



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2019

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

Writ Petition No.32742 of 2018

V.Manikandan
S/o.K.Venkatesan

...Petitioner

Vs

- 1.The Principal District Judge,
Cuddalore District,
Cuddalore.
 - 2.The Registrar General,
High Court, Madras.
 - 3.The Principal Secretary to Government,
Home (Courts V) Department,
Fort St.George,
Chennai - 600 009.
- [R3 impleaded vide order dated 07.06.2019
made in W.M.P.No.12474/2019]

... Respondents

Writ Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of first respondent in connection with the impugned order passed in A.No.69/2018 dated 05.03.2018 and quash the same and direct the respondents to revise the seniority of the petitioner in the cadre of Assistant/Bench Clerk Gr.III and promote him as Assistant by including his name in the appropriate panel notionally on par with his junior Mr.Harikrishnan, who was recruited on 08.07.2009 and grant him further promotion at par with his junior with all consequential service and monetary benefits.

For Petitioner : Mr.K.Venkataramani, senior counsel
for Mr.M.Muthappan

For Respondents: Mr.K.Elango [R1 and R2]
Mr.V.Shanmuga Sundar
Special Government Pleader [R3]



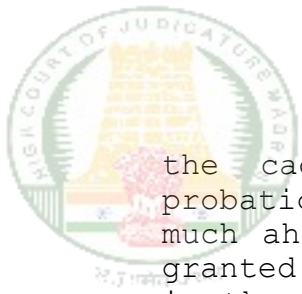
O R D E R

[Order was made by R.SUBBIAH, J]

Petitioner has filed the above Writ Petition seeking quash of the order of first respondent passed in A.No.69/2018 dated 05.03.2018 and consequently, direct the respondents to revise the seniority of the petitioner in the cadre of Assistant/Bench Clerk Grade-III and promote him as Assistant by including his name in the appropriate panel notionally on par with his junior Mr.Harikrishnan, who was recruited on 08.07.2009 and grant him further promotion on par with his junior with all consequential service and monetary benefits.

2. It is the case of petitioner that petitioner's mother was serving as Assistant in Sub-Court and she died on 08.08.2003 while she was in service. Pursuant thereto, petitioner was appointed as Junior Assistant on compassionate ground by proceedings of District Sessions Judge, Cuddalore on 25.01.2007. Petitioner reported for duty on 01.02.2007. Petitioner's service was regularised by orders of Government in GO 2(D) No.669, Home (Courts V) Dept dated 05.11.2013 after getting concurrence from the Tamil Nadu Public Service Commission, who is the competent authority. Though the petitioner was appointed on 01.02.2007, his service was regularised only on 05.11.2013 as there was delay in getting concurrence from the Tamil Nadu Public Service Commission. Thereafter, petitioner was sent to Bhavanisagar Institute for training from 26.07.2014 to 15.09.2014 and recommendations have been made to the Government for declaring the probation of the petitioner. Petitioner has also passed all the examinations conducted at the fag end of the training and petitioner's probation was declared by proceedings of Principal District Judge, Cuddalore, with effect from 12.02.2009. Thereafter, petitioner was promoted as an Assistant.

3. The grievance of the petitioner is that as per the date of appointment, petitioner has attained sufficient seniority and hence, eligible for inclusion of his name in the promotional panel for the year 2013. However, one Harikrishnan & others, who were recruited through TNPSC and appointed on 08.07.2009 and who happened to be juniors to the petitioner, were promoted as Assistant/Bench Clerk Grade III on 02.07.2012 and subsequently, promoted as Head Clerk in Magistrate Court on 23.11.2016 and Grade-II Bench Clerk at Sub Court, Panruti, on 09.08.2017 and further, promoted as Head Clerk in Sub-Court, Cuddalore, on 15.10.2018. As there was delay in regularisation of the petitioner's service as well as declaration of his probation, he could not get his promotion on par with his juniors. Had there been no delay in regularising the service of the petitioner in



the cadre of Junior Assistant as well as declaration of probation, petitioner would have got promotion as Assistant very much ahead of his junior Harikrishnan. Petitioner, who has been granted promotion belatedly, on account of administrative delay, in the panel of Assistant for the year 2015-16 instead of 2012-13, has made a detailed representation to first respondent through proper channel. However, the first respondent, under the impugned order dated 05.03.2018, rejected the petitioner's representation stating as follows:

'After regularisation of temporary services of the individual by the Government and after completion of Civil Service Training at Bhavanisagar, the individual was promoted as Assistant as per the proceedings of the Principal District Judge, Cuddalore, in A.No.03/2015 dated 07.11.2015. Hence refixation seniority w.e.f 01.02.2007 does not arise and the request of the individual is rejected.'

Hence, petitioner has filed the present Writ Petition seeking the aforesaid relief.

4. Heard learned senior counsel for petitioner, learned counsel for respondents 1 and 2 and learned Special Government Pleader for third respondent as also perused the counter of first respondent.

5. When the matter is taken up for consideration, learned counsel for petitioner submits that in an identical set of facts, several Writ Petitions were allowed.

6. Considering the facts and circumstances of the case, we are of the view that petitioner cannot be blamed for delay in getting concurrence from the Tamil Nadu Public Service Commission for regularising his service and non-inclusion of his name in the promotional panel for the year 2013. Petitioner's service was regularised only after 5½ years from the date of his initial appointment, which resulted in sending him to Bhavanisagar Institute for basic training from 26.07.2014 to 15.09.2014. Since the delay in regularising the petitioner's service as well as declaration of his probation has occurred only owing to administrative reasons, the petitioner cannot be denied promotion as Assistant on par with his juniors.

Accordingly, the Writ Petition is allowed. The order of first respondent passed in A.No.69/2018 dated 05.03.2018 is quashed. Consequently, respondents are directed to revise the seniority of the petitioner in the cadre of Assistant/Bench Clerk Grade-III and promote him as Assistant by including his name in the appropriate panel notionally on par with his junior Mr.Harikrishnan, who was recruited on 08.07.2009 and grant him further promotion on par with his junior. However, the



petitioner is not entitled to get any arrears of salary for the promoted post and the seniority alone is to be given. The said notional promotion shall be calculated for all purpose except back wages. No costs.

WEB COPY

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

gm

To

- 1.The Principal District Judge,
Cuddalore District,
Cuddalore.
- 2.The Registrar General,
High Court, Madras.
- 3.The Principal Secretary to Government,
Home (Courts V) Department,
Fort St.George,
Chennai - 600 009.

+1cc to Mr.M.Muthappan, Advocate SR.No.57051

Writ Petition No.32742 of 2018

LN (CO)
GMY (07/08/2019)