



W.A.(MD)Nos.1649 & 1650 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 22.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

W.A.(MD)Nos.1649 & 1650 of 2011

and

M.P.(MD)Nos.2 & 2 of 2011

W.A.(MD)No.1649 of 2011

T.Soundararajan

... Appellant

Vs.

1.The Secretary to Government

Revenue Department,

Fort St.George,

Chennai - 600 009.

2The Commissioner & Director

Survey and Settlement,

Survey House,

Chepauk,

Chennai-5.

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3.The Additional Director of Survey & Land Records,
Survey House,
Chepauk,
Chennai-5.

4.The Assistant Director
Survey & Land Records,
Collector Office,
Pudukottai.

5.N.Mohammed Kuthush

6.D.Panchalingam

7.K.Subbiah

8.M.Abdul Razak

9.K.Buvaneshwari

10.V.Radhakrishnan

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 13.10.2009 made in W.P.(MD)No.6749 of 2006 on the file of this Court.

For Appellant : Mrs.Porkodi Karnan
for M/s.Polex Legal Solutions



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For Respondents : Mr.A.K.Manikkam, - for R1 to R4
Special Government Pleader
: No Appearance -for R5, 6, 8 to 10

W.A.(MD)No.1650 of 2011

T.Soundararajan

... Appellant

Vs.

1.The Secretary to Government
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Chennai - 600 009.

2The Director of Survey & Land Records,
Chepauk,
Chennai-5.

3.The Additional Director of Survey & Land Records,
Collectorate
Pudukottai.

4.T.K.Srinivasan

5.C.Gunasekaran

... Respondents



W.A.(MD)Nos.1649 & 1650 of 2011

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 13.10.2009 made in W.P.(MD)No.1377 of 2009 on the file of this Court.

For Appellant : Mrs.Porkodi Karnan
for M/s.Polex Legal Solutions

For Respondents : Mr.A.K.Manikkam, - for R1 to R3
Special Government Pleader
: No Appearance -for R4 & R5

COMMON JUDGMENT

(Judgment of the Court was delivered by ***R.SURESH KUMAR, J.***)

The appellant was a Writ petitioner who has filed two writ petitions i.e., W.P.(MD)Nos.6749 of 2006 and 1377 of 2009.

2. In the first Writ petition, he sought for a Writ of Certiorarified Mandamus calling for the records to G.O.No.374 Revenue Department dated 13.06.2006 and G.O.Ms.No.492 Revenue Department, dated 25.08.2005 issued by the first respondent and quash the same insofar

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as the petitioner is concerned and to direct the respondents 1 to 4 to refix the service benefits of the petitioner, such as, regularization and conferment of time scale of pay over and above the respondents 5 to 10.

3. In the second writ petition, the prayer sought for was also for a Certiorarified Mandamus calling for the records relating to the impugned order of the third respondent issued in Na.Ka.No.A1/10719/2008, dated 10.12.2008 and quash the same.

4. The petitioner was appointed as Surveyor cum Draftsman on consolidated pay in the year 1983. Like the petitioner, several other persons were also appointed in the same capacity, of course, on consolidated pay. This position was continued insofar as the petitioner is concerned, till 1987 as only with effect from 1987, his service was regularized by the respondents.

5. In this context, it is a grievance of the petitioner that during the period between 1983 and 1987, when he was working as Surveyor cum Draftsman on consolidated pay, since many number of persons like the



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petitioner were also working on consolidated pay, they were also appointed by and large on the same point of time. There had been a consistent request from them to regularize their services with effect from their initial appointment.

6. Considering the said plea of those who have been appointed on consolidated pay with effect from 1983 or thereafter, or prior to that, the respondent Department had come forward to prepare a seniority list for the purpose of regularizing their services with effect from the date they were initially appointed on consolidated salary.

7. When such a seniority list among the consolidated pay appointees were drawn and released, that was under challenge before the then existing Tamil Nadu Administrative Tribunal. The Tribunal having considered the infirmities in drawal of such panel of seniority for the purpose of regularizing their services, had set aside the said seniority itself, as against which, the matter had gone upto the Supreme Court where also the order passed by the Tribunal was upheld. Therefore, the seniority panel that has been drawn was set aside. Therefore, a new panel had to be drawn



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by the respondent Department.

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8. Accordingly, a new panel had been drawn on 20.12.1995 where the name of the petitioner was found in serial No.133. Therefore, more than 100 plus such Surveyor cum Draftsman who were appointed at various point of time on consolidated pay had been brought under one seniority list, dated 20.12.1995 to be implemented for the purpose of regularizing their services.

9. However, for the reasons best known to the respondents, according to the learned counsel for the petitioner, the seniority list, dated 20.12.1995 was not implemented.

10. Aggrieved over the non-implementation of the seniority list, dated 20.12.1995, because of which, the regularization has been delayed or it has been given only belatedly, some of the appointees who were in the seniority list, dated 20.12.1995 had approached this Court and filed writ petition in the year 2005.



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11. The said writ petition was ordered, by order, dated 10.06.2009 whereby, the seniority list, dated 20.12.1995 was directed to be implemented by thus regularizing the services of those temporarily appointed consolidated pay appointees to be regularized with effect from their initial appointment and accordingly, their service benefits can be calculated.

12. It is to be noted that the petitioner had not filed any such writ petition.

13. Instead of implementing the order in toto by giving effect to the seniority list, dated 20.12.1995, extending such a benefit of regularization with effect from their initial appointment to all such consolidated pay employees including the petitioner, the concerned authority has issued order only to regularize the services of those who approached the Court of Law and got an order, by regularizing their service ofcourse notionally from the date of their initial appointment.

14. Therefore, those who got such an order where the initial

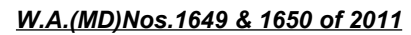


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appointment of the consolidated pay appointees were regularized and got the benefit of notional regularization with effect from their initial appointment and thereby, naturally they might have marched over the seniors who had been in the list of seniority, dated 20.12.1995, because such an implementation had not been made by the Respondent Department in toto to all those whose names found in the seniority list dated 20.12.1985, but only for few persons who had approached the Court of Law.

15. Therefore, in those circumstances, since the petitioner's case had been considered and regularization had been given only with effect from 1987, challenging the said belated regularization that has been made in respect of the petitioner and seeking to place the petitioner on par with or above the juniors who has gained the seniority by virtue of orders passed by the authorities concerned by selectively implementing the seniority list, dated 20.12.1985, the petitioner had filed the aforesaid two writ petitions.

16. The said writ petitions were heard together and disposed of by a common order of the learned Judge, dated 13.10.2009, where the learned Judge having taken note of the plea raised by the petitioner as well



17. In this context, the learned Judge has also taken note of the fact that the Surveyor seniority is to be calculated in District wise while the petitioner transferred from Kancheepuram District to Pudukottai District, since the petitioner has accepted the conditions imposed therein that he will not claim seniority at Pudukottai that has been taken into consideration and since the petitioner had been placed in the seniority as a last person in Pudukottai District. That is how the petitioner lost his seniority and regularization since have been taken only from 1987. From that date onwards, all his service and other attendant benefits since would be calculated from 1987. Therefore, the petitioner has lost the service he has rendered from 1983 to 1987. Despite the fact that the similarly placed persons have been granted such notional regularization and seniority, the said regularization orders were filed and projected.

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18. However, the learned Judge by taking note of the conditions accepted by the petitioner at the time of re-transfer to Pudukottai has accepted the case of the respondents and therefore, dismissed the writ petitions by the said order dated 13.10.2009. Challenging the said order, the present Writ Appeals have been filed.

19. Heard Mrs.Porkodi Karnan, learned counsel appearing for the appellant and Mr.A.K.Manikkam, learned Special Government Pleader appearing for the respondents 1 to 3.

20. The learned Special Government Pleader would contend that whatever be the past history, insofar as the petitioner is concerned, at the time of he being returned back to original District i.e., Pudukottai District and the seniority for the post where he was working is to be calculated on District basis, i.e., District wise seniority alone would be taken into account. The petitioner lost his seniority on accepting the condition and returned back and joined at Pudukottai. Therefore, he cannot once again turn back and say that he is senior and several juniors marched over the



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Tribunal confirmed by the Hon'ble Supreme Court. Therefore, a re-drawal exercise was undertaken, resultantly redrawn seniority list was published on 20.12.1995.

24. It is the further case of the appellant that in the redrawn list, dated 20.12.1995 the petitioner's name was found place at serial No.133. However, the said list, dated 20.12.1995, for the reasons best known to them, has not been implemented and it has been kept pending.

25. Therefore, on the static silence on the part of the respondent in not implementing the order, dated 20.12.1995, which is a redrawn seniority list, some of the aggrieved persons approached this Court and filed a writ petition in the year 2005 where they were able to get a favourable order for the implementation of the said seniority list and in order to implement the same, since the District level seniority has to be followed. The District Level Authority i.e., Assistant Director of Land Surveyor, dated 15.10.2010 had passed the following order :



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சென்னை உயர்நீதிமன்ற மதுரை கிளையில் திரு. D. ஜெயவீர பாண்டியன் மற்றும் 19 நபர்கள் தொடர்ந்த வழக்கு எண்: WP.2275/05, நாள் 10-06-09-ல் வழங்கப்பட்ட தீர்ப்பை செயல்படுத்த பார்வை 2-ல் காணும் கடிதத்தில் அரசு வழங்கிய உத்தரவின்படி முதன்மை செயலர் மற்றும் ஆணையரின் பார்வை 3-ல் காணும் கடிதத்தில் வழங்கிய அறிவுரைகளின்படி மேற்கண்ட நபர்கள் அவரவர் பெயருக்கு எதிரே குறிப்பிட்டுள்ள தேதியில் காலமுறை ஊதியத்தில் பணிபுரிந்ததாக கருதி (Notionally with effect from the Date) பணியினை முன் தேதியிட்டு வரன்முறை செய்து உத்தரவிடப்படுகிறது.

வ. எண்	பெயர் (திருவாளர்கள்)	பதவி	கலம் 3-ல் குறிப்பிட்டுள்ள பதவியில் ஊதிய ஏற்றமுறை ஊதியத்தில் பணி புரிந்ததாக கருதி பணிவரன்முறை செய்யப்படும் தேதி விவரம்
1	2	3	4
1	டி. ஜெயவீர பாண்டியன் (லேட்.)	நில அளவர்	18-07-1988
2	கே. ரிசினையா	நில அளவர்	18-07-1988
3	வி.சி. அசோகன்	நில அளவர்	01-02-1989
4	எம். சிவசாமி	நில அளவர்	04-11-1990
5	ஏ. விஜயசுந்தரம்	நில அளவர்	18-07-1988
6	எம். சௌந்தரராஜன்	நில அளவர்	13-05-1995
7	ஜி. தங்கராஜ்	நில அளவர்	13-04-1993
8	சி. துரைராஜ்	நில அளவர்	18-07-1988

9	பி. துரைராஜ்	நில அளவர்	04-11-1990
10	ஏ. மாரிமுத்து	நில அளவர்	18-07-1988
11	டி. முர்த்தி	நில அளவர்	18-07-1988
12	எல். கண்ணன்	நில அளவர்	18-07-1988
13	பி. அடைக்கன்	நில அளவர்	01-02-1989
14	எஸ். மாசிலாமணி	நில அளவர்	18-07-1988
15	உ. மகாலிங்கம்	நில அளவர்	22-02-1991
16	டி. நடராஜன்	வரைவாளர்	11-10-1991
17	பி. மதியழகன்	வரைவாளர்	05-08-1991
18	எஸ். நல்லு	வரைவாளர்	23-02-1991
19	கே. சோசம்மா	வரைவாளர்	01-02-1989
20	பி. தம்போதி	வரைவாளர்	01-02-1989

மேலே குறிப்பிட்டுள்ள பணியாளர்களுக்கு இயக்கக் கடிதத்தில் தெரிவித்துள்ள அறிவுரையின்படி இவ்வுத்திரவு உடனடியாக அமுல்படுத்தி ஆணையிடப்படுகிறது.



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26. Under this order, 20 such persons like the petitioner who had approached the Court and obtained order alone, were considered and their services were regularised from the date initially they were appointed on consolidated pay of course notionally.

27. By virtue of this regularization, naturally these 20 people or any similarly placed persons would have marched over the seniors as per the seniority list dated 20.12.1985.

28. In this context, if at all the Department wants to implement the seniority list which was redrawn on 20.12.1985, it should have been implemented in toto and the benefits that were accrued to all those consolidated pay employees whose names were found place in the list, ought to have been given the said benefit.

29. But that benefit has not been given for which what reason the Government or the Respondent Department is going to say is not known because, this factor had not been brought to the notice of the learned Single Judge who dealt with two writ petitions as stated supra.



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30. Had this been brought to the notice of the learned Judge, the resultant position in the disposal of the said writ petitions would have been in a different fashion. But unfortunately, this has not been brought to the notice of the learned Judge and when we specifically asked the learned counsel appearing for the appellant, he submits that it is purely an ignorance that has not been brought to the notice of the learned Judge. Therefore, at least one more chance is to be given to the petitioner to bring these developments to the Writ Court and set right the grievances of the petitioner.

31. The said submission made by the learned counsel appearing for the petitioner is appealing, because, the proceedings issued on 15.10.2010 by the Assistant Director concerned picking up only 20 persons who approached the Court for giving such regularization notionally with effect from their initial appointment, would be in violation of Article 14 of the Constitution as similarly placed persons have to be treated similarly. However, in these cases, they have been treated differently.



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32. Though the order of the Assistant Director was passed on 15.10.2010 the learned Judge passed the impugned order in the year 2009.

Therefore, directly this proceedings could not have been brought before the learned Judge as it was a subsequent event. However, several such persons like 20 persons who have been covered under the order, dated 15.10.2010, seems to have been given the same benefit and those aspects since have not been brought to the notice of the learned Judge, the learned Judge had no occasion to consider those developments and therefore, for that reason, we feel that the matter can be remitted back to the learned Judge.

33. For all these reasons stated above, we feel that we can remit the matter back to the Writ Court for reconsideration by taking into account this factor also. For the aforestated purpose, we are inclined to set aside the order impugned. Accordingly, the impugned order is set aside. The matter is remitted back to the Writ Court with a request to take up the writ petitions and decide the same on merits and in accordance with law, as early as possible, preferably, within a period of three months.



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34. With these directions, the Writ Appeals are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

(R.S.K., J.) & (K.K.R.K, J.)

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No

RM



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**R.SURESH KUMAR, J.
AND
K.K.RAMAKRISHNAN, J.**

RM

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