

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.12.2016

Delivered on : 21.12.2016

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

WP.No.21887/2014 & MP.Nos.1 to 3/2014 and 1/2015

B.Sundaresan

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Petitioner

Versus

- 1.The Principal Secretary
Government of Tamil Nadu
Labour and Employment Department
Fort St George, Chennai-9.
- 2.The Principal Secretary
Personnel & Administrative Reforms
Department, Fort St George,
Chennai-9.
- 3.The Director of Employment & Training
Chennai-32.
- 4.R.Arunagiri
- 5.S.Thirumalai Selvi
- 6.N.C.Kalaivani
- 7.P.Kavitha
- 8.M.Kannan
- 9.J.Maharani
- 10.S.Mani

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Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records relating to the 1st respondent herein in G.O.[1D] No.332, Labour and Employment [N1] Department dated 24.07.2014 and the consequential order of the 3rd respondent herein in Proceedings No.Nir-4/32884/13 dated 24.07.2014 and quash the same insofar as conferring the promotion post of Assistant Director in the upgraded post of Assistant Director is concerned to S.No.4 to 10 are concerned and consequently direct the 1st respondent herein to confer the upgraded post of Assistant Director to the petitioner with due regards to his seniority with all attendant and consequential benefits.

For Petitioner : Mr.R.S.Anandan

For RR 1 to 3 : Mr.K.Dhananjayan, Spl.GP

ORDER

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

2 The petitioner, in the affidavit filed in support of this writ petition, would aver as follows:-

[a] The petitioner joined the services as the District Employment Officer on 11.12.2009 in pursuant to the recruitment and selection done by the Tamil Nadu Public Service Commission and he had worked in various places and claims that his services has been appreciated by all his superior officers.

[b] The crucial date for preparation of the panel for promotion to the post of the Assistant Director, is 1st September of every year. The 1st respondent had drawn "Nil Panel" for the year 2012-2013 for promotion to the said post and for the year 2013-2014 panel, the crucial date is 01.09.2013 and at that time, only one vacancy was in existence in the cadre of Assistant Director and however, the panel consisting for 12 persons was drawn for single vacancy as per G.O [1D] No.332, Labour and Employment [N1] Department dated 24.07.2014. The petitioner has not been communicated as to why he has been overlooked over his juniors while drawing the said panel and without doing so, the 3rd respondent, based on the promotional panel vide proceedings dated 24.07.2014, had conferred promotion to six persons by counting the upgraded post of Assistant Director as regular vacancies. The petitioner also expresses further grievance that the promotion granted to six persons have not been communicated to him.

[c] Rule 4 of the Tamil Nadu State and Subordinate Services Rules stipulates that promotion is to be effected based on the approved list of candidates which shall be prepared in the prescribed manner by the Appointing Authority or any other Authority empowered in the Special Rules in that behalf and shall be displayed in the Notice Board in the Office of the Appointing Authority and the list shall also be communicated to all the persons concerned by the Registered Post, whose names are found in the list as well as the persons, senior to the junior most persons, whose names have not been included in the list. The estimate of vacancy shall be prepared taking into account, number of permanent post in a category ; number of temporary post in existence ; the anticipated sanction of new

posts in the next year ; the recruitment post of leave reserves ; the anticipated vacancies due to retirement and promotion etc., in the course of the year and the number of candidates already in the position in that category. The list of approved candidates so prepared, shall be in force for a period of one year and shall lapse at the end of the year.

[d] According to the petitioner, since there is only one vacancy, only two candidates alone have to be considered and included in

the panel. But, the 1st respondent had considered and included twelve names and conferred promotion to nine persons in the upgraded post by counting the upgraded post as regular vacancies and the said action of the 1st respondent is clearly against the Rules. The petitioner, in this regard, had also submitted a representation dated 01.07.2014 praying for the conferment of the benefit of the upgraded post based on seniority and since no orders have been passed, he filed WP.No.18417/2014 praying for appropriate direction, directing the 1st respondent to confer the benefit of upgraded post of Assistant Director based on seniority and eligibility alone, without including the upgraded post of Assistant Director in the District Employment Officer promotional panel for the year 2013-2014 for the promotion post of Assistant Director by treating the same as regular vacancies. The said writ petition was entertained and the learned Government Advocate appearing for the official respondents accepted notice and sought time to get instructions and in the interregnum, the impugned panel has been prepared in a hurried manner and subsequently, vide proceedings dated 01.08.2014, conferred the upgraded Assistant Director post and promoted the respondents 8 to 10.

[e] It the categorical stand of the petitioner that the upgraded post of Assistant Directors cannot be included in the promotional panel for the year 2013-2014 and only regular vacancies alone, can be included in the said panel as the promotion has to be made based on merit and ability with seniority ; but whereas, the upgraded post has to be conferred based on seniority-cum-eligibility on the date of conferment and there is no crucial date for conferring the upgraded post. The petitioner would further contend that in terms of G.O.Ms.No.92 of the 1st respondent Department dated 06.03.2013, four post of Regional Deputy Directors were upgraded as Regional Joint Directors and one post of Joint Director [Employment Programmes] directed to be disbanded and ten post out of 18 sanctioned post of Assistant Directors were upgraded as Deputy Directors and as such, the upgraded post cannot be termed as regular vacancy and out of the 18 sanctioned strength of Assistant Directors post, 10 post are directed to be upgraded as Deputy Directors and the upgradation is only for the purpose of

pay scales only and merely because of upgradation, the cadre post cannot be termed as a vacancy and the same cannot be filled up with the District Employment Exchange Offices by issuing promotional panel. However, by mis-interpreting the Government Order as well as the Rules, the respondents 1 and 2 had prepared the promotional panel for Assistant Director for the year 2012-2013 for the promotion post of Deputy Director and promoted five Assistant Directors as Deputy Directors and posted in the upgraded post of Deputy Directors and subsequently, vide G.O.Ms.No.331, Labour and Employment [N1] Department dated 24.07.2014, promoted five Additional Directors as Deputy Directors and posted them in the upgraded post and therefore, challenging the legality of the said Government Order of the 1st respondent Department dated 24.07.2014 and the consequential proceedings of the 3rd respondent dated 24.07.2014 and to quash the same insofar as conferring the promotional post of Assistant Director in the upgraded post of Assistant Director in Serial Nos.4 to 10 are concerned, the petitioner came forward to file the present writ petition.

3 The writ petition was listed for hearing on 14.08.2014 and notice of motion was ordered and the learned Additional Government Pleader who accepted notice on behalf of the respondents 1 to 3, was directed to get instructions and a perusal of the case bundle would also disclose that no steps have been taken to serve respondents 4 to 10 and no interim order was granted.

4 The petitioner also filed MP.No.3/2014, praying for an interim direction, directing the 1st respondent to confer the upgraded post of Assistant Director to him based on the existing seniority and eligibility criteria and the 2nd respondent has also filed MP.No.1/2015 to delete him from the array of parties on the ground of misjinder.

5 The respondents 1 and 3 had filed a joint counter affidavit, wherein it is stated among other things, that the petitioner joined the Department as a Direct Recruit District Employment Officer on 11.12.2009 and since he did not pass one of the Departmental Test, viz., Accounts test for Executive Officers within the probation period, his probation was periodically extended and he passed the said test only on 08.12.2013 and thereby, satisfactorily completed his probation only on 28.12.2013. It is further averred in the counter that in terms of G.O.Ms.No.92, Labour and Employment [N1] Department dated 06.03.2013, the 1st respondent had upgraded certain posts and prior to the said order, the cadre strength of Assistant Director was 18 and as per the said Government Order, 10 posts of Assistant Director were upgraded as Deputy Director [Employment] and 8 District Employment Officers were upgraded as Assistant Directors in the scale of pay of Rs.15600-39100

with Grade Pay of Rs.5400/- and it is further ordered that the existing incumbents of Assistant Directors are allowed to retain the Grade Pay of Rs.5700/- till they vacate the post. An amendment came into being to the said Government Order by issuing G.O.[Ms] No.241 of the very same Department dated 04.10.2013, to the effect that 8 posts of District Employment Officers are upgraded as Assistant Directors in the scale of pay of Rs.1500-39100 with Grade Pay of Rs.5700/- and thereby, the cadre strength of Assistant Director became 16. The crucial date for drawing up the panel list of approved candidates for appointment is 1st September of every year and the drawal of the annual list for the year 2013-2014 will cover for the period from 02.09.2013 to 01.09.2014 and vide G.O.[D] No.13 dated 09.01.2014, the 1st respondent had approved the estimate of 16 vacancies for the post of Assistant Director for the said year which includes the 8 upgraded Assistant Director Posts/vacancy arose due to retirement during 02.09.2013 and 01.09.2014 / Leave reserve vacancies and unexpected contingency vacancies. Though the name of the petitioner was discussed while drawing up the panel for promotion, he was not recommended as he was not an approved probationer on the crucial date, viz., 01.09.2013 for the panel year 2013-2014 and vide G.O.[1D] No.332 dated 24.07.2014, the names of 12 District Employment Officers fit for promotion to the post of Assistant Director of Employment in Employment Wing of the Department was approved and posting orders were also issued by the 3rd respondent on 24.07.2014, 01.08.2014 and 12.09.2014 respectively and all of them had joined the promoted post also. The petitioner was on Earned Leave between 06.08.2014 and 25.08.2014 and a copy of the said panel was also communicated to him. It is further averred by the respondents 1 and 3 that after upgradation, the cadre strength became 16 only and the contention put forth by the petitioner is untenable for the reason that if the regular promotion and the conferment of the upgradation post of Assistant Director are ordered separately, then the number of Assistant Directors will be 26, which is in excess of the cadre strength of 16 and hence, the upgraded post of Assistant Director was taken into consideration by the 1st respondent while arriving at the estimates for the year 2013-2014 and that apart, the post of Assistant Director is filled by promotion and not by conferment. The respondents 1 and 3 also contended that there is not rule proviso in the Tamil Nadu State and Subordinate Services Rules as well as in the Special Rules for conferring upgraded Assistant Director post based on seniority alone and the post of Assistant Director is a selection category and as per the Special Rules, promotion to the category of Assistant Director [Employment] shall be made on the grounds of merit and ability and seniority is being considered where merit and ability are approximately equal and since the petitioner did not pass the Departmental Test for so long and he has passed the examination only on 08.12.2013, which was beyond the crucial

date, his name was not included in the panel for the year 2013-2014 as admittedly, he was not an approved probationer. Therefore, the respondents 1 and 3 prays for dismissal of the writ petition.

6 The learned counsel for the petitioner made his submissions based on the averments made in the writ petition and would contend that the stand of the respondents 1 and 3 in the counter affidavit is against the Service Jurisprudence and the upgraded post cannot be included in the promotion panel, as upgradation and promotion is entirely a different concept altogether and therefore, the private respondents ought not to have been considered at all for the promotion of Assistant Director. It is further contended by the learned counsel for the petitioner that on account of upgradation of the post, no new post has been created and as a consequence of upgradation, the existing incumbent in that cadre, will get higher scale of pay to the post to which it is upgraded and in the absence of creation of any post, the private respondents who are juniors to the petitioner, ought not to have been accommodated at all and that apart, in the absence of any subsisting and regular vacancy in the post of Assistant Director, promotion cannot be effected to the upgraded post of Assistant Director. The learned counsel for the petitioner, in support of his submissions, placed reliance upon the judgment of the Hon'ble Supreme Court reported in 2012 [1] MLJ 301 [SC] [Bharat Sanchar Nigam Limited Vs. R.Santhakumari Velusamy and others] and 2014 [16] SCC 593 [B.Thirumal Vs. Ananda Sivakumar and others].

7 Per contra, Mr.K.Dhananjayan, learned Special Government Pleader, appearing for the respondents 1 to 3, inviting the attention of this Court to the counter affidavit of the respondents 1 and 3, would contend that the petitioner is under misconception and de hors merits of the case projected by him, admittedly, on the crucial date, the petitioner was not qualified as he had passed the Departmental Test only on 08.12.2013 and it took him nearly four years to do so. It is the further submission of the learned Special Government Pleader that General Rule 4 of the Tamil Nadu State and Subordinate Services Rules has been strictly adhered to and as per G.O [3D] No.13 of the 1st respondent Department dated 09.01.2014, estimate of 16 vacancies for the post of Assistant Director for the year 2013-2014 was approved and it also included 8 upgraded post of Assistant Directors / vacancies which arose due to retirement between 02.09.2013 and 01.09.2014 as well as the Leave Reserve vacancies and unexpected contingency vacancies and the post of Assistant Director is filled up by promotion only and taking into account the merit and ability only, the private respondents were promoted as Assistant Directors and they also joined the post and he would further contend that the points urged by the petitioner lacks merit and subsistence and prays for dismissal of the writ petition.

8 This Court paid its best attention to the rival submission and also perused the materials placed before it.

9 The 1st respondent in G.O.[Ms] No.92, Labour and Employment [N1] Department, dated 06.03.2013, has considered the proposal submitted by the 3rd respondent for upgradation to the post of Regional Deputy Directors as Regional Joint Directors, Assistant Director as Deputy Director [Administration, Computerisation in the District Employment Offices ; Professional and Executive Employment Office] and as a consequence, also upgraded the post of the District Employment Officers as Assistant Directors in the Scale of Pay of Rs.15600-39100 with Grade Pay of Rs.5400/-. It was also made clear that the present incumbents holding the post of Assistant Directors are allowed to retain the Grade Pay of Rs.5400/- till they vacate their post. In terms of the said Government Order, the District Employment Officer [General], District Employment Officer, Nagercoil, District Employment Officer, Professional and Executive Employment Branch Office, at Madurai, District Employment Officer, Ramanathapuram, District Employment Officer, Cuddalore, District Employment Officer, Villupuram, Special Employment Officer for Differently Abled, Chennai, District Employment Officer, Vellore, and the District Employment Officer at Dharmapuri, are upgraded as Assistant Directors. The petitioner submitted a representation on 20.06.2014 to the 1st respondent through proper channel stating among other things, since the Assistant Director came to be upgraded after the crucial date on 01.09.2013 and that his probation has been declared with effect from 28.12.2013, he is eligible to be considered for the post of Assistant Director in the vacancies arising after 01.09.2013 and prays for accommodation and it was followed by a reminder dated 01.07.2014. The 1st respondent, vide G.O.[1D] No.332, dated 24.07.2014, had approved the panel of District Employment Officers, fit for promotion to the post of Assistant Director [Employment] for the year 2013-2014 and it was also followed by the proceedings of the 3rd respondent dated 24.07.2014, approving the names of 12 District Employment Officers for promotion to the post of Assistant Directors of Employment in Employment Wing of the Department of Employment and Training by promotion for the year 2013-2014.

10 Rule 4 of the Tamil Nadu State and Subordinate Services Rules speak about the preparation of the list of approved candidates for appointment by promotion and by recruitment by transfer to all the categories of posts in the Tamil Nadu State and Subordinate Services and it shall be prepared annually against the estimated number of vacancies expected to arise during the course of the year and it is relevant to extract Rule 4[a] and the first proviso of the said Rules:-

"Rule 4: Approved Candidates:-

[a] All first appointments to a service or class or category or grade thereof State or Subordinate, whether by direct recruitment or by recruitment by transfer or by promotion, shall be made by the appointing authority from the list of approved candidates. All appointments made by transfer, from one class to another class and from one category to another category, in the same service carrying identical scale of pay shall be made by the appointing authority from a list of approved candidates. Such list shall be prepared in the prescribed manner by the appointing authority or any other authority empowered in the Special Rules in that behalf and shall be displayed in the Notice Board of the Office of the appointing authority. The list shall also be communicated to all persons concerned by Registered Post whose names are found in the list as well as to persons senior to the junior most person included in the list whose names have not been included in the list. Where the candidates in such list are arranged in their order of preference appointments to the service shall be made in such order:

Provided that the list of approved candidates for appointment by promotion and by recruitment by transfer to all the categories of posts in the Tamil Nadu State and Subordinate Services shall be prepared annually against the estimated number of vacancies expected to arise during the course of a year. The estimate of vacancies shall be prepared taking into account the total number of permanent post in a category ; number of temporary posts in existence ; the anticipated sanction of new posts in the next year ; the recruitment post of leave reserves ; the anticipated vacancies due to retirement and promotion etc., in the course of the year and the number of candidates already in position in that category. The list of approved candidates, so prepared, shall be in force for a period of one year and shall lapse at the end of the year. The candidates whose names were included in the previous list, but were not appointed, shall be considered, if eligible for inclusion in the list of next year along with their seniors if any, whose names were not included in the previous list either because they were found not suitable or because they

were not technically qualified when the previous list was drawn up."

11 In the judgment of the Hon'ble Supreme Court of India reported in 1973 [3] SCC 1 [Bishan Sarup Gupta and others Vs. Union of India and others], [Constitution Bench], the method of filling up the vacancies and the number of candidates to be recruited by each method, vis-a-vis, the decision taken by the Government to upgrade certain number of posts to be filled up by promotees from Class II, came up for consideration and it has been held that "if the Government takes a decision that 214 posts must be upgraded to Class I and all these upgraded posts must be filled up by promotees from Class II which is one of the two methods described in Rule 3 of the Recruitment Rules, there can possibly be no objection. Rule 4 permitted the Government to fill the vacancies either by direct recruitment or by promotion or both. Therefore, it cannot be contended that these 214 upgraded posts must be divided between the direct recruits and promotees in the ratio of 1:2."

12 Rule 4[a] of the General Rules of the Tamil Nadu State and Subordinate Services Rules [cited supra], gives power to the Appointing Authority to make appointments either by direct recruitment or by recruitment by transfer or by promotion and it shall be done from the list of approved candidates and such list shall be prepared in the prescribed manner by the Appointing Authority or by any other Authority empowered in the Special Rules in that behalf and it shall be displaced in the Notice Board in the office of the Appointing Authority and the list shall also be communicated to all persons concerned by Registered Post, whose names are found in the list as well as to the persons senior to the junior most persons included in the list whose names have not been included in the list and where the candidates in such list are arranged in their order of preference appointments to the service shall be made in such order. No doubt, in the case on hand, it is the claim of the petitioner that preparation of the list has not been done in accordance with the above cited Rule for the reason that though his name has not been included in the list alleging that he has not completed the probation on the crucial date, the fact remains that he has not been communicated with the list of approved candidates, viz., the private respondents. The above cited decision rendered by the Constitution Bench of the Hon'ble Supreme Court of India, also supports the case of the official respondents that they are entitled to fill the upgraded post by promotion also.

13 In the decision reported in 1996 [1] SCC 562 [State of Rajasthan Vs. Fateh Chand Soni], the meaning and scope of "promotion" came up for consideration and it has been held that on the basis of merit and seniority-cum-merit, in

accordance with Rule 28A of the Rajasthan Police Service Rules, 1954, amounts to promotion and it is relevant to extract Paragraph 8 of the said judgment:-

".....

8. The High Court, in our opinion, was not right in holding that promotion can only be to a higher post in the Service and appointment to a higher scale of an officer holding the same post does not constitute promotion. In the literal sense, the word "promote" means, "to advance to a higher position, grade or honour". So also "promotion" means, "advancement or preferment in honour, dignity, rank or grade". "Promotion" thus not only covers advancement to higher position or rank but also implies advancement to a higher grade. In service law also the expression "promotion" has been understood in the wider sense and it has been held that "promotion" can be either to a higher pay scale or to a higher post."

14 It is the categorical stand of the respondents 1 and 3 in their counter affidavit that the panel was prepared and the claim of the petitioner was also considered and his name could not be included as he attained the pre-requisite qualification only on 28.12.2013, beyond the crucial date on 01.09.2013 and the post of Assistant Director is a selection post and as per the Special Rules, promotion shall be made on the grounds of merit and ability and seniority is being considered only where merit and ability are approximately equal and on account of the petitioner's inability to pass the Departmental Test within the probation period prior to the crucial date, his name was not included in the panel for the year 2013-2014, while his juniors had acquired the above said qualification for promotion to the post of Assistant Director within the time limit for the year 2013-2014. The respondents 1 and 3 also took a stand that they have followed the existing Special Rules governing the post of Assistant Directors and also the panel procedures laid down in the Tamil Nadu State and Subordinate Services Rules, and while effecting regular promotion to the post of Assistant Director for the year 2013-2014, they have duly taken into account the date 01.09.2013 as the crucial date for the drawal of the panel for the year 2013-2014 and if the petitioner would have passed the said test, either within the period of probation or prior to the crucial date of the panel, his name also would have been recommended for inclusion in the panel. But, he did not possess the pre-requisite qualification on the crucial date on 01.09.2013 for the year 2013-2014. In the considered opinion of the Court, in the light of the Rule position, the stand taken by the respondents 1 and 3 is tenable.

15 In the judgment reported in 2008 [9] SCC 242 [Union of India Vs. Pushpa Rani and others], the difference between promotion and upgradation of post, came up for consideration and it is held as follows:-

"In legal parlance, upgradation of a post involves transfer of a post from lower to higher grade and placement of the incumbent of that post in the higher grade. Ordinarily, such placement does not involve selection but in some of the service rules, and/or policy framed by the employer for upgradation of posts, provision has been made for denial of higher grade to an employee whose service record may contain adverse entries or who may have suffered punishment. The word "promotion" means advancement or preferment in honour, dignity, rank, grade. Promotion thus not only covers advancement to higher position or rank but also implies advancement to a higher grade. In service law, the word "promotion" has been understood in wider sense and it has been held that promotion can be either to a higher pay scale or to a higher post.

Once it is recognised that additional posts becoming available as a result of restructuring of different cadres are required to be filled by promotion from amongst employees who satisfy the conditions of eligibility and are adjudged suitable, there can be no rational justification to exclude applicability of policy of reservation while effecting promotions, more so because it has not been shown that procedure for making appointment by promotion against such additional posts is different than the one prescribed for normal promotion."

16 The above cited decision, lays down the proposition that in service law, the word "promotion" has been understood in wider sense and it has been held that promotion can be either to a higher pay scale or to a higher post. The Hon'ble Apex Court has also held that the promotion by considering the employees who satisfy the conditions of eligibility including the minimum period of service and after adjudgment, found suitable by process of selection.

17 In the case on hand, the official respondents had precisely done that exercise and but for the disqualification suffered by the petitioner as enumerated above, his name could have been included in the panel for the purpose of considering

him for promotion to the post of Assistant Director and unfortunately, he did not fulfill the required qualification before the crucial date.

18 It is also a well settled position of law that it is for the Government to decide whether the qualification has a reasonable relation to the nature of duties and responsibilities and since they have expectation in administrative matters, it is also ordinarily not proper on the part of the Court to sit in appeal over decision unless it is something totally arbitrary or shocking.

19 In the decision reported in [2009] 7 SCC 205 [General Manager, Uttaranchal Jal Sansthan Vs. Laxmi Devi and others], what is meant by regular vacancy came up for consideration and the Hon'ble Supreme Court of India has held thus:-

"Existence of a regular vacancy would mean a vacancy which occurred in a post sanctioned by the competent authority. For the said purpose, the cadre strength of the category to which the post belongs is required to be taken into consideration. A regular vacancy is which arises within the cadre strength. Regular vacancy cannot be filled up except in terms of the recruitment rules as also upon compliance with the constitutional scheme of equality. Distinction must be made between need for regular employee and existence of a regular vacancy. It was for the respondents to establish that regular vacancies existed at the time when the deceased employees were appointed. The respondents had not produced offers of appointment made to deceased employees."

20 The respondents 1 and 3, for all purposes, had considered upgradation as a regular vacancy and therefore, sought to fill up the same by selection process and while doing so, have taken into consideration, merit and ability of the respective candidates and arrived at a fair decision to promote the private respondents and others to the post of Assistant Director and as already pointed out, since the petitioner did not pass the Departmental Test, and that he took some time to pass the same beyond the crucial date, his name was not considered and therefore, the decision of the official respondents in not considering the claim of the petitioner vis-a-vis., the private respondents and others to the post of Assistant Director, cannot be faulted with.

21 The decision relied on by the learned counsel for the petitioner reported in 2012 [1] MLJ 301 [SC] in BSNL case

[cited supra], merely reiterated the earlier view of the Hon'ble Apex Court cited above, as to the word/term "upgradation". However, the decision relied on by the learned counsel for the petitioner reported in 2014 [16] SCC 593 in Thirumal's case [cited supra], also lays down the proposition that "if advancement to the higher pay scale without change of post is accompanied by some process which has the element of selection, then it will be a promotion to a higher pay scale and if such upgradation / re-designation is granted as a matter of course without any selection process and merely on the incumbent acquiring a degree qualification, there is no reason for such upgradation / re-designation should be treated for appointment to the said post by transfer. In the light of the stand taken by the official respondents 1 and 3 in their counter affidavit, upgradation for all purposes was treated as promotion to a higher pay scale and merits and ability of the candidates were considered and by adopting a fair process, the private respondents and others were promoted to the post of Assistant Director. The claim of the petitioner came to be overlooked on the ground of belated passing of the Departmental Test and that too, beyond the crucial date.

22 In the light of the reasons assigned above, this Court is of the considered view that the writ petition lacks merit and deserves dismissal and accordingly, dismissed. However, in the circumstances of the case, there shall be no order as to costs. Consequently, MP.Nos.1 to 3 of 2014 and 1 of 2015 are also dismissed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

AP

To

1.The Principal Secretary
Government of Tamil Nadu
Labour and Employment Department
Fort St George, Chennai-9.

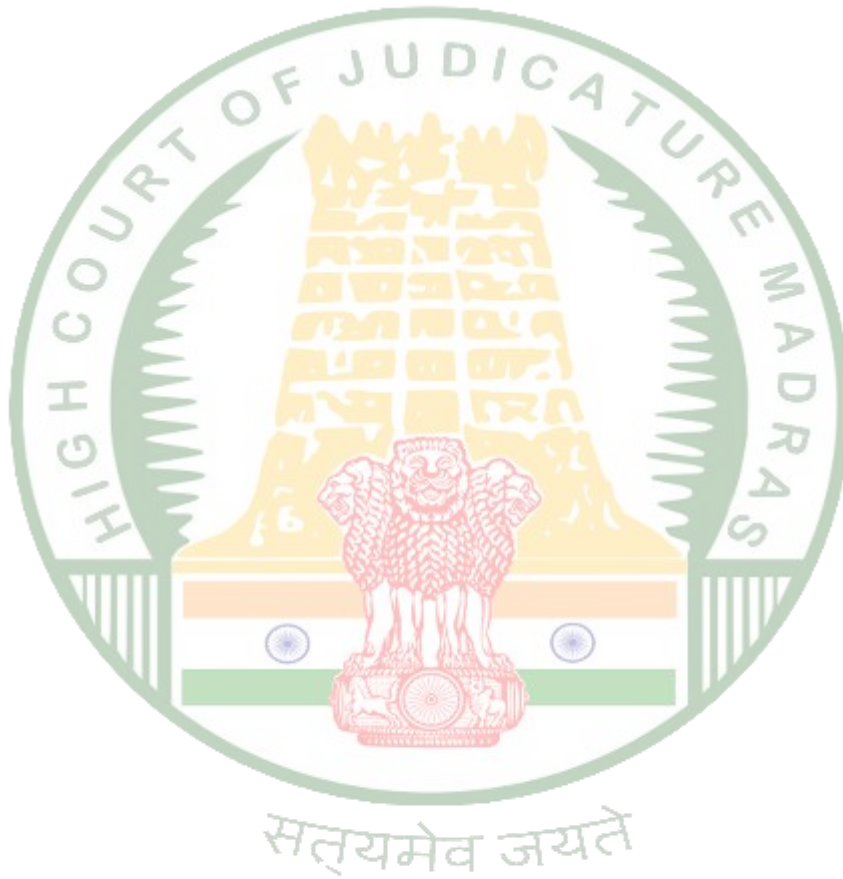
2.The Principal Secretary
Personnel & Administrative Reforms
Department, Fort St George,
Chennai-9.

3.The Director of Employment & Training
Chennai-32.

1 cc to M/s.R.S. Anandan, advocate, Sr. 74536
1 cc to Government Pleader, Sr. 74719

WP.No.21887/2014

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