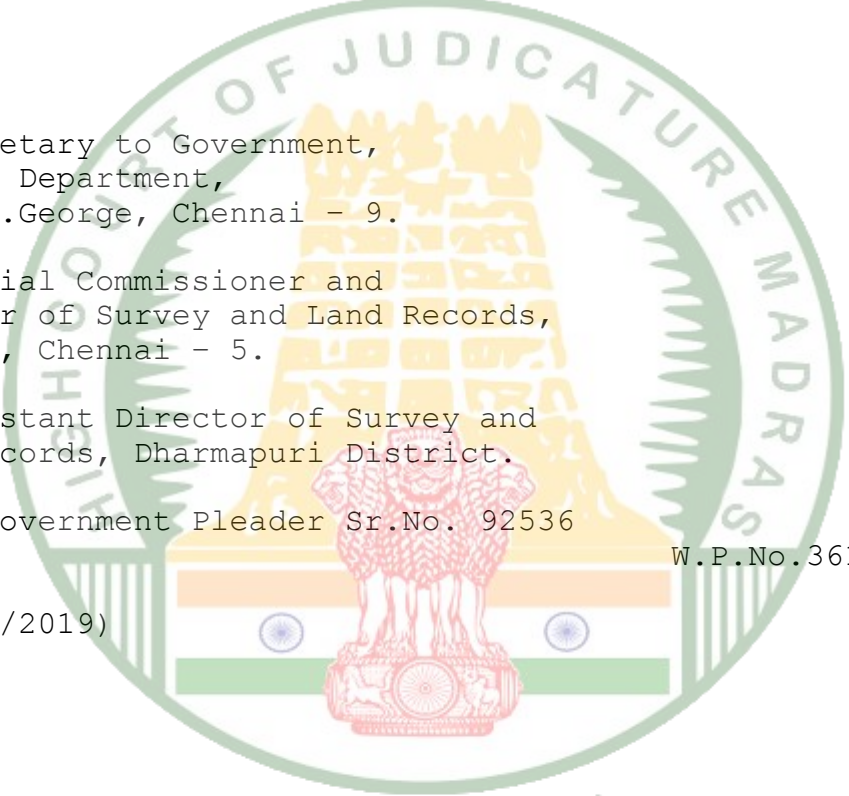
2.The Special Commissioner and
Director of Survey and Land Records,
Chepauk, Chennai - 5.

3.The Assistant Director of Survey and
Land Records, Dharmapuri District.

+1 cc to Government Pleader Sr.No. 92536

W.P.No.36191 of 2007

GMR
A.SK(17/12/2019)



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