IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2018

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THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.15654 of 2010 and

M.P.No.2 of 2010

A.G.Kumudha ... Petitioner

Vs

1.Government of Tamil Nadu,
Rep by Secretary to Government,
Commercial Taxes and Registration Department,
Chennai 600 009.

2.The Inspector-General of Registration,
Chennai 600 028.

3.Tmt.M.Chandra ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records relating to the orders in (1) G.O. (vaalyam) No.283, Commercial Taxes and Registration (K) Department dated 20.05.2010 of the first respondent (2) G.O. (vaalyam) No.937, Commercial Taxes and Registration (H2) Department dated 04.08.2009 by the first respondent (3) G.O. (vaalyam) No.45, Commercial Taxes and Registration (H2) Department dated 27.01.2009 of the first respondent and (4) Pro.No.70504/K2/2005 dated 25.01.2007 of the second respondent, quash the same and issue consequential directions to the respondents 1 and 2 to revise the panel for 2004-05 for promotion to the post of Steno Typist Grade II, by placing the petitioner therein above the name of third respondent herein and on that basis consider the petitioner for promotion to the post of Steno-Typist Grade I with consequential benefits.

For Petitioner : Mr.M.Ravi

For Respondents: Mr.T.M.Pappiah,
Special Government Pleader for RR1 & 2
: Mr.S.Packiaraj for R3

O R D E R

Heard Mr.M.Ravi, learned counsel for the petitioner and Mr.T.M.Pappiah, learned Special Government Pleader appearing for the first and second respondents and Mr.S.Packiaraj, learned counsel appearing for third respondent.

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

> "To issue a writ of Certiorarified Mandamus, to call for the records relating to the orders in,
>
> (1) G.O.(vaalyam) No.283, Commercial Taxes and Registration (K) Department dated 20.05.2010 of the first respondent
> (2) G.O.(vaalyam) No.937, Commercial Taxes and Registration (H2) Department dated 04.08.2009 by the first respondent
> (3) G.O.(vaalyam) No.45, Commercial Taxes and Registration (H2) Department dated 27.01.2009 of the first respondent and
> (4) Pro.No.70504/K2/2005 dated 25.01.2007 of the second respondent and quash the same and issue consequential directions to the respondents 1 and 2 to revise the panel for 2004-05 for promotion to the post of Steno Typist Grade II, by placing the petitioner therein above the name of third respondent herein and on that basis consider the petitioner for promotion to the post of Steno-Typist Grade I with consequential benefits."

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

The petitioner was initially appointed as Steno-Typist Grade III in the year 1992. She was recruited by Tamil Nadu Public Service Commission. Her next avenue of promotion to the post of Steno-Typist Grade III is to the post of Steno-Typist Grade II. The petitioner was fully eligible for being considered and the second respondent herein issued the approved panel for promotion to the post of Steno-Typist Grade II vide proceedings dated 31.08.2000 and the petitioner was placed at Serial No.1 and the third respondent at Serial No.3. The third respondent was appointed as Steno-Typist Grade III on 23.01.1997, much after the appointment of the petitioner.

4. However, inspite of drawing up of panel in 2000, the promotion order was not issued immediately and only on 14.05.2001, the order was issued, transferring and posting the petitioner at Vellore. According to the petitioner, due to family circumstances, she had to relinquish her right to promotion temporarily which she had done by her letter dated 18.05.2001. Her relinquishment was also accepted and the same

was put in operation for a period of three years.

5. After the relinquishment period, the petitioner made a representation for promotion to the post of Steno-Typist Grade II, as there were two vacancies available at that time. It is also to be noted that even the third respondent who was at Serial No.3, in the panel for the year 2000, had also refused the promotion like the petitioner herein. While so, the second respondent issued a panel for the year 2004-05 for the subject promotion, by proceedings dated 25.01.2007, wherein, the name of the third respondent was included overlooking the claim of the petitioner.

6. According to the respondents, the petitioner was overlooked for the reason that the third respondent had relinquished her promotion on 27.11.2000 itself and the period ended on 16.11.2003, whereas, the petitioner had relinquished her right in the year 2001, which period was obviously ended in 2004. Therefore, the petitioner's candidature was not considered for promotion. Ultimately, the petitioner was promoted as Steno-Typist Grade II for the panel year 2006-07.

7. In the above circumstances, the petitioner submitted an appeal on 05.06.2008 to the first respondent, stating that she being much senior to the third respondent, cannot be overlooked in the matter of promotion for the panel year 2004-05, since the relinquishment of both the petitioner and the third respondent pertained to the same year 2000 and therefore, there cannot be any difference in the relinquishment period in respect of both the petitioner and the third respondent. Moreover, the promotion order was in fact issued only on 25.01.2007, by which date, both the petitioner and the third respondent's relinquishment period was very much over. That being the case, the question of overlooking the seniority of the petitioner cannot be countenanced both in law and on facts. Inspite of the above stated position, the petitioner's appeal came to be rejected on 27.01.2009.

8. At this, the petitioner once again submitted a detailed appeal on 18.02.2009 to the first respondent, stating that she would not have relinquished her right for promotion, if the administration issued the promotion order immediately for the panel year 2000. The said appeal was also rejected by G.O.(D).No.937, Commercial Taxes and Registration (H2) Department dated 04.08.2009. A further order was also issued on 14.05.2010, confirming the decision taken against the petitioner. These orders are put to challenge in the present writ petition.

9. The learned counsel for the petitioner would reiterate the above facts and legal contentions.

10. Upon notice, learned Special Government Pleader appearing for the first and second respondents, entered appearance and would submit that in view of the third respondent's relinquishment in the year 2000 itself, she became eligible for consideration for the panel year 2004-05 and the petitioner was ineligible during the panel year 2004-05, since her relinquishment came to be ended only in 2001. The same submission had been made by the learned counsel for the third respondent.

11. This Court has considered the rival submissions of the learned counsel on both sides and perused the pleadings and materials placed on record. This Court is unable to appreciate the stand of the Government as well as the third respondent, as to how the seniority of the petitioner can be overlooked when the promotional order was issued only on 25.01.2007 for panel year 2004-05, by which period, as rightly contended by the learned counsel for the petitioner that the relinquishment period was over in respect of both the petitioner and the third respondent.

12. Moreover, it has to be seen that the relinquishment must relate back to the panel year of 2007 and it was not the fault of the petitioner that the promotional order was issued only on 14.05.2001. If the panel year is taken into consideration, the differential date in respect of the relinquishment of both the petitioner and the third respondent would not have arisen. The stand of the Government in this regard, is not valid and the same is preposterous for the simple reason that the seniority of the petitioner over and above the third respondent, cannot be wiped out when both the petitioner and the third respondent submitted the relinquishment in respect of the same panel year.

13. The stand of the Government is per se discriminatory, arbitrary and also violative of the Article 14 of the Constitution of India. Further, it has to be seen that although the subsequent panel for the year 2004-05, the official respondents have issued order of promotion on 25.01.2007, by which date, admittedly the petitioner's relinquishment request was over and therefore, overlooking the seniority of the petitioner, even otherwise, cannot be countenanced in law. In any case, the third respondent cannot have legitimate opposition to the petitioner's right to get promoted ahead of the third respondent, since the petitioner was appointed as Steno-Typist Grade III in the year 1992, whereas, the third respondent in the year 1997. Therefore, the stand of the Government is a clear attempt to stifle the right of the petitioner for being considered for promotion ahead of the third respondent.

14. In the above circumstances, the petitioner has made out a case for grant of relief. Therefore, the impugned orders are set aside. There shall be a direction to the first and second respondents, to grant promotion to the post of Steno-Typist Grade II for the panel year 2004-05, with all attendant benefits. It is also brought to the notice of this Court that there were two vacancies at the point of time. That be that fact, the promotion of the third respondent can also remain intact, however she would take seniority as per the original date of appointment as Steno Typist Grade III vis-a-vis the petitioner. The direction shall be complied with by the first and second respondents, within a period of eight weeks from the date of receipt of a copy of this order.

15. With the above direction, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1.The Secretary,
Government of Tamil Nadu,
Commercial Taxes and Registration Department,
Chennai 600 009.

2.The Inspector-General of Registration,
Chennai 600 028.

+1cc to Mr.S.Pakiaraj Advocate SR.No.2208

+1cc to the Government Pleader, High Court, Madras SR.No.3328

W.P.No.15654 of 2010

SDR 17.02.2018