



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.02.2017

CORAM:

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THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) .No. 13680 of 2013

S.Vincent

... Petitioner

Vs.

The Registrar
Madurai Kamaraj University
Palkalai Nagar,
Madurai-21.

... Respondent

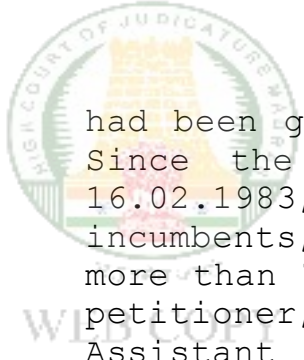
PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the respondent in his proceedings Ref.Estt.I/A1/SV2013 dated 08.08.2013 and quash the same as illegal and arbitrary and consequently directing the respondent to revise the petitioner's pension by granting Notional promotion to the post of Senior Superintendent w.e.f. 01.06.1992 and further directing the respondent to pay all arrears of salary and other attendant and other benefits applicable to the petitioner.

For Petitioner : Mr.B.Saravanan

For Respondent : Mr.R.M.Makesh Kumaravel

O R D E R

The prayer in the writ petition is for Writ of a certiorarified mandamus calling for the records relating to the impugned order passed by the respondent in his proceedings Ref.Estt.I/A1/SV2013 dated 08.08.2013 and quash the same as illegal and arbitrary and consequently directing the respondent to revise the petitioner's pension by granting Notional promotion to the post of Senior Superintendent w.e.f. 01.06.1992 and further directing the respondent to pay all arrears of salary and other attendant and other benefits applicable to the petitioner.



had been given promotion for the post of Assistant on 01.06.1978. Since the respondent University by Syndicate resolution dated 16.02.1983, had resolved to give time bound promotion to the incumbents, who had been in long service in particular cadre for more than 7 years in regular post up to senior Superintendent, the petitioner, since had been working in the regular post of Assistant for 7 years, was considered for the said time bound promotion to the post of Superintendent and accordingly, the said time bound promotion was given to him on 01.06.1985. Thereafter, whenever regular vacancy of Superintendent arose, and according to the seniority of the petitioner, he would be absorbed in the regular vacancy to the post of Superintendent. In the case of the petitioner, such a regular promotion to the post of Superintendent had been given to him only on 08.02.1995. Since the petitioner superannuated on 30.06.1995, the further promotion to the post of Senior Superintendent was not given to him. In this regard, the grievance of the petitioner appears to be that some of his juniors, who entered service, after the petitioner's entering into service, had been given promotion up to the level of Senior Superintendent and therefore, if the candidature of the petitioner had been considered by the respondent University for giving regular functional promotion to the post of Superintendent atleast in the year 1992, the petitioner would be further considered for further promotion to the post of Senior Superintendent by way of time bound promotion. Since the petitioner was not considered for the said time bound promotion to the Senior Superintendent, he had approached the respondent University and his request has been rejected by the respondent University by order dated 08.08.2013. Challenging the same, the petitioner has come with this writ petition.

3. Heard both sides.

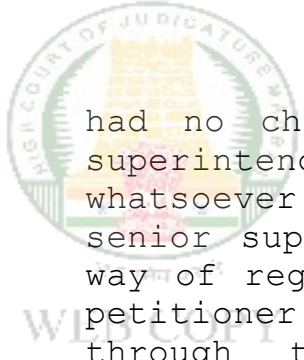
4. The learned counsel for the petitioner has submitted that the petitioner had entered into the service as Clerk in the year 1971. He had been given regular promotion to the post of Assistant in 1978. Since he has completed 7 years of service in the post of Assistant as per the Syndicate resolution, he had been given time bound promotion to the post of Superintendent in June 1985. Whereas atleast two candidates, who had been appointed as Clerks, subsequent to the appointment of the petitioner, ie., in the year 1971 had been given promotion as Assistant prior to the petitioner ie., in the year 1977 in respect of one case and in respect of another man, the said promotion had been given only in the year 1978. Even the said person, who had been given promotion as Assistant in the year 1978, had been considered for time bound promotion in December 1985 ie., 6 months, after such promotion given to the petitioner. Though the person, who had been given promotion in December 1985, had subsequently been considered for the post of Superintendent on regular basis and was given such posting on 27.08.1992, however, the petitioner had been

considered for the regular promotion to the post of Superintendent only on 08.02.1995 ie., more than 2½ years, after his junior was considered.

5. Therefore, in this regard, the learned counsel for the petitioner would submit that had the petitioner's candidature was considered, according to the due date of his turn, based on the seniority for the purpose of functional promotion to the post of Superintendent in the year 1992, the benefits for the said post and subsequent promotional avenue to the post of Senior Superintendent would have been given to the petitioner and because of the delayed promotion, ie., functional promotion to the post of Superintendent given to the petitioner in the year 1995, he was not considered for further promotion to the post of Senior Superintendent.

6. On the other hand, the learned standing counsel for the respondent University would submit that, no doubt, pursuant to the resolution of the respondent University dated 16.02.1983, time bound promotion was allowed for those, who had been stagnated in particular cadre of service, without getting any promotion, and according to the said time bound promotion scheme, those who had completed 7 years of service in a permanent post, would be considered for giving time bound promotion on completion of 7 years, with the result such person would be given time bound promotion to the next higher cadre, for which, all financial benefits would be given to him, though such time bound promotion would no way make him entitled to function in the promoted category.

7. Here, in the case in hand, according to the learned counsel for the respondent University, though the petitioner had entered into service on 02.06.1971 and subsequently had been promoted as Assistant on 01.06.1978 and had been duly considered for giving time bound promotion as Superintendent from 01.06.1985, he was not considered for giving regular promotion to the post of Superintendent as claimed by him in the year 1992, because the petitioner had been suspended from service by proceedings dated 14.10.1991 and subsequently by proceedings dated 23.06.1992, a punishment of cut in increments for three years with cumulative effect has been imposed against the petitioner. Though the said punishment has subsequently been modified through the Syndicate resolution dated 25.10.1993, for cut in two increments without cumulative effect, such increment was cut only on 01.04.1993 and 01.04.1994. Therefore, during the relevant point of time, since he had undergone the said punishment of cut in increments, he was not considered for promotion on regular basis, to the post of Superintendent. Therefore, after completion of the said punishment, he was considered for promotion and was given accordingly, on 08.02.1995. Thereafter, since he was retired on 30.06.1995, he

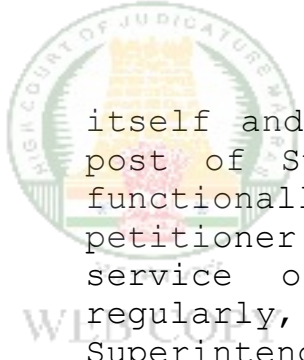


had no chance to get further promotion to the post of senior superintendent and accordingly, there can be absolutely no reason whatsoever on the part of the petitioner to claim the post of senior superintendent either on time bound promotion basis or by way of regular promotion. Therefore, such a request made by the petitioner has been rightly rejected by the respondent University through the impugned order, which does not require any interference at the hands of this Court.

8. This Court had considered the said rival submissions.

9. It is an admitted fact that the petitioner had been given time bound promotion to the post of Superintendent only on 01.06.1985 and up to that level, there is no dispute from the petitioner. The only issue raised by the petitioner is that since he had been given time bound promotion in 1985 and at the time of such giving time bound promotion, it was specifically stated that as and when vacancy arose in the post of Superintendent, the regular promotion to the petitioner to the said post of Superintendent would be given to him, even though regular vacancy was available in the year 1992, where number of persons including some of his juniors had been given promotion, the petitioner had not been promoted to the said post of Superintendent regularly on functional basis. Had he been promoted in the year 1992 as claimed by him, he would have been in a better prospects and subsequently, he would have claimed further promotion to the post of senior Superintendent.

10. This contention made on behalf of the petitioner, though appears to be convincing, but on factual matrix, if we look into the matter, it may not be justifiable, because the petitioner though had been given promotion by way of time bound promotion on 01.06.1985, had subsequently not been considered for regular functional promotion to the post of Superintendent in the year 1992 for the simple reason that the petitioner, admittedly, had suffered with the punishment of cut in three increments with cumulative effect, though subsequently said punishment had been modified into cut in three increments without cumulative effect, admittedly, the petitioner increment was cut only on 01.04.1993 and 01.04.1994. The relevant extract of the service record of the petitioner has also been filed before this Court by the respondent, wherein, it has been entered that the petitioner was given regular increments upto 01.04.1992. Thereafter, there was no increment for the petitioner on 01.04.1993 and 01.04.1994, because of the punishment of cut in two increments without cumulative effect. Thereafter further increment was given to the petitioner only on 01.04.1995. Though further increment, he become eligible only on 01.04.1995, because of the punishment, he have no increment since the punishment was only cut in increment, the respondents had rightly considered the candidature of the petitioner immediately, after cut in increments in the year 1994



itself and accordingly, he was given functional promotion to the post of Superintendent on 08.02.1995. After getting promotion functionally, the petitioner got retired on 30.06.1995. If the petitioner had an extended service beyond 1995 and he had a service of at least 7 years in the post of Superintendent regularly, ie., after getting promoted functionally to the post of Superintendent, certainly, he would have been in a position to claim further promotion to the post of Senior Superintendent by way of time bound promotion. Here, in the case in hand, since he has superannuated on 30.06.1995, he has to retire as Superintendent and therefore, the question of giving any further promotion to the petitioner to the post of Senior Superintendent, even by way of time bound promotion, would not arise at all.

11. The learned counsel for the petitioner would further submit that though the petitioner would not be entitled to claim the promotion of senior Superintendent because of his shorter service, if he was given promotion functionally to the post of Superintendent, immediately, ie., in the year 1992 or at least after the last increment, which was cut on 01.04.1994, some increased monthly benefits would have been given to him, which would correspondingly increase the pensionary benefits of the petitioner. For the said plea made on behalf of the petitioner, it was suitably replied by the learned counsel for the respondent that the petitioner has already put in the pay scale of Superintendent, even by way of time bound promotion. What is the maximum pay, according to the service of the petitioner in the post of Superintendent, has already been given to him, as periodically the increment was given from 1985 onwards. Therefore, even if a functional promotion to the post of Superintendent was given earlier to the petitioner as claimed by him in the year 1992, that would in no way change the pay benefits of the petitioner, because the petitioner was already drawing the maximum pay applicable to the post of Superintendent. Moreover, since the petitioner was admittedly not in service of 7 years in a functional post of Superintendent, he would not be entitled for further promotion to the post of senior Superintendent by way of time bound promotion, nor he would also entitle to get any further financial benefits. In other words, the maximum financial benefits, for which, the petitioner is entitled to has also been given to him, even prior to his superannuation and therefore, accordingly, the pensionary benefits to the maximum extent, after having been worked out taking into account of the last drawn salary, is paid to him. Therefore, in no way the petitioner would get affected either financially or functionally.

12. In view of the said factual matrix, this Court is of the ~~considered~~ ~~view~~ ~~that~~ ~~the~~ ~~petitioner~~ ~~has~~ ~~not~~ ~~made~~ ~~out~~ ~~any~~ ~~case~~ ~~for~~ ~~consideration~~ ~~of~~ ~~the~~ ~~claim~~ ~~made~~ ~~by~~ ~~him~~. Therefore, this Court finds that there is no infirmity in rejecting such a plea made by



the petitioner through the impugned order. Accordingly, the impugned order is liable to be sustained and hence, the writ petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar

+1 cc to Mr.R.M.Makesh kumaravel , Advocate in SR.No. 6941

+1 cc to Mr.B.Saravanan , Advocate in SR.No. 7348

RR

AE/MR/SAR3/15.06.2017/6P/3C

**Order made in
W.P. [MD] .No.13680 of 2013
08.02.2017**