BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated : 08.02.2017
CORAM :
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.(MD).No.1260 of 2011

S.Sugavaneswara Subramanian .. Petitioner

.Vs.

1.The Secretary to Government,
Department of Commercial Taxes and Registration,
Fort St. George,
Chennai - 600 009.

2.The Principal Secretary/Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

3.The Joint Commissioner of Commercial Taxes,
Trichirapalli Division,
Trichirapalli. ... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the second respondent in Memo No.H2/23100/2010 dated 12.11.2010 quash the same as illegal and unlawful and direct him to revise the service of the petitioner as Gujarathi Assistant with effect from 05.11.2001 and to grant consequential promotions and benefits.

For Petitioner : Mr.J.Pooventhera Rajan
For Respondents : Mr.R.Karthikeyan
Additional Government Pleader

O R D E R

The petitioner has come up with the present writ petition challenging the memo No.H2/23100/2010 dated 12.11.2010 in order to quash the same as illegal with the consequential relief to direct the 2nd respondent to revise the service of the petitioner as Guajarathi Assistant with effect from 05.11.2001 with all other benefits.

2.The case of the petitioner is that by the proceedings of the Assistant Commissioner, (Commercial Taxes) Karur in e/f/m6/18965/94, dated 19.10.1994, he was appointed as junior assistant in the commercial taxes office, Karur (Rural) with effect from 19.10.1994. He completed his probation on 19.10.1996 but his probation was not declared as completed. The petitioner also completed the 2 months basic training for junior assistant at the civil service training institute, Bhavanisagar. He was also successfully completed the departmental examination for Guajarathi language in the commercial taxes department in May, 1999. Subsequently the result was communicated by the Tamil Nadu Public Service Commission vide its letter dated 13.10.1999. Since, the petitioner successfully completed the departmental examination for Guajarathi language and also successfully completed the Accountancy exam for Junior Grade, he became eligible to be appointed as Guajarathi knowing assistant in the commercial taxes department. So, he made a representation dated 03.11.1999 to the 3rd respondent to promote him as Guajarathi knowing assistant, but his representation is not been considered. Again on 24.03.2010 he made another representation to the 2nd respondent and this time also the same was not considered. In the meanwhile, on 30.05.2001, according to the petitioner the 2nd respondent requested the 1st respondent to relax the Rule 34(a) r/w 5 of the Special Rules for Tamil Nadu Ministerial Service, General Rule 23-A and also Rule 28 of the Tamil Nadu State and Subordinate Service Rules in favour of the petitioner to enable him to get declared his probation completed as on 17.10.1996 afternoon and to draw all his increments.

3.It is the specific case of the petitioner that in the said letter, the 2nd respondent admitted that the delay in declaring the probation of the petitioner was due to administrative reason. However, the 2nd respondent directed the 3rd respondent to appoint one Mr.K.Rahini as Guajarathi Assistant in the vacancy arose in Trichy Commercial Taxes Division leaving the name of the petitioner for the said post. Hence, on 09.11.2001 and 10.12.2001 the petitioner has made representations to the 2nd respondent but they have not been considered. However, on 16.12.2002 the probation of the petitioner was declared as completed as on 17.10.1997 with retrospective effect by the 1st respondent as per G.O.Ms.No (D) No.383 dated 16.12.2002.

4.It is the grievance of the petitioner that the promotional opportunity was denied by the 2nd respondent only on the ground that his probation was not been declared as completed in the right time. Further, his name was included in the panel of assistant as on 15.03.2004 by the proceedings of the 3rd respondent dated 09.06.2006. In this regard the petitioner filed a Writ Petition before this Court in W.P.(MD)No.12978 of 2010 for the consideration of his representation dated 31.05.2010 and the same is pending for adjudication. However, in the meanwhile the 2nd respondent passed the impugned order by rejecting the claim of the petitioner as there was no vacancy as on 05.11.2001, though the petitioner has relied on Rule 3(q)(3) and 36 of the Tamil Nadu Ministerial Service Rules. Since, the delay in declaring the probation of the petitioner completed was arisen only on administrative reason, the petitioner submits that his representations ought to have been taken for consideration and impugned memo of the 2nd respondent is liable to be quashed.

5.Per contra, the 3rd respondent filed his counter affidavit stating that the instant Writ Petition is not maintainable as the previous Writ Petition is pending. It is stated that by the G.O.No.382 of the Commercial Taxes (A2) Department dated 16.12.2002, the probation of the petitioner was declared as completed with effect from the afternoon on 17.10.1996 with all consequential monetary benefits. At the same time as there is only one sanctioned post as Guajarati Assistant in Trichy Commercial Tax Division, the name of one Tmt.K.Rahini was considered as she is the senior most assistant joined in the service on 25.06.1984, whereas, the petitioner joined duty only on 19.10.1994. Further, as there is only one post of Guajarati Assistant in the Trichy division, the name of K.Rahini was considered as she is the senior to the petitioner. Even though there is 9 vacancies arisen during the year 2001 in the post of Guajarathi Assistant, the concerned Joint Commissioner, who is the appointing authority approved the list of candidates as per Annexure II of Tamil Nadu Ministerial Service Rules. Therefore, the claim of the petitioner was rightly rejected in considering her seniority. Hence, the 3rd respondent prayed for the dismissal of the Writ Petition.

6.I heard Mr.J.Pooventhera Rajan, learned counsel appearing for the petitioner and Mr.R.Karthikeyan, learned Additional Government Pleader appearing for the respondents and all the materials available on record are perused.

7.The learned counsel for the petitioner would submit that though the petitioner completed his probation without any delay on her part, due to the act of the authority concerned, it was belatedly declare as completed. So, this delay would definitely affect the promotional right of the petitioner. On the other hand, the learned government advocate has contended that there is no delay in declaring the probation of the petitioner declared as completed.

8.After the perusal of records it came to light that though the probation of the petitioner, as per G.O.No.382 commercial taxes A2 Department dated 16.12.2002 probation was declared with effect from 17.10.1996 with all consequential monetary benefits. Once the probation of the petitioner was declare as completed with the delay of nearly 6 years the impugned memo of the 2nd respondent dated 12.11.2010 would lose its sanctity. At the same time it is for the authority concerned to consider the representation of the petitioner as the right of the petitioner to get promotion would be under the purview of the constitutional right. Moreover, though it is stated by the 3rd respondent that the person already promoted as Guajarathi Assistant namely K.Rahini was originally appointed as on 25.06.1984, the petitioner has to challenge the fixing of seniority. On the other hand, the pendency of the previous Writ Petition filed by the petition is no bar to file the instant writ petition. The instant writ petition is maintainable as it is filed against the rejection memo pertaining to the promotion of the petitioner. Apart from that it is also kept in mind that the petitioner has not disputed that there is more than one post of Guajarathi Assistant in Trichy division and not the senior most candidate was appointed to the post of Guajarathi Assistant. Therefore, without go into the merits of the case, it would be appropriate to give direction to the respondents to consider the representation of the petitioner in the manner known to law.

9.In the result:

(a) this Writ Petition is disposed of with a direction to the petitioner to submit fresh representation with all particulars within a period of 15 days from the date of receipt of a copy of this order and the same may be submitted to the respondent;

(b) the respondents are hereby directed to consider the petitioner’s representation by giving personal opportunity to the petitioner by noting name list between the petitioner and the said Rahini and consider the petitioner for the appointment of Guajarathi Assistant with effect from 05.11.2001 and pay back all the service and monetary benefits. No costs.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub-Assistant Registrar

To

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Department of Commercial Taxes and Registration,
Fort St. George, Chennai - 600 009.

2.The Principal Secretary/Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai - 600 005.

3.The Joint Commissioner of Commercial Taxes,
Trichirapalli Division, Trichirapalli.

Vs/skn

RL/4C/4P/KP/SAR1/5/7/2017

Pre-Delivery order made in
W.P.(MD).No.1260 of 2011
08.02.2017