IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2017

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.21022 of 2014
and
M.P.Nos.2 & 3 of 2014

P.Saraswathi ... Petitioner

-vs-

1.The Additional Chief Secretary/
Commissioner of Revenue Administration,
Disaster Management and Mitigation Department,
Chepauk, Chennai - 6.

2.Tmt.D.Kumari Sujatha,
Assistant,
Office of the Revenue Administration &
Disaster Management & Mitigation Department,
Chepauk, Chennai - 5.

3.The Secretary to Government,
Revenue Department,
Fort St.George, Chennai-9. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records of the first respondent in A.Na.1(1)/56593/2014 dated 27.06.2014 and Proc. No.OP1(1)/ 56593/14 dated 21.07.2014 and quash the same and further direct the first respondent to restore the name of the petitioner in the panel of Assistant for the year 2012-13 and sent the petitioner for Revenue Inspector training and grant such other further relief as this Hon'ble Court may deem fit in the circumstances of the case.

For Petitioner :: Mr.T.Ayngara Prabhu for
Mr.M.Muthappan

For Respondents :: Mr.R.Vijaya Kumar
Additional Government Pleader
for R1 & R3

O R D E R

The relief sought for in this writ petition is to quash the orders of rejection issued by the first respondent in proceedings dated 27.06.2014 and in proceedings dated 21.07.2014 and to direct the first respondent to restore the name of the petitioner in the panel of Assistant for the year 2012-13 and send the petitioner for Revenue Inspector training.

2.The learned counsel appearing for the writ petitioner states that the writ petitioner was initially appointed as Junior Assistant through Tamil Nadu Public Service Commission on 21.05.2009. The petitioner was promoted to the post of Assistant on 17.12.2012. The learned counsel appearing for the petitioner further states that the writ petitioner was rightly promoted by including his name in the panel of the year 2012-13. Accordingly, his seniority was fixed in the cadre of Assistant. However, the respondents issued the impugned order in proceedings dated 27.06.2014, stating that the results for Departmental Revenue Test (Part-III) was notified only on 16.03.2012 and the crucial date for panel was 15.03.2012 and therefore, the writ petitioner is not entitled to be included in the panel for promotion to the post of Assistant for the year 2012-13 and accordingly, the name of the petitioner ought to have been included in the panel of the year 2013-14. The reasons stated in the order impugned is that the writ petitioner has no doubt passed the Departmental examination. However, the results were notified in the Government Gazette only on 16.03.2012. Therefore, the writ petitioner was not entitled to be included in the panel of the year 2012-13.

3.The learned counsel appearing for the petitioner states that the writ petitioner had participated in the test and the results were declared in the Government's official Website on 09.03.2012 itself. Therefore, for all purposes, the writ petitioner is to be declared as passed for the purpose of granting promotion. In this regard, the learned counsel made a reference to Rule 26(a) of the Fundamental Rules which reads as follows:

> "(2) In cases where the passing of an examination or test confers on a Government servant the tile to any right, benefit or concession, such title should be deemed to have accrued on the day following the last day of the examination or test which he passed. In cases where the examination or test can be passed in instalments, the tile to the right, benefit or concession will be deemed to have accrued on the day following the last day of the examination in the subject or subjects in which he has passed."

4.The writ petitioner states that with reference to the fundamental rules, the petitioner was rightly promoted as Assistant by including his name in the panel of the year 2012-13. Therefore, the impugned order is untenable and in violation of fundamental rules.

5.The learned Additional Government Pleader appearing on behalf of the respondents made a submission that it is not disputed that the writ petitioner has passed the required Departmental Examination. However, the results for the examination was declared only on 16.03.2012, after the crucial date, which is on 15.03.2012. Therefore, the respondents are right in including the name of the writ petitioner only in the panel of the year 2013-14 and the error took place earlier by including the name of the writ petitioner in the panel of the year 2012-13 was rectified. Thus, the impugned order is a rectification of the mistake occurred in respect of the case of the writ petitioner and there is no infirmity.

6.Considering the arguments and the counter arguments advanced by the writ petitioner as well as the respondents, this Court is of the opinion that no doubt, the writ petitioner had participated in the Departmental examination and successfully completed the same. However, the relevant dates are to be taken note of, for granting the relief in this regard. The writ petitioner was originally included in the panel of the year 2012-13 for promotion to the post of Assistant. Accordingly, he was promoted to the post of Assistant on 17.12.2012 itself. However, the impugned order passed on the ground that the results for Part-III Departmental Test was published in the Government Gazette only on 16.03.2012 and the crucial date for promotion was 15.03.2012, one day earlier and therefore, the name of the writ petitioner was erroneously included in the panel of the year 2012-13.

7.However, the fact remains that the results were published by the Department through its website on 09.03.2012. Thus, for all purposes, it is to be construed that the writ petitioner had been declared passed in the Departmental Examinations on 09.03.2012 itself. When the petitioner has passed the Departmental Examination on 09.03.2012, certainly, he is qualified for promotion to the post of Assistant as on 15.03.2012 in the panel of the year 2012-13. The impugned order is hyper-technical in nature and the date of passing of the test is to be considered in the case on hand. The date of publication even if there is a delay of one day, the same is to be ignored in respect of the promotion to the post of Assistant for the petitioner is concerned.

8.In this view of the fact that the petitioner had been promoted to the post of Assistant on 17.12.2012 itself, this Court is of the opinion that the impugned order is perverse and unsustainable. For all purposes, the writ petitioner had completed his Departmental Examination and the date of the publication through website by the Department on 09.03.2012 and the initial promotion granted to the writ petitioner to the post of Assistant is in accordance with the rules and there was no infirmity.

9.In this view of the matter, the impugned order passed by the first respondent in proceedings dated 27.06.2014 and in proceedings dated 21.07.2014 are quashed. Accordingly, the writ petition stands allowed. However, there is no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

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Commissioner of Revenue Administration,
Disaster Management and Mitigation Department,
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Assistant,
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3.The Secretary to Government,
Revenue Department,
Fort St.George, Chennai-9.

+1cc to Mr.M.Muthappan, Advocate sR.No.84312
+1cc to Government Pleader Sr.no.84727

W.P.No.21022 of 2014

sm:18.12.2017