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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.07.2021
PRONOUNCED ON : 18.08.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.6582 of 2016
&
WMP.Nos.5860 of 2016 & 8341 of 2020

P.Balu

...Petitioner

Vs.

The Government of Tamil Nadu
rep. by its Secretary,
Personnel & Administrative Reforms (U) Department,
Fort St. George,
Chennai-600 009.

...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in G.O.(2D) No.33 dated 09.12.2011 and G.O.(4D) No.12, P and AR Department dated 29.05.2018 and to quash the same insofar as not granting the petitioner seniority in the post of Assistant Section Officer with effect from 25.02.2009 (prayer amended vide order dated 21.06.2021 made in WMP.No.13240 of 2021 in WP.No.6582 of 2016 by MSRJ).

For Petitioner : Mr.T.N.Rajagopal
Assisted by Mr.C.Vigneswaran

For Respondent : Mr.K.V.Sajeev Kumar
Counsel for Government

O R D E R

This Writ Petition is heard through Video Conferencing on 26.07.2021.

2. The petitioner herein is aggrieved against the action of the respondent Government in giving effect to his promotion to the post of Assistant Section Officer (ASO) from the date of panel for the year 2017-18 instead of 01.08.2008, on which date, the original panel of ASOs was prepared and the petitioner claims to be qualified for inclusion in that promotional panel.



3. Mr.T.N.Rajagopal, learned counsel for the petitioner submitted that the petitioner had passed his SSLC, which is a minimum qualification prescribed under the Tamil Nadu State and Subordinate Services Rules for the post of ASO, apart from completion of the departmental test prior to the cut off date and therefore was fully eligible to be included in the promotional panel for the post of ASOs as on 01.08.2008. By pointing out to the reason assigned in the impugned order in G.O.(2D) No.33 dated 09.12.2011, the learned counsel submitted that since a pass in SSLC alone was the prescribed qualification for being promoted to the post of ASO, the respondent was not justified in alleging that the petitioner did not possess his higher qualifications in academics under 10+2+3 pattern.

4. The learned Government counsel, would draw attention of this Court to the various averments made in the counter affidavit, which is precisely the reasons assigned by the respondent in the impugned order and submitted that, the petitioner had passed M.A. Degree through Open University System after completing his SSLC and therefore was not under the regular stream of 10+2+3. Hence, his name could not be considered for promotion to the post of ASO as per the instructions in G.O.Ms.No.107, Personnel & Administrative Reforms, Department (M) dated 18.08.2009 and G.O.Ms.No.116 Personnel and Administrative Reforms (M) Department dated 18.08.2010. With such a submission, the learned Government Counsel supported the reasoning adopted in the impugned order dated 09.12.2011. It is also his submission that since the petitioner had subsequently qualified himself in the 10+2+3 pattern, in March 2014 and May 2017 respectively, his name was rightly considered for promotion for the panel year of 2017-18.

5. Some of the relevant facts pertinent to the decision to be taken in the present case are as follows.

6. The petitioner had completed his SSLC examination in the month of March 1985. He was promoted to the post of Assistant on 24.07.2007, wherein he had completed his period of probation on 22.07.2008. While fixing 01.08.2008 as the cut off date for preparation of panel for the post of ASO, the petitioner's candidature came to be rejected for consideration, through the impugned order dated 09.12.2011, predominantly on the ground that he had not completed his higher educational qualifications in the regular stream of 10+2+3. The rejection order was originally challenged before this Court in W.P.No.11956 of 2012, which came to be dismissed on 05.07.2012. Thereafter, the petitioner had completed his higher Secondary Examination (Plus 2) in the month of March 2014. In this background, he had filed the present Writ Petition with an original prayer, challenging the rejection order dated 09.12.2011. Pending the Writ



Petition, the petitioner had completed his degree in B.A. (Sociology) in the month of May 2017 and this brought him under the regular academic pattern of 10+2+3. In consequence to this regular qualification, his request for promotion came to be considered through the order passed in G.O.(4D) No.12, Personnel & Administrative Reforms Department, dated 29.05.2018, promoting him to the post of ASO in the panel of 2017-18. Since the petitioner claims that he is entitled to be included in the promotional panel as on 01.08.2008 and seeks entitlement for promotion from 25.02.2009, when his batch-mates were promoted, the original prayer in the Writ Petition was amended by claiming retrospective promotion to the post of ASO from 25.02.2009.

7. The hierarchy of promotion in the Tamil Nadu Secretariat Service, is in the pattern of Office Assistant / Assistant / Assistant Section Officer / Section Officer / Under Secretary. The Tamil Nadu Secretariat Service Rules provides for filling up the post of ASO in the Departments, other than Law and Finance Department, through three methods, namely, by promotion; by direct recruitment; and recruitment by transfer from the Ministerial Services. The Rules also prescribe the minimum general educational qualification of a pass in 10 Std / SSLC, together with a pass in the departmental test, for appointment as ASO in the Tamil Nadu Secretariat Services. The Rules also provide for the incumbent to undergo a foundational training for a period of two months, followed by an examination at the end of training conducted by the Personnel and Administrative Reforms, Department.

8. It is not in dispute that the petitioner herein had completed his SSLC examination way back in the month of March 1985. In addition, he had also passed the required departmental test for appointment as ASO, apart from successfully completing the foundational training and the consequential examination conducted at the end of the training. Thus, the petitioner was possessed of the required qualification for being promoted to the post of ASO, as on the cut off date i.e., 01.08.2008, when the panel for ASO was originally prepared. The only impediment that the respondent had pointed out as a disqualification for including the petitioner's name in the year 2007-08 promotional panel is that, the petitioner did not possess his higher education in the regular academic pattern of 10+2+3, at that relevant point of time of consideration.

9. It is no doubt true that, as on 01.08.2008, the educational qualification of the petitioner was that he had completed SSLC examination and also possessed a M.A. Degree obtained through Open University, which was not in the regular stream of 10+2+3 pattern. But, the crux of the issue involved in the present Writ Petition is as to whether an incumbent who



seeks inclusion of his name in the promotional panel for ASOs in the year 2007-08, is mandated to hold higher educational qualifications in the regular pattern of 10+2+3 or not?

10. When the Tamil Nadu Secretariat Rules prescribes the qualifications for promotion to the post of ASO, as a pass in SSLC examination, together with successful completion of the departmental test/foundational training and the examination at the end of the training, this Court, is unable to appreciate the claim of the respondent in expecting the petitioner to possess the qualifications, over and above the minimum required qualification for such promotions, in a regular academic stream. Incidentally, it is not the case of the respondent that the service rules/regulations governing the qualifications for promotion to the post of ASO requires or mandates higher qualification in 10+2+3 pattern. As a matter of fact, there is no such provision. Thus, the subsequent higher qualification of the petitioner by completing his higher secondary (Plus 2) in March 2014 and his degree B.A. (Sociology) in May 2017 will have no relevance, for considering the petitioner's candidature for promotion to the post of ASO. While that being so, the inevitable conclusion which this Court is constrained to take is that, the petitioner was possessed of the minimum general educational qualification for being considered for promotion to the posts of ASO as on 01.08.2008. Consequently, it requires to be held that the non inclusion of the petitioner's name in the promotional panel for the post of ASO for the year 2007-08 is not only unjustifiable, but also illegal.

11. When a similar situation arose before this Court in the case of S.Navaneethakrishnan Vs. The Principal Secretary to Government, Personnel & Administrative Reforms Department, Chennai and others in a Writ Petition in W.P.No.24589 of 2013, a learned Single Judge of this Court, in his order dated 10.02.2015, had placed reliance on a decision of the Hon'ble Division Bench of this Court passed in W.A.No.1372 of 2013 and held that when the incumbent seeking promotion possesses the required qualification under the statutory regulations, he would be entitled for the promotion on that minimum qualification alone. The relevant portion of the order reads as follows:-

"7. The petitioner was initially appointed as typist. The appointment was made in Tamil Nadu Secretariat service. The petitioner was promoted to the post of Assistant in the year 2005. There was no requirement that for promotion to the post of Assistant, candidate should have obtained degree. SSLC was the qualification for appointment to the post of Assistant, in case it is by promotion from the post of typist. The



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petitioner is therefore qualified for appointment to the post of assistant. Thereafter, he was promoted to the post of Assistant Section Officer. The recruitment rule for promotion to the post of Assistant Section Officer indicates that it was by way of promotion, from among the category of Assistants. There was no requirement that Assistant Section Officer should hold a degree.

8. The Tamil Nadu General Service rules was amended subsequently. The amendment was made in the year 2012 with effect from December 2011. As per the amended Rule, candidate must hold a Degree. However, that was not the case as on 1 June 2011, which was the crucial date for drawing the panel for the year 2011-12. The petitioner is therefore perfectly correct in his contention that even without a Degree, he was eligible for appointment to the post of Section Officer, as on 1 June 2011.

9. Similar question came up for consideration before a Division Bench of this Court in W.A.No.1372/2013. The Division Bench, having found that on the crucial date for promotion to the post of Under Secretary, respondent therein fulfilled all the necessary qualification, dismissed the writ appeal filed by State by -5- judgment dated 12 July 2013. The petitioner is similarly situated and as such, he must succeed.

10. In view of the then prevailing statutory position that for appointment to the post of Section Officer, requirement is only SSLC, the first respondent was not correct in rejecting the claim made by the petitioner, solely on the ground that he failed to undergo basic course before obtaining degree. While rejecting the request, the first respondent omitted to consider the material fact that it was only by amendment of the rule, condition regarding degree was inserted. The amended rule came into force six months after the crucial date. The case of the petitioner should therefore be considered in the light of the unamended service rule.

12. A similar view was taken in the case of V.K. Baskar and another Vs. The Government of Tamil Nadu rep. by its Principal



Secretary, Personnel & Administrative Reforms Department in W.P.Nos.25701 & 25702 of 2011, dated 04.04.2014, in the following manner:-

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"3. It is the contention of the petitioners that only on 15.06.2012, G.O.Ms.No.88, Personnel and Administrative Reforms (C) Department has been issued by the Government, fixing the required qualification for the post of Section Officers as a Bachelor's Degree of any University recognized by the University Grants Commission for the purpose of its grant. Before 15.06.2012, the petitioners' juniors were promoted on 31.12.2010 and on the said date, the petitioners are possessing the required qualification of Plus 2 and 6 years experience. Therefore, on the date of giving promotion to their juniors viz., on 31.12.2010, the petitioners have the required qualification and hence, promotion has to be given to them.

4. Learned Special Government Pleader appearing for the respondent submits that as per G.O.Ms.No.88, Personnel and Administrative Reforms (C) Department dated 15.06.2012, the petitioners cannot claim promotion as they are not having the required graduation degree through regular stream.

5. I have considered the submissions made on either side and perused the materials available on record.

6. From the records, it is seen that the said graduation qualification was fixed only after 15.06.2012 and the petitioners' juniors having been promoted before the said date, who are also qualified with Plus 2 and 6 years of experience (without graduation degree), the petitioners are also entitled to get promotion, if there is no other legal impediment."

13. The appeal filed by the Government against the aforesaid decision was dismissed through an order dated 25.07.2014 passed in W.A.Nos.860 & 861 of 2014 by observing as follows:

"6. We do not find any merit in these appeals. Admittedly, persons, junior to the respondents, were promoted. According to the appellants, the only ground on which the



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appellants were not considered for promotion along with their juniors, is that they were not possessing the requisite qualification and nothing also. Therefore, the learned Single Judge rightly held that the date on which the juniors of the respondents were considered, a pass in degree was not prescribed as the requisite qualification. When such is the case, the respondents ought to have been considered for promotion and their obtaining degree through Open University System instead of regular stream, cannot be put against them, especially, when a pass in degree itself was not prescribed as a requisite qualification for promotion as Section Officer."

14. A further appeal filed before the Hon'ble Supreme Court of India, against the aforesaid order, was rejected in SLP. (C) No.28282 of 2014, through an order dated 16.10.2014.

15. The citations extracted above are self explanatory. Thus, by applying the above ratio and in the background of the minimum general educational qualifications prescribed under the Tamil Nadu Secretariat Service Rules, it can be said that the respondent cannot expect the petitioner to possess higher qualifications, over and above the minimum educational qualifications, in the regular pattern of 10+2+3. Consequently, the defence taken by the respondent that the petitioner would be qualified to be promoted as an ASO for the year 2017-18, after completion of his higher qualification, in the 10+2+3 pattern, cannot be sustained.

16. It is the case of the petitioner that the promotional panel for the post of ASO for the year 2007-08 was prepared by fixing 01.08.2008 as the cut off date. In accordance with the promotional panel, the respondent had issued G.O.(4D) No.9 dated 25.02.2009, promoting the Assistants, whose names were found in the panel with the cut off date as 01.08.2008. The petitioner claims that his name ought to have been included, along with his batch mates, whose names were included in the said panel. Such a claim is justifiable, in the light of the observations made in this order.

17. For all the reasons stated above, the impugned order of the respondent passed in G.O.(2D) No.33 dated 09.12.2011, rejecting the petitioner's claim for promotion to the posts of ASO, is hereby quashed. Likewise, the subsequent order of the respondent in G.O.(4D) No.12, Personnel and Administrative Reforms Department, dated 29.05.2018, insofar as it gives effect to the petitioner's promotion from the date of its panel for the



year 2017-18, is also quashed. While upholding the petitioner's promotion to the post of ASO, there shall be a direction to the respondents to include the candidature of the petitioner in the promotional panel for ASO with the cut off date as on 01.08.2008 and consequently issue orders of promotion to the petitioner, with effect from 25.02.2009 and fix his seniority below his immediate senior. The respondent shall endeavor to pass such orders, atleast within a period of four weeks from the date of receipt of a copy of this order. The Writ Petition stands allowed accordingly. Consequently, connected Miscellaneous Petitions are closed. There shall be no orders as to costs.

Sd/-

Assistant Registrar(CS IX)

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Sub Assistant Registrar

DP

To

The Secretary,
Government of Tamil Nadu,
Personnel & Administrative
Reforms (U) Department,
Fort St. George,
Chennai-600 009.

+1cc to the Government Pleader, Sr.41746

W.P.No.6582 of 2016

&

WMP.Nos.5860 of 2016 & 8341 of 2020

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NSK 06/09/2021