

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.A.No.2147 of 2013

Irudayaraj

... Appellant

-vs-

- 1.The State of Tamil Nadu,
rep.by its Secretary to Government,
Labour and Employment Department,
Fort St.George, Madras-9.
- 2.The Commissioner of Labour,
Teynampet, Madras-600 006.
- 3.N.Alfred Manual Gnanamuthu
- 4.C.K.Palanisamy
- 5.N.Jagannathan
- 6.S.Sinnandi
(Respondents 5 and 6 given up
vide endorsement made in the writ petition) ... Respondents

Prayer :Writ Appeal filed under Clause 15 of Letters Patent,
against the order passed by this Court in W.P.No.32139 of 2005
dated 15.02.2006.

WP.No.32139 of 2005:This writ petition came to be numbered by
transfer of O.A.No.4335/95 from the file of the Tamilnadu
Administrative Tribunal, praying this court to issue a writ of
certiorarified mandamus calling for the entire records
pertaining to the Impugned order No. E2/64156/E2/93-6 dated
26.8.1994 passed by the 1st respondent and consequential order
passed by the 2nd respondent bearing No. G1/13416/94 dt. 15.9.95
and quash the same with a direction to the 1st and 2nd
respondents to restore the seniority of the petitioner in the
category of the Assistant Assistant Inspector of Labour and
Deputy Inspector of Labour with consequential benefits.

For Appellant :: Mr.L.P.Maurya

For Respondents:: Mr.P.S.Sivashanmugasundaram,
Spl.GP for R1 and R2
R5 & R6 Given up in WP.

JUDGMENT

(Delivered by HULUVADI G.RAMESH, J.)

The appellant entered the service as a Junior Assistant (Lower Division Clerk) in the erstwhile Weights and Measures Department with effect from 17.05.1961. According to him, he had completed three years of service in the cadre of Junior Assistant with effect from 16.05.1964. The next avenue of promotion is to the post of Assistant. As per the Rules, for promotion to the post of Assistant, the following conditions should be satisfied:

- "(i) Must have satisfactorily completed probation in the category of Lower Division Clerk;
- (ii) Must have completed 3 years of service as Lower Division Clerk; and
- (iii) Must have passed Account Test for Subordinate Officers Part-I."

2.Insofar as the third condition, namely, passing of Account Test for Subordinate Officers Part-I, is concerned, this condition was imposed only in December, 1964. Consequently, persons who were already in service as on the date of the said Rules coming into force, were exempted from passing the test for a period of two years. The appellant passed the said test in the year 1970. He was promoted as Assistant with effect from 08.07.1970 whereas the third respondent was promoted on temporary basis as Assistant with effect from 01.06.1965. Subsequently, he was reverted and again promoted with effect from 31.12.1973 and thereafter, by the orders of the first respondent issued in G.O.Ms.No.903, Labour and Employment Department dated 13.9.1976, the date of promotion of the third respondent was revised and deemed as effective from 13.11.1965. Based on the same, respondents 4 to 6 were also given deemed promotion with effect from 05.10.1965, 26.01.1966 and 02.12.1965 respectively. Thereafter, the erstwhile Department of Weights and Measures was merged with the Labour Department with effect from 04.01.1967. In consequence of the above Government Order, though the entry of the appellant in the cadre of Junior Assistant was earlier to respondents 3 to 6, he was placed below respondents 3 to 6 in the seniority list.

3.With the above background, the appellant filed an application before the Tamil Nadu Administrative Tribunal in O.A.No.4335 of 1995 praying to quash the order passed by the first respondent rejecting his representation and the consequential order passed by the second respondent and to restore his seniority in the category of Assistant, Assistant

Inspector of Labour and Deputy Inspector of Labour with consequential benefits. The said Original Application was transferred to this Court and renumbered as W.P.No.32139 of 2005.

4.It was argued before the writ Court on behalf of the appellant that though the appellant was qualified to be promoted as Assistant in the year 1964, on the ground that he did not pass the Account Test for Subordinate Officers Part-I, he was not given promotion in 1964, but only in 1970, he was given regular promotion. According to the appellant, as per the original date of promotion, the appellant was senior to respondents 3 to 6, but, because of the revised date of promotion as Assistant, the appellant has been placed as a junior in the seniority list of Assistants and the representation submitted in that regard was also rejected. Stating so, the learned counsel prayed for a direction, which has already been stated supra.

5.The writ petition was dismissed by this Court on 15.02.2006 on the ground that the appellant did not make any representation claiming promotion with effect from 1964, excepting the representations submitted in the years 1991 and 1994. It was also observed by the learned single Judge that after his promotion to the higher cadre, challenging the date of promotion in the feeder category, the appellant has filed the writ petition, which is not permissible. It was also observed that the appellant has not taken steps in time regarding his grievance, and that admittedly, the appellant was not qualified to be promoted as an Assistant in the year 1964 and only on acquiring the prescribed qualification, he was promoted as an Assistant in 1970; even as per the Rules, two years time was given only for those who were already holding the post of Assistant on the date of the Rules coming into force and not for seeking promotion to the post of Assistant.

6.Challenging the above order passed in the writ petition, the present appeal has been filed by the appellant.

7.The learned counsel for the appellant has relied upon the judgment of the Hon'ble Supreme Court in R.Venkata Ramudu v. State of A.P., reported in (2016) 16 SCC 464 and submitted that as per the applicable Rules, there is no basis to state that those persons who passed Accounts Test within the prescribed probation period constitute separate class from those who pass the test after securing the benefit of extended period of probation and such latter class cannot gain advantage by way of seniority over former class.

8.The learned Special Government Pleader appearing for the State submitted that the learned single Judge has considered the matter in proper perspective and has passed the impugned order and hence the same does not require any interference in the

hands of this Court.

9. Heard the learned counsel on either side and perused the materials available on record.

10. It appears that though the appellant was qualified to be promoted as Assistant in the year 1964, on the ground that he did not pass the Account Test for Subordinate Officers Part-I, he was not given promotion in 1964, but only in 1970, he was given regular promotion. According to the appellant, as per the original date of promotion, the appellant was senior to respondents 3 to 6, but, because of the revised date of promotion as Assistant, the appellant has been placed as a junior in the seniority list of Assistants. In this connection, the appellant has not submitted any representation for over two decades and only in the year 1991 he submitted a representation. As rightly held by the learned single Judge, even after 1991 he had not taken any further steps as contemplated under the relevant rules, but filed the original application before the Tribunal only in the year 1995. According to the appellant, on 01.01.1984, after the merger of the Weight and Measures Department with the Labour Department, the second respondent had published the seniority list of Junior Assistants including those taken over from erstwhile Weights and Measures Department in which the appellant's seniority has been shown as 262, whereas the third and fourth respondents' seniority were shown as 329 and 336 respectively. If that be so, the appellant should have made the representation or should have taken further steps at that point of time itself. But all along, he slept over the matter and submitted his representation only in the year 1991. Thus, the point of delay and laches on the part of the appellant, cannot be simply brushed aside.

11. The principle enunciated in the judgment of the Hon'ble Supreme Court in (2016) 16 SCC 464, relied upon by the learned counsel for the appellant, that there is no basis to state that those persons who passed Accounts Test within the prescribed probation period constitute separate class from those who pass the test after securing the benefit of extended period of probation, is not in dispute. Though not on the ground of merits, but on the ground of delay and laches, the case of the appellant fails and accordingly, the writ appeal stands dismissed. No costs.

12. At this juncture, the learned counsel for the appellant has submitted that the appellant is a retired person and he may be permitted to submit a representation to the respondents placing all relevant materials, and if the authorities are satisfied and if any relief is granted, at least the pensionary benefits of the appellant would get revised.

13.It is for the appellant to make a representation to the respondents placing relevant materials, if any. If any such application is made, the same may be considered and appropriate orders may be passed by the respondents in accordance with law, to grant monetary benefits.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

KM

To

1.The Secretary to Government,
Government of Tamil Nadu,
Labour and Employment Department,
Fort St.George, Madras-9.

2.The Commissioner of Labour,
Teynampet, Madras-600 006.

+1cc to Special Government Pleader Sr.No.25920 dt.9.4.2018

MR(CO)
sm:26.4.2018

W.A.No.2147 of 2013

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