IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.06.2017

Delivered on : 30.06.2017

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

W.A No.919 of 2011

and

and M.P.No.1 of 2015

Jayalakshmi Shankar ...Appellant

Vs

1. The Special Secretary to Government,
   Finance (Treasury & Accounts) Department,
   Fort St. George, Chennai - 9.

2. The Special Commissioner of Treasuries and Accounts,
   Panagal Buildings, Saidapet,
   Chennai - 15. ...Respondents

Prayer:- Writ Appeal filed under clause 15 of Letters Patent, against the order made in W.P.No.22658 of 2006 dated 17.08.2010.

Prayer in W.P.No.22658 of 2006:Praying to issue a Writ of certiorarified mandamus, calling for the records relating to the order of the first respondent herein passed in G.O.No.335, Finance (Treasuries & Accounts No-1) department Dated 17.06.2004 and the order of the second respondent herein passed in his RC.No.42058/04/07, dated 30.08.2004 rejecting the petitioner's request for promotion as Assistant Accounts officer for the year 2002-2003, and quash the same and direct the respondents herein to include the petitioner's name in the panel for promotion as Assistant Accounts officer drawn for the year 2002-2003 in the appropriate place with due seniority and to promote her as Assistant Accounts Officer, With effect from 02.07.2004 with all consequential monetary and service benefits.

For Appellant : Mr. R.S.Anandan

For Respondents : Mr.K.Dhananjayan
Special Government Pleader
for R1 and R2

J U D G M E N T

K.K. SASIDHARAN,J.

The claim made by the appellant for promotion to the post of Assistant Accounts Officer for the year 2002-2003 was negatived by the learned single Judge in W.P.No.22658 of 2006. Feeling aggrieved by the order dated 17 August, 2010, the unsuccessful writ petitioner is before this Court.

Brief Facts

2. The appellant filed a writ petition in W.P.No.22658 of 2006 challenging the Government Order in G.O.Ms.No.335 Finance (Treasuries and Accounts -1) Department, dated 17.06.2004, whereby and where under, amendment was made to the Special Rules for the Tamil Nadu State Treasuries and Accounts Service with retrospective effect.

3. Before the writ Court, the appellant contended that while giving promotion as Assistant Accounts Officer, the Government favoured officers from Treasuries and Accounts Department. According to the appellant, for the period from 2002-2006, the Government have filled up 78% of the vacancies for the post of Assistant Accounts officers from the Treasuries and Accounts Department and only the remaining 22% was given to candidates from other departments. The appellant therefore contended that the post of Assistant Accounts Officer has been filled up contrary to the percentage and undue benefits were given to the employees of Treasuries and Accounts Department. The amendment made to the Special Rules with retrospective effect was challenged by the appellant also on the ground that promotion cannot be diluted by giving retrospective effect to the Special Rules.

4. The learned single Judge dismissed the writ petition holding that Rules can be amended by the Government even retrospectively.

Submissions

5. The learned counsel for the appellant contended that the respondents violated the rules and appointed more number of candidates from the Treasuries and Accounts Department.

According to the learned counsel, even if it is made out that persons from Social Welfare Department were over represented, still, it was not correct on the part of the Government to violate the ratio fixed earlier. The learned counsel submitted that the appellant retired on attaining the age of superannuation and as such, in the event of giving her promotion taking into account the quota, she would receive certain benefits.

6. We have also heard the learned Government Pleader on behalf of the respondents.

Analysis

7. The substantial prayer in the writ petition filed by the appellant in W.P.No.22658 of 2006 was to quash the amendment made to the Special Rules as per G.O.Ms.No.335 Finance (Treasuries and Accounts-1) Department, dated 17.06.2004. The appellant also called in question the order dated 30.08.2004 rejecting her request for promotion as Assistant Accounts Officer for the year 2002-2003 by the Special Commissioner for Treasuries and Accounts.

8. Rule 3 Sub-Rule (g) of the Tamil Nadu State Treasuries and Accounts Services, provides that out of every 5 vacancies of Assistant Accounts Officer, the first two vacancies shall be reserved for recruitment by transfer from Sub Treasury Officer and Superintendents in the Treasuries and Pay and Accounts Offices and that the remaining 3 vacancies shall be reserved for recruitment by transfer from among persons holding the post of Superintendents in other departments. The Rule further provides that in any of the year, the prescribed ratio cannot be followed for want of qualified candidates in one category, that can be filled up by taking qualified candidates from other category and vice versa. The Government appears to have prepared panel every year in accordance with Rule 3 (g) of the Special Rules. Subsequently, the Government incorporated the guidelines issued earlier and notified the amended special rules in G.O.Ms.No.335 dated 17.06.2004. The claim made by the appellant for promotion was rejected on the ground that she belongs to Social Welfare Department and the said department was over represented. It is the contention of the appellant that there was no basis in the finding with regard to over representation.

9. There are no documents before this Court to consider the promotions given all these years and to form an opinion as to whether there was over representation. In fact, the primary challenge was only to the Government Order giving retrospective effect to the Special Rules. It is not the case of the appellant that the Government is not entitled to amend the Rules giving retrospective effect. The position is no longer res integra in

view of the judgment of the Hon'ble Supreme Court in Ashok Kumar Das and others v. University of Burdwan and others [(2010) 2 SCC 450].

10. Though the appellant contended that 36 persons were appointed for the year 2002-2003 and out of that, 29 persons were from the Treasuries and Accounts Department, there is no data before us to arrive at a definite finding. Similar is the position with regard to 2003-2004, 2004-2005 and 2005-2006. None of the promoted officers are before this Court. There is no question of undertaking a roving enquiry by this Court as to whether out of 36 persons promoted to the post of Assistant Accounts Officer, 29 persons were from the Treasuries and Accounts Department. We are therefore of the view that the learned single Judge was correct in dismissing the writ petition. We do not find any ground to take a different view in the matter.

11. In the up shot, we dismiss the intra court appeal. No costs. Consequently,connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

svki

To

1. The Special Secretary to Government,
   Finance (Treasury & Accounts) Department,
   Fort St. George, Chennai - 9.

2. The Special Commissioner of Treasuries and Accounts,
   Panagal Buildings, Saidapet,
   Chennai - 15.

+1cc to M/s.R.S.Anandan, Advocate SR.No.45550

W.A No.919 of 2011

NRI(CO)
GN(17/07/2017)