



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 27.01.2017

DELIVERED ON: 01.03.2017

CORAM:

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

W.P.[MD].No.18879 of 2016

N.Rajesh Khanna

.. Petitioner

Vs.

1.The State of Tamil Nadu,
rep. by its Secretary,
Law Department,
Secretariat,
Chennai -5.

2.The Registrar General,
Madras High Court,
Chennai - 600 104.

3.The Principal District & Sessions Judge,
Combined District Courts Campus,
Madurai - 625 020.

4.Tamil Nadu Public Services Commission,
rep. by its Secretary,
Frazer Bridge Road,
Park Town,
Chennai - 600 003.

.. 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 to the impugned proceedings of the third respondent, vide the order in A.No.12-E/2016 dated 31.05.2016 and quash the same and further direct all the respondents to take appropriate proceedings to regularize the service of the petitioner by fixing the original seniority of the petitioner as on 30.05.2016 and on par with his colleagues and junior within a stipulated time.



For 1st respondent : Mr.V.R.Shanmuganathan,
Special Government Pleader

For respondents 2 to 4: Mr.D.Sivaraman

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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 third respondent dated 31.05.2016 in and by which the petitioner was reverted to his original post of Junior Assistant for not completing the probation satisfactorily, and for a consequential direction to the respondents to regularize his service by fixing the original seniority, as on 30.05.2016 and on par with his junior within a stipulated time.

2.It is stated in the petition that the petitioner's father, while working as Superintendent in Madurai District Court, died in harness on 01.06.2006. On 20.08.2007 he was appointed as Junior Assistant on compassionate ground. But, the third respondent has failed to pass appropriate order declaring his successful completion of probation. As per the order, vide Letter No.14735/10-1 P & AR Department, dated 08.04.2010, his probation is deemed to have been satisfactorily completed, after completion of 2-1/2 years of service. Hence, he was promoted as Assistant, Bench Clerk-Grade III, Head Clerk and Bench Clerk - Grade II on 24.02.2010, 25.11.2011, 30.04.2013 and 12.01.2015 respectively. While so, after completion of 9 years of service, without issuing any notice, the third respondent has passed the impugned order reversing the petitioner from the post of Bench Clerk - Grade II to Junior Assistant stating that he has been working without regularization in the entry level post of Junior Assistant and that the promotion given to him is contrary to Rule 36 of the General Rule for Tamil Nadu State and Subordinate Service Rules. As per G.O.(Ms).No.80, P & AR Department, dated 02.03.2016, the Government of Tamil Nadu has regularised the services of all the appointees under compassionate appointment in all the departments of the State. The petitioner is also deemed to have been regularised as per the said G.O. But, the same has not been done. It is also stated in the petition that after conferring the benefits of higher post and pay scale, he cannot be reverted back belatedly, when there is no fault on his side. Thus, he prayed to quash the impugned order and also seek consequential direction.

3.The learned counsel for the petitioner reiterated in the averments made in the affidavit filed in support of the petition.

4.The learned counsel appearing for the respondents submitted <https://hccourtscn.gov.in> showing the petitioner's initial appointment was not regularised, due to inadvertence, the promotions were given to him contrary to Rule 36 of the Tamil Nadu State and Subordinate



Service Rules. Hence, the impugned order has been passed reverting him to the entry level post of Junior Assistant. He has further submitted that during the pendency of the writ petition, the petitioner's service is regularised with effect from the date of his joining duty ie., from 27.08.2007. Thus, the learned counsel for the respondents prayed for dismissal of this writ petition.

5. Keeping the submissions made on either side, we have carefully gone through the entire materials available on record.

6. Admittedly, the declaration of probation is not in the hands of the petitioner. The same is in the hands of the appointing authority. But, it is stated that without declaration of probation in the initial post, the petitioner was given several promotions, as per his seniority. The petitioner was of the fond hope that because of declaration of his probation, he was promoted. But, after giving several promotions to the petitioner, the third respondent has belatedly passed the impugned order reverting him back to his original post of Junior Assistant for no fault committed by him. Any how, now, it is reported that during the pendency of the writ petition, the petitioner's service is regularised with effect from the date of his joining ie., from 27.08.2007. In view of the said regularisation, we are of the view that now there would not be any difficulty for the third respondent to restore the petitioner to his last holding post and confer all the consequential benefits. Though it is contended by the learned counsel for the respondents that contrary to Rule 36 he was given promotion, we are of the view that after conferring the benefits of higher post and pay scale, he cannot be reverted back belatedly for no fault committed by him. If his appointment was temporary or irregular in any manner, he should have been reverted within a reasonable period. Since the reversion has been made belatedly after 9 years of service for no fault committed by him, the said order is liable to be set aside.

7. In the result, this writ petition is allowed and the impugned order passed by the third respondent is set aside and the third respondent is directed to restore him to the last holding post and also confer all the monetary and attendant benefits within a period of two weeks from the date of receipt of the order. No costs.

Sd/-

Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar



To

1.The Secretary,
Law Department,
Secretariat,
Chennai -5.

2.The Registrar General,
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Chennai - 600 104.

3.The Principal District & Sessions Judge,
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4.Tamil Nadu Public Services Commission,
rep. by its Secretary,
Frazer Bridge Road,
Park Town,
Chennai - 600 003.

+1cc to M/s.N.Karthick Kanna, Advocate sR.No.11627

+1cc to Mr.D.Sivaraman, Advocate SR.No.11538

gcg

sm:MR:10/03/2017:4P/7C

Order made in
W.P.[MD].No.18879 of 2016
Dated: 01.03.2017