



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.09.2019

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P. (MD) .No.4134 of 2011
and M.P. (MD) .No.1 of 2011

Vamadevan Nair

.. Petitioner

Vs.

1.The Principal Secretary to Government
Labour & Employment Department,
Fort St. George, Chennai - 9.

2.The Commissioner of Labour,
Tamil Nadu Labour & Welfare Board Building,
DMS Compound, Thenampet,
Chennai - 6.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for the records of the Impugned order of the first respondent in Letter No.33986/E1/2010-7, dated 27.01.2011, quash the same and consequently direct the respondents to promote the petitioner as Assistant Commissioner of Labour with effect from 27.01.2011 with all attended benefits.

For Petitioner : Mr.A.Thirumurthy

For Respondent : Mr.D.Muruganandam
Additional Government Pleader

ORDER

This writ petition has been filed for issuance of writ of Certiorarified Mandamus, calling for the records of the Impugned order of the first respondent in Letter No.33986/E1/2010-7, dated 27.01.2011, quash the same and consequently direct the respondents to promote the petitioner as Assistant Commissioner of Labour with effect from 27.01.2011 with all attended benefits.

2.The petitioner joined in the Labour Department as Assistant Inspector of Labour, in the year 1994 and promoted as Labour Officer on 13.10.2000. The next promotion to the petitioner is to the post of Assistant Commissioner of Labour and there are three feeder categories namely Labour Officer, Inspector of Plantation and



Inspector of Labour to the promotional post of Assistant Commissioner of Labour.

3.As per G.O.Ms.No.101, dated 24.10.2001, there was an amendment to the special rules for the Tamilnadu Labour Service. As per the amendment to the special rules the person who aspires to get promotion to the post of Assistant Commissioner of Labour should possess the minimum general educational qualification and must have passed Departmental Tests of Labour and Factories - Part 'A' & 'B' and should be an approved probationer. The person also should have experience in the post of Labour Officer or equivalent cadre for a period of not less than 12 calendar months, 12 months experience in the post of Inspector of Plantation and 12 months experience in the post of Inspector of Labour. It is stated that the first respondent gave promotion to six persons who are working in the post of Inspector of Labour, as Assistant Commissioner of Labour and it is stated that all the six persons are juniors to the petitioners for the year 2010-2011.

4.Though the first respondent promoted six persons who are working in the post of Inspector of Labour, as Assistant Commissioner of Labour for the year 2010-2011, the petitioner was not given promotion. It is stated by the petitioner that all the six promotees are juniors to the petitioner and that the petitioner was denied promotion only because he did not have twelve month experience in the post of Inspector of Labour. By the impugned order, dated 27.01.2011, it was stated that the petitioner had not acquired the service experience prescribed in the special rules and that therefore, the petitioner's name had not been included in the panel approved in the promotion order vide G.O.(D) 17 Labour and Employment Department dated 27.01.2011. The above writ petition is filed challenging the order, dated 27.01.2011.

5.Learned counsel appearing for the petitioner submitted that the impugned order is arbitrary, inasmuch as the petitioner was denied promotion only on the short ground that he had not completed 12 months service experience in the post of Inspector of Labour. Learned counsel for the petitioner submitted that the petitioner never refused to serve as Inspector of Labour and that he was repeatedly making representations to the respondent to give him promotion as Inspector of Labour as well as Inspector of Plantation to comply with the requirements. It is the specific case of petitioner that in similar circumstances, some other persons who were also juniors to the petitioner were promoted as Assistant Commissioner of Labour by giving exemption from the Special Rules and that the petitioner also should be given the same benefit.

6.The learned counsel for the petitioner stated that persons who were similarly placed had earlier filed writ petitions and learned single judge of this Court allowed the writ petitions. It is stated that the department though filed appeals, the

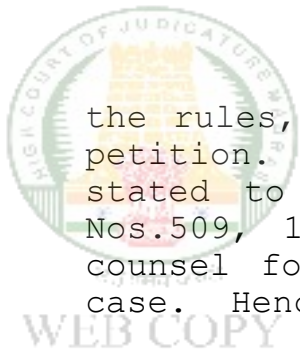


Division Bench of this Court dismissed all the appeals and confirmed the order passed by the learned single Judge.

7. The only question that arise for consideration is whether the petitioner can be given exemption from the special rules and the requirement of service experience in the post of Inspector of Labour can be dispensed with. It is the specific case of petitioner in this writ petition that the petitioner was not posted as Inspector of Labour though there were several vacancies in the department. It is also stated that the petitioner had made several requests to give him posting as Inspector of Labour, so that he would qualify for the promotional post. It is not in dispute that the petitioner passed the tests. The petitioner served as a Labour officer and Administrative Officer for a period of seven years. The petitioner also served as Inspector of Plantation for a period of one year. The petitioner was posted as Inspector of Labour only in the month of January 2008 and on the crucial date for preparation of panel in the year 2010-2011, the petitioner had completed only 10 months of experience as Inspector of Labour. However, when the promotion was given to other persons who are juniors to the petitioner, petitioner was having two years of experience as Inspector of Labour. By applying the rule, it is possible for the Department to play havoc by not giving placement to have 12 months experience in any one of the 3 cadres.

8. It is in the said factual background, the judgment of learned single judge of this Court in a similar situation is relevant. In a batch of writ petitions filed by three other persons who are also aspiring to get promotion to the post of Assistant Commissioner of Labour, this Court dealt with similar issue in W.P. (MD).Nos.23081, 23083 and 31714 of 2007 and allowed the same on 22.11.2007. The petitioners there in had not completed 12 months experience in one of the 3 cadres and hence they filed writ petitions directing the respondent to consider the petitioners for promotion as Assistant Commissioner of Labour by relaxing Rule 2 of Special Rules of Tamilnadu Labour Service. Learned single Judge of this Court found that it is not within the jurisdiction or domain of the candidates to hold the particular post among the three posts in which a candidate is required to have service experience of 12 months. Since the posting is completely left with the Controlling Authority the issue was considered by a practical way of looking at things. Noticing that, by fortuitous circumstances, the person can be posted to different categories, it is found that no one has a right to get posting in a particular place or position. If a person refuses to serve in a particular place or in any one of the three posts for which service experience is required for getting promotion, such conduct may be put against the candidate to deny promotion and to hold that he or she has not completed the minimum experience required to hold the promotional posts. Taking the view in similar situation that the petitioners who were not accommodated

<https://hcservices.tn.gov.in/hcservices> fill the requirement should be promoted by relaxing



the rules, if necessary, the learned single judge allowed the writ petition. The view expressed by the learned single Judge also stated to be confirmed in the three appeals filed in W.A.(MD). Nos.509, 150 & 511 of 2008. The judgment cited by the learned counsel for the petitioner squarely applies to the facts of this case. Hence, this writ petition is liable to be allowed.

9.As a result, this writ petition is allowed and the impugned order passed by the first respondent, dated 27.01.2011 is quashed. The respondents are directed to promote the petitioner as Assistant Commissioner of Labour with effect from 27.01.2011 with all the attendant benefits. It is stated that the petitioner is now retired from service on 31.10.2011. Hence, for the purpose of this writ petition, the promotion directed by this court shall be notional and the petitioner is entitled to all the monitory and other benefits. It is also brought to the notice of this court that the post of Assistant Commissioner of Labour is now redesignated as Deputy Commissioner and this may be taken note of by the respondents while passing appropriate orders. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

TM

To

1.The Principal Secretary to Government
Labour & Employment Department,
Fort St. George, Chennai - 9.

2.The Commissioner of Labour,
Tamil Nadu Labour & Welfare Board Building,
DMS Compound, Thenampet,
Chennai - 6.

+1 CC to M/s.A.THIRUMURTHY, Advocate (SR-86198[F] dated
10/09/2019)

+1 CC to M/s.GP (SR-86156[F] dated 10/09/2019)

W.P. (MD) .No.4134 of 2011
10.09.2019

JMN(27.09.2019) 4P : 5C

<https://hcservices.ecourts.gov.in/hcservices/>