



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P. (MD) No.14747 of 2011

P.Muthukrishnan

... Petitioner

vs.

1.The Principal Secretary/Commissioner
Office of the Commissioner of Archives
and Historical Research,
Egmore, Chennai - 600 008.

2.The Secretary to Government,
Higher Education Department,
Fort.St.George, Chennai 600 009.

3.M.Nallamuthu,
Assistant Commissioner of Archives,
District Records Centre, Perur,
Coimbatore 641 010.

4.The Secretary,
Tamil Nadu Public Service Commission,
Chennai 600 006.

5.The Secretary to Government,
Personnel and Administrative Reforms Department,
Fort.St.George, Chennai 600 009.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the second respondent in letter No.21842/D2/2006-14 dated 28.06.2011 and quash the same as illegal and direct the respondents 1 and 2 to include the name of the petitioner in the panel for the post of respondents 1 and 2 to include the name of the petitioner in the panel for the post of Research Officer for the year 1998-99 in the appropriate place so as to promote the petitioner with retrospective effect from 23.09.1998 and consequently direct the respondents 1 and 2 to give notional promotion to the petitioner as Research Officer with effect from 23.09.1998 with all consequential service and monetary benefits within a time frame that may be stipulated by this Court.

For Petitioner

: Mr.A.Hariharan



For R1& R2 : Mr.S.Dhayalan
Government Advocate
For R3 : No appearance
For R4 : Mr.K.K.Senthil

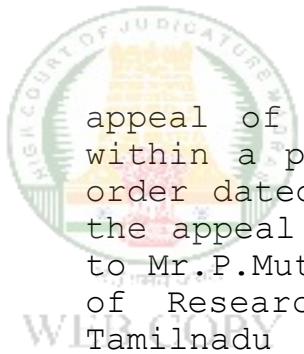
O R D E R

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1.The above Writ petition has been filed to call for the records relating to the impugned order of the second respondent in letter No.21842/D2/2006-14 dated 28.06.2011 and quash the same as illegal and direct the respondents 1 and 2 to include the name of the petitioner in the panel for the post of Research Officer for the year 1998-99 in appropriate place so as to promote the petitioner with retrospective effect from 23.09.1998 and consequently direct the respondents 1 and 2 to give notional promotion to the petitioner as Research Officer with effect from 23.09.1998 with all consequential service and monetary benefits.

2.It is submitted that the post of Research Officer of Archives as per G.O.Ms.No.10 Higher Education (D2) Department dated 28.01.2003 can be filled up by recruitment by transfer from the post of Research Assistant in Tamil Nadu Archives in the Tamil Nadu Ministerial Service or from any other service not lower in rank than Research Assistant, a Master Degree preferably post graduation in History or any other Social Sciences with flair for writing in English.

3.The case of the petitioner is that as on 23.09.1998, the education qualification of the third respondent namely M.Nallamuthu is plus two only, whereas the petitioner is having M.A.History. The third respondent was temporarily promoted as Research Officer, District Record Centre, Coimbatore on 23.09.1998. The learned counsel for the petitioner would submit that the said promotion was against the statute and the post of Research Officer of Tamil Nadu Archives is within the purview of the Tamil Nadu Public Service Commission, the fourth respondent. According to the petitioner, the Tamil Nadu Public Service Commission has not ratified the appointment of the third respondent as Research Officer as he did not possess the requisite qualification as per G.O.Ms.No.10 Higher Education (D2) Department, dated 28.01.2003. Against which, the petitioner preferred an appeal, dated 08.11.2005 before the second respondent. The Government, after thoroughly examining the petitioner's appeal, requested the first respondent to send a revised proposal to the Government to set right the anomaly. But, the first respondent, instead of following the direction of the second respondent and without sending a revised proposal, by his letter dated 17.03.2008, has stated that a supernumerary post may be created. Against which, the petitioner filed a writ petition in W.P (MD).No.9571 of 2008 before this Court and this Court, by an order dated 29.10.2008, directed the second respondent to consider the



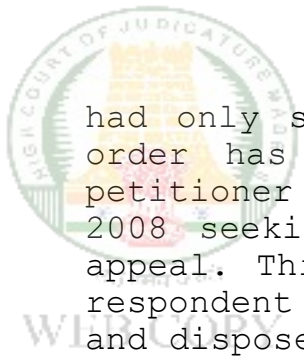
appeal of the petitioner, dated 08.11.2005 and dispose the same, within a period of three months. But, the second respondent by an order dated 28.06.2011, on the basis of the wrong note has rejected the appeal of the petitioner stating that Mr.M.Nallamuthu is senior to Mr.P.Muthukrishnan and he satisfied the qualification to the post of Research Officer, as per the existing Rules and that the Tamilnadu Public Service Commission has also ratified the post, since the post is within the purview of the Tamilnadu Public Service Commission and therefore, creation of supernumerary post in this regard is not required. Against which, the petitioner is before this Court.

4.The learned Government Advocate appearing for the respondents 1 and 2 has produced a letter of the Government, dated 20.01.2020 and submitted that the requisition of the petitioner is now under active consideration of the Government and that an appropriate order will be passed on the same at the earliest.

5.Heard the learned counsel appearing for the petitioner, learned Government Advocate appearing for the respondents 1 and 2 and the learned counsel appearing for the fourth respondent.

6.It is a settled principle of law that when the statute prescribes that a thing should be done in a particular manner, that thing should be done only in that manner and not otherwise. Here, in this case, though qualification had been prescribed for promotion to the post of Research Officer, that was not followed. It is not in dispute that on 23.09.1998, when the third respondent was promoted as Research Officer, he did not have the requisite qualification. It is also not in dispute that the third respondent's appointment was not approved by the Tamil Nadu Public Service Commission. When the petitioner was fully qualified for the post of Research Officer as on 23.09.1998, it is unfair on the part of the first respondent to have promoted the third respondent as Research Officer, as he did not possess the requisite qualification both educational and experience. The illegal promotion given to the third respondent as Research Officer against the statutory rules occupying the field on 23.09.1998, is a nullity in the eye of law and the same cannot be perpetuated by the impugned order.

7.A perusal of record shows that the petitioner had preferred an appeal dated 08.11.2005 before the 2nd respondent. As it was pending for a long time, the petitioner has filed W.P.(MD).No.2757 of 2007 before this Court seeking a direction to the 2nd respondent to dispose of the appeal dated 08.11.2005. This Court, by order dated 26.03.2007, directed the 2nd respondent to dispose of the appeal within a period of ten weeks. The 2nd respondent, by letter dated 29.01.2008, after examining the petitioner's appeal, had requested the 1st respondent to send a revised proposal to the Government to set-right the anomaly, but the 1st respondent, instead of sending a revised proposal, by their letter dated 17.03.2008,



had only suggested to create a supernumerary post. As the final order has not been passed in the appeal dated 08.11.2005, the petitioner has again filed a Writ petition in W.P(MD).No.9571 of 2008 seeking a direction to the 2nd respondent to dispose of the appeal. This Court, by order dated 29.10.2008, had directed the 2nd respondent to consider the appeal of the petitioner dated 08.11.2005 and dispose of the same within a period of three months, but instead of passing orders within three months, the 2nd respondent on 28.06.2011, on the basis of a wrong note, rejected the appeal of the petitioner stating that Mr.M.Nallamuthu is senior to Mr.P.Muthu Krishnan and he satisfied the qualification to the post of Research Officer as per existing rules and that the TNPSC has also ratified the same.

8. It is a settled principle of law that if there is conflict between equity and law, it is the law which must prevail. Equity can only supplement the law when there is a gap in it, but it cannot supplant the law. It is also equally settled principle of law that where a government servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give, he will not in law be deemed to have been validly appointed to the post or given the particular status. As rightly contended by the learned counsel for the petitioner, the post of Research Officer comes under the purview of the Tamil Nadu Public Service Commission and there can be no regularization against the Special Rules in G.O.Ms.No.10, Higher Education Department dated 28.01.2003 with retrospective effect from 11.03.1988 in respect of category III, namely Research Officer of Archives. Therefore, the promotion ought not to have been given to the third respondent as Research Officer. The second respondent, as the Appellate Authority ought to have set right the anomaly. But, without reference to the legal position, the second respondent has erroneously dismissed the appeal filed by the petitioner.

9. When a question as to the effect of a void order of confirmation arises for consideration, the Hon'ble Supreme Court in the Judgment reported in **AIR 1964 Supreme Court 521 (The State of Punjab Vs.Jagdir Singh and others)** has held as follows:

"8.The question then is as to the effect a void order of confirmation. When an order void on the ground that the authority which made it had no power to make it, it cannot give to any legal rights, and as suggested by the learned Advocate-General, any person could have challenged the status of the respondents Tahsildars by instituting proceedings for the issue of a writ of quo-warranto under Art.226 of the Constitution. Had such proceedings been taken, it would not have been possible for the respondents to justify their status as permanent Tahsildars and the High Court would have issued a writ of quo-warranto depriving the



respondents of their status as permanent Tahsildars. Now, where the Government itself realises that an order made by an authority under the Government is void, is it powerless to do anything in the matter? . Is it bound to give effect to a old order and treat as confirmed Tahsildars, persons who have no legal right to be treated as confirmed Tahsildars?. It is not open to the Government to treat the confirmation as void and notify the persons affected and the public a general of the fact of its having done so by issuing a notification of the kind it made on October 31, 1957?. In our opinion where a Government servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give he will not in law be deemed to have been validly appointed to the post or given the particular status. No doubt, the Government has used the expression 'de-confirming' in its notification which may be susceptible of the meaning that it purported to give an act which was therefore valid. We must, however, interpret the expression in the light of actual facts which led up to the notification. These facts clearly show that the so called confirmation by the Financial Commissioner of Pepsu was no confirmation at all and was thus invalid. In view of this, the notification of October 31, 1957 could be interpreted to mean that the Government did not accept the validity of the confirmation of the respondents and other persons who were confirmed as Tahsildars by the Financial Commissioner, Pepsu."

10. In the course of the arguments, learned counsel for the respondents would produce a letter dated 20.01.2020 and stated that the petitioner's request is now under active consideration by the Government and that an appropriate order will be passed on the same at the earliest.

11. It is a very unfortunate case, where the petitioner has been fighting from 23.09.1998 for his promotion which he is entitled as he has got all the requisite qualification both educational and experience to be promoted to the post of Research Officer. But, for reasons best known, in spite of orders from this Court in one way or other, the respondents had been rejecting the claim of the petitioner and the petitioner had been fighting for the same from 23.09.1998. At least, when the petitioner approached this Court and got an order in W.P(MD).No.9571 of 2008, dated 29.10.2008 for his appeal to be disposed of, the appeal ought to have been considered within the time stipulated, but on a wrong note, the appeal was belatedly dismissed on 23.09.1998. It is not known as to whether such mistake had occurred deliberately or not. Further, the second respondent has passed the impugned order, without even considering



his own order dated 29.01.2008, by which he has requested the first respondent to set right the anomaly.

12. In view of the above discussions, I am inclined to interfere with the impugned order and to direct the respondents to pass appropriate orders on the claim of the petitioner.

13. Accordingly, the order passed by the 2nd respondent dated 28.06.2011 is set aside. As the claim of the petitioner is under active consideration of the Government, the respondents are directed to pass appropriate orders on the claim of the petitioner and to provide necessary service and monetary benefits, within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS)

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Sub Assistant Registrar(CS)

To

1.The Principal Secretary/Commissioner
Office of the Commissioner of Archives
and Historical Research, Egmore ,
Chennai 600 008.

2.The Secretary to Government
Higher Education Department,
Fort.St.George, Chennai 600 009.

3.The Secretary,
Tamil Nadu Public Service Commission,
Chennai 600 006.

4.The Secretary to Government,
Personnel and Administrative Reforms Department,
Fort.St.George, Chennai 600 009.

+1 CC to M/s.S.DHAYALAN, Advocate (SR-3696[F] dated 29/01/2020)

+1 CC to M/s.R.VIJAYAKUMAR, Advocate (SR-2299[F] dated 22/01/2020)

+2 CC to M/s.A.HARIHARAN, Advocate (SR-3107[F] dated 27/01/2020)

+1 CC to M/s.SPL.GP (SR-3369[F] dated 28/01/2020)



+1 CC to M/s.K.K.SENTHIL, Advocate (SR-3513[F] dated 28/01/2020)

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