

In the High Court of Judicature at Madras

Dated : 29.11.2016

Coram

The Honourable Mr.Justice R.SUBBIAH

W.P.No.28705 of 2014

and

M.P.No.1 of 2014

M.Manikavasagam

..... Petitioner

..vs..

1.The Principal Secretary to Government,
Personnel and Administrative Reforms Department,
Secretariat, Fort St. George,
Chennai-600 009.

2.The Secretary to Government (Expenditure),
Finance (O.P-I) Department,
Secretariat,
Fort St. George,
Chennai-600 009.

...Respondents

Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus to call for the records of the respondent in his letter No.73560/Fin(OP-I) Department 2013, dated 25.02.2014, and to quash the same and consequently, to direct the 2nd respondent to notionally promote the petitioner for the post of Under Secretary for the panel of year 2010-2011 on par with his immediate junior and place him in the appropriate place in the seniority list of Under Secretary and consequently to pay all monetary benefits from the date of his promotion as Under Ssecretary with interest.

For Petitioner : Mr.A.V.Arumugham

For Respondents : Mr.R.Venkatesh, Govt Advocate (for R1 & R2)

ORDER

This writ petition has been filed by the petitioner praying for issuance of a writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in his letter No.73560/Fin(OP-I) Depart./2013, dated 25.02.2014, and to quash the same and consequently, to direct the 2nd respondent to notionally promote the petitioner to the post of Under Secretary for the panel year 2010-2011 on par with his immediate junior and to place him in the appropriate place in the seniority list of Under Secretary and consequently, to pay all monetary benefits from the date of his promotion as Under Secretary, with interest.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner, as follows:-

2-1.It is the case of the petitioner that the petitioner was SSLC qualified and also knowing typewriting English Higher and Tamil Higher,. He was appointed as Typist in the year 1981 and he had been working as a Typist in the Health and Family Welfare Department from 04.01.1982 to 27.06.1988. Again from 28.06.1988 to 21.09.1988 he worked as Assistant in the Health and Family Welfare Department-cum-Finance Department. Thereafter, on 22.09.1988, the petitioner had been shifted to Personal & Administrative Reforms Department and subsequently, the petitioner was shifted to finance department on 30.06.2012.

2-2.During his tenure, he has studied B.A. (History) through correspondence course in Madurai Kamarajar Open University and obtained B.A. Degree (History) in the year 1987. The petitioner has also undergone Secretariat Foundation Course Account Test Part-I and Account Test Part-II and also Training in the Districts. However, for the panel for promotion to the post of Under Secretary during the year 2011-2012, the petitioner's name was not considered. Hence, the petitioner made a representation dated 22.03.2011 to the Finance Department. But, the petitioner was informed that since he has not completed PUC/HSC as per G.O.Ms.107 P & AR Department dated 13.05.2009, he will not get any promotion till the date of his retirement.

2-3.It is the specific case of the petitioner that he passed SSLC examination and thereafter, passed Higher grade typewriting both in English and Tamil. Subsequently, after joining the service as Typist in the Health and Family Welfare Department, Government of Tamil Nadu on 2.1.1982, he underwent foundation course conducted by the Madurai Kamaraj University and passed second year examination in the year 1983. Subsequently, he passed B.A. (History) through correspondence course and he has been granted degree of Bachelor of Arts in History by Madurai Kamaraj University - Open University.

Therefore, his qualification is in the pattern as follows_

Old SSLC 11 years,

Second year Foundation Course (2nd year),

Three year Degree Course (B.A. - History) ie., 11 + 1 + 3.

As per G.O.Ms.No.528, Personal and Administrative Reforms Department, dated 18.05.1985, two years foundation course of the Madurai Kamaraj University, Open University, is recognized as equivalent to Higher Secondary Course of the Tamil Nadu Government for the purpose of entry into public services in the State. Hence, according to the petitioner, he is entitled to the promotion to the post of Under Secretary even on the crucial date for preparing the panel ie., on 22.09.2011. However, the petitioner retired from service on 30.06.2012. Hence, the petitioner has filed the present writ petitioner seeking notional promotion to the post of Under Secretary and for consequential benefits.

3. When the matter is taken up for consideration, the learned counsel for the petitioner produced a copy of the judgment delivered by the learned Single Judge of this Court, in W.P.No.10509 of 2014 [S.M.Moorthy Vs.Principal Secretary to Government, Personnel and Administrative Reforms Department] dated 20.08.2015 and submitted that in an identical issue, the learned single Judge has allowed the similar prayer sought for by the petitioner therein; hence, following the same, similar order could be passed in the present writ petition also.

4. But, the learned Government Advocate appearing for the respondents by filing a detailed counter would contend that those who obtained a degree under Open University system after passing the pre-foundation course and two year foundation course without passing 10th Std and +2 examination, do not satisfy the conditions laid down in G.O.Ms.No.107, Personnel & Administrative Reforms (M) Department, dated 18.08.2009, which is in consonance with the orders of the Hon'ble Supreme Court of India. Thus, the learned Government Advocate submitted that the petitioner is not entitled for the notional promotion.

5. Heard the learned counsel for the petitioner as well as the learned Government Advocate and perused the materials available on record.

6. As contended by the learned counsel for the petitioner, in an identical issue, in W.P.No.10509 of 2014 [S.M.Moorthy Vs.Principal Secretary to Government, Personnel and Administrative Reforms Department] dated 20.08.2015, the learned Single Judge of this Court has held as follows_

" 7. As rightly contended by the learned counsel appearing for the petitioner, one

S.Mathevan Pillai, who is also similarly placed like that of the petitioner and is claiming for promotion to the post of Under Secretary on similar facts and circumstances, was upheld by this Court in W.P.No.14658 of 2011 and the respondent herein has made a challenge to the said order by preferring a writ appeal in W.A.No.1372 of 2013 and it was also dismissed by this Court on 12.07.2013 and the Special Leave Petition preferred against the said judgment has also ended in dismissal. The Tamil Nadu Public Service Commission in its 38th Equivalent Committee meeting held on 04.01.2013 has also considered the very same issue and made a positive recommendation that the qualification of old SSLC (11 years) + Second Year Foundation Course (1) + 3 years degree is equivalent to 11+1+3 for the purpose of employment and promotion in the public services. This Court in C.Dharuman and Others Vs. Government of Tamil Nadu , rep. By Secretary to Government, School Education Department, Chennai-600 009 and others reported in 2015 (1) MLJ 410 dealt with the similar issue and upheld the claim made by the petitioner.

8.In the light of the factual circumstances and the legal position, this Court is of the view that the claim made by the petitioner is to be upheld."

Hence, following the above said decision, I am of the opinion that the present writ petition is also liable to be allowed.

7.Accordingly, the writ petition is allowed and the impugned order is quashed. The 2nd respondent is directed to notionally promote the petitioner to the post of Under Secretary for the panel year 2010-2011 on par with his immediate junior and to place him in the appropriate place in the seniority list of Under Secretary and consequently to pay all monetary benefits from the date of his promotion as Under Secretary with statutory interest, within a period of eight weeks from the date of receipt of a copy of this order.

Consequently, connected Miscellaneous Petition is closed.
No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssv

To

- 1.The Principal Secretary to Government,
Personnel and Administrative Reforms Department,
Secretariat, Fort St. George,
Chennai-600 009.
- 2.The Secretary to Government (Expenditure),
Finance (O.P-I) Department,
Secretariat,
Fort St. George,
Chennai-600 009.

+2cc to Mr.K. Kala, Advocate, S.R.No.70246
+1cc to the Government Pleader, S.R.No.70601

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md(27/12/2016)

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M.P.No.1 of 2014