

IN THE HIGH COURT OF JUDICATURE AT MADRAS

D A T E : 27.08.2020

C O R A M

The Hon'ble Mr. A.P.SAHI, THE CHIEF JUSTICE
and
The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Petition No.7391 of 2020
and
W.M.P.No.8843 of 2020

S.Purushothaman
S/o.Mr.R.Srinivasan
Assistant Registrar
functioning as Administrative Officer
in the cadre of Assistant Registrar
High Court Guest House
Chennai-600 028.

... Petitioner

Vs

1.The Registrar General
High Court of Judicature at Madras,
Chennai - 600 104.

2.Mr.L.Anandan
Assistant Registrar,
Madurai Bench of Madras High Court,
Madurai-600 104

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus calling for the records on the file of the first Respondent in (i) proceedings in ROC No.1338/2017/RG/B2 dated 18.12.2019 and (ii) the proceedings issued in ROC No.08/2016 - Con.B2 dated 29.04.2016 made in Notification No.62 of 2016 to the limited extent of non promotion of the Petitioner and the promotion of the second Respondent therein and quash the same and direct the first Respondent to declare that the Petitioner is deemed to have been promoted to category 6 "C" post with effect from 29.04.2016 and reckon his seniority being the feeder category post for promotion to the post of Assistant Registrar in category 5 with effect from 29.04.2016 and to promote the Petitioner as Assistant Registrar, notionally with effect from 17.11.2017 and grant him all consequential benefits.

For Petitioner : Mr.M.Ravi
For Respondents : Mr.M.Santhanaraman for R1

O R D E R

SENTHILKUMAR RAMAMOORTHY J.,

This writ petition is filed to quash the notification No.62/2016 to the limited extent of non promotion of the Petitioner and the promotion of the second Respondent; quash the order dated 18.12.2019 rejecting the Petitioner's representation in this regard; and to grant notional promotion to the Petitioner to a Category 6-C post from 29.04.2016 with consequential benefits. The Petitioner is currently working as an Administrative Officer, High Court, Guest House, Chennai. He was initially appointed as an Office Assistant in the Madras High Court Registry on 07.10.1988 and thereafter promoted to the post of Assistant on 30.04.1993. Upon successfully passing the departmental examinations, he was promoted as Assistant Section Officer on 15.04.1998 and as Section Officer on 18.03.2004. Thereafter, he was promoted as Sub-Assistant Registrar on 28.02.2017, transferred to the Madurai Bench of the Madras High Court on 17.09.2017 and, subsequently, promoted as Assistant Registrar in December 2018. According to the Petitioner, he possesses all the requisite educational qualifications, namely, B.A., B.A.L. and B.L.I.S., to have been considered for promotion as Librarian on 29.04.2016. Therefore, he was under the bona fide belief that he would be duly promoted to the post of Librarian.

2. The Petitioner states that the Madras High Court Service Rules, 1955 (the 1955 Service Rules) were in force until 30.11.2015. The 1955 Service Rules were repealed and replaced by the Madras High Court Service Rules, 2015 (the 2015 Service Rules) with effect from 01.12.2015. Rule 14 of the 2015 Service Rules deals with promotion and Sub-Rule (m) to the post of Librarian in Category 6-C of Division-I. The said Sub Rule reads as under:

"Promotion to Category-6C of Division-I viz, Librarian shall be from Category 1 of Division II viz., Court Officer/Section Officer/Appeal Examiner, including Section Officer (Property), Court Fee Examiner, Deputy Sheriff and Liaison Officer(Protocol); Category -2 of Division-II viz, Senior Private Secretary to Hon'ble Judges/Private Secretary to Hon'ble Judges/Personal Assistant to the Hon'ble Judges including Personal Assistant to the Hon'ble Chief Justice and Private Secretary to the Hon'ble the Chief Justice; Category-3 of Division-II viz. Interpreter and Category-4 of Division-II viz, Private Secretary to the Registrar General.

The ratio of 2:1 shall be adopted while making promotion to Category 6-C of Division-I viz. Librarian among the categories 1 and 2 of Division-II viz, Court Officer/Section Officer/Appeal Examiner, including Section Officer(Property), Court Fee Examiner, Deputy Sheriff and Liaison Officer (Protocol) and Senior Private Secretary to Hon'ble Judges/Private Secretary to Hon'ble Judges/Personal Assistant to the Hon'ble Judges including Personal Assistant to the Hon'ble the Chief Justice and Private Secretary to the Hon'ble the Chief Justice, respectively."

There were 5 vacancies in the post of Librarian and the said vacancies were filled up on 29.04.2016 pursuant to the Notification No.62/2016, which is impugned herein, and the second Respondent was one of the persons appointed.

3. The Petitioner further states that the first Respondent did not adhere to Rule 14(m) of the 2015 Service Rules while filling up the aforesaid vacancies. In particular, according to the Petitioner, the ratio of 2:1 should have been followed while filling up the post as between employees from the two feeder categories and, therefore, the five vacancies should have been filled-up in the following manner:

- (i) Court Officer(CO)/Section Officer(SO)/Appeal Examiner(AE)
- (ii) CO/SO/AE
- (iii) Senior Private Secretary(Sr.PS)/Private Secretary(PS)/Personal Assistant (P.A) to the Hon'ble Judges
- (iv) CO/SO/AE
- (v) CO/SO/AE

If Rule 14(m) had been followed, the Petitioner would have been entitled to promotion because he was 4th in the seniority list in the cadre of CO/SO/AE and consequently, he should have been appointed in the 5th vacancy.

4. Instead, the first Respondent erroneously applied the ratio on a 1:2 basis, as between the two feeder categories, and made the first appointment from the seniority list in the cadre of Sr.PS/PS/PA to the Hon'ble Judges and, thereafter, considered candidates from the category of CO/SO/AE. As a result of following this erroneous method, the Petitioner was not selected. After making enquiries, the Petitioner was able to obtain a copy of the notification dated 29.04.2016 with considerable difficulty. On receipt thereof, the Petitioner submitted a representation dated 27.03.2017 pointing out that

the ratio of 2:1 was not followed as between the cadre of CO/SO/AE and Sr.PS/PS/PA to the Hon'ble Judges while filling up the vacancies on 29.04.2016. Consequently, he requested that his seniority position be re-fixed in accordance with Rule 14(m) of the 2015 Service Rules. This representation was rejected by order dated 15.12.2017. In the said reply dated 15.12.2017, the Petitioner was informed that he had not submitted a representation at the time of non-consideration for the post of Librarian in the year 2016. In view of the fact that the vacancies were filled up in the year 2016, the Petitioner was informed that the consideration of the request for re-fixation of seniority would upset promotions made in the year 2016 and that the promotion of Thiru L.Anandan cannot be indirectly assailed by the Petitioner.

5. In these facts and circumstances, the Petitioner filed W.P. No.5404 of 2018 to challenge the order dated 15.12.2017 by which his representation was rejected. By order dated 05.03.2019, this Court set aside the order dated 15.12.2017 on the basis that the points raised by the Petitioner in the representation dated 27.03.2017 had not been adverted to while issuing the order dated 15.12.2017. The Court also directed that the representation of the Petitioner dated 27.03.2017 and the later representation dated 14.02.2019 (which was submitted while W.P. No.5404 of 2018 was pending) should be considered in de novo proceedings and an order should be passed thereon within a period of eight weeks.

6. Pursuant to the aforesaid order of this Court, the Petitioner's representations were considered by the first Respondent and rejected by order dated 18.12.2019, which is impugned herein. Before passing the impugned order, the representations of the Petitioner were considered by the Promotion Committee. The Promotion Committee took note of the fact that there were two vacancies in the post of Librarian in the year 2014 and that these vacancies were filled up from the cadre of CO/SO/AE. Therefore, when the next five vacancies were filled up on 29.04.2016, the first appointment was made from the cadre of Sr.PS/PS/PA to the Hon'ble Judges. On that basis, it was concluded that the promotions made in the year 2016 were in accordance with the 2015 Service Rules. It was further pointed out that, as of today, four persons from the cadre of CO/SO/AE and two persons from the cadre of Sr.PS/PS/PA to the Hon'ble Judges are functioning in the cadre of Librarian on promotion. In effect, the 2:1 ratio has been adhered to. It was further pointed out that any revision of seniority in the post of Librarian, at this juncture, would have an impact on the seniority in the post of Sub-Assistant Registrar and consequently for consideration to the post of Assistant Registrar. For all these reasons, the representations of the

Petitioner were rejected. The writ petition was filed in these facts and circumstances.

7. We heard Mr.M.Ravi, the learned counsel for the Petitioner and Mr.M.Santhanaraman, the learned counsel for the first Respondent.

8. Mr.Ravi contended that the 1955 Service Rules were repealed and replaced by the 2015 Service Rules. The 1955 Service Rules did not originally specify that a 2:1 ratio should be followed as between persons from the two feeder categories of CO/SO/AE and Sr.PS/PS/PA to the Hon'ble Judges. This ratio was introduced by an amendment made on 29.07.2015. After the amendment was made, no appointments were made to to the post of Librarian until the 2015 Service Rules came into force. Therefore, while making appointments by promotion on 29.04.2016, the 2:1 ratio should have been adopted. In other words, the appointments to the post of Librarian under the 2015 Service Rules should have been made on the following basis: (i) first two from the cadre of CO/SO/AE; (ii) 3rd from the cadre of Sr.PS/PS/PA to the Hon'ble Judges; and (iii) 4th and 5th from the cadre of CO/SO/AE. If this method had been followed, he contends that as on 29.04.2016, the following five persons should have been appointed:

1. T.E.Janaki - CO/SO/AE
2. S.Jaya - CO/SO/AE
3. G.Balakrishnan - Sr.PS/PS/PA
4. G.Govindaraju - CO/SO/AE
5. S. Purushothaman- CO/SO/AE

Accordingly, the Petitioner would have filled the 5th vacancy. Instead, the first Respondent erroneously commenced the filling-up of vacancies by making the first appointment from the cadre of Sr.PS/PS/PA to the Hon'ble Judges. By this process, the Petitioner was unfairly and unjustly denied promotion to the post of Librarian. Mr.Ravi contended that this is in contravention of Rule 14(m) of the 2015 Service Rules. In support of this contention, he referred to the representation dated 23.07.2017 and also to the counter affidavit of the first Respondent in the previous writ petition, namely, W.P.No.5404 of 2018. By referring to the aforesaid, he pointed out that the admitted position is that the first vacancy was filled up from the cadre of Sr.PS/PS/PA to the Hon'ble Judges on the basis that the previous cycle of promotion in the year 2014 concluded with the appointment of two persons from the cadre of CO/SO/AE.

9. Mr.Ravi referred to Rule 14(m) of the 2015 Service Rules and pointed out that it specifies that the 2:1 ratio shall be adopted while making promotion to Category 6-C of Division - I,

namely, Librarian, from Categories 1 and 2 of Division - II, namely, CO/SO/AE and Sr.PS/PS/PA to the Hon'ble Judges. By comparing and contrasting Rule 14(m) with Rule 14(j), he contended that Rule 14(m) does not provide for continuity with the immediately preceding selection while making appointments under the 2015 Service Rules. He further contended that the savings clause is not applicable with regard to continuity in the matter of following the 2:1 ratio. The savings clause only protects appointments, promotions, exemptions, penalties, punishments and qualifications prescribed under the 1955 Service Rules as a result of which vested rights or disabilities had been created. His next contention was that the 2:1 ratio was introduced by an amendment made on 29.07.2015 and, therefore, the first appointments, after such amendment, were made only on 29.04.2016. Therefore, the appointments made in the year 2014 cannot be the basis to deviate from the 2:1 ratio while making appointments in the year 2016. In support of his contentions, he relied upon two judgments of the Hon'ble Supreme Court, namely, Y.V.Rangaiah and others v. J.Sreenivasa Rao and others (1983) 3 SCC 284 (Y.V. Rangaiah) and State of Uttar Pradesh and others v. Mahesh Narain and others (2013) 4 SCC 169. In Y.V.Rangaiah, he pointed out that the Hon'ble Supreme Court concluded that the vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. In Mahesh Narain, the Hon'ble Supreme Court concluded that the amendment to the A.P. Registration and Subordinate Service Rules in the year 1990 cannot affect the eligibility and the claim for promotion that arose prior to the entry into force of the amendment. For all these reasons, Mr.Ravi contended that the impugned orders are unsustainable and that the Petitioner's seniority is liable to be revised in the manner prayed for in the writ petition.

10. Mr.Santhanaraman made submissions to the contrary. He commenced his submissions by pointing out that the Petitioner is admittedly in the rank of Administrative Officer, High Court Guest House, Chennai, at present. Therefore, he has been granted more than two promotions in the recent past, namely, to the post of Sub-Assistant Registrar on 28.02.2017, Assistant Registrar in December 2018 and Administrative Officer, High Court Guest House presently. Therefore, at this juncture, he cannot complain about the promotions that were made on 29.04.2016 and that a review of the seniority positions, if made now, would cause immense hardship. His next contention was that the last two vacancies to the post of Librarian were filled up from the cadre of CO/SO/AE in the year 2014. Therefore, when five vacancies arose in the year 2016, such vacancies were filled up by commencing from the cadre of Sr.PS/PS/PA to the Hon'ble Judges so as to provide a reasonable opportunity to both the feeder categories. If the Petitioner was aggrieved against

the said promotions, he should have objected within a reasonable time, whereas he submitted his first representation on 27.03.2017. By relying on the judgment of the Hon'ble Supreme Court in P.S. Sadasivasamy v. State of Tamil Nadu, (1975) 1 SCC 152(P.S. Sadasivasamy), he contended that the Petitioner is not entitled to discretionary relief on account of laches. According to Mr.Santhanaraman, the 2:1 ratio prescribed in the 2015 Service Rules has been duly followed while making such appointments and, therefore, the contentions of the Petitioner are liable to be rejected.

11. We considered the submissions of the learned counsel for the respective parties and examined the records.

12. The 1955 Service Rules did not originally provide for a 2:1 ratio, as between the two feeder categories, while making appointments by promotion to the post of Librarian. The admitted position is that the amendment to this effect came into force on 29.07.2015. After the said amendment, no appointments were made by promotion to the post of Librarian under the 1955 Service Rules. The previous appointments to the post of Librarian were in 2014, when the pre-amendment 1955 Service Rules were in force, and the 2:1 ratio was not applicable. The next appointments to the post of Librarian were made only on 29.04.2016. By this time, the 2015 Service Rules were in force and Rule 14(m) thereof stipulates that a 2:1 ratio should be maintained as between the two feeder categories. As correctly contended by Mr. Ravi, the savings clause only protects vested rights and disabilities and would not result in ipso facto continuity from the immediately preceding selection. Therefore, the contention of the Petitioner that the 2:1 ratio should have been adopted and that the first two appointments should have been made from the cadre of CO/SO/AE is not without merit.

13. However, it should be borne in mind that the 2015 Service Rules did not fill a vacuum. To put it differently, this is not a case of framing service rules for a new institution by specifying a ratio to be followed while promoting persons from the feeder categories. Instead, the 2015 Service Rules repealed and replaced the 1955 Service Rules, which prescribed the 2:1 ratio, albeit after amendment, as regards promotion from the two feeder categories. Throughout this period, i.e. between 1955 and 2015, the service conditions of the staff of the High Court were governed by the 1955 Service Rules. As regards the post of Librarian, the feeder categories both under the 1955 Service Rules and the 2015 Service Rules are the cadre of CO/SO/AE and Sr.PS/PS/PA to the Hon'ble Judges. While applying the 1955 Service Rules, the last set of two vacancies to the post of Librarian were filled up in the year 2014 from the cadre of CO/SO/AE, and by the impugned rejection

order dated 18.12.2019, the first Respondent explained that the vacancies were first filled-up from the cadre of Sr.PS/PS/PA on 29.04.2016 on account of the fact that the immediately preceding selection was made from the cadre of CO/SO/AE. In these facts and circumstances, the question that arises for consideration is whether the decision to take into consideration the immediately preceding selection, while applying the 2:1 ratio, instead of making a fresh start is liable to be quashed on judicial review.

14. From the list of persons appointed on 29.04.2016, which is contained in the Notification dated 29.04.2016, it is clear that three persons from the cadre of CO/SO/AE and two persons from the cadre of Sr.PS/PS/PA were appointed, albeit the first vacancy was filled-up from the cadre of Sr.PS/PS/PA to the Hon'ble Judges. In the present case, the record discloses that the 6 posts of Librarian are presently filled up by 4 persons from the cadre of CO/SO/AE and two persons from the cadre of Sr.PS/PS/PA to the Hon'ble Judges. It is also relevant to bear in mind the following material facts. The first representation, in this regard, from the Petitioner was on 27.03.2017, which is almost a year after the promotions. Of course, the fact situation herein cannot be equated with that in P.S. Sadasivasamy where the aggrieved person challenged the promotion after about 14 years. Subsequent to the filling-up of the posts on 29.04.2016, the Petitioner was promoted as Sub-Assistant Registrar on 28.02.2017, as Assistant Registrar in December 2018, and as Administrative Officer in High Court Guest House, Chennai thereafter. Keeping in mind the overall facts and circumstances, including the ratio of the judgment in P.S. Sadasivasamy, we find that the Notification dated 29.04.2016 is not liable to be quashed. At the same time, the Petitioner has a legitimate grievance because the contention that he was 4th in the order of seniority among the cadre of CO/SO/AE on 29.04.2016 is not disputed, and it is also not disputed that he would have occupied the 5th vacancy if the ratio of 2:1 was adopted without reference to the cadre from which appointments were made in 2014.

15. Therefore, while the refusal to unsettle the promotions of 29.04.2016 is justifiable if a holistic view is taken of the facts and circumstances, the Petitioner's legitimate grievance should have been addressed. For the reasons set out above, the order of rejection dated 18.12.2019 cannot be sustained and is set aside. Consequently, the Petitioner is granted leave to submit a fresh representation to the first Respondent as regards notional promotion and the consequential re-fixation of seniority. Upon receipt of such representation, it may be considered on merits, preferably within three months from the date of receipt thereof, by taking into consideration the

observations made herein. This writ petition is disposed of on the above terms. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Registrar General
High Court of Judicature at Madras,
Chennai - 600 104.

Copy to:

2.The Section Officer,
'B' Section, High Court, Madras.

3.The Section Officer,
Legal Cell, High Court, Madras.

+1cc to Mr.M.Ravi, Advocate in Sr no.27936

W.P.No.7391 of 2020

NRJK(CO)
RV(03/09/2020)