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Court : Chennai

Decided On : Feb-07-2006

Reported in : (2006)1MLJ590

Judge : N. Paul Vasanthakumar, J.

Acts : Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 - Sections 2 and 3

Appeal No. : Writ Petition No. 27039 of 2005

Appellant : R. Mohan

Respondent : Special Commissioner and Commissioner for Revenue Administration and Personal Assistant (General) to

Advocate for Def. : D. Malarvizhi, Government Adv.

Advocate for Pet/Ap. : P. Ganesan, Adv. for ;S. Mani, Adv.

Disposition : Petition allowed

Judgement :

ORDER

N. Paul Vasanthakumar, J.

1. Petitioner seeks to set aside the order of the second respondent in Na.Ka. No. 85069/97/A3, dated 15.9.1998 in this writ petition.

2. The facts of the case are that the petitioner was originally appointed as Night Watchman-cum-Masalchi on 26.3.1973 and later as Office Assistant from 10.9.1973. His services as Office Assistant was regularised by order dated 30.6.1975 with effect from 12.9.1973. Petitioner's probation was declared in the cadre of Office Assistant in the year 1976 and he was then promoted as Record Clerk by order dated 14.11.1985. He joined in the promoted post on 2.12.1985 and is continuing in the same post. Whiles, by the impugned order dated 15.9.1998, the petitioner was reverted back to the post of Night Watchman-cum-Masalchi on the ground that his name was not sponsored through the Employment Exchange at the time of appointment as Office Assistant. The said order of reversion passed by the second respondent is challenged in this writ petition on the ground that no notice was issued to the petitioner before ordering reversion and in similar appointments, the Government ratified the same without sponsorship through Employment Exchange. Therefore it is prayed that the petitioner's appointment without sponsorship through Employment Exchange may also be ratified.

3. In the counter affidavit filed by the respondents it is stated that the petitioner was appointed as Night Watchman-cum-Masalchi in the Office of Agricultural Income-Tax Officer, Dindigul as per the proceedings dated 23.3.1973, even though his name was not sponsored through Employment Exchange, and subsequently he was promoted as Office Assistant on 12.9.1973 and thereafter as Record Clerk by the Proceedings of the District Collector dated 14.11.1985. It is further submitted that as the petitioner was not recruited through Employment Exchange, proposals were sent to the Principal Commissioner and Commissioner of Revenue Administration, Chennai, for regularisation of his appointment, who by order dated 15.5.1998 observed that instructions issued in G.O.Ms. No. 790, Industries Department, dated 5.7.1991 and other Government Orders relating to regularisation of irregular appointments was not followed in this case and instructed to send proposals for regularising the appointment of petitioner at the

first instance after cancelling the subsequent promotional orders. Accordingly the petitioner was reverted back to the post of Night Watchman-cum-Masalchi by the order dated 15.9.1998.

4. The learned counsel for the petitioner reiterated the grounds stated in the affidavit and argued that the impugned order is unsustainable due to non-issuance of notice apart from technicalities. Learned counsel submitted that this Court by order dated 18.11.1996 in W.P. No. 6605 of 1988 (A.R. Maruthappan and Ors. v. The Commissioner and Secretary to Government, Education Department, Fort St. George, Madras-9 and Ors.) held that Section 3 of the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 says that the Act does not apply in relation to vacancies in any employment to do unskilled office work and the definition of 'unskilled office work' under Section 2(i) of the said Act covers watchman, sweeper, etc., and that the petitioners in the said writ petition come under the category of 'unskilled office work' and therefore their appointment need not be through the Employment Exchange. The learned counsel citing the said order submitted that the petitioner's case in the case on hand is similar to that of the petitioners in the above cited case as he was originally appointed as Night watchman-cum-Masalchi, which comes under the 'unskilled office work' category and therefore as per Section 3 of the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959, no sponsorship through Employment Exchange is necessary. The learned counsel further argued that even if sponsorship through Employment Exchange is necessary, the petitioner having worked from 1973, his appointment, in any event, cannot be treated as irregular at this distance of time and the respondents are estopped from passing reversion order. The learned counsel also cited a judgment of the Supreme Court reported in : [2001]2SCR18 (Buddhi Nath Chowdry and Ors. . v. Abahi Kumar and Ors. .) wherein it is held that the appointment though irregularly made at the initial stage, shall not be cancelled after the lapse of long time.

5. I have heard the learned counsel on either side. The decision in W.P. No. 6605 of 1988 and the Supreme Court decision cited supra squarely apply to the facts of this case. Petitioner having been appointed in the year 1973, assuming his appointment is irregular, following the proposition laid down in the Supreme Court

in the above cited decision, I hold that in this case only a formal ratification is required, but instead, the reversion order now made is totally unwarranted. The irregular appointment, if is ratified, will definitely confer a right on the petitioner to get his appointment ratified from the date of initial appointment. Therefore the impugned order is liable to be set aside.

6. In the result, the writ petition is allowed, the impugned order dated 15.9.1998 is set aside. No costs.

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