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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.12.2019
DELIVERED ON : 19.12.2019

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

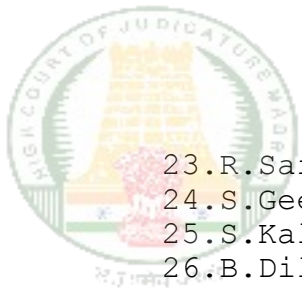
W.P.No.21237 of 2013

K.Ulaganathan

.. Petitioner

vs.

1. The Registrar General
High Court of Judicature at Madras
Chennai - 600 104.
2. The Registrar (Administration)
Madurai Bench of the Madras High Court
Madurai - 625 023.
3. A.Parthiban
4. S.Danalakshmi
5. S.Rajasekaran
6. K.Arumugachander
7. C.Saraswathi
8. S.Revathy
9. K.S.Janani
- 10.R.Padmavathy
- 11.T.Naga Sanjeeva Rao
- 12.A.Amco Kalaimarasi
- 13.N.Valavan
- 14.N.Anurekha Jayasankar
- 15.S.Sumathi
- 16.R.Sumathi
- 17.R.Pushpalatha
- 18.S.T.Adishesan
- 19.N.Rangarajan
- 20.R.Kavitha
- 21.S.Ramakrishnan
- 22.R.Srinivasan



23.R.Saravanakumar
24.S.Geetha
25.S.Kalavathy
26.B.Dilliraj

.. Respondents

WEB COPY (R16 and R26 deleted as per
order dated 7.2.2017)

PRAYER: Petition under Article 226 of the Constitution of India seeking a writ of Declaration declaring that the promotions of respondents 3 to 26 to the post of Assistant with effect from the dates assigned to them are null and void, and directing respondents 1 and 2 to prepare and publish a combined seniority list of the cadre of Copyist/Typist/Reader/ Examiner and, on the basis of such seniority list, treat the petitioner as having been promoted to the post of Assistant with effect from the due date with all consequential service benefits and consequently revise the seniority list of Assistant Section Officers by placing the petitioner above respondents 3 to 7, 9, 11, 13, 17, 18 and 21.

For Petitioner : Mr.M.Radhakrishnan

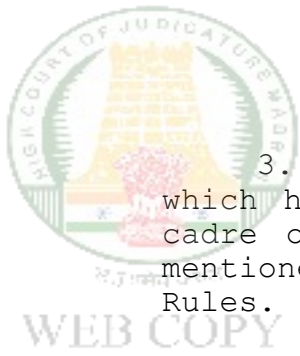
For Respondents : Mr.B.Vijay
for respondents 1 and 2

ORDER

HON'BLE CHIEF JUSTICE

This writ petition has been filed by the petitioner herein, namely, K.Ulaganathan, who was appointed as a Copyist by way of direct recruitment under the Madras High Court Service Rules then existing seeking seniority over and above the private respondents by declaring their promotions from the dates assigned to them to be null and void. The relief sought is in one way to shift their dates of promotion or in a way to advance his date of promotion thereby declaring him to be senior above them.

2. The post of Copyist stood categorized in Rule 8(b) of Division-II of the said Rules. It would be apt to mention that the post of Reader/Examiner/Proof Reader is contained in Rule 8 (a). The category of Typist is included in Rule 7(a) of the said Rules.



3. The next higher promotional post is that of an Assistant, which has to be filled up by way of promotion from the feeder cadre of the aforesaid categories, apart from the other posts mentioned in the said categories of Rules 6, 7 and 8 of the Rules.

4. It appears that appointments to the post of Assistants by direct recruitment were made between 18.3.2004 and 1.12.2004. During this period, promotions were also made to the post of Assistants on 18.3.2004, 27.3.2004, 5.4.2004 and 24.11.2004.

5. The petitioner was appointed as a Copyist in the Madras High Court on 22.11.2000 and while he was working at the Madurai Bench, a representation came to be filed on behalf of the employees at Madurai on 21.4.2005. That was placed before a Committee to look into the grievances for redressal.

6. W.P. (MD) No.1454 of 2006 was filed for mandamus by the petitioner and two others, namely, S.Sugumar and T.Senthilkumar, who were also working as Copyists in Madurai, praying for grant of promotion as Assistants from the date on which their juniors were given promotion, with all consequential benefits, including seniority and to consider their representations filed earlier on 5.9.2004 and 15.12.2004.

7. The said writ petitions were disposed of with a direction to the Registrar General, High Court, Madras to pass orders on the said representations within a period of eight weeks.

8. The then Hon'ble Chief Justice directed the Registry to place the matter before the Committee looking into the said grievances, whereafter the Committee passed a resolution on 10.8.2005 deliberating in detail about the grievances, recommending rejection of the representations. The said fact has been set out in detail in paragraphs (9) to (14) of the counter affidavit filed on behalf of the High Court through the Registrar General.

9. The Committee vide resolution dated 10.8.2005 further passed resolutions for promotions, and with regard to the petitioner and other persons referred to herein above orders were passed on 24.1.2007 and 1.3.2007 granting them promotion as Assistants.

10. The present writ petitioner along with S.Sugumar and T.Senthilkumar, who had filed the earlier writ petition in 2006, filed W.P.(MD)No.8330 of 2008 praying that a writ of mandamus be



issued to the respondent High Court to extend the benefit of notional promotion to the petitioners therein as Assistants with effect from the date on which their juniors were extended such benefits and further confer all consequential benefits, including further promotion as Assistant Section Officer.

11. The said writ petition was dismissed on 16.6.2011 by a learned Single Judge holding that since the petitioners have not challenged the promotion given to the private respondents therein, some of them who were stated to be allegedly junior to the petitioners, the relief prayed for notional promotion as Assistant cannot be granted. It was further observed that the claim of the petitioners for promotion to the post of Assistant Section Officer cannot be entertained as the petitioners upon being promoted as Assistants could not claim their rights over and above those who had already been promoted. In essence, the judgment categorically held, that firstly the claim of notional promotion to the post of Assistant from the date the juniors were promoted was not admissible and consequently, no seniority could be claimed above them, which would automatically place the petitioner junior to those who had been promoted, hence any further promotion to the higher post of Assistant Section Officer bypassing the same was impermissible. The relevant paragraphs of the judgment to this effect, namely paragraphs (10) to (13) are extracted herein under:

"10. However, as rightly pointed out by the learned counsel for respondents 1 and 2, the petitioners have not sought for setting aside the promotions given to the private respondents. For each post, cadre strength has been fixed and only to the extent of cadre strength, individuals can be accommodated in a particular category. According to the learned counsel for respondents 1 and 2, as far as the post of Assistant is concerned, the cadre strength is 159, that is to say, only 159 incumbents can be accommodated in High Court Service as Assistants. Now, by virtue of promotions given to the private respondents, they were promoted as Assistants. Therefore, unless the promotions given to the private respondents are set aside, the petitioners cannot be given promotion to the post of Assistant from the date on which the private respondents were promoted. If promotion is given to the petitioners, without setting aside the promotions given to the private respondents, the cadre strength of Assistants will get increased, for which there is no sanction at all. Therefore,



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we are of the opinion that since the petitioners have not challenged the promotion given to the private respondents, the petitioners cannot be given promotion from the date on which their juniors were promoted. Unfortunately, it is not even stated as to who are all juniors to the petitioners, and therefore, on the ground of lack of particulars also, the petitioners are not entitled for the relief sought for.

11. However, for the reasons discussed above and since as per the argument of the learned counsel for respondents 1 and 2 also, the promotions given to the private respondents to the post of Assistant are not in accordance with the Statutory Rules framed, we are of the opinion that the future vacancies in the post of Assistant can be filled up basing on the inter-se seniority list and if the intention of the administrative side is to give promotion equally to all the incumbents of these three categories, viz., Copyists, Typists and Readers, an amendment to the Statutory Rules fixing a ratio as among these three categories has to be made.

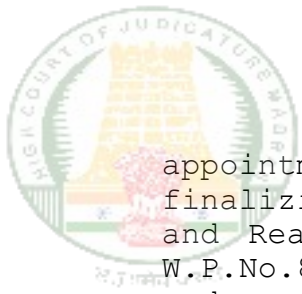
12. According to the learned counsel for the petitioners, as on date, there are vacancies available in the post of Assistant Section Officer and the claim of the petitioners has to be considered for the available vacancies.

13. We are not inclined to entertain the above said request of the learned counsel of the petitioners, for the reason that the feeder categories for the post of Assistant Section Officer is the post of Assistant and basing on the seniority in the post of Assistant alone, the claim of the petitioners for promotion to the post of Assistant Section Officer can be considered and not as claimed by the petitioners."

12. The learned Single Judge however while proceeding to dismiss the writ petition made certain adverse observations relating to the method of promotion for filling up the vacancies on the post of Assistants. We may extract paragraphs (8) and (9) of the said judgment herein under for ready reference:

"8. The learned counsel for respondents 1 and 2

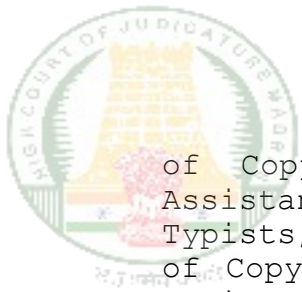




appointment and promotions, having been made during 2004 without finalizing the seniority list of the cadre of Copyists, Typists and Readers/Examiners in October, 2010 during the pendency of W.P.No.8330 of 2008. This fact has been stated in the dates and events filed along with this writ petition and further from the counter affidavit filed by the High Court, it is also evident that the petitioner had already filed his representation in December, 2004, whereafter W.P.(MD) No.6833 of 2005 was filed, in which directions were issued to consider such representations. It is thus evident that the promotions of the private respondents to the post of Assistants was known to the petitioner. The counter affidavit of the High Court also discloses the disposal of the representations and the further promotion granted to the petitioner.

15. The petitioner has pointed out that the pay scale of Copyists, Typists and Readers/Examiners is the same and, therefore, they form one and the same category of posts. It is also the argument on behalf of the petitioner that even assuming that the post of Copyists, Typists and Readers/Examiners were separate categories under Rules 7 and 8 of Division - II of the said Rules, then too also their seniority ought to have been maintained and according to the cadre strength, a proportional representation for promotion on the post of Assistant ought to have been made. The petitioner's contention is that leaving behind the Copyists, the Typists and Readers/Examiners have been promoted to the post of Assistants far beyond their proportion of posts in the cadre strength. Apart from this, the promotions granted to the private respondents was in violation of the Rules and, therefore, their promotions are null and void.

16. It is the contention of the petitioners that the respondent High Court has reversed the process by granting promotions first and not maintaining the seniority list, which stands established by the fact that in the affidavit filed by the Registrar General on 26.12.2014, it has been disclosed that the seniority list was provisionally published on 1.8.2014 and finally published on 1.12.2014. Copy of the seniority list has been placed on record by the respondent Registrar General. A report with regard to the seniority of the petitioner as in March, 2017 indicating the manner of promotions already made has also been brought on record. A chart indicating the sanctioned strength of Typists, Readers/Examiners and Copyists together with the number of promotions to the post of Assistants from each of the three categories has been indicated therein. Out of 239 posts indicated in the chart, 69 is stated to be the sanctioned strength of Typists, 63 of Readers/Examiners and 98



of Copyists. The proportional promotion to the post of Assistant made against the said posts is 25 in the case of Typists, 23 in the case of Readers/Examiners and 23 in the case of Copyists. The said chart, therefore, demonstrates that the ratio of the posts of Assistant offered to Typists and Readers/Examiners is almost 3:1, whereas to the Copyists is almost 4:1. It is, therefore, the submission of the petitioner that no rule of seniority has been followed cadre wise, nor was it finalized and promotions were made disproportionate to the cadre strength. It is, therefore, the contention that the rule of seniority having not been followed, namely Rule 5(b) of the Rules, the respondent High Court has acted unfairly, thereby violating Articles 14 and 16 of the Constitution of India in denying timely promotion to the petitioner and belated fixation of seniority, which deserves to be reversed.

17. The rule of seniority, namely, Rule 5(b) of the Rules, is extracted herein under:

"5(b) Seniority: - The seniority of a member of the Service, Division, Category or Sub-category or post shall, unless he has been reduced to a lower rank as a punishment, be determined by the date of his first appointment to the service, division, category or sub-category or post. Where any difficulty or doubt, arises in applying this rule, seniority shall be determined by the appointing authority. If any portion of the service of such person does not count towards probation under rule 15, his seniority shall be determined by the date of commencement of the service which counts towards probation."

18. It is the contention of the learned counsel for the petitioner, Mr.M.Radhakrishnan, that in effect the petitioner wants his promotion according to his correct placement of seniority and it is for this reason that the promotion order was not challenged previously, and that does not preclude the petitioner from seeking a declaration of the nature as prayed for herein. We may extract the prayer made by the petitioner in the present writ petition to appreciate the said argument.

"to issue a writ of Declaration declaring that the promotions of respondents 3 to 26 to the post of Assistant with effect from the dates assigned to them are null and void, and directing respondents 1 and 2 to prepare and publish a combined seniority list of the cadre of Copyist/Typist/Reader/ Examiner and, on the basis of such seniority list,



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treat the petitioner as having been promoted to the post of Assistant with effect from the due date with all consequential service benefits and consequently revise the seniority list of Assistant Section Officers by placing the petitioner above respondents 3 to 7, 9, 11, 13, 17, 18 and 21."

19. Mr.Radhakrishnan with the aid of the judgment in the case of N.Kannadasan and others v. Ajoy Khose and others, reported in (2009) 7 SCC 1 urged that writ of declaration can always be prayed for and for which specific reliance has been placed on paragraphs (140) and (149) of the said judgment.

20. We have gone through the pleadings and we find that the relief prayed for by the petitioner directly to grant notional promotion to the post of Assistant by re-fixing the seniority and further grant promotion as Assistant Section Officer was squarely dealt with in the judgment dated 16.6.2011 in W.P.(MD) No.8330 of 2008. The paragraphs extracted herein above of the said judgment leave no room for doubt that the issue of alleged unlawful appointment or promotion of the private respondents coupled with the relief of granting notional promotion to the petitioner was considered and decided. The Court specifically held that since the petitioner has not chosen to challenge the promotion orders of the private respondents therein, it was not possible to consider the claim of the petitioner. It would be apt to point out that out of the present private respondents 3 to 26, except six of them, namely respondents 4, 7, 23, 24, 25 and 26, all other private respondents were arrayed as respondents in W.P. (MD) No.8330 of 2008.

21. It is more than evident that the principles of Order II Rule 2 of the Civil Procedure Code; the principles of res judicata and constructive res judicata as well as the doctrine of finality are all clearly attracted and, therefore, the present writ petition is neither entertainable nor maintainable for the reliefs as prayed for. The judgment dated 16.6.2011 clearly binds the petitioner; the High Court and the private respondents. The petitioner had clearly raised the issue of his own promotion and, therefore, he would have been well within his rights to question the promotion orders of the private respondents whom he claims to have been either wrongly appointed or promoted as Assistants in the earlier writ petition itself. It is for this reason that the learned Single Judge in W.P.(MD) No.8330 of 2008 categorically ruled that in the absence of any relief prayed for quashing the promotions, no benefit or notional benefit can be given to the petitioner. The



petitioner, therefore, cannot in a different form seek the same discretionary relief under Article 226 of the Constitution of India. It is by now well settled that the principles of res judicata on issues of fact and a decision on an issue raised or that ought to have been raised and decided binds the parties precluding them from any contest in the matter. Reference may be had to the decision of the Apex Court in U.P. State Road Transport Corporation v. State of Uttar Pradesh, reported in (2005) 1 SCC 444.

22. The petitioner was well aware, and which is evident from the facts narrated above, about the decisions taken by the High Court through the Committee as disclosed in the counter affidavit in the present writ petition, about the status of promotions and the orders passed from time to time. The petitioner therefore cannot be permitted to raise a dispute and achieve indirectly what has been directly denied to him and became final in the earlier round of litigation.

23. No amendment was even sought in the present writ petition, and it appears so rightly, as the petitioner stood precluded from raising this issue in view of the earlier judgment dated 16.6.2011. Not only this, the inordinate delay under the garb of non-finalisation of seniority and not having knowledge is unacceptable as the petitioner has himself admitted that the appointments and promotions were unlawful but he voluntarily did not choose to challenge the same. This argument has been raised as if the petitioner was keeping his rights reserved to further challenge the appointments and promotions whenever he chose to raise the issue of seniority. This right stood foreclosed as observed above and cannot be reopened by reframing the issues in different forms to seek a relief which stood denied earlier.

24. The argument which has been advanced is that the very same judgment did indicate that the methodology of appointment and promotion to the post of Assistants was legally not sustainable. In our considered opinion, an observation made to that effect without granting the final relief, and rather dismissing the writ petition finally, cannot give a fresh cause of action to the petitioner to maintain a writ petition for virtually the same cause of action. The said observations in the judgment may be reflective of the fact of not maintaining the seniority list and not applying the correct methodology of allocating the vacancies to the members of the respective categories of the feeder cadre, but then it was open to the petitioner to have carried the matter further by raising a



challenge to the judgment of the learned Single Judge on the ground that once the observations had come in favour of the petitioner, the writ petition ought not to have been dismissed. We cannot sit in appeal and borrow the said observations over and above the said judgment to practically overrule it and reconsider the grant of a relief which has already been denied by this Court itself.

25. The attempt made by the petitioner, therefore, is one of seeking a second round of opportunity to raise the same issue that stands answered finally in the terms referred to above.

26. We are, therefore, of the firm opinion that the present writ petition seeking relief in the manner as framed cannot be entertained or maintained by the petitioner in view of the earlier judgment dated 16.6.2011 having become final.

The writ petition, therefore, fails and is hereby dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

sasi

To:

1. The Registrar General
High Court of Judicature at Madras
Chennai - 600 104.
2. The Registrar (Administration)
Madurai Bench of the Madras High Court
Madurai - 625 023.

+1cc to Mr.M.Radhakrishnan, Advocate sr.106359

W.P.No.21237 of 2013

vsn(co)

nr 23/01/2020