

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 04.04.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P. NO. 9827 OF 2011

N.Perumal

.. Petitioner

- Vs -

1. Tamil Nadu Civil Supplies Corporation, rep. By its Managing Director
No.25, Thambusamy Road
Kilpauk, Chennai 600 010.

2. The General Manager (Administration)
Tamil Nadu Civil Supplies Corporation
No.25, Thambusamy Road
Kilpauk, Chennai 600 010.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records on the file of the 2nd respondent pertaining to the communication dated 14.3.2011 bearing Reference Na.Ka. No.AE5/11697/2011 and quash the same and consequently direct the respondents to promote the petitioner as Assistant with effect from 25.3.2010 and pay all arrears of salary and retiral benefits and pension with interest at the rate of 24% p.a., from the dates on which the amounts became due till date of disbursement.

(Prayer amended as per order dated 14.06.2011 in M.P.1/2011 in W.P.No.9827/2011)

For Petitioner : Ms. Gopika, for
M/s. Sai Bharath & Ilan

For Respondent : Mr. S.Ramachandran

ORDER

The petitioner was working as Junior Assistant in the respondent/Corporation. The next avenue of promotion is to the

post of Assistant. According to the Employees Service Regulations, 1989, the qualification prescribed for promotion from the post of Junior Assistant to the post of Assistant was three years in the post of Junior Assistant. According to the petitioner, he had completed three years of service as on 12.2.2010 and he came within the zone of consideration for promotion during March, 2010.

2. On 25.3.2010, some of the Junior Assistants were promoted overlooking the seniority of the petitioner. According to the petitioner, there was no impediment for his consideration for promotion, as he had fulfilled all other requirements in terms of the Service Regulations, 1989. In the said circumstances, the petitioner appears to have made a representation to the Corporation to promote him by his letters dated 31.12.2010 and 11.1.2011. Since there was no response forthcoming from the Corporation, he had sought information under the Right to Information Act on 14.3.2011. In response to his application, final order was passed on 14.3.2011 stating that the petitioner had not passed commercial Book-keeping test during his tenure as Junior Assistant and, therefore, he was not entitled to be promoted as Assistant. In the meanwhile, the petitioner, on attaining the age of superannuation, retired from service on 3.1.1.2011. The above rejection order dated 14.3.11. is put to challenge in the present writ petition.

3. Ms.Gopika, learned counsel appearing for the petitioner strenuously contended that the stated ground on which the promotion was denied to the petitioner to the post of Assistant cannot be countenanced both in law and on facts since as per the Employees Service Regulations, 1989, the qualification, as prescribed was only three years of service as Junior Assistant and the person should be an approved probationer in the post of Junior Assistant. This qualification was fulfilled by the petitioner and, hence, the question of passing Commercial Book-keeping test did not arise at all. Therefore, she submits that the denial of promotion as Assistant to the petitioner on the date when his juniors were promoted is unsustainable and requires to be interfered with by this Court.

4. Per contra, learned counsel appearing for the respondent/Corporation submits that there has been some amendments, which had taken place in the service regulations and he drew the attention of this Court to one such amendment as found in Regulation 18, which is extracted hereunder :-

- "The following new regulations added as 18 (b)
- (i), (ii) as per 281st Board Meeting held on 15.05.1998 under item No.105 and as per reference No.23356/1996-F2, dated 29.05.1998.
 - i) Junior Assistants promoted from feeder

category of Helper/Bill Clerk/Record Clerk shall pass the D.O.M. Test within their period of probation failing which their probation shall not be declared and the sanction of increment shall be stopped till such he/she acquires the prescribed test.

ii) Typist/Telex/Telephone Operator who opt for conversion as Junior Assistant shall have passed the D.O.M. test conducted by TNPSC.

iii) The Typies/Steno-Typist/Telex/Telephone Operators who were already converted and not passed the test so far shall not be granted further increment till they pass the D.O.M. Test.

The Board resolved further only those who have passed the D.O.M. Test but not Commercial Book-keeping and therefore reverted may be restored as Junior Assistant and with due seniority and without monetary benefit for the period between the date of reversion and date of restoration as Junior Assistant after getting the individual undertaking from them to that effect."

5. Learned counsel for the respondents submit that as per the above regulation, passing of commercial book-keeping test was mandatory and in this case the petitioner having not passed the test was not entitled to be considered for promotion to the post of Assistant and, therefore, he submits that the original service regulation, as it stood before the amendment, cannot be applied in the case of the petitioner for the subject promotion.

6. At this, the learned counsel for the petitioner submits that it was the admitted position that probation in the post of Junior Assistant had been declared by the respondent/Corporation and the petitioner had become approved probationer in the post of Junior Assistant. She produced a copy of the communication declaring probation of the petitioner in the post of Junior Assistant. The approval of probation of the petitioner would fortify the claim of the petitioner for the subject promotion as even as per the amended regulations, probation shall not be declared unless an employee passes the prescribed test. It is submitted that even assuming the amended regulation would have application, the petitioner being a declared probationer, cannot be subjected to the amended regulation. It is further submitted that the scope of the amendment of the regulation was completely different and the same cannot be applied to the case of the petitioner herein.

7. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent/Corporation.

8. On a careful perusal of the submissions advanced on behalf of either side, this Court finds that there is considerable force in the contention put forth on behalf of the petitioner to the effect that the qualification, as prescribed in the employees service regulation was only 3 years in the post of Junior Assistant and being an approved probationer. Admittedly, the petitioner's probation in the post of Junior Assistant has been declared, which fact is not disputed by the respondent/Corporation, since a communication to that effect was produced before this Court. Once the probation of the petitioner was declared, he would become eligible for consideration for promotion to the next higher post, viz., the post of Assistant. In this case, admittedly, juniors to the petitioner were promoted during March, 2010, overlooking the seniority of the petitioner. Except the reason that the petitioner did not pass commercial book-keeping test, there is no other reason stated for denial of promotion to the petitioner.

9. As rightly contended by the learned counsel for the petitioner, passing of commercial book-keeping test was not a requirement at all in terms of the relevant recruitment rules and even otherwise, the petitioner's probation having been declared by the Corporation, he cannot be denied promotion on the ground that he had not passed commercial book-keeping test.

10. Even otherwise, this Court is of the view that the so-called amended regulation, as shown by the learned counsel for the Corporation cannot be applied to the claim of the petitioner herein, since his claim stands on a different footing and the so-called amended regulations cannot be applied, as the amendment contemplated under the regulations is only in respect of unapproved probationers. In any case, the scope of the amended regulation, as demonstrated by the learned counsel for the Corporation appears to be different and cannot be pressed into service in regard to the claim put forth by the petitioner herein. The case of the petitioner is plain and simple, that he having put in required number of years of service in the post of Junior Assistant and being an approved probationer, was entitled to be promoted as Assistant on par with his juniors.

11. In the above circumstances, the rejection of the petitioner's claim on the stated ground, as rightly contended by the learned counsel for the petitioner cannot ever be countenanced in law or on facts. The so called amended regulations cannot have any application to the claim of the petitioner herein and as such the petitioner is fully covered by the relevant provisions of the Employees Service Regulations, 1989, wherein it provides only for completion of three years of service and also approval of probation for being considered for promotion to the post of Assistant. Once the petitioner

fulfills the qualification, as prescribed in the regulations, he becomes automatically entitled to be promoted from the date his juniors were considered and promoted in March, 2010.

12. For the aforesaid reason, the petitioner has made out a case for grant of relief and, hence, the impugned order dated 14.3.11 is hereby set aside and the respondent/Corporation is directed to grant promotion notionally to the petitioner as Assistant from the date his juniors were promoted in March, 2010 and grant all attendant benefits in the notional post including revision of pay scale, qualification of pension, etc. It is made clear that the petitioner having not shouldered higher responsibility in the post of Assistant in actual terms, is not entitled to claim any arrears of salary applicable to the post of Assistant, but, however, entitled to notional fixation from the date of notional promotion and other consequential benefits arising therefrom. The respondent/Corporation is directed to pass appropriate orders promoting the petitioner as Assistant as indicated above and grant all other benefits as admissible to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

13. This writ petition is allowed with the aforesaid observations and directions. However, there shall be no order as to costs.

GLN

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Managing Director
Tamil Nadu Civil Supplies Corporation
No.25, Thambusamy Road
Kilpauk, Chennai 600 010.

2. The General Manager (Administration)
Tamil Nadu Civil Supplies Corporation
No.25, Thambusamy Road
Kilpauk, Chennai 600 010.

+1cc to M/s.Sai & Bharath, Advocate, SR.No.32669/19
+1cc to Mr.S.Ramachandran, Advocate, SR.No.33103/19

W.P. NO. 9827 OF 2011

Kak(02/07/2019)