

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 01.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. No. 6315 of 2014
and
WMP. No.25832 of 2019

A.Balasaraswathy

.. Petitioner

- Vs -

1.The Principal Secretary to Government,
Personnel and Administrative Reforms Department,
Secretariat, Chennai 600 009.

2.The Secretary to Government,
Industries Department,
Secretariat, Chennai 600 009.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorarified mandamus, calling for the records relating to the impugned order of the 1st respondent issued in G.O.(4D)No.25, P&AR Department, dated 28.05.2013 and the Consequential order issued in G.O.(4D) No.8, P&AR Department dated 04.02.2014 and quash the same and consequently direct the 1st respondent to promote the petitioner as Section Officer in the year 2011-12 panel issued in G.O.(4D) No.35 P&AR department, dated 30.08.2012, above Tmt.R.Saraswathi, now acting as Section Officer in Public Department from 30.08.2012, with all consequential benefits.

For Petitioner : Mr.T.Ranganathan

For Respondents: Mr.S.Thangavel, Spl.G.P for R1

ORDER

This Writ petition is filed by the petitioner, to call for the records relating to the impugned order of the 1st respondent issued in G.O.(4D)No.25, P&AR Department, dated 28.05.2013 and the Consequential order issued in G.O.(4D) No.8, P&AR Department dated 04.02.2014 and quash the same and consequently direct the 1st respondent to promote the petitioner as Section Officer in the year 2011-12 panel issued in G.O.(4D)No.35 P&AR department, dated 30.08.2012, above Tmt.R.Saraswathi, now acting as Section

Officer in Public Department from 30.08.2012, with all consequential benefits.

2.The case of the petitioner is that she had passed SSLC and also acquired technical skills in typewriting and shorthand both in English and Tamil. The petitioner was appointed as Steno Typist through the Tamil Nadu Public Service commission based on her qualification in the Social Welfare Department under proceeding dated 15.03.1983 and she has joined duty on 17.03.1983 under Rule 10(a)(1) of the General Rules of the Tamil Nadu State and Subordinate Services. It is the averment made by the petitioner that she was appointed through Employment Exchange and her services were regularised in the said post on 25.06.1984 and thereafter she was awarded Selection Grade of Scale of Pay on completion of 10 years service in the same post of Steno Typist.

2.1. It is the further averment made by the petitioner that the Government of Tamil Nadu called for appointment of Steno typist in the Tamil Nadu Secretariat Services in Finance Department by transfer of sendee from among the qualified steno typist working in other departments of Ministerial Service. Accordingly the petitioner has appeared for the examination conducted by the Finance Department during 2000. However, since she has acquired M.A.Degree (Sociology) in the year 1998 in not required by the Finance Department, she was selected and appointed in the Prohibition and Excise Department of Secretariat on 17.01.2001 and thereafter she was promoted as Senior Personal Clerk in the year 2005. The petitioner was promoted as Assistant Section Officer on 20.10.2006, based on the panel for promotion as Assistant section Officer, published in 17.10.2006.

2.2.According to the petitioner, the next promotion due to her is Section Officer and one of the qualification prescribed under Rule 9 of the Tamil Nadu State Service (Section 16) of Tamil Nadu General Service (Clause:XII) is " Must have render service for a period of not less than 6 years in the category of Assistant Section Officer in the Department of Secretariat other than Law and Finance and must hold a degree of any university recognized by the U.G.C and for the purpose of this ground, which was considered in the panel prepared for the year 2011-12 as on 01.08.2011. The petitioner having satisfied with the above condition is eligible for consideration and she is within the zone of consideration for being included in the panel prepared for the year 2011-12 as on 01.08.2012. However her juniors were given promotion, the petitioner was not given promotion on the ground that they have obtained degree from open university.

2.3.The grievance of the petitioner is that the 1st respondent, while preparing the said panel for promotion to the post of Section Officer and published in G.O(4D) No.35, P & AR Department, dated 30.08.2012, has not included her name, when her junior one R.Saraswathy, has been promoted as Section Officer in the Public Department and she is performing her duty in that post from 30.08.2012. The petitioner claims that there is no Degree qualification prescribed for promotion as Section Officer in the Tamil Nadu Secretariat Service is mentioned till the year 2012. The petitioner having satisfied with the above condition is eligible for consideration and she is within the zone of consideration for being included in the panel prepared for the year 2011-12 as on 01.08.2012. The 1st respondent ha also not issued any notice to the petitioner as to why her name was not included in the said panel even though the petitioner is possessed all the necessary qualifications. Aggrieved against the same, the petitioner has submitted a representation to the 1st respondent on 03.09.2012 and 28.09.2012, requested to include her name in the panel fit for promotion as Section Officer. However the same was rejected by the 1st respondent by way of passing impugned G.O.(4D) No.25 P& AR department, dated 28.05.2013. As against the rejection order passed by the 1st respondent, the petitioner filed a revision petition, however the same was mechanically rejected by the 1st respondent. As she ha snot been considered for promotion in-spite of fulfilling all the necessary conditions, left with no other alternative, the petitioner has filed this petition with the above said prayer.

3.Learned counsel appearing for the petitioner submitted that the post of Assistant Section Officer, Section Officer, and Under Secretary to Government have not been prescribed with degree qualification by promotion under the special Rules till the date of issue of the Amendment order in G.O.(Ms)No.88, P&AR Department dated 15.06.2012. He further submitted that the said G.O. has been issued by the Government, fixing the required qualification for the post of section officers as a Bachelor's Degree of any university recognised by the university grants commission for the purpose of its grant. Before 15.06.2012, the petitioners junior were promoted on 31.12.2010 and on the said date, the petitioner has possessed the required qualification and 6 years experience. Therefore non consideration of her name for promotion to the post of Section Officer is wholly unsustainable. Learned counsel appearing for the petitioner submitted that the principle of consideration of the qualification existing on the crucial date has been well settled in the case of Thiru.S. Mathevan Pillai, Section Officer Vs. The Secretary to Government, P & AR Department (WP.No.14658 of 2011 dated 30.07.2012), which, on appeal, by the State, has been affirmed in favour of the employee by the Division Bench of this Court in W.A.No.1372 of 2013 vide order dated 12.07.2013. The Special Leave Petition in SLP.No.14718 of 2014 was also

dismissed by the Hon'ble Supreme Court. Hence this Court may issue a direction to the respondents to extend the benefits legally due to the petitioner from the date of panel preparation in the year 2011-12 and grant all consequential benefits to the petitioner.

4. Per contra, learned Additional Government Pleader reiterated the contentions taken by the first respondent in the counter affidavit and submitted that for want of the requisite education qualifications as prescribed G.O.(Ms.)No.107, Personnel and Administrative Reforms (M) Department, dated 18.08.2009, G.O.Ms.No.163, P&AR, (H1) Department dated 16.12.2011, G.O.Ms.No.88, P&AR(C) Department, dated 15.06.2012 and G.O.Ms.No.92, P&AR (C) Department, dated 20.06.2012 the name of the petitioner was not considered and the same was communicated to the petitioner in Government Letter dated 22.06.2012. As the petitioner was not in possession of the prescribed Educational Qualification in accordance with the orders issued in the above said G.O.s and also not qualified at the time of preparation of regular panel (i.e. 22.06.2012) for the post of Section Officer for the year 2011-12, her name was not included in the regular panel for the Year 2011-12.

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

6. It is not in dispute that on the crucial date the petitioner was not possessed of a Bachelor's degree, though she was holding the post of Section Officer, which is the feeder category to the next higher post of Under Secretary to Government on the date when the panel for the year 2011-2012 was prepared. Equally it is not in dispute that no educational qualification, more especially a bachelor's degree was prescribed under the rules on the crucial date when the panel for the year 2011-2012 was prepared. The prescription of bachelor's degree as an educational qualification for promotion to the post of Section Officer was brought in as amendment to the Social Rules vide G.O.(Ms)No.88, P&AR Department dated 15.06.2012, much after the panel was prepared for the panel year 2011-2012. Though the amendment was made in the year 2012 with effect from December 2011, however, on the crucial date when the panel was prepared for the year 2011-2012, i.e., on 1.9.2010, no such amendment to the rule was in existence. Therefore, for all purposes, the petitioner, being in the feeder category for promotion to the next higher post, stood fully qualified for being considered for inclusion of her name in the panel. Though amendment to the rule was made with retrospectivity from the year 2011, however, as rightly contended by the learned counsel for the petitioner, on the crucial date, i.e., 1.9.2010, when the panel was drawn for the

panel year 2011-2012, even without a degree, the petitioner was fully eligible for inclusion of her name in the panel for promotion to the post of Under Secretary to Government, as the educational qualification, as has been amended was not in existence on the crucial date, i.e., on 01.09.2010.

7. The Division Bench of this Court in W.A.No.1372 of 2013, having found that on the crucial date for promotion to the post of Under Secretary, respondent therein fulfilled all the necessary qualification, dismissed the writ appeal filed by the State by its judgement dated 12.07.2013. The petitioner herein is similarly situated and as such, is entitled to succeed. In view of the then prevailing statutory position, the first respondent omitted to consider the material fact that it was only by amendment of the rule, from 2011 educational qualification of degree was inserted. The amendment not being in force on the crucial date when the panel for the year 2010-2011 was prepared, non-consideration of the name of the petitioner for inclusion of her name in the panel for promotion to the post of Under Secretary is wholly unsustainable.

8. For the reason aforesaid, this Court is of the view that non-inclusion of the name of the petitioner in the panel for the year 2010-2011 is wholly unsustainable and the impugned order of the 1st respondent issued G.O.(4D)No.25, P&AR Department, dated 28.05.2013 and the Consequential order issued in G.O.(4D) No.8, P&AR Department dated 04.02.2014 are liable to be quashed and, accordingly, the same is set aside. The first respondent is directed to consider the case of the petitioner for promotion to the post of Section Officer, by including her name in the panel for the year 2011-12 and her name should be included in the appropriate place among the Assistant Section Officers fit for promotion as on 01.08.2011. The respondents are directed to provide all service benefits with notional monetary benefits and the said exercise shall be completed within a period of 12 weeks from the date of receipt of copy of this order.

9. This writ petition stands allowed with the aforesaid observation and direction. There shall be no order as to costs. Consequently, connected miscellaneous petition are closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar

jrs

To

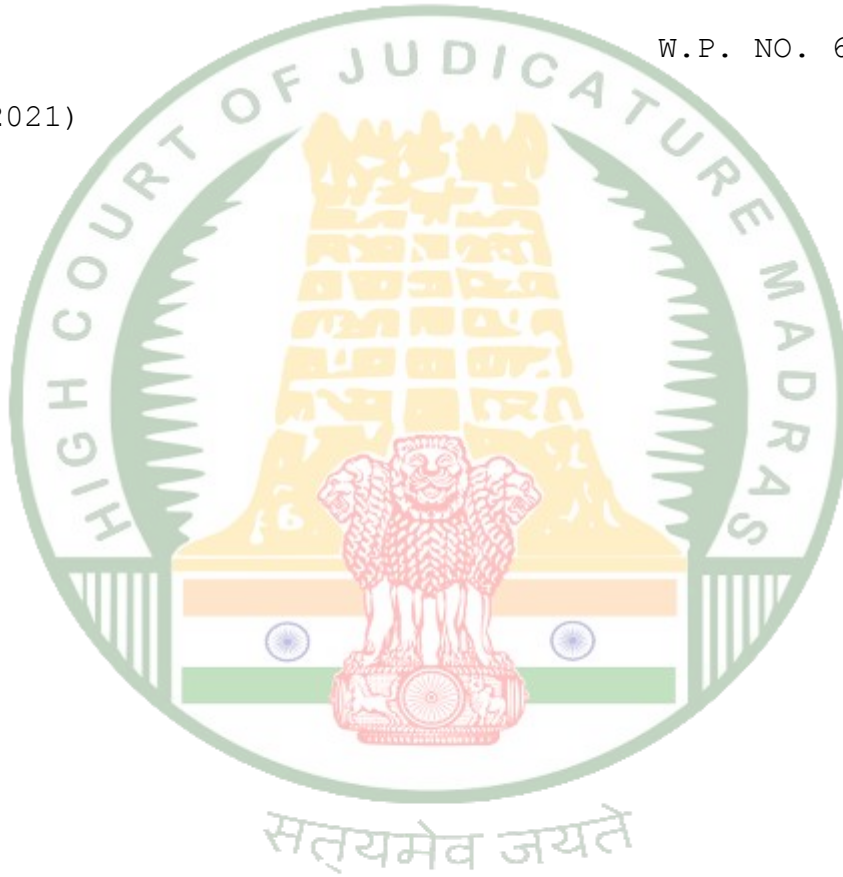
1.The Principal Secretary to Government,
Personnel and Administrative Reforms Department,
Secretariat, Chennai 600 009.

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Secretariat, Chennai 600 009.

+lcc to Mr.T.Ranganathan, Advocate SR.38809
+lcc to the Government Pleader SR.38676

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GSM(CO)
CB(17/02/2021)



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