IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25-01-2018

CORAM

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR. JUSTICE P.VELUMURUGAN

W.A. No.1058 of 2016
And
C.M.P. No.13795 of 2016

1.The State of Tamil Nadu
Represented by its Secretary to Government,
Commercial Taxes and Registration Department,
Secretariat,
Chennai-600 009.

2.The Principal Secretary/Commissioner
of Commercial Taxes,
Chepauk,
Chennai-600 005.

3.The Joint Commissioner (CT),
Vellore Division,
Vellore.

4.The Chairman,
Board of Technical Exam,
Chennai-600 025. .. Appellants

Vs.

G.Thenmozhi .. Respondent

This writ appeal is preferred under Clause 15 of Letters Patent against the order of this Court dated 25.7.2014 passed in W.P.No.32619 of 2012.

Prayer in W.P.NO.32619/2012:

Petition is filed for the issuance of Writ of Certiorarified mandamus to call for the records connected in Memo No.P2/17060/2011 dated 22.2.2012 of the 2nd respondent and quash the same and consequently direct the respondents to promote the petitioner as Assistant Commercial Tax Officer on par with the petitioners Junior by including her name in the promotion penel and grant all benefits.

For Appellants : No Appearance

For Respondent : Mr.G.Elanchezhian

JUDGMENT

[JUDGMENT OF THE COURT WAS DELIUVERED BY K.K.SASIDHARAN, J.]

The case of the respondent for promotion to the post of Assistant Commercial Tax Officer was not considered by the appellants on the ground that she has not passed the Accountancy (Lower Grade) Test conducted by the Directorate of Technical Education, which there was a condition precedent for promotion under the Special Rules for Tamil Nadu Commercial Taxes Subordinate Service. The claim was denied also on the ground that the respondent was not in possession of a Degree in B.Com.

2. The proceedings dated 22.2.2012, negativing the case of the respondent for promotion to the post of Assistant Commercial Tax Officer, was challenged before the Writ Court in W.P.No.32619 of 2012.

3. The learned single Judge, allowed the writ petition, by taking note of the Government Order in G.O.Ms.No.289, Personnel and Administrative Reforms (R) Department, dated 9.12.1998 and the similar case of an employee, by name Mrs.J.Bermin Teresa, whose name was included in the Panel, notwithstanding the lack of required qualification. Aggrieved by the said order, the appellants have preferred this Intra Court Appeal.

5. None appeared on behalf of the appellants. We have heard the learned counsel for the respondent.

6. There is no dispute that the respondent was not in possession of a Degree in B.Com., or a pass in the Departmental Accountancy Test, which is a condition precedent for promotion to the post of Assistant Commercial Tax Officer. The respondent possessed the Post Graduate Degree in M.Com., in Co-operative Management, granted by the Annamalai University. Since the said qualification was recognised by the Government Order in G.O.Ms.No.289, Personnel and Administrative Reforms (R) Department, dated 9.12.1998, she was eligible for promotion to the post of Assistant Commercial Tax Officer.

7. The materials available on record indicate that even for deciding the question of equivalence in qualification, the matter has to be placed before the Committee constituted under Rule 19 of the Tamil Nade State and Subordinate Service Rules. However the fact remains that the case of the respondent was not

placed before the said Committee to take a decision in the matter.

8. The learned single Judge, on the basis of the Government Order in G.O.Ms.No.289, Personnel and Administrative Reforms (R) Department, dated 9.12.1998, directed the appellants to include the name of the respondent in the panel for promotion to the post of Assistant Commercial Tax Officer. Since the Statute says that the question of equivalence in qualification should be decided by the Committee constituted under Rule 19 of the Tamil Nadu State and Subordinate Service Rules, the case of the respondent should have been placed before the said Committee for a decision.

9. There is no dispute that the qualification possessed by the respondent was recognised by the Government and it is evident from the Government Order in G.O.Ms.No.289, Personnel and Administrative Reforms (R) Department, dated 9.12.1998. The learned Judge, without reference to the Equivalence Committee, issued a positive direction for inclusion of name for promotion. We are not in a position to agree with the learned Judge in the course adopted in the matter.

10. We are, therefore, of the view that the order passed by the learned single Judge, is liable to be set aside to the extent, it directs for inclusion of the name of the respondent for promotion to the post of Assistant Commercial Tax Officer.

11. We direct the appellants to place the case of the respondent before the Committee for issuance of Equivalence Certificate in the light of G.O.Ms.No.289, Personnel and Administrative Reforms (R) Department, dated 9.12.1998. The Committee shall take a decision, taking into account the above referred Government Order. After taking such a decision by the Committee, the matter shall be placed before the appellants for considering the case of the respondent for promotion to the post of Assistant Commercial Tax officer. Such exercise shall be completed, within a period of four months from the date of receipt of a copy of this judgment.

12. The Intra Court Appeal is disposed of with the above direction. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

Svn

To

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

2.The Principal Secretary/Commissioner
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Chepauk,
Chennai-600 005.

3.The Joint Commissioner (CT),
Vellore Division,
Vellore.

4.The Chairman,
Board of Technical Exam,
Chennai-600 025.

+1cc to Mr.G.Elanchezhian, Advocate sr.no.6283

W.A.No.1058 of 2016

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nr 21/02/2018