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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05/10/2021

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

WP NOS.33089 OF 2013, 28484 AND 33301 OF 2014
AND
CONNECTED MISCELLANEOUS PETITIONS

W.P.NO.33089/2013

M.Issaivanan

... Petitioner

Vs.

1. Union of India
Rep. by Government of Puducherry
Chief Secretariat
Puducherry - 605 001.
2. The Chairman
DPC - (Non Teaching Staff)
PEC - Cum Secretary to Government (Education)
Chief Secretariat, Govt. of Puducherry
Puducherry - 605 001.
3. The Secretary to Government
Department of Personnel and Administrative Reforms
(Personnel Wing) Chief Secretariat
Govt. of Puducherry, Puducherry - 605 001.
4. The Principal
Pondicherry Engineering College (P.E.C)
Pillaichavady,
Puducherry - 605 014.
5. G.Murugesan
6. R.Govindarajan
7. E.Mourougayane
8. L.Manjini
9. P.Parasuraman
- 10.S.Vengadesaperumal
- 11.N.Ramalingam
- 12.M.Ilangovan
- 13.S.Murthy
- 14.J.Govindarajulu



15.M.Tamilselvam
(R5 to R15 impleaded vide Cour order
dated 01.11.2018 made in WMP No.29755/2018
in WP No.33089/2013 by SMSJ)

... Respondents

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PRAYER:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to Lr.No.PEC/Estt./E7/2013/2608 dated 06.08.2013 issued by the 4th respondent and quash the same and further direct the 4th respondent to pay the arrears for the period from 16.02.2006 to 08.12.2009 and to issue revised order promoting the petitioner with effect from 16.02.2006 instead of 23.02.2006 based on the decision of the DPC meeting held on 09.12.2009.

For Petitioner	:	Mr.D.Sreenivasan
For Respondents	:	Ms.N.Mala
1 to 4		Government Pleader (Pondicherry)

W.P.NO.28484/2014

M.Issaivanan ... Petitioner

Vs.

1. The Chairman cum
Secretary to Government (Education)
Staff Selection (Non-Teaching) Committee
Pondicherry Engineering College,
Pondicherry - 605 014.

2. The Principal
Pondicherry Engineering College (P.E.C)
Pondicherry - 605 014.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the respondents to promote the petitioner with retrospective effect as UDC from 25.06.1993 and LDC from 23.05.2001.

For Petitioner :	Mr.D.Sreenivasan
For Respondents:	Ms.N.Mala
	Government Pleader (Pondicherry)



W.P.NO.33301/2014

M.Issaivanan

... Petitioner

Vs.

1. The Chairman - Cum -
Secretary to Government (Education)
Staff Selection (Non Teaching) Committee
Pondicherry Engineering College
Pondicherry - 605 001.
2. The Secretary to Government
Department of Personnel and Administrative Reforms
(Personnel Wing) Chief Secretariat
Govt. of Puducherry, Puducherry - 605 001.
3. Pondicherry Engineering College
Rep. by its Principal
Pillaichavady, Puducherry - 605 014.
4. G.Murugesan
5. R.Govindarajan
6. E.Mourougayane
7. L.Manjini
8. P.Parasuraman
9. S.Vengadesaperumal
10.N.Ramalingam
11.M.Ilangovan
12.S.Murthy
13.J.Govindarajulu
14.M.Tamilselvam
(RR4 to R14 impleaded vide Cour order
dated 07.04.2017 made in M.P.No.3 of 2015
in WP No.33301 / 2014 by TRJ)

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the respondents to revise the seniority list dated 21.02.2011 in Lr.No. PEC / Estt / E4 / Seniority /2010/671.

For Petitioner :	Mr.D.Sreenivasan
For Respondents:	Ms.N.Mala
1 to 3	Government Pleader(Puducherry)

COMMON ORDER

The petitioner filed three writ petitions in W.P.Nos.33089 of 2013 and 28484 and 33301 of 2014. The case of the writ petitioner has a checkered history.



2.The writ petitioner was originally engaged as daily rated NMR in the respondent College with effect from 01.10.1984. He was regularised as Helper with effect from 01.08.1987 and promoted as Attender with effect from 14.02.1994. Thereafter, he was promoted as Lower Division Clerk (LDC) with effect from 23.05.1996 and Upper Division Clerk (UDC) with effect from 31.10.2001 and Assistant with effect from 23.02.2006.

3.The petitioner earlier filed a writ petition in W.P.No.38340 of 2006 to promote him as UDC retrospectively with effect from 06.07.2000. In the said writ petition, the Principal of the respondent college filed a sworn affidavit in the form of counter wherein at paragraph no.17, it is pleaded as under:

"17.I submit that the petitioner's statement that he was not considered for promotion to Attender, Lower Division Clerk and Upper Division Clerk on relaxing the qualification as SC Candidate is not correct. He has been considered for promotion relaxing the qualification as SC candidate for the following post.

a) Appointed as Attender w.e.f. 01.12.1994 and given consideration as SC candidate and made retropective effect from 01.08.1987.

b) Promoted to Lower Division Clerk with effect from 23.05.1996 and given consideration as SC candidate and made retrospective effect from 25.06.1993.

c) Promoted to Upper Division Clerk with effect from 31.10.2001 and given consideration as SC candidate and made retrospective effect from 23.05.2001."

4.According to the petitioner, he was not given retrospective promotion as LDC with effect from 23.05.1996 and UDC with effect from 23.05.2001. Therefore, in W.P.No.28484 of 2014 he seeks implementation of promotion as sworn by the Principal of the respondent College, in the counter affidavit dated 06.10.2010 filed in WP No.38340 of 2006.

5.Since the petitioner was was deprived of monetary benefits in view of fixation of salary on notional basis, he filed the writ petition in WP No.33089 of 2013.

6.In view of the counter affidavit filed in WP No.38340 of 2006, the petitioner seeks retrospective promotion as LDC with effect from 25.06.1993 and UDC with effect from 23.05.2001.



7. Heard the submissions made on either side.

8. The admitted fact remains that the petitioner was appointed as Helper on 01.08.1987, whereas, his juniors, who were appointed in the year 1988 were appointed as Attenders in the pay scale of Rs.800-1150. The Office Order in No.PSC/PER/B1/90 of the Pondicherry Engineering College dated 26.07.1990 shows that the persons appointed in the year 1990 were given higher pay scale and higher seniority.

9. The learned Government Pleader (Pondicherry) would submit that at the relevant point of time, no recruitment rules were existing. The persons, who had higher qualification like SSLC were appointed as Attenders and the persons with lesser qualification were appointed as Helpers. The petitioner possessed only 7th Standard and therefore, the petitioner cannot seek seniority over these candidates. She further contended that after the promotion of the juniors of the petitioner from the post LDC, on 14.08.2000 they were further promoted as UDC. This promotion was not challenged by the petitioner. Without challenging the promotion order, the petitioner cannot now seek promotion on par with his junior. Thereafter, in the DPC held on 10.08.2006, the petitioner was promoted as UDC with effect from 31.01.2001 notionally and substantially with effect from 10.08.2006. The petitioner has not challenged even this order. Therefore, after a period of eight years, he cannot challenge the present order and it hit by laches. The promotions have attained finality and therefore, he cannot unsettle the settled seniority after a period of eight years.

10. In so far as retrospective promotion to the post of UDC with effect from 23.05.2001 is concerned, on the date of consideration, the petitioner had not completed the required four years of service and he completed only 3 1/2 years of service. Whereas, all other persons, who were cited as similarly placed persons, have completed five years of service as on 16.02.2006. Therefore, the petitioner cannot be promoted with retrospective effect and the prayer in the writ petition is not sustainable.

11. The learned Government Pleader (Pondicherry) argued that the petitioner is not eligible to be promoted with retrospective effect from the date on which his juniors were promoted. It is noted that the Departmental Promotion Committee and the Review Departmental Promotion Committee have exactly promoted him with retrospective effect as sworn by the Principal of Pondicherry Engineering College, in the counter affidavit filed in W.P.No.38340 of 2006. Vide Office Order No.PEC/E3/Per./94/2001/4651 dated 09.02.2001, the petitioner was



given retrospective promotion as Attender with retrospective effect from 01.08.1987. On 07.06.2012, he was promoted as LDC with effect from 23.05.1996. In a Review DPC held on 10.08.2006, the petitioner was promoted as UDC with effect from 31.10.2001 and notionally with effect from 23.05.2001. In a Review DPC held on 22.07.2013 he was promoted as Assistant with effect from 23.02.2006 and substantially from 09.12.2009.

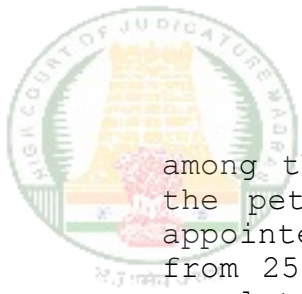
12.The prayer of the petitioner in WP No.28484 of 2014 is to implement the retrospective promotion given to him, considering him as a Scheduled Caste candidate with effect from 25.06.1993.

13.It is relevant to note that the recruitment rules for the post of LDC specifies that it is a non selection post and the method of recruitment is by promotion, failing which, by deputation, failing which, by direct recruitment. In cases of promotion, a candidate should possess five years of regular service as Helper in Pondicherry Government with a pass in SSLC and a pass in Typewriting English or Tamil.

14.Admittedly, the petitioner passed SSLC in 1992. Therefore, the Government relaxed the condition of pass in Typewriting test and granted him promotion as LDC on 07.06.2012 with retrospective effect from 23.05.1996. But, in the counter affidavit, the respondents have taken a stand that the petitioner was given promotion with effect from 25.06.1993. Considering him as a Scheduled Caste candidate, the Government has issued Official Memorandum to relax the qualifications as there was no Scheduled Caste candidate was available for promotion.

15.Admittedly, from the perusal of the records, it is seen that the petitioner was a senior-most Scheduled Caste candidate and no other Scheduled Caste candidate was available. In fact, in the meetings of the Departmental Promotion Committee, it is categorically recorded that no eligible Scheduled Caste candidate was available. In that event, it is clear that the petitioner, who is an available Scheduled Caste candidate should have been accommodated in relaxation of the Typewriting test. In that view of the matter, the claim of the petitioner, as admitted by the respondents in the counter affidavit in W.P.No.38340 of 2006 dated 06.07.2010 that he should have been given promotion as LDC on par with his junior with effect from 25.06.1993 is sustainable.

16.Insofar as recruitment rules for the post of UDC is concerned, it specifies that the post is selection cum seniority post and the method of recruitment is by promotion, failing which, by deputation, failing which by direct recruitment from



among the LDCs' with five years of regular service. Admittedly, the petitioner was the senior-most among the candidates being appointed in the year 01.08.1987 and promoted as LDC with effect from 25.06.1993. In that event, he should have been promoted on completion of five years of service in the year 1998. In an unfortunate circumstance, he was not given promotion as LDC in time. Whereas, his juniors, who were appointed in the year 1990 were given promotion in the year 2000 itself. In that event, the petitioner is entitled to promotion as a Scheduled Caste candidate following the rules of reservation in the year 2000 itself.

17. In respect of recruitment rules for the post of Assistant is concerned, the post is a non selection post and the method of recruitment is by promotion, failing which, by deputation from among the UDCs' having completed five years of service. In a Review DPC held on 22.07.2013, the petitioner was promoted as Assistant with effect from 23.02.2006. On completion of five years, he is entitled to be promoted as Superintendent as the post of Superintendent as per the recruitment rules is a non selection post and the method of recruitment is by promotion from the grade of Assistant with five years of service. Therefore, the petitioner is entitled to be promoted with effect from 2011 onwards.

18. The petitioner has been comparing himself with one G. Murugesan, who was appointed in the post of Attender in the year 1990. Now that, the matter has attained finality in respect of promotion of the petitioner in the post of Attender with effect from 01.08.1987. Therefore, for all purposes, he shall be considered as senior to the said Murugesan. In fact, in Official Memorandum of the respondent College in PEC/E8/Attender Seniority/2019 No.956, dated 16.04.2019, the respondent College has come out with a tentative seniority list of Attenders, wherein the seniority number of the petitioner had been shown as Sl.No.1 and the said G. Murugesan at Sl.No.7. Therefore, by virtue of seniority, the petitioner is entitled to get promotion to the higher posts. Since the seniority is revised by Proceedings dated 16.04.2019 and the petitioner has been arrayed as senior-most person, he cannot have any grievance. Therefore, the prayer in respect of revision of seniority list dated 21.02.2011 in W.P.No.33301 of 2014 has become infructuous. For all purposes, the petitioner shall be considered as senior and he is entitled to all the benefits.

19. A perusal of the entire records clearly shows that the petitioner was promoted at every stage only at the interference of the National Commission for Scheduled Caste. The Scheduled Caste candidates have constitutional right to get promotion in adherence to the rules of reservation. In all these



promotions, this Court finds that the promotion to the petitioner was delayed at every stage and in violation of rules of reservation. Even though the Principal of respondent College by his sworn affidavit has pleaded that the petitioner was given promotion, as a Scheduled Caste candidate, in the posts of Attender, LDC and UDC, the records speaks otherwise. To be particular, the petitioner was not given promotion as LDC with effect from 25.06.1993 on par with his junior. But, he is notionally promoted with effect from 23.05.1996 onwards. Therefore, the contention of the petitioner that the respondents have failed to follow the rules of reservation is well founded.

20. From a simple perusal of the seniority list dated 21.02.2011, it is seen that even though the petitioner was promoted with effect from 23.02.2006, his date of promotion was shown as 09.12.2009. Had he been promoted notionally with effect from 16.02.2006, he would not have been ranked below the said G.Murugesan and would have been filled at seventh roster point in the roster of seniority. As per the roster point, seventh point goes to Scheduled Caste category. In that event, the petitioner by following the rule of reservation would have got promotion earlier than G.Murugesan.

21. Therefore, considering the totality of the circumstances and the failure on the part of the respondents and also the considering the factum that inasmuch as the Government has ignored the length of service of the candidates and departed from the principle of seniority of candidates who served in the same cadre while drawing up of the list of eligible candidates, and that it has committed a mistake that needs to be corrected, a direction is given to the official respondents to ratify the mistakes and accord promotion to the petitioner taking into account his date of promotion as Attender as 01.08.1987 and LDC with effect from 25.06.1993 and further promotions on par with his juniors and revise the seniority at all levels on par with his immediate junior G.Murugesan and consequently, promote him on par with his junior G.Murugesan and disburse all other attendant and monetary benefits in accordance with law within a period of three months from the date of receipt of a copy of this order.

22. The writ petitions are disposed of with the above observations and directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

TK

Sub Assistant Registrar



To

1. The Government of Puducherry
Chief Secretariat
Puducherry - 605 001.
2. The Chairman
DPC - (Non Teaching Staff)
PEC - Cum Secretary to Government (Education)
Chief Secretariat, Govt. of Puducherry
Puducherry - 605 001.
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5. The Chairman cum
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Staff Selection (Non-Teaching) Committee,
Pondicherry Engineering College,
Pondicherry 605 014.

+2ccs to Mr.D.Sreenivasan, Advocate, S.R.No.52361

WP NOS.33089 OF 2013, 28484 AND 33301 OF 2014

JP II(CO)
PM/07/10/2021