

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

WP.No.18568 of 2006

&

M.P.1 of 2006

N.Selvarajan

.... Petitioner

Versus

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
Labour & Employment Department,
Fort St. George,
Chennai - 600 009

2. The Commissioner of Labour,
DMS Compound, Teynampet,
Chennai - 600 006.

.... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the Memorandum G1/20220/2005 dated 21.04.2005 issued by the 2nd respondent, quash the same and consequently direct the respondents to restore the original seniority accorded to the petitioner at S.No:895 in the post of Assistant in the Labour Department and further promote the petitioner as Superintendent on the basis of his original seniority with all consequential benefits.

For Petitioner : Mr.Karthik rajan

For Respondents : Mr.S.V.Duraisolaimalai
Additional Government Pleader

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ORDER

The petitioner has approached this Court seeking the following relief:

" To issue a Writ of Certiorarified Mandamus,
to call for the records relating to the Memorandum
G1/20220/2005 dated 21.04.2005 issued by the 2nd
respondent, quash the same and consequently direct the

respondents to restore the original seniority accorded to the petitioner at S.No:895 in the post of Assistant in the Labour Department and further promote the petitioner as Superintendent on the basis of his original seniority with all consequential benefits."

2. The case of the petitioner is as follows:

The petitioner joined the Labour department in the Tamil nadu Ministerial Service as Record Clerk on 19.06.1974. He was later promoted as Junior Assistant on 08.08.1979. The next avenue of promotion to the post of Junior Assistant is the post of Assistant. The promotion is governed by the special Rules, namely, the Tamil Nadu Ministerial Service Rules, which included in Section 22 of the Tamil Nadu Services Manual Vol.III.

3. According to relevant provisions of the Rules, the Junior Assistants are eligible for promotion as Assistants by passing the Accounts Test for Subordinate Officers (part I) and the District Officers' Manual Test. The petitioner having qualified in the test was promoted as Assistant on 08.08.1984 and thereafter, he was subsequently regularized from 31.01.1989.

4. After the appointment of the petitioner, in G.O.Ms.No.2420, Labour Department dated 17.11.1984, it was stipulated that Junior Assistants should also pass the Labour & Factories Departmental Tests part A & B for promotion to the post of Assistant. Admittedly, the new Government Order was put into effect only from the date of issue i.e., 17.11.1984.

5. According to the Government Order that Junior Assistant/ Typist, who were promoted as Assistants should clear the tests as stipulated in the said Government Order within a period of two years, failing which, they would stand reverted.

6. The next avenue to the post of Assistant is the post of Superintendent. The petitioner, in the meanwhile had qualified in the tests in terms of G.O.Ms.No.2420, Labour Department dated 17.11.1984 and therefore, became eligible for consideration for promotion to the post of Superintendent.

7. While matter stood thus, it appears that several persons, who were promoted after coming into force the G.O.Ms.No.2420, Labour Department dated 17.11.1984, could not pass the test within the stipulated time.

8. In these circumstances, a batch of applications came to be filed before the then Tamil Nadu Administrative Tribunal. The applications were filed by two distinct group of employees

namely, the persons, who passed the Departmental tests prior to their promotion as Assistant and the other group, who failed to qualify in the Departmental tests at the time of promotion. After considering the submissions, the learned Tribunal directed that all the applicants therein will be regularised from the date of qualification with accrued seniority from the date of appointment as Assistant.

9. Against the order of the learned Tribunal, a batch of Writ petitions were filed and the same were disposed of, by the Division Bench of this Court on 28.02.2005. The Division Bench of this Court has modified the order that seniority of those persons, who were promoted as Assistants is to be reckoned from the date of passing of the tests. Subsequently, in respect of the persons, who were promoted as Assistants after passing the tests, their seniority should be counted from the date of such appointment.

10. In the above circumstances, the second respondent by proceedings dated 24.03.2005 issued a draft seniority list of Assistants, who were promoted after 17.11.1984. As far as the petitioner was concerned, he was not to be affected by the development, since he was admittedly promoted before 17.11.1984, where additional criteria were introduced. Therefore, the petitioner was entitled to be promoted as Superintendent on the basis of his original promotion as Assistant on 08.08.1984. However, his request was rejected by the impugned proceedings of the second respondent dated 21.04.2005, on the ground that in view of the order passed by the Division Bench, seniority had been recast and the petitioner having not qualified in the test prior to his promotion as Assistant. The seniority was reckoned only from the date he passed the test in the year 2002. The said proceedings is put to challenge in the present writ petition.

11. Mr. Karthik Rajan, learned counsel for the petitioner would submit that the rejection of the petitioner's claim by the second respondent suffers from mis-application and non-application of mind for the simple reason that admittedly, the petitioner was promoted prior to coming into force the G.O.Ms.No.2420, Labour Department dated 17.11.1984. It is also an admitted fact that the Government Order had come into effect only from the date of issue. That being the case, a question of downgrading seniority of the petitioner did not arise as the petitioner at the time of his promotion on 08.08.1984, was not required to pass the additional test as prescribed in G.O.Ms.No.2420, Labour Department dated 17.11.1984.

12. He would further submit that the litigations which

were pending before the Tamil Nadu Administrative Tribunal and before the Division Bench of this Court had nothing to do with the claim of the petitioner, since those cases were dealt with the promotion of the employees after 17.11.1984. Therefore, under the guise of implementing the orders passed by the Division Bench, the authorities concerned have misdirected themselves and sought to down grade the seniority of the petitioner. Such action is clearly due to mis-conception of both the legal and factual position and therefore, the same is liable to be interfered with.

13. Upon notice Mr.S.V.Duraisolaimalai, the learned Additional Government Pleader entered appearance for the respondents and filed a detailed counter affidavit. The learned Additional Government pleader appearing for the respondents would reiterate the submissions as found in the counter affidavit stating that the petitioner having passed all the relevant tests only in the year 2002, his seniority was reckoned only from that day and not from 08.08.1984. According to him, that the direction of the learned Division Bench was to be implemented in respect of the employees and therefore, the seniority which ought to be fixed to the detriment of the petitioner cannot be faulted with.

14. This Court has considered the rival submissions of the learned counsel appearing for the parties and perused the relevant materials and pleadings placed on record. As rightly contended by the learned counsel for the petitioner that the petitioner having been promoted prior to coming into force of G.O.Ms.No.2420, Labour Department dated 17.11.1984 can not be equated with the employees, who were promoted as Assistant after 17.11.1984. The additional criteria which were prescribed under the aforesaid Government Order by passing departmental tests for promotion to the post of Assistant cannot be applied to the petitioner's case, since admittedly, he was earlier promoted after clearing certain tests as originally prescribed prior to 17.11.1984. Such being the case, this Court does not understand as to why and on what basis the petitioner's seniority was reckoned from the year 2002 in the cadre of Assistant.

15. The learned counsel for the petitioner would submit that the clearance of the tests as prescribed under G.O.Ms.No.2420, Labour Department dated 17.11.1984 was also pre-requisite for consideration for promotion to the post of Superintendent and the petitioner therefore, qualified in the other tests also only for the purpose of promotion to the post of Superintendent and not for the post of Assistant, which promotion admittedly had taken place much earlier to the aforesaid Government Order dated 17.11.1984. In these circumstances, the petitioner has right to be considered for promotion to the post of Superintendent by restoring his

original seniority by reckoning the date of his promotion as 08.08.1984 and not from the date of passing of the tests in the year 2002.

16. This Court is entirely in agreement with the submissions of the learned counsel appearing for the petitioner and therefore, the writ petition is allowed. The impugned order dated 21.04.2005 in No.G1/20220/2005 passed by the second respondent is set aside. The petitioner is entitled to all the consequential and attendant benefits including promotion to the post of Superintendent at the appropriate time on par with his immediate juniors. It is stated that the petitioner had retired from service in the year 2008 itself after attaining the age of superannuation. In any case, the petitioner is entitled to all consequential benefits and the respondents are directed to pass consequential orders within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True copy//

Sub Assistant Registrar

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To

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
Labour & Employment Department,
Fort St. George,
Chennai - 600 009

2. The Commissioner of Labour,
DMS Compound, Teynampet,
Chennai - 600 006.

+1cc to Mr.Karthik Mukundan, Advocate SR.No.83841
+1cc to Government Pleader SR.No.84224

W.P.No.18568 of 2006

GN(27/12/2017)