



WEB COPY

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 26.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.6535 OF 2016

K.Singaram

... Petitioner

.Vs.

1. The Additional Chief Secretary to Govt.
& Chairman of State Transport Undertakings,
Transport (D-2) Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2. V.Sankar

... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the entire records of the 1st respondent's reply in letter No.16304/(D2)/2015, dated 06.02.2016 and quash the same and thereby direct the 1st respondent to include petitioner's name in the panel and promote as Manager (Accounts) for the panel year 2015-16.

For Petitioner : Mr.D.Soundarraaj

For R1 : Mr.K.V.Sajeev Kumar
Government Counsel

ORDER

By consent of both the parties, this writ petition is taken up for final disposal.

2. The petitioner herein, who was promoted to the post of Senior Deputy Manager on 16.10.2015, claims promotion to the panel of Manager (Accounts) with effect from 27.10.2015, stating that he would be entitled for inclusion of his name in the promotion panel for the year 2015-16, from the date of consideration of the panel.



3. According to the learned counsel for the petitioner, the Career Planning Committee (CPC) had taken a decision in its meeting held on 27.10.2015 for inclusion of the names in the promotion panel to the post of Manager (Accounts) and therefore, the crucial date would only be the date of consideration, i.e. 27.10.2015, for which purpose, he relied on the decision of the Hon'ble Division Bench of this Court in the case of I.Kalirajan Vs. The Registrar General, High Court of Madras and another passed in W.P.(MD)No.5805 of 2015. It is his further submission that there is no reference for determination of the crucial date in the Common Service Rules governing the respondent department. The learned counsel also submitted that the decision of the respondent in fixing the crucial date as 01.10.2015 is not based on the regulations governing preparation of a promotion panel and therefore, the claim of the respondent that the crucial date would be from 01.10.2015, is incorrect.

4. In the light of these submissions, the learned counsel for the petitioner submitted that though the petitioner has reached the age of superannuation as on date, he ought to have been included in the promotion panel for the post of Manager (Accounts) for the year 2015-16 and consequently, he would be entitled for the promotional benefits in the said post.

5. Per contra, the learned Government Counsel appearing for the first respondent placed reliance on the averments in the counter affidavit and submitted that, as per the Common Service Rules, the petitioner is required to complete a minimum qualifying period of 4 years as a Senior Deputy Manager and since he was promoted to the post of Senior Deputy Manager only on 16.10.2015, which is after the crucial date of 01.10.2015, he cannot claim for inclusion in the promotion panel to the post of Manager (Accounts) for the year 2015-16.

6. It is no doubt true that the Common Service Rules prescribes the criteria of experience of 4 years in the post of Senior Deputy Manager as a qualification to be considered for promotion to the post of Manager (Accounts). However, the Government has taken into account the dearth of candidates for promotion to the post in the cadre of Manager (Accounts) and in view of the experience prescribed in the Common Service Rules disabling efficacious promotions, orders have been issued, relaxing such a condition and by substituting the experience with 15 years of combined services in the cadre of Selection Grade Assistant Manager/Deputy Manager and Senior Deputy Manager (Accounts), for the purpose of promotion to the post of Manager (Accounts).

7. In G.O.(Ms) No.21, Transport (D) Department, dated 02.02.2015, such a relaxation in experience has been made for



the years 2013-14 and 2014-15. Likewise, for the year 2015-16, a similar relaxation has been referred to in G.O. (Ms) No.10, Transport (D) Department, dated 08.02.2016. Thus, it cannot be disputed that the experience prescribed in the Common Service Rules has now been relaxed and it would be sufficient for a candidate aspiring for consideration for promotion to the post of Manager (Accounts) to possess a combined service of 15 years in the post of Selection Grade Assistant Manager/Deputy Manager and Senior Deputy Manager (Accounts).

8. Insofar as the claim of the respondent that the petitioner was promoted to the post of Senior Deputy Manager only on 16.10.2015 and that the crucial date for the panel to the post of Manager (Accounts) for the year 2015-16 was fixed on 01.10.2015 is concerned, as rightly pointed out by the learned counsel for the petitioner, the Common Service Rules does not prescribe the mode of fixation of the crucial date. However, it is seen that the decision to prepare the panel for the year 2015-16 to the post of Manager (Accounts) was taken by the CPC in its meeting held on 27.10.2015. This aspect is reflected in G.O. (Ms) No.10, dated 08.02.2016, wherein the panel for promotion for the said year was released. Thus, the crucial date for the aforesaid panel gains prominence from the date on which the CPC considered preparation of the panel.

9. In a decision of the Hon'ble Division Bench referred to by the learned counsel for the petitioner, in the case of I.Kalirajan (supra), the Hon'ble Division Bench had taken note of the fact that when the relevant rules do not prescribe the determination of a crucial date, the date of consideration of preparation of the panel would be the guiding factor for inclusion of the names of the promotees in the panel. The relevant portion of the order reads as follows:-

"7.The learned counsel for the petitioner, however, submits that in the absence of there being any definition of 'crucial date' in the Madras High Court Service Rules, it should be the date of publication of the list i.e. 19.11.2012, which should be relevant, by which date the petitioner had obtained essential qualifications.

8.We are afraid, such a submission cannot be accepted, as it will be the date of consideration, which would be relevant for the aforesaid purpose, i.e. the petitioner was required to possess necessary qualifications on the date of consideration. We also cannot accept the submission that because the petitioner had appeared for the examination earlier and his



result had not been declared by 24.04.2012, the date relates back to his appearance for the examination."

10. In the light of the ratio laid down by the Hon'ble Division Bench in the aforesaid decision and by taking into account that the fixation of the crucial date has not been determined in the Common Service Rules, the date of consideration of the panel for the post of Manager (Accounts) for the year 2015-16, (i.e.,) 27.10.2015, can be taken as the crucial date of the panel.

11. In the above scenario, it is seen that the petitioner herein had put in 15 years of combined services in the cadre of Selection Grade Assistant Manager/ Deputy Manager and Senior Deputy Manager (Accounts) for promotion the post of Manager (Accounts) as on 27.10.2015 and therefore, the respondent ought to have included the name of the petitioner in the panel for the year 2015-16 itself. Since the rationale adopted by the respondents in fixing the crucial date as 01.10.2015 is not in conformity with the legal position, the reasoning adopted by the respondents for excluding the petitioner's name in the 2015-16 panel cannot be sustained and as such, the petitioner is entitled for retrospective promotion.

12. This Court has taken note of the fact that the petitioner had reached the age of superannuation on 31.08.2016 and since the petitioner was not promoted to the post of Manager till the date of superannuation, he may not be entitled to claim salaries for the period from which he was entitled to be promoted to the post of Manager (Accounts) till the date of superannuation. However, since it has been established that the petitioner's name ought to have been included in the post of Manager (Accounts) for the year 2015-16, he would be entitled for retrospective promotion from 27.10.2015 and consequently entitled for the pensionary monetary benefits. In this view of the matter, the impugned order dated 06.02.2016, cannot be sustained.

13. In the light of the above observations, the impugned order dated 06.02.2016 passed by the first respondent is quashed. Consequently, there shall be a direction to the first respondent herein to notionally promote the petitioner to the post of Manager (Accounts) with effect from 27.10.2015, i.e. from the date on which the CPC considered the promotion panel to the post of Manager (Accounts) for the year 2015-16 and consequently pass orders, granting all monetary pensionary benefits for which the petitioner may be entitled to, if he had been promoted to the post of Manager (Accounts) with effect from 27.10.2015 and thereafter retired. The first respondent shall



endeavour to pass such orders determining such entitlement of the petitioner's pensionary benefits and forward the same to the concerned authorities for sanctioning of the revised pension, atleast within a period of 8 weeks from the date of receipt of a copy of this order.

14. The writ petition stands allowed, accordingly. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

hvk

To

The Additional Chief Secretary to Govt.
& Chairman of State Transport Undertakings,
Transport (D-2) Department,
Secretariat, Fort St. George,
Chennai - 600 009.

+1cc to Mr.K.Kathiresan, Advocate, S.R.No.35519
+1cc to Mr.D.Soundarraaj, Advocate, S.R.No.35795
+1cc to the Government Pleader, S.R.No.36268

W.P.NO.6535 OF 2016

GPL(CO)
PBS/26/08/2021