IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2017

CORAM

THE HON'BLE MR.JUSTICE NOOTY. RAMAMOHANA RAO
and
THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.A. No.1668 of 2013
and
M.P.No.1 of 2013

1. Government of Tamil Nadu
   represented by Secretary to Government
   Finance (T & A-1) Department
   Secretariat,
   Chennai - 600 009.

2. The Principal Secretary / Commissioner of
   Treasuries and Accounts,
   Chennai - 15
   (Now the Commissioner of
   Treasuries and Accounts, Chennai - 15)

.. Appellants/Respondent

/vs/

T.M.Gopalakrishnan .. Respondent/Petitioner

Prayer: This writ appeal has been filed under Clause 15 of the Letters Patent against the order passed by the learned Single Judge of this Court dated 12.10.2012 in W.P.No.11964 of 2010.

Prayer in Writ Petition: Writ Petition filed Under Article 226 of Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to Call for the records of the second Respondent relating to Memo L.Dis.No.25703/2008/A2 dated 07.11.2008 and Memo No.13525/2009/A2 dated 28.07.2009 to quash the same and issue consequential directions to the first Respondent to include the Petitioner name in the panel for the year 2009-2010 promotion as Accounts Officer issued in G.O.Ms.No.70 Finance (T. & A.) Department dated 01.03.2010 and to promote the petitioner as such with retrospective effect from the date of promotion of his immediate juniors with all consequential benefits

For Appellants : Mr.P.Sivashanmugasundaram, SGP

For Respondent : Mr.M.Ravi

JUDGMENT

(Order of the Court was made by Nooty. Ramamohana Rao, J.)

This in-house writ appeal is directed against the order rendered by the learned single judge allowing the writ petition.

2.The short question, which fell for consideration was, whether the writ petitioner, who was working as an Assistant Accounts Officer, is entitled to seek an exemption from passing Accountancy Higher Grade Examination for the purpose of further promotion to the post of Accounts Officer in terms and in accordance with the order passed by the State Government in G.O.Ms.No.1120, Personnel and Administrative Reforms Department, Dated 30.10.1984, or not?

3.Mr.P.Sivashanmugasundaram, learned Special Government Pleader appearing for the State /Appellant would contend that there is an essential distinction between the tests, which are required to be compulsorily passed for securing promotion and pass of tests, which would render the individual candidate eligible for such promotion. Learned Special Government Pleader would draw our attention to the Tamil Nadu State Treasuries and Accounts Services Special Rules and would contend that in Class III, category 1, the post of Accounts Officer is included, while the post of Assistant Pay and Accounts Officer is included in category 2 of the said Class III. Rule 3 dealt with the method of appointment to various classes and the table appended therein dealing with Class II, unmistakably prescribes the following :

a) Must have passed Accountancy Higher Grade Examination.

b) Must have passed the departmental test for Subordinate Officers of the Treasuries and Accounts department, provided that a person who possesses the B.Com degree, shall not be required to pass the Accountancy Higher Grade Test.

4.According to the learned Special Government Pleader, since the writ petitioner is not a B.Com graduate, he has to necessarily pass Accountancy Higher Grade Examination. He would contend that for becoming an Accounts Officer, a pass in the Higher Grade Accountancy Test is prescribed, because of the intricate issues involved in functioning as Accounts Officer, which will have serious bearing upon 'Finance and Accounts management' thereof by the State's administration. Therefore, unless the Accounts Officer is properly equipped, he will not be able to discharge his functions effectively and efficiently as an Accounts Officer and hence in larger public interest, the Special Rules have provided for passing the 'Accountancy Higher Grade Test' as a compulsory requisite. The only exemption provided for by and under the said Rules is confined to those who have already possessed B.Com degree. The reason being, as a part of academic study and curriculum, the graduates of B.Com degree would have undergone critical study of Accountancy subject thoroughly and they study all the necessary aspects relating thereto and hence, pass in that examination was exempted only in favour of B.Com graduates. The writ petitioner not being a B.Com graduate, cannot seek exemption falling back upon general order passed by the State Government.

5.We are afraid that the contention canvassed by the learned Special Government Pleader appearing for the State / Appellant is not sound. The State Government has passed the orders through G.O.Ms.No.1120, Personnel and Administrative Reforms Department, Dated 30.10.1984 with specific reference to a similar exemption granted as long back as on 29.05.1972. They revisited the said exemption and after appropriate consideration, have formulated the policy decision and announced it through G.O.Ms.No.1120 Personnel and Administrative Reforms Department, Dated 30.10.1984 and the decisions stated therein are extracted hereunder:

> ''In order to give exemption to a Government servant from passing the Special and Departmental Examinations, he should fulfill the following conditions:
>
> 1.The Government servant concerned should be not below the age of 53;
> 2.To pass the Departmental Examinations, he should have made 5 Attempts and as a proof of this, necessary entry should have been made in the Service Register or the concerned official should send the Hall Tickets in this regard.
> 3.His service records should be satisfactory to avail of this concession.''

By virtue of the said order, the State Government has not mechanically granted exemption from passing the departmental examinations alone. They have also specifically and in so many words included passing the special test also. Otherwise, there is no necessity for the State Government to use the following expressions "Exemption to a Government servant from passing special and departmental test.....". It is therefore, more than clear to us that the discretionary exercise of granting exemption by the State Government has not been intended to confine only from passing departmental examinations, but it was widened to cover even the special test / examination as contemplated by any of the Special Rules. Further, the above exemption is limited to those whose service record is otherwise clean and satisfactory and is also of 53 years of age leaving very little service left for retirement. Above all, he should have made atleast 5 attempts to pass the special test.

6.In our opinion, the Special Rules have provided for passing Accountancy Higher Grade Test i.e., a special test, because it is required to be so passed in the Treasuries and Accounts Department. Perhaps, for earning promotion to an equivalent cadre in other department, such a special test i.e., passing of Accountancy Higher Grade Test, may not be required. It is therefore clear to us that passing of Accountancy Higher Grade Test is a special test prescribed for Treasuries and Accounts Department and hence, the sweep of exemption granted as a policy by the State Government by G.O.Ms.No.1120 dated 30.10.1984 covers the same.

7.Fortunately, there is no dispute that the writ petitioner has satisfied the other conditions subject to which such exemption is granted in the above said Government Order. We see no merit in the writ appeal and accordingly, dismiss the same. However, if the writ petitioner has not been accorded any benefits including consideration and promotion as an Accounts Officer, with effect from the relevant date, the same shall be undertaken immediately and his pay shall be fixed notionally. All other benefits upon such notional fixation of pay would automatically follow. Three months time is granted for completing the exercise as aforesaid.

8.In the result, the writ appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

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To
1.The Secretary to Government,
Finance (T&A) Department,
Fort St.George,
Chennai-9

2.The Principal Secretary / Commissioner of
Treasuries and Accounts,
Chennai - 15

+1cc to M/s.M.Ravi, Advocate in sr.no.46706
+1cc to Government Pleader in sr.no.46598

W.A.No.1668 of 2013

GMI(CO)
NR 14/07/2017