

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.A.No.478 of 2017
and
C.M.P.No.15831 of 2017

B.Sundaresan

Appellant

-vs-

- 1.The Government of Tamil Nadu
rep.by its Principal Secretary
Labour and Employment Department
Fort St.George, Chennai-600 009.
- 2.The Principal Secretary,
Personnel & Administrative Reforms Department
Fort St.George, Chennai-600 009.
- 3.The Director of Employment & Training,
Chennai-600 032.
- 4.R.Arunagiri
- 5.S.Thirumalai Selvi
- 6.N.C.Kalaivani
- 7.P.Kavitha
- 8.M.Kannan
- 9.J.Maharani
- 10.S.Mani

सत्यमेव जयते ... Respondents

Appeal filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.No.21887 of 2014 dated 21.12.2016.

Prayer in W.P.No.21887 of 2014:

Writ Petition filed under Article 226 of the constitution of India praying for a Writ of Certiorarified Mandamus Calling for the records relating to the first respondent herein in G.O.(1D) No.332 Labour and Employment (N1) Department dated 24.07.2014 and the consequential order of the third respondent herein in proceedings No. Nir-4/32884/13 dated 24.07.2014 and quash the

same in so far as conferring the promotion post of Assistant Director in the upgraded post of Assistant Director is concerned to S.No.4 to 10 are concerned and consequently direct the first respondent herein to confer the upgraded post of Assistant Director to the petitioner with due regards to his seniority with all attendant and consequential benefits.

For Appellant :: Mr.R.S.Anandan

For Respondents:: Mr.P.S.Sivashanmugasundaram,
Spl.GP for R1 to R3

Mr.S.Sadasharam for R4 to R10

JUDGMENT

(Delivered by HULUVADI G.RAMESH, J.)

The appellant herein has filed this writ appeal against the order of dismissal dated 21.12.2016 passed by this Court in W.P.No.21887 of 2014.

2.The facts of the case would run thus:

(i)The appellant joined the services as District Employment Officer on 11.12.2009, pursuant to the recruitment and selection made by the Tamil Nadu Public Service Commission and he had worked in various places. The crucial date for preparation of the panel for promotion to the post of the Assistant Director, is 1st September of every year. The first respondent had drawn "Nil Panel" for the year 2012-2013 for promotion to the said post and for the year 2013-2014 panel, the crucial date is 01.09.2013 and at that time, only one vacancy was in existence in the cadre of Assistant Director and however, the panel consisting of 12 persons was drawn for single vacancy as per G.O [1D]No.332, Labour and Employment [N1] Department dated 24.07.2014. The appellant has not been communicated as to why he has been overlooked over his juniors while drawing the said panel. The third respondent, based on the promotional panel vide proceedings dated 24.07.2014, had conferred promotion to six persons by counting the upgraded post of Assistant Director as regular vacancies.

(ii)Rule 4 of the Tamil Nadu State and Subordinate Services Rules stipulates that promotion is to be effected based on the approved list of candidates which shall be prepared in the prescribed manner by the Appointing Authority or any other

Authority empowered in the Special Rules in that behalf and shall be displayed in the Notice Board in the Office of the Appointing Authority and the list shall also be communicated to all the persons concerned by the Registered Post, whose names are found in the list as well as the persons, senior to the junior-most persons, whose names have not been included in the list. But the appellant herein was not informed about the promotion granted to six persons. The list of approved candidates so prepared, shall be in force for a period of one year and shall lapse at the end of the year.

(iii) According to the appellant, since there is only one vacancy, only two candidates alone have to be considered and included in the panel, but the first respondent had considered and included twelve names and conferred promotion to nine persons in the upgraded post by counting the upgraded post as regular vacancies and the said action of the first respondent is clearly against the Rules. The appellant, in this regard, had also submitted a representation dated 01.07.2014 praying for the conferment of the benefit of the upgraded post based on seniority and since no orders have been passed, he filed a writ petition in W.P.No.18417/2014 praying for an appropriate direction, directing the first respondent to confer the benefit of upgraded post of Assistant Director based on seniority and eligibility alone, without including the upgraded post of Assistant Director in the District Employment Officer promotional panel for the year 2013-2014 for the promotion post of Assistant Director by treating the same as regular vacancies. The said writ petition was entertained and the learned Government Advocate appearing for the official respondents accepted notice and sought time to get instructions and in the interregnum, the impugned panel has been prepared in a hurried manner and subsequently, vide proceedings dated 01.08.2014, conferred the upgraded Assistant Director post and promoted the respondents 8 to 10.

(iv) The stand of the appellant is that the upgraded post of Assistant Directors cannot be included in the promotional panel for the year 2013-2014 and only regular vacancies alone, can be included in the said panel as the promotion has to be made based on merit and ability with seniority, and there is no crucial date for conferring the upgraded post. It is also his stand that by mis-interpreting the Government Order as well as the Rules, the respondents 1 and 2 had prepared the promotional panel for Assistant Director for the year 2012-2013 for the promotion post of Deputy Director and promoted five Assistant Directors as Deputy Directors and posted in the upgraded post of Deputy Directors and subsequently, vide G.O.Ms.No.331, Labour and

Employment [N1] Department dated 24.07.2014, promoted five Additional Directors as Deputy Directors and posted them in the upgraded post.

3. With the above background, the appellant filed the writ petition in W.P.No.21887 of 2014 praying to set aside the order passed by the first respondent in G.O.[1D] No.332, Labour and Employment [N1] Department dated 24.07.2014 and the consequential order of the third respondent in Proceedings No.Nir-4/32884/13 dated 24.07.2014, in so far as conferring the promotion post of Assistant Director in the upgraded post of Assistant Director to the respondents 4 to 10 herein is concerned and to direct the first respondent herein to confer the upgraded post of Assistant Director to the appellant with due regards to his seniority with all attendant and consequential benefits.

4. Counter was filed on behalf of the respondents 1 to 3 before the writ Court stating that the appellant joined the Department as a Direct Recruit District Employment Officer on 11.12.2009 and since he did not pass one of the Departmental Test, viz., Accounts test for Executive Officers within the probation period, his probation was periodically extended and he passed the said test only on 08.12.2013 and thereby, satisfactorily completed his probation only on 28.12.2013. It is further averred in the counter that in terms of G.O.Ms.No.92, Labour and Employment [N1] Department dated 06.03.2013, the first respondent had upgraded certain posts and prior to the said order, the cadre strength of Assistant Director was 18 and as per the said Government Order, 10 posts of Assistant Director were upgraded as Deputy Director [Employment] and 8 District Employment Officers were upgraded as Assistant Directors in the scale of pay of Rs.15600-39100 with Grade Pay of Rs.5400/- and it is further ordered that the existing incumbents of Assistant Directors are allowed to retain the Grade Pay of Rs.5700/- till they vacate the post. An amendment came into being to the said Government Order by issuing G.O.[Ms]No.241 of the very same Department dated 04.10.2013, to the effect that 8 posts of District Employment Officers are upgraded as Assistant Directors in the scale of pay of Rs.1500-39100 with Grade Pay of Rs.5700/- and thereby, the cadre strength of Assistant Director became 16. The crucial date for drawing up the panel list of approved candidates for appointment is 1st September of every year and the drawal of the annual list for the year 2013-2014 will cover for the period from 02.09.2013 to 01.09.2014 and vide G.O.[D]No.13 dated 09.01.2014, the first respondent had approved the estimate of 16 vacancies for the post of Assistant Director for the said year which includes the 8 upgraded Assistant Director

Posts/vacancy arose due to retirement during 02.09.2013 and 01.09.2014 / Leave reserve vacancies and unexpected contingency vacancies. Though the name of the appellant was discussed while drawing up the panel for promotion, he was not recommended as he was not an approved probationer on the crucial date, viz., 01.09.2013 for the panel year 2013-2014 and vide G.O.[1D] No.332 dated 24.07.2014, the names of 12 District Employment Officers fit for promotion to the post of Assistant Director of Employment in Employment Wing of the Department was approved and posting orders were also issued by the third respondent on 24.07.2014, 01.08.2014 and 12.09.2014 respectively and all of them had joined the promoted post also. It is also stated that the appellant was on Earned Leave between 06.08.2014 and 25.08.2014 and a copy of the said panel was also communicated to him.

5.Considering the arguments advanced on either side, the learned single Judge has dismissed the writ petition. Challenging the same, the present writ appeal is filed.

6.The learned counsel for the appellant has argued the matter in the same lines as argued before the learned single Judge. Amongst all contentions raised before the writ Court, the learned counsel mainly contended before us, that for conferring the upgraded post, there is no crucial date and the same has to be made based upon the seniority and eligiblity as on the date of filling up of the said post; that the panel in question has been drawn contrary to Rule 4 of the Tamil Nadu State and Subordinate Services Rules.

7.The learned Special Government Pleader as well as the learned counsel for the respondents 4 to 10 have submitted that the learned single Judge has considered the matter in detail in proper perspective and has passed the impugned order, and hence the same does not require any interference in the hands of this Court.

8.Heard the learned counsel on either side and perused the materials available on record.

9.The claim of the appellant is that preparation of the list has not been done in accordance with the Rule 4(a) of the General Rules of the Tamil Nadu State and Subordinate Services Rules, by alleging that the appellant has not completed the probation on the crucial date. The learned single Judge relied

upon the Constitution Bench decision of the Hon'ble Supreme Court in 1973 (3) SCC 1 (Bishan Sarup Gupta and others v. Union of India and others), and held that the said decision also supports the case of the official respondents that they are entitled to fill the upgraded post by promotion also.

10. Further, the learned single Judge has relied upon the judgment of the Hon'ble Supreme Court, reported in 2008 [9] SCC 242 [Union of India Vs. Pushpa Rani and others] with regard to the issue relating to difference between promotion and upgradation of post, and held that the said decision lays down the proposition that in service law, the word "promotion" has been understood in wider sense and that the promotion can be either to a higher pay scale or to a higher post. The Hon'ble Apex Court has also held that the promotion by considering the employees who satisfy the conditions of eligibility including the minimum period of service and after adjudgment, found suitable by process of selection.

11. The learned single Judge has observed that the respondents 1 and 3, for all purposes, had considered upgradation as a regular vacancy and therefore, sought to fill up the same by selection process and while doing so, have taken into consideration, merit and ability of the respective candidates and arrived at a fair decision to promote the private respondents and others to the post of Assistant Director. Since the appellant did not pass the Departmental Test, and he took some time to pass the same beyond the crucial date, his name was not considered and therefore, the decision of the official respondents in not considering the claim of the appellant, cannot be faulted with.

12. Thus, it has been held that the decision taken by the official respondents cannot be found fault with, as it is a fair one. It has also been categorically held that the case of the appellant has been properly considered by the authorities and only then, orders have been passed.

13. In the case on hand, it is seen that merits and ability of the candidates were considered and by adopting a fair process, the private respondents and others were promoted to the post of Assistant Director. It is also seen that the appellant passed the Departmental Test belatedly, that too beyond the crucial date. The learned single Judge has passed a detailed order, considering all aspects of the matter, ie., law relating to seniority, merit and ability and came to the final conclusion

rejecting the case of the appellant, on which we have no second opinion. We are of the considered view that in the light of the Rule position, the stand taken by the respondents 1 to 3 in respect of drawing the panel, is tenable and there is no necessity to interfere with the same.

14. In the result, the writ appeal stands dismissed. No costs. Consequently the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

KM
To

1. The Principal Secretary to Government,
Government of Tamil Nadu,
Labour and Employment Department
Fort St. George, Chennai-600 009.
2. The Principal Secretary to Government
Government of Tamil Nadu,
Personnel & Administrative Reforms Department
Fort St. George, Chennai-600 009.
3. The Director of Employment & Training,
Chennai-600 032.

+1 cc to the Government Pleader Sr.44064
+1cc to Mr.R.S.Anandan, Advocate Sr.43512
+1cc to Mr.S.Sadasharam, Advocate Sr.43478

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