

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 31.08.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.30765 OF 2013

M.Bab Robert

... Petitioner

- Vs -

1. The Addl. Chief Secretary &
Commissioner of Revenue Administration
Chepauk, Madras 600 005.

2. The District Collector
Coimbatore.

... Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus to call for the records of the 1st respondent herein in his proceedings Proc. No.Ser.3(3)/41051/2010 dated 27.07.2013 and quash the same and further direct the respondents herein to include the name of the petitioner in the list of panel of Deputy Tahsildars for the year 2006 with all attendant benefits.

For Petitioner : Mr. S.Kasirajan

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

ORDER

It is the case of the petitioner that he was appointed as Junior Assistant in the Revenue Department on 1.9.1980 on compassionate ground and allotted to the Coimbatore Revenue Unit. The petitioner was promoted to the post of Assistant after six years. The petitioner, while serving as Assistant, secured employment abroad and, therefore, applied for leave on loss of pay for a period of five years from 9.6.2003 to 31.03.2008, which was sanctioned by the respondents and, accordingly, the petitioner had gone abroad to take up the said employment. In the interregnum, in the year 2006, the respondents drew the panel for promotion of persons to the post of Deputy Tahsildar from the feeder category of Assistant. On the petitioner rejoining service on 9.5.08, on completion of one year service on 9.5.09, the petitioner submitted a representation to the respondent for considering his name for

promotion to the post of Deputy Tahsildar by refixing his original seniority from the year 2006 stating that he had completed one year service on rejoining. Though the representation/appeal petition was forwarded to the 1st respondent, no orders were passed on the said petition inspite of diligent follow up by the petitioner. It is further averred by the petitioner that in the year 2009, a panel was drawn for promotion of persons to the post of Deputy Tahsildar. Pursuant to the follow up action of the petitioner and obtaining information under the Right to Information Act, the petitioner came to know that his request was rejected as he had to complete one year service from the date of rejoining the service and, therefore, he is not entitled for being considered in the panel for the year 2006. Since the orders were not communicated, the petitioner filed W.P. No.11100/2013 for a direction to the respondent to communicate the orders passed in his appeal petition and this Court directed the respondents to dispose of the appeal petition within a particular time frame. Pursuant to the said order, the 1st respondent rejected the claim of the petitioner vide the impugned communication, assailing which the present writ petition has been filed.

2. Learned counsel appearing for the petitioner submits that the issue raised in the present writ petition relates to strict interpretation of Rule 36 of the Tamil Nadu State Subordinate Services Rules. As per the rules, as soon as the person returns back to India after availing the leave on loss of pay and on rejoining duty and completes one year service, the person is entitled to have his seniority refixed at the relevant position. It is submitted that some portion of the Government Orders are in his favour and following the same, the respondents ought to have refixed his seniority by including his name in the panel for the year 2006, which has not been done properly. Hence, he prays for allowing the present petition.

3. Per contra, learned Special Government Pleader appearing for the respondent submits that admittedly the petitioner was not in service between 2003 and 2008 when the panel for the post of Deputy Tahsildars was drawn in the year 2006 and, therefore, his name was not included in the said panel. However, on the petitioner joining service in May 2008 and completing one year service in May, 2009, the name of the petitioner was included in the panel for promotion to the post of Deputy Tahsildar in the year 2009 and was given promotion. Rule 36 (c) disentitles the petitioner from having his name considered for promotion when he is on loss of pay at the point of time when the panel was drawn and further the second limb of the said rule contemplates that on joining, the person has to complete one year of service whereinafter only his name will be considered for inclusion in the panel. The respondents have scrupulously followed the rules

and have not deviated from the same and, therefore, no interference is warranted with the well considered order passed by the 1st respondent.

4. This Court bestowed its best attention to the contentions advanced on behalf of the parties and also perused the relevant rules to which this Court's attention was drawn.

5. As pointed out by the learned counsel for the petitioner, the issue in the present case revolves around Rule 36 (c) of the Tamil Nadu State Subordinate Service Rules and, therefore, for better appreciation, the said rule is extracted hereunder :-

"If a member of a service who had been on leave for a period of 3 years continuously for any reason except higher studies or for a period of four years continuously for higher studies, shall not be considered for appointment to a higher category either by promotion or by recruitment by transfer unless he has completed service for a period of 1 year from the date on which he joins duty on return from leave."

6. From a bare perusal of the above rule, it is unambiguously evident that no person/employee would be entitled to promotion to a higher category, if the said employee had been on leave for a continuous period of three years and that his name would be considered for promotion only after he completes one year of service from the date on which he rejoins duty.

7. In the case on hand, it is not in dispute that the petitioner was not in the services of the State from 9.6.2003 to 31.3.08 and that he was on leave on loss of pay, not for higher studies, but had taken up a better assignment abroad during the said period. It is also not in dispute that the petitioner joined the service on 9.5.08. In that backdrop, the petitioner completed the one year service on 9.5.09 on and from which date the petitioner becomes eligible for being considered for promotion to the next higher category. The rule does not contemplate in any way that on the petitioner completing one year service from the date of his rejoining, the petitioner would be entitled to have his promotion by re-fixation of seniority. If an interpretation as the one above, as suggested by the petitioner is given, it would defeat the very purpose of Rule 36 (c) as any person can take up a lucrative employment abroad and, thereafter, come back and claim re-fixation of seniority which would be in detriment of the persons, who had been in the service of the State. Such an interpretation would be a direct attack on the services of the persons, who had been in continuous service of the State without any break.

8. Further, it is to be pointed out that when the panel was drawn in the year 2006, the petitioner was nowhere in the scene and was outside India serving some other employer. Further, the petitioner was on leave on loss of pay, which literally means that the service of the petitioner during the said period of five years was not even service to be taken into account for any purpose, let alone promotion at a later point of time. The service of the petitioner during the period from 9.6.13 to 31.3.08 would stand excluded for all purposes and in such a case, it is not open to the petitioner to claim promotion for a period when he was not in the service of the State. The relief sought for by the petitioner is not only misconceived but is equally mischievous and the same cannot be acceded to by this Court and the 1st respondent has rightly construed the said rule and has passed the impugned order, which is perfect in all sense and does not call for any interference.

9. For the reasons aforesaid, this writ petition is devoid of merits and, accordingly, the same is dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

GLN
To

1. The Additional Chief Secretary &
Commissioner of Revenue Administration
Chepauk, Madras 600 005.

2. The District Collector,
Coimbatore.

+1cc to the Government Pleader Sr.28489

W.P. NO.30765 OF 2013

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srg 08/10/2020