

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2019

CORAM

THE HONOURABLE MR. JUSTICE M.VENUGOPAL

AND

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

W.P.No.4127 of 2019

R.N.Arul Jothi

... Petitioner

vs.

The Registrar General,
High Court,
Madras.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the orders of the respondent in Official Memorandum R.O.C.No.55721/2018/B2 dated 28.08.2018 and quash the same as is in violation of fundamental rights as enshrined in the Constitution of India, unjust, arbitrary, mala fide and violation of natural justice and consequentially directing the respondents to promote the petitioner to the post of Deputy Registrar in the service of the Hon'ble High Court with all attendant benefits and terminal benefits.

For Petitioner : Mr.J.Nagarajan

ORDER

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

Heard the Learned Counsel for the Petitioner.

2.According to the Petitioner, he retired as an 'Assistant Registrar (Personnel Administration)' from the Registry of this Court on 31.08.2018. He entered the service of this Court on 06.02.1989. He was selected on merits in a recruitment by this Court for the post of 'Assistant' and was promoted to the Post of 'Assistant Registrar' and remained so till his retirement i.e., on 31.08.2018. His areas of work consisted of Current Section, Budget Section, 'J' Section, 'C' Section, 'F' Section, 'B5' Section, Court Officer Section, Original Side,

'D' Section and Criminal Section. The version of the Petitioner is that he discharged his duties assigned to him in various wings of Administration and Judicial Side with utmost sincerity and perfection. Wherever he was required to work, he was lauded for the dispensation of service and work. He had rendered an unblemished service of 29 years. However, it was a little short of 30 years, which was the qualified Full Service to secure Full Pension Benefits.

3. With a view to compensate the monetary loss of retirement benefits due to non-completion of Full Service to receive full pension, the Petitioner thought of seeking the benign consideration of the Hon'ble Chief Justice of the High Court for promotion to the next promotional post of 'Deputy Registrar' with Higher Scale of Pay. In fact, this would compensate the loss sustained to the non-completion of 30 years. Keeping in mind, the Petitioner projected a representation on 06.08.2018 for promotion to the post of 'Deputy Registrar' in this Court.

4. The prime plea advanced on behalf of the Petitioner is that in number of cases, the Hon'ble Chief Justice of this Court was pleased to promote the employees on the verge of retirement to immediate promotional post, which could be of 'substantial' or 'temporary' promotion. He is under the bona fide and legitimate expectation of securing the promotion for a short spell or even for a day on the date of retirement or on the penultimate date of retirement. Also that, there were a few cases of promotion of deserving employees on the last day of their retirement month.

5. At this juncture, the Learned Counsel for the Petitioner submits that the Petitioner was shocked to receive the Official Memorandum of the Respondent dated 28.08.2018 communicating the rejection of his requisition for the promotional post of 'Deputy Registrar'. The reason for the rejection is lack of seniority and non reach of Zone of Consideration. To shock and dismay of the Petitioner, one T.Selvaraj, then Assistant Registrar, a co-retiree, was promoted to the post of 'Deputy Registrar' on the verge of retirement and it is a clear example for the step-motherly treatment.

6. Advancing his argument, the Learned Counsel for the Petitioner proceeds to point out that the provision of law particularly considering the Zone of Consideration enunciated by the Hon'ble Supreme Court in the decision in S.B.Mathur and other v. the Hon'ble Chief Justice of Delhi High Court reported in AIR 1988 Supreme Court at page 2073 that found no

arbitrariness in considering 5 persons for every vacancy in the seniority list. In this connection, a fervent plea was made on behalf of the Petitioner that the Zone of Consideration as pointed out in the aforesaid decision of the Hon'ble Supreme Court could have been considered in his case. Furthermore, it is represented on behalf of the Petitioner that the post of 'Deputy Registrar' is a selection post on merits and if this Principle is considered in the material particulars of having served in almost all the wings of the Registry of this Court with a span of 29 years of unblemished and laudable service, his requisition of considering his candidature for promotion to the post of 'Deputy Registrar' for a short duration for a pensionary benefits, his case would have been favourably considered.

7.The Learned Counsel for the Petitioner contends that bypassing a number of seniors in the cadre of Assistant Section Officers, the case of promotion of Perumal, Assistant Section Officer to the post of Section Officer, was considered and the Officers viz., Mr.Balraj was promoted from Deputy Registrar to Joint Registrar, Mr.Pachaiappan was promoted from Deputy Registrar to Joint Registrar, Mr.S.Vijayakumar was promoted from Deputy Registrar to Joint Registrar, Mrs.A.V.Amutha was promoted from Assistant Registrar to Deputy Registrar, Mr.V.Subramanian was promoted from Librarian (Sub Assistant Registrar) to Assistant Registrar, Mr.B.Annamalai was promoted from Court Officer to Assistant Registrar and Mr.K.Sukumar was promoted from Court Officer to Assistant Registrar and they were considered for promotion to the next higher post irrespective of the seniority and non reach of Zone of Consideration at the time of their retirement. However, the stand taken in the aforesaid cases was not considered in his case. As such, the order of rejection dated 28.08.2018 of the Petitioner's requisition for promotion to the post of 'Deputy Registrar' is against all canons of Law.

8.The Learned Counsel for the Petitioner points out that there are 'precedents of promotion' on the eve or last day of retirement, given to the persons like Mr.Perumal from the Post of Assistant Section Officer to the Post of Section Officer, one Pachaiappan from the post of Deputy Registrar to Joint Registrar, one Pandian from the post of Deputy Registrar to Joint Registrar and one Annamalai from the post of Section Officer to the post of Assistant Registrar, irrespective of the seniority and non-reach of 'Zone of Consideration' and the denial of same yardstick to the Petitioner has resulted in serious miscarriage of justice.

9. The Learned Counsel for the Petitioner seeks in aid of the decision of the Hon'ble Supreme Court in S.B.Mathur and others v. the Hon'ble Chief Justice of Delhi High Court reported in AIR 1988 Supreme Court at pages 2073 and 2074, wherein, it is observed as follows:

"It is an accepted principle that where there is an employer who has a large number of employees in his service performing diverse duties, he must enjoy a certain measure of discretion in treating different categories of his employees as holding equal status posts or equated posts, as questions of promotion or transfer of employees inter se will necessarily arise for the purpose of maintaining the efficiency of the organisation. There is, therefore, nothing inherently wrong in an employer treating certain posts as equated posts or equal status posts provided that, in doing so, he exercises his reasonably and does not violate the principles of equality enshrined in Articles 14 and 16 of the Constitution. It is also clear that for treating certain posts as equated posts or equal status posts, it is not necessary that the holders of these posts must perform completely the same functions or that the sources of recruitment to the posts must be the same nor is it essential that qualifications for appointments to the posts must be identical. All that is reasonable required is that there must not be such difference in the pay-scales or qualifications of the incumbents of the posts concerned or in their duties or responsibilities or regarding any other relevant factor that it would be unjust to treat the posts alike or, in other words, that posts having substantially higher pay-scales or status in service or carrying substantially higher responsibilities and duties or otherwise distinctly superior are not equated with posts carrying much lower pay scales or substantially lower responsibilities and duties or enjoying much lower status in service."

"All the more, the posts in question were treated as equal status posts under Rule 2 read with the Schedules to the Seniority Rules of 1971. These Rules became effective in 1971. The challenge made 8 years after the Rules have been given effect to is liable to be rejected on ground of laches."

10.It is to be pointed out that 'Seniority' is a facet of interest. Further, the term 'Seniority' is governed by the existing Rules and is to be worked out accordingly. Indeed, no one has a vested right to Promotion or Seniority. However, a person / an officer has an interest to 'Seniority' acquired by working out the Rules. No wonder, Rule, which affects the promotion of an individual, pertains to 'Conditions of Service'. The chances of promotion are not conditions of service.

11.In Law, 'Seniority' is a Civil Right of an eligible Employee / Government Servant on the basis of which he can claim consideration for future promotion. The 'Seniority' is a civil right and not a fundamental right. The violation of 'Seniority' is permissible only if there are validly framed Rules to this effect and any Rule taking away such right deserves strict / rigid / interpretation constructions, as per the decision of the Hon'ble Supreme Court in State of Uttarpradesh v. Dinkar Sinha reported in [2007] 10 SCC 548. Undoubtedly, 'Seniority' is an ancillary of service and where the Service Rules specify the manner of its computation, one is squarely governed by such Rules. Apart from that, a Right to get certain position in Seniority List is not an accrued or vested right, in the considered opinion of this Court.

12.All that an employee in Law is entitled to is that his claim for promotion should be considered and that the 'Seniority' in service merely decides the order of precedence for the purpose of consideration of promotion. An arbitrary order changing the 'Seniority', which affects the civil right of an employee / Government Servant for future promotion violates Article 16 of the Constitution of India. Besides this, 'Rule of Equality' is only intended to secure justice to avoid discrimination. Furthermore, ordinarily, 'Seniority' once settled ought not be unsettled except for genuine reasonable and bona fide reasons and that too, after following the due Principles of Law.

13.The Rule 3 of Constitution of Service Division -I [Gazettee post] of the Madras High Court Service Rules, 2015, Category 5 speaks of 'Assistant Registrars'. Further, Rule 14 'Promotion /Appointment to the post in Division - I (f) speaks of 'Promotion to Post in Category of Division -I [Deputy Registrar] shall be from category 5, namely, Assistant Registrar'.

Rule 14-B of the Madras High Court Service Rules, 2015, enjoins as under:

"All categories in Division-I, shall be selection categories and promotion thereto shall be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal."

14.It cannot be gainsaid that no one can claim to a certain / Particular Rank in 'Seniority', unless it is governed / regulated by Rules having Statutory Flavour. 'No Legitimate Expectation' can be founded, on unfounded impressions. In short, the crystalline 'Statutory Rules' governing the subject matter override any expectation.

15.Rule 28 of the Madras High Court Service Rules, 2015, refers to 'Inherent Powers of the Chief Justice'. Also that Rule 32 of the Madras High Court Service Rules, 2015, under the Caption 'Repeal and Savings' Clause (v) reads as under:

"(v) Whenever any difficulty or doubt arises in applying and / or interpreting these Rules, the decision of Chief Justice thereon shall be final."

16.It is to be remembered that an individual to be considered for promotion to a Higher post, should possess an essential qualification and in the absence of the same, he cannot be considered therefor. More importantly, even the Selection Committee in the absence of any express power conferred upon it, cannot relax such essential qualification, as per the decision of the Hon'ble Supreme Court in Rajasthan Public Service Commission v. Kaila Kumar Paliwal reported in AIR 2007 SC 1746.

17.It must be borne in mind that the Petitioner as 'Assistant Registrar (Personnel Administration)', High Court, Madras had addressed a 'Representation' to the Respondent on 06.08.2018, wherein he had among other things, stated that he is going to retire on 31.08.2018 and in the post retirement period, he will receive minimum amount of pension. If his request for promotion for the post of 'Deputy Registrar' is considered for a short duration, say, for a week's time, there will be a slight increase in the pensionary benefits, which will not affect the promotional prospects of others, who fall in line for promotion and it will not tell upon the Government's Exchequer.

18.In pith and substance, the Petitioner, in his 'Representation' dated 06.08.2018 addressed the Respondent, had prayed for a request for promotion to the post of 'Deputy Registrar' for a short duration, considering his service, experience and the little increase in the pensionary benefits,

so that he may retire with a sense of satisfaction of being rewarded for his service rendered hitherto.

19.The Respondent, after considering the 'Representation' of the Petitioner dated 06.08.2018, had issued the impugned Official Memorandum in ROC.No.55721/2018/B2 dated 28.08.2018 by stating that the request of the Petitioner was considered and the same was rejected as he does not have seniority and also does not fall within the Zone of Consideration for promotion to the post of 'Deputy Registrar'.

20.One cannot brush aside the very vital fact that the 'aspect of promotion' cannot be claimed by any employee as a matter of right. Unless an employee comes within the Zone of Consideration for promotion to a particular post, he has no semblance of right to stake a claim for promotion. Further, promoting a person to a particular Higher post on the eve/penultimate day of his retirement with a view to gain monetary benefits (when he is not otherwise entitled to) is not a palatable or desirable one. Also that, one can avoid possible/plausible Audit Objection being raised by the Authorities Concerned. That apart, by no stretch of imagination, the past instances mentioned by the Petitioner, even assuming without admitting, cannot be cited as a Rightful/Binding Precedent.

21.Furthermore, this Court, by perusing the contents of the impugned Official Memorandum in ROC No.55721/2018/B2 dated 28.08.2018 of the Respondent, comes to a resultant conclusion that the said impugned order dated 28.08.2018 of the Respondent is free from any legal infirmities.

22.Even though, the Petitioner has referred to in his Writ Affidavit that the cases of some persons were considered and they were promoted on the verge of retirement, that will not be a Lever/Premium/Cementing Platform for the Petitioner to stake a claim for promotion to the post of 'Deputy Registrar', when as per the Rules and Regulations and in Law, admittedly, he is not entitled to seek the relief sought for by him in the present Writ Petition. Viewed in that perspective, the Writ Petition fails.

23.In fine, the Writ Petition is dismissed, leaving it open to the parties to bear their respective costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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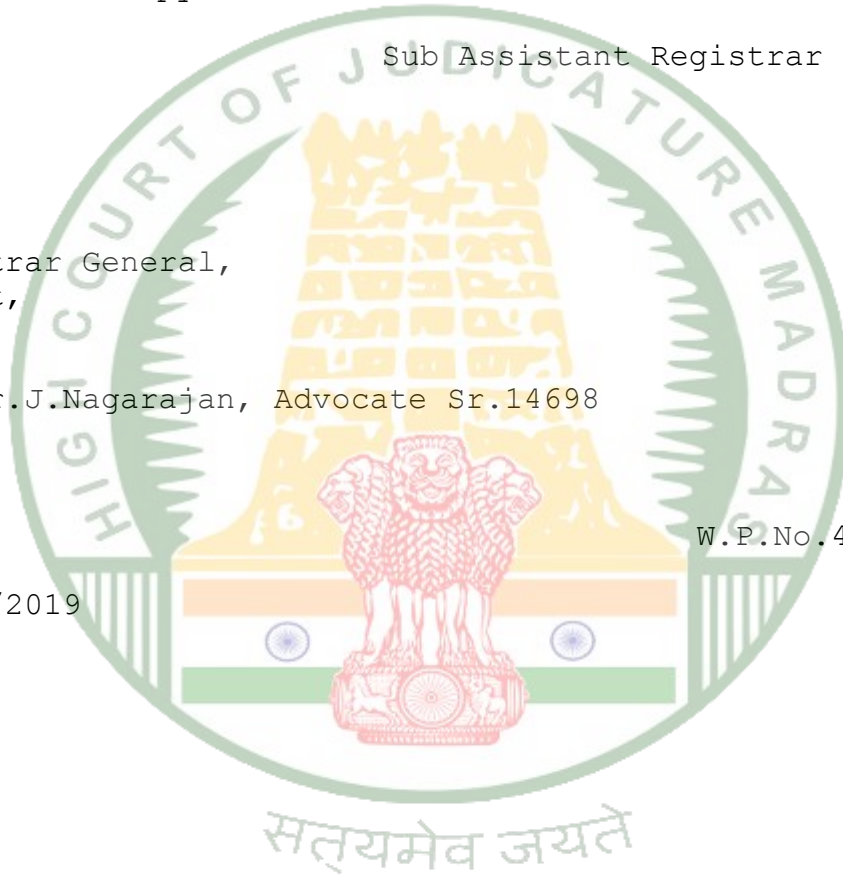
To

The Registrar General,
High Court,
Madras.

+1cc to Mr.J.Nagarajan, Advocate Sr.14698

W.P.No.4127 of 2019

srg 27/02/2019



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