



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.31712 of 2019

(Through Video Conferencing)

S.E.Suresh

.. Petitioner

vs.

1. The Director of College Education,
College Road, Nungambakkam,
Chennai 600 006.
2. The Joint Director of Collegiate Education,
(Administration), College Road,
Chennai 600 006.

.. Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, call for the records pertaining to the panel list of the 1st respondent in Na.Ka.No.33345/B3/2019 dated 26.09.2019 and quash the same and issue a consequential direction directing the 1st respondent to include the name of the petitioner in the promotion panel for the post of Bursar for the year 2018-2019 before to his junior.

For Petitioner : Mr.Karan and Uday

For Respondents : Mr.L.S.M.Hasan Fizal
Government Advocate.

O R D E R

The petitioner has challenged the impugned notification dated 22.08.2018 containing the list of superintendent to be promoted as Bursar i.e. Treasurer in the Educational Department.



2. The case of the petitioner in the writ petition is that the petitioner was appointed as a Junior Assistant on compassionate ground on 26.11.2001. When the petitioner was due for promotion to the next post as an Assistant, he was overlooked and therefore the petitioner filed W.P.No.26675 of 2011 and considering the fact that one of the juniors was promoted by overlapping the petitioner, this Court allowed the said writ petition, by an order dated 16.08.2013 by directing the respondents to promote the petitioner with effect from the date of which, the juniors were promoted as Assistants.

3. It is the case of the petitioner that the aforesaid order was also implemented by the first respondent vide order dated 10.04.2014. However, while implementing the aforesaid order the respondents have not set right the anomaly. It is submitted that while promoting the petitioner to the post of Superintendent, who had been promoted as Superintendent with effect from 20.03.2013 has been given seniority which anomaly was not corrected.

4. It is also the case of the petitioner that while he was notionally promoted to the post of Assistant on 05.10.2009 and subsequently promoted as Superintendent on 20.03.2013, when the impugned seniority list was prepared on 22.08.2018, one of the juniors namely S.Kalpana's name was included as Sl.No.18 in the seniority list by ignoring his right. It is submitted that even though the petitioner was appointed after Tmt.S.Kalpana, the petitioner cleared the mandatory Account Test (Part-1) during May 2002 whereas Tmt. S.Kalpana cleared the exam only and during May, 2004 was given seniority.

5. It is further case of the petitioner that the promotion of the petitioner notionally with retrospective effect from 24.06.2005 as an Assistant and thereafter as Superintendent with effect from 20.03.2013, clearly indicates that the petitioner was senior to Tmt.S.Kalpana who was promoted to the post of the Assistant only on 06.03.2006 which is almost 9 months after the notional promotion to the petitioner of the aforesaid post of Assistant .

6. It is further submitted that even though the petitioner was notionally promoted as a Superintendent with effect from 20.03.2013 which is 9 months prior to the promotion of Tmt S.Kalpana on 05.12.2013, the petitioner's name was not included. While preparing the panel for promoting the petitioner as Bursar, it is therefore submitted that the non-inclusion of the petitioner in the panel for promotion to the post of Bursar



cannot be justified.

7. Defending the impugned order dated 20.06.2019 of the first respondent, the learned Government Advocate submits that the petitioner was junior to Tmt.S.Kalpana, inasmuch as he joined as a Junior Assistant almost two years after Tmt.S.Kalpana was appointed. Both the petitioner and the said Tmt.S.Kalpana were appointed on compassionate ground. Therefore, the petitioner cannot claim any priority.

8. It is further submitted that though the petitioner was appointed on compassionate ground on 26.04.2001, his probation was declared later on 06.12.2003 and therefore was not entitled to any seniority. It is further submitted that Tmt.S.Kalpana not only served as an Assistant with effect from 06.03.2006 and thereafter as a Superintendent from 05.12.2013.

9. It is submitted that the petitioner was serving only the capacity of a Junior Assistant and that only by virtue of an order dated 10.04.2014, he was notionally promoted with retrospective effect as Assistant on 24.06.2005 and thereafter notionally promoted as Superintendent on 20.03.2013. He therefore submits that the respondents were justified in not including in the name of the petitioner in the panel for promotion to the post of Bursar, in the panel list dated 22.08.2019. Learned counsel for the respondents therefore prays for dismissal of the present writ petition and upholding of the impugned order dated 26.09.2019.

10. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents.

11. The facts are not in dispute. The petitioner was given a relief in W.P.No.26675 of 2011 vide order dated 16.08.2013. The petitioner was given promotion which was legitimately due to him. The petitioner was thus notionally promoted to the post of Assistant with effect from 24.06.2005 and subsequently promoted to the post of Superintendent with effect from 20.03.2013. Tmt.Kalpana was promoted as a Superintendent only on 05.12.2013.

12. The facts also indicates that the petitioner has qualified in the Account Test (Part I) which is mandatory almost two years prior to Tmt.S.Kalpana. Therefore, non inclusion of the petitioner's name in the panel for no fault of the petitioner cannot be justified. The fact that the order dated 16.08.2013 has recognized the rights of the petitioner to be notionally promoted with monetary benefits to the post of Assistant from the date of promotion given to the petitioner's juniors from 24.06.2005 shows that the petitioner was entitled



to seniority. The petitioner was thus entitled to get promoted to the post of Superintendent which has been rightly implemented by the 1st respondent.

13. Therefore, this writ petition deserves to be allowed with consequential direction to the first respondent to include the name of the petitioner in the panel for promotion to the post of Bursar for the year 2018-2019 along with other persons whose name were included in the said panel without disturbing, the promotion already given to Tmt.S.Kalpana. The petitioner shall also be promoted as Bursar as a senior to Tmt.S.Kalpana. In the next promotion, the petitioner's name shall be placed above Tmt.S.Kalpana's name. This exercise shall be carried out within a period of six weeks from the date of receipt of a copy of this order.

14. This writ petition is allowed with the above observation. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

kkd

To

1. The Director of College Education,
College Road, Nungambakkam,
Chennai 600 006.
2. The Joint Director of Collegiate Education,
(Administration), College Road,
Chennai 600 006.

+1cc to Mr.Karan & Uday, Advocate, S.R.No.41716

+1cc to the Government Pleader, S.R.No.41778

W.P.No.31712 of 2019

PL(CO)
SU(20/09/2021)