

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.03.2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.11369 of 2013
and
M.P.No.1 of 2015

S.K.Subbaiah

...Petitioner

-Versus-

1.Government of Tamil Nadu,
Rep. by Secretary to Government,
Animal Husbandry, Dairying and Fisheries Department,
Secretary, Chennai 600 006.

2.The Commissioner and Director of Fisheries,
Chennai 600 006.Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the respondents to include the name of the petitioner in the panel of the 2nd respondent Rc.No.16843/M2/73 dated 24.11.1973 for the year 1973 for promotion as Assistant and to promote him and consequently to include his name in the appropriate place in the panel for promotion as Superintendent on that basis and promote him as such to include his name in the panel for 2003-2004 for promotion as Personal Assistant above his junior - Thiru.R.Sundaram, approved in G.O.Ms.No.36, AH & Fisheries Department, dated 18.03.2005 and notionally promote him as such and consequently revise his pensionary benefits and disburse the arrears with interest.

For Petitioner : Mr.A.R.Suresh for
Mr.J.Muthukumaran

For Respondent(s) : Mr.S.Thangavel,
Spl.G.P.for RR1 and 2

ORDER

This writ petition has been filed seeking mandamus directing the respondents to include the name of the petitioner in the panel dated 24.11.1973 for promotion to the post of Assistant and for a consequential direction to include his name at the appropriate place in the panel for promotion to the post of Superintendent and then to include his name for promotion as Personal Assistant above his junior-R.Sundaram and notionally promote him as such and for a consequential relief of revision of pensionary benefits.

2. According to the petitioner, he was appointed as Junior Assistant in the Fisheries Department on 09.10.1967. He was fully qualified and as such he was eligible to be promoted as Assistant in the year 1973-74. But, his name was not included in the panel for promotion as Assistant. The 2nd respondent had recommended for inclusion of his name in the panel for the year 1974 and placed him below one Thiru.C.Jagadeesan and above Thiru.K.Raghavan. Accordingly, his name was placed in the seniority list for further promotion to the post of Assistant. Thereafter, the Government had passed an order in G.O.2D No.11, Animal Husbandry and Fisheries Department, dated 29.04.1998 directing the 2nd respondent to include his name in the panel for promotion as Assistant for the year 1974 at the appropriate place. The 2nd respondent had also implemented the order by his proceedings dated 06.05.1998 and he was placed in Sl.No.6 of the seniority list. Thereafter, the Government by way of order in G.O.2D No.37, dated 29.09.2000, had cancelled the earlier order in G.O.2D No.11 dated 29.04.1998 without giving any reason what soever and consequently, the 2nd respondent had also issued an order cancelling the earlier order fixing the seniority. Challenging the above said GO, he moved the Tamil Nadu State Administrative Tribunal in O.A.No.7541 of 2000 wherein an order of interim stay was granted on 17.10.2000.

3. Further, according to the petitioner, by virtue of interim order of stay granted by the tribunal, he was allowed to continue to work as Superintendent. Thereafter, on the abolition of the tribunal, the writ petition was transferred to this court and it was renumbered as W.P.No.45955 of 2006. Pending writ petition, on attaining the age of superannuation, the petitioner was permitted to retire from service on 30.04.2005. Pursuant to the order allowing the writ petition, he was entitled to get included his name in the panel for the year 1973-74 for promotion as Assistant and thereafter to get included his name in the panel for the year 2003-2004 for promotion as Personal Assistant. But, his name was not considered for promotion and whereas one Sundaram who was his immediate junior was promoted as Personal Assistant. Therefore, the petitioner seek for

notional promotion as Personal Assistant and for consequential relief of revision of pension. The grievance of the petitioner is that though he made a representation in this regard, the same has not been considered by the respondents till date. Hence, he has come up with this writ petition seeking writ of mandamus to the respondents.

4. The 2nd respondent filed his counter affidavit inter alia contending that earlier the petitioner had sent a representation dated 07.01.1998 seeking to include his name in the panel for the year 1974 for promotion as Assistant and based on such representation, a proposal was sent to the 1st respondent to include the name of the petitioner in the panel for the year 1974 for promotion as Assistant. Thereafter, the Government had issued an order in GO 2D No.11 AH & F (FS.II) Department, dated 29.09.2000 including the name of the petitioner in the panel for the year 1974 to the post of Assistant at appropriate place. The petitioner was under suspension from 09.03.1969 to 29.04.1969 and the period of suspension was treated as punishment. The probation period of the petitioner was also extended for one year. Certain charges were also pending for the loss of timber to the tune of Rs.10,800/-. Hence, the request of the petitioner to include his name in the panel was not considered. However, in GO 2D No.11 dated 29.04.1998, the Government had issued orders including the name of the petitioner in the panel for the year 1974 for promotion as Assistant. Subsequently, the above said Government Order had been cancelled by way of another Government Order in G.O.2D No.37 dated 29.09.2000. Taking note of the fact that by virtue of an interim order the petitioner had continued to hold the higher post of Superintendent and he got retired from service on 30.04.2005 on attaining the age of superannuation, this court while disposing of the writ petition held that there would not be any feasibility of giving any further notice since the petitioner was no longer in service and directed the respondents to treat the case of the petitioner as if he retired in the post of Superintendent and regularize the same for working out his pension and other terminal benefits. Based on such order, the pay of the petitioner in the post of Assistant and Superintendent was revised and arrears for the period up to 30.04.2005 was revised by the Accountant General by order dated 25.08.2001. The petitioner was not eligible for inclusion of his name in the panel for the year 1973 to the post of Assistant, as he had passed Accounts Test for Subordinate Officers Part-I only on 18.11.1973 after the crucial date of the panel i.e., on 15.03.1973. As he was not qualified, his name was not included in the panel for the year 1973 to the post of Assistant and therefore, the question of considering his name for further promotion is not maintainable.

5. The petitioner filed rejoinder to the counter affidavit

contending that in the year 1973 there was no adverse remarks against the petitioner from the years 1972 to 1974 and he was also eligible for promotion as Assistant w.e.f. 17.11.1973. When the panel was approved only on 24.11.1973, his name for promotion to the post of Assistant ought to have been included in the panel for the year 1973. His junior was promoted to the higher post and, therefore, he is also entitled for promotion notionally from the date of which his immediate junior was promoted to the higher post of Assistant.

6. I have heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondent and also perused the records carefully.

7. The prayer in the writ petition is to include the name of the petitioner in the panel dated 24.11.1973 for promotion to the post of Assistant and consequently include his name at the appropriate place in the panel for promotion to the post of Superintendent and on that basis to include his name in the panel 2003-2004 for further promotion as Personal Assistant to Director and promote him notionally and for consequential relief of revision of pension.

8. Admittedly, the crucial date for approval of the panel for the year 1973 for promotion to the post of Assistant was 15.03.1973. Even though no disciplinary proceedings was pending against the petitioner on the date of approval of the panel, indisputably, the petitioner was not qualified as he did not pass the Account Test for Subordinate Officers Part-I as on the crucial date of approval of panel. He had passed the Test only on 18.11.1973. On that score, the petitioner was not eligible to include his name in the panel for the year 1973 for promotion to the post of Assistant. However, based on the representation of the petitioner, his name was mistakenly included in the panel which was also approved by the Government. Thereafter, on realizing the mistake, the Government had cancelled its earlier order. When it was challenged by the petitioner by way of Original Application before the Tribunal, the tribunal had stayed the order of reversion and by virtue of the same, the petitioner had continued to hold the higher post of Superintendent. Thereafter, on the abolition of the tribunal, the Original Application was transferred to the file of this court and it was renumbered as W.P.No.45955 of 2006. Pending writ petition, the petitioner was permitted to retire from service on attaining the age of superannuation on 30.04.2005. The order of the Government cancelling the promotion was challenged mainly on the ground that the order came to be passed without any notice whatsoever. Ultimately, when the writ petition came up for hearing before this court on 20.01.2011, taking into account the fact that the petitioner had already

retired from service on attaining the age of superannuation, this court had come to a conclusion that there would not be any feasibility of giving any further notice since the petitioner was no longer in service and directed the respondents to treat the case of the petitioner as if he retired in the post of Superintendent and regularize the same to work out his pension and other terminal benefits. The relevant portion of the order reads as follows:-

"6. Accordingly, the impugned orders stand set aside and the writ petition is allowed. It is also now noted that the petitioner, by virtue of the interim order, had continued to hold the higher post of Superintendent and got retired from service on 30.04.2005. Therefore, there won't be any feasibility of giving any further notice, since the petitioner is no longer in service. Hence, the respondents are directed to treat the case of the petitioner, as if he retired in the post of Superintendent and regularize the same to work out his pension and other terminal benefits. This exercise shall be carried out by the respondents within twelve weeks from the date of receipt of a copy of this order and the result shall be communicated to the petitioner."

Thereafter, the petitioner approached this court with the present writ petition seeking to include his name in the panel for the year 1973 for promotion to the post of Assistant and, accordingly, revise his seniority and for a consequential direction to consider his name for notional promotion to the post of Personal Assistant for the purpose of pensionary benefits.

9. First of all, in the year 1973, the petitioner was not eligible to be included his name in the panel for promotion as Assistant, as he was not qualified for promotion to the post of Assistant. That apart, by mistake, the name of the petitioner was considered for promotion to the post of Assistant, however, the mistake was rectified immediately. Yet, by virtue of the interim order granted by the Tribunal, the petitioner had continued to work as Superintendent and this court also on considering the fact the petitioner was permitted to retire from service pending writ petition on attaining the age of superannuation in the higher post of Superintendent by, this court while disposing of the writ petition directed the respondents to treat the case of the petitioner as if he retired in the post of Superintendent and regularize the same to work

out his pension and other terminal benefits. The said direction was also complied with by the respondents and the entire terminal benefits were paid to the petitioner. The petition is also getting pension. In the light of the factual matrices of the case, this court is of the view that now it is not open to the petitioner to seek for re fixation of seniority to include his name in the panel for the year 1973 for promotion as Assistant and give consequential promotions and other benefits. It is the settled law that settled seniority cannot be disturbed after a long number of year. That apart, the petitioner was also not eligible to include his name in the panel for the year 1973 as he was not then fully qualified for promotion to the post of Assistant. Thus, the petitioner is not entitled for any relief in this writ petition and the writ petition is liable only to be dismissed.

In the result, this Writ Petition is dismissed. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
Animal Husbandry, Dairying and Fisheries Department,
Secretary,
Chennai 600 006.

2.The Commissioner and Director of Fisheries,
Chennai 600 006.

+1cc to Mr.J.Muthkumaran, Advocate, S.R.No.18542

W.P. No.11369 of 2013

NR(CO)
RN(16/07/2020)