

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

W.P. No.4167 of 2015

K.Sivakumar

.. Petitioner

Vs.

The Registrar General,
High Court,
Madras-600 104.

... Respondent

The writ petition is filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records in O.M. ROC No.24/14-Con.B2.Estt.1 dated 15.12.2014 on the file of the respondent and quash the same.

For petitioner : Mr.V.Bhiman

For Respondent : Mr.C.T.Mohan

ORDER

(Order of the Court was made by SATISH K. AGNIHOTRI, J.)

Challenging the official memorandum dated 15th December, 2014, whereby and whereunder, the representation of certain staff members against the provisional seniority list (non gazetted), was rejected, the petitioner has filed the instant petition.

2 Indisputably, the petitioner was appointed as Office Assistant on 1st November, 2004. Subsequently, he was promoted to the post of Reader / Examiner on 3rd February, 2014. The petitioner made a representation on 11th September, 2014 for refixation of his seniority by placing him above Ms.V.Chandravathana, Reader / Examiner (Serial No.49), on restoring his seniority from 19th November, 2012. His representation was duly considered and rejected accordingly.

According to the petitioner, he was not considered for promotion on 19th November, 2012 when he was duly qualified to hold the post of Reader/ Examiner, as no departmental proceedings or any charge memo was pending on the said crucial date. The petitioner claims his seniority in the post of Reader / Examiner according to the date of entry, i.e., 1st November, 2004 in service as Office Assistant. It is further stated that one Mr.Sundaresan was shown at Serial No.40 and Ms.Chandravathana was shown at Serial No.49. The juniors to the petitioners have been placed above him in Serial No.49 to 70. Thus, a direction be issued to refix the seniority by fixing seniority on the basis of initial entry into the service.

3 In response, the Registrar General has filed a comprehensive counter affidavit. The learned counsel appearing for the respondent submits that the promotion committee held its meeting on 24th April, 2012, which was subsequently approved by the Chief Justice on 26th April, 2012. On the said crucial date, charges were pending against the petitioner as well as one Mr.M.Sundaresan. Thus, they were not considered for promotion on that date. Subsequently, charges were dropped on account of withdrawal of the complaint on 28th June, 2012. Thereafter, the names of M.Sundaresan and one I.Kalirajan were considered against two vacancies on 23rd January, 2013. Subsequently, the petitioner was promoted to the post of Reader / Examiner with effect from 3rd February, 2014. The seniority of the petitioner has been determined on the promoted post of Record /Examiner. The demand of the petitioner to grant seniority from the date of initial appointment has no basis. The seniority in a particular post is maintained on the basis of promotion to the said post.

4 It is strongly contended that no junior to the petitioner even on the post of Office Assistant was promoted to the post of Reader /Examiner and also granted seniority above him. The relevant para from the affidavit filed by the respondent reads as under :

"(ii)After 19.11.2012, No person junior to the petitioner was promoted to the post of Reader/Examiner in the intervening period i.e. After 19.11.2012.

Sl .N o	Name of the Reader / Examiner	Date of entry into service	Date of Promotion to the post of Reader / Examiner
1.	M.Sundaresan	Appointed as Record Clerk w.e.f.11.02.2004	01/02/2013

Sl .N o	Name of the Reader / Examiner	Date of entry into service	Date of Promotion to the post of Reader / Examiner
2.	I.Kalirajan	Appointed as Office Assistant w.e.f. 20.10.2004	01/02/2013
3	G.Sakthivel	Appointed as Watch and Ward w.e.f. 04.01.2004	03/02/2014
4	K.Sivakumar (Petitioner)	Appointed as Office Assistant w.e.f. 01.11.2004	03/02/2014

(iii) The Hon'ble Promotion Committee considered Tvl.M.Sundaresan and I.Kalirajan, to the post of Reader/Examiner in the available two vacancies, in the Hon'ble Committee Minutes dated 23.01.2013 and no junior to the petitioner was promoted to the post of Reader/Examiner."

5 Heard the learned counsel for the parties, perused the pleadings and documents appended thereto.

6 The petitioner had failed to produce any document or any provision to the effect that the seniority of all posts are to be considered from the date of initial appointment in the feeder post. Even if the feeder post is taken into consideration, no junior to the petitioner has been promoted. There is no gain-saying that on the date when similarly situated persons, like the petitioner, were considered on 24th April, 2012, a departmental enquiry was pending against him. Thus, it was rightly not considered. Subsequently, on dropping of the proceedings, his name was considered along with other persons. In the ultimate seniority list, the seniority of the petitioner is at proper placement as it is manifest, no junior to the petitioner was granted seniority even in the seniority list of Reader/Examiner.

7 Resultantly, the writ petition is devoid of merit and is, accordingly, dismissed. No costs.

-s/d-

Assistant Registrar(CO)
dt:15/10/2015

True Copy

Sub-Assistant Registrar

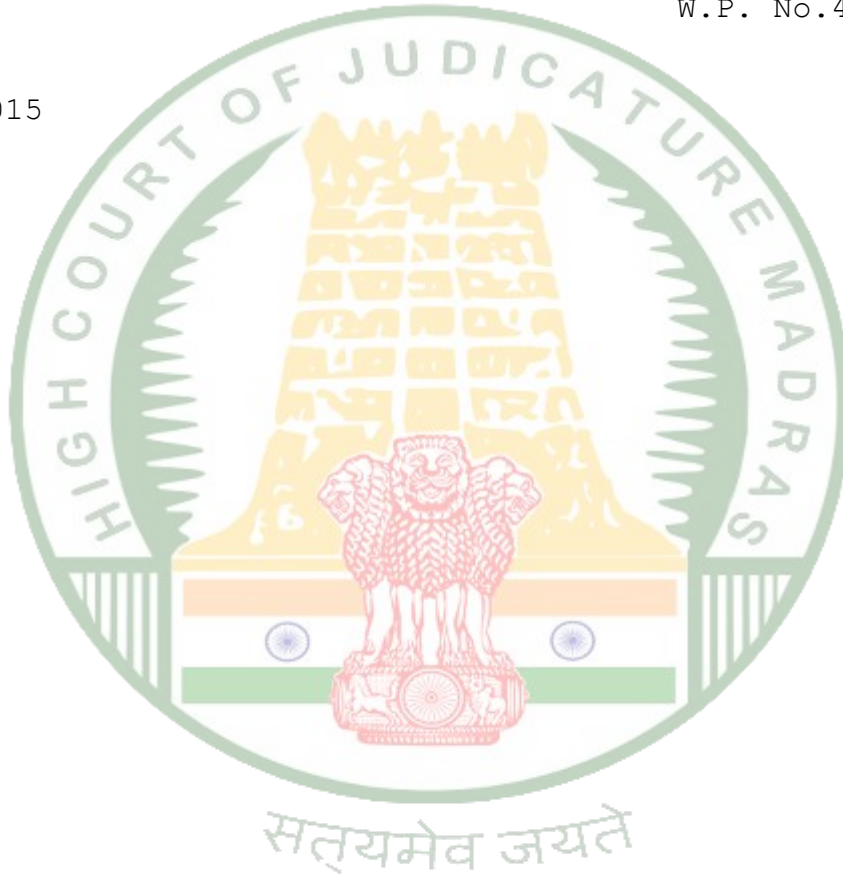
To

The Registrar General,
High Court,
Madras-600 104.

+1 cc to Mr.V.Bhiman, Advocate sr.53773

W.P. No.4167 of 2015

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