

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 7.10.2015.

CORAM

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.31642 of 2015

G.Dhanasekaran

...Petitioner

vs.

1 Inspector General of Registration
100 Santhome High Road
Pattinampakkam Chennai 600 028

2 The District Registrar
(Administration)
Virudhunagar Registration District
Virudhunagar District

3 R.Kumaresan
District Registrar (Audit)
Villupuram

...Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing respondents 1 and 2 for inclusion of the petitioner's name in the temporary panel of Grade I, Sub Registrar for the year 2011-2012 over and above the third respondent with consequential service benefits and maintaining the petitioner's seniority in accordance with Tamil Nadu Public Service Commission seniority as mandated by General Rule 35(a) and on the basis of the representation of the petitioner dated 16.3.2015.

For Petitioner : Mr.S.Vadivelu

For RR 1 and 2 : Mr.N.Srinivasan, Additional Govt. Pleader

ORDER

By consent, the writ petition is taken up for final disposal.

2. The petitioner would state that the first respondent, under Rule 12(b) of the General Rules, has released the list of selected candidates of directly recruited Sub-Registrar Grade II, vide proceedings dated 26.7.2008. The petitioner's name was

found in Serial No.9 and the name of the third respondent was found in Serial No.11. The petitioner was appointed as Sub Registrar, Grade II by the first respondent vide his proceedings dated 21.8.2008 and here again, the serial number of the petitioner was assigned as 8 and the third respondent's serial number was 10 and therefore, the petitioner is senior to the third respondent. It is further contended by the petitioner that the first respondent, vide his proceedings dated 5.9.2008, has chosen to call upon the petitioner to choose Telugu as the third language with a further direction to pass the Test within the period of probation and even in the said proceedings, the petitioner's name was found at serial No.7 and the name of the third respondent was found at serial No.9. The petitioner would further state that contrary to the Service Rules, his name was not included in the temporary panel of Grade I Sub Registrar for 2011-2012. It has been indicated therein that the said list is purely temporary and the name of the third respondent was found at serial No.12 and the petitioner's name was not included in the said panel. The proceedings relating to temporary panel of the year 2011-2012 of Grade I Sub Registrar is also subject matter of litigation in W.P.No.11296 to 11298 of 2003 and 28787 of 2004 and it has been held that the appointment by transfer in a higher post in the same Department is promotion and hence, the rule of reservation would not apply. The review applications were also filed which had ended in dismissal and the Special Leave Petitions are filed in SLP Nos.5888 and 5589 of 2006 and the same are pending.

3. It is further contended by the petitioner that the name of the petitioner was once again overlooked in the subsequent panel of the year 2012-2013 and the first respondent has issued proceedings dated 27.1.2014, wherein the name of the petitioner was found at Serial No.22. In the panel for the year 2013-2014, once again the name of the petitioner was not found. The petitioner would claim that he has passed the Registration Test, District Office Manual Test and Account Test for Subordinate Officers Part I within the period of probation viz., upto 31.8.2011 and he did not pass Telugu language Test within the period of probation. The second respondent did not also communicate the petitioner about the extension of probation from 31.8.2011 to 31.8.2013 and only on account of non-passing of the third language, the period of probation was extended. The petitioner has passed the Telugu Test on 27.8.2013.

4. The grievance expressed by the petitioner is that the non-passing of the Telugu Test has nothing to do with his probation and placed reliance upon Rule 23A of the General Rules. In the light of the said Rule, there is no justification on the part of respondents 1 and 2 to exclude the name of the

petitioner from Grade I Sub Registrar of the year 2011-2012. The petitioner, in this regard, submitted a detailed representation dated 16.3.2015 to respondents 1 and 2 to restore his original seniority in the category of Sub Registrar Grade II and since no order has been passed, he came forward to file the present writ petition.

5. Mr.S.Vadivelu, learned counsel appearing for the petitioner has drawn the attention of the court to Rule 23A of the General Rules and would submit that non-passing of the third language Test within the extended period is not a penalty and therefore, the non-inclusion of the name in the panel is unsustainable and prays for appropriate orders.

6. The court heard Mr.N.Srinivasan, learned Additional Government Pleader, who accepts notice for respondents 1 and 2.

7. It is relevant to extract Rule 23A and 35 of the General Rules hereunder:-

"23A Completion of probation and drawal of arrears of Increment:

xxxx In cases where the petitioner is to acquire any special qualification or to pass any prescribed test within the period of probation, or within the extended period of probation referred to in Rule 28, the first increment in cases where the period of probation is one year and the second increment in case where the period of probation is two years, shall be sanctioned only after acquiring the qualification or passing the test. ...

Rule 35(a)

... the seniority of a person in a service, class or category or grade shall unless he has been reduced to a lower rank as a punishment be determined by the rank obtained by him in the list of approved candidates drawn up by the Tamil Nadu Public Service Commission or other Appointing Authority, as the case may be, subject to the Rule of reservation where it applies. The date of commencement of his probation shall be the date on which he joins duty irrespective of his seniority."

8. Though the petitioner has prayed for a larger relief, in the light of the facts and circumstances of the case, without going into the merits of the case, this court directs respondents 1 and 2 to consider the petitioner's representation

dated 16.3.2015 on merits and in accordance with law, after putting on notice the third respondent and pass orders within a period of eight weeks from the date of receipt of copy of this order and communicate the decision to the writ petitioner.

9. The writ petition is disposed of accordingly. No costs.

-Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

ssk.

To

1 Inspector General of Registration
100 Santhome High Road
Pattinampakkam Chennai 600 028

2 The District Registrar
(Administration)
Virudhunagar Registration District
Virudhunagar District

+1 cc to Mr.S.Vadivelu,Counsel for the Petitioner(sr.54379)

+1 cc to Government Pleader(sr.54703)

VGI (co)
cp 19/10/2015

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सत्यमेव जयते

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