

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.2.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P. No.24589 of 2013

S.NAVANEETHAKRISHNAN ... petitioner

versus

- 1 THE PRINCIPAL SECRETARY TO
GOVERNMENT PERSONAL AND ADMINISTRATIVE
REFORMS DEPARTMENT SECRETARIAT FORT ST.
GEORGE CHENNAI-9.
- 2 THE PRINCIPAL SECRETARY TO
GOVERNMENT HIGHER EDUCATION DEPARTMENT
SECRETARIAT FORT ST. GEORGE CHENNAI-9.
- 3 MADRAS UNIVERSITY
REP. BY ITS REGISTRAR CHEPAUK CHENNAI-5.
- 4 THE DISTANCE EDUCATIONAL
COUNCIL (ESTABLISHED UNDER IGNOU ACT) NEW
DELHI. ...RESPONDENTS

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus Calling for the records of the 1st respondent in Connection with the impugned orders in (i) G.O.Ms. No.107 P & AR (M) Department dated 18.8.2009 and (ii) G.O.(4D) No.40 P & AR (H1) Department dated 28.5.2013 and quash the same in so far as the petitioner is concerned and consequently give to the petitioner the promotional appointment by transfer to the Post of Section Officer by including his name in the place of appropriate Seniority i.e. in between Sl.No.24 (E.Loganathan) and Sl.No.25 (A.Deivanayaki) in the Regular Promotion Panel made in G.O. (4D) No.35 P & AR (H1) Department dated 30.8.2012 among the Assistant Section Officers fit for appointment as Section Officer as on 1.6.2011 for the year 2011-12 with all attendant and monetary benefits.

For petitioner : Mr.S.Rajendran
For respondents : Mr.P.Sanjay Gandhi,
Additional Government Pleader
For R1-R2
Mrs.G.Thilakavathy for R3

O R D E R

The claim made by the petitioner for promotion by transfer, to the post of Section Officer, by including his name in the appropriate place for the year 2011-12 was rejected on the ground that as per the government order in G.O.Ms.No.107 P&AR (M) Department dated 18 August 2009, B.A. Degree obtained by him cannot be recognized as a Degree for the purpose of appointment/promotion in public service. The petitioner therefore challenges the order dated 28 May 2013 on the file of 1st respondent.

Brief facts :-

2. The petitioner was appointed as Office Assistant in the Tamil Nadu Secretariat on 1 November 1996. He was promoted to the post of typist in 2002. Thereafter, he was promoted as Assistant in the year 2005. Though the petitioner was promoted to the post of Assistant Section Officer, he was not considered for promotion to the post of Section Officer. Name of the petitioner was not included in the panel prepared for the year 2011-12 in spite of his eligibility for inclusion in the said panel on the basis of his qualification as on 1 June 2011, the crucial date on which the panel was prepared for the said year. Request made by the petitioner for inclusion was rejected on the basis of the government order in G.O.Ms.No.107 P&AR (M) Department dated 18 August 2009.

3. According to the petitioner, he was qualified for inclusion in the regular panel of Assistant Section Officer for appointment as Section Officer as on 1 June 11, which is the cut off date for preparation of panel for the year 2011-12.

4. The first respondent has filed a counter affidavit contending that the petitioner obtained Degree through Open University without doing a basic course. His case was therefore not considered for inclusion in the panel for the year 2011-12.

Submissions :-

5. The learned counsel for the petitioner contended that relevant rule for the purpose of considering the case of the petitioner is the unamended Tamil Nadu General Service Rules. According to the learned counsel, Assistant Section Officer in the Tamil Nadu Secretariat Service was eligible for promotion to the post of Section Officer, provided he rendered service for a period not less than 6 years in the said post. According to the learned counsel, the petitioner satisfied the said criteria and as such, he was eligible to be considered for promotion for the year 2011-12. The learned counsel contended that obtaining degree without undergoing the basic course would not be relevant in the case of the petitioner for promotion to the post of Section Officer, for the simple reason that there was no need to obtain degree qualification for promotion.

6. The learned Additional Government Pleader reiterated the contentions taken by the first respondent in the counter affidavit.

Analysis :-

7. The petitioner was initially appointed as typist. The appointment was made in Tamil Nadu Secretariat service. The petitioner was promoted to the post of Assistant in the year 2005. There was no requirement that for promotion to the post of Assistant, candidate should have obtained degree. SSLC was the qualification for appointment to the post of Assistant, in case it is by promotion from the post of typist. The petitioner is therefore qualified for appointment to the post of assistant. Thereafter, he was promoted to the post of Assistant Section Officer. The recruitment rule for promotion to the post of Assistant Section Officer indicates that it was by way of promotion, from among the category of Assistants. There was no requirement that Assistant Section Officer should hold a degree.

8. The Tamil Nadu General Service rules was amended subsequently. The amendment was made in the year 2012 with effect from December 2011. As per the amended Rule, candidate must hold a Degree. However, that was not the case as on 1 June 2011, which was the crucial date for drawing the panel for the year 2011-12. The petitioner is therefore perfectly correct in his contention that even without a Degree, he was eligible for appointment to the post of Section Officer, as on 1 June 2011.

9. Similar question came up for consideration before a Division Bench of this Court in W.A.No.1372/2013. The Division Bench, having found that on the crucial date for promotion to the post of Under Secretary, respondent therein fulfilled all the necessary qualification, dismissed the writ appeal filed by State by judgment dated 12 July 2013. The petitioner is similarly situated and as such, he must succeed.

10. In view of the then prevailing statutory position that for appointment to the post of Section Officer, requirement is only SSLC, the first respondent was not correct in rejecting the claim made by the petitioner, solely on the ground that he failed to undergo basic course before obtaining degree. While rejecting the request, the first respondent omitted to consider the material fact that it was only by amendment of the rule, condition regarding degree was inserted. The amended rule came into force six months after the crucial date. The case of the petitioner should therefore be considered in the light of the unamended service rule.

11. In the result, the impugned order dated 28 May 2013 is set aside and the matter is remitted to the 1st respondent for fresh consideration.

12. The 1st respondent is directed to consider the case of the

petitioner for promotion to the post of Section Officer, by including his name in the panel for the year 2011-12. His name should be included in the appropriate place among the Assistant Section Officers fit for appointment as Section Officer as on 1 June 2011. The petitioner should be given all service benefits except monetary benefits for the period in question. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

13. In the upshot, I allow the Writ Petition. No costs. Consequently, M.P.No.2/2013 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

tar

To

1 The Principal Secretary to Government,
Personnel and Administrative Reforms Department,
Secretariat, Fort St.George,
Chennai 600009.

2 THE PRINCIPAL SECRETARY TO
GOVERNMENT HIGHER EDUCATION DEPARTMENT
SECRETARIAT FORT ST. GEORGE CHENNAI-9.

3 The REGISTRAR
MADRAS UNIVERSITY, CHEPAUK CHENNAI-5.

4 THE DISTANCE EDUCATIONAL
COUNCIL (ESTABLISHED UNDER IGNOU ACT) NEW
DELHI.

1 cc to Mr.S.Rajendiran ,Advocate, SR.No.7612
1 cc to Mr.G.Thilakavathi ,Advocate, SR.No.7276
1 cc to Government Pleader,Sr.No.7453

W.P. No.24589 of 2013

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