

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.07.2018

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.8758 of 2007

and

M.P.No.2 of 2007

B.Sankar

.. Petitioner

Versus

1. State of Tamil Nadu, rep.by
its Secretary to Government,
Tourism & Culture Department,
Secretariat, Chennai - 9.

2. Principal Commissioner and
Commissioner of Museums I/C,
Government Museum,
Egmore, Chennai - 8.

3. K.Vijayakumari
Tickets Sales Attender,
Government Museum,
Egmore, Chennai - 8.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of writ of certiorari, calling for the records pertaining to the order passed by the 1st respondent in Govt. Letter No.6345/ATHOU-1/2006-8, dated 28.02.2007 and the consequential order of the 2nd respondent in SE.MU.AA.No.47/2003/E2, dated 05.03.2007 and quash the same and confer all the consequential benefits.

For Petitioner

: Mr.P.Ganesan
for Mr.S.Mani

For Respondents No.1 & 2

: Mr.Ravikumar

For Respondent No.3

: Mr.S.Sathia Chandran

O R D E R

The petitioner has filed the writ petition challenging the order dated 28.02.2007 and the consequential order of the 2nd respondent dated 05.03.2007, by which the petitioner was promoted to the post of Gallery Guard on 19.04.1996 and also passed District Office Manual Test conducted.

2. The petitioner joined as Watchman on 12.10.1990 in the Government Museum service. Subsequently, the service of the petitioner have been regularized. Subsequent to his appointment, he passed plus two in the year 1993. Thereafter, he was promoted as Gallery Guard in the year 1996. After promotion, the petitioner passed District Office Manual Test conducted by TNPSC on 16.03.2000. When he was working, he was posted as Record Clerk and he served for 3 years as Record Clerk and he also passed Typewriting qualification, while so the second respondent called for applications to fill up the post of Junior Assistant from among the eligible persons working in the Museums by circular dated 03.06.2002. In the said circular, the 2nd respondent has clearly stated that the minimum qualification is Plus 2 and pass in District Office Manual for applying to the post of Junior Assistant. In response to the circular of 2nd respondent, the petitioner applied for the post of Junior Assistant based on the qualification of Plus Two as well as pass in DOM test. In addition to that, the petitioner also established that he worked as Record Clerk. The said post of Junior Assistant is to be filled up by recruitment by transfer from other service and to the the petitioner, while making such appointment, there is no question of seniority.

3. The 3rd respondent who was working as Gallery Guard was promoted and posted as Sales Attender in Government Museum on 08.11.2002. However, on the date on which the applications were called, she was not working in the museum. However, the petitioner reliably understood that among the persons who applied, the 2nd respondent had selected and appointed the petitioner as Junior Assistant by order dated 05.12.2002. Challenging the same the 3rd respondent filed O.A.No.6540 of 2002 before State Administrative Tribunal claiming that she is senior most and claiming that awarding promotion in favour of the petitioner is unsustainable. However, the petitioner is further aver that the said post is not a promotion post and there is no question of seniority as the said post has to be filled up by transfer of service.

4. Heard both sides.

5. The petitioner has filed the present writ petition

challenging the order of the 1st respondent dated 28.02.2007 and the consequential order of the 2nd respondent dated 05.03.2007, by which he was demoted from the post of Junior Assistant to the post of Gallery Guard.

6. There is no dispute that the petitioner is junior to the 3rd respondent from the date of initial appointment. As evident from the counter affidavit filed by respondents 1 and 2, the post of Junior Assistant is an entry level post, which is under the purview of the Tamil Nadu Public Service Commission and it not a promotional post and it is classified under the Tamil Nadu Ministerial Services. Among the total vacancies estimated, 20% should be filled up as per Rule 3(g) of the Special Rules for Tamil Nadu Ministerial Service for recruitment by transfer from all lower categories as per the conditions stipulated therein. Though the petitioner was promoted as Junior Assistant vide Commissioner's proceeding No.7055/2002/E2 dated 05.12.2002, as it was done without following the seniority and within the 20% vacancies earmarked for recruitment by transfer and also without completion of six months training as per the instructions issued in G.O.(Ms) No.43 Personnel and Administrative Reforms(B) Department dated 15.02.1994 and as per rules amended in G.O.(Ms) No.15 Personell and Administrative Reforms(B) Department dated 21.02.2002 the posting order was subsequently reviewed by the Government on complaints and cancelled by the impugned order dated 28.02.2007.

7. For appointment to the post of Junior Assistant by transfer of service, all the eligible persons as per seniority have to be considered. When the 3rd respondent is senior to the petitioner and she is eligible to be appointed to the post of Junior Assistant, as per G.O.(Ms) No.43 dated 15.02.1994, the claim made by the petitioner is unsustainable. This Court is fully satisfied that the impugned orders are perfectly valid and the petitioner's promotion to the post of Junior Assistant, which is contrary to the aforesaid G.O., has been rightly cancelled. The writ petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

AT

To

1. The Secretary to Government,
Tourism & Culture Department,
Secretariat, Chennai - 9.

2. The Principal Commissioner and
Commissioner of Museums I/C,
Government Museum,
Egmore, Chennai - 8.

3. K.Vijayakumari
Tickets Sales Attender,
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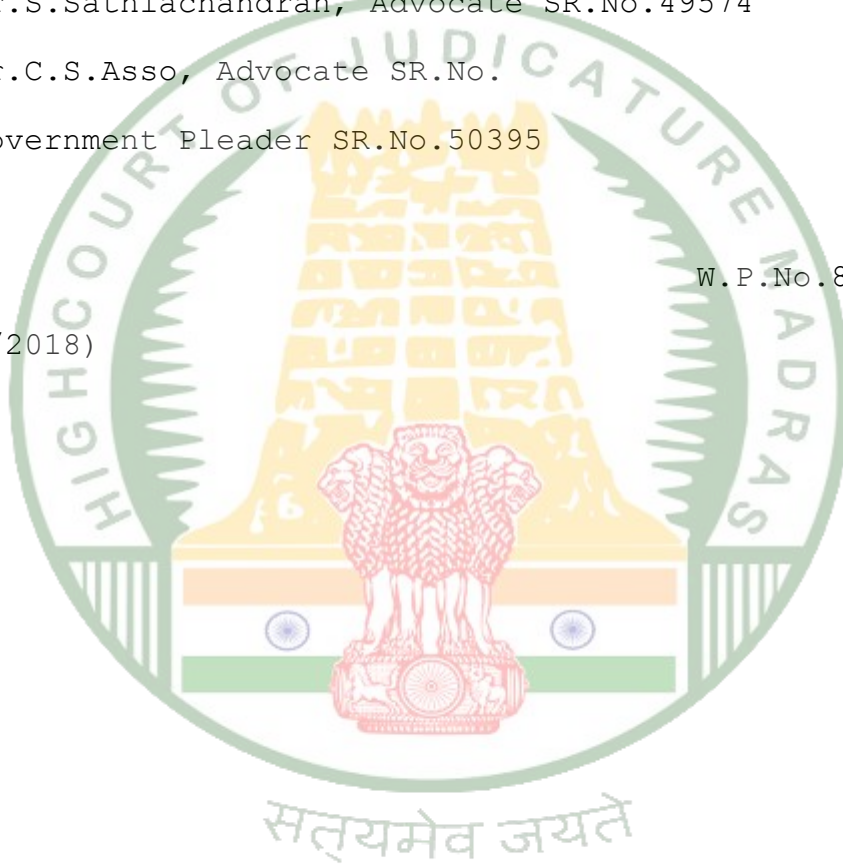
+1cc to Mr.S.Sathiachandran, Advocate SR.No.49574

+1cc to Mr.C.S.Asso, Advocate SR.No.

+1cc to Government Pleader SR.No.50395

W.P.No.8758 of 2007

GMV (18/09/2018)



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