

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Writ Petition No.28318 of 2013

P.Radhakrishnan

...Petitioner

vs.

1. Government of Tamil Nadu,
represented by Secretary to Government,
Labour and Employment Department,
Secretariat,
Chennai 600 009.

2. The Commissioner of Labour,
Chennai 600 006.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus, directing the 1st Respondent to include the name of the Petitioner in the appropriate place in the panel as on 01.01.2012 of Labour Officers fit for promotion as Assistant Commissioner of Labour by treating the service of the Petitioner as Labour Officer (Social Security Scheme) from 01.11.2009 to 10.12.2020 as the prescribed service qualification for promotion and to consequently promote him.

For Petitioner : Mr.M.Ravi

For Respondents: Mr.A.N.Thambidurai,
Special Government Pleader

ORDER

Petitioner has come up with this Writ Petition seeking a direction to the 1st Respondent to include his name in the appropriate place in the panel as on 01.01.2012 of Labour Officers fit for promotion as Assistant Commissioner of Labour by treating his service as Labour Officer (Social Security Scheme) from 01.11.2009 to 10.12.2020 as the prescribed service qualification for promotion and to consequently promote him.

2. According to the Petitioner, he was initially appointed as Assistant Inspector of Labour by direct recruitment through the Tamil Nadu Public Service Commission and joined service on 29.12.1989. He was thereafter promoted as Deputy Inspector of

Labour on 07.08.2003 and as Labour Officer in the year 2008. It is the case of the Petitioner that, he has fulfilled the criteria for promotion as Assistant Commissioner of Labour by serving in three different posts, viz. Inspector of Labour, Labour Officer (Social Security Scheme) and Inspector of Plantation.

3. It is stated by the Petitioner that, the post of Labour Officer (Social Security Schemes) itself was created only in view of G.O.Ms.No.124, Labour and Employment Department, dated 24.10.2008 and hence, the said post cannot be expected to be included in the amended Special Rules framed in the year 2001. According to the Petitioner, the Government was well aware of the anomaly while issuing posting orders to the Petitioner and others, as Labour Officer (Social Security Scheme). While so, the 2nd Respondent vide Memorandum dated 10.12.2010, based on Government Letter No.19302/E1/2010-1, Labour and Employment Department, dated 18.11.2010, has issued Circular, stating that where working experience in a particular wing is a requirement for promotion to higher post as per the Special Rules for such posts, it is the responsibility of the Department concerned to post him/her to a particular wing for a specified period required for promotion to gain experience.

4. As the Special Rules for Tamil Nadu Labour Service has not been amended as proposed by the 2nd Respondent vide his Letter dated 07.02.2011, apprehending that, his name will be deferred for inclusion in the panel for the year 2012, in which event, he will be exposed to grave prejudice and hardship, the Petitioner submitted a representation dated 17.11.2011 to the 1st Respondent/Government, well in advance of the crucial date i.e. 01.01.2012. As the said representation did not evoke any response, the Petitioner preferred W.P.No.10249 of 2012 seeking directions to the 1st Respondent to include his name in the appropriate place in the panel as on 01.01.2012 of Labour Officers fit for promotion as Assistant Commissioner of Labour Officer (Social Security Scheme) as the prescribed service qualification for promotion and consequently promote him to the said post. This Court, by an order dated 18.04.2012 issued directions to the 1st Respondent to consider his representation on merits and in accordance with law within a period of four months.

5. Pursuant thereto, the 2nd Respondent informed the Petitioner vide proceedings dated 18.10.2012 that, a proposal had been sent to the Government for amendment to the Special Rules to treat the service rendered as Labour Officer (SSS) as service qualification for promotion. In the meanwhile, the 1st Respondent/Government, vide G.O.(D) No.82, Labour and Employment (E1) Department, dated 27.02.2013, has fixed the estimated

number of vacancies in the post of Assistant Commissioner of Labour for the year 2012 as 'Four'. As no orders were passed by the 1st Respondent/Government, the Petitioner is before this Court by way of the present Writ Petition.

6. Learned counsel for the Petitioner contended that, the Respondents ought to have taken into consideration that, by virtue of possessing the requisite service qualifications, i.e. prescribed period of service in three different posts, the Petitioner has become fully eligible and qualified for promotion as Assistant Commissioner of Labour. He pointed out that, the issue in question is squarely covered by a decision rendered by this Court in W.P.No.33011 of 2015 by an order dated 31.07.2018.

7. Learned Special Government Pleader appearing for the Respondents has not disputed the facts and has no serious objection to the submissions of the learned counsel for the Petitioner.

8. Heard the learned counsel on either side and perused the material documents available on record.

9. Admittedly, the Petitioner has served as Labour Officer (Social Security Scheme) for a period of more than 13 months. Since the post of Labour Officer (Social Security Scheme) was not included in the Special Rules for Tamil Nadu Labour Service as feeder category for promotion to the post of Assistant Commissioner of Labour, the Petitioner's name was not considered for promotion to the said post.

10. In a similar circumstance, this Court, in W.P.No.33011 of 2015 vide order dated 31.07.2018, has allowed the Writ Petition, relevant portion of which is extracted hereunder:

"3. ... The Petitioner was appointed as Labour Officer under Tamil Nadu Labour Services. The next avenue of promotion to the post of Labour Officer is the post of Assistant Commissioner of Labour. The appointment to the said post is governed by the Special Rules (Section 20-B in Volume II of the Tamil Nadu Service Manual, 1979). The feeder posts for appointment to the post of Assistant Commissioner of Labour are Inspector of Labour, Labour Officer and Inspector of Plantation. As per the provisions of the service rules, a person working in the feeder post, has to complete 12 calendar months and not less than 12 calendar months in other feeder categories, for e.g. if the Petitioner was working as Labour Officer, has to work as Inspector of Labour and Inspector of Plantation for not less than 12 calendar months, for promotion to the post of Assistant Commissioner of Labour.

11. The learned counsel for the Petitioner would at the outset submit that under similar circumstances, the learned Judge of this Court has allowed the writ petition on the basis of the fact that exemption had been granted to similarly placed employees who has not completed the requisite period of service in the feeder post. He would draw the attention of this Court to the order passed by the learned Judge of this Court in W.P.Nos.23081 and 23083 of 2007, dated 22.11.2007 in paragraph Nos.5 and 6, which are extracted below:

...
"It is noted that inspite of postings in the place as per the requirement the Officers are not willing to be served in these posts. Even some of the Officers have not brought to the notice of the administration that they may be given postings in the field for qualifying themselves as per the G.O. cited. Therefore, it is made clear that it is the responsibility of the Officers concerned to represent to the administration to serve in the specific posts prescribed for promotion to the next higher category. It is also made clear that no exemption shall be considered at a later date if they do not qualify for promotion to the next higher category for want of prescribed norms as stated above.

...
13. Against the order passed by the learned Single Judge, Writ Appeals came to be filed in W.A.Nos.509 to 511 of 2008. The Appeals came to be dismissed by the learned Division Bench of this Court on 19.06.2009.

20. The spirit of rule is that the seniors must be allowed to complete the required tenure of services in the respective feeder post to enable the seniors to be considered for promotion ahead of their juniors. In this case, it so happened that the juniors were allowed to continue and complete the required period of service in the respective feeder post and they were considered for promotion ahead of the seniors like the Petitioner herein. Such action on the part of the Respondents is per se discriminatory, illegal, unjust and unreasonable and cannot be countenanced in law. Moreover, as rightly contended by the learned counsel for the

Petitioner that, when exemption is granted to the persons of identically placed, denial of the same to the Petitioner cannot be appreciated at all.

22. For the above said reasons, the Writ Petition is allowed and there shall be a direction to the Respondents to regularise the promotion of the Petitioner as Assistant Commissioner of Labour for the year 2015, if he is otherwise fit for such regularisation and grant him all attendant benefits as admissible on such regularisation. The Respondents are directed to comply with the direction of this Court by passing appropriate orders, within a period of eight weeks from the date of receipt of a copy of this order."

11. As per the provisions of the Service Rules, a person working in the feeder post, has to complete 12 calendar months and not less than 12 calendar months in other feeder categories. In the case on hand, the Petitioner has served for 13 months and 10 days in the post of Labour Officer (Social Security Scheme) from 01.11.2009 to 10.12.2010. In similar circumstances, several Officers, who were working in the feeder posts, who did not complete the required number of service, were granted exemption by the Government and came to be promoted as Assistant Commissioner of Labour. Hence, the Petitioner herein, who has served as Labour Officer (Social Security Scheme) for more than 13 months, cannot be denied promotion for want of service qualification.

12. In view of the foregoing and in view of the settled legal position, this Court directs the 1st Respondent herein to include the name of the Petitioner in the appropriate place in the panel as on 01.01.2012 of Labour Officers fit for promotion as Assistant Commissioner of Labour by treating the Petitioner's service as Labour Officer (Social Security Scheme) from 01.11.2009 to 10.12.2020 as the prescribed service qualification for promotion and consequently promote him to the post of Assistant Commissioner of Labour, if he is otherwise eligible.

The Writ Petition is allowed with the above direction. No costs. Consequently, connected M.P.No.1 of 2013 is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:

1. The Secretary to Government,
Government of Tamil Nadu,
Labour and Employment Department,
Secretariat,
Chennai 600 009.
2. The Commissioner of Labour,
Chennai 600 006.

+1cc to the Government Pleader, S.R.No.35870

W.P.No.28318 of 2013

KK(CO)
RV(08/12/2020)



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