

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.12681 of 2015

N.Sekar

... Petitioner

Vs.

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
Home Department,
Secretariat, Chennai 600 009.
2. The Director of Prosecution,
O/o. The Director of Prosecution,
Tamil Nadu Slum Clearance Board Building,
2nd Floor, No.5, Kamarajar Salai,
Chennai 600 005.
3. The Assistant Director of Prosecution,
107/1, Municipal Colony,
Nehruji Nagar,
Dindigul - 624 001.

... Respondents

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of certiorarified mandamus calling for the records relating to the impugned order of the first respondent herein in G.O.Ms.No.624, Home Department (Court) dated 21.08.2012 and the consequent letters of rejection, dated 10.03.2015 and 20.02.2015 in Na.Ka.No.4129/KTF/A2/2013 and quash the same and further direct the respondents herein to grant exemption to the petitioner from writing Criminal Judicial Tests Part I and II and to consider for promotion to the post of Superintendent in the office of the 3rd respondent.
(Prayer amended as per the order dated 19.10.2016 in W.M.P.No.12162/2016)

For Petitioner : Mr.D.S.Rajasekaran

For Respondents : Mr.K.Dhananjayan,
Special Government Pleader

O R D E R

The petitioner has come up with this Writ Petition seeking to quash the impugned order dated 21.08.2012 passed by the first respondent vide G.O.Ms.No.624, Home Department (Court) dated 21.08.2012 and the consequent letters of rejection, dated 10.03.2015 and 20.02.2015 in Na.Ka.No.4129/KTF/A2/2013 and for a further direction to the respondents herein to grant him exemption from writing Criminal Judicial Tests Part I and II and to consider him for promotion to the post of Superintendent in the office of the 3rd respondent.

2. According to the petitioner, he was appointed as Junior Assistant on adhoc basis with effect from 2009 vide proceedings No.33765/2003/C2, dated 14.07.2003 of the District Collector, Dindigul, through Employment Exchange. He was posted in the RDO's Office, Dindigul vide RDO's proceedings No.6931/03/E, dated 28.07.2003. Later, he was transferred and posted to work as Junior Assistant in the office of the Tahsildar, Vedachandur, Dindigul District, vide proceedings No.13936-2005-E, dated 31.12.2005. He was selected for appointment to the cadre of Junior Assistant after successfully being selected in the competitive examinations conducted by the Tamil Nadu Public Service Commission in 2007 and appointed as Junior Assistant in the Directorate of Prosecution's Office at Dindigul, with effect from 03.06.2009 vide proceedings R.C.No.2641/A2/DOP/2009, dated 27.05.2009. His services were regularised with effect from 02.06.2009, vide proceedings dated 28.07.2010.

3. It is the case of the petitioner that he is a Law Graduate and was practising as an Advocate in Nilakottai Munsif Court, Dindigul District for more than 10 years and when he was selected for an adhoc appointment as Junior Assistant in 2003, he left the practice and took up appointment in the Government of Tamil Nadu. It is his further submission that for promotion to the post of Superintendent in the office of the Director of Prosecution, the incumbents in the post of Assistant, who do not possess Law qualification, should pass the departmental tests in Criminal Judicial Tests - Parts I and II. His immediate senior Moni, who was working in the office of the Deputy Director of Prosecution, Tirunelveli, who did not possess law qualification, appeared for the Criminal Judicial Tests - Parts I and II and was promoted as Superintendent in the year 2010.

4. When vacancies arose in the year 2010 for the post of Superintendent, the petitioner vide his letter dated 06.09.2010 represented to the 3rd respondent to exempt him from writing Criminal Judicial Tests Part - I and II on the ground that he has acquired Graduation in Law. The 3rd respondent vide his

letter No.215/2010/A2, dated 06.09.2010 to the 2nd respondent, requested him to exempt the petitioner from appearing for Criminal Judicial Tests Part I and II. The 2nd respondent vide his letter No.4129/KuvaTho.E/A2, dated 03.09.2013 addressed to the 1st respondent, requested exemption to the petitioner from writing Criminal Judicial Tests Parts I & II for promotion to the post of Superintendent on the ground that he possessed Law Degree.

5. It is the further case of the petitioner that G.O.Ms.No.624, Home (Courts-VIA) prescribing the criteria for passing the Criminal Judicial Test Parts I & II was issued only in the year 2012 vide proceedings dated 21.08.2012, whereas, when he represented in the year 2010, no such criteria was insisted or in vogue. Contending that the order dated 20.02.2015 passed by the 1st respondent is contrary to law and arbitrary, having no other alternative, the petitioner has come up with this Writ Petition.

6. Heard the learned counsel on either side and perused the material documents available on record.

7. When the matter is taken up for consideration, learned counsel for the petitioner contending that the impugned order of the 1st respondent is arbitrary, sought to quash the same with a further direction to the respondents to exempt the petitioner from writing Criminal Judicial Test Parts - I and II on the grounds that he had acquired Graduation in Law.

8. Learned Special Government Pleader appearing for the respondents, inviting the attention of this Court to paragraphs 15, 16 and 17 of the counter affidavit filed by the respondents, submitted that the Writ Petition is not maintainable and the petitioner cannot claim promotion to the post of Superintendent in the 3rd respondent's Office, as a matter of right.

9. For better appreciation of the case, relevant paragraphs of the counter affidavit are extracted hereunder:

'15. It is further submitted that Rule 15 of Tamil Nadu Subordinate Service prescribes as follows:

Where a probationer has before he commenced his probation, already acquired any special qualification or passed any special test prescribed by the Special Rules, or has acquired such other qualification as may be considered by the State Government or by the appointing authority with the approval of the State

Government to be equivalent to the said special qualification or special test he shall not be required to acquire such special qualification or to pass such special test again after the commencement of his probation.

16. It is further submitted that, in G.O. (Ms) No.624, Home (Courts VIA) Department, dated 21.08.2012, an amendment has been made to Adhoc Rules for the post of Superintendent in the office of the Director of Prosecution that the pre-requisite qualification for the post of Superintendent is must have passed the Criminal Judicial Test Papers I and II. The earlier request of the individual to exempt him from passing of Criminal Judicial Tests Papers I and II has been already rejected on the ground that no provision has been made in adhoc rules exempting the person possessing law qualification from passing Criminal Judicial Tests Parts I and II.

17. It is further submitted that no juniors to the petitioner has been promoted as Superintendent till date. It is submitted that no post of Superintendent has been sanctioned for the office of the Assistant Director of Prosecution, Dindigul. It is submitted tht only 11 Superintendent posts are sanctioned for the Prosecution Department and there are also Seniors to the petitioners yet to be promoted as Superintendent and hence, the claim of the petitioner is wrong."

10. On a reading of Rule 15 of Tamil Nadu Subordinate Service Rules, it is clear that any probationer who has already acquired special qualification or passed any special test prior to the commencement of his probation shall not be required to acquire such special qualification or pass such special test again after the commencement of his probation and thus, the petitioner is eligible to be exempted from writing Criminal Judicial Test Parts I and II.

11. In the light of the above, the respondents are directed to exempt the petitioner from writing Criminal Judicial Tests Part I and II. Further, I am of the view that there is no need to quash the impugned order passed by the 1st respondent and the consequent letters of rejection. As regards the petitioner's claim for promotion, since it is averred by the respondents in

the counter that only 11 posts of Superintendent are sanctioned for the Prosecution Department and there are also Seniors to the petitioner to be promoted as Superintendent, this Court is not inclined to give any positive direction as prayed for by the petitioner. However, the respondents are directed to consider the case of the petitioner for promotion, as per the available vacancy in the 3rd respondent's Office and pass appropriate orders on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order.

This Writ Petition is allowed in part with the above direction. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To:

1. The Secretary to Government,
State of Tamil Nadu,
Home Department,
Secretariat, Chennai 600 009.
2. The Director of Prosecution,
O/o. The Director of Prosecution,
Tamil Nadu Slum Clearance Board Building,
2nd Floor, No.5, Kamarajar Salai,
Chennai 600 005.
3. The Assistant Director of Prosecution,
107/1, Municipal Colony,
Nehruji Nagar,
Dindigul - 624 001.

+1cc to Mr.D.S.Rajasekaran, Advocate, S.R.No.69859
+1cc to the Government Pleader, S.R.No.70598

W.P.No.12681 of 2015

NRJK(CO)
CA(01/12/2016)