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W.P.No. 15590 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.03.2024

PRONOUNCED ON : 03.06.2024

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.Nos. 15590, 15591 & 15592 of 2017

and

W.M.P.Nos. 16892 to 16897 of 2017

R. Kumaran	... Petitioner in WP. No.15590 of 2017
D.Dillibabu	... Petitioner in WP. No.15591 of 2017
P.Ravichandran	.. Petitioner in WP. No.15592 of 2017

Vs.

Chennai Port Trust,
Rep., by its Chief Engineer,
Civil Engineering Department,
Establishment Division,
Rajaji Salai, Chennai – 600 001. ... Respondent in all Wps.

Prayer: Writ petitions have been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the concerned records from the respondent, quash the order of the respondent dated 16.06.2017 bearing No.E3/3001/12/E as illegal, arbitrary and contrary to law and consequently direct the respondent to continue the petitioner in the post of Junior Engineer (Civil) in terms of the order dated 28.01.2011(Prayer in all Wps).

For Petitioner (in all Wps) : Mr. Balan Haridas

For Respondent(in all Wps) : Mr. P. Ulaganathan



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COMMON ORDER

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These Writ Petitions have been filed to call for the records from the respondent, quash the order of the respondent dated 16.06.2017 bearing No.E3/3001/12/E as illegal, arbitrary and contrary to law and consequently direct the respondent to continue the petitioners in the post of Junior Engineer (Civil) in terms of the order dated 28.01.2011.

2. The case of the petitioners is that they were initially appointed as Tracer, Luskar Grade II and Mazdoor respectively and later promoted to the post of Junior Engineer (Civil) on adhoc basis on 02.04.2007. Thereafter, they were regularly promoted to the post of Junior Engineer by orders dated 28.01.2011 with effect from 30.12.2010. On 28.05.2008, the petitioners were deputed as Assistant Engineer to the Sethu Samuthiram Project, wherein, they worked for about 3 months. Even though the order of promotion states that the same is on temporary basis, it is the practice of the respondent to issue such order even in respect of permanent appointments also. Only on that basis, the petitioners were promoted on regular basis with effect from 30.12.2010 by an order dated 28.01.2011 to the post of Junior Engineer (Civil) by terming the said promotion to be temporary. Thus, the petitioners were working in the post of Junior Engineer (Civil) for the last 10 years.



The petitioners' services had been regularized in the post of Junior Engineer (Civil) pursuant to the recommendations of the Departmental Promotion Committee Meeting held on 30.12.2010 and thereby, the petitioners claim they have been regularised in the post of Junior Engineer (Civil) with effect from 30.12.2010.

3. While so, without assigning any reasons, the respondent issued order dated 16.06.2017 reverting the petitioners from the post of Junior Engineer (Civil) to the post of Record Draughtsman. Aggrieved by the same, the present writ petitions have been filed.

4. On behalf of the respondent, counter affidavits have been filed, wherein, it is stated that pursuant to the objections raised by the General Administration Department and due to the fact that the petitioners were holding substantive post in the category of Record Draughtsman while the post held by the petitioners viz., Junior Engineer (Civil) was not extended beyond 30.09.2013, and due to the prolonged correspondence between the proponent department viz., Civil Engineering Department and General Administration Department, the petitioners could not be reverted even though the posts held by them were not extended by the Board after 30.09.2013 onwards.



5. Heard the learned counsel for the petitioners and the learned Standing counsel for the respondent and perused the material available on record.

6. The case of the petitioners is that they were initially appointed as Tracer, Luskar Grade II and Mazdoor respectively and promoted to the post of Record Draughtsman. Subsequently, the respondent promoted the petitioners to the post of Junior Engineer on 02.04.2007 on adhoc basis. They had been working and discharging the duties of the regular work of a Junior Engineer. However, the respondent used to give an artificial break on the 90th day afternoon and from the 91th day, the petitioners continued as Junior Engineers. The respondent by following due procedure for promotion by constituting a Departmental Promotion Committee, promoted the petitioners as Junior Engineer(Civil) in the pay scale of Rs.12100-30800 with effect from 30.12.2010 by the order dated 28.01.2011 under Regulation 27 of the Chennai Port Trust Employees (Recruitment, Seniority and Promotion) Regulation, 2008. In the year 2008, the petitioners were deputed as Assistant Engineers to the Sethu Samudram Project and so far they were working for about 3 months. Thus, the petitioners have been working in the post of Junior Engineer (Civil) for 10 years. The services of the petitioners had been regularised in the post of Junior Engineer (Civil), pursuant to the recommendation of the Departmental Promotion Committee Meeting held on 30.12.2010. While so, the respondent



without any justification and without any basis issued order dated 16.06.2017

reverting the petitioners from the post of Junior Engineer (Civil) to the post of Record Draughtsman. Aggrieved by the said order, the petitioners have been constrained to file the present Writ Petitions.

7.The learned counsel for the petitioners would submit that no reasons have been assigned as to why the petitioners had been reverted while they have been regularly promoted to the post of Junior Engineer(Civil) with effect from 30.12.2010 in terms of Regulation 27 of the Chennai Post Trust Regulation 2007. As such, the impugned order dated 16.06.2017 is arbitrary and illegal and sought to quash the same.

8.The learned counsel further submits that the reversion will have effect even on the terminal benefits of the petitioners. As such, the respondent cannot revert the petitioners without affording an opportunity of hearing by way of notice, particularly when the reversion will result in civil consequences. As such, it is in utter violation of the principles of natural justice and fair play.

9. Detailed counter affidavits have been filed by the respondent. It is pleaded in the counter affidavits that the petitioners were promoted to the post of Junior



Engineer(Civil) purely on adhoc basis in terms of Regulation 25(1) with effect from 02.04.2007 and they joined duty with effect from 31.12.2007, after the petitioners were relieved from Sethu Samuthiram Corporation Limited. It is stated in the counter affidavits that the petitioners were given regular breaks every six months till 30.06.2010, so as to avoid regularization. However, based on the recommendation of the Departmental Promotion Committee(DPC), which was convened on 30.12.2010, the petitioners were promoted to the post of Junior Engineer(Civil) under Regulation 27 of the Chennai Port Trust Employees(RSP) Regulations, 2008 with effect from 30.12.2010, subject to the conditions that their promotion will not bestow on them any right to claim for the post and thereby, they are liable for reversion in case if the project posts against which they were promoted were not extended beyond 31.03.2011. However, the services of the petitioners were extended periodically upto 30.09.2013, with the approval of the Board.

10. It is averred in the counter affidavit that later on taking into account the objections of General Administration Department and due to the fact that the petitioners were holding substantive post in the category of Record Draughtsman, the posts held by the petitioners viz., Junior Engineer(Civil) were not extended beyond 30.09.2013. Further, due to the prolonged correspondence between the proponent department viz., Civil Engineering Department and General



Administration Department, the petitioners could not be reverted to even though the posts held by them were not extended by the Board after 30.09.2013.

11.The learned Standing counsel for the respondent would submit that the reversion order is purely based on the administrative decision taking into account of various factors in each case and no notice will be given nor the employees heard in person before issuing reversion order. The learned counsel further contends that 98 Supervisors in 1997, 12 Supervisors in 1998 and one Supervisor in 2001 were appointed for the project work of Ennore Port Limited and other Project works under Regulation 25(1) were subsequently regularized under Regulation (10) on different dates. Subsequently, all the Junior Engineers except 6 Junior Engineers have been confirmed in the post against the then available permanent posts of Junior Engineer vacancies arise then and there from the year 2003 and 42 Junior Engineers were confirmed in the year 2015 in lieu of 33 numbers of "entry level live" posts of respondent Department and 37 numbers of Mazdoor(Shore-labour) entry level live posts of Traffic Departments after obtaining Ministry's approval.

12. The learned Standing counsel further submits that while approving, the Ministry in their letter dated 31.07.2015 has directed to treat 70 Nos. of entry level live posts stand abolished subsequent to absorption of 42 Nos. of Junior Engineers



(Civil) within the present sanctioned strength of 29 in future and till the cadre strength is contracted to 29, no resultant vacancy will be shown in this category.

Relying on this letter, the learned counsel would contend that since the petitioners were holding the posts of Junior Engineer (Civil) on adhoc basis, they can be regularised in the said post of Junior Engineer (Civil) only after the sanctioned strength is contracted to 29. However, the learned counsel for the respondent would further submit that there is no violation of principles of natural justice in issuing the impugned order and sought to dismiss the Writ Petitions.

13. On behalf of the petitioners, reply affidavits were filed reiterating almost all the averments made in the affidavits filed along with the Writ Petitions. In the reply affidavits, it is further contended that well before the letter of the Ministry, the petitioners had been promoted to the post of Junior Engineer (Civil) by letter dated 28.01.2011 in terms of Regulation 27 of the Chennai Port Trust Employees (RSP) Regulations, 2008 and such promotion cannot be wiped away by letter dated 31.07.2015 of the Ministry. It is also stated that the education qualification upto the post of Superintendent Engineer is only Diploma Engineering and if the impugned order is given effect to, the petitioners will not only lose monetarily but also, their promotion will be affected. From May 2022 onwards, the petitioners were deputed to Kamarajar Port, Ennore to work as Junior Engineers and they have been continuing to work there till now.



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14. The learned counsel for the petitioners has placed reliance on the order dated 23.02.2010 in W.P.No.34099 of 2006 passed by a learned single Judge of this Court in “***K.Periyasamy Vs. The Special Commissioner and Commissioner for Revenue Administration, Chepuak, Chennai and two others***” to substantiate his contention that the impugned order is in violation of principles of natural justice. In the said case, a Telex Operator, who was promoted as Assistant was sought to be reverted by the impugned order therein passed by the District Revenue Officer, Pudukottai and the Personal Assistant to the District Collector, Pudukkottai. While setting aside the impugned order of reversion, this Court has held in paragraphs 6 and 7 as extracted hereunder:

“6.The short question that arises for consideration is whether the impugned orders are legal and proper. There is no doubt that at the time when the petitioner was promoted as Assistant, the relevant Government Orders provided for such a promotion. It is not out of any misrepresentation on the part of the petitioner. On the contrary, G.O.Ms.No.321, Personnel and Administrative Reforms (Personnel-B) Department, dated 18.09.1992 came to be passed subsequent to his promotion in the year 1991. No doubt, it has been made with retrospective effect.

“7.Time and again, the Supreme Court held that such a retrospective effect of any rule should not affect the vested right of the persons. In the present case, the Tribunal even did not note that prima facie case has been made out by the petitioner, and that has



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not been answered in the reply affidavit. In any event, since by virtue of retrospective nature of the rule, the petitioner has been reverted, this Court finds that such an action of the respondents is illegal and such a vested right of the petitioner cannot be taken away by the orders passed by the respondents. Hence, the writ petition stands allowed and the impugned orders stand set aside. No costs.”

15. On behalf of the respondent, the learned Standing counsel for the respondent has placed reliance on the judgments of the Apex Court in “*M.Ramanatha Pillai & Others Vs. State of Kerala & Another*” reported in CDJ 1973 SC 172; “*K.Rajendran & Others Vs. State of Tamilnadu & Others*” reported in CDJ 1982 SC 070 and “*Rajendra Vs. State of Rajasthan*” reported in CDJ 1999 SC 076 to substantiate his contentions.

16. On perusal of the judgments relied by the learned counsel for the respondent, it appears that though the judgments were rendered in the cases where posts were abolished, the Hon'ble Apex Court held that the power to create or abolish a post is not related to the doctrine of pressure and it is a matter of Governmental policy. The creation or abolition of post is dictated by policy decision, exigencies of circumstances and administrative necessity. As such, it is clear in the above judgments that the Hon'ble Supreme Court dealt with the issue with regard to abolition of posts, whereas, the issue involved in the present Writ Petition is



different. As such, though this Court is in full agreement with the proposition of law laid down in those judgments, however, this Court of the considered view that the said judgments are not applicable to the facts and circumstances of the present case.

17. It is an undisputed fact that the petitioners were promoted as Junior Engineer(Civil) on 02.04.2007 on adhoc basis and subsequently, by following the procedure provided under Regulation 27 of the Chennai Port Trust Employees(RSP) Regulations 2008 and following due procedure for promotion by constituting Departmental Promotion Committee, the respondent by order dated 28.01.2011, promoted the petitioners to the post of Junior Engineer (Civil) with effect from 30.12.2010 and they have been working there till the impugned order dated 16.06.2017. As such, it is clear that the petitioners have been discharged their duties as Junior Engineer (Civil) for 10 years. They were also promoted as per the procedure prescribed under the Regulations. Though in the promotion order, it is termed to be temporary, but the petitioners services had been regularised in the post of Junior Engineer(Civil), pursuant to the recommendations of the Departmental Promotion Committee. Once the petitioners are promoted to the post of Junior Engineer (Civil) as per the terms of Regulation 27 of Regulations 2008, if the respondent intends to revert the petitioners by issuing the impugned order, the respondent ought to have put the petitioners on notice assigning the reasons as to



why they had contemplated to revert the petitioners from the post of Junior Engineer(Civil) to the post of Record Draughtsman. But the said procedure is not followed by the respondent. Even in the order dated 16.06.2017, which is impugned in the present Writ Petition also no reasons have been assigned to revert the petitioner. On a bare perusal of the impugned order dated 16.06.2017, it appears that the said order is passed arbitrarily and without following the principles of natural justice. The impugned order of reversion passed by the respondent *per se* is untenable for the reason that, firstly, when the petitioners were promoted as Junior Engineer (Civil) on adhoc basis on 02.04.2007 and the respondent issued an order dated 28.01.2011 under Regulation 27 of the Chennai Port Trust Employees(RSP) Regulations, 2008 promoting the petitioners to the post of Junior Engineer (Civil) with effect from 30.12.2010. Though in the order dated 28.01.2011, it is stated that the petitioners are liable for reversion in case, the project posts against they were promoted are not extended beyond 30.03.2011, but on reading of the impugned order, it does not show that the project posts has been closed against which, the petitioners have been promoted. Even in the letter dated 31.07.2015 of the Ministry of Shipping on which, the respondent has relied upon to substantiate their stand to revert the petitioners, it is clearly stated that the order will have effect from the date of issue. As such, in the said letter, it is stated that to treat 70 nos of entry level live posts stands abolished will have effect from the date of that letter dated 31.07.2015



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only. Admittedly, this letter has no retrospective effect. But in the present case, the petitioners were promoted on 28.01.2011 under the relevant Regulations of the respondent Post Trust and such promotions cannot be taken away by a letter dated 31.07.2015, which was issued subsequently.

18. For the above reasons, this Court is of the considered view that the action of the respondent in reverting the petitioners is unjust and the order impugned in this Writ Petition is untenable in the eye of law as it has been issued without following the principles of natural justice and as such, it is liable to be set aside.

19. Accordingly, these Writ Petitions are allowed with the following directions:

(i) The order of the respondent dated 16.06.2017 bearing No.E3/3001/12/E is hereby set aside.

(ii) The respondent shall continue the petitioners in the post of Junior Engineer(Civil) in terms of the order dated 28.01.2011.

No costs.

Consequently connected miscellaneous petitions are closed.

03.06.2024

Index :Yes/No

Neutral Citation :Yes/No

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BATTU DEVANAND, J.

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To
The Chief Engineer,
Chennai Port Trust,
Civil Engineering Department,
Establishment Division,
Rajaji Salai, Chennai – 600 001.

Pre-delivery Order made in
W.P.Nos.15590,15591 & 15592 of 2017 and
W.M.P.Nos. 16892 to 16897 of 2017

03.06.2024