

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2018

CORAM

THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.No.19136 of 2016

and

WMP.Nos.16674, 8511 of 2016

R.Durai

Petitioner

-Vs-

1. The State of Tamil Nadu Represented by
The Secretary to Government,
Labour & Employment Department,
Fort St. George, Chennai-600 009.

2. The Commissioner of Labour,
D.M.S.Complex,
Chennai-600 006.

3. B.Madhavan

Respondents

Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to Memorandum No.E(3) /37694/2013 dated 11.04.2016 issued by the 2nd respondent rejecting the request of the petitioner for inclusion in the panels issued vide G.O.(D) No.593 Labour & Employment (E1) Department dated 21.11.2013 or G.O.(D) No.96, Labour & Employment (E1) Department dated 03.03.2015 issued by the first respondent, quash the same insofar as it does not include the name of the petitioner at the appropriate place and consequently direct the 1st and 2nd respondents to prepare a regular panel for promotion to the post of Assistant Commissioner of Labour for the year 2012-13 and 2014-15 and first include the name of the petitioner at Sl.No.3 in the panel for 2012-13 if found fit, and if not include the name of the petitioner in the panel for the year 2014-15 and promote him as Assistant Commissioner of Labour with effect from the date the respective panels were given effect in respect of persons included in the panel with all consequential benefits, including seniority, monetary benefits flowing therefrom.

(Prayer amended as per order dated 31/8/2016 in WMP.No.23514)

For Petitioner : Mr.Karthik Raja
for Mr.Menon Karthik

For Respondents : Mr.V.Kadhirvelu, (R1 and R2)
Special Government Pleader
Mr.Kanagasundaram (R3)

O R D E R

This Writ Petition has been filed by the petitioner challenging the Memorandum No.E(3) /37694/2013 dated 11.04.2016 issued by the 2nd respondent rejecting the request of the petitioner for inclusion in the panels issued vide G.O.(D) No.593 Labour & Employment (E1) Department dated 21.11.2013 or G.O.(D) No.96, Labour & Employment (E1) Department dated 03.03.2015 issued by the first respondent, quash the same insofar as it does not include the name of the petitioner at the appropriate place and consequently direct the 1st and 2nd respondents to prepare a regular panel for promotion to the post of Assistant Commissioner of Labour for the year 2012-13 and 2014-15 and first include the name of the petitioner at Sl.No.3 in the panel for 2012-13 if found fit, and if not include the name of the petitioner in the panel for the year 2014-15 and promote him as Assistant Commissioner of Labour with effect from the date the respective panels were given effect in respect of persons included in the panel with all consequential benefits, including seniority, monetary benefits flowing therefrom.

2. Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents 1 and 2 as well as the learned counsel appearing for the third respondent.

3.As it appears that the petitioner was initially appointed as a Assistant Inspector of Labour on 23.03.1987 and subsequently promoted as a Deputy Inspector of Labour on 09.08.1999 and as a Labour Officer on 08.04.2008 and he continued to work as Labour Officer. Thereafter, he served as Inspector of Plantation from July 2009 to August 2010 and as a Inspector of Labour from August 2010 to December 2011 and while he was working as a Inspector of Labour, a disciplinary proceedings was initiated against him under Rule 17(b) of the Tamil Nadu Civil Service Discipline and Appeal Rules, against the petitioner. Thereafter, the competent authority decided to give promotion from the post of Feeder Cadre of Labour Officer to the post of Assistant Commissioner of Labour for the panel year 2012-2013, against four vacancies. The petitioner's case

was deferred and he was not included in the panel due to pendency of the disciplinary proceedings against the petitioner. The grievance of the petitioner is that though there were nearly 20 vacancies available for the panel year 2014-2015, without estimating the same and without drawing the panel, the third respondent who is junior to the petitioner was promoted as Assistant Commissioner of Labour on 03.03.2015. Thereafter, the Charge Memo issued by the disciplinary authority against the petitioner was dropped on 02.12.2014 and the petitioner's case for promotion was considered for the crucial year of 2015-2016 and accordingly he was promoted on 29.01.2016. Then the respondent authority initiated proposal for consideration of promotion to the post of Deputy Commissioner of Labour for the panel year 2016-2017 and the petitioner was not then working as Assistant Commissioner of Labour. Inasmuch as he was promoted only on 29.01.2016, his case was not considered. Hence, the petitioner came to challenge the same in this writ petition, assigning the reasons that he was not promoted due to pendency of the disciplinary proceeding for the year 2012-2013 to the post of Assistant Commissioner of Labour and after charges having been dropped against him, he was promoted. The authority ought to have considered for promotion from that year, granting all consequential benefits and considered his case for promotion to the post of Deputy Commissioner of Labour.

4. The State has filed the counter affidavit indicating the fact that inasmuch as the petitioner has not worked as Assistant Commissioner of Labour on the crucial date for consideration of promotion to the panel year 2016-2017, his case has been ignored and as such the same cannot be said to be illegal.

5. During the course of hearing, it is submitted by the learned counsel for the petitioner that since the petitioner's promotion was deferred on the ground of pendency of the disciplinary proceedings and after the same was dropped he has been promoted, the same should be to be antedated with all consequential benefits to the petitioner in view of the settled position of law. Accordingly, his case has to be considered for promotion to the post of Deputy Commissioner of Labour for the crucial year 2016-2017. Reliance has been placed on the decision of the Hon'ble Apex Court in a case of C.O. Arumugam and others Vs. State of Tamil Nadu and others reported in 1991 Supp (2) SCC 199, wherein in similar situation the Apex Court, held that such promotion should be given with retrospective effect from the date on which juniors persons were promoted, so also the Apex Court in the case of one Ramesh Kumar Vs. Union of India and others reported in 2015 14 SCC 335, have held that such promotion should be given with retrospective effect. So far as, consequential benefits is concerned i.e. with regard to the payment of his salary with "No Work No pay" principle, the

same is not applicable to such cases and the same depends on facts and circumstances of each case.

6. The learned counsel for the third respondent vehemently opposed the contention raised by the petitioner that he was eligible for promotion for the crucial year 2012-2013 and submits that he being senior in no circumstances the petitioner can be accorded promotion earlier to the third respondent. If such promotion has to be granted, the same should be on the date of promotion granted to the third respondent. In this case, the third respondent has no case to be considered for promotion to the post of Deputy Commissioner of Labour. Therefore, he submits that the prayer in this Writ Petition may be denied and liable to be dismissed.

7. The learned counsel for the State however submits that the petitioner have been promoted on 29.01.2016. As the disciplinary proceedings was pending against him, he was not considered for promotion during the panel year 2012-2013 and subsequently when the disciplinary proceedings was dropped, he was promoted and therefore such promotion cannot be retrospective and the prayer of the petitioner to antedate his promotion is devoid of merits and otherwise also the petitioner has no case for consideration to the post of Deputy Commissioner in view of the fact that during the panel year, he was already retired from service. Hence, he submits that the writ petition filed is devoid of merits and the same is liable to be dismissed.

8. It is not in dispute that the petitioner has already been promoted to the post of Assistant Commissioner of Labour on 29.01.2016, after dropping of the disciplinary proceedings. The only question that has to be considered is whether the petitioner's promotion which was deferred on account of the pendency of the disciplinary proceedings can be promoted with retrospective effect. As it appears in this case, the same is seriously disputed by the learned counsel for the respondents.

9. From the materials on record, it appears that for the year 2012-2013, the petitioner as well as two other senior persons were considered for promotion but on account of the disciplinary proceedings pending against the petitioner, his case was deferred so also the case of the third respondent could not be considered as inspite of availability of vacancy, he was not possessed with requisite qualification to be promoted for the panel year 2012-2013. Later on the panel year of 2014-2015, the respondent No.3 was promoted. However, in the meanwhile, the petitioner's disciplinary proceeding having been dropped and he was promoted in the year 2016. As it appears from the materials available on record that for the panel year 2012-2013,

the petitioner could not be promoted to the post of Assistant Commissioner of Labour nor any of the junior also superceded him, during the said period and thereafter also none of the junior of the present petitioner were promoted at any point of time. But the same is no ground not to consider his promotion with retrospectivity when he was entitled to be considered but for pendency of the departmental proceeding his case was deferred in view of the law laid down in the case of C.O.Arumugam and others Vs. State of Tamil Nadu and others reported in 1991 Supp (2) SCC 199 stated supra.

9. Considering the above facts and circumstances of the case and the law laid down in this regard, this Court is of the view that the petitioner who was otherwise entitled to be considered for promotion to the post of Assistant Commissioner of Labour in the year 2012-2013, but for the pendency of the disciplinary proceedings, his case was deferred, he is entitled to consider for promotion with retrospectivity i.e. from the panel year 2012-2013. Accordingly, the respondents are directed to consider the case of the petitioner for promotion during the panel year 2012-2013 and if not qualified for promotion, for subsequent panel years. Needless to say that such promotion is accorded to the petitioner with retrospectivity, for the post of Assistant Commissioner of Labour, the same was also enure to his benefits besides incidental service benefits, for consideration to the post of Deputy Commissioner of Labour. It is further made clear that in the event the petitioner is granted promotion in pursuance to this order for the post of Deputy Commissioner of Labour, no persons already promoted shall be disturbed, on account of non availability of the sanctioned post but a supernumerary post be created to accommodate the petitioner till a vacancy arose or he is superannuated whichever is earlier. Consequential benefits of fixation of pay for such promotion including the retiral benefits shall also be granted to the petitioner. The aforesaid exercise shall be carried out within a period of three months from the date of receipt of copy of this order.

With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

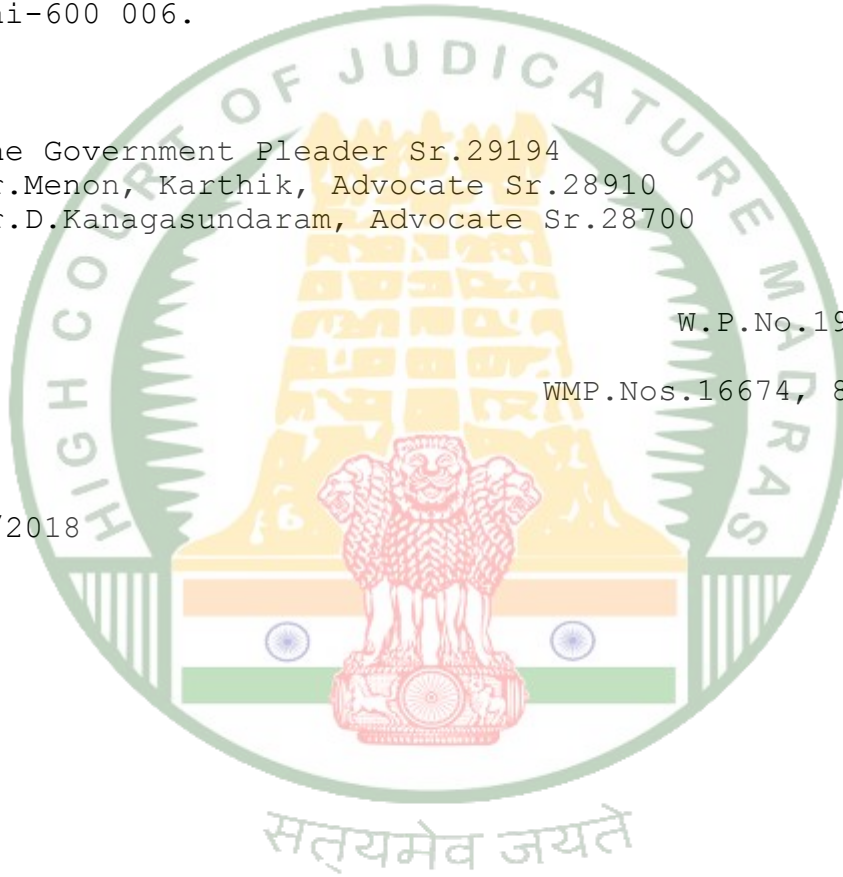
To

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Labour & Employment Department,
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2. The Commissioner of Labour,
D.M.S.Complex,
Chennai-600 006.

+1cc to the Government Pleader Sr.29194
+1cc to Mr.Menon, Karthik, Advocate Sr.28910
+1cc to Mr.D.Kanagasundaram, Advocate Sr.28700

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