

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.02.2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.2065 of 2020

1. J.Davy Arockia Shreemahn
2. M.Suresh
3. P.Balaji
4. V.Pandiarajan
5. T.Rajesh Kumar

6. S.Saravanakumar
7. S.Subash
8. S.Manickam
9. R.Sudhakar
10. A.Sankar

11. M.Manimuthu
12. R.Karthikeyan
13. T.Parameswary
14. P.Sivaperumal
15. S.Srinivasan

16. A.Suresh Kumar
17. K.Nirmalraj
18. K.Kalidas
19. K.Jeyandhi
20. M.Archunan
21. S.Praveen Kumar
22. T.Vinoth
23. S.Gobinath

... Petitioners

सत्यमेव जयते
Vs.

1. The Secretary to Government,
Commercial Taxes and Registration Department,
Fort St. George, Chennai 09.
2. The Commissioner,
Commercial Taxes Department,
Ezhilagam, Chempauk,
Chennai 05.

.. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the respondents to fix the seniority of the petitioner's in the panel year 2015 for the post of DCTO and

to accord proper placement and to grant all attendant benefits.

For Petitioners : Mr.K.Venkatramani, SC
for M/s.S.Sivakumar

For Respondents : Mr.M.Hariharan
Additional Government Pleader

O R D E R

This Writ Petition has been filed for the issue of Writ of Mandamus directing the respondents to fix the seniority of the petitioners in the panel year 2015 for the post of DCTO and to accord them with all attendant benefits.

2. The case of the petitioners is that they entered into the service as Assistants of the Commercial Tax Department through direct recruitment conducted by TNPSC in the year 2012. Their next avenue of promotion is to the post of Deputy Commercial Tax Officer (DCTO). According to the petitioners, they were promoted as DCTOs in the year 2016 belatedly. The further case of the petitioners is that there were a larger number of vacancies of 299 DCTO posts and the petitioners were fully qualified on the crucial date. But, however, only 72 posts were filled up and the remaining vacancy was left as it is. This happened in the year 2015 and according to the petitioners, they were also eligible for consideration for promotion during the crucial date. The petitioners gave their objections to the list that was finalised by the second respondent and in spite of the same the second respondent proceeded to grant promotions to 72 persons. Therefore, the petitioners gave a representation by stating all the above facts with a request to fix the seniority of the petitioners in the panel for the year 2015 and to give them all the attendant benefits. Since the same was not considered, the present Writ Petition has been filed before this Court.

3. Mr.K.Venkatramani, learned Senior Counsel appearing on behalf of the petitioners submitted that the petitioners have entered into service in the year 2012. There was an administrative delay in sending these persons, who were selected as Assistants, for Bhavanisagar Training. They were only sent in batches. The learned Senior Counsel submitted that the petitioners had completed the Bhavanisagar Training in January 2015 itself. The learned Senior Counsel further submitted that the crucial date that was fixed for promotion to the post of DCTO was 22.07.2015 and by then the petitioners were eligible to be considered for promotion in their appropriate seniority status.

4. The learned Senior Counsel also brought to the notice of this Court, the earlier orders that were passed by this Court in similar issues, wherein, this Court had repeatedly held that the delay in sending the Assistants for Bhavanisagar Training cannot be put against them and that they must be placed in the Seniority from the date of their appointment.

5. Per contra, Mr.M.Hariharan, the learned Additional Government Pleader appearing on behalf of the respondents submitted that the petitioners have made a representation to the respondents and the same will be considered strictly in accordance with law. The learned counsel further submitted that the second respondent will be able to consider the claim made by the petitioners only after necessary particulars are forwarded by the concerned Joint Commissioners belonging to various regions. The learned counsel concluded his arguments by submitting that the department will take a decision on the representation made by the petitioners strictly in accordance with Rules and the seniority of the petitioners will be fixed accordingly.

6. This Court has carefully considered the submissions made on either side and the materials available on record.

7. The main ground on which the petitioners have come before this Court is that when the seniority list was drawn by the second respondent in the year 2015, there were 299 posts that was available and only 72 posts were filled up. According to the petitioners, the service of the petitioners is entitled to be regularised on the completion of two years of service. This is subject to the condition that the petitioners complete their Bhavanisagar Training. All the persons, who were appointed as Assistants were not sent for training at one go and they were sent only on batches. Whatever batches completed the Bhavanisagar Training, was regularised and their probation was declared.

8. Earlier a dispute arose before this Court, as to whether, the delay in sending the Assistants for Bhavanisagar Training can be put against the candidates, who are regularised at a later point of time and they can be denied their appropriate seniority without considering the date of appointment. In this regard, this Court has to take note of the judgment in G.Raja v. The Secretary to Govt., Higher Education Department, Chennai 9, WP No.27349 of 2011 dated 16.08.2013. The relevant portions of the judgment are extracted hereunder.

"3. The case of the petitioner is that the

petitioner was appointed as Typist on compassionate ground due to the death of his father on 09.09.1994, while working as a Selection Grade Watchman in the Arignar Anna Government College, Walajapet. The petitioner joined in the post of Junior Assistant-cum-Typist on 25.10.1996 in the Rajeswari Vedachalam Government Arts College, Chingleput. The petitioner passed the departmental test within the stipulated period and his probation was declared on 29.01.2004 with effect from 31.12.1998. The petitioner was sent for Foundational Course Training in Bhavani Sagar Government Servants Training Institute from 17.07.2001 to 14.09.2001, which is one of the requirements for getting promotion to the post of Assistant.

4. According to the petitioner, due to the delay in regularizing the services of the petitioner as well as declaration of probation, he could not get his promotion as Assistant and Superintendent in time at par with his junior. In the meanwhile, the 3rd respondent issued a seniority list of Assistants, who were promoted as Assistant in the panel year 2004-2005 for the year 2011-2012 on 13.09.2011 and invited objections in respect of seniority in the cadre of the Assistant. In the said list, the name of the petitioner was not included. Whereas the petitioner's junior viz., A.Padmanabhan was included. The petitioner submitted his objection to the 2nd respondent and requested for revision of his seniority in the cadre of Assistant at par with his junior. The 2nd respondent, instead of restoring the seniority of petitioner, published the panel of Superintendent for the year 2011-2012, wherein the name of his junior A.Padmanabhan and as many 17 persons from the said list have been promoted as Superintendent vide proceedings of the 2nd respondent dated 26.10.2011. The petitioner having affected by not sending him for training and consequently non-inclusion of his name in the panel for promotion and the denial of promotion, has filed this writ petition contending that sending of his juniors to undergo Bhavani Sagar Training and failure to send the petitioner on time for training is unjust and merely for that reason, the petitioner cannot be denied of promotion.

5. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents. This Court in W.P.No.13517 of 2009, by order dated 9.4.2010 considered the very same issue and in paragraph-19, it is held as follows:-

" 19. Going through the issue, this Court

pointed out that on no fault of the petitioners but on account of administrative reasons, the petitioners could not complete their service qualification to serve in the category of Rural Welfare Officer Grade I. It was pointed out that even though the petitioners had been in service as Junior Assistant with effect from 1991 and in the post of Rural Welfare Officer Grade I, the petitioners were not considered for further promotion on account of the non-completion of the service requirements. This Court held that when the petitioners had successfully completed the departmental examinations, the petitioner cannot be denied inclusion in the panel on the ground that they did not possess the service qualification - an area which was purely in the hands of the respondents. Referring to the order of this Court dated 9.10.2006 in W.P.No.18501 of 2006 (C.Periasamy and another Vs. The District Collector, Dharmapuri) holding that service qualification cannot be equated to a pass in the departmental test, this Court held: "While the pass in a departmental test may be in the hands of the individual, the posting of the individual to a particular post is not within the hands of the individual." In the circumstances, this Court held that the respondents should have formulated and implemented a policy providing equal opportunity to all persons to acquire the service qualifications. This Court pointed out that but for the belated regularisation in 1996, the petitioner would have undergone the foundation training in Bhavani Sagar Training Institute, the petitioners were not at fault, they should not have been omitted to be included in the panel."

6. It is also pointed out in the said judgment in paragraph-21 that deputing the petitioner therein for one year training at Bhavani Sagar Institute cannot be attributed to the petitioner and he had not qualified himself though inclusion in the promotion panel for seniority cannot be allowed, as it would prejudice the petitioner as he was prevented by the department to undergo the training. Ultimately in paragraphs 28 to 31, it is held thus:-

" 28. It is no doubt true that in the case of a person who sleeps over his right consciously, the question of showing any

indulgence to disturb a well settled seniority will not arise. As already pointed out, on the appeal preferred by respondents-3 to 5 dismissed, the seniority of the petitioner remained undisturbed at least upto 2001. There was no occasion for the petitioner to entertain any doubt as to the seniority panel to voice his grievance. He came to know of this fact only when the petitioner's name was not included in the panel prepared for the year 2004 onwards. In the background of this fact, when as per the law declared by this Court, the petitioner's name should have been considered in the seniority list, he having successfully completed the examination well ahead of respondents 3 to 5, the delay in challenging the seniority list, by itself, cannot be held against the petitioner, for the simple reason that the delay on the part of the District Collector had caused serious prejudice to the petitioner by his not having deputed the petitioner to undergo the one year stint in the post of Rural Welfare Officer Grade II and for the foundation training in the Bhavani Sagar Training Institute as required under the Service Rules.

29. In the light of the above facts and in fairness to the claim of the petitioner, taking note of the decisions of this Court as referred to above, the petitioner merits to have his seniority fixed. I do not find any justification in the plea of the respondents on the issue of laches. In so doing, I am conscious of the decision of the Apex Court holding that a settled list of seniority and promotion should not be disturbed at a long distance of time vide the decision reported in (1976) 1 SCC 599 (Malcom Lawrence Cecil D'Souza Vs. Union of India) and (2008) 2 SCC 750 (Union of India Vs. Narendra Singh).

30. Going by the fact that the petitioner had passed all the departmental examinations and the delay in satisfying the service requirement was not attributable to the petitioner, without disturbing the seniority of respondents-3 to 5, I feel that respondents-1 and 2 should place the petitioner in his original place in the order of seniority that at least in future, if and when the time comes, in the matter of granting promotion, the

petitioner's name should be considered at the first place.

31. With the above observation, I allow this writ petition thereby set aside the order of the first respondent herein. By so setting aside the impugned order, it is hereby made clear that this Court does not intend to disturb the seniority of respondents-3 to 5, as they had been in service for quite a long number of years. As already pointed out, respondents-1 and 2 should consider the petitioner at the right place of seniority for considering him for further promotion from the post of Assistant to the post of Extension Officer and pass orders within a period of six weeks from the date of receipt of a copy of this order. "

7. Applying the said judgment, particularly, the principles stating that the petitioner cannot be blamed for not undergoing the training in Bhavani Sagar, the non-inclusion of the petitioner's name in the panel for promotion to the post of Assistant for the year 2003-2004 and denying promotion to the petitioner as Assistant on the date when his junior was given promotion cannot be justified. However, taking note of the subsequent promotion given to the petitioner, the petitioner shall be notionally promoted for the post of Assistant from the date of promotion given to the petitioner's junior from 20.09.2004. The petitioner is not entitled to get any arrears of salary for the promoted post and the seniority alone is to be given by respondents. The said notional promotion shall be calculated for all purpose except backwages. "

9. It is clear from the above judgment that the concerned candidates cannot be blamed for not undergoing the training in Bhavanisagar immediately after their appointment since there was an administrative delay in sending the candidates for training. It was made very clear in the above judgment for the purpose of seniority, it is only the date on which the person was appointed that must be taken into consideration. Mere delay in declaration of probation cannot be put against the candidates. This judgment has also been followed subsequently and consistently.

10. In the present case, the petitioners are requesting the respondents to place them in the right position in the seniority list in the panel for the year 2015. The

representation has also been made to the respondents in this regard.

11. In view of the above, there shall be a direction to the second respondent to consider the representation made by the petitioners on 07.01.2020 and after getting the relevant details from the concerned Joint Commissioners, he shall pass appropriate orders strictly in accordance with Rules and in line with the present order, within a period of eight weeks from the date of receipt of copy of this order. The petitioners are directed to make a fresh representation to the second respondent along with a copy of the representation dated 07.01.2020 and a copy of this order.

12. This writ petition is disposed of with the above directions. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jv

To

1.The Secretary to Government,
Commercial Taxes and Registration Department,
Fort St. George, Chennai 09.

2.The Commissioner,
Commercial Taxes Department,
Ezhilagam, Chepauk,
Chennai 05.

+2cc to Mr.S.Sivakumar, Advocate SR.11474
+1cc to the Spl Govt Pleader(Taxes), SR.12600

W.P.No.2065 of 2020

SSV(CO)
CB(18/02/2020)

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