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WP No.1213 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

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D.K.Srinivasa Rao

... Petitioner

versus

- 1.The Registrar
Central Administrative Tribunal,
Chennai Bench,
Madras High Court Campus,
Chennai-600104.
- 2.Union of India
Represented by Director General,
Department of Posts,
Dak Bhavan,
New Delhi-110001.
- 3.Chief Postmaster General,
Tamil Nadu Circle,
Chennai-600002.



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4. The Senior Manager,
Mail Motor Service,
Chennai-600006.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorari to call for the records relating to the order in OA No.635 of 2023 dated 17.11.2023 passed by the Central Administrative Tribunal and quash the same.

For the Petitioner	:Mr.S.Ramaswamyrajarajan
For the Respondents	:Mr.AR.L.Sundaresan Additional Solicitor General for Mr.B.Sudhir Kumar Senior Panel Counsel for respondents 2 to 4 first respondent-Tribunal

ORDER

(Order of the Court was made by *D.KRISHNAKUMAR, J.*)

The writ petition is filed for the issuance of a writ of Certiorari to call for the records relating to the order in OA No.635 of 2023 dated 17.11.2023 passed by the Central Administrative Tribunal and quash the same.



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2. Brief facts of the case:

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2.1. The petitioner, while he was working as Assistant, was promoted as Assistant Manager on officiating basis in the vacant post, with effect from 06.03.2006, until further order by the second respondent vide order dated 02.03.2006. According to the petitioner, on 30.03.2010, the second respondent passed an order, terminating the service of the petitioner without any notice or assigning any reason. Aggrieved by the same, the petitioner has filed original application in OA No.1464 of 2010 before the Tribunal. The Tribunal, by order dated 25.11.2011, *directed the respondents to reinstate the petitioner in officiating capacity in the post of Assistant Manager till a regular incumbent is appointed, as per the recruitment rules.* As the respondents had not implemented the order of the Tribunal, the petitioner has filed contempt application in CA No.25 of 212 before the Tribunal.

2.2. While so, the respondent Department filed WP No.15346 of 2012 before a Division Bench of this Court and obtained an order of stay against the order of the Tribunal and consequently, the said contempt proceeding



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was closed. Subsequently, on 20.03.2014, the Division Bench dismissed the said writ petition with the following observation:

“We are unable to see any reason to interfere with the said order of the Central Administrative Tribunal. The writ petition is dismissed with direction to the appellants to implement the order of the Central Administrative Tribunal within four weeks from the date of receipt of this order”

2.3. Thereafter, the respondent Department had filed SLP No.20526 of 2014 before the Hon'ble Supreme Court and the same was dismissed on 01.04.2015. Following the order of the Hon'ble Supreme Court dated 20.07.2015, the petitioner was reinstated as Assistant Manager on officiating basis and he was allowed to work in the same capacity till 11.06.2023.

2.4. While so, by order dated 12.06.2023, the fourth respondent, has again terminated the petitioner from the said post with effect from 12.06.2023 wherein it is stated as follows:

“Consequent on orders of termination of officiating arrangement vide Circle office letter no.STA/37-36/2017 dated 08.06.2023, Shri.D.K.Srinivasa Rao, Assistant Manager (O)



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Mail Motor Service, Chennai-6 deemed to be terminated w.e.f.12.06.2023 AN and directed to assume charge as Postal Assistant, Mail Motor Service, Chennai on return from leave (Earned leave granted for 3 days from 12.06.2023 to 14.06.2023)."

2.5. Subsequently, the second respondent issued two orders dated 20.06.2023 and 04.07.2023 merging the cadre of Assistant Manager with the cadre of Inspector of posts to protect the petitioner and other six officials in New Delhi circle, those who are officiating in the post of Assistant Manager by stating, *"Moreover, there are 07 posts (06 in Delhi Circle and 1 in Tamil Nadu Circle) of Assistant Manger MMS where PA/LSG officials in MMS are officiating as Assistant Manager, MMS on ad-hoc basis on directions of various court orders. They will continue to officiate as Assistant Manger, MMS. As and when these posts are vacated by the incumbents, these posts shall also be included in the sanctioned strength of Inspector Posts in concerned circle."*

2.6. According to the petitioner, based on the aforesaid order of the second respondent dated 04.07.2023 and order in SLP No.20526 of 2014, he



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made a representation, dated 13.07.2023, to the third respondent, seeking reinstatement in the said post of Assistant Manager. However, the third and fourth respondents did not come forward to reinstate the petitioner in the said Post. Aggrieved by the same, the petitioner has filed original application in OA No.635 of 2023 before the Central Administrative Tribunal. The Tribunal, by order dated 17.11.2023, has dismissed the said OA, based on the reply submitted by the respondents in the said OA, with the following observations:

“It is found that the order, dated 25.11.2011, of the Tribunal in OA 1464/2010 has now been fully complied with, as a regular incumbent has been posted as per the Recruitment Rules. Hence, the applicant can no longer be allowed to continue or get promoted to the post.

In view of the merger of cadres, as per the eligibility criteria and the Recruitment Rules, regular officials are available who are qualified for the post of Inspector Posts. The applicant was only officiating as no regular official was previously available. He is neither qualified nor eligible to hold the post of Assistant Manager/Inspector Posts in view of the applicable Recruitment Rules.

In view of the above, no merit is found in the OA. The OA is, accordingly, dismissed, No order as to costs.”

2.7. Challenging the said order, the petitioner has filed the present writ petition.



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3. The learned counsel for the petitioner has contented before this Court that the instant original application has been filed challenging the termination order dated 12.06.2023 passed by the fourth respondent and the said application came to be dismissed on the ground that the petitioner is not eligible for appointment to the post of Assistant Manager as per the recruitment rules and a new incumbent has been appointed as per the recruitment rules.

4. Learned counsel for the petitioner has placed reliance on the proceedings of the second respondent dated 20.06.2023 and 04.07.2023, and stated that in the said proceedings, it is clearly stated that as and when these posts are vacated by the incumbents, these posts shall also be included in the sanctioned strength of Inspector Posts in concerned circle. He further stated that the letter of the second respondent/Director (Establishment) dated 04.07.2023, would clearly state that the petitioner will continue in the officiating capacity as Assistant Manager. He further submits that the letter



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of the second respondent also assures that "as and when these posts are vacated by the incumbents, these posts shall also be included in the sanctioned strength of Inspector Posts in concerned circle". Therefore, in view of the categoric assurance given in the proceedings of the second respondent, dated 04.07.2023, the petitioner can continue as Assistant Manager till his retirement and only thereafter, they can fill up this vacancy by way of regular appointment. Therefore, the order of the fourth respondent dated 12.06.2023, terminating the petitioner from the post of Assistant Manager, is illegal and arbitrary and therefore, the same is liable to be set aside.

5. Learned Additional Solicitor General of India heavily relied upon the decision rendered by the Tribunal in OA No.1464 of 2010 dated 25.11.2011, which was confirmed by a Division Bench of this Court in WP No.15346 of 2012 dated 20.03.2014 and also the judgment passed by the Hon'ble Supreme Court in SLP No.20526 of 2014 dated 01.04.2015, wherein a specific direction has been given to the respondents to reinstate the petitioner in officiating capacity in the post of Assistant Manager till a



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regular incumbent is appointed as per the recruitment rules framed for the said post. Now, a regular incumbent, namely, S.Kumaresan, was appointed, as Inspector Posts, Mail Motor Service, Chennai, *vide* letter dated 10.08.2023 of the second respondent, on completion of 11 months of service rendered by the petitioner.

6. He further submits that the Tribunal has not gone into the question of considering the claim of the petitioner for regularization of his service in the post of Assistant Manager. It is open to the respondents to decide the same in accordance with law. Therefore, the Tribunal has rightly dismissed the instant original application on the ground that the order in the original application has been fully complied with and a regular incumbent has also been appointed in the said post. Further, the petitioner is not eligible for the said post as per the recruitment rules.

7. Heard the parties and perused the materials available on record.



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8. It is seen that the order of the Tribunal in OA No.1464 of 2020 is clear and specific that the petitioner can continue in service as Assistant Manager till a regular incumbent is appointed as per the recruitment rules framed for the post. It is the case of the respondent Department that regular incumbent, namely, S.Kumaresan, was appointed, as Inspector Posts, Mail Motor Service, Chennai, vide letter dated 10.08.2023, of the second respondent, on completion of 11 months of service by the petitioner. Therefore, the contention of the petitioner, relying upon the said proceedings of the Director of the Department/second respondent dated 20.06.2020, followed by proceedings dated 04.07.2023, to claim that he can continue as Assistant Manager till he vacates the aforesaid post and only thereafter that post shall be included in the sanctioned strength of Inspector Posts in concerned circle, cannot be accepted and it is liable to be rejected. Further, the petitioner is not eligible to be considered as per the recruitment rules for the post of Inspector. Since the post was vacant, the respondent Department had given temporary promotion to the petitioner and the same may not give any statutory right to the petitioner for seeking regular



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promotion in the aforesaid post. Viewed from any angle, the petitioner has no legal right. There is no merit in the writ petition. Therefore, we are not interfering with the order in OA No.635 of 2023 dated 17.11.2023 of the Tribunal and the same is confirmed. Consequently, the writ petition stands dismissed. There shall be no order as to costs.

[D.K.K., J.] [K.B., J.]
26.04.2024

Index : Yes/No
Neutral Citation : Yes/No
mrn

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D.KRISHNAKUMAR, J.
and
K.KUMARESH BABU, J.

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