



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2021

CORAM:

THE HON'BLE MR.JUSTICE N.KIRUBAKARAN

W.P.No.9143 of 1995
and
W.M.P.Nos.35096 & 35097 of 2016
and
W.P. (MD) .No. 3571 of 2013

W.P.No.9143 of 1995

C.Sivagnanam
S/o.P.Chinnaiyan

...Petitioner

-vs-

1. Bharathidasan University
Rep by The Registrar
Trichy

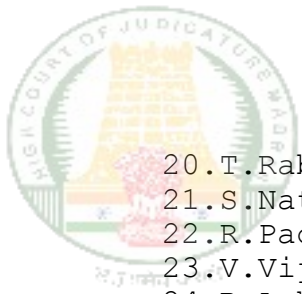
2. Vice Chancellor
Bharathidasan University
Trichy

3. The Registrar
Bharathidasan University
Trichy

4. L.Baskar Rao

5. L.Sivaprakasam & 31 others ...Respondents

6. M.Ayyakannu
7. A.M.Joseph Raj
8. A.Sabzathi Begum
9. R.Nagarajan
10.S.Venkatesh
11.V.Palanivel
12.Selvi L.Parimaladevi
13.A.Vanaja
14.E.Velayutham
15.N.Chandrasekaran
16.R.Vasanthi
17.S.Ramakrishnan
18.A.Veeramani
19.C.Renganathan



20.T.Rabindran
21.S.Natarajan
22.R.Padmalochni
23.V.Vijayalakshmi
24.R.Anbarasan
25.S.Manjula
26.D.Mala
27.R.Rengappan
28.K.K.Elangovan
29.P.Parrgunan
30.N.Nagendran
31.P.Murugan
32.D.Anthuwan Emil
33.S.Arivizhan
34.K.Panneerselvam
35.V.Babu
36.D.Sridharan

(RR 22 to 36 impleaded as per order dated 02.11.2013 made in WMP.No.535/10 in WP.No.9143/95)

Prayer:

Writ Petition filed under Article 226 of the Constitution of India to call for the records on the file of the 3rd respondent in connection with the order passed by him in his proceedings B1/177/90, dated 15.12.1993, B1/3033/89 dated 22.03.1994, B1/07377/2001 dated 04.04.2001, B1/073777/2001 dated 06.07.2001 and B1/18389/2009 dated 27.05.2009 and also the order passed by the 1st respondent in his proceedings 003033/B1/89 dated 25.02.1989 and quash the same and direct the respondents to place the petitioner over and above the respondents in the post of Assistant/Assistant Section Officer and Consequently, promote him to the post of Superintendent, Section Officer with effect from the date of promotion given to him with all monetary and service benefits by issuing a writ of Certiorarified Mandamus or other other appropriate Writ, Order or Direction in the nature of a Writ or any other appropriate relief.

(Prayer Amended as per Order dated 26.03.2014 by KBKVJ in WPMP 536 of 2010 in W.P.No.9143 of 1995)

W.P. (MD) .No.3571 of 2013

C.Sivagnanam
Section Officer (SG)
'D' Section, Registrar's Office
Bharathidasan University
Tiruchirapalli.

...Petitioner

-vs-



1.Bharathidasan University,
Tiruchirapalli,
Rep by The Registrar

...Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India seeking Writ of Certiorarified Mandamus calling for the records relating to the order passed by the respondent in his proceedings R.C.No.B1/35218/2010 dated 04.07.12 and quash the same as illegal and consequently promote me notionally with effect from the date on which my Junior Mrs.T.Udayammai was promoted as Assistant with further promotions along with all monetary benefits.

For Petitioner : Mr.R.Singgaravalen, Senior Counsel
for Mr.V.S.Jagadeesan
in both the WP's

For Respondents : Mr.V.Govardhanan,
for M/s.Row and Reddy,
for R1 to R3 in W.P.No.9143/1995
and for sole respondent in
W.P.(MD).No.3571 of 2013.

COMMON ORDER

W.P.No.9143 of 1995 has been filed praying for writ of Certiorarified Mandamus to call for the records on the file of the 3rd respondent in connection with the order passed by him in his proceedings B1/177/90, dated 15.12.1993, B1/3033/89 dated 22.03.1994, B1/07377/2001 dated 04.04.2001, B1/073777/2001 dated 06.07.2001 and B1/18389/2009 dated 27.05.2009 and also the order passed by the 1st respondent in his proceedings 003033/B1/89 dated 25.02.1989 and quash the same and direct the respondents to place the petitioner over and above the respondents in the post of Assistant/Assistant Section Officer and Consequently, promote the petitioner to the post of Superintendent/ Section Officer with effect from the date of promotion given to him with all monetary and service benefits.

2.W.P.(MD).No.3571 of 2013 has been filed praying for Writ of Certiorarified Mandamus calling for the records relating to the order passed by the respondent in his proceedings R.C.No.B1/35218/2010 dated 04.07.12 and quash the same as illegal and consequently promote the petitioner notionally with effect from the date on which his Junior Mrs.T.Udayammai was promoted as Assistant with further promotions along with all monetary benefits.



3. It is the case of the petitioner that he was selected for appointment to the post of Junior Assistant by Direct Recruitment on merits and joined service on 27.2.85 on daily wages basis. He was brought to regular time scale of pay on 23.3.87 in the post of Junior Assistant. While drawing the seniority list, two of the unqualified candidates, namely, Mrs.T.Udayammai, Mrs.Kala Ponnambalam, who were appointed to the post of Telephone Operator on 1.12.82 and 12.9.83 respectively on daily wages basis and who were brought to regular time scale of pay on 16.06.86 in the post of Telephone Operator also were included in the seniority list of Junior Assistants before even completion of 3 years in the post of Telephone Operator. According to him, it is only on completion of 3 years they can be brought to the post of Junior Assistant by conversion and not by way of promotion, as per G.O.MS.No.248, Public (Service-B) Dept., dated 29.01.1976. Hence, he has pleaded that their inclusion is illegal.

4. The petitioner contended that as per the above Govt., order they could have become Junior Assistants only in 1989 and not in 1986 and hence he made an objection dated 23.11.89 to the first respondent as their inclusion would affect his promotional chances. But without considering his representation, T.Udayammai and Kala Ponnambalam were temporarily promoted to the post of Assistant on 29.11.1989 and 30.11.1989 respectively which constrained him to file a Writ Petition in W.P.No.9669 of 1995 against the University by impleading them also as parties. Along with that, he has filed another writ also in W.P.No.9143 of 1995 in sum and substance for the proper fixation of seniority.

5. According to him, when the matter in W.P.No.9669 of 1995 was taken up for final disposal, this Court permitted him to withdraw the said Writ Petition by giving him liberty to make a representation to the University for consideration of his claim for due promotion. He contended that he made several representations and they were not considered and hence he had filed a Writ Petition in W.P.No.5805 of 2012 praying for consideration of his representation dated 5.10.10 and the same was ordered on 25.04.12 directing the University to consider his representation and pass orders in accordance with law. But according to him the said representation was not properly considered and was rejected by an order dated 4.7.12 and hence he had filed another Writ Petition before the Madurai Bench in W.P.(MD) No.3571 of 2013 challenging the said order dated 4.7.12 on various grounds which is also before this Court on transfer from the Madurai Bench to be heard along with W.P.No.9143 of 1995.

6. In the meanwhile, the petitioner got the prayer in W.P.No.9143 of 1995 amended so as to challenge the erroneous seniority list with consequential placement over and above the party respondents and for promotion. In the course of



notification of seniority lists nearly 10 in number with different position and placement, the seniority lists dated 27.05.09 and 6.01.15 have rightly mentioned the date of promotion of petitioner to the post of Assistant as 28.04.1990. Though it is mentioned correctly, it has not given effect to by giving consequential promotion.

7. Heard Mr.R.Singgaravelan, learned Senior Counsel for the petitioner assisted by Mr.V.S.Jagadeesan and Mr.Govardhanan, learned counsel for the respondent.

8. In the counter as well as in the written submission, the University has not disputed the factual details furnished by the petitioner. It is surprising to note that nearly 10 seniority lists in the long span of 26 years were published as contended by the petitioner and each and every time, the position of the petitioner got changed.

9. It is not good for the healthy and honest administration of the Public Authority to publish such number of seniority lists altering the position of the candidates from time to time as per their whims and fancies without any adequate reasons from the date of the appointment of the candidates till the date of their retirement. It is because of this type of practice the petitioner as rightly contended by him lost his due promotional chances and atlast, with a heavy heart, retired from service on 31.07.16 from the post of Section Officer (Selection Grade), two posts above in which he was initially appointed.

10. It is very strenuously argued by the Senior Counsel Mr.R.Singaravelan that because of the innumerable seniority lists published by the University, without any rhyme or reason, the petitioner lost the chance of the promotion which caused irreparable loss not only to him but to his family also. He pointed out that if date of promotion of the petitioner to the post of Assistant mentioned in the last two seniority lists dated 27.5.09 and 6.1.15 were operated, atleast though belatedly he would have got promotion to the post of Assistant Registrar in 2011 and retired from that post. It is not known as to why the date of promotion of the petitioner to the post of Assistant on 28.04.1990 mentioned in those two seniority lists published by the University were not implemented for the petitioner alone which drove him to retire from the post of Section Officer (Selection Grade).

11. This Court finds that there is force in the argument of the learned Senior Counsel that the failure on the part of the University to act upon the date of promotion of the petitioner to the post of Assistant mentioned in those two seniority lists for the petitioner alone to avoid giving him due promotion before his retirement is not only out and out unconstitutional and ultravires but also unjustifiable and unconscionable. In fact, the same date of promotion to the post of Assistant i.e.,



28.04.1990 was mentioned in the earlier two seniority list dated 19.1.1991 and 26.03.1992 and if the same had been acted upon even at that time, the petitioner would not have chosen to file these writ petitions and wait in the court corridor for more than 25 years. The Hon'ble Apex Court in (2010) 4 SCC 290 has categorically held that the right to be considered for promotion and proper placement in the seniority list are the fundamental rights guaranteed under Articles 14, 16 and 21 of the Constitution of India. The said judgment quoted by the learned senior counsel is squarely applicable to the facts of the case. On perusal of the pleadings and records this Court finds that the failure to act upon the date of promotion of the petitioner to the Assistant on 28.04.1990 is vindictive, motivated and unreasonable.

12.The University has not only failed to implement their own orders notifying the date of promotion of the petitioner to the post of Assistant rightly but also has passed an order of recovery dated 17.11.16 on audit objection without even any prior notice to him withholding Rs.4,51,599/- from his retirement benefits after his retirement on 31.07.2016. This has been done when the matter is being heard before the Hon'ble Court. Fairness requires that atleast the university should have informed the court such a necessity for recovery and then proceeded further. Such a revision was done on his representation claiming parity with that of his junior. But the University does not even seem to have realized the seriousness involved in the court proceedings and has chosen to proceed further against the petitioner.

13.It is to be noted that the above amount was given to him by way of revision for every month from 13.07.2005 by an order dated 30.11.2012 in the name of revised pay and not one time. The recovery order without any notice and that too, after his retirement is illegal. Such a type of recovery is not only arbitrary but also unrecognized in Service Jurisprudence. It is not only against Arts.14 and 16 of the Constitution of India but also against the principles of natural justice and fair play as rightly contended by the Senior Counsel. Further had he been given due promotion he would have got more salary and the excess payment would not have arisen at all.

14.The two important aspects of the case, viz.,

(i) the failure to implement the seniority lists dated 27.5.09 and 6.01.15 in favour of the petitioner while implementing for all others without any reasons is nothing but illegal and motivated;

(ii) Secondly the proper fixation of pay rightly done for him on par with his junior by an order dated 30.11.2012, w.e.f.,



13.07.2005 was ordered to be recovered in 2016 without any notice to him and that too, after his retirement would warrant this court to hold in favour of the petitioner.

15. For the reasons given above, these Writ Petitions are allowed and this Court directs the respondent University to give the petitioner all the due promotions as per the date of his promotion to the post of Assistant i.e., 28.04.1990 mentioned in the seniority lists dated 27.5.2009 and 06.01.2015 upto the post of Assistant Registrar with effect from 25.02.11, the date of promotion of his immediate junior with all monetary and service benefits on the basis of such promotion with 9% interest. Consequently the order of recovery passed against him is liable to be set aside and accordingly it is set aside. Connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

pgp

To

1. The Registrar,
Bharathidasan University,
Trichy.
2. The Vice Chancellor,
Bharathidasan University,
Trichy.

+1cc to M/s.Row and Reddy, Advocate, S.R.No.41937

+1cc to Mr.V.S.Jagadeesan, Advocate, S.R.No.41690

W.P.No.9143 of 1995

and

W.P. (MD) .No.3571 of 2013

SVI[co]

NSK 17/09/2021