



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 15.02.2017

CORAM :

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.(MD).No.3642 of 2011

E.V.Sivakumar

.. Petitioner

.Vs.

1.The Secretary to Government,
Department of Highways and Minor Ports,
Secretariat,
Chennai.

2.The Director General (Highways),
Department of Highways,
Chepauk,
Chennai.

3.The Chief Engineer (Production and Maintenance)
Department of Highways,
Chepauk,
Chennai.

... 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 குறிப்பாணை எண் ன் 3(2)/45774/1998 dated 31.01.2011 quash the same as illegal and unlawful and direct the first and second respondents herein to revise the service of the petitioner as Junior Assistant with effect from date of publication of G.O.Ms.No.1499 (Labour and Employment Department) dated 03.08.1989 (viz. 03.08.1989) and further direct them to provide subsequent promotions by taking in to account of the service rendered by the petitioner in the cadre of record clerk with effect from 18.06.1986 along with back wages and other monetary benefits.

For Petitioner : Mr.J.Pooventhera Rajan

For Respondents :Mr.K.Guru
Additional Government Pleader

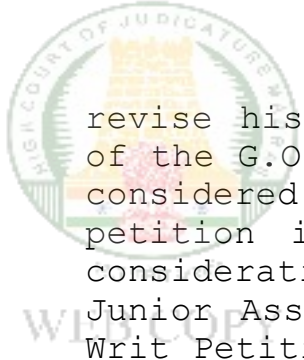
O R D E R

The Petitioner has filed the instant Writ Petition for Certiorari Mandamus to call for the records of the 2nd respondent relating to a Memorandum No.3(2)45774/1998 dated 31.01.2011 and quash the same as illegal and to direct the 1st and 2nd respondents to revise the service of the petitioner as Junior Assistant with effect from the date of publication of G.O.Ms.No.1499 (Labour and Employment Department) dated 03.08.1989 with a further direction to provide subsequent promotion by calculating the service of the petitioner rendered in the cadre of Record Clerk with effect from 18.06.1986 along with back wages and other monetary benefits within a time frame which may be stipulated by this Court.

2.It is the case of the petitioner that by the proceedings of the Chief Engineer (General Highways Department, Chennai) he was appointed as Record Clerk in the Highways and Rural Development Department with effect from 18.06.1986 on compassionate ground. Subsequently, his service was regularized by the 1st respondent as per his proceedings in G.O.Ms.No.113 of Transport Department dated 16.02.1988. For the post to which the petitioner was appointed requires educational qualification of 8th standard pass or fail. However, at the time of appointment, the petitioner possessed SSLC qualification which is sufficient for the post of Junior Assistant.

3.It is the further case of the petitioner that as per the G.O.Ms.No. 1499 (Labour and Employment Department) dated 03.08.1989, it is stated that a dependent appointed to a lower post like Record Clerk, Office Assistant and Sweeper on compassionate ground, but possesses the qualification required for the post of Junior Assistant at the time of initial appointment to a lower post may be appointed as Junior Assistant/Typist. The said G.O has further clarified that this concession is allowed only to those who already have been appointed to a lower post like Record Clerk, Office Assistant and Sweeper etc.

4.However, the petitioner has specifically has pointed out that one Mrs.V.Vijayalakshmi was appointed as Record Clerk under the compassionate ground in the respondent department in 1987. Her service was subsequently regularized as Junior Assistant with effect from 21.12.2000 by relying upon the G.O.Ms.No.1499 (Labour and Employment Department) dated 03.08.1989. In this regard the petitioner sent a representation to the 1st and 2nd respondents to



revise his service as Junior Assistant with effect from the date of the G.O.Ms.No.1499 dated 03.08.1989. His representation was not considered which constrained the petitioner to file a writ petition in W.P.(MD)No.8372 of 2010 before this court for the consideration of his representation and to revise his service as Junior Assistant as per the aforesaid government order. The said Writ Petition was disposed of by this court as per the order dated 05.07.2010 with a direction to the 1st respondent to consider his representation dated 26.05.2010 and to pass order within a period of 8 weeks from the date of receipt of copy of the order. In the mean time the petitioner was promoted as Junior Assistant as per the proceedings of the 2nd respondent dated 15.09.2010 on the other hand, the respondents have rejected the claim of revision of service of the petitioner by the present impugned order.

5.At the same time this court in a similar issue in W.P.(MD) No.69 of 2010 dated 22.04.2000 and also W.P.(MD)No.1685 of 2010 dated 06.08.2010 dealt with the very same Government order and allowed the writ petitions and the same were upheld by the Division Bench of this court. Therefore, the petitioner filed the instant writ petition.

6.Per contra, the Additional Secretary the Government Highways and Minor Ports Department, Chennai filed a counter affidavit which was also signed by the Undersecretary to Government, stating that the petitioner has not made out any case and he filed the Writ Petition belatedly. Further his representation was rightly considered by rejecting the same by the respondents. Moreover, as the petitioner was already working as Junior Assistant after the promotion from the post of Record Clerk, his claim for revision of appointment as Junior Assistant from 03.08.1989 has become redundant. Moreover, the concurrence of the Tamil Nadu Public Service Commission is necessary for appointing the petitioner as Junior Assistant. Therefore the Writ petition is liable to be dismissed.

7.I heard Mr.J.Pooventhera Rajan, learned counsel appearing for the petitioner and Mr.K.Guru, learned Additional Government Pleader appearing for the respondent.

8.It is the case of the petitioner that on compassionate ground, originally he was appointed as Record Clerk. Further it is no dispute that at the time of appointment, the petitioner possessed SSLC qualification. However, the Government Order in G.O.Ms.No.1499 (Labour and Employment Department) dated 03.08.1989 was passed. It is the case that as per the said Government Order, the petitioner is entitled to be appointed as Junior



Assistant/Typist from the date of the Government Order. The relevant paragraph of the said Government Order is reproduced here under:

"A dependent appointed to a lower post like Record Clerk Office Assistant and Sweeper on compassionate grounds but possess the qualification required for the post of Junior Assistant at the time of initial appointment to a lower post may be appointed as Junior Assistant/Typist. This concession is allowed only to those who have already been appointed to a lower post like Record Clerk, Office Assistant, Sweeper etc. the dependents should satisfy the conditions prescribed for consideration of appointment under compassionate grounds at the time of their appointment as Junior Assistant Typist etc."

9. So, as per the case of the petitioner, he is entitled to get the benefit of the aforesaid Government order. At the same time the impugned order is passed by the Director General of Highways without properly considered the case of the petitioner. However, the similar issue was dealt with by this court as well as the Division Bench of this court in the aforesaid writ petitions and appeals respectively. In those cases, the aforesaid Government Order was testified and remedies were given as per the Government Order.

10. Moreover, though the petitioner was specifically pointed out the revision of appointment of one V. Vijayalakshmi based on the aforesaid Government Order, the respondent has replied that it is not Vijayalakshmi but one Jeyalakshmi was initially appointed as Record Clerk under compassionate ground on her father's death. She was appointed as Junior Assistant after getting concurrence from the Tamil Nadu Public Service Commission.

11. First of everything that the respondent cannot shirk their responsibility either in complying with the Government Orders or the orders passed by the Courts of Law. Further, the respondents cannot show any discrimination in giving benefit of any Government Order with deviation. Apart from that it cannot be justified by the respondents that the petitioner claimed his legal right based on Government Order, but belatedly. It is a well settled legal proposition that legal right can be claimed at any point of time and the question of limitation would not arise at all and even latches will not be applicable in claiming legal rights. In the present writ petition also the petitioner has claimed his legal right based on the Government Order. Moreover, the same Government Order is testified by the Division Bench of this Court and the reliefs were given positively. So, it is for the respondents to consider the case of the petitioner as per the aforesaid Government Order.



12. In view of the foregoing discussions, the impugned order is quashed and the 1st and 2nd respondents are directed to revise the appointment of the petitioner as Junior Assistant from the date of the Government Order G.O.Ms.No.1499 (Labour and Employment Department) dated 03.08.1989.

13. In the result:

(a) the writ petition is allowed by setting aside the Memorandum No.3(2)45774/1998 dated 31.01.2011 passed by the 2nd respondent;

(b) the respondents 1 and 2 are directed to revise the service of the petitioner as Junior Assistant and to provide subsequent promotion by taking into account of his service with effect from 18.06.1986 along with all the monetary benefits;

(c) the said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CSII)

/True Copy/

Sub-Assistant Registrar

To

1. The Secretary to Government,
Department of Highways and Minor Ports,
Secretariat,
Chennai.

2. The Director General (Highways),
Department of Highways,
Chepauk,
Chennai.

3. The Chief Engineer (Production and Maintenance)
Department of Highways,
Chepauk, Chennai.

Vs/skn

RL/4C/5P/MR/SAR2/28.4.2017

Pre-delivery order made in
W.P. (MD).No.3642 of 2011