

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.33011 of 2015 and

M.P.Nos.1 and 2 of 2015

Mr.D.Vimalanathan

... Petitioner

Vs

1.The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Labour and Employment Department,
Fort St.George, Chennai 600 009.

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

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the respondents to consider the case of the petitioner for promotion as Assistant Commissioners of Labour for the year 2015 by relaxing rule 2 of the Special Rules for the Tamil Nadu Labour Service and promote him as Assistant Commissioner of Labour with all consequential benefits.

For Petitioner : Mr.N.Balamuralikrishnan for
Mr.Menon Karthick

For Respondents : Mr.J.Pothiraj,
Special Government Pleader

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O R D E R

Heard Mr.N.Balamuralikrishnan, learned counsel for the petitioner and Mr.J.Pothiraj, learned Special Government Pleader appearing for the respondents.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Mandamus, to direct the respondents to consider the case of the petitioner for promotion as Assistant Commissioners of Labour for the year 2015 by relaxing rule 2 of the Special Rules for the Tamil Nadu Labour Service and promote him as Assistant Commissioner of Labour with all consequential benefits."

3. The case of the petitioner is as follows:-

The petitioner was appointed as Labour Officer under Tamil Nadu Labour Services. The next avenue of promotion to the post of Labour Officer is the post of Assistant Commissioner of Labour. The appointment to the said post is governed by the Special Rules (Section 20-B in Volume II of the Tamil Nadu Service Manual, 1979). The feeder posts for appointment to the post of Assistant Commissioner of Labour are Inspector of Labour, Labour Officer and Inspector of Plantation. As per the provisions of the service rules, a person working in the feeder post, has to complete 12 calendar months and not less than 12 calendar months in other feeder categories, for e.g., if the petitioner was working as Labour Officer, has to work as Inspector of Labour and Inspector of Plantation for not less than 12 calendar months, for promotion to the post of Assistant Commissioner of Labour.

4. The petitioner herein was originally posted as Labour Officer, Erode and worked there from 29.12.2008 to 03.11.2009 and not completed 12 calendar months. On 04.11.2009, the petitioner was posted to work as Labour Officer (Social Security Scheme) and he worked there till 28.02.2011. According to the service regulations, the appointment in Social Security Scheme was considered as foreign service and not taken into account as qualifying service for the purpose of promotion to the post of Assistant Commissioner of Labour.

5. Thereafter, the petitioner had worked as Inspector of Labour in Kanchipuram from 28.02.2011 to 10.06.2014 and from 16.06.2014 till 15.06.2015, worked as Inspector of Plantation, Yercaud. Thus, the petitioner fulfilled the condition, as he had completed more than 12 calendar months of service both as Inspector of Labour as well as Inspector of Plantation. Unfortunately, the petitioner could not complete 12 calendar months of service as Labour Officer as he was posted to work as Labour Officer (Social Security Scheme) which was considered to be a foreign service, not taken into account as qualifying service. The petitioner therefore suffered shortage of little

over one month service as Labour Officer. Therefore, he became ineligible for consideration for appointment to the post of Assistant Commissioner of Labour.

6. According to the petitioner, he had submitted a representation to the Department that his posting in a foreign service would affect his carrier progression. But, it appears that the Department did not take any action to facilitate the petitioner, completing 12 calendar months of service as Labour Officer. In 2015, there was a proposal to approve the panel for appointment to the post of Assistant Commissioner of Labour and several eligible candidates were considered. But, unfortunately, the name of the petitioner was omitted to be empaneled only for the reason that he did not complete the required 12 calendar months of service as Labour Officer.

7. The grievance of the petitioner is that many of his juniors were allowed to complete the required qualifying service in respect of all the three posts in the feeder category. But, the petitioner alone was prevented from completing the required qualifying service as Labour Officer, in view of his posting in the Social Security Scheme, which was admittedly a foreign service at that point of time.

8. According to the petitioner, under similar circumstances, several Officers were working in the feeder posts who did not complete the required years of service, had been granted exemption by the Government and came to be promoted as Assistant Commissioner of Labour. Several such instances have been pointed out in the affidavit filed in support of the writ petition. The said fact has also not been disputed by the respondents. But, when the petitioner was denied an opportunity of completing his tenure as Labour Officer, his representation ought to have been considered and he ought to have been granted exemption before his juniors were included in the panel for the year 2015 and ought to have been promoted as Assistant Commissioner of Labour. Since the petitioner has been overlooked in the matter of subject promotion, he is before this Court, seeking direction to grant him promotion as Assistant Commissioner of Labour for the year 2015 by relaxing the relevant rules governing the subject promotion.

9. When the writ petition was admitted, there was an interim direction to provisionally promote the petitioner as Assistant Commissioner of Labour and on the basis of the direction, it appears that the petitioner has been appointed as Assistant Commissioner of Labour, however, subject to the outcome of the writ petition. The fact of the matter is that the petitioner, as on date, is working as an Assistant Commissioner of Labour. It is also relevant to point out that subsequently the appointment

of Labour Officer to Social Security Scheme from 2016 onwards, has been counted as qualifying service and was not treated as foreign service any more.

10. Be that as it may, the point for consideration before this Court is that whether the petitioner who has not satisfied with the conditions laid down in the subject rules, entitled to the direction as prayed for in the writ petition or whether the relaxation given to other similarly placed persons ought to be extended to this petitioner as well, in order to facilitate his appointment as Assistant Commissioner of Labour, De hors the stipulation.

11. The learned counsel for the petitioner would at the outset submit that under similar circumstances, the learned Judge of this Court has allowed the writ petition on the basis of the fact that exemption had been granted to similarly placed employees who has not completed the requisite period of service in the feeder post. He would draw the attention of this Court to the order passed by the learned Judge of this Court in W.P.Nos.23081 and 23083 of 2007 dated 22.11.2007 in paragraph Nos.5 and 6, which are extracted below:-

"5. It is not the case of the respondents that any of the three petitioners have granted any such declaration when they were posted to man a particular post. The first respondent has thoroughly misunderstood the spirit behind the letter issued by the Government referred to above. On the contrary, the Commissioner of Labour, without reference to the Government Order, issued a circular memorandum dated 18.10.2005 and the relevant passage found therein is extracted below:

"It is noted that inspite of postings in the places as per the requirement the officers are not willing to be served in these posts. Even some of the officers have not brought to the notice of the administration that they may be given postings in the field for qualifying themselves as per the G.O. cited. Therefore it is made clear that it is the responsibility of the officers concerned to represent to the administration to serve in the specific posts prescribed for promotion to the next higher category. It is also made clear that no exemption shall be considered at a later date if they do not qualify for promotion

to the next higher category for want of prescribed norms as stated above."

6. It is a complete misreading of the Government letter and it shifts the onus on the individual to seek for a particular posting, which is neither legally permissible nor practicably feasible. Even if such requests are made for a particular posting, there is no obligation on the part of the cadre controlling authority to give a posting to such officers so as to enable them to complete the minimum eligible service for the next post. Therefore, when the panel for the post of Assistant Commissioner of Labour for the year 2007-2008 was prepared, the details regarding the various officers were sought for by the second respondent Commissioner of Labour, vide Memorandum dated 10.4.2007. In that letter, the name of Tamilarasi, petitioner in W.P.No. 23081 of 2007 is found as serial No. 9 and M.Santhi, petitioner in W.P. No. 23083 of 2007 is found as serial No. 10 and R.Muthukrishnan, petitioner in W.P. No. 31714 of 2007 is found as serial No. 16.

However, by a further Memorandum dated 25.5.2007, the following particulars were given in respect of the three petitioners.

S.No	Name and Designation of the Officer	Post in which not worked
1	T.Tamilarasi, Inspector of Labour, Office of the Joint Commissioner of Labour, Chennai.	Worked as Inspector of Plantations for 10 months out of 12 months. Working as Inspector of Labour since 22.02.2007.
2	M.Santhi, Inspector of Labour, Thiruvallur.	Working as Inspector of Labour since 30.06.2006. Inspector of Plantations, 12 months.
3	R.Muthukrishnan, Inspector of Labour, Karur.	Working as Inspector of Labour since 05.04.2007.

12. Finally, the learned Judge in paragraph Nos.13 and 14 of the above mentioned order, has allowed the writ petition as follows:-

"13. Therefore, in that case, the State Bank of India protected the seniority of persons, who did not get rural posting. In the present case, the respondents did not have any such safeguard for being overruled on the ground that they did not have the experience as found in the service. Even in the Memorandum dated 25.5.2007, they were merely asked to complete the other postings so that in the future years, their names will be considered. There is no guarantee for any seniority. Under these circumstances, the case pleaded by the learned Senior Counsel for the petitioners is well-founded. Even in the State Bank of India case (cited supra), there was no evidence on any particular person being given exemption by the Department whereas in the present case, the exemption granted in favour of Umadevi and Alagesan is a clear case where the respondents are having a pick and choose approach and had not treated everybody fairly in the same way. The circumstances that are available to Umadevi and Alagesan must also be available to the petitioners and there is no reason why the respondents cannot grant such an exemption in favour of the petitioners also. In fact, in the case of one of the petitioners, the experience wanting is only two months.

14. In the result, all the writ petitions will stand allowed. The respondents are directed to include the names of the petitioners in the panel for the post of Assistant Commissioner of Labour and if necessary, to give relaxation from the Special Rules. No cost."

13. Against the order passed by the learned Single Judge, writ appeals came to be filed in W.A.Nos.509 to 511 of 2008. The appeals came to be dismissed by the learned Division Bench of this Court on 19.06.2009.

14. Therefore, the learned counsel for the petitioner would submit that by all fours, the issue raised in the writ petition is covered by the above orders passed by both the learned Single Judge as well as the Division Bench of this Court. In any event, when the department itself had granted exemption to similarly placed persons, refusing to grant such exemption to this petitioner, tantamount to discriminatory treatment and the same is therefore violative of the Article 14 of the Constitution of India.

15. Upon notice, Special Government Pleader appearing for the respondents, entered appearance and made his submissions and a detailed counter affidavit has also been filed.

16. The learned Special Government Pleader appearing for the respondents would resist the claim of the petitioner, stating that the petitioner herein while working as Inspector of Labour, had requested for retention vide his letter dated 30.05.2013, which is mentioned in paragraph No.4 of the counter affidavit. For better understanding of the case of the respondents, paragraph No.4 of the counter affidavit is extracted below:-

"4. With reference to the averments made in paragraph Nos.5 and 6 of the affidavit, it is submitted that the Special Rules for Tamil Nadu Labour Service is governing the posts in 4 categories viz., Joint Commissioner of Labour, Deputy Commissioner of Labour, Assistant Commissioner of Labour and Labour Officers. Those who have acquired qualification as prescribed in the Special Rules for the Tamil Nadu Labour Service only can be included in the panel of Labour Officers fit for promotion as Assistant Commissioner of Labour. While working as Inspector of Labour, Kancheepuram, the petitioner in his letter dated 30.05.2013, requested for retention in the post of Inspector of Labour, Kancheepuram, even though he completed more than two years in the said post, when his turn came for posting as Inspector of Plantations, thereby become ineligible for further promotion. Even though he was well aware of his position of seniority and consequences of non compliance of special rules, he did not give request to post him either as Inspector of Plantations or Labour Officer, in which he had to complete the requisite period of service, to get himself qualified for further promotion. Thus he failed to be vigilant and was slumber on his right. Moreover, by seeking retention in the same post when his turn came, he lost his chance of becoming qualified."

17. Therefore, the learned Special Government Pleader appearing for the respondents would submit that having made a request for retention, the petitioner cannot seek for exemption. Moreover, the order passed by the learned single Judge as cited supra, cannot be applied to the facts of this case, in view of the specific request by the petitioner for his retention. Once, such request is made and the petitioner was retained in particular station and the petitioner being fully aware of the rule position, he became dis-entitled to be considered for promotion to the post of Assistant Commissioner of Labour, since admittedly, he did not satisfy the rule position.

18. At this, learned counsel for the petitioner would submit that the request of the petitioner was made only in 2013 i.e., the petitioner had worked as Labour Officer from 29.12.2008 till 03.11.2009 and was prevented from completing 12 calendar months at that point of time. Therefore, his request for retention in 2013, cannot be held against him.

19. This Court having considered the submissions made on behalf of the petitioner as well as the respondents, is of the view that for no fault of the petitioner that he was posted to work as Labour Officer (Social Security Scheme) from 04.11.2009 onwards and unfortunately, at that point of time, the Social Security Scheme was considered to be a foreign service and not counted as qualifying service for the purpose of promotion to the post of Assistant Commissioner of Labour, in any event, admittedly, the said service is now been counted as qualifying services from 29.01.2016 onwards. Even otherwise, from the materials and pleadings placed on record, it is clear that in identical circumstances, the Government has granted exemption from the Special Rules to several candidates who could not complete the required period of services in the feeder post. When such is the case, this Court does not see how the petitioner alone could be treated differently in the matter of subject promotion.

20. The spirit of rule is that the seniors must be allowed to complete the required tenure of services in the respective feeder post to enable the seniors to be considered for promotion ahead of their juniors. In this case, it so happened that the juniors were allowed to continue and complete the required period of service in the respective feeder post and they were considered for promotion ahead of the seniors like the petitioner herein. Such action on the part of the respondents is per se discriminatory, illegal, unjust and unreasonable and cannot be countenanced in law. Moreover, as rightly contended by the learned counsel for the petitioner that when exemption is granted to the persons of identically placed, denial of the same to the petitioner cannot be appreciated at all.

21. The learned Judge of this Court has rightly held that once an exemption was granted to similarly placed persons, it ought to be extended to the petitioners also in the aforesaid decision, which is extracted supra. In fact, the learned judge's decision was also confirmed by the detailed order passed in the appeals by the learned Division Bench of this Court. In any event, the fact of the matter is that by way of interim order, a direction was issued by this Court to promote the petitioner as Assistant Commissioner of Labour and in pursuance of the

direction, he has been appointed as Assistant Commissioner and has been working as such. Such positive direction was given by this Court, since the Court was prima facie convinced with the case of the petitioner. That being the case, this Court is of the considered view that in all fours, the petitioner is entitled to the relief as prayed for in the writ petition. Any other view by this Court will only lead to miscarriage of justice and result in negation of the right of the petitioner to be treated equally by the State.

22. For the above said reasons, the writ petition is allowed and there shall be a direction to the respondents to regularise the promotion of the petitioner as Assistant Commissioner of Labour for the year 2015, if he is otherwise fit for such regularisation and grant him all attendant benefits as admissible on such regularisation. The respondents are directed to comply with the direction of this Court by passing appropriate orders, within a period of eight weeks from the date of receipt of a copy of this order.

23. With the above direction, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

gsk

To

1.The Principal Secretary to Government,
Labour and Employment Department,
Fort St.George, Chennai 600 009.

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

+1cc to M/S.Menon Karthik, Mukundan, Advocate Sr.54790
+1cc to the Government Pleader Sr.52461

W.P.No.33011 of 2015

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srg 16/10/2018