IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2017

CORAM

THE HON'BLE MR. JUSTICE K.K. SASIDHARAN
and
THE HON'BLE MR. JUSTICE M.V. MURALIDARAN

W.P. No.38317 of 2015

1. S.Neethisolan

2. M.Senthilkumar

3. C.Swaminathan

4. A.G.M.Selvanayagam

5. R.Murali Krishnan ...Petitioners

Vs.

1. Union of India
Rep. By Joint Secretary (Administration)
Central Board of Excise and Customs
North Block, New Delhi.

2. The Commissioner of Central Excise
No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034.

3. The Central Administrative Tribunal,
Chennai Bench,
Rep. By its Registrar,
Chennai-600 104. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus calling for the records of the 3rd respondent in O.A.No. 1617/2013 and quash the order 17.04.2015 and direct the 1st and 2nd respondents to fix the date of promotion of the petitioners to the post of Tax Assistant notionally from the date of promotion of their immediate junior C.Karunakaran and further to fix the date of promotion of the petitioners to the post of Senior Tax Assistant notionally from the date of promotion of their immediate junior C.Karunakaran the post of Senior Tax Assistant and consequently promote the petitioners to the post of Inspector with effect from their date their immediate junior C.Karunakaran was promoted to the post of Inspector.

For Petitioners : Mr. Manoj Sreevalsan
For Respondents : Mr. V.Sundareswaram SCGSC for R1 & R2

O R D E R

K.K. SASIDHARAN,J.

The Original Application filed by the petitioners in O.A.No.1617 of 2013 seeking fixation of their promotion to the post of Tax Assistant, notionally from the date of promotion of their immediate junior to the said post and consequently, to promote them to the post of Senior Tax Assistant with effect from the date on which their juniors were promoted, was dismissed by the Tribunal on the ground that the petitioners have chosen to pass the departmental examination only on 04 November 2011 and that the juniors have passed the test even before the said date. The order is under challenge at the instance of the applicants in O.A.No.1617 of 2013.

2. The learned counsel for the petitioners contended that the petitioners were given notional promotion and as such, they should have been given further promotion to the post of Tax Assistant, notwithstanding the ineligibility on account of qualifying service of two years. According to the learned counsel for the petitioner, the order giving them notional promotion should be extended even for promotion to the post of Tax Assistant.

3. We have also heard the learned counsel for the respondents 1 and 2.

4. There is no dispute that the petitioners were promoted notionally to the post of Lower Division Clerk pursuant to the order in W.P.No.23622 of 2006. The order was passed on 08 September 2010. The next avenue of promotion is to the post of Tax Assistant. The Recruitment Rule provides that the candidate should have two years of qualifying service. Since the petitioners were not having the qualifying service, they were not considered. Subsequently, the petitioners were given promotion on account of their fulfilment of the condition regarding qualifying service. The petitioners filed Original Application before the Tribunal contending that they ought to have been given promotion on the date on which their immediate juniors were given promotion taking into account the notional promotion given earlier, pursuant to the order in W.P.No. 23622 of 2006.

5. There is no merit in the contentions taken by the petitioners, for the simple reason that the petitioners were not having the qualifying service of two years. There is a vital difference between notional promotion and qualifying service. Notional promotion was given taking into account the denial of promotion to the petitioners earlier. The Recruitment Rule for the post of Tax Assistant provides that the candidate should have two years of qualifying service. Even according to the petitioners, they do not have the qualifying service after promoting to the post of Lower Division Clerk. Moreover, the Tribunal found that the petitioners have not passed the departmental examination on 16 October 2009, which was the crucial date, the petitioners passed the examination only on 04 November 2011.

6. In view of the factual matrix, the petitioners are not correct in their contention that they ought to have been promoted to the post of Tax Assistant taking into account the promotion given to their immediate juniors. We do not find any error or illegality in the order passed by the Tribunal.

In the upshot, we dismiss the writ petition. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

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+1cc to M/S. Manoj sreevalsan, Advocate Sr. 23799

+1cc to Mr.V. Sundareswaran, Advocate Sr. 23730

W.P. No. 38317 of 2015

SJ(CO)
VR(4/5/2017)