

J. Kumar Vs. the Commissioner and Director.

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Court : Chennai

Decided On : Mar-05-2012

Judge : Vinod K.Sharma, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : W.P.No.31956 of 2005 (O.A.No.3240 of 1997)

Appellant : J. Kumar

Respondent : The Commissioner and Director.

Advocate for Pet/Ap. : Ms. Kuilmozhi, Adv.

Judgement :

Prayer: Writ petition under Article 226 of the [Constitution of India](#) praying for issuance of a writ of certiorari, to call for the records culminating to 2nd respondent's order in Na.Ka.No.A5/4892/97 dated 18.4.1997 and quash the same and consequently direct the respondents to follow the seniority as per his earlier order dated 18.07.1996.

ORDER

1. The petitioner was appointed as Junior Computer Draftsman on 15.10.1979 in the District Survey Office at Ooty, Coimbatore. The petitioner successfully completed his probation on 13.11.1981. The petitioner was thereafter transferred

from Ooty to Coimbatore on 25th May, 1988. This transfer was on the request of petitioner, as per the rules, petitioner was placed at the bottom of seniority list of the post held by him at Ooty.

2. The petitioner was thereafter promoted to the post of Taluk Draftsman and was placed at Serial No.2. The seniority list of petitioner was changed to 45(a) without issuing any notice to him.

3. The petitioner, being aggrieved by revision of seniority, filed a representation with the respondents. No reply was received to the representation, which forced petitioner to issue legal notice.

4. On receipt of legal notice, second respondent vide order Na.Ka/A5/3538/96(2) dated 18.07.1996 again fixed the petitioner's seniority in the cadre of Taluk Draftsman at Sl.No.2.

5. The petitioner was transferred to Sattur in Kamaraj District and petitioner joined new place posting, when the second respondent passed the impugned order, reverting petitioner to the post of Draftsman and further transferred him from Sattur to Chennai.

6. The impugned order, as translated, reads as under:

PROCEEDINGS OF THE ASSISTANT DIRECTOR OF LAND AND SURVEY
RECORDS DEPARTMENT PRESENT : Thiru A. SUBRAMANIAN

Na.Ka. A/5 4891/97 Date : 18.4.97

Sub : Public Works Thiru.J.Kumar, Taluk Draftsman,

Mettupalayam Taluk is transferred to Virudhunagar, Kamarajar District de-promoted orders issued-reg.

Ref : 1. Proceedings of the District Collector, Coimbatore, A 5/118258/96 (NiA) dated 28.09.1996.

2. Proceedings of the Commissioner of Land and Survey records at Chennai in Na. Ka.A.6/99/96 NiA dated 30.9.1996.

3. Orders passed by the Supreme Court in S.L.P. (CC) 25347/93 dated 17.10.94.

4. Proceedings of the Director of Land Revenues in Na. Ka. A6/(Sarukkam)/ 99/96 dated 9.4.1997.

As per the order cited in Ref. No. 1, Thiru. J. Kumar, Taluk Draftsman who was working in the Taluk Office at Mettupalayam is hereby transferred to Virudhunagar Kamarajar District for administrative reason and thereby he is relieved from duty from this district. As per the order of the Supreme Court as cited in ref. No: 3, his seniority in the category of Draftsman has been fixed by this office by proceedings in Na. Ka. A5/25(1) dated 6.1.96 orders have been issued and based on the same situation arose to revert him as he is the junior most in the draftsman seniority list. Hence, as per the order of the Commissioner of Land and Survey Records, cited in Ref. No: 4 orders issued to revert Taluk Draftsman to Draftsman and he is instructed to join as Draftsman in the office of the Assistant Director of Land and Survey Records at Chennai. Sd/.

Assistant Director,

District Land and Survey

Coimbatore 18.

7. Learned counsel for the petitioner challenges the impugned order, on the ground that, the impugned order of reversion, cannot be sustained, as no notice was issued to petitioner before ordering his reversion.

8. The order is also challenged on the ground that it is totally arbitrary, thus, violative of Article 14 of the [Constitution of India](#), as in the garb of order of transfer, petitioner could not be reverted to the post of Draftsman, though the feeder cadre for promotion to the post of Taluk Draftsman, is Senior Draftsman.

9. The order is also challenged on the ground of non application of mind.

10. The learned Additional Government Pleader appearing on behalf of the respondents, however contends, that the impugned order has been passed in compliance with the decision of the Hon'ble Supreme Court. Therefore the contention of learned counsel for the petitioner, that the order is arbitrary or outcome of non application of mind, cannot be sustained.

11. On consideration, I find that the writ petition deserves to succeed. In the garb implementing the order of the Hon'ble Supreme Court, the respondents cannot alter the seniority list of the cadre of Taluk Draftsman.

12. The perusal of the order passed by the Hon'ble Supreme Court shows, that directions were issued to the respondents to fix seniority of employee in accordance with law.

13. The requirement of law is that the parties, likely to be affected by change, should have been issued show cause notice. Thereafter, a conscious decision was required to be taken, as to whether petitioner was to be reverted or not, in view of change of seniority.

14. The impugned also suffers from vice of arbitrariness, as it gives no reason for reversion. It does not disclose change of seniority of petitioner in a particular cadre.

15. The seniority dispute was with respect to the post of Draftsman, therefore, it is not understood or disclosed how the seniority of Taluk Draftsman was changed, resulting in reversion.

16. The impugned order, thus, is hit by Article 14 of the [Constitution of India](#), therefore, cannot be sustained in law. The impugned order also shows no application of mind, as reversion cannot be ordered in the garb of transfer order.

17. Consequently, this writ petition is allowed. The writ, in the nature of certiorari, is issued quashing the impugned order. No costs. The petitioner shall also be entitled to all consequential benefits flowing from this order.

