



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and

THE HONOURABLE MR.JUSTICE P.D.AUDIKESSAVALU

W.A.[MD]No.1507 of 2018

and

C.M.P.[MD]No.10743 of 2018

The Commissioner,
Tamil Nadu Hindu Religious Charitable
and Endowments Department,
Chennai-600 034.

: Appellant/1st Respondent

Vs.

1.K.Kannaki

: 1st Respondent/Petitioner

2. The Joint Commissioner/Executive Officer,
Arulmigu Subramaniasamy Thirukovil,
Thiruchendur,
Thoothukudi District.

: 2nd Respondent/2nd Respondent

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent against the order of Writ Court dated 09.02.2018 made in W.P.(MD) No.236 of 2014.

Prayer in WP(MD).No. 236/ 2014 :

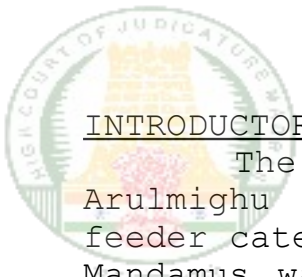
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the proceedings of the 2nd respondent in Na.Ka.No.2706/2013/A2-1 dated 4.10.2013 and quash the same and consequently direct the respondents to promote the petitioner to the post of Assistant .

For Appellant : Mr.N.Shanmugaselvam,
Additional Government Pleader

For Respondent No.1 : Mr.A.Thirumurthy,
For Mr.G.Gomathisankar

For Respondent No.2 : Mr.M.Muthugeethaiyan

JUDGMENT



INTRODUCTORY:

The learned Single Judge found that the post of Librarian in Arulmighu Subramaniaswamy Thirukovil at Thiruchendur was not a feeder category for promotion to the post of Assistant. Even then, a Mandamus was issued to the second respondent to promote the first respondent to the post of Assistant. Feeling aggrieved by the said direction, the appellant has come up with this intra-Court appeal.

THE FACTS:

2. The first respondent was appointed as a Librarian by the Management of Arulmighu Subramaniaswamy Thirukovil at Thiruchendur. The appointment was made on 24 September, 1996. The first respondent was made to work in the department of accounts and also as a Typist. The first respondent, therefore, made a claim that she should be promoted to the post of Assistant. The claim was rejected by the second respondent by order dated 04 October, 2013.

3. The order passed by the Joint Commissioner -cum- Executive Officer was challenged before the Writ Court in W.P.No.236 of 2014.

4. Before the Writ Court, the appellant and the second respondent contended that the post of Librarian is an isolated post and taking into account the fact that the promotional opportunity was not available, selection grade and special grade were given to the first respondent. However, without divulging the background facts, the first respondent made an unjustifiable claim.

5. The learned Single Judge was of the view that the appellant is obliged to relieve the writ petitioner of the pain of stagnation in the post of Librarian. The learned Single Judge was also of the view that the post of Librarian was not a feeder category for promotion to the post of Assistant. However, with a view to avoid the stagnation, the Management was directed to give the first respondent promotion to the post of Assistant.

SUBMISSIONS:

6. The learned Additional Government Pleader for the appellant contended that on account of the stagnation, the first respondent was given time scale and super time scale. The claim made by the first respondent for promotion to the post of Assistant was negatived by order dated 27 November, 2012. The said order was not challenged by the first respondent. It was only the order passed in the representation submitted by the first respondent which was challenged before the Writ Court. According to the learned Additional Government Pleader, in the absence of a promotional post, the learned Single Judge was not correct in directing the appellant to promote the first respondent as Assistant.

7. The learned counsel for the first respondent, while supporting the order passed by the learned Single Judge, contended that the pay scale of Librarian and Junior Assistant are one and the same. The first respondent was, therefore, correct in making a claim



for promotion to the post of Assistant. The learned counsel, by placing reliance on the judgment of the Hon'ble Supreme Court in State of Tripura v. K.K.Roy [2004(9) SCC 65], contended that the appellant cannot escape from its constitutional obligation of providing an avenue for promotion to the first respondent.

WEB COPY

DISCUSSION:

8. The first respondent was appointed to the post of Librarian, which is an isolated post. There was no promotional avenue and as such, the first respondent was given time scale and super time scale on completion of prescribed number of years of service. The first respondent accepted the order giving her grade and special grade in lieu of promotion and thereafter, made a claim for promotion to the post of Assistant.

9. The first respondent submitted a representation for inclusion of her name in the panel for promotion to the post of Assistant. The request was rejected by order dated 27 November, 2012. The said order has become final.

10. The first respondent once again made a claim for inclusion of her name for promotion to the post of Assistant. The Executive Officer, by proceedings dated 04 October, 2013, rejected the claim on the ground that the post of Librarian is not a feeder category for promotion to the post of Assistant.

11. The learned Single Judge, on an analysis of the entire facts and the recruitment rules, found that the post of Librarian was not a feeder category for promotion to the post of Assistant. The learned Single Judge was of the view that the appellant ought to have provided promotional avenue to the first respondent and hence, issued a Mandamus to give her promotion.

12. The first respondent was given grade and special grade only on account of the absence of an avenue for promotion. In case there is a promotional avenue, there is no question of granting her the special grade pay.

13. In K.K.Roy's case cited supra, the Hon'ble Supreme Court found that there was no promotional avenue to the employee. The Hon'ble Supreme Court was, therefore, of the view that the respondent in the appeal ought to have been given two higher grades, one upon expiry of the period of 12 years from the date of his joining service and the other upon expiry of 24 years. In the present case, the second respondent, by granting two higher grades, compensated the first respondent. This aspect was not considered by the learned Single Judge. We are, therefore, of the view that the appellant must succeed.

<https://hcservices.ecourts.gov.in/hcservices/>
14. The order dated 09 February, 2018, is set aside. The Writ Petition in W.P.(MD)No.236 of 2014, is dismissed.



15. In the upshot, we allow the intra-Court appeal without any liability to pay the costs. Consequently, the connected miscellaneous petition is closed.

WEB COPY

Sd/

Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar(CS-I)

To

The Joint Commissioner/Executive Officer,
Arulmigu Subramaniasamy Thirukovil,
Thiruchendur,
Thoothukudi District

+1 cc to Mr.G.Gomathisankar, Advocate, SR.No.95268
+1 cc to Mr.M.Muthugeethaiyan, Advocate, Sr.No.95112
+1 cc to Spl.Govt.Pleader, SR.No.95183

SML

SS/BK/SAR 1/20.12.2018/4P/5C

Judgment made in
W.A.[MD]No.1507 of 2018
Dated: 13.11.2018