



W.P.No.73 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.01.2024

PRONOUNCED ON : 12. 01.2024

CORAM:

THE HON'BLE Dr. JUSTICE D.NAGARJUN

W.P.No.73 of 2015
and M.P.No.1 of 2015

J.Thamilarasan

...Petitioner

versus

1. The Government of Puducherry,
Rep., by its Secretary (Housing),
Chief Secretariat,
Puducherry.

2. The Chairman,
Puducherry Housing Board,
Annanagar, Nellithope,
Puducherry.

3. The Secretary,
Puducherry Housing Board,
Annanagar, Nellithope,
Puducherry.

4. G.Vengadessane.

Respondents

Prayer : This Writ petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of certiorarified Mandamus to call for the records relating to the proceedings of the 2nd respondent in



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Order.No.2538/PHB/Estt./E3/2008-09/901 dated 31.12.2014 and quash the same and consequently direct the 3rd respondent to permit the petitioner, to continue in his post as Programmer.

For Petitioner : M/s.Stalin Abhimanyu

For Respondents : M/s.T.P.Manoharan, Senior Advocate
for M/s.K.P.Jotheeswaran for R2 & R3

: Mr.Arun Babu for R4

ORDER

This Writ Petition is filed challenging the impugned orders passed by the respondent/ Pondicherry Housing Board, degrading the post of Programmer to that of the Assistant Programmer along with petitioner thereby petitioner's pay was reduced from the pay of the Programmer to that of the Assistant Programmer.

2. In order to digitize the records, the Government of Pondicherry has created the posts of Programmer and Assistant Programmer. Similarly respondents Nos.2 and 3/ Puducherry Housing Board has created the posts of Programmer and Assistant Programmer. The petitioner was appointed as Assistant Programmer and another person was appointed as programmer.



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3. The petitioner has filed a representation dated 18.10.2006 before the respondents Nos.2 and 3 Puducherry Housing Board stating that the Government of Puducherry has upgraded the post of Assistant Programmer to that of the Programmer, thereby, sought for up-gradation of the post of Assistant Programmer to the Programmer even in the respondent Nos.2 and 3 Puducherry Housing Board as well. A high level committee was formed to consider the request of the petitioner and after detailed discussions, the said committee has given a report to upgrade the post of Assistant Programmer to that of the Programmer. The said report has been accepted, accordingly the post of Assistant Programmer was upgraded to Programmer by Puducherry Housing Board.

4. Respondent No.2 and Puducherry Housing Board realised subsequently that the Government of Pudcherry has not upgraded the post of Assistant Programmer to that of the Programmer and that petitioner has mislead the respondent Nos.2 and 3 Housing Board. Accordingly issue was referred to the high power committee which has given a report to degrade the post of programmer to Assistant Programmer, thereby the respondent Nos.2 and 3 Housing Board has



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decided to revert the post of Programmer to the Assistant Programmer.

Accordingly the impugned proceedings were issued reverting/degrading the post of the Programmer in which the petitioner was working to the post of Assistant Programmer. In view of which the petitioner was also degraded from to the post of Programmer to the post of Assistant Programmer. Aggrieved by the same, the petitioner has preferred this Writ Petition.

5. According to the learned counsel for the petitioner, the post of the Programmer was degraded by the respondent Nos.2 and 3/ Housing Board to the Assistant Programmer without following due process and notice was not given to the petitioner and disciplinary proceedings were also not initiated against the petitioner. Thereby submitted that degrading the post of the Programmer to the Assistant Programmer is irregular. It is also submitted that another person was allowed to work as Programmer and that the other post was not degraded. Therefore degrading the post of the petitioner is violation of Article 14 of the Constitution of India.



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6. It is further submitted by the learned counsel for the respondents that as the petitioner has mislead, the respondent Nos.2 and R.3 Housing Board upgraded the posts. The petitioner has submitted representation dated 18.10.2006 to the respondent No.2 and 3 Housing Board for up-gradation of the post. However it is for the respondent Nos.2 and 3 Housing Board to enquire properly as to whether really Government of Puducherry has upgraded the post of the Assistant Programmer to Programmer. Housing Board has formed a committee and as per the report of the committee only up-gradation of post was done. It is not clear what prompted the committee to give clearance for upgrading the post, without government has upgraded the post of Assistant Programmer to the post of Programmer. Therefore, though the respondents have attributed that the petitioner is responsible for the irregular upgrading of the post from the Assistant Programmer to he Programmer, this Court is of the opinion that the management of the respondent Housing Board is also equally responsible for the up gradation of the post.

7. Upgrading the post from Assistant Programmer to Programmer and downgrading the post of Programmer to Assistant Programmer is the



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decision of the respondent Nos.2 and 3 Housing Board. Merely because another post of Programmer is allowed to continue, the petitioner cannot contend that the post of Programmer in which he was working should have been continued in the same cadre without degrading to Assistant Programmer. According to the respondents the up-gradation of the post of the Assistant Programmer to Programmer is irregular and illegal. When such is the decision of the respondent Nos.2 and 3, it is for the respondent Housing Board to take appropriate steps including degrading the post of Programmer to the Assistant Programmer. In view of the same, the orders issued degrading the post of Programmer to the Assistant Programmer cannot be questioned and the relief as sought for by the petitioner cannot be granted.

8. The other contention of the respondents is that since the petitioner has illegally worked as Programmer, the excess salary drawn by him as Programmer has to be recovered, thereby impugned proceedings were issued ordering recovery. The impugned orders insofar as recovery of salary drawn by petitioner as Programmer are not convincing. The petitioner was allowed to work as a Programmer for



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considerable period and in the same cadre he was granted yearly increments and incentives as Programmer. The department has also extracted work from the petitioner as a Programmer. Having done all these things suddenly the post of Programmer is degraded to Assistant Programmer without any notice, and the petitioner is asked to pay the salary which was drawn by him excessively as Programmer.

9. This Court is of the firm opinion that the petitioner was not excessively paid when he was working as Programmer. The petitioner was paid remuneration, which the petitioner was entitled as a Programmer. It is not the case of the respondents that the petitioner was paid more than what he was required to receive as Programmer. Once the petitioner is promoted and allowed to work as Programmer and has drawn the salary as a Programmer, it cannot be said that he was paid excessively. The respondents has cited the following judgments:

a) ***Devendra Kumar Vs. State of Uttaranchal and others***, reported in (2013) 9 SCC 363.

b) ***State of Chattisgarh & Others Vs. Dhirjo Kumar Sengar***, reported in (2009) 13 SCC 600.



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c) ***Secretary, AP Social Welfare Residential Educational Institutions Vs. Pindiga Sridhar & Others*** reported in (2007) 13 SCC 352.

d) ***S.L.Kapoor vs. Jagmohan & others***, reported in (1980) 4 SCC 379.

e) ***State of Haryana & Ors. Vs. Northern Indian Glass Ind. Ltd.***, reported in (2015) 15 SCC 588.

f) ***Bhartiya Seva Samaj Trust Vs. Yogeshbhai Ambalal Patel & Anr.***, reported in (2012) 9 SCC 310.

g) ***State of Orrisa & Another Vs. Mamata Mohanty***, reported in (2011) 3 SCC 436.

h) ***Chandi Prasad Uniyal & Ors Vs. State of Uttarakhand & Ors.***, reported in (2012) 8 SCC 417.

i) ***State of Punjab & Others Vs. Rafiq Masih***, reported in (2014) 8 SCC 883, reported in (2014) 8 SCC 883.

j) ***Entertainment Tax Officer, Madhapur Circle, Hyderabad Vs. Hi Tech Theatre, Madhapur, Hyderabad***, reported in (2007) 13 SCC 621.



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10. The above referred judgments are not applicable to the facts of the case on hand, as all of them are in respect of recovery of excess amount paid to the employees. In the case on hand, no excess amount was paid. The petitioner was promoted by the respondents Nos.2 and 3 and was allowed him to work as Programmer, thereby petitioner cannot be held responsible for the mistake committed by the respondents in upgrading the post. Further no disciplinary action was initiated for misleading the respondent Nos.2 and 3 in promoting the post.

11. Further the impugned orders speaks that the reversion order will come into effect from 30.06.2009. This order of the respondent is also erroneous. The downgrading of post will come into effect only from the date of issuing the proceedings of downgrading but not with retrospective effect. The petitioner worked as Programmer upto 13.12.2014 basing on the order of upgrading the post. Upgrading was found to be irregular and on 13.12.2014 thereby downgrading of the post will be effective only with effect from 13.12.2014.

12. In view of the above discussions, this Writ Petition is disposed



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of, upholding impugned order dated 13.12.2014, insofar as reverting the petitioner from the post of Programmer to Assistant Programmer.

However the impugned order of reverting him to the post of Assistant Programmer from Programmer will come into effect from 13.12.2014 and not from 30.06.2009 as mentioned in the impugned order.

Accordingly, the respondents shall not initiate any steps for recovery of any portion of salary or other benefits that were extended to the petitioner as programmer from 30.06.2009 to 13.12.2014. No costs.

Consequently miscellaneous petition is closed.

12.01.2024

Index : Yes / No
Speaking/Non-speaking Order
Neutral Citation: Yes/No
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To

1. The Secretary (Housing),
Government of Puducherry,
Chief Secretariat,
Puducherry.
2. The Chairman,
Puducherry Housing Board,
Annanagar, Nellithope,
Puducherry.



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3. The Secretary,
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Dr.D.NAGARJUN, J.
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