

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2009

CORAM:

THE HON'BLE MR.JUSTICE K.RAVIRAJA PANDIAN
AND
THE HON'BLE MR.JUSTICE T.RAJA

W.A.No.2141 of 1999
and W.P.No.2748 of 2001

S.Ramalingam ... Appellant in W.A.No.2141 of 2001
and Petitioner in W.P.No.2748/2001

Vs.

The Chairman and Managing Director
Tamilnadu Civil Supplies Corporation
Limited, Madras - 10.

..... Respondent in W.A.No.2141 of
2001 and
W.P.No.2748 of 2001.

Writ Appeal in W.A.No.2141 of 1999 is filed under Clause 15 of
the Amended Letters Patent against the order dated 25.8.1999 made in
W.P.No.14371 of 1999 on the file of this Court.

Writ Petition in W.P.No.2748 of 2001 is filed under Article 226
of the Constitution of India seeking for the relief of issuance of
writ of a certiorari to call for the records in proceedings
Proc.No.H3/118176/99(2) dated 15.12.2000 and quash the same.

For Appellant : Mr.S.Sadasharam
in W.A.No.2141
and for petitioner
in W.P.No.2748
of 2001.

For Respondent : Mr.R.P.Kabilan, AAG
for Mr.V.Selvanayagam

JUDGMENT

(Judgment of the Court was made by K.RAVIRAJA PANDIAN,J.)

W.A.No.2141 of 1999:

The writ appeal is filed against the order of the learned single Judge dated 25.8.1999 made in W.P.No.14371 of 1999 non-suiting the appellant for the relief of setting aside that portion of the order of the respondent in Rc.No.H3/123983/94 dated 21.12.1998 whereby the appellant was denied monetary benefit despite he be included in the panel of Assistant Executive Engineer (Civil) for the year 1994 and placing him between Thiru.K.Veeraraghavan Sl.No.2 - and A.Chandraseakran - Sl.No.3.

2. Disputing the seniority list dated 4.11.1994 prepared for the post of Assistant Executive Engineer (Civil) from among the cadre of Assistant Engineers, the appellant herein filed writ petition in W.P.No.6350 of 1995. By a detailed order, the writ Court allowed the Writ Petition and directed the respondent herein to include the appellant's name in the panel. As the said direction is having some bearing on the ultimate decision of this appeal, we re-produce the same here:

"Accordingly, there shall be a direction to the first respondent to include the petitioner's name in the panel of Assistant Executive Engineer (Civil) for the year 1994 and consider his claim for promotion and appointment to the post of Asst. Executive Engineer (Civil) for the year 1994 and consider his claim for promotion and appointment to the post of Asst. Executive Engineer (Cviil) with effect from 8-11-1994, the date on which his junior, namely the 4th respondent was promoted with all consequential service benefits from that i.e., 8-11-1994. Writ Petition is allowed to the extent mentioned above...."

The said order was accepted by the respondent and thus become final. Pursuant to the same, the respondent passed an order giving effect to the direction by including the appellant's name in the panel of Assistant Engineers (Civil) for the year 1994 and placed him in between Thiru.K.Veeraraghavan Sl.No.2 - and A.Chandraseakran - Sl.No.3 and was deemed to have been promoted as Assistant Executive Engineer on par with his immediate junior with effect from 8.11.1994, however without monetary benefit. This order came to be passed on 21.12.1998. The appellant filed Contempt Application No.375 of 1999 on the premise that the order of the learned single Judge was not given effect to in full, and that the appellant was given promotion retrospectively with effect from 8.11.1994, however, the pay was not

regulated and the arrears of salary and allowances have not been sanctioned and paid to him. The said contempt application was disposed of by the learned single Judge by observing as follows:

"... After going through the order of this Court dated 29-10-1998, more particularly with regard to the direction in the last para of the said order and in view of the explanation offered by the respondents in their counter affidavit, I do not find any merit in the contention raised by the applicant. I am satisfied with the explanation offered by the respondent. Accordingly the contempt application is dismissed. Notice issued earlier is discharged. I have not expressed anything regarding the claim of the petitioner with regard to back wages for the period from 8-11-1994."

3. Thereafter the appellant filed Writ Petition No.14371 of 1999 challenging the order dated 21.12.1998 promoting the appellant with retrospective effect from 8.11.1994 without giving monetary benefit and the same was dismissed by the learned single Judge after narrating the facts of filing of earlier writ petition and subsequent filing of the contempt application and taking note of the decision of the Supreme Court in the case of PALURU RAMAKRISHNAIAH VS. UNION OF INDIA (1989 2 SCC 541) by holding that the appellant herein is not entitled to the benefit sought for in the writ petition in view of the judgment of the Supreme Court in the case of PALURU RAMAKRISHNAIAH VS. UNION OF INDIA and unless the seniority list is prepared and finalised and promotions are made in accordance with the rules on the basis of the seniority list, the question of entitlement to work in the promotional posts does not arise. The correctness of the same is now canvassed before us in this writ appeal.

4. Learned counsel for the appellant relying on a judgment of the Supreme Court in the case of THE COMMISSIONER, KARNATAKA HOUSING BOARD VS. C.MUDDAIAH reported in 2007(6) Supreme 97 contended that unless the order of the learned single Judge granting service benefit unconditionally is set aside or modified, the authorities cannot interpret the order for their convenience as interpreted in the impugned order of the writ petition by saying that the appellant is not entitled to the benefit as he did not work during the relevant period.

5. However, the learned counsel appearing for the respondent submitted that as the appellant has not worked during the relevant period, he is not entitled to any payment and he relied on that portion of the order of the learned single Judge, where he explained the decision of the Supreme Court in the case of PALURU RAMAKRISHNAIAH VS. UNION OF INDIA (1989 2 SCC 541).

6. We are not able to sustain the argument of the learned counsel appearing for the respondent or sustain the judgment of the learned single Judge for the reason that the order dated 29.10.1998 made in W.P.No.6350 of 1995 and the portion of the order, which has been extracted above has become final, and the Corporation - respondent herein has not taken up the matter on appeal, as done in the case of PALURU RAMAKRISHNAIAH VS. UNION OF INDIA (1989 2 SCC 541). If the order dated 29.10.1998 made in the above writ petition has been taken on appeal by the Corporation and that portion of the order giving all service benefits is put in issue and on that ground that order has been interfered the issue is totally different. But in this case the order of the learned single Judge has become final and that has not been taken up on appeal. These different factors available in this case make ocean of difference between Paluru Ramakrishnaiah's case and this case. Vide HARYANA FINANCIAL CORPORATION VS. JAGADAMBA OIL MILLS, AIR 2002 SC 834. The learned single Judge has thought it fit to grant the service benefits also while directing the respondent to fix the seniority on par with his juniors and promote him to the post of Assistant Executive Engineer on par with his juniors. Rightly that portion of the order has been complied with. But without any reason the service benefit granted by the learned single Judge has been denied in the order impugned. In almost identical set of facts, such a relief granted in favour of an employee was put in issue by the Commissioner of Karnataka Housing Board before the Supreme Court and the Supreme Court dismissed the said appeal in the case of THE COMMISSIONER, KARNATAKA HOUSING BOARD VS. C.MUDDAIAH reported in 2007(6) Supreme 97. We are of the view that it would be appropriate to refer paragraph Nos.31 and 32 of the judgment, so as to have a clear picture on this issue, which reads thus:

"... 31. We are of the considered opinion that once a direction is issued by a competent Court, it has to be obeyed and implemented without any reservation. If an order passed by a Court of Law is not complied with or is ignored, there will be an end of Rule of Law. If a party against whom such order is made has grievance, the only remedy available to him is to challenge the order by taking appropriate proceedings known to law. But it cannot be made ineffective by not complying with the directions on a specious plea that no such direction could have been issued by the Court. In our judgment, upholding of such argument would result in chaos and confusion and would seriously affect and impair administration of justice. The argument of the Board, therefore, has no force and must be rejected.

32. The matter can be looked at from another angle also. It is true that while granting a relief in favour

of a party, the Court must consider the relevant provisions of law and issue appropriate direction keeping in view such provisions. There may, however, be cases where on the facts and in the circumstances, the Court may issue necessary direction in the larger interest of justice keeping in view the principles of justice, equity and good conscience. Take a case, where ex facie injustice has been meted out to an employee. In spite of the fact that he is entitled to certain benefits, they had not been given to him. His representations have been illegally and unjustifiably turned down. He finally approaches a Court of Law. The Court is convinced that gross injustice has been done to him and he was wrongfully, unfairly and with oblique motive deprived of those benefits. The Court, in the circumstances, directs the Authority to extend all benefits which he would have obtained had he not been illegally deprived of them. Is it open to the Authorities in such case to urge that as he has not worked (but held to be illegally deprived), he would not be granted the benefits? Upholding of such plea would amount to allowing a party to take undue advantage of his own wrong. It would perpetrate injustice rather than doing justice to the person wronged. We are conscious and mindful that even in absence of statutory provision, normal rule is 'no work no pay'. In appropriate case, however, a Court of Law may, nay must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The Court, in a given case, may hold that the person was willing to work but was illegally and unlawfully not allowed to do so. The Court may in the circumstances, direct the Authority to grant him all benefits considering 'as if he had worked'. It, therefore, cannot be contended as an absolute proposition of law that no direction of payment of consequential benefits can be granted by a Court of Law and if such directions are issued by a Court, the Authority can ignore them even if they had been finally confirmed by the Apex Court of the country (as has been done in the present case). The bald contention of the appellant-Board, therefore, has no substance and must be rejected."

7. In the light of the law enunciated by the Supreme Court in the case of THE COMMISSIONER, KARNATAKA HOUSING BOARD VS. C.MUDDAIAH reported in 2007(6) Supreme 97, we are of the considered view that the order of the learned single Judge has to be set aside and the writ appeal has to be allowed. Accordingly, the writ appeal is allowed and the order of the learned single Judge is set aside and writ petition is allowed as prayed for by directing the authorities

giving the benefit as decided by the Supreme Court in the case of THE COMMISSIONER, KARNATAKA HOUSING BOARD VS. C.MUDDAIAH reported in 2007(6) Supreme 97.

W.P.No.2748 of 2001:

8. The writ petition tagged along with the above appeal is filed by the appellant/writ petitioner seeking for the relief of issuance of writ of a certiorari to call for the records in proceedings Proc.No.H3/118176/99(2) dated 15.12.2000 and quash the same. The said relief is sought for by the petitioner contending that pursuant to the order passed on 29.10.1998, by proceedings dated 19.7.1999, the scale of pay of the appellant has been fixed on par with A.Chandraseakran, Assistant Executive Engineer, Tirunelveli, whose pay was fixed at Rs.2575/- from 14.11.1994. While that being so, without any reason, what so ever, without a notice to the appellant, by proceedings dated 15.12.2000, the pay of the writ petitioner was re-fixed stating that the earlier order of fixing the pay of the writ petitioner by steeping up to Rs.2275/- was not correct as the writ petitioner is only a diploma holder and his salary should not be steeped up on par with A.Chandraseakran, who is a degree holder in Engineering and further directed the authorities to recover the excess amount paid to the writ petitioner, as per the original fixation of pay. That order is put in issue in this writ petition.

9. We heard the argument of the learned counsel appearing on either side.

10. Whatever may be the reason for re-fixation of the scale of pay of the writ petitioner, but having civil consequence, which is evident on the face of the order. Natural justice requires that order should be passed after putting the writ petitioner on notice only when the order passed is having civil consequence. On this single ground, the order dated 15.12.2000 impugned in this writ petition is hereby set aside with liberty to the writ petitioner to pass appropriate order after affording reasonable opportunity to the writ petitioner.

However, there is no order as to costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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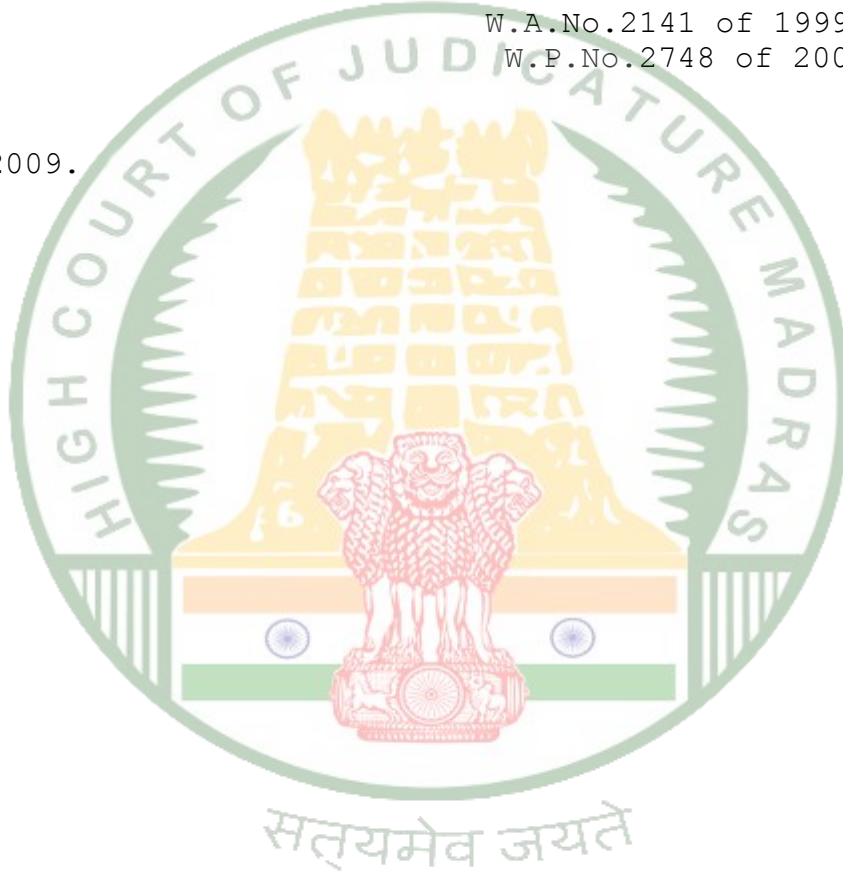
The Chairman and Managing Director
Tamilnadu Civil Supplies Corporation
Limited, Madras - 10.

1 cc To Mr.V.Selvanayagam, Advocate, SR.43460

1 cc To Mr.,S.Sadasharam Advocate, SR.43106,43105

W.A.No.2141 of 1999 and
W.P.No.2748 of 2001

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