

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2015

CORAM:

THE HONOURABLE MR. JUSTICE V.RAMASUBRAMANIAN
and
THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

W.P.No.29106 of 2014

&

M.P.Nos.1 & 2 of 2014

N.Baskar

P.A to the Hon'ble Judges
High Court of Judicature at Madras
Chennai

... Petitioner

Vs.

1. The Registrar General
High Court of Judicature at Madras
Chennai - 600 104

2. A Paramasivam
Sub-Assistant Registrar (Insolvent Accounts)
Madras High Court
Chennai

... Respondents

Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records in the proceedings bearing No.ROC Nos.32, 33, 34, 35, 36 & 37/2013-Con-B2 Notification No.165 of 2013 dated 21.08.2013 issued by the 1st respondent insofar as it relates to the 2nd respondent (V), quash the same and consequently direct the 1st respondent to consider the petitioner for promotion to the post of Sub Assistant Registrar (Insolvents/Accounts) and grant him notional promotion w.e.f 21.08.2013 with all consequential service benefits.

For Petitioner : Mr.V.Raghavachari
for Ms.M.N.Sumathy

For Respondents : Mr.S.Haja Mohideen Gisthi for R1
Mr.V.Venkadasalam for R2

ORDER
(Order was delivered by V.RAMASUBRAMANIAN,J)

The petitioner, who is working as a Personal Assistant to the Hon'ble Judges of this Court, has come up with the above writ petition, challenging an order of promotion granted to the second respondent herein, to the post of Sub-Assistant Register (Insolvent, Accounts)

2. Heard Mr.V.Raghavachari, learned counsel for the petitioner, Mr.S.Haja Mohideen Gisthi, learned counsel appearing for the first respondent and Mr.V.Venkadasalam, learned counsel appearing for the second respondent.

3. The petitioner originally joined service as a Stenographer in the Court of Judicial Magistrate, Sathyamangalam on 12.08.1994. Thereafter, he was appointed by the method of recruitment by transfer to the High Court as a Personal Assistant to the Hon'ble Judges from 24.12.2001. The petitioner appears to hold a degree in Commerce and a degree in law. By a Notification bearing No.165 of 2013 dated 21.08.2013, several promotions were ordered by the High Court. One such promotion was the promotion of the second respondent, who was working as a Court Officer, to the post of Sub-Assistant Registrar (Insolvent, Accounts).

4. Upon coming to know of the said order, granting promotion to the second respondent, the petitioner made a representation dated 03.07.2014 contending that the second respondent was ineligible to be promoted as he did not hold a degree in Bachelor of Law and that the petitioner may be considered for promotion. Since the said representation did not purportedly invoke any response, the petitioner has come up with the above writ petition challenging the order of promotion of the second respondent and also seeking a consequential relief.

5. The attack of the petitioner to the promotion of the second respondent, is two fold namely a) that the petitioner is qualified to be promoted and b) that the second respondent was not qualified on the date of the impugned order to be promoted to the post of Sub-Assistant Registrar (Insolvent, Accounts).

6. Before examining the question as to whether the second respondent was eligible or not, it is first necessary to find in matters of this nature as to whether the petitioner is entitled as per the rules to seek promotion to the post to which he is now seeking promotion. Therefore, a look at the rules is necessary.

7. The Madras High Court Service Rules, divides all the posts in the High Court Services into two divisions, namely Division I

dealing with Gazetted Posts and Division II dealing with Non-Gazetted Superior Posts. Division I comprises of about 7 categories of posts (originally it had 8 categories and the 8th category now stands deleted). Within each category of posts, there are sub-categories. Similarly, Division II comprises of 9 categories of posts with each category having its own sub-categories.

8. The post held by the petitioner is that Personal Assistant to the Hon'ble Judges. This post is actually included as Category 4 in Division II. Category 4 in Division II comprises of three sub-categories, namely (i) Senior Private Secretary to Hon'ble Judges, (ii) Private Secretary to Hon'ble Judges and (iii) Personal Assistant to Hon'ble Judges.

9. The post with which we are now concerned in this case is the post of Sub-Assistant Registrar (Insolvent, Accounts). This post is included in Category 6B in Division I.

10. Promotions to the various categories of posts in both the divisions are actually governed by Rule 14. The said Rule 14 has a few rules and a few provisos. In the printed copy of the statutory rules made available to us, there appears to be a jumble of the provisos.

11. Insofar as promotion to Category 6B in Division I, namely the post of Sub-Assistant Registrar (Insolvent, Accounts) is concerned, Rule 14 states the following rule:

"Promotion to category 6B in Division-I, shall be from Categories 1A, 2 and 3 of Division II."

12. Unfortunately for the petitioner, category 4 of Division II in which the post held by the writ petitioner falls is not included in the rule contained in Rule 14 for promotion to the post of Sub-Assistant Registrar (Insolvent, Accounts). However there is a proviso which is sought to be relied upon by Mr.V.Raghavachari, learned counsel for the petitioner. As per the said proviso, even the members of merit and ability in category 4 are entitled to be considered. The proviso relied upon by the learned counsel for the petitioner reads as follows:

"Provided that members of merit and ability in categories 2 and 4 of Division II may also be considered."

13. But, we do not think that the petitioner can take advantage of the said proviso. The said proviso was made to one rule which immediately precedes the proviso. That rule reads as follows:

"Promotion to category 6 in Division I shall be from Category 3 of Division II".

14. Category 6 of Division I comprises of about 13 sub-categories of posts of Sub-Assistant Registrars of different Departments. The proviso relied upon by the learned counsel for the petitioner is with specific reference to 13 sub-categories of posts of Sub-Assistant Registrars which are grouped in Serial 6(a) to 6(m). The proviso has no application to the post in Category 6B. Therefore, prima facie we are of the view that in the absence of a statutory rule enabling persons coming under Category 4 of Division II to be promoted to Category 6B in Division I, the petitioner cannot seek a mandamus.

15. An alternative argument advanced by the learned counsel for the petitioner is that persons holding posts in Category 4 of Division II are entitled to be promoted as Deputy Official Assignee coming under Category 4B of Division I. Therefore, it is the contention of the learned counsel for the petitioner that if a Personal Assistant to the Hon'ble Judges is entitled as per the rules to be promoted to the post of Deputy Official Assignee, which is actually a higher post and a supervisory post to the post of Sub-Assistant Registrar (Insolvent, Accounts), there is no rhyme or reason as to why the Personal Assistants should be considered as ineligible for feeder category.

16. Though the aforesaid contention may appear to be attractive, on the face of it we do not think that the Court can issue a mandamus on the basis of logic and reasoning when the special rules prescribe a particular eligibility criteria for promotion. We are here to test whether the petitioner is eligible as per the rules for promotion to a particular post. The rule is not under challenge. Therefore, whether the rule has got any rational basis or logic in it falls outside the purview of the present dispute.

17. Insofar as the eligibility of the second respondent is concerned, it appears that he had a degree in law, which did not, at the time of his promotion, made him eligible for promotion. But, by an amendment made on 24.11.2014, persons holding a degree in law, though not recognized by the Bar Council for admission as its member, have been made eligible. In any case, the second respondent has already been transferred as Sub-Assistant Registrar (Current Section) and he is not now holding the post of Sub-Assistant Registrar (Insolvent, Accounts). Even assuming that the promotion of the second respondent at that time was contrary to the rules, it will not entitle the petitioner to seek promotion to the post de hors the rules. one wrong cannot be set right by another wrong.

18. The last contention of the learned counsel for the petitioner is that as per the amended rules, the petitioner is

fully qualified. But the amendment was made on 24.11.2014. That question does not arise for consideration.

19. Therefore, no relief can be granted and hence, the writ petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gpa

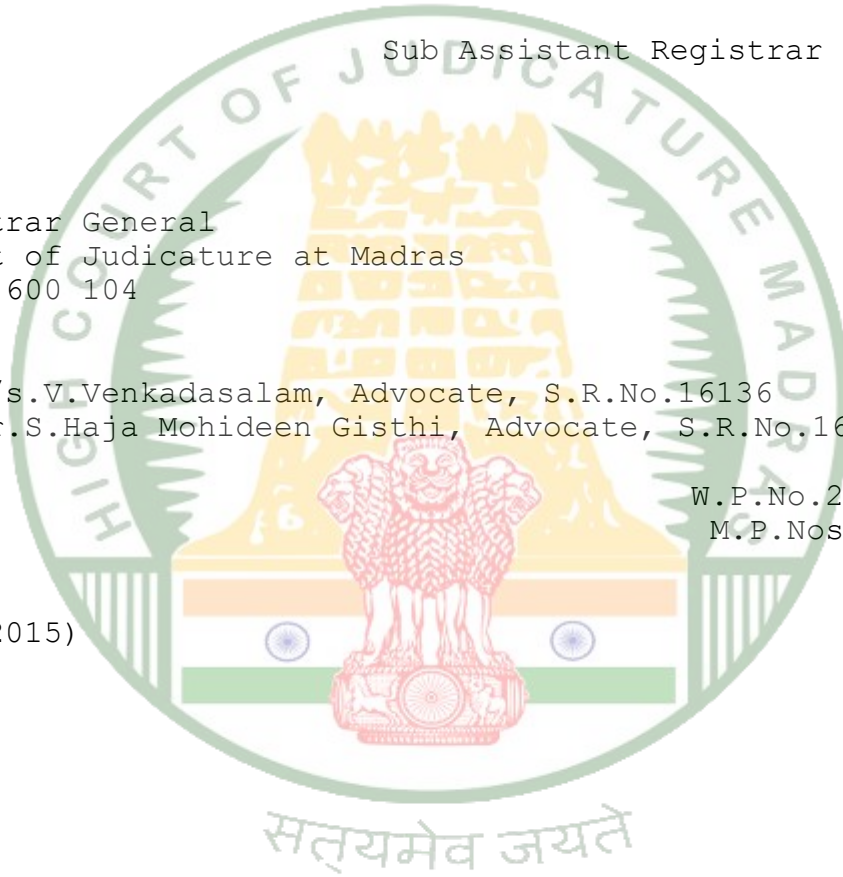
To

The Registrar General
High Court of Judicature at Madras
Chennai - 600 104

+1cc to M/s.V.Venkadasalam, Advocate, S.R.No.16136
+1cc to Mr.S.Haja Mohideen Gisthi, Advocate, S.R.No.16189

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VGI (CO)
CA(07/04/2015)



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