

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2019

CORAM

THE HONOURABLE MR. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

W.P.No.27386 of 2018

P.Munuswamy

... Petitioner

vs.

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

2.The Secretary to Government,
Tamil Nadu Law Department,
Fort St. George,
Chennai - 600 009.

3.The Principal Judge,
City Civil Court,
Chennai - 600 104.

4.The Principal Judge,
Family Court,
Chennai - 104.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus by quashing the impugned order of the third respondent in his in Roc No.244/2018/E2/ Dated 14.8.2018 and consequently directing the respondents to notionally promote the petitioner as Record Clerk with effect from proceeding the year 2006 and Record Assistant with effect from January 2017 placing him on par with his junior Mr.Srinivasan and pay the arrears and the retirement benefit and pay the pension, which is payable to the Record Assistant on retired from service.

For Petitioner : Mr.V.Neethidurai
For R1, R3 & R4 : Mr.S.Kaithamala Kumaran
For R2 : Mr.S.N.Parthasarathy, Govt.Advocate

ORDER

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

Heard the Learned Counsel for the petitioner, the Learned Counsel for the Respondents 1, 3 and 4 and the Learned Government Advocate appearing for the Second Respondent. No Counter Affidavit is filed on behalf of the Respondents 1 and 2.

2.The Petitioner was appointed as Office Assistant with effect from 09.12.1988 based on Employment Office seniority and promoted to the post of Selection Grade Office Assistant with effect from 09.12.1998 and as Special Grade Office Assistant with effect from 09.12.2008. Further, he was promoted as Record Clerk with effect from 10.11.2009 as per the proceedings of the Third Respondent/Learned Principal Judge, City Civil Court, Chennai, dated 09.11.2009. In fact, his junior Srinivasan was appointed as Office Assistant with effect from 17.12.1988 and he was promoted as Record Clerk in the year 2006 itself and further promoted as Record Assistant in the month of January, 2017.

3.In the year 2006, a minor charge was pending against the Petitioner along with other Employees of the Court as regards missing of one Court Record and after due enquiry, his innocence was proved and proceedings initiated against him was dropped. By means of the proceedings dated 11.01.2008, the Petitioner was exonerated from the charges framed against him. After coming to know that his junior Srinivasan was promoted as Record Clerk in the year 2006 itself etc, on 02.08.2017, he submitted a representation to the Third Respondent/Learned Principal Judge, City Civil Court, Chennai through the Fourth Respondent/Learned Principal Judge, Family Court, Chennai seeking promotion of Record Assistant. When his representation was pending, he was permitted to retire from service on 28.02.2018.

4.At this stage, the Learned Counsel for the Petitioner emphatically submits that the Petitioner, prior to his retirement, should have been promoted notionally to the post of Record Clerk and Record Assistant and placed on par with his junior Srinivasan, now, serving in Principal City Civil Court, Chennai and granted him the arrears of monetary benefits. Further, the Petitioner on 02.08.2017 itself, submitted a representation seeking promotion as Record Assistant on par with his junior. Even though there were four vacancies, the same was not considered till his retirement. Once again, on 27.03.2018,

the Petitioner sent further representation to the Respondents seeking notional promotion to the post of Record Clerk with effect from 2006 and Record Assistant with effect from January 2017, placing him on par with his junior Srinivasan and pay the arrears of terminal benefits. Since the same was also not considered, the Petitioner has filed the present writ petition praying for an order of this Court in directing the Respondents to notionally promote him as Record Clerk with effect from 2006 and Record Assistant with effect from January 2017, placing him on par with his junior and pay the arrears and retirement benefits and pay the pension, which is payable to the Record Assistant on retired from service.

5. At this juncture, the Learned Counsel for the Petitioner projects an argument that the Third Respondent/Learned Principal Judge, City Civil Court, Chennai has passed the impugned order in ROC No.244/2018/E2 dated 14.08.2018 in a prejudicial manner and also by not providing an opportunity to the Petitioner to explain his case.

6. Expatiating his submission, the Learned Counsel for the Petitioner contends that Rule 36(cc) of the Tamil Nadu Judicial Ministerial Services Rules (shortly referred to as "TNJMS Rules") does not apply to the Petitioner, because he had no knowledge about the promotion of his junior as Record Clerk in the year 2006 and Record Assistant in January 2017, when the charges framed against him were exonerated and he came to know about the same only in the year 2017 and immediately he made a representation on 02.08.2017 and further representation on 27.03.2018.

7. Thus, the gist of the stand taken by the Petitioner in the present Writ Petition is that the impugned order dated 14.08.2018 of the Third Respondent/Learned Principal Judge, City Civil Court, Chennai, is an arbitrary, illegal one and also in negation of the Principles of Natural Justice.

8. Per Contra, it is the submission of the Learned Counsel Mr.S.Kaithamala Kumaran for the Respondents 1, 3 and 4 that as against the Petitioner, charges were framed in D.I.No.10/2003 for missing of case bundle and ultimately, he was exonerated from the charges as per the proceedings dated 11.01.2008, after which, he was promoted as Record Clerk on 10.11.2009 FN. That apart, when the charges were pending against the Petitioner, his junior one Srinivasan in the year 2006 was promoted as Record Clerk on 28.09.2006. Also that, the Petitioner made a representation on 02.08.2017 seeking promotion to the post of

Record Assistant and pensionary benefits. Later, he projected another representation on 27.03.2018 seeking promotion to the post of Record Clerk notionally with effect from 2006 and subsequently, to the post of Record Assistant with effect from January 2017, by determining his seniority on par with his junior Srinivasan etc.

9.The Learned Counsel Mr.S.Kaithamala Kumaran for the Respondents 1, 3 and 4 brings it to the notice of this Court that the Petitioner, on earlier occasion, filed WP.No.17865/2018 before this Court and on 16.07.2018, this Court had directed the Registrar General, High Court, Madras and the Principal Judge, City Civil Court, Chennai to look into the representations of the Petitioners dated 02.08.2017 and 27.03.2018 within a period of two weeks and dispose of the said representations within a period of four weeks from the date of receipt of copy of the order.

10.The Learned Counsel Mr.S.Kaithamala Kumaran for the Respondents 1, 3 and 4 proceeds to point out that the impugned order dated 14.08.2018 was passed by the Third Respondent/Learned Principal Judge, City Civil Court, Chennai rejecting the Petitioner's claim inter alia stating that as per Rule 17 in Rulings 27 of the Fundamental Rules and Rule 36(cc) of the TNJMS Rules, the individual had not submitted any requisition to restore his seniority after exonerating him from the charges within the prescribed time of three years. Therefore, it was observed that the request of the Petitioner for notional promotion to the post of Record Clerk with effect from 2006 on par with his junior, could not be considered, since he had not submitted any requisition within the period of three years as per Rule 36(cc) of the TNJMS Rules.

11.The Learned Counsel Mr.S.Kaithamala Kumaran for the respondents 1, 3 and 4 comes out with a plea that since the Petitioner had not claimed his right to refix seniority on par with his junior after exoneration order passed dated 11.01.2018 within the stipulated period of three years, as per Rule 36(cc) of TNJMS Rules, his seniority remained as junior to Srinivasan in the post of Record Clerk and his junior was promoted to the post of Record Assistant.

12.The Learned Government Advocate for the Second Respondent adopts arguments advanced by the Learned Counsel for the Respondents 1, 3 and 4.

13. In the present case, it comes to be known that the Petitioner, Record Clerk, City Civil Court, Chennai was transferred to Family Court, Chennai on 11.11.2009 FN. While he was working as Record Clerk in the Family Court, he has submitted a representation dated 02.08.2017 addressed to the Third Respondent/Learned Principal Judge, City Civil Court, Chennai through proper channel, requesting to promote him as Record Assistant so as to secure pensionary benefits. In reality, his request was forwarded to the Third Respondent/Learned Principal Judge, City Civil Court, Chennai on 09.08.2017 for necessary action. Later, the Petitioner on 02.01.2018 was transferred to City Civil Court as per the proceedings of the Third Respondent/Learned Principal Judge, City Civil Court, Chennai dated 02.01.2018 and his Service Register was forwarded to City Civil Court immediately. Thereafter, he retired from service on superannuation from the City Civil Court, Chennai on 28.02.2018 AN in the post of Record Clerk.

14. It transpires that the Third Respondent/Learned Principal Judge, City Civil Court, Chennai, in the departmental enquiry, initiated action against one K.Mathivanan, T.Thirumalai and P.Munusamy (Petitioner herein) and passed a final order on 17.12.2007 exonerating two delinquents (including the Petitioner) from the charges framed against them. In respect of one K.Mathivanan, a punishment of stoppage of increment for one year without cumulative effect excluding the periods spent on leave, was imposed on him.

15. It must be borne in mind that Rule 17 in Rulings 27 of the Fundamental Rules, enjoins as under:

"17. In case where a Government servant has been overlooked for promotion/appointment to the next higher post but subsequently promoted/appointed to that higher post after restoration of his original seniority on appeal, his pay shall be fixed on the date of assumption of charge in the higher post on par with the pay of his junior provided he has drawn the same rate of pay as his junior in the lower post from time to time. If he has not drawn the same rate of pay as his junior in the lower post, his pay shall be fixed, on the date of assumption of charge, at the stage at which he would have drawn pay on that date had he been promoted/appointed to the higher post along with his junior. In cases where seniority has been restored on or after 19th September 1981, arrears of pay and allowance consequent of fixation

of pay shall be admissible with effect from the date of assumption of charge in the higher post; in cases where seniority has been restored prior to 19th September 1981, arrears shall be admissible only with effect from the above date.

(G.O.Ms.No.977, Personnel and Administrative Reforms (FR.III), dated 6th October, 1986)

"Provided that in case of Government servants whose names were deferred for inclusion in the panel for promotion to higher post due to pendency of charges, but subsequently included in the same panel on exoneration of the charges after the date of their retirement on superannuation on appeal or review, their pay shall be fixed notionally on the date of their retirement on superannuation at the stage at which they would have drawn, had they been promoted or appointed to the higher post along with their junior for the purpose of pension and other monetary terminal benefit;

Provided further that in the case of Government servant whose names were deferred for inclusion in the panel due to pendency of charges and have subsequently died while in service or after retirement from service, the charges shall automatically stand abate. In such cases, the pay shall be fixed notionally on the last date of their service or on the date of the retirement on superannuation, as the case may be, at the stage at which they would have drawn, had they been promoted or appointed to the higher post along with their juniors for the purpose of pension and other monetary terminal benefits."

(vide G.O.Ms.No.120, P&AR(FR.IV) Department, dated 6.7.2001-w.e.f. 30.10.2000)

Furthermore, Rule 36(cc) of the TNJMS Rules, reads as follows:

"Application for the revision of seniority of a person in the service, class, category or grade shall be submitted to the appointing authority within a period of three years from the date of appointment to the service, class, category or grade or within a period of three years from the date of order fixing the seniority, as the case may be. Any application received after the said period of three years shall be summarily rejected. This shall not, however, be applicable to cases of rectifying orders, resulting from mistake of facts."

16.Indeed, Section 7 of the Tamil Nadu Government Servants (Conditions and Service) Act, 2016 speaks of 'Approved Candidates'. At this juncture, this Court aptly refers to Schedule XI [See Section 7(1)] Part-A of the Tamil Nadu Government Servants (Conditions and Service) Act, 2016 [Tamil Nadu Act No.14 of 2016 - Received the assent on 14.09.2016 (Amendment Act No.30 of 2017, dated 20.07.2017)], Section 7(1) (19), which runs as follows:

"The case of a member of service whose promotion or appointment has been deferred on account of any pending charges, shall be reopened after disposal of the charges and appropriate orders shall be passed on merits, either giving him promotion or appointment if he is exonerated or acquitted of the charges and if there is no other adverse factor to be reckoned or denying him promotion or appointment or giving promotion or appointment from a later date, depending upon the nature of punishment and other factors to be reckoned in other cases. In all such cases, the appointing authority shall take suo moto action within fifteen days from the date of issue of final orders in the departmental disciplinary case or criminal case."

17.It is to be noted that the words 'Suo motu Action' to be taken by the Appointing Authority within 15 days from the date of issuance of final orders in the Departmental Disciplinary Case or Criminal Case occurring in Section 7(1)(19) of the Act, 2016, in the considered opinion of this Court, are quite 'Explicit', 'Mandatory' and 'Admits of No Exception'.

18.By applying the contents of the aforesaid Schedule XI, Part-A, Section 7(1) (19) of the Act, 2016, in the instant case, when the Petitioner was exonerated of the charges levelled against him by virtue of the order passed by the 3rd Respondent as per proceedings dated 17.12.2007 (communicated on 11.01.2008), then, the Appointing Authority, who is supposed to take suo motu action within 15 days from the date of issuance of final orders in the Departmental Disciplinary Case, had not taken up the Petitioner's case suo motu and passed orders on merits by granting him due promotion as per Rules. Hence, there is a glaring omission on the part of the 3rd Respondent/Appointing Authority to take suo motu action within the date of receipt of

passing of final orders dated 17.12.2007 (communicated on 11.01.2008 to the Petitioner). For such an act of omission/commission on the part of the 3rd Respondent/Principal Judge, City Civil Court, Chennai, the Petitioner cannot suffer or to be penalised, when no fault can be attributed to him, despite the fact of his inaction that he had not projected any application within a period of three years from the date of order fixing the Seniority as per Rule 36(cc) of the TNJMS Rules.

19. In view of the foregoing and also in the present case, the Respondents 1, 3 and 4 fall back upon Rule 36(cc) of the TNJMS Rules and that the Petitioner submitted his representation to restore seniority well after the stipulated period of three years, but his request was rejected by the 3rd Respondent, this Court is of the considered view that the Schedule XI, Part-A of Section 7(1)(19) ingredients certainly operate to and in favour of the Petitioner and inasmuch as the 3rd Respondent had not taken any suo motu action within 15 days from the date of issue of final orders in the departmental disciplinary case [i.e. on 17.12.2007 (communicated on 11.01.2008) to the Petitioner], this Court, to prevent an aberration of Justice and to promote substantial cause of Justice, deems it fit and proper in directing the 3rd Respondent to consider the Petitioner's representations dated 02.08.2017 and 27.03.2018 respectively seeking notional promotion to the post of 'Record Clerk' and 'Record Assistant' on par with his Junior in accordance with Law. Furthermore, the claim of notional promotion to the post of Record Clerk and Record Assistant by the Petitioner will not affect or prejudice anyone and also that, it will not upset the 'Apple cart' and unsettle the 'Settled Seniority'. After all, by granting promotion to the Petitioner notionally to the post of Record Clerk and also Record Assistant, it will only enable him to receive pensionary benefits, since he attained the superannuation on 28.02.2018 AN. Looking at from any angle, this Court sets aside the impugned order of the 3rd Respondent dated 14.08.2018 and allows the present Writ Petition.

20. In fine, the Writ Petition is allowed. No costs. The impugned order dated 14.08.2018 passed by the Third Respondent/Learned Principal Judge, City Civil Court, Chennai is set aside by this Court for the reasons ascribed in this Writ Petition. The Third Respondent/Learned Principal Judge, City Civil Court, Chennai is hereby directed by this Court to consider the representations of the Petitioner dated 02.08.2017 and 27.03.2018 in fair, objective, just and unbiased, dispassionate and prudent manner and to pass a reasoned speaking order, on merits, ofcourse, in qualitative and quantitative terms, in the teeth of Schedule XI Part-A of Section 7(1)(19) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 by adhering to the Principles of Natural Justice, within a

period of six weeks from the date of receipt of copy of this order. If the Petitioner seeks any personal hearing before the Third Respondent with reference to his two representations dated 02.08.2017 and 27.03.2018, then, the Third Respondent shall consider that request and hear the grievances of the Petitioner. In this regard, it is open to the Petitioner to raise all Factual and Legal pleas before the Third Respondent, who shall advert to all the points raised by the Petitioner and pass reasoned speaking order, after applying thinking judicial mind. The Petitioner is directed to lend his assistance and unstinted co-operation to the Third Respondent to pass a final order, within the time determined by this Court.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Registrar General,
High Court of Madras,
Chennai - 600 104.
- 2.The Secretary to Government,
Tamil Nadu Law Department,
Fort St. George, Chennai - 600 009.
- 3.The Principal Judge,
City Civil Court,
Chennai - 600 104.
- 4.The Principal Judge,
Family Court, Chennai - 104.

+1cc to Mr.S.Kaithamali Kumaran, Advocate sr.10543
+1cc to the Government Pleader sr.11394
+1cc to Mr.V.Neethidurai, Advocate Sr.10578

W.P.No.27386 of 2018

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