

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.No.346 of 2010  
and  
M.P.No.1 of 2010

S.Sridhar

.. Petitioner

Vs.

1. The Secretary to Government,  
Higher Education Department,  
Chennai-9.

2. The Director of Collegiate Education,  
Chennai.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records and quash the seniority list of 'Assistants' prepared by the second respondent in his Proceedings Na.Ka.No.41972/B3/2009 dated 7.12.2009 and consequently, direct the respondents to prepare a fresh seniority list of assistants for promotion as Superintendent.

For Petitioner : Mr.R.Gururaj

For Respondents : Mrs.M.E.Raniselvam  
Addl. Government  
Pleader

**ORDER**

This writ petition has been filed by the petitioner seeking a writ of certiorarified mandamus to call for the records of the second respondent in Na.Ka.No.41972/B3/2009, dated 7.12.2009 and to direct the respondents to prepare a fresh seniority list of Assistants for promotion as Superintendent.

2. Brief facts is that the petitioner joined as Junior Assistant in Dr.Ambedkar Government Arts College, Chennai on compassionate appointment and was regularised with effect from the date of appointment i.e., from 3.12.1990. Pursuant to the regularisation, the petitioner was sent for training to Bhavanisagar Government Officers' Training Centre. The petitioner has completed the probation period on 2.12.1992 and had passed Account Test in December 1999.

3. According to the petitioner, in the seniority list dated 9.10.1998, he was placed at Serial No.80. In September 2004, the petitioner was promoted as Assistant and had joined as Assistant on 9.9.2004. His next promotion is Superintendent.

4. The case of the petitioner is that the second respondent released seniority list of Assistants on 04.11.2009 and after releasing the seniority list only, he came to know that his juniors were promoted as Assistants earlier to his promotion.

5. On 20.11.2009, the petitioner submitted appeal to the second respondent. By the impugned order dated 7.12.2009, the claim of the petitioner was rejected. Challenging the same, the petitioner has filed the writ petition.

6. Refuting the writ petition, the second respondent filed the counter stating that the seniority list of Assistants dated 04.11.2009 had been given effect and all the Assistants have been promoted as Superintendents and all of them have been

officiating as Superintendents from December 2009 except those who have relinquished their promotion.

7. It is stated that the seniority list was prepared as per rules. Though the petitioner was placed in Serial No.80 in the combined seniority list of Junior Assistant/Typist/Store Keeper, he had failed to qualify himself in the Account Test for Subordinate Officer's Part-I in time. Hence, the name of the petitioner could not be placed among 56 persons, who have been upgraded as Assistant from the post of Junior Assistant. Though the petitioner was qualified in December 1999, he failed to inform the second respondent immediately about his acquiring the qualification.

8. According to the second respondent, the name of the petitioner was included in the panel during the year 2003-2004 and he was given regular promotion as Assistant with effect from 9.9.2004. The petitioner has accepted the same and therefore, the seniority list issued by the second respondent was in order. The prayer of the petitioner is misconceived and prayed for

dismissal of the writ petition.

9. I heard Mr.R.Gururaj, learned counsel appearing for the petitioner and Mrs.M.E.Raniselvam, learned Additional Government Pleader appearing for the respondents and also perused the materials available on record.

10. The learned counsel for the petitioner submitted that normally the list of seniority and panel for promotion will be prepared every year and this will enable vacancies to be filled up properly. He submitted that for several years the seniority list was not prepared and released and several persons junior to the petitioner were promoted to the post of Assistant. According to the learned counsel, the petitioner was not aware of the promotions and failure to release the seniority list put the petitioner in dark.

11. The learned counsel for the petitioner argued that the reasoning given by the second respondent in the impugned order was incorrect and promotion of 56 Junior Assistants was

only temporary and subject to General Rule 39(c).

12. Per contra, the learned Additional Government Pleader submitted that only as per rules the seniority list was prepared. She submitted that pursuant to G.O.Ms.No.595, dated 1.8.1992, the Government issued orders for upgradation of ministerial posts in the Department of Collegiate Education vide G.O.Ms.No.666, dated 9.7.1993, wherein 73 posts of Junior Assistants have been upgraded as Assistants. In the said G.O., no conditions have been laid down that there must be 10 years of completion of service in the post of Junior Assistant for upgradation. Therefore, 56 Junior Assistants who have been qualified for holding the post of Assistants were upgraded as Assistants and in that, the petitioner was placed in Serial No.80. Since the petitioner has failed to qualify himself in time, his name was not considered in the said list.

13. For proper appreciation and adjudication of the matter, it is relevant to mention certain dates and events, which read as follows:

| <b>Date</b>    | <b>Events</b>                                                                     |
|----------------|-----------------------------------------------------------------------------------|
| 03.12.1990     | <i>Petitioner was appointed as Junior Assistant on compassionate ground.</i>      |
| 07.02.1996     | <i>Services of the petitioner was regularised.</i>                                |
| 02.12.1991     | <i>Probation period completed</i>                                                 |
| December 1999  | <i>Petitioner passed Account Test for the Subordinate Officer Part-I</i>          |
| 09.10.1998     | <i>Seniority list prepared wherein the petitioner was placed at Serial No.80.</i> |
| September 2004 | <i>Petitioner was promoted as Assistant</i>                                       |
| 09.09.2004     | <i>Joined as Assistant</i>                                                        |
| 04.11.2009     | <i>Seniority list of Assistants released by the second respondent.</i>            |
| 20.11.2009     | <i>Petitioner's appeal to the second respondent.</i>                              |
| 07.12.2009     | <i>Impugned order.</i>                                                            |

14. It appears that pursuant to G.O.Ms.No.595, Finance (Pay Cell) Department, dated 1.8.1992, the Government issued orders for upgradation of ministerial posts in the Department of Collegiate Education. As per G.O.Ms.No.666, Education

Department, dated 9.7.1993, 73 posts of Junior Assistants have been upgraded as Assistants, wherein no conditions have been laid down. After scrutiny, 56 Junior Assistants who were qualified to hold the post of Assistants have been upgraded as Assistants.

15. According to the petitioner, the promotion of 56 Junior Assistants was only temporary and subject to General Rule 39(c) and the same has been done to avoid vacancy in the higher post.

16. As stated supra, only after considering the qualifications, the respondent department decided to upgrade 56 Junior Assistants as Assistants.

17. In the counter-affidavit, the second respondent specifically stated that the petitioner was placed in Serial No.80 in the combined seniority list of Junior Assistant/Typist/Store Keeper has failed to qualify himself in the Account Test in time. Admittedly, on the date of proceedings dated 20.8.1999, the

petitioner has not passed the Account Test. He himself admitted that he had passed the Account Test for Subordinate Officer Part-I only in December 1999.

18. It also appears that the petitioner has failed to inform the second respondent immediately about his passing of Account Test. According to the petitioner, he was not aware of the promotions and the failure to release the seniority list in time, put him in the dark. The said submission of the petitioner is not acceptable.

19. Regular promotion was given to the petitioner as Assistant in September 2004 and accepting the promotion, he had joined the duty as Assistant on 9.9.2004. While so, when the seniority list of Assistants dated 04.11.2009 released suddenly he woke up and complained that his juniors have been promoted as Assistants earlier to his promotion. Opposing the seniority list dated 04.11.2009, the petitioner submitted a representation dated 20.11.2009, which was rejected by the second respondent.

20. Admittedly, the seniority list dated 04.11.2009 have been given effect and all the Assistants have been promoted as Superintendents and all of them have been officiating as Superintendents from December 2009.

21. In the impugned order, the second respondent has stated that since the petitioner has not passed the Account Test Part-I in time, he was not placed above Haripriya in the upgradation proceedings dated 20.8.1999. Though the petitioner averred that his juniors were upgraded/promoted, he has not shown any piece of evidence to prove the same. In the absence of any proof, it cannot be contended that his juniors were given upgradation/promotion. It is also not the case of the petitioner that Assistant promotion was given to him belatedly.

22. As rightly stated by the second respondent, the petitioner has failed to appeal within 30 days when the seniority list for the combined seniority of Junior Assistant/Typist/Store Keeper was released. Therefore, in the absence of any appeal

filed by the petitioner within the prescribed period, he cannot claim that he should have been given promotion as Assistant earlier.

23. It is trite that in absence of satisfactory explanation for inordinate delay of more than 5 years in questioning under Article 226 of the Constitution, the validity of the seniority and promotion assigned to other employee could not be entertained. Aggrieved person must approach the Court expeditiously for relief and it is not permissible to put forward stale claim.

24. It is settled law that fence-sitters cannot be allowed to raise the dispute or challenge the validity of the order after its conclusion. No party can claim the relief as a matter of right as one of the grounds for refusing relief is that the person approaching the Court is guilty of delay and the laches. The settled legal proposition that emerges is that once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained.

25. In *K.R.Mudgal and others v. R.P.Singh and others*, reported in AIR 1986 SC 2086, the Hon'ble Supreme Court held that a seniority list which remains in existence for 3 to 4 years unchallenged, should not be disturbed. Thus, 3-4 years is a reasonable period for challenging the seniority and in case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum, by furnishing satisfactory explanation. Admittedly, in the case on hand, the petitioner has failed to do so.

26. The pleading of the petitioner that he was not aware of the promotions given earlier is not acceptable. As a public servant that too working in the cadre of Assistant, for academic interest, the petitioner must know when his promotion is due and who are all promoted and are likely to be promoted at the relevant point of time. On a thorough reading of the impugned order, I find that the same is well considered and there is no reason warranting interference with the same.

27. In the result, the writ petition is dismissed. No costs. Consequently, M.P.No.1 of 2010 is closed.

08.06.2018

Note: Issue order copy on 13.06.2018

vs

Index : Yes

Internet : Yes

Speaking order

To

1. The Secretary to Government,  
Higher Education Department,  
Chennai-9.

2. The Director of Collegiate Education,  
Chennai.

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M.V.MURALIDARAN, J.

VS



Pre-delivery order made in  
W.P.No.346 of 2010  
and  
M.P.No.1 of 2010

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