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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.09.2023**

CORAM

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**  
AND  
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD)Nos.122 to 128 of 2014 and 532 of 2017  
and

M.P.(MD)Nos.1, 1, 1, 1, 1, 1, 1, 2, 2, 2, 2, 2 and 2 of 2014  
and C.M.P.(MD)No.4521 of 2017

W.A(MD)No.122 of 2014:-

1.The Secretary to Government,  
Revenue Department,  
Government of Tamilnadu,  
Fort St.George, Chennai – 600 009.

2.The Director of Survey and Settlement,  
Chepauk, Chennai -5.

3.The Assistant Director of Survey and  
Land Records,  
District Collectorate Compound,  
Pudukottai District.

...Appellants

-Vs.-

K.Chinnaiah (Died)



C.Palaniselvam

...Respondent

(C.Palaniselvam was brought on record as legal representative of deceased K.Chinnaiah, respondent, vide order of this Court in C.M.P. (MD)No.8574 of 2018 dated 04.09.2023)

PRAYER:- Writ Appeal - filed under Clause 15 of Letters Patent Act, to set aside the order dated 13.02.2013 made in W.P.(MD)No.5257 of 2006 on the file of this Court.

For Appellants : Mr.T.Amjad Khan  
Government Advocate  
For Respondent : Mr.S.Vellaichamy  
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### COMMON JUDGMENT

(Judgment of the Court was delivered by **DR.ANITA SUMANTH, J.**)

These Writ Appeals have been filed by the State challenging orders passed by Writ Court on 13.02.2013 and 14.10.2015.

2.The Writ Petitioners had been appointed as Surveyor/Draftsman by a Selection Committee on 17.04.1983. Thereafter, the Assistant Director of Survey and Land Records had prepared a seniority list, wherein, irregularities were found. The seniority list was challenged



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before the Tamilnadu Administrative Tribunal, set aside and directed to be re-done.

3.The Writ Petitioners were of the view that even thereafter, the fixation of seniority and pay over benefits have not been in proper manner and had, hence, made representations to restore regularisation, as per seniority list dated 20.12.1995. Since those representations have not been disposed by a long time, a Writ Petition came to be filed, wherein, the prayer was for a Mandamus directing the respondents/appellants to follow seniority list dated 20.12.1995 in letter and spirit and accord due regularisation between 1988 and 1991 with all service benefits as sought for.

4.The Writ Petition came to be disposed on 10.06.2009. The Writ Court has narrated the submissions of the Writ Petitioners and has also noted the fact that the respondents did not file a counter. In fine, though the petitioners had sought a positive direction for fixing seniority as well as service benefits, all that was granted to them was a benefit by way of a direction to the respondents/appellants to consider the representations of



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the petitioners within a period of eight weeks from date of receipt of a copy of that order.

5. That order has attained finality, as the Writ Petitioners did not pursue the rejection of their request for a positive direction, satisfied with a direction for disposal of their representations. In consequence of the aforesaid order, the respondents passed order dated 15.10.2010, wherein, the seniority of the respondents was fixed on various dates between 18.07.1988 and 13.05.1995, though notionally only. It is relevant to note that, the order fixing seniority on notional basis, has not been challenged by the Writ Petitioners.

6. Instead, one of the Writ Petitioners, by name, C. Durairaju, chose to file an application alleging contempt of order dated 10.06.2009. The Contempt Petition came to be disposed by order dated 23.12.2014, wherein, the Writ Court found that the official respondents ought to have provided benefit of regularisation for the period that he was regularised in terms of order dated 15.10.2010. There is no reference to the fact that the regularisation had only been notional.



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7. As against that order, the official respondents filed a Contempt Appeal in Cont.A.(MD)No.1 of 2015. That appeal came to be decided on 28.04.2019, wherein, the Division Bench has specifically noted the fact that the Writ Court had not issued any positive order directing regularisation on 10.06.2009. All that had been granted to the Writ Petitioners was the benefit of direction to the respondents to dispose their representations. The representations had, indeed, been disposed on 15.10.2010 and hence, to that extent, there could not be no allegation of contempt insofar as the order dated 10.06.2009 is concerned.

8.The Division Bench also noted the position that what has been sought in the Contempt Petition, was grant of benefits in real terms as against the direction in order dated 15.10.2010 to the effect that the regularisation was only notional with effect from stipulated dates. They were of the considered view that the prayer was not part of the relief that had been sought at any stage and the Writ Petitioners, having accepted order dated 15.10.2010 could not be seen to expand the scope of the original relief at the stage of contempt.



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9.If at all the Writ Petitioners had aggrieved by the fact that order dated 15.10.2010 only granted notional benefits and no relief in real terms, the appropriate course of action would have been for the Writ petitioners to challenge order dated 15.10.2010, which has not been done till date. Hence, the Contempt Appeal came to be allowed by the Court.

10.As against that order, C.Durairaju filed an SLP in S.L.P.(C)Nos. 17378 of 2015, but chose to withdraw that SLP, when the matter was listed for hearing 24.09.2015 seeking leave of the Court to file an independent Writ Petition for the relief of granting seniority and consequential benefit of regularisation. The Hon'ble Apex Court granted liberty stating that if such Writ Petition is presented within two weeks from that date, the High Court should look into the same within six weeks therefrom, adjudicating it on its merits.

11.Thereafter, the petitioners have once again reiterated their request for a Mandamus simplicitor directing the respondents to accord due regularisation in the post of Surveyor and Draftsman with effect from



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18.07.1988 with all attendant and monetary benefits. The Writ Court had noted the trajectory of events and directed the respondents to pay monetary benefits from 18.07.1988 within a period of two months from date of receipt of that order, as against which order, the present appeals have been filed.

12.The appellants would harp on the admitted position that the relief sought for could not be granted by way of a Mandamus in light of order dated 15.10.2010 staring them in the face. Till such time the order in Contempt Petition thereof was disturbed/varied, the Writ Petitioner would not be entitled for anything more than a notional regularisation.

13.It is true that the Writ Petitioners thus far, obtained relief only on paper. However, they have chosen to accede to the same, consciously not challenging order dated 15.10.2010, despite there being several opportunities for them to have done so. The fact that no positive order/relief was granted to them by the Writ Court was specifically noted in Contempt Appeal by order of the Division Bench dated 28.04.2015.



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14.The Division Bench had also noted specifically therein that the ambit of the Contempt Appeal could not be expanded to cover those reliefs that were never contemplated by the Writ Petitioners at the first instance. Despite this, what the Writ Petitioners have merely reiterated the prayer for Mandamus without seeking quash of order dated 15.10.2010 at the relevant point of time, for reasons best known to them.

15.There is a limit to which a prayer for Mandamus may be stretched. In the present case, the Writ Petitioner's claim has expressively been denied by way of order dated 15.10.2010 and that order has attained finality. Thus, and having taken note of the detailed trajectory of events that have unfolded from 2009 onwards, we are of the considered view that these Writ Appeals are liable to be allowed and the order of Writ Court reversed. These Writ Appeals are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

NCC :Yes/No  
Index :Yes/No  
cmr

**[A.S.M.J.] & [R.V.J.]**  
**04.09.2023**  
(2/2)



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**AND**  
**R.VIJAYAKUMAR, J.**

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