

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.11.2020

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.23852 of 2013

V.Chitra

.. Petitioner

vs.

1.The Secretary to Government
Government of Tamilnadu,
Labour and Employment Department,
Chennai 600 009.

2.The Commissioner of Labour
Chennai -600 006.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent in his proceedings in letter NO.1699/E1/2016-12 dated 23.04.2019 and quash the same and direct the respondents to promote the petitioner as Joint Commissioner of Labour (Now Additional Commissioner of Labour) from April 1995 when her immediate junior G.Sundaramoorthy was promoted and notionally fix the pay and pension and accordingly disburse the terminal benefits.

PRAYER AMENDED VIDE ORDER DATED 29/10/2020
MADE IN WMP.18961/2020 IN WP.23852/2013 BY MDIJ

For Petitioner : M/S.Lita Srinivasan

For Respondent(s) :Mr.S.Thangavel, Spl.G.P.

ORDER

This writ petition has been filed by the petitioner, to call for the records of the 1st respondent in his proceedings in letter NO.1699/E1/2016-12 dated 23.04.2019 and quash the same and direct the respondents to promote the petitioner as Joint Commissioner of Labour (Now Additional Commissioner of Labour) from April 1995 when her immediate junior G.Sundaramoorthy was promoted and notionally fix the pay and pension and accordingly disburse the terminal benefits.

2.The case of the petitioner is that the petitioner was selected as Inspectress of Factories in the the Tamilnadu Factory Service by direct recruitment on 26.07.1977, and thereafter appointed as permanent Inspectress of Factories in the Tamil Nadu Factory Service by the G.O.Ms.No.743, Labour and Employment Department on 18.10.1977. In the year 1993, the Government passed G.O.Ms.NO.17 dated 09.02.1993 transferring the post of Inspectress of Factories from the Department of Factories to the Department of Labour and re- designated as Inspectress of Labour. In the G.O. it was further stated that the post of Inspectress of Labour is to be treated as an addition to the category of Labour Officers in the Tamil Nadu Labour service. Even in the G.O. it was stated that necessary amendments to service Rules to be above said extent is to be issued separately. However the petitioner's seniority was not fixed in G.O.Ms.No.17 dated 19/2/1993 from the date of transferring the petitioner to Labour department, thereby she was not considered for promotion. Aggrieved by the inaction of the respondents to amend the Rules and consider her name for promotion, the petitioner filed a writ petition before this Court in W.P.No.18488 of 1999, on the ground that though the petitioner's selection was under the Factories Department, however, by the order of the Government, the said post was moved to the Labour Department and, therefore, for all purposes, her seniority should be reckoned from the date of her initial appointment in the Factories Department and that her name should be appropriately placed in the seniority in the Labour Department. However, till the filing of the writ petition, neither any order was passed refixing the seniority or notifying the rules. By virtue of the said act of the respondent, as great injustice and prejudice had been caused to the petitioner, this Court by its order dated 25.02.2003, accepting the petitioner's plea, however, disposed the writ petition by permitting the petitioner to amend the prayer and file the petition before the tribunal. In compliance of the above said order, the petitioner filed with the Original Application in OA.No.2628/1994 seeking a direction to the respondents to fix her seniority from the date of her joining and not from the date of her transfer to the Labour Department. The Tribunal, considering the materials, allowed the original application and issued a direction to the respondent to amend service rules to include the category of Inspectress of Labour in the cadre of Labour Officers and fix the seniority of the petitioner with reference to the date of her joining as Inspectorsss of Factories in the Factories Department on 07.11.1977. As against the said order, neither any writ petition was filed before this Court, nor the petitioner was given any promotion on par with one her immediate junior viz., G.Sundramoorthy till her retirement. Hence, she has filed the present petition.

3. It is the submission of the learned counsel for the petitioner that in the earlier round of litigation, though direction was issued to pass orders on the representation of the petitioner for promotion with all monetary benefits, however, considering the same, the petitioner was granted promotion to the next higher posts of Assistant Commissioner of Labour and Deputy Commissioner of Labour, but her next avenue of promotion as Joint Commissioner of Labour has not been considered by reckoning her date of joining as 7.11.77 by refixing her seniority in the Labour Department above one Mr.Sundaramoorthy, who has been promoted. The respondents having not challenged the order passed by the Tribunal, which has attained finality, the petitioner is entitled to the relief prayed for.

4. Learned Special Government Pleader appearing for the respondents did not dispute the facts submitted by the petitioner as also the order of this Court in WP.No.18488 of 1999, dated 25.02.2003 and the order of the Tribunal dated 20.08.2003. However, it is the contention of the learned Special Government Pleader that only due to the punishment suffered by the petitioner and also adverse entries in the annual confidential report of the petitioner, the petitioner has not been granted further promotion to the post of Joint Commissioner of Labour. Therefore, the case of the petitioner for grant for further promotion does not merit acceptance.

5.This Court heard the submissions advanced by the learned counsel on either side and also perused the entire materials available on record.

6. The fact that the petitioner was initially appointed in the Factories Department and later on, the said post was merged with the Labour Department by the orders of the Government is not in dispute. Therefore, for all purposes, the seniority of the petitioner ought to be reckoned as the date of her joining in the Factories Department. In the earlier round of litigation for fixation of seniority, sans the absence of any rule framed by the Government, the Tribunal has passed the following order :-

" 11.It has been already held by the High Court that the applicant is entitled to get her seniority from her initial date of appointment in the Factories Department since the post itself was transferred to Labour Department. Seniority given to her in the Factories Department shall not be erased or ignored. Therefore since the impugned G.O. Has fixed the seniority reckoning with her joining in the Labour Department in 1993 the said G.O. Is to be set aside an illegal. Since it has unjustly deprived the seniority of the applicant which she has already earned in the

Factories Department. The High Court has held that applicant's seniority has to be reckoned from 1977 when she joined as Inspectress of Factories and her seniority must be fixed accordingly in the cadre of Labour officer from 1977. So... the persons who are working as Labour Officers in 1993 the applicant's seniority must be fixed reckoning her seniority from 7.11.1977 and not the date on which she joined the Labour Department. Since the G.O has wrongly fixed the seniority reckoning the date of joining in the labour Department, it is liable to be set aside and is hereby

7. From the above, it is evident that the Tribunal has directed refixation of seniority of the petitioner from the date of her entry into service in the Factories Department. The said order has been allowed to attain finality and no challenge has been made to the said order. In spite of the same, the directions given in the said order has not been given effect to by the respondent by framing the necessary rules and in effect, the petitioner has been denied her promotion. In the wake of non-grant of promotion, the petitioner preferred W.P. No.18488/99 before this Court, wherein this Court directed the respondent to consider the petitioner's case for grant of promotion with all monetary benefits. Pursuant to the said directions, the petitioner has been granted two promotions to the post of Assistant Commissioner of Labour and Deputy Commissioner of Labour. However, curiously, her case for promotion as Joint Commissioner of Labour has not been given, though her junior one, Sundaramoorthy, has been given the said promotion.

8. Though it is the case of the respondents that the petitioner was suffering punishment and also adverse remarks in the confidential report, which denied her of the opportunity of promotion, however, a perusal of the records reveal that on the crucial date, when the case of Sundaramoorthy was considered for promotion, the petitioner was neither suffering any punishment nor was there any adverse remarks attached to her and, there being no stigma attached to the petitioner on the said crucial date, denial of promotion to the petitioner is wholly unjustified.

9. The respondents having allowed the order of the Tribunal to attain finality and having granted two promotions to the petitioner pursuant to the orders of this Court, cannot come before this Court and claim that currency of punishment was the reason for the denial of subsequent promotion to the petitioner as Joint Commissioner of Labour, which stand of the respondents is not supported by materials available on record. Therefore,

for all purposes, the petitioner is not only entitled for promotion to the post of Joint Commissioner of Labour on and from the date when her immediate junior Sundaramoorthy was granted the said promotion, but is equally entitled to all monetary and terminal benefits associated with the said promotion.

8. For the reasons aforesaid, this writ petition is allowed and the impugned order passed by the 1st respondent in his proceedings in letter NO.1699/E1/2016-12 dated 23.04.2019 is hereby set aside and the respondents are directed to refix the seniority of the petitioner in the light of the order of the Tribunal, dated 18.05.1994 made in OA.No.2628/1994, and grant promotion to the petitioner on par with her junior, G.Sundarmoorthy and grant notional promotion to the petitioner and pay all the monetary, service, terminal and pensionary benefits due to the petitioner. Since the petitioner is aged above 70 years, and the writ petition having been on the board of this Court since 2013, in the fitness of things and also to ensure that the petitioner is able to enjoy the fruits of her, the respondents are directed to pay all the benefits, as noted above, to the petitioner, within a period of 8 weeks from the date of receipt of copy of this order. There shall be no order as to costs.

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Assistant Registrar [CS]

//True copy//

Sub Assistant Registrar

jrs

To

1.The Secretary to Government
Government of Tamilnadu,
Labour and Employment Department,
Chennai 600 009.

2.The Commissioner of Labour
Chennai -600 006.

+ 1 C.C. to M/S. LITA SRINIVASAN, Advocate SR.NO.37199

+ 1 C.C. to Government Advocate SR.NO.37179

W.P.No.23852 of 2013

AJB [CO]
RR 18/12/2020