



WEB COPY



W.P.Nos.13434 of 2010, 20575 of 2009 and W.P.(MD) No.9327 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 30.06.2023

Pronounced on : 30.08.2023

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. Nos.13434 of 2010, 20575 of 2009 and

W.P.(MD).No.9327 of 2008

and

W.M.P.No.16722 of 2022

W.P. No.13434 of 2010

1.S.Kameshwaran

2.A.Sekar

.... Petitioners

V.

1.The State of Tamil Nadu rep. by its Secretary,
Information Technology Department,
Secretariat, Chennai 600 009.

2.The State of Tamil Nadu rep. by its,
Additional Secretary to Government,
Finance [BPE] Department, Secretariat, Chennai 600 009.

*[R2 deleted vide order dated 29.06.2022 made in
W.M.P.No.1 of 2015 in W.P.No.13434 of 2010 by
JSNPJ]*

3.ELCOT rep. by it Managing Director,
692, Anna Salai, MHU Complex,
Nandanam, Chennai 600 035.

... Respondents



W.P.Nos.13434 of 2010, 20575 of 2009 and W.P.(MD) No.9327 of 2008

Prayer: Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration that G.O.Ms.No.12 dated 08.11.2006 as arbitrary, violative of Articles 14, 21, 42 of the Constitution of India, contrary to the principles of Natural Justice, Legitimate expectation, human rights, social justice, the resultant action of the management of ELCOT is contrary to its Service Rules, attracting procedural irregularity and Malice in Law and consequently direct the management of ELCOT to consider and promote the petitioners in terms of the Service Rules by placing the petitioners in the appropriate place above their juniors interpolating the seniority list, grant all continuity and consequential benefits, award cost.

For Petitioner : Mr.K.M.Ramesh
Senior Counsel
for Mr.S.Apunu

For Respondents : Mrs.Geetha Thamaraiselvan
Special Government Pleader (for R1 & R2)

Mr.Anand Gopalan
for T.S.Gopalan & Co. (for R3)

W.P.No.20575 of 2009

V.Girijaa Shri

... Petitioner

V.

The Electronics Corporation of
Tamil Nadu Limited (ELCOT),
No.692, Anna Salai,
M.H.U.Complex, 2nd Floor,
Nandanam,
Chennai 600 035.
Rep. by its Managing Director.

... Respondent



W.P.Nos.13434 of 2010, 20575 of 2009 and W.P.(MD) No.9327 of 2008

Prayer: Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to the impugned proceeding of the respondent in COM/OPC/2007 dated 02.07.2009 quash the same.

For Petitioner : Mr.V.Selvaraj

For Respondent : Mr.Anand Gopalan
for M/s.T.S.Gopalan & Co.,

W.P.(MD).No.9327 of 2008

V.C.Manirathnem

... Petitioner

V.

1.The Managing Director,
Electronics Corporation of Tamil nadu Limited
(ELCOT),
692, Annasalai,
Nandanam,
Chennai 35.

2.V.Girijaa Shri

3.K.Suresh Babu

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for records relating to the impugned order of 1st respondent dated 25.02.2008 issued in his reference ELCOT / MD / 1100 / 2007-2008 and ELCOT / MD / 1106 /2007-2008 issued in favour of the 2nd and 3rd respondents and quash the same and direct the 1st respondent to consider the name of the petitioner and promote him as Deputy Manager-II with effect from the date on which the date his junior was promoted and to grant all the consequential benefits and arrears of salary and granting such other.

For Petitioner : Mr.G.Sankaran
Senior Advocate



WEB COPY



W.P.Nos.13434 of 2010, 20575 of 2009 and W.P.(MD) No.9327 of 2008

For Respondents : Mr.Anand Gopalan
for M/s.T.S.Gopalan & Co., (for R1)

For Respondents : No appearance
2 and 3

COMMON ORDER

There are three writ petitions. In all the three petitions, ELCOT is the common respondent. It is submitted by the learned counsel for the petitioners as well as the Respondents that the issue raised in all the writ petitions are interconnected. Thus, the writ petitions are disposed by a way of a common order.

2. Relief sought in the Writ Petitions:

i. The writ petition in W.P. No.13434 of 2010 was filed by Mr.Kameshwaran and Mr.Sekar, challenging G.O.Ms.No.12 dated 08.11.2006 IT (E-Gov.I) Department (for brevity “G.O.12”), and to direct the management of ELCOT to consider and promote the petitioners in terms of the Service Rules by placing the petitioners viz., Mr. S. Kameshwaran and Mr. A. Sekar in the appropriate place above their juniors interpolating the seniority list, grant all continuity and consequential benefits. During the pendency of the Writ Petition, Mr.Sekar died and the counsel for the petitioner would submit that writ petition insofar as Mr. Sekar



W.P.Nos.13434 of 2010, 20575 of 2009 and W.P.(MD) No.9327 of 2008

stands may be treated as having abated.

WEB COPY

ii. The Writ Petition in W.P.(MD).No.9327 of 2008 was filed by Mr.Manirathnem, challenging the promotion given to Mrs.Girijaa Shri and Mr.Suresh Babu as Deputy Manager Grade II overlooking the fact that Mr.Manirathnem was already holding the post of Superintendent and that Mrs.Girijaa Shri, who was only an Assistant was directly promoted to the post of Deputy Manager Grade II and to direct the 1st respondent to consider the name of the petitioner and promote him as Deputy Manager-II with effect from the date on which his junior was promoted and to grant all the consequential benefits and arrears of salary.

iii. The writ petition in W.P.No.20575 of 2009 was filed by Mrs.Girijaa Shri, challenging the order dated 02.07.2009, whereby, she has been reverted to the post of Assistant with effect from 01.06.2003.

3. Brief Facts

i. ELCOT, the respondent in all these writ petitions, had two Divisions viz., Corporate Office and Communication Division. The Communication Division merged with the Corporate Office and some of the employees were granted/opted VRS.



W.P.Nos.13434 of 2010, 20575 of 2009 and W.P.(MD) No.9327 of 2008

ii. The salary of the employees of Communication Division was paid on the basis of a wage settlement. With a view to bring them under the Government Pay Scale, G.O.12 was issued. Importantly G.O.12 provided for the following:

a) That the post along with incumbents shall be deemed to be transferred to the Perungudi Unit i.e., Corporate office with effect from 01.06.2003.

b) For the purpose of seniority and promotion, the two units viz., Corporate Office and Communication Division shall be treated as separate and distinct units.

c) The posts are deemed to be taken out of the wage settlement and shall be brought under the Service Rules.

d) Necessary amendments shall be made to the Service Rules with retrospective effect from 01.06.2003, subject to the approval by the Board and the Government.

4. Mr.K.M.Ramesh, learned Senior Counsel appearing for petitioner in W.P.No.13434 of 2010 submitted that Mr. Kameshwaran was employed as Assistant in the Corporate Division, in terms of seniority he was ranked No.1. Though G.O.12 dated 08.11.2006 provided for demarcation between the two units insofar as the seniority is concerned, Mrs.Girijaa Shri was promoted to the post of Deputy



W.P.Nos.13434 of 2010, 20575 of 2009 and W.P.(MD) No.9327 of 2008

Manager Grade-II directly although she was an Assistant in Communication Division and ranked No. 39. It is submitted that promotion of Mrs.Girijaa Shri is contrary to G.O.12. Though there is a challenge to G.O.12, it is submitted that the prayer will be confined to ensure proper implementation of G.O.12.

5. It is submitted by the learned counsel for the Respondents (ELCOT) that there was an anomaly insofar as implementation of G.O.12 initially, inasmuch as, there was merger of employees of the Communication Division with Perungudi employees, and promotions were not made in accordance with G.O.12 which provided for demarcation and segregation. Realising the said mistake, the anomaly was set right *vide* proceeding dated 02.07.2009, and the seniority was re-fixed in terms of G.O.12. As a result, Mrs.Girijaa Shri, who was appointed as Deputy Manager Grade II was reverted to the post of Assistant *vide* proceedings dated 02.07.2009. Pursuant to the proceedings dated 02.07.2009 grievance of Mr. Kameshwaran stands redressed as the seniority is re-fixed in terms of G.O.12, which contemplated setting apart/segregating the two sets of employees *viz.*, one in Perungudi and the other in the Corporate Unit.



W.P.Nos.13434 of 2010, 20575 of 2009 and W.P.(MD) No.9327 of 2008

6. It is the case of Mr.Manirathnem in W.P.(MD)No.9327 of 2008 that he was actually working as a Superintendent and thus, he ought to have been promoted ahead of Mrs.Girijaa Shri and Mr.Suresh Babu to the post of Deputy Manager Grade-II. However, overlooking the same, Mrs.Girijaa Sri was promoted to the post of Deputy Manager from Assistant. It was submitted that the promotion to the post of Deputy Manager requires completion of five years of service as Assistant to be promoted as Superintendent and five years of service as Superintendent to be promoted as Deputy Manager, subject to vacancies. In other words, Mrs.Girija Shri has been granted double promotion, which is wholly unjustified.

7. To the contrary, it was submitted by Mr.Selvaraj, learned counsel for Mrs.Girijaa Sri in W.P.20575 of 2009 that G.O.12 by itself is incomplete unless and until Service Rules are framed. Importantly, Service Rules were framed in the year 2019. It is further submitted that the rules framed contain a saving clause, which provides that promotions already effected from the date of issue of G.O.12 till the date of approval of the amended rules shall not be withdrawn. It is further submitted that having been promoted as Deputy Manager Grade II, the saving clause would come to her rescue and she cannot be reverted back.



WEB COPY

8. In response, the learned counsel for the Respondents (ELCOT) submitted that the saving clause cannot be understood in the manner suggested inasmuch as, the saving clause only intends to protect such promotions which were made validly in accordance with G.O.12. In the present case, the promotion of Mrs. Girijaa Sri and Mr. Suresh Babu was not in conformity with G.O.12, which error was also rectified by the Board. It may thus not be open for her to take protection in the saving clause with regard to promotion.

9.1. Against the above background, the question that arises for consideration is whether the saving clause contained in the Service Rules which provides that promotion effected from the date of issue of G.O.12 till the approval of the rules shall not be withdrawn, would provide immunity to Mrs. Girija Shri and Mr. Suresh Babu.

9.2. Firstly, the immunity under the saving clause from revisiting promotions is only in those cases where the promotion is in consonance/ compliance with G.O.Ms.No.12 and cannot be used as a means to sustain an illegal promotion. This would be evident if we bear in mind that any attempt at understanding the Rules in



W.P.Nos.13434 of 2010, 20575 of 2009 and W.P.(MD) No.9327 of 2008

particular the saving clause as enabling or granting immunity from action against illegal promotion would produce results that are arbitrary, obnoxious, unjust and may well fall foul of Article 14 of the Constitution of India, a construction which ought to be avoided*.

9.3. It may also be relevant to bear in mind that Court will adopt a construction that which is just, reasonable and sensible rather than that which is none of those things as it may be presumed 'that the legislature should have used the word in that interpretation which least offends our sense of justice'. Similarly, a construction giving rise to anomalies should be avoided as noted by the Hon'ble Supreme Court in the case of *N.T. Veluswami Thevar v. G. Raja Nainar*, reported in (1959) Supp (1) SCR 623, the relevant portions of the order reads as under:

"Justice and reason constitute the great general legislative intent in every peace of legislation. Consequently where the suggested construction operates harshly, ridiculously or in any other manner contrary to prevailing conceptions of justice and reason, in most instance, it would seem that the apparent or suggested meaning of the statute, was not the one intended by the law makers. In the absence of some other indication that the harsh or ridiculous effect was actually intended by

* Uttar Pradesh vs. Sarjudevi, AIR 1977 SC 2196, p.1883:1969 (2) SCC 481;
N.T.Veluswami Thevar vs. G.Raja Nainar, AIR 1959 SC 422;
Stock vs. Frank Jones (Tipton) Ltd., (1978) 1 All ER 948; p.954: (1978) 1 WLR 231 (HL) (LORD SIMON) quoted with approval in Afcons Infrastructure Ltd. vs. Cherian Varkey Construction Co. (Pvt. Ltd.) (2010) 8 SCC 24 para 21.6.



W.P.Nos.13434 of 2010, 20575 of 2009 and W.P.(MD) No.9327 of 2008

the legislature, there is little reason to believe that it represents the legislative intent.”

(emphasis supplied)

10. Secondly, this Court is of the view that Mrs.Girija Shri, the petitioner in W.P.No.20575 of 2009 who was appointed as Deputy Manager Grade-II purportedly in terms of G.O.12 had her promotion revoked inasmuch as it was found that promotion of some of the employees belonging to the Communication Division (Perungudi Unit) as Deputy Manager Grade-II and Superintendent were not in consonance/ conformity with G.O.12. The impugned proceedings were passed to set right the anomaly in promotion, it was decided to bring the employees of the Communication Division (Perungudi Unit) to the position which obtained on 01.06.2003. The revision of seniority/promotion is valid inasmuch as Mrs. Girija Shri is found to have been granted promotion erroneously and thus rightly revoked.

10.1. Though the counsel for Mrs. Girija Shri questioned the authority to revoke promotions. I would think that the above submission need not detain this court, for it is trite law that the power to appoint would also include the power to revoke. In this regard, it may be relevant to refer to the following judgment:



W.P.Nos.13434 of 2010, 20575 of 2009 and W.P.(MD) No.9327 of 2008

Dharma Dev v. U.P. State Road transport Corpn., 2004 SCC OnLine All 2077 :

WEB COPY

“37. In (2003) 7 SCC 403 : (AIR 2003 SC 3849) State of Rajasthan v. Anand Prakash Solanki (D.B.) the apex Court reiterated that power to make appointment includes the power to transfer unless the same is expressly barred. The Court held that:—

“The concept of appointment by transfer is not unknown to service jurisprudence. A power to appoint includes a power to revoke an appointment, and also includes a power to make an appointment by transfer.....”

10.2. Thus, any doubt as to the jurisdiction / authority/ power to revoke the promotion/appointment by the appointing authority is misconceived.

11. Thirdly, the right to promotion itself is on the basis of G.O.Ms.No.12. That being the case, an erroneous application of G.O.Ms.No.12 resulting in the promotion of the petitioner in W.P.No. 20575 of 2009 ought to be rectified lest illegality would be permitted to be perpetuated which is impermissible. Moreso, as it adversely affects the right of promotion of other employees senior to Mrs.Girija Shri.

12. In the light of the above discussion this court is of the view that pursuant to the re-fixation of seniority *vide* proceedings dated 02.07.2009 subsequent to the filing of this Writ Petitions the grievance of the petitioner viz., Mr. Kameshwaran



W.P.Nos.13434 of 2010, 20575 of 2009 and W.P.(MD) No.9327 of 2008

in Writ Petition No.13434 of 2010 and Mr. V.C. Manirathnem in W.P. (MD) No. 9327 of 2008 would no longer survive. In view of the subsequent development grievance if any can only be with reference to the proceedings dated 02.07.2009 which is not under challenge by Mr. Kameeswaran nor Manirathnem. The Writ Petition filed by Mrs. Girija Shri in W.P. No. 20575 of 2009 is devoid of any merit inasmuch as this court has found that her promotion to the post of Deputy Manager – II was not in conformity with G.O. 12 and thus revoked rightly *vide* proceeding dated 02.07.2009.

13. For the reasons stated above, the Writ Petitions in W.P.No.13434 of 2010 and W.P.(MD).No.9327 of 2008 stands disposed of and W.P.No.20575 of 2009 stands dismissed accordingly. No costs. Consequently, connected miscellaneous petition stands closed.

30.08.2023

Index: Yes/No
Speaking Order: Yes/No
Neutral Citation: Yes/No
mka/ shk



WEB COPY



W.P.Nos.13434 of 2010, 20575 of 2009 and W.P.(MD) No.9327 of 2008

MOHAMMED SHAFFIQ, J.

mka/ shk

To:

- 1.The Secretary,
State of Tamil Nadu,
Information Technology Department,
Secretariat, Chennai 600 009.
- 2.The Managing Director,
ELCOT, 692, Anna Salai, MHU Complex,
Nandanam, Chennai 600 035.

Pre-Delivery Order made in
W.P. Nos.13434 of 2010, 20575 of 2009 and
W.P.(MD). No.9327 of 2008

30.08.2023