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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 04.01.2017

DELIVERED ON: 17.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.[MD].No.5967 of 2014

S.Kalaiselvi .. Petitioner

Vs.

1.The Principal District Judge,
District Court Buildings,
Madurai.

2.K.Sarpudeen

3.M.Bhaskaran .. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining proceedings of the first respondent dated 24.03.2014 and quash the same and consequently direct the first respondent to promote the petitioner to the post of Sheristhadar with all monetary benefits from the date of promotion.

For Petitioner : Mr.D.Sadiq Raja

For 1st respondent : Mr.N.Tamil Mani

For respondents 2 & 3 : Mr.P.Veerabaku

O R D E R

[Order of the Court was made by R.SUBBIAH, J.]

The petitioner has come up with this Writ Petition challenging the order passed by the first respondent dated 24.03.2014 in and by which the petitioner's juniors were promoted as Sheristadars and for a consequential direction to the first respondent to promote her to the post of Sheristadar with all monetary benefits from the date of promotion.

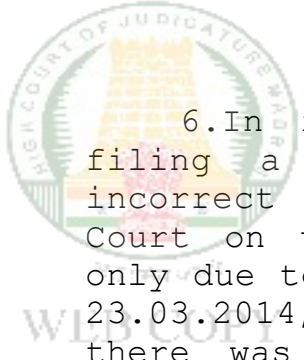


2. It is stated in the petition that the petitioner had joined in the Tamil Nadu Judicial Ministerial Service on 05.08.1987 as Copyist. She belongs to D-notified community. She has completed 27 years of service without any remarks. She was given promotion as Grade I Bench Clerk on 01.12.2011. In the combined seniority list published on 01.07.2013, her name was found above the respondents 2 and 3. While so, two vacancy arose in the promotional post of Sheristadars. The first respondent has convened Selection Committee meeting headed by himself and other Additional District Judges of Madurai and passed impugned order, promoting the respondents 2 and 3, who are juniors to her, as Sheristadars. The grievance of the petitioner is that her seniority has been overlooked. Hence, she has come up with this writ petition.

3. When the matter came up for consideration, the learned counsel for the petitioner submitted that the petitioner is senior to the second and third respondents and till date there is no adverse remarks against her, whereas the second and third respondents were subjected to disciplinary proceedings, due to which, the third respondent has been transferred along with other staff of the TANPID Court. The first respondent, without considering the past conducts of the second and third respondents, has erroneously given favourable consideration to them and the petitioner was discriminated. There is no justification in rejecting the merit and ability of the petitioner to the post of Sheristadar. Therefore, the impugned order is liable to be quashed.

4. Countering the submissions made by the learned counsel for the petitioner, the learned counsel for the first respondent by filing a detailed counter affidavit submitted that as on the date of selection for the post of Sheristadar, there was no charge memo issued against the second and third respondents. They were selected based on their merit and ability. There is no need to interfere with the order passed by the first respondent. Thus, he prayed for dismissal of the writ petition.

5. The learned counsel for the second respondent, by filing a detailed counter affidavit submitted that it is incorrect to state that the disciplinary proceeding was pending against the second respondent. As on the crucial date viz., 24.03.2014, no charge memo was issued against him. Though the disciplinary proceedings initiated against him in the year 2005 ended in punishment, in the appeal it has been set aside on 06.03.2009. Further, there was no punishment in currency as on 24.03.2014 or any punishment was pending within a period of five years prior to 24.03.2014. There was no allegation against the first respondent or about the services rendered by him to the first respondent. Thus, he prayed for dismissal of the writ petition.



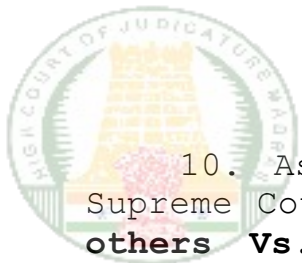
6. In respect of third respondent, the learned counsel, by filing a detailed counter affidavit, submitted that it is incorrect to state that he has been transferred from the TANPID Court on the allegation of corruption. He has been transferred only due to administrative reasons. As on the crucial date viz., 23.03.2014, no charge memo was issued against him. Further, there was no punishment in currency as on 23.04.2014 or any punishment was pending within a period of five years prior to 23.04.2014. Thus, he prayed for dismissal of the writ petition.

7. Keeping the submissions made on either side, we have carefully gone through the entire materials available on record. Admittedly, as per the combined seniority list, the second and third respondents were junior to the petitioner in the post of Grade I Bench Clerk. The main submission of the learned counsel for the petitioner is that though disciplinary proceedings were pending against the second and third respondents and they were juniors to her, they have been given promotion by the first respondent. According to the respondents, as on the crucial date i.e., 24.03.2014, there was no charge memo issued against the second and third respondents and neither there was any currency of punishment pending as on 23.04.2014 nor there was any punishment within a period of five years prior to 23.04.2014. Though the petitioner is senior to them, they have been selected only on the basis of assessment of merit and ability.

8. As per the dictum laid down by the Hon'ble Supreme Court in **Union of India and others Vs. K.V.Jankiraman**, reported in (1991) 4 SCC 109 and (b) **Union of India and others Vs. Anil Kumar Sarkar**, reported in (2013) 4 SCC 161, consideration of case of an employee for promotion, selection grade, crossing of efficiency bar or higher scale of pay cannot be withheld merely on the ground of

pendency of any preliminary inquiry/criminal investigation against him. The departmental proceedings/criminal prosecution can be stated to be initiated against the employee, only when a charge memo in a disciplinary proceedings or a charge sheet in a criminal prosecution is issued against him. Here, in this case, as on the date of passing the order dated 24.03.2014, no charge memo was issued against the second and third respondents. Therefore, there cannot be any difficulty in considering them for promotion.

9. As per the statutory Rule 8 of the Tamil Nadu Judicial Ministerial Service, the promotion shall be made on the grounds of merit and ability, seniority being considered only where merit and ability are approximately equal. Thus, it is clear that the promotion shall be granted only on the basis of merit and ability and not on seniority. However, the seniority can be considered only when merit and ability are approximately equal between two candidates.



10. As to the assessment of merit and ability, the Hon'ble Supreme Court in paragraph No.27 of the judgment in **K.K.Parmar and others Vs. H.C. of Gujarat through its Registrar and others**, reported in (2006) 5 SCC 789, has held as follows;

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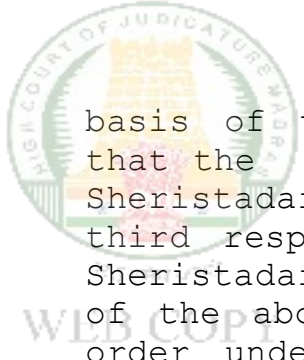
"27.Merit of a candidate is not his academic qualification. It is sum total of various qualities. It reflects the attributes of an employee. it may be his academic qualification. He might have achieved certain distinction in the university. It may involve the character, integrity and devotion to duty of the employee. The manner in which he discharges his final duties would also be a relevant factor. (See Guman Singh Vs. State of Rajasthan - (1971) 2 SCC 452)."

Thus, it is clear that for the purpose of judging the merit, past performance would be a relevant factor. Here, in this case, the first respondent constituted a committee under his head consisting of two members viz., IV Additional District Judge, Madurai and VI Additional District Judge, Madurai, in order to assist him in the selection process. Based on the recommendations of the members of the committee and on perusal of the other particulars, the first respondent being the appointing authority has passed the following orders;

"On perusal of particulars submitted and on the recommendation of members of the selection committee Sl.Nos.2 and 3 are the persons who has to be selected upon their merit and ability and selected accordingly for the post of Sheristadar in Category 1 of Class IV of T.N.J.M.S.. Issue proceeding."

Serial Nos.2 and 3 mentioned therein are second and third respondents herein. Thus, the selection of the second and third respondents made by the appointing authority on the basis of the merit and ability cannot be interfered on the ground that the seniority has been overlooked.

11. Of-course, it is true that the members in the selection committee viz., the IV Additional District Judge, Madurai and VI Additional District Judge, Madurai, had recommended the second and third respondents for selection to the post of Sheristadar, considering their age and lesser years of service also. But, ultimately, the first respondent being the appointing authority held that on perusal of the particulars submitted and also the recommendation of the members of the selection committee, the second and third respondents were selected to the post of Sheristadar on the basis of their merit and ability. Thus, it is clear that the appointing authority by not only considering the recommendation of the members of the committee but also on the



basis of the particulars submitted, has come to the conclusion that the second and third respondents are suitable to the post of Sheristadar. Further, it is also stated that now the second and third respondents have served about three years in the post of Sheristadars and they are also at the verge of retirement. In view of the above, this Court is not inclined to interfere with the order under challenge. More over, it is not the case of the petitioner that there is a *mala fide* action on the part of the appointing authority in effecting promotion to the respondents 2 and 3 by rejecting her name. When that being so, this Court is of the opinion, absolutely, there is no compelling circumstances warranting this Court to make interference in the impugned order.

12. In the result, this Writ Petition deserves dismissal and accordingly dismissed. No costs.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To
1.The Principal District Judge,
District Court Buildings,
Madurai.

+1 cc to M/S.D.SADIQ RAJA, Advocate SR.No.9057

Pre-delivery Order made in
W.P.[MD].No.5967 of 2014
Dated: 17.02.2017

SMA/SV-MMS/28.02.2017:5P/3C