IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2020

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.No.25188 of 2010

R.Ravichandran ... Petitioner

Vs.

1.The Principal Secretary to Government,
Commercial Taxes and Registration Department,
Secretariat, Chennai - 600 009.

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

3.The Joint Commissioner of Commercial Taxes,
Chennai (North) Division,
Chennai. ... Respondents

Prayer: Writ petition filed under Article 226 of Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the proceeding bearing Letter No.H3/43127/2008 dated 05.08.2010 on the file of the 1st respondent, quash the same and direct the respondents to refix seniority of the petitioner in the cadre of Assistant in the Commercial Taxes and Registration Department, with reference to his date of passing the Gujarathi Language Test viz., 13.10.1999.

For Petitioner : Mr.N.Naganathan

For Respondents: Mr.M.Hariharan
Additional Government Pleader (Taxes)

O R D E R

The petitioner was recruited as typist through TamilNadu Public Service Commission and has posted at the Office of Assistant Commissioner of Commercial Taxes, Vellore on 10.10.1994. The next promotion is to the post of Assistant. There is a post of Gujarati Assistant under category (12-A) of the Tamil Nadu Ministerial Service Rules. A person having passed Gujarati language test can be appointed to that post by promotion from the post of Junior Assistant/typist.

2. The petitioner passed the Gujarati language test on 13.10.1999. Thereafter, he submitted a representation to

promote him to the post of Gujarati Assistant on 29.10.1999. However, he was not appointed but in regular course was promoted as Assistant on 20.10.2001. The 2nd respondent in his Letter No.H2/79962/99 dated 05.11.2001, considered the candidates for being promoted to the post of Gujarati Assistant including that of the petitioner. He also granted permission by his Letter No.H2/79962/99 dated 05.11.2001 to the Deputy Commissioner (CT) of the concerned circle to consider the case of the petitioner also. On 11.03.2002, the 3rd respondent directed the Deputy Commissioner (CT), Vellore to relieve the petitioner on receipt of posting orders of the the Deputy Commissioner (CT), Chennai (North).

3. According to the petitioner, as per Rule 31 of the TamilNadu Services Manual Vol.I p.136, he is entitled to get retrospective regularisation from the date of acquiring qualification as Gujarati Assistant and should be appointed w.e.f. 13.10.1999, the date on which the results were declared.

4. The 2nd respondent by his proceedings dated 06.08.2008 rejected the request. Again which the petitioner made a representation on 04.09.2008 to the first respondent and the same was rejected by way of impugned order in Letter No.H3/43127/2008 dated 05.08.2010. Aggrieved over the same, the petitioner is before this Court.

5. According to the petitioner, as per Rule 30 (a) of the Tamil Nadu Ministerial Service Rules, Junior Assistant or Typist is entitled to promotion to the post of Assistant, provided he has necessary qualification. The respondent has appointed the petitioner as Gujarati Assistant by transfer from the category of Assistant and posted him in Chennai North Division. Since the petitioner passed the examination on 13.10.1999 he should have been appointed by transfer, whereas the respondent has promoted him as Assistant contrary to the Rules and transferred him as Gujarati Assistant with effect from the date of promotion as Assistant. Had he been given the post of Gujarati Assistant by transfer, he is eligible to get appointed from the date of passing of the test. Therefore, the order passed by the respondents is illegal and unsustainable.

6. I have considered the submission of the petitioner.

7. Admittedly, the petitioner was working as a typist in the year 1999 and that he passed the test of Gujarati language on 13.10.1999. He was promoted to the post of Assistant on 20.10.2001. Since there were no posts available in Vellore circle, he was transferred from Vellore to Chennai and posted as Gujarati Assistant. The claim of the petitioner is that he should have been appointed as Gujarati Assistant from the date on which he passed the eligibility test namely passing of Gujarati language test. In the light of Rule 31(a) of the Tamil Nadu States and Subordinate Service Rules, the

act of the respondent is not sustainable. Rule 31(a) of Tamil Nadu State and Subordinate Service Rules reads as under:

> "31.Appointment of full members:
>
> a) Subject to the provisions of Rules 9 and 35(a) an approved probationer shall be appointed to be a full member of the service in the class or category for which he was selected, at the earliest possible opportunity in any substantive vacancy which may exist or arise in the permanent cadre of such class or category and if such vacancy existed from a date previous to the issue of the order of appointment, he may be so appointed with retrospective effect from the date or, as the case may be, from any subsequent date from which he was continuously on duty as a member of the service in such class or category or in a higher class or category.
>
> Provided that where more than one approved probationer is available for such appointment as full member, the senior most approved probationer shall be appointed."

8. The Government has amended the Rule and published the same in G.O.Ms.No.125 Personnel and Administrative Reforms(s) Department dated 10.07.2000. The amended Rules reads as under:

> "31. Appointment of full Member:
>
> Subject to the provisions of Rule 9 and Sub-Rule (a) of Rule 35 an approved probationer shall be considered for confirmation of service immediately after the declaration of his probation. Such confirmation of service shall be made in the entry level post to which he was first appointed. A specific order of confirmation of service shall be issued."

9. In my consideration the above said Rule will apply to the entry level post to which a government servant is appointed. The petitioner was originally appointed as a Typist and there is no dispute about his date of appointment or seniority. As per the Tamil Nadu Ministerial Service Rules, the post of Assistant falls under the Category 12 Gujarati knowing Assistants fall under Category 12-A. The said post can be filled by Direct Recruitment and by promoters. Direct recruitment shall be made only when no qualified and suitable Assistant, Junior Assistant or Typist is available for appointment or promotion as Gujarati knowing Assistant. According to the petitioner as per the rules he is entitled to be appointed as Gujarati Assistant from the date on which he passed the eligibility test. But the rules regarding method of recruitment provide for appointment by transfer from the category of Assistant to the post of Gujarati knowing Assistants. In respect of Junior Assistants and Typists it

provides for the method of promotion subject to eligibility conditions. A Junior Assistant or Typist, who passed the test for the members of the Commercial Taxes department in Gujarati language, passed Departmental Test in Commercial Taxes Act and Accountancy and passed District Office Manual Test are entitled to be considered for promotion to the post of Gujarati knowing Assistants. The method of transfer is provided only to the Assistants and not Junior Assistants or Typist. The petitioner misconstrued the rules and claim for the method of recruitment by transfer from the post Junior Assistant and Typist. It is well settled that an employee / servant has right to be considered for promotion but not a right to get promotion. The petitioner does not have a right to adopt a method of recruitment to suit his convenience that too with retrospective effect. The respondents have rightly considered his case to be posted as Gujarati knowing Assistant by transferring him to a Station, where the said post was vacant.

I do not find any illegality in the order passed by the first and second respondents. Therefore, the writ petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Secretary to Government,
Commercial Taxes and Registration Department,
Secretariat, Chennai - 600 009.

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

3.The Joint Commissioner of Commercial Taxes,
Chennai (North) Division,
Chennai.

+1cc to Mr.N.Naganathan, Advocate, S.R.No.13464
+1cc to the Special Government Pleader, S.R.No. 13777

W.P.No.25188 of 2010

PP(CO)
GN(30/07/2020)