BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.08.2019**

CORAM:

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**

W.P.(MD)No.19809 of 2013

S.Loganathan ... Petitioner

Vs.

1. The Secretary to Government,
   Commercial Taxed & Registration Department,
   Fort St.George,
   Chennai.

2. The Commissioner of Commercial Taxes,
   Ezhilagam Buildings,
   Chepauk,
   Chennai-600 005.

3. The Joint Commissioner (Legal)
   Office of the Commissioner of Commercial Taxes,
   Legal Wing at Madurai,
   Commercial Taxes Buildings,
   Dr.Thangaraj Salai,
   Madurai-625 020. ... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for records pertaining to the G.O.(MS).No.122, Commercial Taxes and Registration (E1) Department, dated 20.09.2013, passed by the first respondent, insofar as it relates to the sentence that 'this is only a formal order issued for record purpose, since his junior has not reached his turn in the regular panel of Commercial Tax Officers fit for appointment as Assistant Commissioners for the years from 1984 to 2010 and this will not entitle him for inclusion in the regular panel and to quash the same and further to direct the respondents to promote the petitioner to the post of Assistant Commissioner in the Department of Commercial Taxes with effect from 04.03.2010 being the date on which his junior, by name, Thiru.T.G.Sundaramoorthy, joined duty as Assistant Commissioner and further to direct the respondents to disburse to the petitioner the consequential monetary benefits.

For Petitioner : Mr.D.Gnanasekaran

For Respondent : Mr.S.Dhayalan
Government Advocate

ORDER

The order of rejection issued by the Government in G.O.Ms.No.122 Commercial Taxes and Registration(E1) Department, dated 20.09.2013, is under challenge in the present writ petition.

2.The writ petitioner was appointed as Typist in the Commercial Tax Department and subsequently, promoted to the post of Assistant and thereafter, to the post of Assistant Commercial Tax Officer and to the post of Deputy Commercial Tax Officer, which is now re-designated as Commercial Tax Officer. The writ petitioner attained the age of superannuation on 30.04.2010 and retired from service. The writ petitioner submitted an appeal to the Government for grant of promotion to the post of Assistant Commissioner of Commercial Taxes. The said claim of the writ petitioner was rejected by the Government in the impugned G.O.Ms.No.122, dated 22.09.2013 mainly on the ground that "*this is only a formal order issued for record purpose, since his junior has not reached his turn in the regular panel of Commercial Tax Officers fit for appointment as Assistant Commissioners for the years from 1984 to 2010 and this will not entitle him for inclusion in the regular panel*".

3.The Government made it clear that none of the junior to the petitioner was promoted as Assistant Commissioner of Commercial Taxes. Undoubtedly, the name of the writ petitioner was under consideration for promotion to the post of Assistant Commissioner. However, the petitioner attained the age of superannuation and retired from service on 30.04.2010 and till the date of his retirement, no junior was promoted. The writ petitioner also not made clear in the writ petition that any such junior was promoted to the post of Assistant Commissioner (Commercial Tax Officer). Thus, the writ petitioner cannot make out the case for the purpose of retrospective promotion on par with his junior, when none of his junior was promoted to the post of Assistant Commissioner (Commercial Taxes).

4.Promotion *per se* cannot be claimed as a matter of right. However, the the name of the writ petitioner was considered which is a right. Though the name of the writ petitioner was considered for promotion to the post of Assistant Commissioner (Commercial Taxes), he cannot able to get promotion on account of the fact that he attained the age of superannuation on 30.04.3010. Mere consideration or inclusion of the name in the panel would not confer any right on the candidate to seek promotion. Even to fill up the post of the Assistant Commissioner (Commercial Taxes) is the administrative prerogative of the authorities concerned. The employee, who was included in the panel cannot claim that there is a vacancy and therefore, he must be promoted whenever a decision is taken to fill up the post, then alone the order of promotion can be passed and not otherwise.

5.In the present case on hand, admittedly, no junior was promoted and therefore, the writ petitioner cannot seek any promotion retrospectively to the post of Assistant Commissioner of Commercial Taxes.

6.In view of the facts and circumstances, this Court is of the opinion that the reasons stated in the impugned order are candid and there is no infirmity as such. Thus, the writ petitioner has not made any acceptable legal grounds for the purpose of interfering with the order impugned.

7.With the above observation, this writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Secretary to Government,
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Office of the Commissioner of Commercial Taxes,
Legal Wing at Madurai,
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Dr.Thangaraj Salai, Madurai-625 020.

+1 CC to M/s.D.GNANASEKARAN, Advocate (SR-79721[F] dated 05/08/2019)

+1 CC to M/s.SPL GP (SR-79990[F] dated 06/08/2019)

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