

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.02.2019

CORAM

THE HON'BLE MR JUSTICE M. VENUGOPAL
AND
THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

W.P.No.2098 of 2019
and WMP No.2352 of 2019

M. Boopathiraja Petitioner

Vs

1. The Registrar General,
Madras High Court,
Chennai - 600 104

2. The Principal District Judge,
Salem District, Salem

.... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorari to call for the records pertaining to the impugned show cause notice in D.No.9524/A/2018 dated 06.12.2018 issued by the second respondent and quash the same.

For petitioner : Mr.R. Neelakandan
For Respondents : Mr.Kaithamalai Kumaran

सत्यमेव जयते
ORDER

(Order of the Court was made by M VENUGOPAL, J.,)

Heard the Learned Counsel for the Petitioner, Learned Counsel for the Respondents 1 and 2.

2. No counter is filed on behalf of the Respondents.

3. According to the Petitioner, he was originally appointed as Office Assistant in the Tamil Nadu Judicial Ministerial Service on compassionate ground in the year 2010. He has got requisite qualification for appointment to

the posts of Junior Assistant, Examiner, Reader as the case may be. He made a requisition to the Second Respondent/Principal District Judge, Salem by way of an Application in the year to appoint him in any of the said Posts.

4. The Second Respondent, based on his request, appointed the Petitioner in the post of 'Reader' as 'Fresh Appointee' by means of Proceedings dated 01.03.2012 on condition that he shall not claim any priority based on the service rendered in the original post of Office Assistant. Resting on the aforesaid order of appointment, he joined in the post of Reader on 05.03.2013 Fore Noon.

5. The stand of the Petitioner is that from the date of appointment of Reader, he is discharging his service without any blemish on record. Later, by means of Proceedings dated 18.02.2013 of the Second Respondent/Principal District Judge, Salem, he was promoted to the post of 'Junior Assistant' with effect from 20.02.2013. Furthermore, his services were regularised based on the Proceedings of the Second Respondent/Principal District Judge, Salem, dated 23.01.2014 with effect from 05.03.2012 and the completion of probation was declared on 30.04.2014.

6. The Petitioner was promoted to the post of Assistant by virtue of Proceedings dated 15.10.2014 of the Second Respondent/Principal District Judge, Salem and he joined in the promoted post on 16.10.2014. That apart, as per the Proceedings of the Second Respondent/Principal District Judge, Salem dated 15.09.2016, the Petitioner worked as Bench Clerk Grade III from 19.09.2016, for more than two years.

7. At this stage, the Learned Counsel for the Petitioner submits that the Second Respondent/Principal District Judge, Salem had issued Show Cause Notice dated 06.12.2018 to the Petitioner, directing him to offer his explanation within two weeks from the date of Show Cause Notice as to why 'Seniority' be re-fixed and rectify the mistake in terms of Sec.40(6) of Tamil Nadu Government Service (Conditions of Service) Act, 2016.

8. The primordial plea taken on behalf of the Petitioner is that the Second Respondent/Principal District Judge, Salem had predetermined the issue with a conclusion even without securing Petitioner's explanation as if the promotion given to him was in breach of Rule 36

(a) of Tamil Nadu State and Subordinate Service Rules . Hence, the Petitioner is performed to file the present Writ Petition, assailing the issuance of Show Cause Notice dated 06.12.2018 on the ground that the same is contrary to Law besides the same being an illegal one.

9. Advancing his arguments, the Learned Counsel for the Petitioner forcefully contends that the Second Respondent/Principal District Judge, Salem should have seen that the first promotion was given to the Petitioner, after he acquired the eligible criteria as per the requirement of candidates to be accommodated in the available posts, due to the necessity. As such, there is no prohibition in granting the promotion and per contra, it was rightly given to him.

10. Yet another stand taken on behalf of the Petitioner is that the settled seniority of the Petitioner after granting 'promotions' cannot be allowed to be unsettled after a long period of working in the promoted post.

11. At this stage, the Learned Counsel for the Petitioner cites an order of this Court dated 01.03.2017 in WP(MD) No.18879 of 2016 between N. Rajsh Khanna vs The State of Tamil Nadu rep by its Secretary, Law Department, Secretariat- Chennai-5, and three others, wherein, in Paragraph No.6, it is observed hereunder:

" Admittedly, the declaration of probation is not in the hands of the Petitioner. The same is in the hands of the appointing authority. But is stated that without declaration of probation in the initial post, the petitioner was given several promotions, as per his seniority. The petitioner was of the fond hope that because of deflation of his probation, he was promoted. But, after giving several promotions to the petitioner, the third respondent has belatedly passed the impugned order reverting him back to his original post of Junior Assistant for no fault committed by him. Any how, now it is reported that during the pendency of the writ petition, the petitioner's service is regularised

with effect from the date of his joining i.e., from 27.08.2007. In view of the said regularisation, we are of the view that now there would not be any difficulty for the third respondent to restore the petitioner to his last holding post and confer all the consequential benefits. Though it is contended by the learned counsel for the respondents that contrary to Rule 36 he was given promotion, we are of the view that after conferring the benefits of higher post and pay scales, he cannot be reverted back belatedly for no fault committed by him. If his appointment was temporary or irregular in any manner, he should have been reverted within a reasonable period. Since the reversion has been made belatedly after 9 years of service for no fault committed by him, the said order is liable to be set aside."

12. While winding up, the Learned counsel for the Petitioner comes out with a plea that for no fault on the side of the Petitioner, the 'Regularisation' of his 'Services' and 'Declaration of Probation' cannot be displaced/dislodged in a light hearted manner.

13. Conversely, it is the submission of the Learned Counsel for the Respondents 1 and 2 that the Petitioner, as per Law, is entitled to give a reply to the Official Memorandum of the Second Respondent/Principal District Judge, Salem dated 06.12.2018 and in fact, the said Proceedings, was only required to submit his explanation within a period of two weeks from the date of receipt of the Memorandum as to why "Seniority" be Re-fixed and rectify the mistake as enjoined under Section 40(6) of Tamil Nadu Government Service (Conditions of Service) Act, 2016.

14. In this connection, it is pertinently point out that in the impugned Official Memorandum of the Second Respondent/Principal District Judge, Salem dated 06.12.2018, it was mentioned in a crystalline manner that the promotion given to one K. Mohankumar and M. Boopathiraja (the Writ Petitioner) well ahead of their

probation, was declared as gross violation of Rule 36 of Tamil Nadu State and Subordinate Service Rules and placed well before the Seniors and further promotions also given without considering the facts. Viewed in that perspective, the Petitioner and one K. Mohankumar were required to offer their explanation within a period of two weeks from the date of issuance of Official Memorandum i.e., 06.12.2018.

15. It is to be pointed out that as against the issuance of 'Show Cause Notice', (An Official Memorandum), requiring the concerned Petitioner/Aggrieved Person to offer his remark, no Writ Petition would lie per se in the eye of Law.

16. Furthermore, a mere running of the eye of the Official Memorandum of the Second Respondent/Principal District Judge, Salem, in the considered opinion of this Court, requires the Petitioner to submit his explanation only within a period of two weeks from the date of receipt of a copy of this Official Memorandum.

17. It is not in dispute that the Petitioner was issued with the Official Memorandum by the Second Respondent. The Petitioner, when sought an extension of time to offer his reply as per Letter dated 20.12.2018, he was granted time till 18.01.2019 by the Second Respondent/Principal District Judge Salem. However, the Petitioner has not offered his explanation even during the period of his extended time as regards furnishing of his reply. In fact, the Petitioner has filed the instant Writ Petition before this Court on 10.01.2019, assailing the impugned Official Memorandum dated 06.12.2018.

18. Considering the fact that the Petitioner is only to offer his Explanation to the Official Memorandum issued by the Second Respondent/Principal District Judge, Salem dated 06.12.2018, wherein, it is open to the Petitioner to raise all factual and legal pleas available to him in the manner known to Law and in accordance with Law, at this stage, this Court is not expressing any opinion on the merits of the subject matter, in issue and also not delving deep into the issue, simpliciter directs the Petitioner to offer his Explanation within a period of one week from the date of receipt of a copy of this Order. Soon after the receipt of the 'Explanation', submitted by the Petitioner, the Second Respondent shall look into the same with all seriousness, earnestness and to pass reasoned speaking order, 'outlining a process of Reasoning' in a qualitative

and quantitative fashion, of course, after providing an opportunity to the Petitioner and also adhering to the Principles of Natural Justice, in any event, within a period of four weeks thereafter. Further, the Petitioner is directed to lend his assistance and co-operation to the Second Respondent/Principal District Judge, Salem, in disposing of the explanation, ofcourse, in accordance with law.

20. With the above observations and directions, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/--

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Registrar General,
Madras High Court,
Chennai - 600 104
2. The Principal District Judge,
Salem District, Salem
3. The section officer,
B Section,
High court
Madras

+1cc to Mr.Kaithamalai Kumaran , Advocate SR.No. 8822

+1cc to Mr. R. Neelakandan, Advocate SR.No. 8552

W.P.No.2098 of 2019

A.SK(21/02/2019)

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