



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.14328 of 2010

M.Munusamy

... Petitioner

Versus

1. The Commissioner and Director of
Survey and Settlement,
Chepauk, Chennai - 600 005.

2. The Additional Director of
Survey and Land Records,
Chepauk, Chennai - 600 005.

3. The Assistant Director of Survey
and Land Records, Vellore - 9.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the order in R.C.No: A3/8520/08(2), dated 29.05.2009 of the 3rd respondent and the consequential order in memo No: O.Mu: A3/3170/09, dated 17.07.2009 of the second respondent and quash the same and to direct the respondents to issue orders promoting the petitioner with retrospective effect to the post of Firka Surveyor w.e.f 30.11.1987 and Sub-Inspector of Survey w.e.f. 21.06.1991 in furtherance of the order in T.A.No:1 of 1993, dated 24.05.1996 and in pursuance of the regularization of the service of the petitioner in the post of Field Surveyor w.e.f 01.03.1984 with all attendant and consequential benefits.

For Petitioner : Mr.R.Muthukkannu

For Respondents: Mr.Alagu Gowtham, Govt.
R1 to R3 Government Advocate



ORDER

This Writ Petition is filed by the petitioner challenging the impugned orders of the respondents, dated 29.05.2009 and 17.07.2009 whereby retrospective promotion requested by the petitioner was rejected and as a consequential relief, the petitioner prays that he has to be promoted as Firka Surveyor with effect from 13.11.1987 i.e., from the date of promotion of his immediate junior and to be granted the further promotion and benefits.

2. The facts of this case are as follows:-

The petitioner was appointed as a Surveyor/Draftsman on a consolidated pay with effect from 12.03.1983. Thereafter, with effect from 01.03.1984, he was absorbed in Time Scale of Pay. However, again, by an order, dated 08.07.1985, the petitioner was reverted to consolidated pay. Therefore, the petitioner along with similarly situated persons, approached this Court, by way of W.P.No.7644 of 1985 and an interim stay was granted. When the above Writ Petition was pending consideration, the Government by G.O.Ms.No.626, Revenue Department, dated 16.04.1990, regularised the services of such Surveyor/Draftsman with effect from 01.03.1984 and the petitioner's name was also included in the said Government Order. However, because there was an order of stay and the matter was pending, the consequential individual orders granting the benefits to the petitioner were not passed.

3. While so, on account of the constitution of Tamil Nadu Administrative Tribunal, the Writ Petition filed by the petitioner was transferred to the Tamil Nadu Administrative Tribunal and taken on file as T.A.No.1 of 1993 and by an order, dated 24.05.1996, the said Transfer Application came to be disposed of by the Tamil Nadu Administrative Tribunal. The Tribunal took note of the fact that subsequently the Government itself, on its own volition, has regularised all these Draftsmen including the petitioner and consequential promotion has also been granted to the juniors of the petitioner. Only because the petitioner and eight other persons were in Court and there was an interim order in force, consequential orders were not passed. Under these circumstances, the Tribunal allowed the Transfer Application on the following terms:-

"We direct the respondents to pass orders pursuant to the G.Os. referred to above promoting the aforesaid nine persons from the dates their juniors were included in the



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said G.Os. and promoted with all attendant and consequential benefits of seniority, pay and allowance within two months from the date of issue of this order or a copy thereof. T.A.No.1/93 is allowed to the extent mentioned above. No order as to costs".

4. Pursuant thereto, an order, dated 27.10.1997 was passed regularising the petitioner with effect from 01.03.1984. Thereafter, by an order, dated 10.12.1997, the petitioner was also granted Selection Grade, upon expiry of ten years of service i.e., with effect from 01.03.1994. However, citing certain Review Applications, being filed in respect of the said Original Application etc., an order was passed by the second respondent on 26.08.1999 doubting as to how the petitioner could be regularised or granted Selection Grade. Thereafter, by another order, dated 23.09.1999, it was held that the grant of regularisation and the Selection Grade was erroneous. The petitioner once again challenged both the said orders before this Court by way of W.P.No.27453 of 2005.

5. This Court found that relief has been categorically granted to the petitioner by Tamil Nadu Administrative Tribunal in T.A.No.1 of 1993. A Review Application filed in R.A.No.127 of 2002 has already been dismissed. No other review or any order reversing judgment from the High Court was there and therefore, after holding so, this Court set aside both the orders and directed the respondents to implement the order of the Tribunal as it stood.

6. Thereafter an order was passed on 22.02.2007 by the first respondent directing the third respondent to implement the order of this Court in the said W.P.No.27453 of 2006. However even though regularisation was granted with effect from 01.03.1984, the consequential promotion was not granted inspite of repeated representations. As a matter of fact, in a subsequent order, dated 29.01.2009, while the petitioner's name was shown at S.No.282, again doubt was expressed as to the date of his regularisation pursuant to the order of the Tribunal. Thereafter, when the petitioner pointed out the specific case of his junior, namely, D.Ragukumar and requested promotion as Firka Surveyor with effect from 13.11.1987 with effect from the date of promotion of said person, the same was rejected by the impugned order dated 29.05.2009 and thereafter by another order dated 17.07.2009. Impugning the said two orders, the present Writ Petition is filed before this Court. The petitioner prays



that the Writ Petition should be allowed and he should be granted the benefits.

7. The respondents are contesting the case by filing a detailed counter affidavit. As per their counter affidavit, even though the petitioner succeeded in his Original Application, as per the direction of the Tribunal, the regularisation has been granted. However, for the purpose of grant of further promotion, there is yet another collateral proceeding whereunder the Tamil Nadu Administrative Tribunal, in O.A.No.199 of 1990, has held that apart from the regularisation, the inter se seniority among all those Draftsmen should be firstly by following the date of their consolidated appointment and secondly, by following the rule of reservation. Therefore, while implementing the order by following the rule of reservation as well as the inter se seniority with reference to the date of consolidated appointment, the petitioner's seniority was re-fixed at S.No.282 and his date of initial regularisation was taken as 26.08.1991 and therefore he is not eligible for the consequential promotion which he is praying for.

8. Heard Mr.R.Muthukkannu, learned Counsel for the petitioner and Mr.Alagu Gowtham, learned Government Advocate for the respondents. The learned Counsel for the petitioner took this Court through the earlier orders of the Tribunal and this Court and the connected order passed by the Tribunal and the impugned communications and would submit that this is a simple case where he has got a categorical and clear cut order by the Tribunal which directed that he should be regularised with effect from 01.03.1984 and he should be granted the consequential promotion which is granted to his juniors. The above decision was once again re-agitated and this Court in W.P.No.27453 of 2005 again for the second time categorically directed the respondents to implement the order of the Tribunal. But, while implementing connected order, to which the petitioner is not a party, the respondents cannot artificially postpone or give another date of presumptive regularisation and determine his promotion on such date.

9. Per contra, the learned Government Advocate would submit that it is not a simple case of date of regularisation alone which has to be taken into account. Once the subsequent order in O.A.No.199 of 1990 directs the fixation of seniority in a different manner i.e., by taking into account their inter se seniority with reference to their original appointment on consolidated pay and also by implementing the rule of reservation, the authorities have not done any error except to



re-work seniority in accordance with later direction and therefore, as per the re-working, the seniority position of the petitioner is at S.No.228, while the case of the immediate junior is shown in S.No.94 and therefore, the petitioner cannot claim any parity with that of said person and therefore, there is no merit in this Writ Petition and hence prays to dismiss the Writ Petition.

10. I have considered the rival submissions made on behalf of both the sides and gone through the material records of the case. I am unable to accept the stand taken by the respondents in this case for the reason that the petitioner's right got crystallised by two judgments inter-parties, namely by the order of the Tribunal in T.A.No.1 of 1993 and W.P.No.27453 of 2005. Therefore, when the right of the petitioner got crystallised by these two Judgment in respect of two aspects, (i) the petitioner should be regularised with effect from 01.03.1984; & (ii) he should be granted promotion from the date of promotion of his immediate junior. Now re-working his date of regularisation as 26.08.1991 for any reason is impermissible and will go contrary to the judgments referred above. This apart, when the petitioner is not a party in O.A.No.199 of 1990 and the other litigations, the said judgment cannot be relied upon so as to affect the rights of the petitioner which got crystallised in the litigations filed by him. Therefore, the stand taken by the respondents is incorrect and is unsustainable.

11. At the same time, a perusal of the order, dated 29.01.2009 of the third respondent, fixing the initial date of regularisation and fixing the Time Scale of Pay as per the judgment in O.A.No.199 of 1990, it can be seen that while the petitioner was regularised with effect from 01.03.1984, the seniority position is re-fixed by implementing the communal rotation and other horizontal reservations and based on the orders fixing the communal rotations, initial date of regularisation is notionally re-fixed rather it is mentioned as presumptive date as 26.08.1991 based on which the impugned orders are passed. The said order of the Tribunal in O.A. No. 199 of 1990 is extracted in entirety as follows:-

"With reference to orders in G.O.Ms.No.910 C.T.&R.E. Department Dated 10-8-83 for absorption of Surveyors appointed on a consolidated pay in the regular cadre vacancies of surveyors on a temporary basis till the recruitment for the post is made by the Tamil Nadu Public Service Commission, the Director of Survey and Land Records had,



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in his orders in Ref.No.A1/19555/89, dated 30-11-89 appointed certain persons 29 in number. The applicants' contention is that the respondents 3 to 9 are juniors to the applicants but they have been promoted on the basis that 30% of the vacancies shall be reserved for woman, according to the orders in G.O.Ms.No.89, P.&.A.R. dated 17-2-89. The applicant's contention that this reservation applies to vacancies filled up by direct recruitment and in the present case the applicants are being appointed within the department having been appointed on a consolidated pay earlier and therefore the appointment is made by promotion.

It is seen in the Government orders dated 10-8-83 that the post of surveyors are within the purview of the Tamil Nadu Public Service Commission and the appointment of persons already in the department on a consolidated pay in the regular vacancies is only on a temporary basis. Thus, in effect means that pending filling up of the post by direct recruitment the vacancies are being filled up by appointment of departmental personnel. The fact that such would make them any less departmental personnel and therefore would be justified because when the posts are to be filled up regularly through the Tamil Nadu Public Service Commission, appointment of departmental candidates would not be by way of direct recruitment. There are other cases such as Junior Assistants which posts are normally filled up by recruitment through the Tamil Nadu Public Service Commission but department personnel such as Record Clerks can be promoted temporarily and even on a regular basis.

The Government have not agreed to the suggestion of the Director that the persons appointed on a consolidated pay may be permitted to man the posts of sub-Inspectors of Survey and Senior Draftsman by promotion. But this has no bearing as far as appointment to the post of Surveyor/Draftsman are concerned. The



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persons are working on a consolidated pay and only terms of service are being varied, though on a temporary basis. For this reason we direct that as far as the temporary appointment are concerned only the seniority among the persons on a consolidated pay with reference to the date of their appointment would be relevant. In fairneer, when a category employed on a temporary basis is sought to be given better terms, that should be viewed as a fresh appointment. Therefore, we direct that the temporary appointment in the time scale of pay in accordance with the orders in G.O.Ms.No.910 C.T.&.R.E. Dated 10-8-83 may be strictly in accordance with the seniority among the personnel on a consolidated pay. Accordingly, the orders issued in Ref.No.A1/19555/89, dated 30-11-89 of the Assistant Director of Survey, Cuddalore are set aside."

12. Therefore, on a perusal of the above Order, it can never be said that the order of the Tribunal in O.A.No.199 of 1990 can have the effect of postponing the regularisation which is granted by the Government or by the order of the Tribunal in T.A.No.1 of 1993 and this Court in W.P.No.27453 of 2005. Therefore, the contention of the respondents in this regard is without any merits. When the rights of the petitioner got crystalised in the judgment inter-parties, the same has to be implemented in letter and spirit. Therefore, the petitioner shall be deemed to be regularised in service with effect from 01.03.1984 for all purposes. Taking the said date as the date of his regularisation, he is entitled for promotion to the next higher post of Firka Surveyor from the date of promotion of his immediate junior i.e., with effect from 30.11.1987 and Sub-Inspector of Survey with effect from 21.06.1991.

13. Therefore, the present Writ Petition is allowed on the following terms:-

(a) The impugned orders of the third respondent, dated 29.05.2009 and the second respondent, dated 17.07.2009 are quashed;

(b) Since the petitioner has superannuated pending the disposal of the Writ Petition, the respondents are directed to notionally grant promotion to the petitioner to the post of Firka Surveyor with effect from 30.11.1987 and Sub-Inspector of



Survey with effect from 21.06.1991 and accordingly, re-fix his last drawn pay and retiral benefits and pay of the arrears of retiral benefits and pension to the petitioner;

(c) The petitioner will not be entitled to back-wages during the period of service. The petitioner will not also be entitled for any interest on the arrears.

(d) The respondents shall complete exercise of grant of notional promotion and granting of the arrears of retiral benefits and pension within a period of two months from the date of receipt of copy of this order. No costs.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

1. The Commissioner and Director of
Survey and Settlement,
Chepauk, Chennai - 600 005.
2. The Additional Director of
Survey and Land Records,
Chepauk, Chennai - 600 005.
3. The Assistant Director of Survey
and Land Records, Vellore - 9.

+1cc to the Government Pleader Sr.25937
+1cc to Mr.R.Muthukkannu, Advocate Sr.25433

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