IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 21.07.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 28099 OF 2013

A.Duraisingam .. Petitioner

- Vs -

1. Government of Tamil Nadu
rep. By Principal Secretary to Govt.
Commercial Taxes Department
Secretariat, Chennai 600 009.

2. The Principal Secretary/Commissioner
of Commercial Taxes
Chennai 600 005. .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus directing the 1st respondent to include the name of the petitioner in the panel for the year 2009-2010 for promotion as Assistant Commissioner (Commercial Taxes) approved in G.O. Ms. No.8, Commercial Taxes and Registration Department, dated 22.1.2010 in the appropriate place therein, to grant notional promotion as such with consequential benefits including higher pensionary benefits.

For Petitioner : Mr. M.Ravi

For Respondents: Mr. A.N.Thambidurai, Spl. GP

ORDER

It is the case of the petitioner that he joined as Office Assistant in the Commercial Taxes Department on 1.5.1971 and, thereafter, over the period of time, was promoted as Deputy Commercial Tax Officer in the year 2007. While functioning as Deputy Commercial Tax Officer, the said post was upgraded as Commercial Tax Officer from the year 2008. It is the further averment of the petitioner that pending litigations, panel for promotion to the post of Assistant Commissioner was not drawn for the years 2007 and 2008. It is the case of the petitioner that for drawal of panel for the year 2009, the crucial date for inclusion of name in the panel for promotion to the post of Assistant Commissioner was fixed as 1.1.09. It is the further case of the petitioner that he reliably came to know that his name was not included in the panel for the reason that he has not completed two years of service in Assessment Service. It is the further case of the petitioner that the petitioner fell short by 21 days on the crucial date fixed, whereas, on the date of drawal of panel, the petitioner had completed more than 2 years and 5 months service and, therefore, the name of the petitioner ought to have been included in the panel for promotion. It is the further case of the petitioner that another person junior to him, who had similarly not completed 2 years in Assessment Service, the Government had granted necessary relaxation, which treatment had not been meted out to the petitioner. Though the petitioner submitted representation in this regard, however, no orders have been passed by the respondents on the said representation. Therefore, left with no other alternative, the petitioner has filed the present petition.

2. Learned counsel appearing for the petitioner submits that for no fault on the part of the petitioner, the petitioner has been denied inclusion of the name in the panel for promotion in the year 2009. Though on the crucial date, i.e., 1.1.09, the petitioner fell short by 21 days in the qualifying service, however on the date when the panel was drawn, the petitioner had completed the required service and, therefore, the case of the petitioner ought to have been considered. It is the further contention of the learned counsel for the petitioner that the fault lies with the respondents, as they have not posted the petitioner in the Assessment Circle, so as to enable him to complete the period of two years, as is required for consideration of the name during the relevant time. It is the further submission of the learned counsel for the petitioner that it is not the case of the respondents that the petitioner had failed to join the Assessment Service, when he was posted there. Therefore, the non-completion of the requisite qualifying service on the crucial date cannot be put against the petitioner to deny him the benefit of promotion to which he is duly entitled to. In support of the above contention, learned counsel for the petitioner placed reliance on the decision of this Court in S.Sasisivanandam - Vs - District Collector, Thoothukudi District & Anr. (2012 (1) MLJ 634).

3. Per contra, learned Special Government Pleader appearing for the respondents, referring to the counter, submitted that it is not mere shortfall in the requisite qualifying service in a stream that has been the cause of non-consideration of the name of the petitioner. The petitioner, on the crucial date had also crossed 57 years of age and, therefore, the name of the petitioner was not considered. It is the further submission of

the learned Special Government Pleader that during the previous years, viz., 2007 and 2008, pending litigation, panel for Assistant Commissioners were not drawn, and, therefore, persons who had crossed the age of 57 years were also considered for promotion in the panel to be drawn for the year 2009. However, on the crucial date, i.e., 1.1.09, for drawing the panel for the year 2009, the petitioner not having completed 2 years of in the Assessment Service and also having crossed 57 years of age, his name was not considered for inclusion in the panel.

4. Learned Special Government Pleader, in response to the contention of the petitioner that a person, junior to the petitioner, who had not completed 2 years in the Assessment service, his name was considered for inclusion in the panel, submitted that the Government, in exercise of its powers, granted relaxation of the rule since the said person had not crossed the age of 57 years on the crucial date and, therefore, equating the petitioner with the said individual to claim similarity is wholly impermissible. It is the further submission of the learned Special Government Pleader that the petitioner having completed 2 years of service in the year 2010, his name was included in the panel for promotion, even though he had crossed the age of 57 years. However, the superannuation of the petitioner intervened before he could be granted promotion, and the same cannot be put against the respondents to claim that they have acted arbitrarily and against the rules and in favour of other persons.

5. This Court heard the learned counsel appearing on either and also bestowed its attention to the contentions advanced and the decisions to which this Court's attention was drawn.

6. The facts in issue are not in dispute. It is the case of the petitioner that his non-completion of two years in Assessment service cannot be put against him as his posting in the said service was within the domain of the respondents and, therefore, the lacunae on the respondents part cannot be fastened on the petitioner to his detriment. In support of the said contention, the decision in Sasisivanandam's case (supra) has been pressed into service.

7. In Sasisivanandam's case (supra), learned single Judge therein, took into consideration the decision in another case to lean in favour of the petitioner. The relevant portion of the said order is quoted hereunder :-

> "16. The learned counsel for the petitioner has rightly contended that the judgment of this Court dated 4.9.2007 in W.P.Nos.47872 and 47885 of 2006 and 7791 of 2007 is squarely applicable to this case. The relevant portion of the above

said judgment reads as follows:

> "8.Under these circumstances, the petitioners cannot be denied the benefit of inclusion in the panel, on the ground that they did not possess the service qualification. After all, the service qualification cannot be equated to the qualification of a pass in the departmental test. 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. Therefore, the respondents ought to have formulated and implemented a policy providing equal opportunity to all persons to acquire the service qualifications. Since the respondents have failed to do so, the petitioners were not at fault and on that ground, they should not have been omitted to be included in the panel."

8. True it is that a qualification when prescribed should meet the test of reasonableness and once it meets the test of reasonableness, it is for the rule framing authority to adhere to the same. There is no question as to the reasonableness of the qualification prescribed, i.e., prescription of two years in the Assessment service, as the same is not under challenge. Equally it is not disputed that qualification of age is also prescribed and that the persons, who are considered for being empaneled should not have crossed the age of 57 years. However in the case on hand, the relevant rules, which prescribes the qualification and also the outer age limit for being considered for inclusion in the panel has not been placed before the Court. The whole of the writ petition is silent on the said aspect. However, equally, the respondents are not disputing the said stand of the petitioner that he has put in a service, which falls short by 21 days on the crucial date. However, it is the contention of the respondents that the petitioner having not completed two years in Assessment service as on 1.1.09 and also having crossed the age of 57 years as on 1.7.09, the date of drawal of panel, the name of the petitioner was not considered for inclusion in the panel.

9. It is the case of the petitioner that one other person, junior to him, was considered, who had put in completed 23 days in the Assessment service but his case was considered for relaxation and his name has been included in the panel. The said fact is not disputed by the respondents, but the said person was included in the panel on the basis of the Government relaxing Rule 4 r/w Annexure 1-A (iii) of TNCTS Special Rules

relating to assessment service. There is no whisper about the age of the said person, who is junior to the petitioner, whose name has been included in the panel.

10. It is not the case of the petitioner that he has not crossed the age of 57 years on the crucial date, i.e., 1.1.09 and also on the date when the drawal of panel was drawn, i.e., on 1.7.09. Equally, it is not disputed by the petitioner that on completion of two years in assessment service , the petitioner's name was considered when the panel was drawn for the year 2010-2011, by relaxing the age, as by then the petitioner had crossed 57 years of age.

11. The counter of the respondents clearly reveal that even during the drawal of panel, which is in issue before this Court, only the names of persons, who had completed 2 years in assessment service were considered, even though they had crossed 57 years of age, as relaxation in age was given, as no panel was drawn during two preceding years. Equally during the drawal of panel for the year 2009-2010, persons, who had completed 2 years in assessment service, their names were considered, even though they had crossed the age of 57 years, by granting relaxation. In the same analogy, the petitioner, on having completed two years in assessment service, even though he crossed the age of 57 years, his name was considered in the panel drawn for the year 2010-2011. However, the petitioner not having completed 2 years in assessment of service and also having crossed the age of 57 years on the date of drawal of panel for the year 2009, his name was not considered. From the above, it is unambiguously clear that the petitioner failed the twin test laid down in order to qualify himself for being in the zone of consideration on the crucial date, i.e., 1.1.09 and also on the date of drawal of panel, i.e., 1.7.09. In such a backdrop, similarity claimed by the petitioner with a person, junior to him to press into service that relaxation ought to have been granted to the petitioner in the completion of 2 years in assessment service, which is not due to his fault, is wholly unsustainable as the petitioner has not fufilled the other limb of the test which would entail his qualification for being considered.

12. Further, the question of bias between the petitioner and other person does not come into the picture for the simple reason that the petitioner, during the year 2007, was working as Deputy Commercial Tax Officer and his post was upgraded as Commercial Tax Officer in the year 2008. Persons, who were serving as Commercial Tax Officers were the feeder category for being considered for promotion to the next higher post of Assistant Commissioner. Had the petitioner's post not been upgraded, the petitioner would not have been entitled to claim

the post of Assistant Commissioner. However, the posts were upgraded in the year 2008 and, the petitioner was posted as Commercial Tax Officer in 2008. Though the petitioner claims that there is only a shortfall of 21 days, however, the counter of the respondents is otherwise. According to the respondents, the petitioner, though has put in 1 year 11 months and 9 days service as Commercial Tax Officer, however, in the Assessment Service, the petitioner has put in only 1 year 5 months and 20 days. Though the upgradation as Commercial Tax Officer dates back to the year 2007 for the purpose of computing service, at the particular point of time, during the year 2007, the petitioner having worked only as Deputy Commercial Tax Officer and only on and from 2008, the petitioner's post having been upgraded as Commercial Tax Officer, calculation of the petitioner's period in the Assessment Service ought to be calculated only on and from the date on which the posts stood upgraded and not the date from which retrospective upgradation was granted. Therefore, it is not open for the petitioner to contend that the fault in not posting the petitioner in Assessment Service is on the respondents, as prior to 2008, the petitioner being a Deputy Commercial Tax Officer, not only posting him in assessment service would not arise, but equally the qualification for being promoted as Assistant Commissioner would also not stand attracted to the petitioner as the Commercial Tax Officers alone are feeder category to the post of Assistant Commissioner.

13. Further, it is to be pointed out that the petitioner has neither challenged the promotion panel drawn in the year 2009 nor challenged the rule, which prescribed two years in the Assessment Service and not crossing the age of 57 years as precondition for being considered for promotion. Having failed to question the promotion panel as also the prescription of qualification in the rules, it is not open to the petitioner, that too after superannuating, to come before this Court belatedly and claim notional promotion. The delay on the part of the petitioner to come before this Court as also the failure on the part of the petitioner to call in question the promotion panel as also the rules prescribing qualification in service, definitely causes serious injury to the case of the petitioner. It is also to be noted that though the approved panel was published on 22.1.2010, however, no steps have been taken by the petitioner till 10.3.2013, when representation was filed by the petitioner. The said representation has been filed by the petitioner much later in point of time after superannuating way back on 31.5.2010. Except for submitting the representation to the respondents, that too belatedly, the petitioner has not taken any timely action either to challenge the promotion panel or the rules prescribing qualification. In the above backdrop, the decision relied on by the learned counsel for the petitioner

would in no way advance the case of the petitioner, as the said decision is on the facts of the case as pleaded before the Court. That decision cannot be pressed into service to enable the petitioner to gain any advantage.

14. For the reasons aforesaid, this Court is not inclined to grant any relief to the petitioner as sought for. Accordingly, this writ petition fails and the same is dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

GLN

To

1. The Principal Secretary to Govt.
   Commercial Taxes Department
   Government of Tamil Nadu
   Secretariat, Chennai 600 009.

2. The Principal Secretary/Commissioner
   of Commercial Taxes
   Chennai 600 005.

+1cc to Special Government Pleader SR.No.25059

W.P. NO. 28099 OF 2013

MS(CO)
GMY(06/08/2020)