



WEB COPY

W.P.No.5982 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.5982 of 2018
and
W.M.P.No.7364 of 2018

R.Revathi

...Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by Secretary to Government,
Revenue Department,
Secretariat, Chennai-9.
2. The Commissioner of Survey & Land Records,
Chepauk, Chennai-5.
3. The Assistant Director of Survey (Incharge)
& Land Records,
Krishnagiri District, Krishnagiri.

...Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records on the file of the First Respondent pertaining to G.O.(ID) No.9 Revenue (L.S.4 (1)) Department dated 11.01.2017 and consequent order of the Third Respondent issued in Na.Ka. D.1.4049/ 2015 dated 28.02.2017 and quash the same and to direct the Respondents herein to reinstate the petitioner as



Draughtsman with continuity of service by passing appropriate orders or in the alternative to appoint the petitioner herein in the post of Field Assistant or Office Assistant with effect from the date of the petitioner initial appointment as Draughtsman i.e 04/03/2011 FN with continuity of service and without back wages for the period of termination by posting Petitioner in an existing vacancy or in a supernumerary post by passing appropriate orders with all consequential benefits within a limited time frame.

For Petitioner : Mr.J.R.Sushill Raj Kumar

For Respondents : Mr.D.Gopal
Government Advocate

ORDER

The order of removal from service dated 28.02.2017 is sought to be quashed in the present writ petition.

2. The petitioner was appointed as Draughtsman on compassionate grounds on 04.03.2011 at District Land Survey Records Office, Krishnagiri. The services of the writ petitioner was regularised with effect from 04.03.2011 in accordance with the G.O.(3D)No.140 Revenue dated 25.08.2015. The petitioner has to pass the requisite Departmental Tests within a period of five years from the the date of initial appointment, as per



Rule 26(b)(ii) of the Tamil Nadu State and Subordinate Service Rules and as per Section 31(2) and Section 33 of the Tamil Nadu Government Servants (Service Conditions) Act, 2016. Thus, it is a statutory requirement to pass the requisite Departmental Tests within a period of five years from the date of appointment.

3. The learned counsel for the petitioner states that the petitioner cleared three Tests and in respect of other Tests, she appeared but the results were invalidated since there were allegations of malpractices on her, during the Departmental Tests. Consequently, the petitioner was debarred from appearing in the Departmental Tests for a period of three years. The allegation of malpractices is under enquiry and no final decision was taken by the competent authorities. Thus, the petitioner had not passed the requisite Departmental Tests within a period of three years. In view of the fact that the petitioner has not completed the test, the respondents invoked Section 31(2) and 33 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and remove the petitioner from services.

4. The learned counsel for the petitioner reiterated that in the event of



declaring the results, the petitioner would be qualified. However, such a contention is hypothetical and if at all the petitioner was exonerated from the allegations of malpractices in the Departmental Tests and she was declared passed, thereafter she may submit appropriate representation to the competent authority for the purpose of reconsidering the decisions taken by the competent authority. However, as of now, the petitioner has not completed the requisite Departmental Tests and she was removed from service in the year 2017 and thereafter this Court cannot consider the results of the enquiry, which is yet to be finalised. In respect of certain future decisions, relief cannot be considered in the present writ petition.

5. The learned counsel for the petitioner reiterated that similarly placed persons are still continuing in the Department. The Government is not implementing the statutory provisions strictly and they are showing favouritism and nepotism in many number of cases and allowing the unqualified employees to continue in service. While so, the petitioner also must be allowed to continue in service.

6. This Court is of the considered opinion that any illegality cannot be



a ground to claim equality under Article 14 of the Constitution of India. The similarity is to be considered only with reference to the principles of legality and Courts would not follow the illegal or irregular decisions contrary to law, if taken by the authorities or even by the Courts.

7. The principles in this regard are considered by the Division Bench of this Court in the case of ***The Director of Sericulture Department Vs. K.Kumar*** reported in ***2015(4) CTC 241***, and its paragraphs 34, 35 and 41 is extracted hereunder:

“34. It is true that consistency helps the parties to a litigation to know where they stand. But, when it is brought to the notice of the Court that on most of the earlier occasions, several similarly placed employees obtained Orders at the stage of admission, on the ground that the issue is already covered by a decision of this Court and that it was only in this manner that several employees got a benefit that was not legitimately due to them, the Court cannot shut its eyes and choose to prefer maintenance of discipline rather than upholding public interest.

*35. As a matter of fact, the greatness of the Court lies only in its courage and ability to correct its mistakes. Justice is more precious than discipline. This was the principle that the Supreme Court highlighted in ***A.R. Antulay v. R.S.****



Nayak, AIR 1988 SC 1531. It was observed in the said decision that "in rectifying an error, no personal inhibitions should debar the Court because no person should suffer by reason of any mistake of the Court." The Supreme Court focused on the elementary rule of justice that no party should suffer due to the mistake of the Court. Therefore, this Court should not feel shackled either by the rules of procedure or by the principles of propriety, when it is so glaring that a gross injustice has been done to the State (1) by Writ Petitions getting allowed at the stage of admission, and (2) by getting those Orders implemented under threat of contempt. This is especially so when the earliest decision that was followed in all other cases, did not decide the Scale of Pay to be granted for Selection and Special Grades. Hence, the Second Contention of the Writ Petitioners is also liable to be rejected.

....

*41. In **Union of India v. Kartick Chandra Mondal**, 2010 (1) LLN 687 (SC) : 2010 (2) SCC 422, the Supreme Court, relying upon its previous decisions in various cases including the one in **State of Bihar v. Upendra Narayan Singh**, 2009 (2) LLN 754 (SC): 2009 (5) SCC 69, held that Article 14 is a positive concept and that it cannot be enforced in a negative manner. The Court further held that if an illegality or irregularity has been committed in favour of any individual or a group of individuals or a wrong Order has*



*been passed by a Judicial Forum, others cannot invoke the jurisdiction of the higher or superior Court for repeating or multiplying the same irregularity or illegality or for passing a wrong Order. Interestingly, the decision of the Supreme Court in **Kartick Chandra Mondal** was subsequent to the decision in **Maharaj Krishan Bhatt** and the decision in **Maharaj Krishan Bhatt** is also referred to in **Kartick Chandra Mondal**.”*

8. The supreme Court of India in the case of **Basawaraj and other Vs. Special Land Acquisitions Officer**, reported in **2013 (14) SCC 81** held in unequivocal terms that *"It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity*



WEB COPY

has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible"

9. The learned counsel for the petitioner made a submission that similarly placed persons like the petitioner who have not completed the Departmental Tests within a period of five years from the date of initial appointment are allowed to continue in the Departments and no action has been taken. If at all, the statement is true, then it is the failure on the part of the competent authorities to implement the provisions of the Act and Rules. Such failures on the part of the competent authorities are also a misconduct or offence on the part of the higher officials. Thus, the government has to initiate all appropriate actions against the competent authorities who have committed omissions and commissions on account of favouritism, nepotism



or due to corrupt activities, by not initiating appropriate action in accordance with the law.

WEB COPY

10. Every authority of the Government is expected to act in accordance with law and initiate appropriate actions wherever there is illegality, irregularity or otherwise. Thus, if any unqualified persons are allowed to continue in service based on favouritisms or due to corrupt activities, then serious actions are warranted and in this regard. The first respondent has to get detailed report from the competent authorities concerned, across state of Tamil Nadu and initiate appropriate actions against the unqualified persons, if at all, continuing in service in violation of the provisions of the Act and Rules in force.

11. As far as the case of the writ petitioner is concerned, she had not completed the Departmental Tests within a period of five years from the the date of initial appointment. An allegation of malpractices are initiated against the writ petitioner which is pending. Thus, the results are invalidated. Therefore, the petitioner is at liberty to pursue the remedy if at all she was exonerated from the allegation of malpractices and she was



declared passed in the Departmental Tests in which she had appeared within the period of five years from the the date of initial appointment.

WEB COPY

12. In respect of the other similarly placed persons, the first respondent is directed to initiate appropriate actions and issue directions to the subordinate authorities for initiation of further actions in the manner known to law.

13. With these directions, this writ petition stands **dismissed**. No costs. Consequently, connected miscellaneous petition is closed.

19.10.2022

Index : Yes
Speaking order
sha

To

1. The Secretary to Government,
State of Tamil Nadu,
Revenue Department,
Secretariat, Chennai-9.
2. The Commissioner of Survey & Land Records,
Chepauk, Chennai-5.

10/12



3. The Assistant Director of Survey (Incharge)
& Land Records,
Krishnagiri District, Krishnagiri.

WEB COPY

W.P.No.5982 of 2





WEB COPY



W.P.No.5982 of 2

S.M.SUBRAMANIAM, J.

sha

W.P.No.5982 of 2018

19.10.2022