IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.04.2019
Pronounced on : 30.04.2019

CORAM
THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No.22645 of 2012

M.Nagaraju ... Petitioner

Vs

1.The Commissioner of Treasuries and Accounts,
Chennai - 600 015.

2.The Treasury Officer,
Namakkal. ... Respondents

PRAYER: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents to include the name of the petitioner in the panel for promotion as Assistant/Accountant in Namakkal District Treasury unit in the appropriate place therein and to promote the petitioner as such with retrospective effect from the date of promotion of his immediate junior with consequential benefits.

For Petitioner : Mr.K.Venkataramani, Senior Counsel.
For Mr.M.Muthappan

For R1 & R2 : Mr.P.S.Sivashanmuga Sundaram,
Special Government Pleader.

ORDER

This writ petition has been filed in the nature of Writ of Mandamus, directing the respondents to include the name of the petitioner in the panel for promotion as Assistant/Accountant in Namakkal District Treasury Unit in the appropriate place therein and to promote the petitioner as such with retrospective effect from the date of promotion of his immediate junior with consequential benefits.

2. The petitioner, M. Nagaraju, was serving in the Census Organization and was retrenched from service in the year 1991. He was then appointed as Junior Assistant and joined duty on 23.02.2004 in Namakkal District Treasury Unit. He passed all his Departmental Tests in the year 2007 and qualified for promotion as Accountant/Assistant. He was deputed for training at Civil Service Training Institute, Bhavanisagar from 02.12.2009 to

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30.01.2010. He successfully completed the training. His probation was declared on 24.02.2006. He claimed that he became eligible for promotion as Accountant/Assistant in the year 2010. His name was not included in the panel for the year 2011. Though his name was included for the year 2012, he was not promoted since it was claimed that the vacancies were reserved for direct recruitment.

3. The first respondent, the Commissioner of Treasuries and Accounts, issued circular instructions to subordinate officers for preparation and approval of panel for the year 2012-2013 vide Na.Ka.No.35664/12/C3 dated 03.07.2012. He claimed to be the senior most in the Namakkal District Treasury Unit. He claimed that though he was fully qualified his name was not included in the panel for the year 2010, 2011 and 2012. He was claimed that he had been deprived of promotion in accordance with the seniority. It was under these circumstances, that he had filed the writ petition in the nature of Mandamus directing the respondents to include his name in the panel for promotion as Accountant/Assistant in Namakkal District Treasury Unit in the appropriate place and promote him to the said post.

4. The Commissioner of Treasuries and Accounts, first respondent filed a counter affidavit also on behalf of the second respondent. In the counter affidavit, it had been stated that since the probation of the petitioner was declared on 14.10.2010, his name was not included in the panel for promotion for the year 2010-2011, since the crucial date within which probation should be declared was 15.03.2010. In so far as the year 2011-2012 was concerned, it was stated that the petitioner herein was the fourth in the list of seniority. The Commissioner of Treasuries and Accounts vide proceedings dated 09.08.2011 had directed that one post should be kept vacant for direct recruitment and the other three posts could be filled by promotion. Consequently, the senior most three individuals were granted promotion. With respect to the year 2012-2013, the petitioner's name was included as the second name in the panel. It was stated that the Junior Assistant whose name was first in the serial number, was senior to the petitioner. He had been regularized on 27.09.2010 with effect from 22.01.2011, and he had been deputed to training at Civil Service Training Institute, Bhavanisagar from 28.12.2010 to 25.02.2011. It was stated that the said individual, R.Senthil Selvam was senior to the petitioner and therefore he was included in the Serial No.1. It was stated that the Commissioner of Treasuries and Accounts vide proceedings dated 03.07.2012, had instructed to reserve one vacancy for direct recruitment and one for promotion. Consequently, R.Senthil Selvam granted the promotion. It was stated that no malafide can be attributed for non-including the name of the petitioner in the panel for the years 2010-2011 and 2011-2012. It was also stated that the petitioner being the next

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senior in the Accountant panel, 2012-2013, he would be given Accountant posting. It was stated that he cannot be granted promotion with retrospective effect. It had been stated that he had also been included for the panel 2012-2013. It was stated that the writ petition should therefore be dismissed.

5. Heard arguments advanced by Mr.K.Venkataramani, learned senior counsel for Mr.M.Muthappan, learned counsel for the petitioner and Mr.P.S.Sivashanmuga Sundaram, learned Special Government Pleader for the respondents.

6. The petitioner who originally served in Census Organization and was retrenched from the service in the year 1991, was subsequently appointed as Junior Assistant and joined duty on 23.02.2004 in the Namakkal District Treasuries Unit. His claim is that he had passed all the Departmental Tests in the year 2007. He was eligible for promotion as Accountant/Assistant. He had been deputed for training at Civil Service Training Unit at Bhavanisagar only from 02.12.2009 to 30.01.2010. His probation had been declared on 24.02.2006. These facts are not disputed or challenged by the respondents. The petitioner, however, further claimed that he had been wrongfully omitted from the panel for promotion as Assistant/Accountant for the years 2010-2011 and 2011-2012. Apprehending that his name would also not be included in the panel for the years 2012-2013, the writ petition has been filed.

7. The learned senior counsel for the petitioner Mr.K.Venkataramani, pointed out that it was not the fault of the petitioner that he had been belatedly sent for training at Civil Service Training Institute, Bhavanisagar. He had completed all his Departmental Tests and was eligible for promotion as Accountant/Assistant. The only reason why he was not promoted was that he had not been sent promptly for training to the Civil Service Training Institute at Bhavanisagar. That was the fact which was not under the control of the petitioner. That was an administrative delay attributable solely to the respondents. It was therefore urged by the learned senior counsel for the petitioner, that he should not be put to loss and hardship and should not suffer promotion owing to the administrative delay in sending him for training.

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8. The probation of the petitioner was declared vide G.O.(D)No.268, Finance (T&AII) Department, dated 14.10.2010. Since cut off date for inclusion in the panel for the years 2010-2011 was 15.03.2010, he was not included in the said panel for the said year. For the years 2011-2012, four posts were vacant in the panel, the petitioner was in Serial No.4. However, the Commissioner of Treasuries and Accounts by proceedings R.C.No.18122/2011/C3 dated 09.08.2011 had instructed to reserve one post for direct recruitment. Consequently, the senior most

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three Junior Assistants were promoted. The petitioner was in Serial No.4. For the years 2012-2013, another Junior Assistant by name R.Senthil Selvam was placed in Serial No.1. This had been justified in the counter affidavit by stating that he was senior to the petitioner but he was not considered for earlier panels, since his services were regularized by G.O.No.374 Finance (T&AII) dated 27.09.2010 with effect from 22.01.2011. He was deputed to undergo training at Civil Service Training Institute, Bhavanisagar from 28.12.2010 to 25.02.2011. His probation was declared with retrospective effect from 12.02.2003 by G.O.(D)No.108 Fin (T&A-II) dated 26.03.2012. It was claimed that the said R.Senthil Selvam was senior to the petitioner. A comparative chart of the service records as disclosed, of the petitioner and said R.Senthil Selvam shows that the petitioner had undergone training from 02.12.2009 to 30.01.2010, whereas, R.Senthil Selvam had undergone training from 28.12.2010 to 25.02.2011, i.e., after the petitioner had undergone such training. The probation of the petitioner was declared vide G.O.(D)No.268, Finance (T&AII) Department, dated 14.10.2010 with effect from 24.02.2006. On the other hand, the probation of R.Senthi Selvam was declared much later on 26.03.2012 vide G.O.(D)No.108 Finance (T&A-II) but however, with retrospective effect from 12.02.2003. It is for that reason that the respondents considered that R.Senthil Selvam was senior to the petitioner herein.

9. In this connection, it is also seen that the petitioner herein had given representation on 06.07.2012 wherein, he had stated that an order should be passed appointing him as Accountant/Assistant.

10. Mr.K.Venkataramani, learned senior counsel for the writ petitioner, during the course of arguments also placed on record a further representation, which the petitioner had given to the first respondent through proper channel on 09.12.2014. The petitioner in the said representation had once again sought promotion orders for the post of Accountant with effect from the date when it was due, retrospectively, and for inclusion of the name of the petitioner in the appropriate place in the panel of Accountant for promotion to the post of Superintendent for the years 2013-2014 with all consequential service and monetary benefits.

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11. It is not disputed by the respondents that the petitioner was eligible for promotion. It is also not disputed that his services had been regularized and that he had passed the Departmental Tests. It is also not disputed that his probation had been declared. It is also not disputed that he was sent for training to Civil Service Training Institute at Bhavanisagar, only between 02.12.2009 and 30.01.2010. The petitioner was eligible for promotion but the respondents have

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denied the same, according to the learned senior counsel, unjustly and without proper application of mind to the facts. At any rate, since the petitioner had forwarded a representation dated 06.07.2012, before instituting the writ petition and another representation pending the writ petition, on 09.12.2014. I hold that it would be only just and proper that the respondents examine the said representations and pass a considered order. I direct that such order should be passed on or before 31.08.2019.

12. In this connection, the respondents must realize that the petitioner is only another public servant who fears that he has been singled out and has been wrongly denied promotion. The petitioner has not alleged malafide on any of the Senior Officials. When an employee cries for justice in this manner, a duty is cast on those in Administration to examine the representations made and pass such orders in accordance with the rules. Merely, because a public servant had approached this Court by way of a Writ Petition under Article 226 of the Constitution of India seeking to protect his statutory and valuable rights vested with his service, it would not automatically mean that he is a foe to the Government or to his seniors in Office. The respondents should realize that the situation in which the petitioner finds himself would happen at very regular intervals to very many public servants and if it does so, then it would only signal that there has been a failure in effective administration and it was not a fault on the part of the public servant.

13. Consequently, this Court directs that the respondents should examine the two representations referred above made by this writ petitioner on the basis of the relevant rules, and after fully satisfying themselves on the facts of the case. If a benefit is to be extended to a public servant, then a duty is cast on the Administrators to extend such benefit. They cannot and should not withhold just benefits, merely because representations have been made seeking them and they have been sought by approaching the Court.

14. In the present case, the petitioner had completed his Departmental Tests successfully in the year 2007 and was eligible for promotion as Accountant/Assistant. At that juncture, the administrative procedures to declare his probation, to send him for training were not under his control. Consequently, it would be very harsh for the petitioner to be denied promotion only due to a systematic failure in the administration. It is directed that the representations mentioned above namely dated 06.07.2012, which was given prior to institution of the writ petition and dated 09.12.2014, which was given subsequent to the filing of the writ petition must be considered at the earliest by the respondents in their true

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perspective and with proper application of mind and subjective satisfaction, keeping in mind the rules and regulations to be applied. With these observations, the writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

smv

To,

1.The Commissioner of Treasuries and Accounts,
Chennai - 600 015.

2.The Treasury Officer,
Namakkal.

+1cc to Mr.M.Muthappan, Advocate, S.R.No.42642

W.P.No.22645 of 2012

RRS(02/05/2019)

HIGH COURT OF JUDICATURE MADRAS
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