IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.1818 of 2015

1. The Government of TamilNadu
Rep. By the Secretary to Govt.
Finance (T & A) Department,
Fort. St. George, Chennai 600 009.

2. The Commissioner of Treasuries and Accounts
(Now Director of Treasuries and Accounts)
Chennai 600 015.

3. The Treasury Officer,
Cuddalore. ... Appellants/Respondents

versus

R.Srinivasan
Assistant Accounts Officer,
Office of the Commissioner of
Municipal Administration
Chepauk, Chennai 600 005.
(Now residing at Old No.171/3, New No.15/3
Nerkundram Road, Chinmaya Nagar Part -II,
Virugambakkam, Chennai 92.) ... Respondent/Petitioner

Appeal filed against the order passed by this Court dated 29.04.2014 passed in W.P.No. 16595 of 2007.

Prayer in WP.No.16595/2007:To call for the records relating to (1)K.Dis.No.12743/90/E1 dated 01/06/1990 of the 3rd respondent only to the limited extent of the date of effect of advancement to Selection Grade (2)Pro.RC.No.15883/99/D1 dated 09/11/1999 of the 3rd respondent (3)Pro.Rc.No.5682/2000/C3 dated 08/03/2000 of the 2nd respondent and (4)G.O.D.No.287 Finance (T&A) Department dated 23/12/2002 of the 1st respondent quash the same and issue directions to the respondents to revise the date of advancement of Selection Grade in the post of Accountant 04.09.1987 on par with his junior Thiru.S.Rajasekaran, and to grant consequential advancement to special grade from 4/9/97 in the post of accountant, with all consequential services and monetary benefits.

For appellants : Mr.M.Karthikeyan, Addl. Govt. Pleader

For Respondent : Mr.T.Ranganathan

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

This Intra Court Appeal is at the instance of the respondent in WP 16595 of 2007, in and by which, the said Writ Petition which was filed as a Original Application before the Tamil Nadu Administrative Tribunal, Chennai, in OA No.3276 of 2003 was allowed, quashing the proceedings of the 3rd respondent to the extent of the date of effect of advancement to Selection grade and to quash the same and to direct the respondent to revise the date of advancement of the petitioner to Selection Grade in the post of Accountant to 04.09.1987 on par with his junior, Thiru.S.Rajasekar and to grant consequential advancement to Special Grade from 04.09.1997.

2. The facts that led to the filing of the Writ Petition are as follows:

The petitioner/1st respondent was appointed as a Junior Assistant in Treasuries and Accounts Department on 16.09.1974. He was promoted as an Accountant on 18.05.1977 and his services were regularized with effect from the said date. While so, the petitioner was reverted to the post of Junior Assistant in two spells between 20.07.1977 and 21.11.1977 and between 07.12.1977 and 21.09.1979 and again he was promoted as Accountant. According to the petitioner, one Mr.S.Rajasekar, who joined in services as directly recruited Accountant on 28.07.1977, after the petitioner was allowed to continue in the cadre of Accountant and on completion of 10 years of service, he was granted Selection Grade on 04.09.1987 and Special Grade with effect from 04.09.1997. Contending that his reversions were not penal, but were actuated by non availability of the post, the petitioner claimed that he should be granted selection grade and special grade on par with said S.Rajasekar, who is junior to him in service. For claiming such benefits, the petitioner would rely upon G.O.Ms.No.68 P & AR Department, dated 23.01.1986.

3. This claim of the petitioner was resisted by the respondent contending that the petitioner was a promotee, while, the so called junior S.Rajasekar was directly recruited to the post of an accountant and when reversion is made on the ground of non availability of the posts, it can be only that of promotee and not that of a direct recruit. The Authorities

would also contend that the petitioner cannot compare himself with a person, who is directly recruited to the higher post. The respondents rejected the claim of the petitioner by an order dated 23.12.2002, on the aforesaid grounds, which led to the filing of the Original Application in OA No.3276 of 2003, before the Tamil Nadu Administrative Tribunal, Chennai. On abolition of the said Tribunal, the matter was transferred to this Court and numbered as WP No.16595 of 2007. The said Writ Petition came to be disposed of, by an order dated 29.04.2014, by this Court. The learned Single Judge, relying upon the G.O.Ms.No.68 Personal and Administrative Reforms Department on 23.01.1986, concluded that since the reversion of the petitioner was for no fault of his, he should be treated on par of his junior and therefore, he would be entitled to Selection Grade with effect from 04.09.1987 and Special Grade with effect from 04.09.1997 upon such finding, the learned single Judge also directed the respondents to pay the consequential monetary benefits within a period of 12 weeks from the date of receipt of a copy of the order. Aggrieved the respondent in the Writ Petition have come forward with the above Writ Appeal.

4. We have heard Mr.M.Karthikeyan, learned Additional Government Pleader appearing for the appellants and Mr.T.Ranganathan, learned counsel appearing for the respondent.

5. Mr.M.Karthikeyan, learned Additional Government Pleader appearing for the appellants would contend that the petitioner was a promotee, whereas Mr.S.Rajasekar, the junior, on whose case the petitioner relies, upon was a direct recruit. Therefore, the petitioner cannot equate himself with the directly recruited employee. Mr.M.Karthikeyan would also rely upon G.O.Ms.No.898 P & AR Department, dated 23.09.1983, which deals with advancement to Selection Grade and contend that in view of the said Government Order the petitioner is not entitled to conferment of Selection Grade and Special Grade on par with Mr.S.Rajasekar. The facts are not in dispute. The fact that the appellant was promoted as an Accountant on 18.05.1977 is not disputed, the fact that the Mr.S.Rajasekar was directly recruited and appointed as an Accountant on 28.07.1977 is also not in dispute. It is the claim of the appellants that the petitioner was reverted due for want of vacancy for two periods viz. 20.07.1977 to 21.11.1977 and 07.12.1977 to 21.09.1979 i.e. for a total period of 25 months and 16 days and therefore, he cannot claim Selection Grade and Special Grade on par with Mr.S.Rajasekar. Mr.M.Karthikeyan, would also rely upon the Rule 35 (aa) of the Tamil Nadu State and Subordinate Service Rules, in support of his contention.

6. Per contra Mr.T.Ranganathan, learned counsel appearing for the respondent would contend that G.O.No.68 P & AR Department, dated 23.01.1986 as well as the G.O.Ms.No.898 P & AR Department, dated 23.09.1983 would make it clear that a senior person though has not completed 10 years or 20 years services would be entitled to the conferred Selection Grade and Special Grade, if any of his/her junior has been conferred such Selection Grade or Special Grade ahead of the seniors. A reading of G.O.Ms.No.68 P & AR, Department dated 23.01.1986 would show that the benefit of advancement of Selection Grade and Special Grade is extended notionally to a senior, if his junior is conferred Selection Grade or Special Grade, even though the senior might not have actually put in the required 10 or 20 years of service as the case may be. Clause 3 (viii) of the said Government Order reads as follows:

> "3 (viii). A senior person in the ordinary/selection category will also be appointed to the Selection/Special category with effect from the date on which his junior is appointed to the Selection/Special category even though the senior might not have actually put in the required 10/20 years of service. However, in respect of cases, where junior moves to Selection Grade due to retrospective regularization from a date earlier than the date of regularization of their seniors, the seniors should be appointed to Selection/Special Grade only after they have completed 10 years of service."

7. Admittedly, the respondent was promoted as an Accountant on 18.05.1977 and the two reversions were not for any fault of the respondent. They were on the ground that there was no vacancy. Therefore, the respondent cannot be faulted for such reversions. Mr.Karthikeyan would, however, seek to rely upon G.Ms.No.898 P & AR dated 23.09.1983 contend that the respondent cannot claim equality with a person, who was directly recruited. The said Government Order only refers to one Unit System and not the source of appointment, in fact the said Government Order after stating that the periods of reversion should be deducted from the total service, however, directs that if a junior has been assigned Selection Grade or Special Grade, then de hors the period of reversion, the senior must also be assigned Selection Grade and Special Grade, on par with the junior.

8. The contention of Mr.M.Karthikeyan, based on 35(aa) of the Tamil Nadu States Subordinate Service Rules, in our considered opinion is misconceived. Rule 35(aa) deals with the fixation of inter se seniority between persons, who have been recruited by more than one method of recruitment. Even Rule 35 (aa) provides that unless the individual has been reduced to a

lower rank as a punishment, the seniority should be determined with reference to the date on which he is appointed to the Service, Class, Category or Grade and the proviso to Rule 35(aa) would make it clear that the junior appointed by a particular method of recruitment happen to be appointed to service earlier than the senior appointed by the same method of recruitment, the senior shall be deemed to have been appointed to the Service, Class, Category or Grade on the same day, on which the junior was so appointed.

9. We do not think that this Rule would enable the appellants to contend that the respondent is not entitled to selection grade and special grade, in accordance with the Government Orders, viz., G.O.Ms.No.68 Personal and Administration Reforms Department dated 23.01.1986 and G.O.Ms. No.898 Personal and Administration Reforms Department dated 23.09.1983. Hence, we find no error in the order of the learned Single Judge, in as much as the appellants are directed to confer Selection Grade and Special Grade on the respondent with effect from the date on which the junior Mr.S.Rajasekar was conferred Selection Grade and Special Grade, viz. 04.09.1987 and 04.09.1997. The quashing of the impugned proceedings by the learned Single Judge is bound to be upheld.

10. Mr.M.Karthikeyan would, however, contend that the confirmation of Selection Grade and Special Grade can only be notional and the direction of the learned Single Judge to pay the monetary benefits cannot be sustained. The learned counsel for the respondent would concede the position that the sanction of monetary benefits are not contemplated under the Government Orders cited supra. Therefore, we are constrained to set aside that portion of the order of the learned Single Judge, wherein the appellants are directed to pay the consequential monetary benefits.

11. In fine, this Writ Appeal is allowed in part. The order of the learned Single Judge directing the payment of monetary benefits to the respondent will stand set aside, in other respects order will stand confirmed. The appellants shall notionally work out the benefits that would be available to the petitioner, as if he had been granted Selection Grade on 04.09.1987 and Special Grade on 04.09.1997 in computing his pension and other retirement benefits only. In view of the fact that the respondent had already retired, we direct that the exercise for computing the pension and other retirement benefits shall be made, within a period of twelve (12) weeks from the date of receipt of a copy of this Judgment.

12. The Writ Appeal is disposed of with the above direction. However, considering the facts and circumstances of the case, there will be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

jv
To

1. The Secretary to Govt.,
   Government of Tamil Nadu
   Finance (T & A) Department,
   Fort. St. George, Chennai 600 009.

2. The Commissioner of Treasuries and Accounts
   (Now Director of Treasuries and Accounts)
   Chennai 600 015.

3. The Treasury Officer,
   Cuddalore.

+1cc to M/s.T.Ranganathan, Advocate SR.No.26080
+1cc to Government Pleader SR.No.26767

GMI(CO)
sm:7.5.2018

W.A.No.1818 of 2015