



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD) No.21146 of 2018

and W.M.P.(MD) No.18963 of 2018

(Through Video Conference)

T.Murugan

...Petitioner

Vs.

1) The Principal Secretary and Commissioner,
Land Survey and Settlement (Survey),
Chennai 5

2) The Director,
Land Survey and Settlement (Survey),
Chennai 5

3) The Regional Deputy Director,
Survey and Land Records,
Madurai 625 020

4) The Assistant Director (Additional Charge),
District Land Survey Office,
Nagercoil, Kanyakumari District.

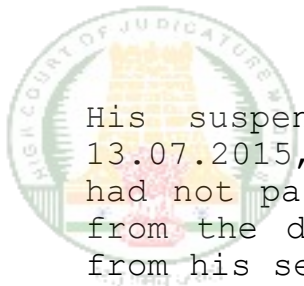
... Respondents

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.No.3/23297/18, (Ni.A) dated 11.09.2018 on the file of the respondent No.2 and quash the same as illegal and consequently to direct the respondent No.2 to reinstate the petitioner in service considering the petitioner's pass in the Departmental tests within the time frame stipulated by this Court.

For Petitioner : Mr.S.Louis
For Respondents : Mr.S.Dhayalan,
Government Advocate

O R D E R

The petitioner is a Draftsman under the respondent's Department, whose services were regularised with effect from 21.10.2009. By an order dated 30.08.2012, the petitioner was suspended from his services on the ground that he was involved in a criminal case registered in F.I.R.No.131 of 2012, dated 15.06.2012.



His suspension continued for a period of three years and on 13.07.2015, he was discharged from services on the ground that he had not passed the Departmental Test within a period of five years from the date of regularisation and therefore, he was discharged from his services.

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2. It is stated that subsequently, the petitioner was given an opportunity by the respondents to undertake the Departmental Tests and accordingly, the petitioner had also cleared the Departmental Tests. On 18.06.2018, when he had sought for reinstatement, the second respondent herein had passed the impugned order dated 11.09.2018 stating that though the petitioner has passed the Departmental Tests, he was involved in the criminal case in F.I.R.No.131 of 2012 and therefore, his request for reinstatement is not feasible. This impugned order of rejection dated 11.09.2018, is under challenge in the present writ petition.

3. The only ground on which the petitioner was originally suspended from service on 30.08.2012 is for his involvement in the criminal case registered in F.I.R.No.131 of 2012. Thereafter, through the order dated 13.07.2015, the petitioner was discharged from service stating that he had not passed the mandatory Departmental Tests, within a period of five years from the date of his regularisation. However, even though his services were discharged, in view of the relaxation extended by the respondents themselves, the petitioner had undertaken the Departmental Test and has also completed the same successfully.

4. While it is stated by the learned Government Advocate that the petitioner did not complete the Departmental Tests before five years, the learned counsel for the petitioner submitted that similarly placed Draftsmen, who had completed the required Departmental Test after a period of five years, were regularized into service. While that being so, the petitioner would also be entitled to be regularised in his services, in view of the relaxation granted by the respondent to take the Departmental Test after a period of five years.

5. I am not in agreement with the reasoning adopted by the respondents in discharging the petitioner from the service, through the impugned order. Originally, the petitioner herein was discharged from the service on 13.07.2015 on the ground that he had not passed the mandatory Departmental Tests within a period of five years from the date of his entry into service. However, the petitioner herein, along with similarly placed employees, were extended with an opportunity to complete the Departmental Tests and furnish the details of having completed such Tests to the fourth respondent, through his proceedings dated 06.09.2017. The petitioner herein, like similarly placed Draftsmen, had thereafter completed the Tests and sought for reinstatement into service. Since the petitioner's services were not considered in time, he had filed a writ petition before



this Court in W.P.(MD) No.13592 of 2018 and by an order, dated 26.06.2018, the respondents were directed to consider the case of the petitioner for reinstatement.

6. The second respondent herein, though had not disputed that the petitioner had completed the Departmental Tests and had not implicated him of not having completed the same within a period of five years, had chosen to discharge the petitioner's service by citing a totally new ground that the petitioner was involved in a criminal case. In other words, the reason, for which, the petitioner was originally discharged from service, which was subsequently taken up for reconsideration to such of the discharged employees, who had belatedly completed their Departmental Tests, has now been rejected on a different ground of his involvement in the criminal case.

7. The present impugned order, rejecting the petitioner's case for reinstatement, could be deemed as an order of discharge itself since a fresh reason has been assigned for the refusal. The cause of action for reconsideration of the petitioner's case for reinstatement arose when the respondents had taken a policy decision to give an opportunity to such of those employees, who were discharged from their services for failing to qualify in the Departmental Tests and who had subsequently qualified after the five year period. Therefore, the issue that was before the respondents when this Court had directed them to consider the petitioner's request for reinstatement, was as to whether the petitioner had availed an opportunity extended and passed the Departmental Tests or not. When the answer to the issue is in the affirmative, the second respondent had no other option but to reinstate the petitioner back into service. However, the second respondent has totally exceeded his jurisdiction in assigning a new reason of the petitioner's involvement in the criminal case and thereby had exceeded his authority. This rejection itself, is in the form of fresh order of discharge, which has been made without any prior opportunities to the petitioner to put forth his objections. As such, the impugned order itself cannot be sustained.

8. In the light of the above discussion, the impugned order made in Na.Ka.No.3/23297/18, (Ni.A) dated 11.09.2018 on the file of the respondent No.2 is quashed. Consequently, the respondents are directed to reinstate the petitioner herein and simultaneously place him under suspension in view of the earlier order of suspension dated 30.08.2012. In case, the petitioner is aggrieved against the suspension order, it is always open to him to make a request to the respondents for revocation of the suspension order. If in case, any representation of that nature is made, it is open to the respondents to consider it on its own merits and take a decision in accordance with law.

9. It is made clear that this Court has not expressed any of
<https://hcservices.courts.gov.in/hcservices/> regard to the petitioner's right to have the



suspension order revoked. Accordingly, the Writ Petition stands allowed. However, there shall be no order as to costs. Consequently, connected W.M.P. (MD) No.18963 of 2018 is closed.

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Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

- 1) The Principal Secretary and Commissioner,
Land Survey and Settlement (Survey),
Chennai 5
- 2) The Director,
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Chennai 5
- 3) The Regional Deputy Director,
Survey and Land Records,
Madurai 625 020
- 4) The Assistant Director (Additional Charge),
District Land Survey Office,
Nagercoil, Kanyakumari District.

+1 CC to M/s.GP (SR-2827[F] dated 02/02/2021)

+1 CC to M/s.S.LOUIS, Advocate (SR-2767[F] dated 02/02/2021)

W.P. (MD) No.21146 of 2018

01.02.2021

SMV (CO)

KK (23.03.2021) 4P 7C

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