

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

WA.No.228/2017

S.Arasalingam

.. Appellant /
Writ Petitioner

vs.

1. The Government of Tamil Nadu
rep.by its Principal Secretary
Labour and Employment Department,
Fort St George, Chennai 600 009.
2. The Director
Directorate of Employment and Training
Guindy, Chennai 600 032.

.. Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent Act against the order dated 02.12.2016 in WP.No.19797/2014.

W.P. No 19797/2014:

Writ Petition No. 19797/2014 has been filed under Article 226 of the constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the concerned records from the 1st and 2nd respondent quash the order of the 1st respondent dated 26.11.2013 bearing letter No.21596/N2/2013-4 order of the 2nd respondent dated 23.8.2013 bearing Nir3/5962/13 and the order of the 2nd respondent dated 21.03.2014 bearing Nir3/6867/14 as illegal arbitrary and contrary to law and consequently direct the respondents to include the name of the petitioner for promotion to the post of Assistant in the panel for the year 2011-2012 and promote her with effect from 31.01.2013 being the date when the candidates in the panel for the year 2011-2012 were promoted with all consequential benefits.

For Appellant .. Mr.Balan Haridas
For R1 & R2 .. Mrs.A.Srijayanthi, Spl.GP

JUDGMENT

(Judgment of the Court was delivered by K.K.SASIDHARAN, J.)

This Intra Court Appeal is directed against the order dated 02.12.2016 in WP.No.19797/2014, whereby and whereunder, the learned Single Judge negatived the plea taken by the appellant that he should have been given exemption by invoking the Government Order in G.O.Ms.No.1120, Personnel and Administrative Reforms Department dated 30.10.1984, on account of his completion of 53 years and his failure to pass the Departmental Test for five times.

2 We have heard the learned counsel for the appellant and the learned Special Government Pleader appearing for the respondents.

3 The appellant joined the services as a Junior Assistant on 11.08.2000. He was expected to pass the Departmental Test for the purpose of considering his case for promotion. Though the appellant made five attempts to clear the test, he was not successful. The name of the appellant was not considered for promotion to the post of Assistant for the year 2011-2012 on account of his failure to pass the Departmental Test. Subsequently, the appellant was given promotion by granting exemption under the Government Order in G.O.Ms.No.1120 dated 30.10.1984. The order by which the claim of the appellant was rejected for promotion for the year 2011-2012 was challenged before the learned Single Judge.

4 The Learned Single Judge considered the Government Order in G.O.Ms.No.1120 dated 30.10.1984 and opined that there was no time limit prescribed by the Government for consideration of the applications for exemption. The writ petition was accordingly, dismissed.

5 There is no dispute that the crucial date for inclusion of the name in the panel for the post of Assistant for the year 2011-2012 was 15.03.2011. It is also not in dispute that the appellant completed 53 years of age as on 09.03.2011. The Government issued the order in G.O.Ms.NO.1120 dated 30.10.1984 to assist the Government servants who have completed the age of 53 years and failed in the Departmental Test by appearing at least five times. It is a matter of record that the appellant appeared for the Departmental Test on five occasions ; but, however, he was not successful. It is also not in dispute that the appellant completed 53 years as on 09.03.2011. He was therefore, eligible for exemption under the Government Order in G.O.Ms.No.1120 dated 30.10.1984.

6 The Government granted relaxation to the appellant and considered his case for promotion for the year 2013-2014 by including his name in the panel year 2013-2014.

7 The factual matrix clearly indicates that the appellant was eligible for relaxation for the year 2011-2012. The fact that the Government Order in G.O.Ms.No.1120 dated 30.10.1984 does not contain any indication that the relaxation should be given immediately after attaining the age of 53 years, it cannot be said that the employee has to wait indefinitely even after attaining the age of 53 years. We are of the view that the learned Single Judge was not correct in dismissing the writ petition filed by the appellant.

8 In the result, the order dated 02.12.2016 in WP.No.19797/2014 is set aside. The writ petition is allowed. However, we make it clear that the appellant is not entitled to the monetary benefits for the differential period in question. In short, the appellant would be entitled only for notional benefits. The period of service would be counted for pension and other benefits.

9 The Intra-Court appeal is allowed as indicated above. No costs.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

AP

To

1. The Principal Secretary
Government of Tamil Nadu
Labour and Employment Department,
Fort St George, Chennai 600 009.

2. The Director
Directorate of Employment and Training
Guindy, Chennai 600 032.

+1 CC to Mr. Balan Manidass, advocate sr 9281.

+1 cC to Govt. Pleader sr 9774.

WA.No.228/2017

SP(22/02/2018)