

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR

W.P.No.17943 of 2017

N.Parameswaran

..Petitioner

Vs

1.The Union of India,
Rep. By the Chief Secretary to Government,
Government of Union Territory of Puducherry,
Puducherry.

2.The Director of Local Administration,
Government of Union Territory of Puducherry,
Puducherry.

3.Pondicherry Municipality,
Rep. By its Commissioner,
Government of Union Territory of Puducherry,
Puducherry.

..Respondents

Writ Prayer:- Writ 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 third respondent relating to the impugned order dated 20.07.2016 bearing Ref.No.PM/Estt.1-118/A2/2016 and quash the same in as much as it promotes the petitioner only prospectively with effect from 28.07.2016 and consequently direct the respondents to promote the petitioner as Upper Division Clerk/Senior Assistant with retrospective effect from 22.12.2006 and thereafter, as Assistant with effect from 22.12.2009 and Office Manager with retrospective effect from 28.12.2014 with all monetary benefits, backwages, seniority and other service benefits.

For Petitioner : Mrs.G.Thilagavathi, SC
For M/s.Kamala Kumar

For Respondents : Mr.J.Kumaran
Additional Government Pleader
Puducherry

ORDER

This writ petition has been filed by the petitioner seeking to call for the records on the file of the third respondent relating to the impugned order dated 20.07.2016 bearing Ref.No.PM/Estt.1-118/A2/2016 and quash the same, inasmuch as it promotes the petitioner only prospectively with effect from 28.07.2016 and consequently direct the respondents to promote the petitioner as Upper Division Clerk/Senior Assistant with retrospective effect from 22.12.2006 and thereafter, as Assistant with effect from 22.12.2009 and Office Manager with retrospective effect from 28.12.2014 with all monetary benefits, backwages, seniority and other service benefits.

2. According to the writ petitioner, he was appointed as Junior Assistant in the third respondent office/Municipality on compassionate grounds due to his father's death, while he was in service. The next promotion available to the petitioner is the higher post of Senior Assistant. As per the recruitment rules, there were 32 vacancies available in the post of Senior Assistant for the year 2006. As such, 23 posts have to be filled up under the 80% promotion quota and 9 posts have to be filled up under 20% limited departmental competitive examination quota. As far as the promotion quotas are concerned, the respondents has to fill up the 23 vacancies as per the rules. However, as far as the departmental competitive examination quota are concerned, there were 9 vacancies, even though the petitioner, who is a degree holder and also a eligible candidate for the above said promotion post in the available vacancy, the respondents never took any steps to accommodate the petitioner for the aforesaid post. The petitioner had made repeated representations to the respondents, without considering the same, the respondents again convened a departmental promotion committee meeting for the promotion post with effect from 28.07.2016. The departmental promotion committee has promoted, the first 8 candidates out of 17 persons with retrospectively, with effect from 22.12.2006. Therefore, the petitioner's case has to be considered with effect from 22.12.2006, under the 20% quota meant for degree holders. But, the petitioner's promotion was not considered by the respondents, and he made representation to the respondents, the same was not considered. Hence, the petitioner has filed the present Writ Petition for the relief stated supra.

3.A counter affidavit has been filed on behalf of the respondents stating that the petitioner was appointed only on compassionate grounds as Junior Assistant due to his father's death, but not on the basis of normal recruitment through conduct of competitive examination. Thereafter, all the Junior Assistants had to carry out the duties and responsibilities

assigned to them in the interest of the Municipal Administration, irrespective of the fact as to whether they belong to the category of Junior Assistant or Data Entry Operator, etc. As such, the contention of the petitioner stating that he has been doing duties of higher post is quite unacceptable and devoid of any merit. The post of Data Entry Operator was filled up duly under the recruitment process and hence his claim for the post of Data Entry Operator could not be considered, as he is not eligible for consideration of the same, since he was specifically recruited on compassionate grounds only for the post of Junior Assistant. It is further submitted that if there was valid reason on his part for consideration, he would have been considered by the respondents. The D.P.C., held on 18.07.2016 had duly considered the merit, services and seniority of all the contenders for the post of Upper Division Clerk based on their service particulars. The senior most eligible persons have been duly considered and according to their seniority they were given promotions. Likewise, the petitioner also promoted and placed in the respective seniority position. It is further submitted that as per the post of Upper Division Clerk, according to the mode of recruitment, i.e., 80% is to be filled up by promotion and 20% is to be filled up by departmental competitive examination. Therefore, he has no right to claim for the post meant for direct recruitment to be filled up by him and his claim is devoid of merit and deserves no consideration on the ground that they were many of his seniors having degree not considered for the promotion. Therefore, the petitioner cannot seek for retrospective promotion, as he was not placed on par with his seniors due to the reason that his initial appointment was purely on compassionate grounds. It is also further submitted that the petitioner has rendered his 15 years of service and granted only one promotion in the Government of Puducherry, similarly appointed persons are granted three promotions, the said contention of the petitioner is quite untenable and unacceptable on the ground that he cannot in any manner equate himself with the Puducherry Municipality, which is a local body under the control of the local administration department. Therefore, the petitioner's contention that he should have been considered for the post of Assistant under 20% quota being a degree holder, cannot be a valid reason on the ground that there are many of his seniors waiting for consideration and promotions. Hence, the respondent prays to dismiss the above writ petition.

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

5. On a perusal of the counter affidavit, it is averred that the Municipality denied the averments of the petitioner stating that the D.P.C. held on 18.07.2016 had duly considered

his case along with 15 other candidates based on their seniority for promotion to the post of Upper Division Clerk. However, the senior most eligible persons namely, S1.No.1 to 8 were selected. Except the aforesaid statement, no other particulars were furnished in the counter affidavit. There is no reply in the said counter affidavit with regard to the contention raised by the petitioner on what basis one set of similarly placed Lower Division Clerks were promoted with retrospective effect and other set of persons were denied promotion with retrospective effect in the same proceedings. Based on the available records and accepting the contentions of the petitioner for his non-consideration the the Upper Division Clerk post, granting the same to the similarly placed persons, holds the same as discriminatory and violative of Articles 14 and 16 of the Constitution of India. Hence, it is clear that there is discrimination among the persons eligible for promotion on the relevant date based on the seniority list, which was finalized by the respondent/municipality.

6. In view of the above, the respondents 2 and 3 are directed to consider the petitioner's representations dated 12.05.2003, 09.09.2015, 21.06.2016 and 27.06.2017, only in respect of granting promotion with retrospective effect from 22.12.2006 on par with similarly placed persons and pass appropriate orders on merits and in accordance with law, as expeditiously as possible, in any event, within a period of twelve weeks from the date of receipt of a copy of this order, after affording due opportunity to the petitioner. It is made clear that the writ petitioner shall seek further promotion in the relevant post based on the outcome of the decision taken by the promotion committee.

7. With the above observations and directions, the writ petition is partly allowed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

msm/ak
To

1.The Chief Secretary to Government,
Government of Union Territory of Puducherry,
Puducherry.

2.The Director of Local Administration,
Government of Union Territory of Puducherry,
Puducherry.

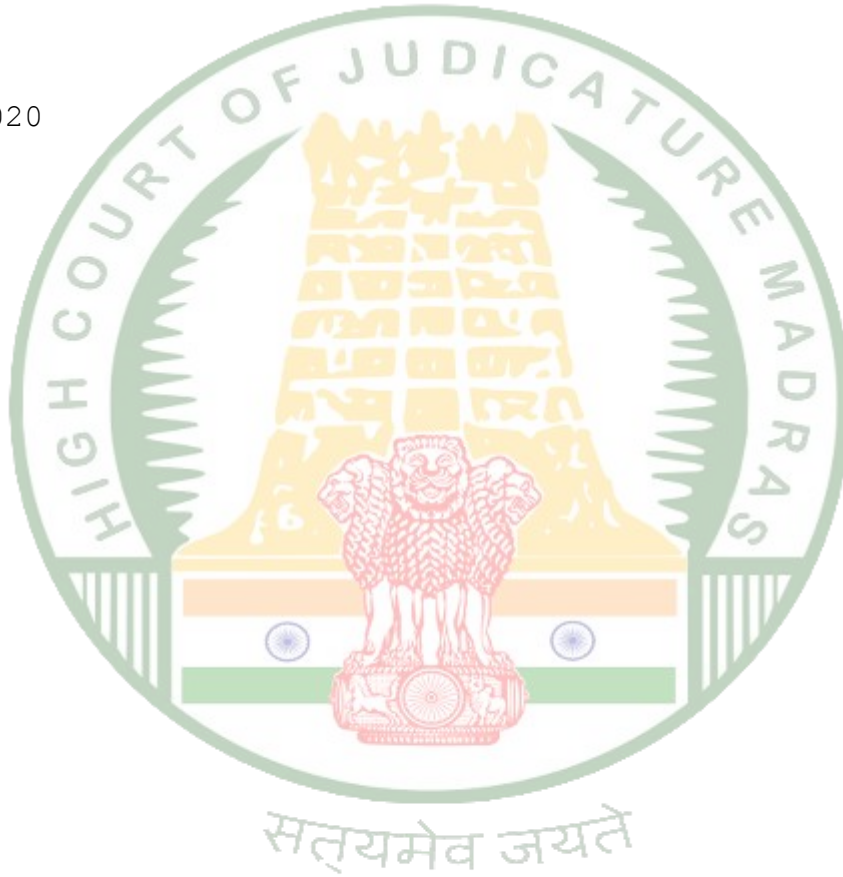
3.The Commissioner,
Pondicherry Municipality,
Government of Union Territory of Puducherry,
Puducherry.

+1 cc to Mr.P.Saravanan Advocate sr18377

+1 cc to Government Pleader sr18326

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