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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.7163 of 2017

1.R.Thenmozhi-I
2.N.Kanagavalli
3.G.Dhandapani
4.D.Kumar
5.K.Anitha
6.E.Vijaya Shankar
7.V.Vijayalakshmi
8.G.Rajeswari
9.D.Jeyachitra
10.B.Wilson
11.D.Periyasamy
12.Jayalakshmi Kannan
13.G.K.Geetha
14.T.S.Harikrishnan
15.A.Chandrasekaran
16.B.Parimala
17.N.Tamilselvan
18.A.Rasitha
19.N.Kalaivani
20.G.Premalatha

.. Petitioners

v.

High Court of Judicature at Madras,
rep. by the Registrar General,
High Court, Chennai-600 104.

.. Respondent

Petition filed under Article 226 of the Constitution of India
praying for issue of Writ of Mandamus forbearing the respondent-
High Court from effecting promotions to the cadre of Section



Officer from the cadre of Assistant Section Officer without first completing the process of review of the illegal appointments/promotions to the post of Assistant made since 2002.

For Petitioners : Mr.M.Radhakrishnan

For Respondent : Mr.B.Vijay

ORDER

HON'BLE CHIEF JUSTICE

This writ petition has been filed by 20 Assistant Section Officers of the High Court contending that they have been appointed and were working as Copyists, upon being appointed in the year 2000 and after being promoted to the post of Assistants in the year 2007 and thereafter being promoted as Assistant Section Officers in the year 2011. Their prayer is, not to make any further promotions on the post of Assistant Section Officers, without reviewing the appointments and promotions made to the post of Assistants that were made in the year 2002 who are now claiming their right to be promoted as Section Officers. The challenge raised is on the ground that such of these persons who were appointed or promoted in the year 2002 had obtained appointment contrary to the Rules, the direct recruitees having not been appointed after due advertisement etc. and the promotees having not been promoted in accordance with Rules and therefore, they deserve to be reviewed in the light of the Apex Court decision in the case of Renu ad others v. District and Sessions Judge, Tis Hazari Courts, Delhi and another, reported in (2014) 14 SCC 50. Relying on the said judgment, it is urged by the petitioners that appointment made in contravention of the statutory Rules would be void and therefore, without reviewing the earlier unlawful appointments that have been made in the feeder cadre of the Assistant Section Officers, promotions to the post of Section Officers should not be made.

2. It is the assertion of the petitioners that the respondent High Court made appointment on the post of Assistants directly between the years 2002 and 2005 and had obtained 69 persons without any public advertisement in spite of the fact that the petitioners herein were entitled for being promoted on the post in question.

3. Besides this, promotions were also made contrary to the legal provision in the year 2004 to the post of Assistant



Section Officers that has been challenged in W.P.No.21237 of 2013 where such unlawful promoted persons have been arrayed as respondent Nos.3 to 26 in the writ petition filed by Mr.K.Ulaganathan.

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4. Thus, the petitioners who were promoted in the year 2005 (petitioner No.1) and 2007 (petitioner Nos.2 to 20), ought to have been granted promotion prior to the aforesaid appointees and therefore they have suffered injustice since 2002. The contention appears to be that had these petitioners been considered and promoted in the year 2002 itself, this difficulty would not have arisen, but the same was delayed on account of unlawful appointments and promotions made as referred to aforesaid thereby causing prejudice to the petitioners.

5. The sum and substance of the writ petition therefore is that appointments that were made by direct recruitment or promotion to the post of Assistants which were made between 2002 and 2005 prior to the promotion of the petitioners should be reviewed and should be declared to be nullity in the light of the judgment in the case of Renu (supra) and it is only thereafter that the Section Officers post by way of promotion should be filled up considering the case of the petitioners as well.

6. The High Court has filed counter-affidavit through the Registrar General contending that the challenge to the appointments made between 2002 and 2005 through a writ petition in the year 2017 is neither entertainable, nor maintainable after a lapse of more than one and half decade. This inordinate delay disentitles the petitioners from seeking any such relief.

7. It is further submitted through the counter-affidavit that the judgment in the case of Renu (supra) was delivered in the year 2014 and would not apply retrospectively for reviewing any appointment made between 2002 and 2005, nor does it do injustice in any way indicated so.

8. It is then contended that the judgment in the case of Renu (supra) was implemented by the High Court whereafter by framing Rules in tune therewith by repealing the Madras High Court Service Rules, 1955 and substituting it with new Rules framed in 2015. However, Rule 22 of the 2015 Rules provides a saving clause that appointments made or promotions effected under the repealed Rules would not in any way be affected by repeal of the Rules.



9. It is further contended that all the writ petitioners have been promoted as Assistant Section Officers between the years 2009 and 2011 and they have not questioned their promotions having been made by ignoring any earlier claim. No challenge was raised in this regard when they were promoted. It is then urged that neither the seniority as fixed in the year 2014, nor award of promotions were challenged and the writ petitioners accepted the same without any demur which they now cannot be permitted to challenge indirectly during promotions to the post of Assistant Section Officers. The High Court also contends that all those who were promoted as Assistants in the year 2002 and were further granted promotion as Assistant Section Officers about whom the grievance is raised in the writ petition, have not been arrayed as parties in the present writ petition. They having been fence-sitters with certain rights cannot be now divested through the indirect method for which the prayer has been made in the present writ petition.

10. The next contention raised on behalf of the petitioners is with regard to the different categories having been merged together. It appears from the record that the merger has taken place long after. Apart from this, the ratio of filling up of the vacancies to the post of Section Officers having been made in the light of the Rules that are in force, this writ petition filed by the petitioners who did not chose to raise any such pleadings is in effect a proxy petition that has been preferred taking the support of the facts stated in W.P.No.21237 of 2013 filed by one Mr.K.Ulaganathan. It is also submitted that this writ petition has also been filed by the very same counsel who has filed W.P.No.21237 of 2013.

11. We have considered the submissions raised and we find that if the petitioners were aggrieved by certain unlawful appointments or promotions made between 2002 and 2005 to the post of Assistants, they ought to have raised this plea then. Learned counsel for the petitioners contended that the petitioners were not aware of the unlawful status of such appointments and promotions. In this regard, learned counsel for the High Court informs that the claim of not having knowledge of the alleged unlawful appointments and promotions is neither pleaded, nor proved. It has also been indicated that all such representations were considered in the year 2015 and we find that petitioner No.9 - D.Jeyachitra had moved a representation



along with S.Sukumar, K.Ulaganathan and D.Senthilkumar in this regard in the year 2004 and 2005 itself while claiming their right to be promoted as Assistants and raising a grievance about promotions having been made. One other petitioner G.Rajeswari had also moved a representation and one V.Vijaya Lakshmi, who is petitioner No.7 had moved a representation in this regard. Photostat copies of the said representations have been placed from the record of the High Court before us and all these representations were considered and disposed of, whereafter, the seniority list was published in the year 2014. The decision of the Committee has also been placed that was approved by the then Chief Justice.

12. It is not understood as to why such of these petitioners who joined along with others did not chose to disclose these facts in the writ petition. The intention appears to be obvious as this writ petition has been filed to stall promotion to the post of Section Officers in the light of what had been raised by Mr.K.Ulaganathan in W.P.No.21237 of 2013. This writ petition is therefore very much generated after an inordinate delay in respect of the grievance raised under the cover of not being aware of what was happening in the High Court. This plea is absolutely unjustified and is contrary to the records. The petitioners are very much employees of this High Court and some of the petitioners who have joined in this petition have already represented with Mr.K.Ulaganathan who challenged in the previous rounds of litigation. The plea that the petitioners did not have knowledge is only oral and not substantiated at all. To the contrary, the records reveal that the petitioners were very much aware of promotions and appointments that had been made between 2002 and 2005, which they did not challenge.

13. It is for this reason that they have not made as parties in the writ petition, but indirectly have placed reliance on facts stated in W.P.No.21237 of 2013 filed by Mr.K.Ulaganathan where promotions made to the post of Assistant Section Officers have been questioned as being unlawful. The only addition in this writ petition is about the direct appointees to the post of Assistants between 2002 and 2005 on the ground that such appointments were unlawful and contrary to law as explained in the case of Renu (supra).

14. We find that the judgment in the case of Renu (supra) did not annul any past appointments and directed High Courts to re-frame their Rules accordingly. Thus, apart from the



inordinate delay in the issue being raised, that too without impleading the persons whose appointments and promotions are sought to be questioned, it is evident that the petitioners did not chose to challenge the seniority which was fixed in the year 2014 and are now seeking to achieve something indirectly which ought to have been timely challenged directly when occasion had arisen. The respondent High Court therefore is justified in contending that the petitioners were fence-sitters and had approached this Court on the strength of pleadings made in W.P.No.21237 of 2013 and the judgment in the case of Renu (supra) which otherwise does not come to the aid of the petitioner for the reasons already stated hereinabove. The 2015 Rules clearly contain a saving clause which does not in any way affect the appointments previously made and now at this stage it will not be appropriate for this Court to issue a direction for reviewing of such appointments treating them to be unlawful or not in accordance with law.

15. For all the aforesaid reasons, we see no merit in this writ petition, which is accordingly dismissed. No costs. Consequently, W.M.P.No.7786 of 2017 is closed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

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To:

The Registrar General,
High Court of Judicature at Madras,
Chennai-600 104.

+lcc to Mr.M.Radhakrishnan, Advocate sr.106358

W.P.No.7163 of 2017

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