IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.1720 of 2010

N.Govindan .. Petitioner

Vs.

1.The Principal Secretary to Government,
Commercial Taxes and Registration Department,
Fort St. George,
Chennai 9.

2.The Commissioner of Commercial Taxes,
Chepauk, Chennai.

3.Mr.K.Shanmugam,
Assistant Commissioner of Commercial Taxes,
Thallakulam Assessment Circule,
Madurai Division,
Madurai. .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for an issuance of a Writ of Mandamus, seeking for a direction to the 1st respondent to include the name of the petitioner in the panel of the year 2009 for appointment to the post of Assistant Commissioner of Commercial Taxes in accordance with his seniority and appoint him with effect from 23.01.2010 along with the 3rd respondent who is the immediate junior and consequently direct the respondents 1 and 2 to grant all monetary and other terminal and pensionary benefits with arrears.

For Petitioner : Mr.N.OM.Prakash
for R.Prem Narayan

For RR1 & 2 : No appearance

For R3 : M/s.A.Vinu Pradha
for M/s.S.Ramesh Kumar

O R D E R

The present Writ Petition is for an issuance of a Writ of Mandamus, seeking for a direction to the 1st respondent to include the name of the petitioner in the panel of the year 2009 for appointment to the post of Assistant Commissioner of Commercial Taxes in accordance with his seniority and appoint him with effect from 23.01.2010 along with the 3rd respondent who is the immediate junior and consequently direct the respondents 1 and 2 to grant all monetary, other terminal and pensionary benefits with arrears.

2.The grievance of the petitioner is that even though he is fully qualified to be promoted as an Assistant Commissioner of Commercial Taxes, his name was not included in the panel for promotion for the years 2007 & 2008. The 3rd respondent, his junior was included in the panel and was promoted. On enquiry, the petitioner was informed that his name was not included in the panel as he has crossed the age of 57 years.

3.According to the learned counsel appearing for the petitioner, the crucial date for preparation of the panel is 01.01.2009 and the petitioner has not crossed the age of 57 years on the date of preparation of the panel. Further, 13 persons who have completed 57 years of age were included in the panel and subsequently, promoted as Assistant Commissioner of Commercial Taxes. Non-inclusion of the petitioner in the panel is a discrimination. The petitioner has given representations dated 05.01.2010 and 25.01.2010 to the respondents 2 and 1 respectively. The respondents 1 and 2 failed to consider the said representations. In such circumstances, the petitioner has come out with the present Writ Petition seeking for the relief sought for above.

4.The respondents 1 and 2 filed counter affidavit. But, none appeared for the respondents 1 and 2 at the time of hearing. The respondents 1 and 2 in the counter affidavit have stated that the eligibility for appointment to the post of Assistant Commissioner, [Commercial Taxes] by recruitment or by transfer is that a person should not have completed 57 years as on 1st July of the particular panel year and should have worked as Commercial Tax Officer for two years, preceding the panel year. The petitioner has not worked as a Commercial Tax Officer preceding the panel year, 2007-2008. He has completed two years of service as Commercial Tax Officer only in the year 2009. The petitioner's date of birth is 13.01.1952 and he has completed 57 years as on 12.01.2009. In view of the same, his name was not considered for appointment to the post of Assistant Commissioner [Commercial Taxes].

4(i).As far as 13 persons who have crossed the age of 57 years as on 01.08.2009 included in the panel is concerned, they have completed two years of service as Commercial Tax Officer in the year 2007 & 2008 itself and during that time, no panel was prepared for promotion and therefore, the 1st respondent relaxed the age limit in respect of those persons. The petitioner has not completed two years of service in the year 2007 & 2008. Therefore, the 1st respondent has not granted age relaxation to the petitioner.

5.The learned counsel appearing for the 3rd respondent contended that the 3rd respondent was possessing prescribed qualification as on 01.01.2009 i.e., on the crucial date and therefore, his name was considered and he was promoted as the Assistant Commissioner, [Commercial Tax] and prayed for dismissal of the Writ Petition against the 3rd respondent.

6.Heard the learned counsel appearing for the petitioner as well as the 3rd respondent and perused the materials available on record.

7.The contention of the learned counsel for the petitioner is that his junior was promoted in the year 2009, but the petitioner was not promoted. According to the learned counsel for the petitioner, the crucial date for the preparation of panel for the year 2007 - 2008 was 01.01.2009 and on that date, the petitioner did not cross the age of 57 years. When 13 persons who had crossed the age of 57 years were considered, the petitioner's name also ought to have been included in the panel and considered for promotion. The respondents 1 and 2 filed counter affidavit and stated that as per Rule 4A of the Tamil Nadu Commercial Tax Service Special Rules, a person should not have completed 57 years of age as on 1st July of particular panel year. The date of birth of the petitioner is 13.01.1952 and he has completed the age of 57 years as on 13.01.2009. In view of Rule 4A of the Tamil Nadu Commercial Tax Service Special Rules, the petitioner is not eligible to be considered for promotion. Further, the contention of the learned counsel for the petitioner that the crucial date is 01.01.2009 and on that day, the petitioner has not completed 57 years is not acceptable as per Rule 4A of the Tamil Nadu Commercial Tax Service Special Rules. In respect of 13 persons who have completed the age of 57 years were included in the panel is concerned, the respondents 1 and 2 filed counter affidavit stating that those persons were eligible to be promoted as Assistant Commissioner of Commercial Tax in the year 2007 & 2008 itself and as no panel was prepared during the year 2007 and 2008, the 1st respondent relaxed the age limit for those persons and age relaxation was not given to the petitioner as he has not completed 2 years of service as

Commercial Tax Officer during 2007-2008. In Paragraph No.3 of the Counter affidavit, the respondents 1 and 2 have stated that the petitioner has put in 11 months and 27 days of service in the year 2007 and 1 year, 11 months and 27 days of service in the year 2008 and he has completed 2 years only in the year 2009 and became eligible to be included in the panel for the year 2009, was not given age relaxation and not included in the panel. The relaxation given to 13 persons is not discriminatory or arbitrary. The reason for giving relaxation by the 1st respondent is valid.

7(i).As far as the inclusion of 3rd respondent in panel is concerned, he was fully qualified to be considered for promotion as Assistant Commissioner, [Commercial Tax] as he has completed 2 years of service as Commercial Tax Officer in the year 2007 and he has not crossed the age of 57 years as on 1st July 2009. In view of the same, the promotion of 3rd respondent cannot be interfered with.

8.In the result, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Principal Secretary to Government,
Commercial Taxes and Registration Department,
Fort St. George,
Chennai 9.

2.The Commissioner of Commercial Taxes,
Chepauk, Chennai.

+1cc to Mr.S.Rameshkumar, Advocate sr.55068
+1cc to Special Government Pleader(Taxes) sr.54602
+1cc to R.Prem Narayan, Advocate sr.55068

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rr(co)
nr 06/08/2019