



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **11.08.2016**

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO

and

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Writ Appeal (MD) No.1183 of 2016

G.Umapathy

...Appellant/Petitioner

-Vs-.

The Inspector General of Registration,
100, Santhome High Road,
Chennai-600 020.

... Respondent/Respondent

Appeal filed under Clause 15 of Letters Patent praying against the order passed in W.P(MD)No.11925 of 2016 dated 06.07.2016.

Prayer in WP(MD).No. 11925/2016 :

Writ petition is filed Under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the Respondent to promote the petitioner with effect from 29.06.2011 as Grade II Sub Registrar on par with the petitioner's Junior retrospectively with consequently monetary benefits and revision of Pension.

For Appellant : Mr.P.Veerabaku

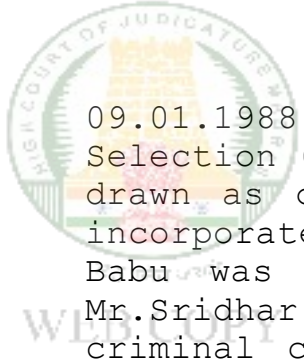
For Respondent : Mr.A.K.Baskara Pandian
Special Government Pleader.

JUDGMENT

(Judgment of the Court was delivered
by **NOOTY.RAMAMOHANA RAO,J**)

This writ appeal has been preferred against the order and decree dated 06.07.2016 rendered by the learned Single Judge dismissing the writ petition instituted by the appellant.

2. The facts lie in a very narrow campus. The writ petitioner/appellant is recruited to the service of the State of Tamil Nadu, to begin with as an Office Assistant, in the
<https://hreservices.ecourts.gov.in/hreservices/> Registration Department on 17.12.1975. He was subsequently promoted as Junior Assistant and Assistant on 01.01.1981 and



09.01.1988 respectively. He was also granted the Scale of Pay of Selection Grade Assistant. A seniority list appears to have been drawn as on 01.04.2010, in which the name of the petitioner is incorporated at Serial No.385, whereas the name of one Sridhar Babu was incorporated at Serial No.386 thus, signifying that Mr.Sridhar Babu is a Junior to the writ petitioner. However, a criminal case in Crime No.3 of 2008 was registered against the petitioner/appellant and during the pendency of the said criminal case, the said Junior Sridhar Babu, was promoted as Sub-Registrar on 29.06.2011.

3.The petitioner/appellant herein has moved this Court earlier by instituting Criminal O.P(MD)No.8031 of 2008 and the same was allowed by this Court on 24.06.2014, discharging the writ petitioner/appellant from the said criminal case. Consequently, the learned Judicial Magistrate No.2, Ramanathapuram, has also passed an order on 06.12.2014, deleting the name of the writ petitioner/appellant from the array of the accused in the criminal case. Thus, by order dated 06.12.2014, the cloud gathered around on the writ petitioner/appellant with regard to his eligibility to seek promotion to the Post of Sub-Registrar in the Registration Department has been cleared. In quick time, thereafter, however, the writ petitioner has attained the age of superannuation and retired from service on 31.01.2015. It is the case of the petitioner/appellant herein that he has taken up the matter with the Department when his junior was promoted as Sub-Registrar ignoring his claim. He has in fact reiterated his claim, once again by submitting a detailed representation on 06.04.2015, for notional promotion as Sub-Registrar with effect from the date on which his immediate junior Sridhar Babu was promoted as such on 29.06.2011. That having not been granted, he filed the writ petition.

4. The whole question which needs to be decided at this stage is as to whether the claim of the writ petitioner/appellant has been denied for promotion as Sub-Registrar at the relevant point of time on merits or all due to the pendency of the criminal case pending against him at that point of time. If the post of Sub-Registrar is a selection post, thus implying that the merit and ability of the candidate counts for promotion rather than mere seniority alone, in such an event, the case of the petitioner could not have been ignored from consideration for such a promotion, provided he has the necessary eligibility to be so considered, consideration of one's case for promotion being a fundamental right. If, on the other hand, his case was left out of consideration for promotion in view of the pendency of criminal case which was registered against him, in such an event, his case deserves to be given a fresh look and deserves to be considered for promotion after 06.12.2014, the date on which the learned Magistrate has discharged the petitioner/appellant herein from the array of the accused in the criminal case. If there is no other factor coming in the way of the writ petitioner for getting promotion with effect from the same date on which the immediate



junior namely Sridhar Babu got promotion as Sub-Registrar, the State is bound to reconsider the entire issue after the criminal Court has discharged the writ petitioner from the criminal case.

5. Hence, we consider that the ends of justice would be better served by directing the respondent immediately to take up the case of the writ petitioner/appellant for promotion as Sub-Registrar with effect-from the date on which date his junior was promoted and take appropriate decision and communicate the same to the writ petitioner/appellant as quickly as possible within a period of three months from the date of receipt of a copy of this order.

6. In case, the case of the writ petitioner was already considered at the relevant point of time and the decision relating to the writ petitioner/appellant for promotion was confined to a sealed cover, the same may be opened and the decision confined therein be acted upon now.

With these directions, the writ appeal is disposed of. No costs.

Sd/-
Assistant Registrar(Records)

/TRUE COPY/

Sub Assistant Registrar

TO
The Inspector General of Registration,
100, Santhome High Road,
Chennai-600 020.

+1cc to Mr.P.VEERABAKU,ADVOCATE SR NO:43723
+1cc to M/S.THE SPECIAL GOVERNMENT PLEADER, SR NO: 44147

gsr

JA-KBM-26.08.2016/3P:4C

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