



W.P.No.879 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2024

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.No.879 of 2017
and W.M.P.No.884 of 2017

V.Chelian

... Petitioner

Vs

1.The Secretary,
Tamil Nadu Slum Clearance Board,
No.5, Kamaraj Salai,
Chennai – 5.

2.The Chairman,
Tamil Nadu Slum Clearance Board,
No.5, Kamaraj Salai,
Chennai – 5.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to direct the respondent to grant pension and other statutory monetary benefits payable in the cadre of Assistant Executive Engineer and pass such further orders.

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For Petitioner : Mr.G.Ravisankar
For Respondents : Mr.S.Karthikeyan
Standing Counsel

ORDER

Heard Mr.G.Ravishankar, learned counsel for the petitioner and Mr.S.Karthikeyan, learned Standing Counsel for the respondents and perused the materials available on record.

2. The case of the petitioner is that he was appointed as Assistant Engineer on 17.08.1987 and he had completed more than twenty years of service as Assistant Engineer from 17.08.1987 to 26.01.2011. Subsequently, the petitioner was promoted as Assistant Executive Engineer on 27.01.2011 and voluntarily retired from service as Assistant Executive Engineer on 31.07.2012.

3. The respondent/ Board by proceedings in J1/22871/97 dated 14.07.2004, awarded punishment of stoppage of increment for 2 years with cumulative effect. Against the said order, the petitioner filed an

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appeal to the respondent Board and the said appeal was not considered.

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4. The respondent board in proceedings dated 23.10.2008 granted extension of extraordinary leave without pay and allowance initially for a period of 3 years from 01.07.2005 to 27.08.2008 and subsequently, extended extra ordinary leave for 2 more years from 28.08.2008 to 30.06.2010. The petitioner was permitted to join as Assistant Engineer. The first stoppage of increment which is due payable for the year 2005 as on 01.07.2005 was not paid to the petitioner as per the punishment awarded by the respondent Board and even after the petitioner joined as Assistant Engineer on 26.03.2010. Subsequent increment payable for the year 2011 was not deducted by the respondent Board for no fault of the petitioner.

5. The learned counsel for the petitioner submit that the Board has to implement the order of stoppage of second increment which was not carried out by the respondent Board. To the surprise and

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shock of the petitioner, the 1st respondent by the impugned order dated 30.06.2016, by suo moto cancelled the promotion of the petitioner as Assistant Executive Engineer, which was received by the petitioner on 27.07.2016, which is nearly after a period of 5 years and consequently, cancelled the petitioner's pension fixed in the cadre of Assistant Executive Engineer and fixed the pension based upon the pay drawn by the petitioner in the cadre of Assistant Engineer. The said order is impugned in the present Writ Petition.

6. The learned counsel for the petitioner contends that the said order of the 1st respondent is illegal and without jurisdiction, for the reason that the 1st respondent is not a competent authority under the provisions of Tamil Nadu Slum Clearance Board, Engineering Office Service Rules, 1972. As per the Rule 4 of the said Rules, the Board is a competent appointing authority and therefore, the impugned order passed by the 1st respondent is without jurisdiction and on this short ground, the impugned order is liable to be set aside.

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7. The learned counsel for the petitioner further contends that no opportunity was granted to the petitioner before passing the impugned order by the 1st respondent. Therefore, the impugned order is violative of principles of natural justice. The learned counsel would submit that the 1st respondent has got no jurisdiction to cancel the order of promotion given to the petitioner as Assistant Executive Engineer and the said order of promotion was made by the Board in Resolution No.19/438 dated 12.01.2011, as evident from the proceeding of the 2nd respondent dated 25.01.2011. Therefore, the 1st respondent is not having any authority to cancel the accrued legal rights of the petitioner and cannot be deprived after expiry of 5 years that too after the petitioner was permitted to retire by the Board on 31.07.2012 and accordingly, sought to allow this Writ Petition.

8. On behalf of the respondents, a counter affidavit has been

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filed. It is averred in the counter affidavit for that the petitioner was imposed with a punishment of stoppage of increment for a period of 2 years with cumulative effect on 31.01.2002 for the irregularities committed in Trichy Division and the same was implemented during January 2002 and January 2003 and the increment was sanctioned to the individual during 01.07.2004 only. It is also averred that based on the Board's Resolution No.18 of 2004, dated 28.04.2004, punishment of stoppage of increment for a period of two years with cumulative effect was awarded vide Board proceedings No.J1/22871/97 dated 14.07.2004, for his administrative supervision lapses and lack of monitoring and quality control which led to poor substandard quality of construction in the Duraisamy Puram Tenement Scheme in Trichy at the top floor level during his period as Assistant Engineer.

9. It is also averred in the counter affidavit that the petitioner was promoted as Assistant Executive Engineer vide Board Proceedings No.J2/48/2007 dated 25.01.2011 and was relived on voluntary

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retirement on 31.07.2012. Based on the averments in the counter affidavit, the learned counsel for the respondent submits that as per the Audit Report dated 10.02.2014 in Na.Ka.No.768/A1/2014, it came to the notice of the respondent that the punishment of stoppage of two increments to the petitioner was imposed by order dated 14.07.2004 was not implemented.

10. The learned counsel further contends that the petitioner was on leave on loss of pay from 01.07.2005 to 27.08.2008 and the next increment due to him was to be effected from 01.07.2007. The learned counsel would also submit that the appeal preferred by the petitioner against the order of the respondent dated 14.07.2004 could not be processed, as the petitioner was on long extraordinary leave from 2005 onwards. The learned counsel further submits that since, the petitioner availed extraordinary leave and resumed duty only with effect from 26.03.2010, there had been an inadvertent error on the part of the respondents in examining the eligibility of the petitioner to be placed in

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seniority list for consideration as Assistant Executive Engineer, whereby the petitioner was given promotion as Assistant Executive Engineer on 25.01.2011.

11. The learned counsel further contends that in view of the extraordinary leave availed by the petitioner, the punishment of stoppage of increment imposed on 14.07.2004 could be implemented only with effect from the date of resumption of duty, as he availed loss of pay from 01.07.2005 to 27.08.2008 and thereafter, the petitioner availed extraordinary leave from 28.08.2008 to 30.06.2010. Since, the loss of pay period from 01.07.2005 to 27.08.2008 could not be taken into account for inclusion of his name in the seniority list for consideration to be promoted as Assistant Executive Engineer itself could fall short of the service to be included in the panel for consideration. The learned counsel further submits that the currency of the period of punishment would be 01.07.2004 to 01.10.2012 and

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admittedly, as per the Rules during the currency of punishment, he cannot be promoted as Assistant Executive Engineer. As per the audit report, the 1st respondent had ordered to recover the amount granted to the petitioner in the order made in Na.Ka.No.J3/7194/2012 dated 13.07.2015.

12. The learned counsel further contends that as per the Rules applicable, the officer concerned should not be considered for promotion during the currency of any punishment. But the petitioner is considered for promotion during the currency of punishment which contrary to the Rule which was pointed out by the Audit. As per the Audit Report dated 10.02.2014, the 1st respondent issued proceedings dated 29.07.2015 made in Na.Ka.No.J3/7194/2012 for recovery to be made after withdrawing the revision of pay granted without implementing the stoppage of increment punishment imposed on 14.07.2004. Based on the Audit, the Board Proceedings No.J3/7194/2012 dated 30.06.2016 an order was issued and the

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petitioner's pay has been revised with a stoppage of increment and he has been stepped down from Assistant Executive Engineer to Assistant Engineer and his promotion has been cancelled.

13. The learned Standing Counsel would submit that as promotion given to the petitioner to the post of Assistant Executive Engineer during the currency of punishment period, there is no illegality in cancelling the said promotion and the order of recovery and the order for revising the salary with stoppage of increment is in accordance with law and therefore, no interference of this Court is required and sought for dismissing this Writ Petition.

14. Heard the arguments advanced by both side counsels and perused the materials available on record.

15. On perusal of the order impugned in this Writ Petition, it appears that no notice is issued before issuing the impugned order

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dated 30.06.2016. It is also clear that no opportunity was provided to the petitioner before passing the impugned order. In the averments of the counter affidavit also, there is no answer to the ground raised by the petitioner in the Writ Petition. Without affording an opportunity to the petitioner, the impugned order is passed. Under these circumstances, this Court is of the considered opinion that the order impugned in this Writ Petition is passed without giving reasonable opportunity to the petitioner by issuing show cause notice or by affording any opportunity of personal hearing which is in violation of principles of natural justice. In the considered opinion of this Court, this Writ Petition can be disposed of by remanding the matter to the 1st respondent to pass orders afresh by following due process of law to meet the interest of justice.

16. Accordingly, without going into merits of the case or without expressing any opinion with regard to the facts of the case, this Writ Petition is disposed of with the following directions:-

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1.The order of the 1st respondent dated 30.06.2016
in No.J3/7194/2012 is hereby set aside.

2. The matter is remanded back to the 1st
respondent for a fresh consideration and to pass
appropriate orders by following due process of law
within a period of two months from today.

3.The 1st respondent shall afford reasonable
opportunity to the petitioner before passing final order.

16. There shall be no order as to costs.

17. Consequently, connected miscellaneous petition is closed.

14.02.2024

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Speaking order : Yes/No

Neutral Citations : Yes/No

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To

- 1.The Secretary,
Tamil Nadu Slum Clearance Board,
No.5, Kamaraj Salai,
Chennai – 5.
- 2.The Chairman,
Tamil Nadu Slum Clearance Board,
No.5, Kamaraj Salai,
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BATTU DEVANAND,J.

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