BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **30.01.2020**

CORAM:

THE HONOURABLE MR.JUSTICE **M.S.RAMESH**

W.P.(MD) Nos.8089 of 2015 & 26103 of 2019
and
M.P.(MD) Nos.1 & 2 of 2015
and
W.M.P.(MD) No.22577 of 2019

M.Shanmugavel ... Petitioner in both W.Ps.,

vs.

1.Joint Commissioner of Commercial Taxes (CT),
AR Road, Palayamcottai,
Tirunelveli.

2.Deputy Commissioner of Commercial Taxes (CT),
NGO Colony,
Sivakasi. ... Respondents in W.P.(MD) No.8089 of 2015

1.State of Tamilnadu,
represented by its Principal Secretary,
Department of Commercial Taxes
and Registration Department,
St.George Fort,
Chennai.

2.The Principal Secretary/Commissioner of Commercial Taxes,
Chepauk,
Chennai - 600 005.

3.The Joint Commissioner of Commercial Taxes (CT),
AR Road, Palayamcottai,
Tirunelveli.

4.The Deputy Commissioner of Commercial Taxes (CT),
Satchiyapuram, Sivakasi.
... Respondents in W.P.(MD) No.26103 of 2019

PRAYER in W.P.(MD) No.8089 of 2015: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of reversion passed by the second respondent in her proceedings No.Na.Ka.A1/4957/2009 dated 22.04.2015 and received on 05.05.2015 and quash the same as illegal.

PRAYER in W.P.(MD) No.26103 of 2019: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned letter No.540/A1/2014-4 dated 01-12-2014 and quash the same as illegal and consequently direct the respondents to grant relaxation to Rule 5(2) of the Tamil Nadu Basic Service Rules and regularize the petitioner's services from the date of his initial appointment viz., 17-08-92 with all monetary and other attendant benefits within the period that may stipulated by this Court.

For Petitioner
in both W.Ps., : Mr.M.E.Ilango

For Respondents
in both W.Ps., : Mr.R.Sethuraman
Special Government Pleader

COMMON ORDER

W.P.(MD) No.8089 of 2015 is filed to quash the order dated 22.04.2015 passed in Na.Ka.A1/4957/2009 by the second respondent.

2.W.P.(MD) No.26103 of 2019 is filed to quash the letter No.540/A1/2014-4 dated 01.12.2014, to direct the respondents to grant relaxation to Rule 5(2) of the Tamil Nadu Basic Service Rules and to regularize the petitioner's services from the date of his initial appointment with all monetary and other attendant benefits.

3.The petitioner herein was originally inducted in the Commercial Tax Department as Casual Labour on 25.05.1983 on compassionate grounds, since the petitioner's father had earlier served the department in his capacity as an Office Assistant. By proceedings dated 17.08.1992, the petitioner was brought into regular time scale of pay. When the petitioner's candidature was sent for regularization, the first respondent in W.P.(MD) No.26103 of 2019 in his proceedings dated 01.12.2014 was of the view that the petitioner's qualification of pre-foundation course is not the required qualification for the post of an Office Assistant and therefore, the petitioner should be placed in any of the post with the same scale of pay under Group IV. The order of the first respondent dated 01.12.2014 has been acted upon by the second respondent in W.P.(MD) No.8089 of 2015 through proceedings dated 22.04.2015, by implementing the order of the first respondent dated 01.12.2014. Both the orders are under challenge in these writ petitions.

4.The learned counsel appearing for the petitioner would submit that the petitioner was brought into regular time scale of pay way back on 17.08.1992 and after having served for more than 22 years, there was no justification on the part of the respondents herein in reverting the petitioner to lower grade.

5.The learned Special Government Pleader appearing for the respondents by relying on the averments made in the counter affidavit would submit that the qualification described for the post of an Office Assistant is 8th Standard, and that since the petitioner has possessed the pre foundation course, it is not in conformity with the qualifications prescribed under Government letter dated 01.12.2014 and 03.12.2010. As such, he would submit that there was no infirmity in the action initiated against the petitioner.

6.I have considered the rival submissions made on both side counsel.

7.It is not in dispute that the petitioner herein was originally inducted in the Commercial Tax Department as Casual Labour on 25.05.1983 on compassionate ground and thereafter, brought into regular time scale with effect from 17.08.1992. When the respondents herein had chosen to bring the petitioner into regular time scale of pay for the post of Office Assistant, there was a duty cast on them to verify as to whether the petitioner possessed the required qualification to hold the post of Office Assistant for the purpose of bringing him under regular time scale of pay.

8.As the respondents had failed to exercise their duty at that relevant point of time, which was 22 years ago from the date of regularization, there is absolutely no justification on their part in having realized their mistake after about 22 years, during which period the petitioner herein had continued his service as an Office Assistant in the respondent department.

9.Useful reference could be made to the action of the respondents in treating similarly placed candidates, who did not possess the requisite qualification, but had completed for more than 10 years of service and whose services were regularized under G.O.Ms.No.165, dated 11.11.2008. While passing the orders regularizing the services of about 40 candidates, the Government had taken a stand that in view of the long service of 10 years and above, the basic qualification prescribed under Rule 5 (2) of the Tamilnadu Basic Service Rule came to be relaxed. Hence, the discretion of the Government to relax the educational qualification, which is vested under Rule 48 of the General Rule for the Tamilnadu State and Special Services, is always available to them.

10.When there was an error committed in not referring to the minimum qualification prescribed for Office Assistants at the time of bringing the petitioner in the regular time scale of pay by overlooking the educational qualification and having waited for almost more than 22 years, in all fairness, the respondents ought to have exercised their powers under Rule 48 of the General Rule for the purpose of relaxing the educational qualification, insofar as the petitioner is concerned, by taking into account the passage of 22 years on the ground of equity.

11.Though by bringing the services of the petitioner from Group III to Group IV, may not affect his pay scale, it is stated that there would be a financial impact insofar as the petitioner's service benefits are concerned, at a later stage. As such, this Court is of the view that the petitioner's case requires to be dealt with a lenient view and thereby, the impugned order of the respondents requires interference.

12.In the light of the above observations, the impugned order dated 22.04.2015 passed in Na.Ka.A1/4957/2009 by the second respondent and the impugned letter No.540/A1/2014-4 dated 01.12.2014 are hereby set aside. Consequently, the respondents herein shall regularize the petitioner's services in the post of Office Assistant from the date of his initial appointment ie., on 17.08.1992, atleast within a period of twelve weeks from the date of receipt of a copy of this order.

13.With the above directions, these Writ Petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1.The Principal Secretary,
Department of Commercial Taxes
and Registration Department,
St.George Fort, Chennai.

2.The Principal Secretary/Commissioner of Commercial Taxes,
Chepauk,
Chennai - 600 005.

3.The Joint Commissioner of Commercial Taxes (CT),
AR Road, Palayamcottai,
Tirunelveli.

4.The Deputy Commissioner of Commercial Taxes (CT),
Satchiyapuram,
Sivakasi.

+1cc to Mr.M.E.Ilango,Advocate, SR.No. 4346

+1cc to Spl.Govt. Pleader, SR.No.4118

W.P.(MD) Nos.8089 of 2015 &
26103 of 2019
30.01.2020

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