



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.29237 of 2012

K.Kotteeswaran

.. Petitioner

Vs.

1.The Principal Commissioner and
Secretary to Government,
Labour and Employment Department,
Fort St. George,
Chennai - 600 009.

2.The Director of Employment & Training,
Employment and Training,
Guindy, Chennai - 600 032.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 2nd respondent through his proceedings in Nir.36022/11 dated 17.11.2011 and to quash the same and consequently directing the respondents to refix the seniority of the petitioner in the appropriate place and to effect retrospective promotion promoting the petitioner as District Employment Officer on par with his Juniors with all monetary and attendant benefits.

For Petitioner : Ms.T.P.Kuilmozhi

For respondents : Mr.R.S.Selvam
Government Advocate

O R D E R

The present Writ Petition is filed for issuance of a writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 2nd respondent through his proceedings in Nir.36022/11 dated 17.11.2011 and to quash the same and consequently directing the respondents to refix the seniority of the petitioner in the appropriate place and to



effect retrospective promotion promoting the petitioner as District Employment Officer on par with his Juniors with all monetary and attendant benefits.

2. According to petitioner, he was appointed as Junior Assistant on 08.03.1977 in Government I.T.I. Hosur, through Tamil Nadu Public Service Commission. The petitioner's service was regularized on 28.12.1979 and he was posted to various places in the District Employment Office. A panel for promotion to the post of Assistant was prepared for the year 1985-1986. The name of the petitioner was overlooked due to various charges and currency of minor punishments. The petitioner filed T.A.No.736 of 1991 on the file of the Tamil Nadu Administrative Tribunal. The Tribunal passed an order directing the respondents to consider the case of the petitioner for promotion, if his work have adequate and his conduct has been satisfactory for the last three or four years. Based on the said order, the petitioner was promoted as Assistant on 13.11.1992.

3. While he was working as Junior Assistant in the District Employment Office, Salem, the Assistant Director of District Employment Office by the proceedings dated 25.10.1982, 04.12.1982 and 09.05.1983, imposed punishments of stoppage of increment for one year without cumulative effect, stoppage of increment for three months and censures respectively. A panel for promotion to the post of Junior Employment Officer was prepared in the year 2003-2004. The crucial date for the preparation for the said panel is 01.04.2003. At that time, the petitioner was not subjected to any charge or there was no currency of punishments. The petitioner's immediate junior Mrs.D.Nalini was promoted as Junior Employment Officer and she retired as District Employment Officer.

4. The petitioner made representation to the respondents 1 and 2 to include his name into the panel for the year 2003-2004 to the post of Junior Employment Officer, considering his seniority in the entry level post. The same was pending with the respondents for a long time. The petitioner filed W.P.No.45386 of 2006 and this Court by the order dated 23.11.2006 directed the respondents to consider the petitioner's representation dated 30.11.2005 and 12.04.2006 and pass appropriate orders within a period of eight weeks. The first respondent through his letter bearing No.4112/D2/2006-12 dated 23.01.2007, rejected the petitioner's claim for promotion. Challenging the said order, the petitioner filed W.P.No.3264 of 2009. This Court by the order dated 08.10.2009, dismissed the said Writ Petition.

5. The petitioner's immediate junior Mrs.D.Nalini was promoted as Junior Employment Officer. The crucial date for preparation of panel for promotion to the post of Junior



Employment Officer was 01.04.2003 and during that time, the petitioner was not suffering from any punishments. The petitioner's name was not included in the panel for promotion as Junior Employment Officer and the petitioner gave a representation dated 09.11.2010 and 30.11.2010 to the respondents. The representations were not considered by the respondents. The petitioner filed Writ Petition in W.P.No.15166 of 2011 and this Court by the order dated 30.08.2011 directed the respondents to consider the claim of the petitioner on merits. The second respondent by the impugned order dated 17.11.2011, rejected the claim of the petitioner for promotion. Challenging the said order, the petitioner has come out with the present Writ Petition.

6.The learned counsel appearing for the petitioner contended that the petitioner was senior to the said Mrs.D.Nalini in the entry level post of Junior Assistant and the petitioner's name was not considered for promotion during the year 2003-2004 as Junior Employment Officer, even though the petitioner is senior to said Nalini and no charges were pending when the panel for promotion was prepared. The reason given by the second respondent for rejecting the claim of the petitioner for promotion is not valid and the petitioner is entitled to promotion as Junior Employment Officer and District Employment Officer from the date when his immediate junior Mrs.D.Nalini was promoted. The denial of promotion to the petitioner amounts to double jeopardy and prayed to quash the impugned order and allowing the Writ Petition.

7.The respondents filed counter affidavit and Mr.R.S.Selvam, learned Government Advocate appearing for the respondents contended that the petitioner while working as Junior Assistant committed number of misconduct and suffered punishment. Due to pendency of punishment, the petitioner was not promoted as Assistant during the year 1986-1987 when his immediate junior Mrs.D.Nalini was promoted as Assistant and the said Mrs.D.Nalini was in serial No.318 in the seniority list of Assistant. The petitioner was promoted as Assistant only on 13.11.1992 and he was in serial No.388 in the seniority list of Assistant. During the year 2003-2004, 4 vacancies arose for the post of Junior Employment Officer. 14 Assistants upto serial No.328 were considered for promotion as Junior Employment Officer. The said Mrs.D.Nalini was included in the panel at serial No.4 for the post of Junior Employment Officer. The petitioner was in serial No.388 and hence he was not included in the panel for promotion to the post of Junior Employment Officer for the year 2003-2004. During the year 2011-2012 for the vacancy that arose for the post of Junior Employment Officer, the petitioner was promoted as Junior Employment Officer by the proceedings dated 18.04.2011.



7(a). On 01.09.2009, 33 posts of District Employment Officer felt vacant. The post of Junior Employment Officer is the feeder post for promotion to the post of District Employment Officer. The crucial date for preparation of panel list for promotion to the post of District Employment Officer for the year 2010-2011 is 01.09.2009. Mrs.D.Nalini was in the serial No.27 in the post of Junior Employment Officer and her name was included in the panel at serial No.18 for the post of District Employment Officer. At the time of preparation of panel to the post of District Employment Officer, the petitioner was working only as Assistant and he was not eligible to be promoted as District Employment Officer on par with Mrs.D.Nalini, as he did not satisfy the qualification and seniority and therefore the petitioner was not considered for promotion. The petitioner was promoted as Assistant and then to Junior Employment Officer, long after Mrs.D.Nalini was promoted and petitioner was junior to Mrs.D.Nalini in the post of Assistant and Junior Employment Officer. Therefore, the petitioner is not entitled to promotion on par with Mrs.D.Nalini and prayed for dismissal of the Writ Petition.

8. Heard the learned counsel appearing for the petitioner as well as Mr.R.S.Selvam, learned Government Advocate appearing for the respondents and perused the entire materials on record.

9. From the materials available on record, it is seen that the petitioner was appointed as Junior Assistant on 08.03.1977 before one Mrs.D.Nalini was appointed as Junior Assistant. The petitioner was in serial No.277 in the post of Junior Assistant, while the said Mrs.D.Nalini was in serial No.278 in the seniority list for the post of Junior Assistant. The petitioner suffered several punishments and therefore he was overlooked for promotion to the post of Assistant during the year 1986-1987 and the said Mrs.D.Nalini was promoted as Assistant during the year 1986-1987. The petitioner was promoted as Assistant only on 30.11.1992 and the said Mrs.D.Nalini was in serial No.318 in the post of Assistant, while the petitioner was in serial No.388 in the post of Assistant. The petitioner did not challenge the seniority list and did not claim that he must be placed above the said Mrs.D.Nalini in the seniority list of Assistant for the year 1986-1987. The said Mrs.D.Nalini was promoted as Junior Employment Officer on 04.06.2004. The petitioner did not challenge the said promotion and did not claim that he must be promoted on par with Mrs.D.Nalini. He gave two representations dated 30.11.2005 and 12.04.2006 and filed Writ Petition in W.P.No.45386 of 2006 before this Court, as the respondents did not pass any orders on the representations given by the petitioner. This Court by the order dated 23.11.2006, directed the respondents to consider the representation of the petitioner and pass orders on the representation given by the petitioner.



The second respondent rejected the representation of the petitioner by the order dated 23.01.2007. The petitioner challenged the said order in the year 2009 by filing Writ Petition in W.P.No.3264 of 2009. This Court by the order dated 08.10.2009, dismissed the Writ Petition taking into consideration that 28 charges were pending and minor punishments were imposed on the petitioner and domestic enquiry under Rule 17(b) of Tamil Nadu Civil Services (D&A) Rules was pending against the petitioner. The petitioner did not challenge the order of this Court dated 08.10.2009 made in W.P.No.3264 of 2009 by taking further proceedings.

10.Subsequently, in the vacancy that arose for promotion to 33 posts for District Employment Officer during the year 2009, the said Mrs.D.Nalini was promoted as District Employment Officer, as she was working as Junior Employment Officer, which is a feeder category for being promoted as District Employment Officer and she possessed all other requisite qualification. During that time, the petitioner was working only as an Assistant and therefore he was not eligible for being considered for promotion to the post of District Employment Officer. The petitioner was promoted as Junior Employment Officer on 18.04.2011, as he was not undergoing any punishment of currency on crucial date for promotion for the panel of the year 2011-2012 and he was retired from service on 31.07.2011. The petitioner gave a representation dated 03.01.2011 to the respondents to include his name in the panel for promotion for the post of District Employment Officer for the year 2010-2011. As per the order dated 30.08.2011 passed by this Court in W.P.No.15166 of 2011 to consider the representation of the petitioner on merits, the petitioner's representation was considered and by impugned order, the same was rejected by giving valid reason. From the facts stated above, the petitioner was not promoted as Assistant during the year 1986-1987, when his immediate junior Mrs.D.Nalini was promoted for the post of Assistant and the petitioner did not challenge the said promotion. In view of the above facts stated above, the petitioner is not entitled to promotion as claimed by him. There is no reason warranting interference by this Court to quash the impugned order.

11.In the result, this Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

krk



To

1.The Principal Commissioner and
Secretary to Government,
Labour and Employment Department,
Fort St. George,
Chennai - 600 009.

2.The Director of Employment & Training,
Employment and Training,
Guindy, Chennai - 600 032.

+1cc to Mr. S.T.P.Kuilmozhi, Advocate, S.R.No. 52634
+1cc to the Government Pleader, S.R.No. 53416

W.P.No.29237 of 2012

BR(CO)
GN(19/08/2019)