

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2019

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

Writ Appeal No.688 of 2015
and CMP.No.5282 of 2016

- 1.The Government of Tamilnadu,
rep. by its Principal Secretary to Government,
Personnel and Administrative Reforms Department,
Fort St. George,
Chennai- 600 009.
- 2.The Secretary to Government,
Revenue Department,
Government of Tamilnadu,
Fort St. George,
Chennai- 600 009 Appellants /Respondents 1 and 3

Vs.

- 1.J.Janaki Respondent/Petitioner
- 2.The Tamilnadu Public Service Commission,
rep. by its Secretary,
Park Town,
Chennai- 600 003. Respondent/Respondent

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order dated 12.09.2014 made in W.P.No.31108 of 2013.

Prayer in W.P.No.31108 of 2013:Petition u/Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to Call for the records on the file of the records on the file of the 1st respondent herein in Government Letter No. 28127/H1/2013-2 dt 4.10.2013 and quash the same and to direct the respondents herein to include the name of the petitioner in the appropriate place in accordance with her seniority in the panel for promotion to the post of Section Officer for the year 2010-2011 and to promote her as such with retrospective effect from the date of promotion of her immediate

junior and to grant her all consequential service and monetary benefits.

For Appellants :Mr.P.H.Aravindh Pandian,
Additional Advocate General
assisted by
Mr.P.S.Shivashanmughasundaram, Spl.GP.

For Respondents : Mr.S.Namasivayam for R1

JUDGMENT

(Judgment of the Court delivered by M.M.Sundresh, J.)

This appeal has been filed by the appellants/respondents 1 & 3 challenging the order passed in W.P.No.31108 of 2013 dated 12.09.2014. The first respondent herein has sought for a Writ of Certiorarified Mandamus to direct the official respondents to include her name in the appropriate place in accordance with her seniority in the panel for promotion to the post of Section Officer for the year 2010-2011 and to promote her with retrospective effect from the date of promotion of her immediate junior and to grant her all consequential service and monetary benefits.

2. Heard, Mr.P.H.Aravindh Pandian, learned Additional Advocate General assisted by Mr.P.S.Shivashanmughasundaram, learned Special Government Pleader appearing for the appellants and Mr.S.Namasivayam, learned counsel appearing for the first respondent.

3. The first respondent herein was initially appointed as Typist and thereafter, she was recruited by transfer as Graduate Typist. She was further promoted as Assistant and then as Assistant Section Officer. For the reasons best known to the appellants, she was not included in the panel prepared for the year 2010-2011, for promotion to the post of Section Officer. The first respondent made a request enclosing a copy of the recommendation of the Equivalence Committee with respect to the qualification acquired by her. Since her request was rejected by the order of the second appellant dated 09.01.2012, she filed a writ petition in WP.No.31108 of 2013 before the learned Single Judge of this Court. The learned Single Judge by taking note of the order passed by the Division Bench on similar issue in W.A.No.1372 of 2013 dated 12.07.2013, was pleased to set aside the order of the second appellant and consequently,

allowed the writ petition. Challenging the same, the present Writ appeal has been preferred.

4. The learned counsel for the appellants would submit that the appeal will have to be allowed in the light of the Government Order passed in G.O.Ms.No.528, Personnel and Administrative Reforms (Per. R.) Department dated 18.05.1985. In 2017, a Government Order was issued in G.O.Ms.No.144, Personnel and Administrative Reforms (Per. R.) Department dated 20.11.2017, wherein, the earlier stand taken in G.O.Ms.No.528, Personnel and Administrative Reforms (Per. R.) Department dated 18.05.1985 has been changed.

5. The learned counsel for the first respondent would contend that on the relevant date, the first respondent was having requisite qualification and the similar issue has been considered by the Division Bench of this Court in the decision cited supra. The learned Single Judge has allowed the writ petition by following the principles laid down by the Division Bench. The learned counsel further submits that the first respondent/writ petitioner is a similarly placed person as that of the respondent in W.A.No. 1372 of 2013 cited supra. Therefore, the appeal will have to be dismissed.

6. Considering the submissions made, we would like to place on record the relevant portion of the order passed in W.A.No.1372 of 2013.

'17. On the crucial date, i.e., 01.09.2009, for promotion to the post of Under Secretary, the respondent/writ petitioner, in terms of Annexure to the Tamil Nadu General Service, has fulfilled all the necessary qualifications and therefore, the appellant/official respondent ought to have considered his claim. A reading of the affidavit filed in support of the writ petition, would also disclose that he was included in the panel for promotion to the post of Under Secretary and later on only, his name was dropped on the misconception that G.O.Ms.No.107, P & AR (M) Department, dated 18.08.2009, and G.O.Ms.No.92, P & AR (C) Department, dated 20.6.2012, would be applicable to the case on hand. In the considered opinion of the Court, the learned Single Judge has rightly taken into consideration the legal as well as the factual aspects and rightly arrived at a decision

that the writ petitioner is eligible to be considered for promotion to the post of Under Secretary and accordingly, granted the relief. This Court is of the view that there is no error apparent or infirmity in the reasons assigned by the learned single Judge for allowing the writ petition and finds no merits in this writ appeal.

18. In the result, this writ appeal is dismissed and the impugned order dated 30.07.2012, made in W.P.No.14658/2011, is confirmed. No costs. Consequently, connected MP is also dismissed."

7. In the light of the fact that the first respondent/writ petitioner stands in the same footing, this writ appeal is liable to be dismissed. The Government Order produced, being prospective in nature, cannot take away the statutory right of the first respondent /writ petitioner. In such view of the matter, we do not find any merit in this appeal. Accordingly, the appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:

1.The Government of Tamilnadu,
rep. by its Principal Secretary to Government,
Personnel and Administrative Reforms Department,
Fort St. George,
Chennai- 600 009.

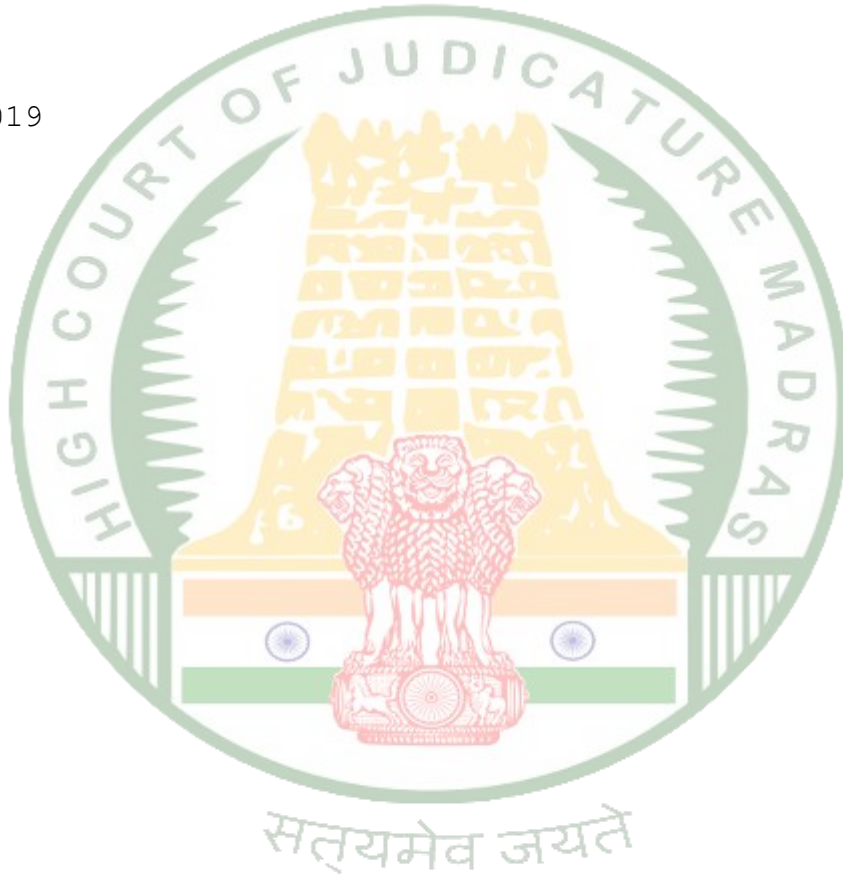
2.The Secretary to Government,
Revenue Department,
Government of Tamilnadu,
Fort St. George, Chennai- 600 009

3.The Secretary,
The Tamilnadu Public Service Commission,
Park Town,
Chennai- 600 003.

+1cc to Mr.S.Namasivayam, Advocate Sr.32391
+1cc to the Government Pleader Sr.33403

W.A.No.688 of 2015

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