



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2021

CORAM :

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THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P.No.29662 of 2019

P.Subramanian

...Petitioner

Vs

1 The Registrar General
Madras High Court
Chennai - 600 104.

2 The Principal District Judge
Salem.

3. R.Vijayakumar

...Respondents

Prayer: Petition under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the records pertaining to the impugned orders in (i) Roc.No.607-A/2014/C1 Dated: 16.04.2019 on the file of the 1st Respondent; (ii) Report in ROC No.607-A/2014/C1 Dated: 20.4.2015 sent in D.No.3304, Dated: 22.04.2015 on the file of the 2nd Respondent; (iii) Roc.No.198/A/2009 Dated: 10.01.2009 on the file of the 2nd Respondent and (iv) Roc.No.4387/2003/A Dated: 04.06.2006, on the file of the 2nd Respondent and quash the same; consequentially direct the 2nd Respondent to give notional promotion to the Writ Petitioner as "Sherishtadar" in Category I of Class IV of TNJMS Rules with effect from 4.6.2003, with all attended benefits and within a reasonable time.

For the Petitioner : Mr.Balan Haridas
for Ms.S.Surya Devi

For the Respondents : Mr.V.Balamurugan
for respondents 1 and 2

: Mr.N.Manokaran
for 3rd respondent



ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

The petitioner herein may have been hard done by in not being promoted ahead of a colleague in or about the year 2003.

2. However, the mode of challenge adopted by the petitioner was not in accordance with the procedure established and, in any event, the petitioner's relationship with the employer has been irreversibly severed upon the petitioner attaining superannuation and retiring in or about the year 2009.

3. The petitioner complained of one Vijayakumar being promoted ahead of the petitioner to Sherishtadar Category-I. The petitioner's remedy in respect of such grievance could have been addressed in accordance with the Tamil Nadu Judicial Ministerial Service Rules, under Rule 11 thereof, by carrying a revision. The relevant provision permits revision of orders of promotion to selection posts and mandates that an order of promotion "may be revised by an authority to which an appeal would lie against an order of dismissal passed on a full member of the service ..." The provision also permits the revision to be made by the relevant authority suo motu or on a petition submitted by the aggrieved person.

4. In this case, the petitioner filed a revision petition before the Principal District Judge, Salem since the petitioner served in the District Court at Salem. Simultaneously, the petitioner instituted W.P.No.14181 of 2007 before this court which was disposed of by an order dated November 13, 2008. The writ court noticed that the revision had been filed on November 28, 2003 and it was pending consideration before the Principal District Judge, Salem. The writ petition was disposed of by requiring the revision to be decided within a month of the receipt of a copy of the order passed on the writ petition.

5. The revision came, ultimately, to be decided on January 10, 2009. Though there are several observations in the relevant order to the effect that the petitioner was not, on merit or ability, inferior to Vijayakumar who was promoted ahead of the petitioner, what is of paramount importance is that the concerned authority found that the revision before it was not maintainable. At paragraph 15 of the relevant order, the Principal District Judge, Salem noticed that the revision had been preferred under Rule 11 of the said Service Rules "as per which the revision would lie with authority to whom appeal would lie against the order of dismissal passed by the appointing authority namely the District Judge." The District Judge then went on to observe that the revision petition had been filed before the appointing authority though it should have been



carried to the High Court which was the appellate authority against an order of dismissal. Even paragraph 17 of the relevant order made the position clear that the revision petition was dismissed "as not maintainable".

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6. Ordinarily, when a judicial or quasi-judicial authority is approached with a plea and such authority finds that it lacks the power or jurisdiction to address the matter, observations are not made on the merits and the relevant authority rejects the plea on the ground that it is not maintainable before him. In this case, once the Principal District Judge, Salem found that the revision before him was not maintainable, the observations on merits were not called for and cannot be of any assistance to the petitioner herein, since such authority accepted that he did not have any jurisdiction to entertain the revision and dismissed the same as not maintainable.

7. A second writ petition came to be filed by way of W.P.No.8666 of 2009 before this court. Again, as is evident from the order dated April 30, 2009 passed on such petition, the petitioner made a submission to carry a further representation to the Principal District Judge, Salem and it was the petitioner's prayer in such regard that was permitted without the court examining the validity of such prayer or the permissibility thereof under the said Service Rules. Indeed, the relevant order of April 30, 2009 recorded that the court had not decided the writ petition on merits.

8. A subsequent representation was made by the petitioner here to the Principal District Judge, Salem acknowledging in the relevant representation that such Principal District Judge was the appointing authority of the petitioner. However, by the time that the relevant representation was made on December 20, 2010, the petitioner had already retired on June 30, 2009.

9. Nonetheless, the representation came to be considered by the Principal District Judge, Salem and, by an order dated April 20, 2015, the same was dismissed. Again, an appeal of sorts was sought to be carried by this petitioner to the High Court on May 12, 2015, though there is no provision for any appeal against an order passed in proceedings instituted under Rule 11 of the said Service Rules. The matter appears to have been considered on the administrative side by the High Court and rejected. The present petition is directed against the several orders culminating in the High Court's rejection of the petitioner's plea.

10. It is evident that the petitioner barked up the wrong tree in carrying the petitioner's revision to an authority that did not possess the jurisdiction to consider the same. The



order dated January 10, 2009 has not been interfered with in the subsequent writ petition filed by the petitioner before this court. Thus, the petitioner's fate stood sealed upon the erroneous filing of the revision before an inappropriate authority and such authority dismissing the same as not maintainable. The further measures that the petitioner took were not in accordance with the procedure established under the Service Rules and, in the meantime, the petitioner's severance from service upon his superannuation took place. In the circumstances, it cannot be seen that there was any right that vested in the petitioner that the petitioner can assert to have legitimately pursued in accordance with the established procedure for the petitioner to claim the benefits, whether notional or monetary, in respect of the perceived irregularity in promoting some other ahead of the petitioner in the year 2003.

11. For the reasons aforesaid, no relief can be afforded to the petitioner at this stage. W.P.No.29662 of 2019 is dismissed. W.M.P.No.29553 of 2019 is closed.

There will be no order as to costs.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

sasi
To:

- 1 The Registrar General
Madras High Court
Chennai - 600 104.
- 2 The Principal District Judge
Salem.

Copy to
The Section Officer
VR Section
High Court, Madras 104.
+2 Ccs to Ms.S.Surya Devi, Advocate sr 45347(16/09/2021)

W.P.No.29662 of 2019

RLD(CO)
SP(09/09/2021)