

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.8.2017

CORAM

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

W.P.No.28306 of 2004

M.Vijayakumar

.. Petitioner

vs

1. The Director of Collegiate Education
Chennai - 600 006.

2. K.Chandra

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus, calling for the records of the first respondent in his proceedings No.O.Mu.No.6317/B1/2004, dated 01.04.2004, to quash the same and to direct the first respondent to grant promotion to the petitioner to the post of Upgraded Assistant with effect from 20.08.1999 with all consequential monetary and other service benefits and also assign a seniority to the petitioner in the category of Assistant over and above that of the second respondent.

For Petitioner : Mr.P.Arumuga Rajan
for R.Ravi

For Respondents : Mrs.K.Bhuvaneswari (for R1)
Government Advocate

सत्यमेव जयते

ORDER

The petitioner has filed this writ petition seeking issuance of a writ of Certiorarified Mandamus to call for the records of the first respondent in his proceedings No.O.Mu.No.6317/B1/2004, dated 01.04.2004, to quash the same and to direct the first respondent to grant promotion to the petitioner to the post of Upgraded Assistant with effect from 20.08.1999 with all consequential monetary and other service benefits and also assign a seniority to the petitioner in the category of Assistant over and above that of the second respondent.

2. The brief facts of the case are as under: The petitioner was appointed on compassionate ground as a Junior Assistant cum Typist with effect from 03.04.1996 in His Highness The Rajah Government College, Pudukottai. It is stated that by virtue of G.O.Ms.No.568, Higher Education (G2) Department, dated 09.10.1998, the services of the petitioner in the said post were regularized with effect from 03.04.1996, viz., the date of his joining duty, and subsequently, by G.O.Ms.No.232, Higher Education (G2) Department, dated 20.06.2000, the petitioner was declared to have successfully completed the probation with retrospective effect from 02.04.1998.

3. It is the case of the petitioner that his next avenue of promotion is to the post of Upgraded Assistant and he was fully eligible for promotion to the said post in the year 1999. An inter se seniority list was also drawn by the first respondent on 20.08.1999, in which the petitioner was placed at Serial No.32, whereas the second respondent was placed at Serial No.39.

4. It is averred that thereafter the first respondent by another proceedings dated 20.08.1999 promoted 56 persons as Upgraded Assistants, including the second respondent, but omitted the name of the petitioner. Calling into question the said proceedings, the petitioner sent representations to the first respondent, but the same did not evoke any response.

5. In the meanwhile, the petitioner was granted promotion with effect from 08.11.2000 as Assistant, i.e., in the next batch of promotion, but the petitioner made representations seeking promotion with retrospective effect with effect from 20.08.1999, the date on which the second respondent was promoted. The said representation was rejected by the first respondent by proceedings dated 01.04.2004 on the ground that on the date of issue of promotion orders in the year 1999, his probation in the category of Junior Assistant had not yet been declared and that there was delay in sending the petitioner for administrative training to Bhavani Sagar.

6. Challenging the said proceedings, the present writ petition is filed for the relief stated supra.

7. The learned counsel for the petitioner submitted that the ground stated in the impugned order that the denial of promotion to the petitioner was on ground that he had not completed training at Bhavani Sagar and that there was delay in declaration of probation are not sustainable inasmuch as the delay was on account of administrative reasons and for such administrative delay, the petitioner should not be penalized.

8. It is further contended that the probation of the petitioner was declared with retrospective effect from 02.04.1998 and, therefore, it does not lie in the mouth of the first respondent to say that the petitioner was not eligible to be considered for promotion as on 20.08.1999. He added that it is not the case of the first respondent that probation of the petitioner was extended or so, as no order was passed to that effect at any stage and, therefore, the probation of the petitioner is deemed to have been declared with effect from 02.04.1998.

9. The learned Government Advocate appearing on behalf of the first respondent reiterated the stand taken by the first respondent in the impugned proceedings and prayed for dismissal of the writ petition.

10. I heard Mr.P.Arumuga Rajan for Mr.R.Ravi, learned counsel appearing for the petitioner and Mrs.K.Bhuvaneswari, learned Government Advocate appearing for the 1st respondent and perused the documents available on record.

11. In the case on hand, it is beyond any cavil that as per the seniority list drawn by the first respondent on 20.08.1999, the petitioner was senior to the second respondent in the cadre of Junior Assistant/Typist/Storekeeper. It is not the case of the first respondent that the delay in sending the petitioner for training was on account of reasons attributable to the petitioner.

12. A perusal of the documents in the typed set of papers annexed shows that the petitioner's probation was declared with retrospective effect from 02.04.1998. In any event, the probation of the petitioner was not extended and, therefore, it is deemed to have been declared with effect from 02.04.1998. The petitioner also completed the training at Bhavani Sagar during the period from 16.04.1999 to 14.06.1999, i.e., prior to the order dated 20.08.1999 promoting the second respondent. Therefore, it is explicitly clear that the delay is due to administrative reasons and the same cannot be put against the petitioner.

13. The said view of this Court is fortified by a decision of this Court in S.Krishnakumar vs. State of Tamil Nadu, Rep. By Its Secretary, Home Department and Others, [2011 (8) MLJ 317], wherein it is held as under:

"7. It is also pointed out in the said judgment (W.P. No. 13517 of 2009, by order dated 9.4.2010) in paragraph-21 that deputing the petitioner therein for one year training at Bhavani Sagar

Institute cannot be attributed to the petitioner and he had not qualified himself though inclusion in the promotion panel for seniority cannot be allowed as it would prejudice the petitioner as he was prevented by the department to undergo the training. Ultimately in paragraphs 28 to 31, it is held thus:-

28. It is no doubt true that in the case of a person who sleeps over his right consciously, the question of showing any indulgence to disturb a well settled seniority will not arise. As already pointed out, on the appeal preferred by respondents-3 to 5 dismissed, the seniority of the petitioner remained undisturbed at least upto 2001. There was no occasion for the petitioner to entertain any doubt as to the seniority panel to voice his grievance. He came to know of this fact only when the petitioner's name was not included in the panel prepared for the year 2004 onwards. In the background of this fact, when as per the law declared by this Court, the petitioner's name should have been considered in the seniority list, he having successfully completed the examination well ahead of respondents 3 to 5, the delay in challenging the seniority list, by itself, cannot be held against the petitioner, for the simple reason that the delay on the part of the District Collector had caused serious prejudice to the petitioner by his not having deputed the petitioner to undergo the one year stint in the post of Rural Welfare Officer Grade II and for the foundation training in the Bhavani Sagar Training Institute as required under the Service Rules.

29. In the light of the above facts and in fairness to the claim of the petitioner, taking note of the decisions of this Court as referred to above, the petitioner merits to have his seniority fixed. I do not find any justification in the plea of the respondents on the issue of laches. In so doing, I am conscious of the decision of the Apex Court holding that a settled list of seniority and promotion should not be disturbed at a long distance of time vide

the decision reported in (1976) 1 SCC 599 (Malcom Lawrence Cecil D'Souza Vs. Union of India) and (2008) 2 SCC 750 (Union of India Vs. Narendra Singh).

30. Going by the fact that the petitioner had passed all the departmental examinations and the delay in satisfying the service requirement was not attributable to the petitioner, without disturbing the seniority of respondents-3 to 5, I feel that respondents-1 and 2 should place the petitioner in his original place in the order of seniority that at least in future, if and when the time comes, in the matter of granting promotion, the petitioner's name should be considered at the first place.

31. With the above observation, I allow this writ petition thereby set aside the order of the first respondent herein. By so setting aside the impugned order, it is hereby made clear that this Court does not intend to disturb the seniority of respondents-3 to 5, as they had been in service for quite a long number of years. As already pointed out, respondents-1 and 2 should consider the petitioner at the right place of seniority for considering him for further promotion from the post of Assistant to the post of Extension Officer and pass orders within a period of six weeks from the date of receipt of a copy of this order.

8. Applying the said judgment, particularly, the principles stating that the petitioner cannot be blamed for not undergoing the training in Bhavani Sagar, the non-inclusion of the petitioner's name in the panel for promotion to the post of Assistant for the year 2005-2006 and denying promotion to the petitioner as Assistant on the date when his juniors were given promotion cannot be justified. However, taking note of the subsequent promotion given to the petitioner, the petitioner shall be notionally promoted for the post of Assistant from the date of promotion given to the petitioner's juniors from 15.12.2005. The petitioner is not entitled to get any arrears of salary for the promoted post and the seniority alone is to be given by respondents 1 and 2. The said notional

promotion shall be calculated for all purpose except back wages. The writ petition is disposed with above observations. No costs."

14. In such view of the matter, the non consideration of the petitioner for promotion with effect from 20.08.1999, the date on which the second respondent was promoted, cannot be justified. However, taking note of the subsequent promotion given to the petitioner, the petitioner shall be notionally promoted from the date on which the second respondent was promoted. It is made clear that the petitioner shall not be entitled to get any arrears of salary for the promoted post and the seniority alone is to be given by the first respondent. The said notional promotion shall be calculated for all purposes, except backwages.

15. In the result, this writ petition is allowed with the above directions and the proceedings No.O.Mu.No.6317/B1/2004, dated 01.04.2004, passed by the first respondent, is quashed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vs

To

The Director of Collegiate Education
Chennai - 600 006.

+1cc to Mr.R.Ravi, Advocate, S.R.No.60238
+1cc to the Government Pleader, S.R.No.60557

W.P.No.28306 of 2004

RRK(07/03/2018)

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