

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 01.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. No. 25071 of 2014
and
M.P. Nos. 1 & 2 of 2014

J.Lalitha

.. Petitioner

- Vs -

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

2.The Secretary to Government,
Environment and Forests 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, to call for records relating to the impugned orders of the 1st respondent issued in Letter No.25108/Q/2012-1, P&AR Department dated 21/08/2012 and the consequential order issued on Letter 46714/Q2/2012-1, P&AR department, dated 18.02.2013 and quash the same and consequently direct the 1st respondent to consider the name of the petitioner in the Panel of Under Secretary to Government prepared as on 1.9.2010 for the year 2011-2012 and to promote her as Under Secretary to Government on par with her Junior Tmt.Kayathri with all monetary benefits.

For Petitioner : Mr.T.Ranganathan

For Respondents: Mr.S.Thangavel, Spl.G.P for R1
:Mr.S.Prabhu, AGP for R2

ORDER

This Writ petition is filed by the petitioner, to call for records relating to the impugned orders of the 1st respondent issued in Letter No.46714/Q2/2012-1, P&AR department, dated 18.02.2013 and quash the same and consequently direct the 1st respondent to consider the name of the petitioner in the Panel of Under Secretary to Government prepared as on 1.9.2010 for the year 2011-2012 and to promote her as Under Secretary to

Government on par with her Junior Tmt.Kayathri with all monetary benefits

2.The case of the petitioner is that she has completed SSLC in the year 1973 and also acquired technical skills in typewriting both in English and Tamil and had passed secondary school leaving certificate course under the old system (11 years) in the year 1975-76 itself. She was appointed as Typist through the Tamil Nadu Public Service Commission based on her qualification. It is the averment made by the petitioner that she was recruited through TNPSC and posted in 2nd respondent Department as Typist in the year 1978 and thereafter she was promoted as Assistant Section Officer in the year 1994 and subsequently as Section Officer in the same department during the year 2007 based on the service rules.

2.1.According to the petitioner, the next promotion due to her is Under Secretary to Government and the qualification prescribed under the Special Rules is "Must have rendered service for a period of not less than 2 years in the category of Section Officers in the Department of Secretariat other than Law and Finance Department and no other education qualification 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 2011-2012 as on 01.09.2010.

2.2.The grievance of the petitioner is that the 1st respondent, while preparing the said panel and published in G.O (D) No.130, P & AR Department, dated 22.06.2012 has not included her name, when her junior one S.Gayathri, Section Officer, M.A.&W.S. Department has been promoted as Under Secretary to Government. The petitioner claims that on the crucial date for consideration of panel for promotion, i.e., 01.09.2010, no education qualification was prescribed by the government for promotion to the post of Under Secretary. However subsequently, the Government issued G.O.Ms.No.92, P &AR Department, dated 20.06.2012, and decided to fix a Bachelor's Degree as the requisite Educational Qualification for appointment to the post of Section Officer in any department other than Law and Finance and the modes of filling up the post has also been codified. The post of Section Officer is the feeder category for the post of Under Secretary to Government, and the above amendment was to come in to force retrospectively from 16.12.2011. The petitioner claims that the said graduation qualification was fixed only after 15.6.2012 and juniors to the petitioner having been promoted before the said date, who are also without graduation, the petition is also entitled to get promotion, if there is no other legal impediment. As she has not been considered for promotion inspite of fulfilling all the necessary conditions, the petitioner has filed the present writ petition with the

above said prayer.

3.Learned counsel appearing for the petitioner submitted that the petitioner, as Section Officer, is the feeder category to the next higher post of Under Secretary and that she served in the post of Section officer from 2007 and has completed 3 years in the year 2009 and, therefore, she was fully qualified for being considered for promotion to the post of Under Secretary as on 01.09.2010 and on the said crucial date, there was no specific educational qualification of degree prescribed for promotion to the post of Under Secretary to Government under the Rules. 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 no degree qualification is prescribed under the Rules as on 01.09.2010 and the executive instructions issued by the 1st respondent prescribing degree qualification was only on 16.2.2011 and the amendment to the rules was issued only on 20.06.2012. Therefore non consideration of her name for promotion to the post of Under Secretary to Government 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 due to the petitioner from the date of panel preparation in the year 2010 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 Under Secretary to Government 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 judgment 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 in Letter No.46714/Q2/2012-1, P&AR department, dated 18.02.2013 is liable to be quashed and, accordingly, the same is set aside. The 1st respondent is directed to consider the case of the petitioner for promotion to the post of Under Secretary to Government, by including her name in the panel for the year 2011-12 and her name should be included in the appropriate place among the Section Officers fit for promotion as on 01.09.2010. 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)

//True Copy//

Sub Assistant Registrar

jrs

To

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

2.The Secretary to Government,
Environment and Forests Department,
Secretariat, Chennai 600 009.

+1cc to Mr.T.Ranganathan, Advocate SR.38810

+1cc to the Spl.Government Pleader(Forest) SR.38571

W.P. NO. 25071 OF 2014

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