

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE :13.10.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.58 of 2013

and

M.P.Nos.1 of 2013 & 1 of 2015

1.P.Purshothaman

... Petitioner

- Vs -

1.The Secretary to government
Commercial Taxes and Registration
Department, Fort St. George,
Chennai -09.

2.The Inspector General of Registration
Santhome, Chennai 28.

... 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 in connection with the impugned order passed by the 2nd respondent in No.3497/a-3/2010 dated 7.7.2011 and the subsequent rejection order in Mu.Mu.No.37872/A5/2012 dated 19.10.2012 and quash the same and further direct the respondents to refix the seniority and grant all consequential service and monetary benefits and grant such other further relief as this Court may deem fit in the circumstance of the case.

For Petitioner : Mr.S.Sivakumar

For Respondents :Mr.S.Thangavel, Spl.G.P.

ORDER

The present petition has been filed to call for the records in connection with the impugned order passed by the 2nd respondent in No.3497/A-3/2010 dated 7.7.2011 and the subsequent rejection order in Mu.Mu.No.37872/A5/2012 dated 19.10.2012 and quash the same and further direct the respondents to refix the seniority and grant all consequential service and monetary benefits and grant such other further relief as this Court may

deem fit in the circumstance of the case.

2.It is the case of the petitioner that he was appointed as section writer in the Registration Department on 02.05.1973; and was later promoted as Junior Assistant and his services in the said post were regularised with effect from 01.06.1981; subsequently he got promotion as Assistant in the year 1994 and Sub Registrar Grade II in the year 2008 respectively; and thereafter he attained the age of superannuation on 31.01.2011 and he was allowed to retire from service.

2.1.It is the averment made by the petitioner that the rule prescribes 8 years of service including two years as Assistant as qualification for appointment to the post of Sub Registrar Grade II. Though he is eligible for consideration to the post of Sub Registrar Grade II in the panel for the year 1997-98, however his name was not included in the panel and thereafter a number of lists were published after 97-98; however neither the petitioner name was included nor any reason was communicated to him for non-inclusion of his name in any of the panel. Finally, his name was included in the panel for the year 2008 and he got promotion on 02.07.2008 after a lapse of 10 years.

2.2.It is the further averment of the petitioner that inspite of the rule position the respondents have not promoted number of Assistants including the petitioner in time and thereby their legitimate right has been deprived of, One Mr.Narayanan, made a representation to the Government to which reply dated 21.10.1985 was given informing that under the Tamil Nadu Registration Subordinate Service Rules, the rule of reservation being followed and therefore the claim was not considered. Aggrieved by that, he filed original application in O.A.No.392/89 wherein the Tribunal considered the issues on the basis of relevant rules applicable and the claim of the applicant was allowed by order dated 27.08.2013 and it was held that the seniority should be reckoned from the date of initial appointment in the category of junior Assistant which is contemplated under the rules as existed then. . Against the said order, State filed an appeal before the Hon'ble Supreme Court and the same was dismissed on 23.09.1994, which led to the amendment to the rule and the order of the Tribunal was complied. A committee was constituted to find out the beneficiaries under the said order and to that effect, a report was filed in which the name of the petitioner was not found prompting the petitioner to approach the 2nd respondent with a request to include his name in the panel for promotion to the

post of Sub Registrar Grade II for the year 1974-75, wherein the petitioner name was not found, however number of juniors have been included in the panel and have become his senior as Sub Registrar Grade II.

2.3. It is the further averment made by the petitioner that the feeder category for promotion to the post of Assistant is junior Assistant within the registration district, whereas for promotion as Sub Registrar Grade II, the State is the unit. The district level seniority for being considered for promotion from the post of Junior Assistant to Assistant creates anomaly due to the vacancies arising in certain district, which fortuitous circumstance aids persons from the said districts, while considering the case for further promotion. Hence the Government amended the rule by an order dated 24.02.1999 and after the amendment there is no dispute from the panel year 1998-99 onwards. Thereafter, based on the Narayanan's case, a number of similarly situated persons approached this Court and got order in their favour and the Association also made an request to the 2nd respondent to extend the benefits to the similarly situated persons. In order to rectify the anomaly, a committee was constituted by the 2nd respondent and based on the recommendation of the committee, the 2nd respondent issued impugned order with a rider to extend the benefits to the similarly situated persons.

2.4. The grievance of the petitioner is that as per the revised seniority he is entitled for appointment by way of promotion as Sub Registrar Grade II from 09.07.1998 and entitled for further up gradation as Grade I from 10.07.2000 and further he is entitled for inclusion of his name in the panel for the post of District Registrar for the year 2008-09. The crucial date for promotion to the post of Sub Registrar Grade II is 15.03.1998 and on the said date, his name was found in S.No.42 in the deferred list, as no charge was pending against him and he was fully qualified and eligible to be considered for inclusion in the panel to be drawn for the year 2008-09. Hence the petitioner approached the respondent and requested to include his name in the panel for promotion to the post of Sub Registrar Grade II for the year 97-98. To his shock and surprise, he was informed by an order dated 06.07.2012, that he was imposed with a punishment of cut in pension for a sum of Rs. 1000/- per month for a period of three years by an order dated 11.05.2012. The second respondent has failed to consider that the present punishment imposed after the retirement is not a bar for refixation of seniority based on the date of appointment, hence, he made a detailed representation to the

respondents on 25.07.2012, however, without considering the fact i.e., on the crucial date, there was no charge pending against the petitioner or the petitioner had suffered any punishment, the 2nd respondent has passed the impugned order by referring the earlier order dated 06.07.2012. As against the denial of re-fixation of seniority and the subsequent promotion to the petitioner the petitioner is before this Court with the present petition.

3. Learned counsel appearing for the petitioner submits that the punishment imposed on the petitioner is post-retirement and as on the crucial date, when the petitioner was eligible for promotion, there was neither a charge nor a punishment suffered by the petitioner and, therefore, non-consideration of the petitioner in the relevant panel years for promotion is impermissible and unsustainable and, accordingly, he should be granted the promotion during the respective periods based on his seniority and entitlement.

4. Per contra, learned Special Government Pleader appearing for the respondents submitted that based on the fixation of seniority by the Inspector General of Registration on the basis of the directions of the Tribunal, the seniority was fixed and such of those persons, who had been facing charge or had suffered punishment, of which one was the petitioner, were not included in the panel for the respective years and their names were deferred in terms of Rule 4 of the Tamil Nadu Subordinate Services (D&A) Rules. However, it is fairly conceded by the learned Special Government Pleader that the petitioner not suffering any punishment during the crucial period, viz., 1997-1998, his name ought to have been included in the panel and, accordingly, submits that appropriate directions may be given to the respondents.

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

6. A careful perusal of the materials available on record reveals that as on the date of preparation of the panel for the year 1997-1998, the petitioner was not suffering any punishment, though the petitioner was imposed with a punishment of 'Censure' vide proceedings No.3497/A3/2010, dated 7.7.2011. Therefore, on the crucial date, the petitioner not suffering any punishment, is entitled to have his name included in the panel for promotion. However, the impugned order relies on the Government instructions for denying inclusion of the name of the petitioner

in the panel for promotion and the same is extracted hereunder :-

"Any punishment, other than "Censure" imposed on an officer within a period of Five years prior to the crucial date and punishment of "Censure" within a period of one year prior to the crucial date "(or censure imposed after the crucial date, but before actual promotion) should be held against the Officer. In such a case the officer's name should be passed over."

7. Though such a stand is taken in the impugned order, it is to be pointed out that the the vires of G.O. Ms.No.368 P&AR (Personnel) Department dated 18.10.1993 was put to test before the Full Bench of this Court, and the Full Bench of this Court quashed the impugned Government Order holding that the check in period after the currency of the punishment was illegal and is against the Act and a Government Order cannot supplant what is not provided under the Act.

8. As already stated above, on the crucial date, viz., 15.03.1998, the petitioner not having suffered any charge or punishment, the non-inclusion of the name of the petitioner in the said panel is wholly unsustainable and the stand taken by the respondents cannot be accepted. The charge memo itself having been issued only in the year 2012, the panel having been drawn much earlier, definitely the respondents ought to have included the name of the petitioner in the panel. The non-inclusion of the name of the petitioner in the panel for promotion in the year 1997-98, therefore, deserves interference.

9. For the reasons aforesaid, this writ petition is allowed setting aside impugned order passed by the 2nd respondent. This Court directs the respondents to refix the seniority of the petitioner and to grant subsequent promotion to the petitioner along with all consequential service and monetary benefits in accordance with the law to the petitioner. The above exercise shall be completed by the respondents within a period of three months from the date of receipt of a copy of this order. However, in the circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

jrs

To

1 1.The Secretary to government
Commercial Taxes and Registration
Department, Fort St. George,
Chennai -09.

2.The Inspector General of Registration
Santhome, Chennai 28.

+1cc to Mr.S.Sivakumar Advocate SR.NO.34184

+1cc to the Government Pleader SR.NO.34119

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