



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P. (MD) No.4073 of 2012

and

M.P(MD) .Nos.1 and 2 of 2012

K.Prema

... Petitioner

vs.

1.State of Tamil Nadu
Represented by its Secretary
Revenue Department
St.George Fort
Chennai - 09

2.The Commissioner
Survey and Settlement
Survey House
Chepauk, Chennai 600 005

3.The Regional Deputy Director
Survey and Land Records
Court Campus, Cantonment
Trichirappalli -1
Trichirappalli District

4.The Assistant Director
Survey and Land Records
Collectorate, IIIrd Floor
Trichirappalli - 1
Trichirappalli District

... 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 pertaining to the impugned order in Na.Ka.Gnal/24839/2011 (Ni.A), dated 14.09.2011 on the file of the respondent no.2 and quash the same as illegal and consequently to direct the respondent nos.1 and 2 to include the petitioner in the seniority list of the senior draftsman with seniority of the year 1995 in pursuance to the regularization of the petitioner in the post of Senior Draftsman with effect from 25.04.1995 vide the proceedings in Na.Ka.A2/12264/05, dated 25.04.2006 on the file of the respondent no.4 with consequential benefits.



For Petitioner : Mr.T.Lajapathi Roy

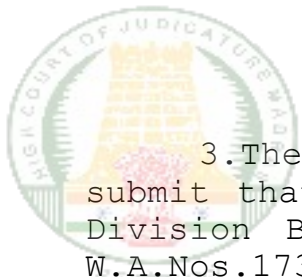
For Respondents : Mr.P.Kannidevan
Additional Government Pleader

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O R D E R

The Writ petition has been filed by the petitioner seeking for a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order in Na.Ka.Gna1/24839/2011 (Ni.A), dated 14.09.2011 on the file of the respondent no.2 and quash the same as illegal and consequently to direct the respondent nos.1 and 2 to include the petitioner in the seniority list of the senior draftsman with the seniority of the year 1995 in pursuance to the regularization of the petitioner in the post of Senior Draftsman with effect from 25.04.1995 vide the proceedings in Na.Ka.A2/12264/05, dated 25.04.2006 on the file of the respondent no.4.

2.According to the petitioner, she was considered for appointment to the post of Surveyor/Draftsman and was instructed to undergo Land Survey Training for three months from 01.03.1990. On 26.02.1990, on completion of the training, she was appointed by an order dated 12.07.1990. The petitioner's service was regularized with effect from 24.05.1993 by an order dated 04.04.2006 and she was promoted temporarily as Senior Draftsman on 25.08.1993, in which, her services were regularized with effect from 25.04.1995 vide order dated 25.04.2006. As per instruction by the fourth respondent, the petitioner has participated in Orathanadu Survey Training from 15.03.2002 to 11.04.2002 for 28 days. Subsequently, the petitioner was awarded Selection Grade in the post of Senior Draftsman with effect from 26.04.2005 vide order dated 06.06.2006. In this circumstance, on 14.09.2006, G.O.Ms.No.615 was issued where it has been stated that exempted the persons from undergoing the Survey training for 28 days who were appointed on consolidated pay as Surveyor-draftsman after 10.08.1983, who had undergone survey training for 90 days. The petitioner's name was excluded from the seniority list of senior draftsman as on 01.01.2007 giving reason that the petitioner had completed Orathanadu Survey Training in the year 2002 and therefore the petitioner's name wrongly included in the Seniority list of 1995 and she is placed only in the Seniority list with seniority of 25.04.2002, as per proceedings of the fourth respondent. Against which, the petitioner gave representations on 24.07.2007 and 23.01.2008 to the respondents 2 and 4 respectively, stating that already she had completed three months training at the time of appointment itself and pleaded for placing her seniority with effect from 25.04.1995 and the same was rejected by the second respondent by an impugned order dated 14.09.2011. Aggrieved against the same, the petitioner has filed the present Writ petition.

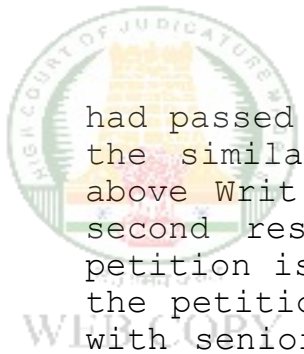


3.The learned counsel appearing for the petitioner would submit that the above issue is no longer *res integra*. The Hon'ble Division Bench of this Court by an order dated 22.01.2009 in W.A.Nos.173 and 174 of 2019 held that the order of the learned Judge does not warrant any interference, in which, paragraph No.5 reads as follows:

"5.The issue now is, when after completing their training, should the writ petitioners/respondents herein, be reverted back to the post of Land Records Draftsman. The learned Single Judge, rejected the arguments of the Government which contended that the promotion itself was bad and that therefore, the fact that they have cleared the training after becoming Senior Draftsman is immaterial. The learned Single Judge relied on similar cases in which the department has accepted the training undergone by a candidate after being promoted. The learned Single Judge has quoted extensively from the order dated 16.04.2018 passed in W.P.No.19206 of 2015. Even at the cost of repetition, the said portion is reproduced, in this order as well.

"10.Finally the learned Additional Advocate General would rely upon the decision of the Hon'ble Supreme Court of India reported in (2008) 7 SCC 153 in the case of Pramod Kumar Vs.U.P.Secondary Education Services Commission and others, wherein it has been held that illegality cannot be cured and only irregularity can be cured. According to the learned Additional Advocate General it was an illegal promotion granted to the petitioner and therefore, the same needed to be set right. Though the argument appears to be valid at threshold, however, if the same is examined in the facts and circumstances of the present case, it could be seen that the promotion of the petitioner was effected as early as 1984 and the only fact against the promotion of the petitioner was that the petitioner did not successfully undergo the Survey Training for 28 days. Such training is always a part of the Government service and the experience gained all these years by the Government servant is more than the knowledge acquired through the so called training that too for a short duration of 28 days. Completion of training in the circumstances of the case can only be construed as procedural formality. Therefore, this Court finds that the reliance placed by the learned Additional Advocate General on the judgement of the Hon'ble Supreme Court cannot be applied to the facts of the present case. (emphasis supplied)"

4.The above case is squarely applicable to the facts of the present case and for implementing the above relief, the Government



had passed G.O.(D1).No.578, dated 29.11.2019. The petitioner is also the similarly placed person like that of the respondents in the above Writ Appeals and therefore, the impugned order passed by the second respondent, dated 14.09.2011 is set aside and this Writ petition is allowed. The respondents 1 and 2 are directed to include the petitioner's name in the seniority list of the Senior Draftsman with seniority of the year 1995 in pursuance of the regularization of the petitioner in the post of Senior Draftsman with effect from 25.04.1995 vide proceedings in Na.Ka.A2/12264/05, dated 25.04.2006. The petitioner is entitled to all consequential benefits. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

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/ /2020

Sub Assistant Registrar(CS)

msa

To

- 1.The Secretary
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Revenue Department
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Collectorate, IIIrd Floor
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Trichirappalli District



+1 CC to M/s.SPL.GP (SR-3181[F] dated 27/01/2020)

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-3120[F] dated 27/01/2020

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