

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2019

CORAM

THE HONOURABLE MR. JUSTICE M.VENUGOPAL
and
THE HONOURABLE MR.JUSTICE SETHILKUMAR RAMAMOORTHY

W.P.No.5404 of 2018
and WMP No.6648 of 2018

S. Purushothaman

.. Petitioner

Versus

1. The Registrar,
High Court of Judicature at Madras,
Chennai - 600 014

2. Mr.L. Anandan

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court for issuance of Certiorarified Mandamus to call for the records on the file of the First Respondent in proceedings (1) ROC No.08/2016 - Con.B2, Clause V dated 29.04.2016 made in Notification No.62/2016 to the limited extent of non promotion of the Petitioner and the promotion of the Second Respondent therein and (2) ROC No.1338/2017/RG/B2 dated 15.12.2017 in its entirety and quash the same and direct the First respondent to declare that the Petitioner is deemed to have been promoted to the Category 6 Post with effect from 29.04.2016 and to reckon his seniority in category 6 post being the feeder category post for promotion to the post of Assistant Registrar with effect from 29.04.2016 and to promote the Petitioner as Assistant Registrar with effect from 17.11.2017 and grant him all consequential benefits.

For Petitioner : Mr.M. Ravi
For 1st Respondent : Mr.M. Santhanaraman
For 2nd Respondent : No appearance

ORDER

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

Heard the Learned Counsel for the Petitioner and the Learned Counsel for the First Respondent/Registrar General, High Court, Madras.

2. In regard to the Second Respondent, Court Notice was served as early as on 12.03.2018, yet, he has not appeared either in person or through the Learned Counsel.

3. According to the Petitioner, he submitted a Representation dated 27.03.2017 addressed to the First Respondent/Registrar General, High Court, Madras, wherein, he had stated that Madras High Court Service Rules were recast and reissued to be effective from 01.12.2015 and the Revised Relevant Rules for following the ratio while making promotion to the category of 'Librarian' runs as under:-

"Rule 14(m) Promotion to Category-6C of Division-I viz., Librarian shall be from

Category I of Division - II viz., Court Officer/Section Officer/Appeal Examiner, including Section Officer (Property), Court Fee Examiner, Deputy Sheriff and Liaison Officer (Protocol);

Category-2 of Division II, viz., Senior Private Secretary to Hon'ble Judges/Private Secretary to Hon'ble Judges/Personal Assistant to the Hon'ble Judges including Personal Assistant to the Hon'ble the Chief Justice;

Category - 3 of Division-II viz., Interpreter; and

Category - 4 of Division - II viz., Private Secretary to the Registrar General.

The ratio of 2:1 shall be adopted while making promotion to Category-6C of Division-I, viz., Librarian among the categories 1 and 2 of Division-II viz., Court Officer/Section Officer/Appeal Examiner, including Section Officer (Property), Court Fee Examiner, Deputy Sheriff and Liaison Officer (Protocol) and Senior Private Secretary to Hon'ble Judges/Private Secretary to Hon'ble Judges/Personal Assistant to the Hon'ble the Chief

Justice, respectively'.

4. In the Representation dated 27.03.2017, the Petitioner had proceeded to make a pertinent mention that as per the aforesaid Rule, two members from the cadre of Court Officer/Appeal Examiner/Section Officer and one member from the cadre of Senior Private Secretary/Private Secretary/Personal Assistant shall be promoted to the post of 'Librarian' and as per the 2:1 ratio, the Roster will be as follows:

Post No.: 1- CO/SO/AE
Post No.: 2 - CO/SO/AE
Post No.: 3 - Sr.PS/PS/PA
Post No.: 4 - CO/SO/AE
Post No.: 5 - CO/SO/AE

5. The stand of the Petitioner is that at the time of promotion to the post of 'Librarian', he was fourth in seniority in the cadre of CO/SO/AE and if the above Roster was strictly adhered to, he would have been in the fifth place as 'Librarian'. Furthermore, inasmuch as, the ratio as stated supra was not followed, the Petitioner's grievance is that his name was not included at the time of promotion for the post of 'Librarian' and in fact, he was holding the qualifying degree for the post of 'Librarian'.

6. The Petitioner, in his Representation dated 27.03.2017 addressed to the First Respondent had also proceeded to point out that while filling up five vacancies for the post of 'Librarian' as per Notification No.62/2016 dated 29.04.2016, after coming into effect of the aforesaid Revised Rules, ratio of 2:1 between the cadre of CO/AE/SO and Sr.PS/PS/PA was not followed.

7. The plea of the Petitioner is that the Office of the Registry at the time of filling up of five vacancies for the post of 'Librarian' as per Notification No.62/2016, dated 29.4.2016, (after coming into force of the aforesaid Revised Rules) had not properly followed the ratio of 2:1 between the cadre of CO/AE/SO and Sr.PS/PS/PA. But, followed the undermentioned Roster which had resulted in deprivation of his seniority and the same runs as under:-

"Post No.: 1 - Sr.PS/PS/PA
Post No.: 2 - CO/SO/AE
Post No.: 3 - CO/SO/AE
Post No.: 4 - Sr.PS/PS/PA
Post No.: 5 - CO/SO/AE

8. At this stage, the Learned Counsel for the Petitioner emphatically submits that the Petitioner had rendered 29 years of unblemished service in the Office of the Registry and he is to retire on 31.01.2027 and if the Roster, as specified by the Revised Rules is followed, then, he would get his promotion on time as per seniority and therefore, made a request to place him at the appropriate position as per the High Court guidelines and refix his seniority and to shower him with all monetary benefits.

9. A perusal of the affidavit in W.P.No.5404 of 2018 filed by the Petitioner, shows that the Petitioner is elder to the Second Respondent and further, it is his grievance that he should have been promoted to the post of 'Librarian' on 29.04.2016 and that the Second Respondent was illegally included in the order of promotion dated 29.04.2016. Further, the claim of the Petitioner is that he is entitled to be promoted as Assistant Registrar on notional basis with effect from the date of promotion to the Second Respondent to the said post and his entitlement to the same is in accordance with proviso to Rule 35 (aa) of Tamil Nadu State and Subordinate Service Rules, by means of which, he should be deemed to have been promoted to the higher posts with effect from the date of promotion of the Second Respondent.

10. The prime contention advanced on behalf of the Petitioner is that the Petitioner has to be necessarily placed above the Second Respondent in the seniority list of the holders of Category 6 post which is the feeder category for promotion to the post of Assistant Registrar that falls under Category 5 and in view of the same the Petitioner is entitled to be promoted to the post of Assistant Registrar with effect from 17.11.2017 i.e., the date on which, his junior viz., the Second Respondent was promoted as Assistant Registrar.

11. The Learned Counsel for the Petitioner comes out with plea that the posts of 'Librarian' and 'Sub Assistant Registrar' belong to same Category viz., Category 6 and for no fault of Petitioner, he was not promoted to the post of Librarian on 29.04.2016 though he should have been promoted in the place of Second Respondent and also for his delayed promotion to Category 6 i.e., in the post of Sub Assistant Registrar on 28.02.2017, in accordance with proviso to Section 40 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, which provides that where the junior appointed by a particular method of recruitment (promotion herein) happens to be appointed to a Service, Class, Category or Grade (Category herein) earlier than the senior appointed by the same method of recruitment, the senior shall be deemed to have been appointed to the Category on the same day on which the Junior was so appointed. Besides this, the Third Proviso to Section 40 also provides that if a person

deemed to have been appointed on the same day (as that of his junior) the inter se seniority shall be decided with reference to their age.

12. In response, it is the contention of the Learned Counsel for the First Respondent that the claim of the Petitioner is that promotion to the post of 'Librarian', ordered in the year 2016, should have been given as:

Thiru./Tmt./Selvi

- | | |
|-------------------|---------------|
| 1.T.E.Janaki | - CO/SO/AE |
| 2.S.Jaya | - CO/SO/AE |
| 3.G.Balakrishnan | - Sr.PS/PS/PA |
| 4.G.Govindaraju | - CO/SO/AE |
| 5.S.Purushothaman | - CO/SO/AE, |

in which event, the promotion given to the Second Respondent (L.Anandan) was not questioned by the Petitioner, at the time of promotion of the Second Respondent, would be unsettled now.

13. It is the further stand of the Learned Counsel for the First Respondent/Registrar General, High Court, Madras that the Petitioner's Representation dated 27.03.2017 was considered by the Hon'ble Promotion Committee and an Official Memorandum in ROC No.1338/2017/RG/B2 was issued to the Petitioner stating that his Representation was rejected because of the reason that he had not submitted his Representation at the time of his non-consideration for the post of 'Librarian' in the year 2016 and that, promotion given to Mr.L. Anandan cannot be indirectly assailed and further that, Revision of seniority sought for, will upset promotions ordered in the year 2016 and thereafter, Settled issues would be unsettled.

14. Furthermore, it is projected on the side of the First Respondent that as on date two posts in the cadre of Assistant Registrar are vacant and as per the Seniority List of Sub Assistant Registrars, the Petitioner is placed at Seniority No.7 and in the list of eligible persons for promotion to the post of Assistant Registrar, he is placed at Seniority No.2 and he is well within the zone of consideration.

15. By way of Reply, the Learned Counsel for the Petitioner proceeds to point out that the First Respondent had failed to consider that the Petitioner, being the Fourth Senior, most qualified and eligible holder of the post of Court Officer/Section Officer/Appeal Examiner, including Section Officer (Property), Court Fee Examiner, Deputy Sheriff and Liaison Officer (Protocol) and as the first two vacancies and the fourth and fifth vacancies in the post of Librarian have to be filled from in accordance with ratio of 2:1 as prescribed in

Rule 14(m) of Madras High Court Service Rules, 2015, the fifth vacancy in the post of Librarian as on 29.04.2016 ought to have been filled up only by the Petitioner and the Second Respondent ought not to have been promoted to the post of Librarian as on 29.04.2016.

16. The Learned Counsel for the Petitioner submits that Rule 35(f) of Tamil Nadu State and Subordinate Services provides three years time for making claims regarding to seniority and the plea that 'settled seniority cannot be unsettled' will arise only after the lapse of three years from the date of the grievance pertaining to seniority in accordance with Rules.

17. The Learned Counsel for the Petitioner points out that the Second Respondent is only the second senior most candidates amongst the holders of the post of Senior Private Secretary to the Hon'ble Judges/ Private Secretary to Hon'ble Judges (including P.A. to the Hon'ble the Chief Justice) and if 2015 Rules are to be applied, then, the ratio of 2:1 is to be followed from the first vacancy.

18. In this regard, the Learned Counsel for the Petitioner adverts to Rule 14 (f) of the Madras High Court Service Rules, 2015 which provides for continuing from the vacancy filled up during the immediate preceding selection while filling up the vacancies in rotation as per 2:1 ratio only if the vacancies are less than three at a given point of time. In short, it is the stand of the Petitioner that while such a provision of filling up the vacancies in rotation by continuing from the vacancy filled up during the immediate preceding selection is not provided in Rule 14(m) of 2015 Rules and the same is provided only in Rule 14(j) and further, even in Rule 14(j) the said provision will be applicable only in cases where less than three vacancies arise at a given point of time. Therefore, it is represented on behalf of the Petitioner that the question of continuing from vacancies filled up during the immediate preceding selection that too when the earlier selection was made in accordance with pre-amended Rules would not arise in the given case of filling up the five vacancies in the post of 'Librarian' by following Rule 14(m) of 2015 Rules.

19. It may not be out of place for this Court to make a significant mention that Rule 26 of the Madras High Court Service Rules speaks of 'Application of other Rules regarding Pay, Allowances, Leave, Leave Salary, Pension and other conditions of Service' and the same is as follows:

Subject to these Rules, the Tamil Nadu State and Subordinate Service Rules, the Fundamental Rules and the subsidiary Rules thereunder, the Tamil Nadu Leave Rules, 1933, the Tamil Nadu Pension Rules, 1978,

the General Provident Fund (Tamil Nadu) Rules, The Tamil Nadu Government Servants Conduct Rules, the Tamil Nadu Civil Services (Discipline and Appeal) Rules, and Rules regulating the pay of the Services and other Rules, time being in force, applicable to employees under the Rule making power of the Government of Tamil Nadu shall govern the members of Service in the matter of their pay, allowances, leave, leave salary, pension and other conditions of Service.

Provided that except with regard to salaries, allowances, leave and pensions, the Chief Justice shall exercise the powers vested in the Governor under any of the aforesaid Rules:

Provided further that the Chief Justice shall specifically issue orders sanctioning the grant of the scales of pay and allowances to the member of Service in accordance with those sanctioned by the Government from time to time.

Provided also that the Tamil Nadu Revised Scales of Pay Rules, time being in force and as prescribed in the order issued by The Chief Justice shall be applicable to the members of the Service. (Annexure to these Rules).

20. Further, it is projected that application for revision of Seniority as per Section 35(f) of the Tamil Nadu State and Subordinate Service Rules shall not be applicable to cases of rectifying orders, resulting from Mistake of Facts.

21. At the outset, this Court points out that the term 'Seniority' is a Civil Right and certainly it is not a fundamental right. Service Seniority is governed by existing Rules and the same is required to be worked out accordingly. 'Seniority' is an incidence of service. An Employee is interested in his inter-se Seniority. 'Promotion', more often than not is based on 'Seniority'. Undoubtedly, 'Promotion' is an act of elevation conveyed by an Employer in writing in favour of a person promoted and duly communicated. In short, 'Promotion' must fulfill the test of Selection as per Statute, Rules and Regulations and Administrative instructions. A person is recruited to a public service not for a job, but for an entire carrier and as such, an opportunity to climb up the ladder is to be provided in a given case, of course, as per Rules. Further,

any Rule taking away the civil right of an Employee in respect of Seniority requires strict constructions, as per decision of the Hon'ble Supreme Court in State of Uttar Pradesh V. Dinkar Sinha, (2007) 10 SCC 548.

22. It is to be pointed out that an Executive/Administrative Order must exhibit an outline of process of reasoning. A reasoned order will have an 'Appearance of Justice' From the point of view of an 'Affected Person' an unreasoned Order is not a Just and Valid one.

23. It is to be remembered that the word 'Consideration' ordinarily means something is considered as 'Ground of Opinion or Action'.

24. It is to be relevantly pointed out that in the decision of Hon'ble Supreme Court in Mohinder Singh Gill and another vs The Chief Election Commissioner, New Delhi and Others reported in AIR 1978 SC 851 at Special Page 858, wherein, at Paragraph No.8, it is observed as under:-

"The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji (AIR 1952 SC 16) (at p.18):

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to, do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

Orders are not like old wine becoming better as they grow older:

A Caveat.

25. Also, in the decision of the Hon'ble Supreme Court in Barium Chemicals vs A.J. Rana reported in AIR 1972 SC 591 at Special Page 595 and 596, wherein at Paragraph 15, it is observed as under:-

The words 'considers it necessary' postulate that the authority concerned has thought over the matter deliberately and with care and it has been found necessary as a result of such thinking to pass the order. The dictionary meaning of the word 'consider' is 'to view attentively, to survey, examine, inspect (arch), to look attentively, to contemplate mentally, to think over, meditate on, give heed to, take note of, to think deliberately, be think oneself. to reflect' (vide Shorter Oxford Dictionary). According to Words & Phrases-Permanent Edn: Vol. 8A to 'consider' means to think with care. It is also mentioned that to 'consider' is to fix the mind upon with a view to careful examination; to ponder; study; meditate upon, think or reflect with care. It is, therefore, manifest that careful thinking or due application of the mind regarding the necessity to obtain and examine the documents in question in sine que non for the making of the order. If the impugned order were to show that there has been no careful thinking or proper application of the mind as to the necessity of obtaining and examining the documents specified in the order, the essential requisite to the making of the order would be held to be non-existent.

26. That apart, in the decision of the Hon'ble Supreme Court in State (Anti-Corruption Branch), Govt. of NCT of Delhi and another vs Dr.R.C. Anand and Another reported in (2004) 4 SCC 615 at special page 621, wherein, at Paragraph No.13, it is observed as follows:

"13. The validity of the sanction would, therefore, depend upon the material placed before the sanctioning authority and the fact that all the relevant facts, material and evidence including the transcript of the tape record have been considered by

the sanctioning authority. Consideration implies application of mind. The order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. This fact can also be established by extrinsic evidence by placing the relevant files before the Court to show that all relevant facts were considered by the sanctioning authority. (See Jaswant Singh vs State of Punjab, AIR 1958 SC 124 and State of Bihar vs P.P. Sharma, 1992 Supp (1) SCC 222.)

27. As regards the plea of the First Respondent that the Petitioner had not given representation at the time of his non-consideration for the post of Librarian in the year 2016, it is to be pointed out that a Notification No.62/2016 in R.O.C.No.08/2016-Con.B2 was issued by the First Respondent represented by Registrar General on 29.04.2016 and that the Petitioner made a representation on 27.03.2017, which according to the Petitioner, is well within three years.

28. On going through the contents of the Representation dated 27.03.2017, the stand taken by the Petitioner in the present Writ Petition and also the detailed Representation of the Petitioner dated 14.02.2019 addressed to the First Respondent/Registrar General, High Court, Madras, this Court is of the view that rejection Order passed by the First Respondent ROC No.1338/2017/RG/B2 dated 15.12.2017 had not adverted to the points raised by the Petitioner in his Representation dated 27.03.2017 by ascribing necessary reasons thereto. But only mentioned that the Petitioner had not submitted the Representation at the time of his non-consideration for the post of Librarian in the year 2016 and that promotion given to Mr.L. Anandan could not be indirectly assailed etc. As such, this Court interferes with the Order of the First Respondent dated 15.12.2017 and sets aside the same. Consequently, the Writ Petition succeeds.

29. In fine, the Writ Petition is allowed. No costs. The Impugned Order of the First Respondent dated 15.12.2017 is set aside by this Court for the reasons assigned in this Writ Petition. At this stage, this Court, without expressing any opinion on the merits of the earlier Representation dated 27.03.2017 and the present Representation dated 14.02.2019 and also not delving deep in the subject matter in issue, simpliciter directs the First Respondent to 'De novo' consider the aforesaid two Representations of the Petitioner dated 27.03.2017 and 14.02.2019, in a free, fair, just, objective and dispassionate manner and to pass a reasoned final order with

reference to the pleas raised, within a period of eight weeks from the date of receipt of copy of this Order, of course, uninfluenced and untrammelled with any of the observations made by this Court in the present Writ Petition.

30. Before parting with the case, this Court makes it lucidly clear that it is open to the Petitioner to seek an opportunity of hearing before the First Respondent/High Court, Madras to represent his case/air his grievances, if he so desires/advised and the same may be considered by the First Respondent, if need be/situation so warrants, based on the facts and circumstances of the present case, which float on the surface. Also that, the Petitioner shall provide necessary assistance and unstinted co-operation to the First Respondent in passing the final order in the subject matter in issue within the time adumbrated by this Court. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

sr
To

The Registrar General
High Court of Judicature at Madras,
Chennai - 600 014

+1 CC to Mr.M.Ravi, Advocate sr 20699

W.P.No.5404 of 2018

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