



W.A.(MD)No.857 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.08.2022

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**
and
THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.A(MD)No.857 of 2022
and
C.M.P.(MD)No.7093 of 2022

- 1.The Secretary to Government,
Municipal Administration and
Water Supply Department
Fort St.George, Chennai.
- 2.The Commissioner,
Municipal Administration,
Chepauk, Chennai.
- 3.The Commissioner,
Thoothukudi City Municipal Corporation,
Thoothukudi.

... Appellants

Vs.

M.Saravanan

... Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent to set aside the order, dated 31.01.2022 made in W.P.(MD)No.9143 of 2021.

For Appellants :Mr.S.P.Maharajan

For Respondent :Mr.N.Dilip Kumar



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JUDGMENT

(Judgment of the Court was delivered by **S.S.SUNDAR, J.**)

This Writ Appeal is directed against the order of Writ Court allowing a Writ Petition filed by the respondent herein in W.P.(MD)No. 9143 of 2021.

2.Heard Mr.S.P.Maharajan, learned Special Government Pleader appearing for the appellants and Mr.N.Dilip Kumar, learned Counsel, who takes notice on behalf of the respondent. By consent of both parties, the present Writ Appeal is taken up for final disposal at admission stage.

Brief facts that are necessary for the disposal of this Writ Appeal are as follows:

3.The Writ Petitioner/respondent was working as Junior Engineer in the appellants department. The Writ Petitioner was entitled to get promotion as Assistant Executive Engineer, whose name was also added in the promotional panel, which was prepared on 05.04.2013. As per the promotional panel, the Writ Petitioner is the senior most person. However, the promotion was not effected even though there was vacancy on account of an order of stay obtained on 12.04.2013 in W.P.(MD)No. 5932 of 2013. It is admitted before this Court that in view of the



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pendency of the Writ Petition and the interim order, the Writ Petitioner was not promoted. It is admitted that the Writ Petition filed in W.P.(MD)No.5932 of 2013 challenging the promotional panel, dated 05.04.2013 was dismissed as withdrawn, subsequently.

4.A representation was made by the Writ Petitioner to give effect to the promotion with effect from 05.04.2013 by promoting him with effect from 05.04.2013. By order impugned in the Writ Petition vide G.O.Ms.No.9, Municipal Administration and Water Supply Department, dated 18.01.2021, the Writ Petitioner's request was rejected and the Writ Petitioner was given promotion as Assistant Executive Engineer with effect from 12.10.2020.

5.Challenging the same, the Writ Petitioner/respondent approached this Court for issuing a Writ of Certiorari Mandamus to quash the impugned order passed vide G.O.Ms.No.9, Municipal Administration and Water Supply Department, dated 18.01.2021 and to set aside the portion giving effect to the appointment by way of promotion as Assistant Executive Engineer post from 12.10.2020.

6.Before the learned Single Judge, the Writ Petitioner gave up monetary benefits, that may be follow by re-fixing the seniority in the



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post of Assistant Executive Engineer with effect from 05.04.2013. Hence, the prayer was also conceded by the learned Special Government Pleader appearing for the respondents before the Writ Court. On the basis of the concession of learned Special Government Pleader, the Writ Petition was allowed with a direction to the appellants herein to treat the Writ Petitioner's promotion as Assistant Executive Engineer with effect from 05.04.2013 for all other benefits except the monetary benefits. Challenging the same, the above Writ Appeal is filed.

7.The learned Special Government Pleader appearing for the appellants relied upon a judgment of Honourable Supreme Court in the case of ***Director of Elementary Education, Odisha and others vs Pramod Kumar Sahoo***, reported in ***(2019) 10 SCC 674***, wherein, it is held as follows:

“11.The concession given by the learned State Counsel before the Tribunal was a concession in law and contrary to the statutory rules. Such concession is not binding on the State for the reason that there cannot be any estoppel against law. The rules provide for a specific grade of pay, the concession given by the learned State Counsel before the Tribunal is not binding on the appellant.”

8.Relying upon the said judgment, the learned Special Government Pleader states that the concession made by the learned Special Government Pleader before the Writ Court is contrary to the



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statutory rules. In other words, it is submitted that granting promotion with retrospective effect is not authorised by any rules.

9.This Court is not inclined to dismiss this Writ Appeal merely on the ground that the appeal is not maintainable, in view of the concession made by the learned Special Government Pleader before the Writ Court. The facts in this case are not in dispute. The learned Special Government Pleader appearing for the appellants also admitted the position that the Writ Petition in W.P.(MD)No.5932 of 2013 was filed by a person, who had no *locus standi* to question the promotional panel of the Writ Petitioner. It is also not in dispute that the Writ Petitioner would have been promoted with effect from 05.04.2013, but for the interim order granted in WP(MD)No.5932 of 2013. Therefore, the Writ Petitioner was deprived of his promotion by order of this Court in a Writ Petition filed by a person, who had no *locus standi* to question the promotional panel. The Writ Petition was later dismissed.

10.Citing the facts, which are not in dispute, the learned Counsel the respondent relied upon a judgment of Honourable Supreme Court in the case of ***Amarjeet Singh and others vs Devi Ratan and others***, reported in ***(2010) 1 SCC 417***, wherein, after referring to various judgments of Honourable Supreme Court, it was held that the



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law permits promotion with retrospective effect only in exceptional circumstances, when there has been legal impediment in making the promotions, like an intervention by the Court. It is useful to refer to the principles reiterated by Hon'ble Supreme Court in other cases and followed by the Honourable Supreme Court in the said judgment as seen from paragraphs 17 to 27, which reads as follows:

“17.No litigant can derive any benefit from mere pendency of case in a Court of Law, as the interim order always merges in the final order to be passed in the case and if the writ petition is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of his own wrongs by getting interim order and thereafter blame the Court. The fact that the writ is found, ultimately, devoid of any merit, shows that a frivolous writ petition had been filed. The maxim "Actus Curiae neminem gravabit", which means that the act of the Court shall prejudice no-one, becomes applicable in such a case. In such a fact situation the Court is under an obligation to undo the wrong done to a party by the act of the Court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralised, as institution of litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the Court. (Vide Shiv Shankar & Ors. Vs. Board of Directors, Uttar Pradesh State Road Transport Corporation & Anr., 1995 Suppl. (2) SCC 726; M/s. GTC Industries Ltd. Vs. Union of India & Ors., AIR 1998 SC 1566; and Jaipur Municipal Corporation Vs. C.L. Mishra, (2005) 8 SCC423).

18.In Ram Krishna Verma & Ors. Vs. State of U.P. & Ors., AIR 1992 SC 1888 this Court examined the similar issue while placing reliance upon its earlier judgment in Grindlays Bank Limited Vs. Income Tax Officer, Calcutta & Ors., AIR 1980 SC 656 and held that no person can suffer from the act of the Court and in case an interim order has been passed and petitioner takes advantage thereof and ultimately the petition is found to be without any merit and is dismissed, the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralized.



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19. In *Mahadeo Savlaram Sheke & Ors. Vs. Pune Municipal Corporation & Anr.*, (1995) 3 SCC 33, this Court observed that while granting the interim relief, the Court in exercise of its discretionary power should also adopt the procedure of calling upon the plaintiff to file a bond to the satisfaction of the Court that in the event of his failing in the suit to obtain the relief asked for in the plaint, he would adequately compensate the defendant for the loss ensued due to the order of injunction granted in favour of the plaintiff. Even otherwise the Court while exercising its equity jurisdiction in granting injunction is also competent to grant adequate compensation to mitigate the damages caused to the defendant by grant of injunction. The pecuniary award of damages is consequential to the adjudication of the dispute and the result therein is incidental to the determination of the case by the Court. The Court can do so in exercise of its inherent jurisdiction in doing *ex debito justitiae* mitigating the damage suffered by the defendant by the act of the Court in granting injunction restraining the defendant from proceeding with the action complained of in the suit. Such a procedure is necessary as a check on abuse of the process of the Court and adequately compensate the damages or injury suffered by the defendant by act of the Court at the behest of the plaintiff.

20. In *South Eastern Coalfields Ltd. Vs. State of M.P. & Ors.*, AIR 2003 SC 4482, this Court examined this issue in detail and held that no one shall suffer by an act of the Court. The factor attracting applicability of restitution is not the act of the court being wrongful or a mistake or error committed by the court; the test is whether on account of an act of the party persuading the court to pass an order held at the end as not sustainable, has resulted in one party gaining an advantage it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the court and the act of such party. There is nothing wrong in the parties demanding being placed in the same position in which they would have been had the court not intervened by its interim order when at the end of the proceedings the court pronounces its judicial verdict which does not match with and countenance its own interim verdict. The injury, if any, caused by the act of the court shall be undone and the gain which the party would have earned unless it was interdicted by the order of the court would be restored to or conferred on the party by suitably commanding the party liable to do so. Any opinion to the contrary would lead to unjust if not disastrous consequences.

21. The Court further held :



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".....Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel encouraged to approach the courts, persuading the court to pass interlocutory orders favourable to them by making out a prima facie case when the issues are earlier to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated....."

22. Similarly in *Karnataka Rare Earth & Anr. Vs. Senior Geologist, Department of Mines & Geology & Anr.*, (2004) 2 SCC 783, a similar view has been reiterated by this Court observing that the party who succeeds ultimately is to be placed in the same position in which they would have been if the Court would not have passed an interim order.

23. In *Dr. A.R. Sircar Vs. State of U.P. & Ors.*, (1993) Supp. 2 SCC 734, the dispute arose regarding the seniority of direct recruits and promotees on the post of Professor of Medicine in a medical college. The appellant therein faced the selection process for direct appointment along with the respondents who had been working on the said post on ad hoc basis. The appellant was duly selected, however, the private respondents could not succeed. The respondents filed the writ petition before the High Court and precluded the appointment of appellant pursuant to his selection, by obtaining the interim order and on the other hand they got their ad hoc promotion to the post regularized under the rules. The appellant could succeed in obtaining the appointment only after dismissal of the writ petition against him after several years of his selection. This Court held that in addition to the relief under the statutory provisions the appellant was entitled in equity to get the seniority over the respondents as they succeed in precluding his appointment to the post by obtaining an interim order in a case having no merits whatsoever.

24. *Arya Nagar Inter College & Anr. Vs. Sree Kumar Tiwari & Anr.*, AIR 1997 SC 3071, the services of the respondent therein were terminated, however, he continued to be in service on the



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basis of interim order passed by the High Court in the writ petition filed by him. During the pendency of the writ petition, the rules for regularization of ad hoc appointees were amended and in pursuance thereof his services also stood regularized. Ultimately, the writ petition filed by the respondent was dismissed. This Court held that his continuity in service and regularization had to be understood as it was subject to the result of the writ petition. As the writ petition was dismissed the order of regularising of his services, passed during the pendency of the writ petition, became inoperative.

25. In view of the above, the appellants are entitled for the relief purely on equitable grounds without going into any other legal issue and appeals deserve to be allowed and the seniority list quashed by the High Court has to be restored.

26. There is another aspect of the matter. The appellants and the respondents have been considered by the DPC held on 19.12.1998 to fill up 42 vacancies under the unamended rules. However, at the cost of repetition, it may be pertinent to mention here that only 30 candidates/appellants were found suitable by the DPC held on 19.12.1998 and had been promoted, under the unamended Rules on the criterion of "merit". The respondents had been promoted under the amended rules by carrying forward 12 vacancies, by another DPC held subsequently on 22.1.1999 on different criterion, i.e., "Seniority subject to rejection being unfit". Indisputably, these 12 officers/respondents were found unsuitable for promotion under the unamended rules by the DPC held on 19.12.1998. Subsequent thereto, both set of officers had been promoted notionally from the back dates. The appellants had been given promotions as AEC against the vacancies for the year 1994-95 while the respondents were given notional promotions against the vacancies for the years 1996 and 1997. The seniority list dated 12.7.2000 was prepared accordingly. As the appellants had been given notional promotion w.e.f. 6.12.1995 and the respondents w.e.f. 28.2.1997 and 13.8.1997, their inter se seniority had rightly been determined while issuing seniority list dated 12.7.2000.

27. The law permits promotion with retrospective effect only in exceptional circumstances when there has been some legal impediment in making the promotions, like an intervention by the Court. An officer cannot be granted seniority prior to his birth in the cadre adversely affecting the seniority of other officer who had been appointed prior to him. "The late comers to the regular stream cannot steal a march over the early arrivals in the regular



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queue" (vide *Dr. S.P. Kapoor vs. State of Himachal Pradesh* AIR 1981 SC 2181; *Shitala Prasad Shukla vs. State of U.P. & Ors.*, AIR 1986 SC 1859; and *Uttaranchal Forest Rangers' Assn. (Direct Recruit) & Ors. vs. State of U.P. & Ors.*, (2006) 10 SCC 346)."

11.The learned Counsel for the respondent also relied upon yet another judgment of Honourable Supreme Court in the case of ***State of Uttar Pradesh and others vs Prem Chopra***, reported in ***2022 Live Law (SC) 378***.

12.The learned Counsel for the respondent relied upon the above judgments for the proposition that the Writ Petitioner/respondent was entitled to get promotion with retrospective effect by virtue of the precedents particularly, the two judgments of Honourable Supreme Court above referred to. The relief conceded by the learned Special Government Pleader for the respondents before the Writ Court is to grant promotion to the Writ Petitioner with retrospective effect without monetary benefits and the appellants are benefited by the order based on the concession made by the learned Special Government Pleader appearing for the respondents before the Writ Court.

13.Though argument was advanced by the learned Special Government Pleader for the appellants to the effect that retrospective promotion cannot be permitted, as there is no rule for granting



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retrospective promotion, the view expressed by the Honourable Supreme Court in the judgments above referred to clearly indicate that the respondent, whose promotion was deferred for more than seven years purely on account of an interim order granted in a Writ Petition, which was later dismissed, is entitled to get retrospective promotion. Hence, this Court find no merit in this Writ Appeal. Accordingly, this Writ Appeal is dismissed. The first appellant is directed to pass appropriate orders, as it was directed by the learned Single Judge within a period of six weeks from the date of receipt of a copy of this judgment. No costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [S.S.Y., J.]
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