IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR

W.P.No.8753 of 2016

V. Murugesan ..Petitioner

Vs

1. The Government of Tamil Nadu,
   Represented by its Secretary to Finance Department,
   Fort St. George, Chennai -600 009.

2. The Director,
   Treasury Accounts Department,
   Panagal Maligai, Saidapet,
   Chennai-600 015.

3. The Treasury Officer,
   District Treasury,
   Vellore, Vellore District,

4. The Assistant Treasury Officer,
   Sub Treasury Office,
   Gudiyatham, Vellore District. ..Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents 1 and 2 to refix the post of superintendent on 20.08.2008 and consequently to revise the petitioner's pay scale from 20.08.2008 onwards and on such revise of pay scale to pay the arrears from 20.08.2008 onwards and also to revise the petitioner's pensionary benefits as per the petitioner's representation dated 20.03.2015.

For Petitioner : Mr.M. Thamizhavel

For Respondents : Mr.S. Thangavel
Special Government Pleader

ORDER

This writ petition has been filed by the petitioner seeking for a direction to the respondents 1 and 2 to refix the post of superintendent on 20.08.2008 and consequently to revise the petitioner's pay scale from 20.08.2008 onwards and on such revise of pay scale to pay the arrears from 20.08.2008 onwards and also to revise the petitioner's pensionary benefits as per the petitioner's representation dated 20.03.2015.

2. According to the writ petitioner, on 23.10.1981, he was appointed as Junior Assistant in the fourth respondent office. His services were regularized on 25.06.1984. Subsequently, he was promoted as Accountant on 01.06.1992 and he was awarded Selection Grade in the post of Accountant on 01.06.2002. However, he appeared for the departmental test, but he had not passed in the departmental test continuously for five times. Meanwhile, he was retired from service on 30.04.2011. However, he sought for exemption from appearing the departmental test in his representation dated 24.12.2008 to the respondents 1 and 3. The respondents sent a letter dated 21.01.2009 in Na.Ka.No.156/08/A2 to the fourth respondent to send the particulars with regard to participation of petitioner in the departmental test. The fourth respondent sent all the particulars relating to the petitioner's participation in the departmental test by its letter dated 22.10.2009. In the light of the G.O.Ms.No.110, dated 02.09.2010 giving an exemption to the petitioner from appearing for the departmental test. Pursuant to the Government Order, the petitioner was eligible to get the post of Sub Treasury Officer or Superintendent. On 02.08.2010, the first respondent published panel list for the post of Superintendent, the petitioner's name was not included in the aforesaid panel, for the reason that the Government Order was passed, only on 02.09.2010. Though the petitioner made his representation on 24.12.2008 and the same was acknowledged by the respondents 3 and 4. The second respondent forwarded the same to the first respondent and the first respondent passed the order on 02.09.2010. Hence, the petitioner made a representation dated 20.03.2015 through proper channel to revise his pay scale and also to pay pensionary benefits by re-fixing the post of Superintendent from 02.08.2010. Again another representation was sent on 14.08.2015 to the second respondent to consider for paying the pensionary benefits. But, no order has been passed by the respondents till now. Hence, the petitioner has come forward with the present writ petition.

3. The learned Special Government Pleader reiterating the statements made in the counter affidavit filed by the second respondent submitted that the petitioner was accorded relaxation from passing departmental examinations for subordinate officers in G.O.(2D) No.110 Finance (T&A-II) Department, dated 02.09.2010. The crucial date for the preparation of the panel of Sub Treasury Officer/Superintendent for the year 2010-2011 as on 01.04.2010 and the aforesaid panel list was approved on 02.08.2010. Therefore, his relaxation order was issued after the said dates. Since the relaxation on exemption from appearing in the departmental test in respect of petitioner was issued on 02.09.2010, his name was not considered for the inclusion in

the panel of Sub Treasury Officer/Superintendent for the year 2010-2011. Meanwhile, the petitioner retired from service on attaining the age of superannuation on 30.04.2011, before the inclusion of his name in the panel of Sub Treasury Officer/Superintendent for the year 2011-2012, for which the crucial date was fixed as 01.04.2011. The Government has already considered the representation of the petitioner, granted for relaxing from passing the departmental examination for subordinate officers in G.O.(2D) No.110, Finance (T&A-II) Department dated 02.09.2010, the representation of the petitioner could not be considered for the payment of pensionery benefits in the post of Sub Treasury Officer/Superintendent. Therefore, the act of the respondents is in accordance with law and there is no violation of the relevant rules. In view of the submissions made by the respondents, it is submitted that the representation of the petitioner dated 20.03.2015 is not sustainable either in law or on facts and the prayer of the petitioner that to re-fix the post of Superintendent on 20.08.2008 could not be considered. On the other hand, the contention of the writ petitioner deserves no merits and it is liable to be rejected.

4. Heard both sides and perused the materials available on record.

5. It is not in disputed fact that the writ petitioner was eligible for the promotion to the post of Sub Treasury Officer/Superintendent as on 01.04.2011 by granting the relaxation of the departmental test on 02.09.2010 in view of the G.O.Ms.No.110, Finance (T & A-II) Department, dated 02.09.2010, but the writ petitioner was attaining the age of superannuation on 30.04.2011. During the aforesaid service period in the department, the respondents have not passed any promotion order by promoting to the post of Sub Treasury Officer/Superintendent for the year 2011-2012. Therefore, the point for consideration in the writ petition, according to the writ petitioner, he is eligible as on 01.04.2011 for the year 2011 – 2012 in the respondent department. Therefore, even the writ petitioner was retired from service, he is entitled for the notional promotion for the purpose of pensionary benefits. The writ petitioner was eligible for the promotion to the post of Sub Treasury Officer/Superintendent, but the petitioner's name was not considered for the said promotion on the ground that he attained the age of superannuation on the date of the promotion order issued to the Juniors. Therefore, the petitioner is not entitled for the aforesaid promotion. These issues were already decided by the Delhi High Court, in the case of Ranvir Singh v. Government of NCT of Delhi & Ors., dated 24.05.2013 in W.P.(C).No.2969 of 2012, wherein it has been held in paragraph Nos.4, 5, 6 and 7 are as follows::-

> "4. The only question which calls for our consideration is whether the petitioner is entitled to be promoted on notional basis to the post of Principal. The admitted position

is that the petitioner stood retired on May 31, 2010 i.e. before the date of promotion order, June 29, 2010. The issue is no more res integra inasmuch as a Division Bench of this Court of which one of us, Pradeep Nandrajog, J. was a member had decided a batch of writ petitions, lead matter being WP(C) No.8102/2012 Union of India & Anr. v. K.L.Taneja on the subject as to when can a person be granted promotion from a retrospective date. The Bench noted various decisions of the Supreme Court on the point as under:-

"(i) 1987 (4) SCC 566 K.Madhavan & Anr. vs.UOI & Ors.

(ii) 1989 Supp (2) SCC 625 Union of India & Ors. vs. K.K.Vadera & Ors.

(iii) 1995 (4) SCC 246 Vinod Kumar Sangal vs.UOI& Ors.

(iv) 1998 (7) SCC 44 Baij Nath Sharma vs. Hon'ble Rajasthan High Court At Jodhpur & Anr.

(v) AIR 2004 SC 255 P.N Premachandran vs. The State of Kerala & Ors.

(vi) AIR 2004 SC 3460 Sanjay K.Sinha & Ors. vs. State of Bihar & Ors.

(vii) 2006 (13) SCALE 246 State of Uttaranchal & Ors. Vs.Dinesh Kr.Sharma

(viii) 2007 (1) SCC 683 State of Uttaranchal & Anr. vs. Dinesh kumar Sharma.

(ix) 2008 (14) SCC 29 Nirmal Chandra Sinha vs. UOI & Ors.

(x) 2010 (4) SCC 290 UOI & Anr. vs. Hemraj Singh Chauhan & Ors."

5. The Bench had held that the cornucopia of case law above noted brings out the position:-

"(i) Service Jurisprudence does not recognize retrospective promotion i.e. a promotion from a back date.

(ii) If there exists a rule authorizing the Executive to accord promotion from a retrospective date, a decision to grant promotion from a retrospective date would be valid because of a power existing to do so.

(iii) Since mala fides taints any exercise of power or an act done, requiring the person wronged to be placed in the position the person would find himself but for the mala fide and tainted exercise of power or the act, promotion from a retrospective date can be granted if delay in promotion is found attributable to a mala fide act i.e. deliberately delaying holding DPC, depriving eligible candidates the right to be promoted causing prejudice.

(iv) If due to administrative reasons DPC cannot be held in a year and there is no taint of malice, no retrospective promotion can be made."

6. The reasoning of the Bench in the decision dated April 12, 2013 be read as a part of the present decision.

7. The learned counsel for the petitioner would rely upon a judgment of this Court in WP (C) 5549/2007, Dr. Sahadeva Singh v. Union of India & Ors. The said case can be differentiated on facts inasmuch as in that case the petitioner was still working whereas in this case he stood retired. Further, in the case in hand the promotion order was issued after the petitioner had retired. Further, the Tribunal in the impugned order relied upon a judgment of this Court in the case in WP(C) 20812/2005 Union of India v. Rajender Roy wherein this Court rejected a similar plea on the ground that none of the juniors to the respondent was promoted before his retirement. In this case also the Tribunal, in the impugned order, rejected the claim of the petitioner on this very ground. In other words, since no junior to the petitioner was promoted before his retirement, he could not have claimed any right for being promoted to the post of Principal. Further, if the claim of the petitioner is allowed then the promotion order with respect to around 128 Vice Principals promoted to the post of

Principals vide order dated June 29, 2010, need to be revised which is impermissible.”

6. From the aforesaid facts and circumstances of the case, it is seen that the writ petitioner retired from service on 30.04.2011 on attaining the age of superannuation. At that time, no junior was promoted on the date of his retirement as on 30.04.2011. Therefore, the writ petitioner could not have vested with his rights for the promotion to the post of Sub Treasury Officer/Superintendent for the year 2011-2012. Hence, this court has come to the conclusion that the contention of the learned counsel for the petitioner is unacceptable and the same is liable to be rejected. Hence, there is no merit in this writ petition for granting the relief sought for in this writ petition.

7. With the above observations, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

msm/ak

To

1. The Government of Tamil Nadu,
Represented by its Secretary to Finance Department,
Fort St. George, Chennai -600 009.

2. The Director, Treasury Accounts Department,
Panagal Maligai, Saidapet, Chennai-600 015.

3. The Treasury Officer,
District Treasury, Vellore, Vellore District,

4. The Assistant Treasury Officer,
Sub Treasury Office,
Gudiyatham, Vellore District.

+1cc to Mr.M. Thamizhavel, Advocate SR.No.16099

W.P.No.8753 of 2016

NRL(CO)
GMY(24/09/2020)