

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P. No.4420 of 2015

A.Raman

... Petitioner

versus

The Registrar General
High Court Madras-104.

... Respondent

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records in ROC No.24/2014-Con-B2.Estt.I dated 15.12.2014 on the file of the respondent and quash the same and consequently refix the seniority of the Petitioner.

For petitioner : Mr.V.Bhiman

For Respondent : Mr.C.T.Mohan

O R D E R
(made by K.K.SASIDHARAN, J.)

This Writ Petition is directed against the official memorandum dated 15 December 2014 whereby and whereunder, the Registrar General, was pleased to reject the request made by the petitioner for restoration of his seniority.

2. The petitioner was initially appointed as typist on 4 August 2000. He was promoted as Assistant with effect from 18 March 2004. Thereafter, he was promoted as computer operator vide order dated 18 October 2004. The petitioner was promoted as Assistant Section Officer with effect from 24 August 2011. The petitioner thereafter submitted a representation for refixing his seniority, taking into account his seniority position in the post of Assistant. The request was negatived by the Registrar General, and the same resulted in filing this Writ Petition.

3. The Registrar General in his counter affidavit justified

the impugned office memorandum. It was contended that the petitioner was promoted as Computer Operator on 18 October 2004. Thereafter, he was promoted as Assistant Section Officer. The promotion to the post of Computer Operator was made taking into account the option given by the petitioner. Since promotion to the post of Assistant Section Officer was made taking into account the seniority position in the post of Computer Operator, there is no question of revising the seniority on the basis of the seniority in the post of Assistant.

4. The learned counsel for the petitioner contended that it was only from the notification dated 5 December 2006, the petitioner came to know of the amendment made to the Madras High Court Rules. The rule very clearly provides that amendment shall not affect the appointments/ promotions already made to the post of Computer Operator from 19 January 2004. It is the contention of the learned counsel that the petitioner is entitled to his original seniority in the post of Assistant.

5. The learned Standing Counsel supported the impugned proceedings.

6. The documents available on record would show that the petitioner was initially appointed as typist on 4 August 2000. He was promoted to the post of Assistant on 18 March 2004. The petitioner worked as Assistant for a period of seven months. The counter affidavit filed by the Registrar General shows that pursuant to the option given by him, the petitioner was promoted as Computer Operator and worked as such from 18 October 2004 to 24 August 2011. The petitioner was thereafter promoted as Assistant Section Officer on 24 August 2011.

7. The High Court issued a notification in R.O.C.No.11479/A/03 dated 5 December 2006 indicating that while filling up the vacancies in category 5 from categories 5C, 6 or 7, the existing ratio 4:1 between Assistants and Typists would be continued and after filling up five posts of Assistant Section Officers, four from Assistants and one from Typist, the sixth vacancy would be reserved for Computer Operator in the ratio of 4:1:1, among Assistants, Typists and Computer operators. Though the amendment was given retrospective effect from 19 January 2004, it was indicated that the amendments shall not affect the appointments/ promotions already made to the post of Computer Operator from 19 January 2004, to the date of publication of the notification. In view of the amendment, those serving in the post of Assistants are having more chances of becoming Assistant Section Officer by promotion.

8. The petitioner submitted series of representations for considering him to the post of Assistant Section Officer, taking into account his seniority in the post of Assistant prior to promotion to the post of Computer Operator. Similar prayer was made by Mr.M.R.Senthil Kumar, a similarly placed employee, by filing Writ Petition in W.P.No.22170 of 2010. The said Writ Petition was dismissed by the Division Bench by order dated 28 January 2010. The relevant portion of the order is extracted below.

"9.It is also an admitted position that the Rule was amended on 5.12.2006, and the petitioner was actually promoted to fill up the post of Computer Operator. He has also been working so all along the period as referred to above. Now, he feels it so inconvenient that he could not get promotion as ASO, and the ratio for the said post was actually 1 out of 6. As rightly contended by the learned Counsel for the respondent, no Rule envisages such a situation that any employee can get demotion to his convenience and go or compete for the other post. It could be well seen that as far as the Assistants are concerned, out of 6, 4 posts of ASOs are to be filled up from Assistants. Though the rule was amended on 5.12.2006, while he has been working as Computer Operator which he wanted at his choice, now he cannot be allowed to have a reversion to the post of Assistant so that he could come in the first four thereby enabling him to get promotion as ASO. The learned Counsel for the petitioner brought to the notice of the Court that as far as the promotion to the post of ASO is concerned, there are certain anomalies, and as far as the ratio of 4:1:1 was concerned, it was taken into consideration all the aspects of the matter, and it was actually filled. The learned Counsel also brought to the notice of the Court that 4:1:1 has not been strictly followed; but, there are certain deviations made. Even assuming to be so, that cannot be a reason to strike down the Rules because it was taken into consideration all the aspects of the matter before framing the Rules. Having accepted the post of Computer Operator on appearing in the test and having

passed, now the petitioner cannot be allowed to have a reversion to make it convenient to get promotion since four posts are available for promotion from the category of Assistant."

9. The case of the petitioner is covered by the decision in M.R.Senthil Kumar (cited supra).

10. The petitioner wanted his seniority in the post of Assistant to be given due weight for the purpose of fixing his seniority in the post of Assistant Section Officer, notwithstanding the fact that the post of Computer Operator is one of the feeder category for appointment to the post of Assistant Section Officer. There is no provision in the Service Rules for restoration of seniority in the post of Assistant after promotion to the post of Computer Operator. We are therefore of the view that the representation submitted by the petitioner was rightly rejected by the Registrar General. We do not find any error or illegality in the said order, warranting interference by this Court, by exercising the power of judicial review.

11. In the upshot, we dismiss the Writ Petition. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The Registrar General
High Court Madras-104.

+1cc to Mr.Bhiman, Advocate Sr.55646 [5/11/2015]

W.P. No.4420 of 2015

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