

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A.No.968 of 2017

and C.M.P.No.13323 of 2017

1.The Principal Secretary to Government
Personnel and Administrative Reforms Department
Secretariat, Fort St.George
Chennai 600 009.

2.The Secretary to Government (Expenditure)
Finance (OP-I) Department
Secretariat, Fort George
Chennai 600 009.Appellants

Vs

M.ManikavasagamRespondent

Prayer:- Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order dated 29.11.2016 passed by this Court in W.P.No.28705 of 2014.

WP.No.28705 of 2014:Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of respondent in his Letter No.73560/ Fin (OP-I) Department 2013 dated 25.2.2014 and quash the same and consequently directing the second respondent to notionally promote the petitioner for the post of Under Secretary for the panel of year 2010-2011 on par with his immediate junior and place him in the appropriate place in the Seniority List of Under Secretary and consequently pay all monetary benefits from the date of his promotion as Under Secretary with interest.

For Appellants : Mr.V.Anandhamurthy
Additional Government Pleader

JUDGMENT

P.VELMURUGAN, J.

This intra Court appeal is directed against the order dated 29 November, 2016, passed by the learned Single Judge in W.P. No.28705 of 2014.

2 The facts in a nutshell leading to the filing of the writ petition are as under:

2.1 The respondent was S.S.L.C. qualified and had also passed Higher Grade in English and Tamil Typewriting. He was appointed as Typist in the year 1981 and he had been working as a Typist in the Health and Family Welfare Department from 04 January, 1982 to 27 June, 1988. Again, from 28 June, 1988 to 21 September, 1988, he worked as Assistant in the Health and Family Welfare Department-cum-Finance Department. Thereafter, he was shifted to the Personnel & Administrative Reforms Department and subsequently, he was shifted to the Finance Department on 30 June, 2012.

2.2 During his tenure, he acquired B.A.Degree (History) through Correspondence Course in Madurai Kamaraj University (under Open University mode) in the year 1987. He also underwent Secretariat Foundation Course Account Test Part-I and Part-II and also training in the District. However, for the panel for promotion to the post of Under Secretary during the year 2011-2012, the name of the respondent was not considered. Hence, he made a representation dated 22 March, 2011 to the Finance Department, in response to which, he was informed that since he had not completed PUC/HSC as per G.O.Ms.107, Personnel & Administrative Reforms Department dated 13 May, 2009, his name was not considered for promotion to the post of Under Secretary.

2.3 It was the specific case of the respondent that he passed S.S.L.C. examination and thereafter, passed Higher Grade in both English and Tamil Typewriting. Subsequently, after joining the service as Typist, he underwent Foundation Course and passed second year examination in the year 1983 and thereafter, acquired B.A. (History). Thus, his qualification pattern is old S.S.L.C. 11 years, second year foundation course and three year degree course, i.e., 11 + 1 + 3.

2.4 As per G.O.Ms.No.528, Personnel and Administrative Reforms Department, dated 18 May, 1985, two years foundation course of the Madurai Kamaraj University, is recognised as equivalent to Higher Secondary Course of the Tamil Nadu Government for the purpose of entry into public services in the State. Thus, even on the crucial date for preparing the panel, i.e. on 22 September, 2011, he is entitled to promotion to the post of Under Secretary, but, he was not considered.

2.5 While so, the respondent retired from service on 30 June, 2012. However, after his retirement, the respondent made representations dated 05 December, 2013 and 05 February, 2014 seeking promotion and to fix his pay on par with his junior one R.Ayyavvo. The appellants, vide proceedings dated 25 February, 2014 stated that the said R.Ayyavoo was promoted as Assistant

Section Officer from the category of Typist according to his seniority, whereas, the respondent was promoted as Assistant Section Officer from a different category and hence, his request for notional promotion and for fixation of pay was rejected. Feeling aggrieved, the respondent filed the writ petition in W.P.No.28705 of 2014.

3 After hearing the arguments advanced by both sides and taking into account, the identical issue in W.P.No.10509 of 2014 (S.M. Moorthy vs. Principal Secretary to Government, Personnel and Administrative Reforms Department), the learned Single Judge allowed the writ petition in W.P.No.28705 of 2014. The appellant is before this Court challenging the order passed by the Writ Court.

4 One of the cardinal points inter alia urged before this Court by the learned Additional Government Pleader is that the respondent and R. Ayyavoo belong to two different feeder categories for promotion to the post of Assistant Section Officer and such being the factual position, the respondent cannot be heard to contend that he must be placed on par with his immediate junior in the seniority list of Under Secretary.

5 From a perusal of the records placed before this Court, it is evident that the respondent and R.Ayyavoo were selected for appointment as Typist during the year 1981 with seniority No.16 and 20 respectively. The respondent was allotted as Typist to the Health & Family Welfare Department and R.Ayyavoo was allotted as Typist to the Finance Department. The respondent was promoted as Assistant and reallocated to the Finance Department with effect from 22 September, 1988, i.e. even before the Finance Department became a separate unit in the year 1994. Since the respondent was reallocated to the Finance Department in the category of Assistant and subsequently, absorbed in the Finance Department after it became a separate unit, his seniority was fixed in the category of Assistant in the Finance Department, whereas, R.Ayyavoo had continued as Typist in the Finance Department. Subsequently, the respondent was promoted as Assistant Section Officer with effect from 04 September, 1992 from the category of Assistant, whereas, Ayyavoo was promoted as Assistant Section Officer with effect from 07 October 1988 from the category of Typist and further promoted as Under Secretary/Deputy Secretary/Joint Secretary according to seniority. Since both the individuals were concededly promoted to the post of Assistant Section Officer from two different feeder categories, the respondent cannot claim parity in seniority with R. Ayyavoo.

6 Such being the factual position, the learned Single Judge was not correct in directing the appellants to notionally promote the respondent to the post of Under Secretary for the

panel year 2010-2011 on par with his immediate junior and to pay consequential benefits. We are therefore, of the view that impugned order is liable to be set aside.

7 In the result, the order dated 29 November, 2016 is set aside. The Writ Petition in W.P.No.28705 of 2014 is dismissed.

In the upshot, we allow the intra court appeal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

gms
To

1.The Principal Secretary to Government
Personnel and Administrative Reforms Department
Secretariat, Fort St.George
Chennai 600 009.

2.The Secretary to Government (Expenditure)
Finance (OP-I) Department
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