BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :24.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.A.(MD)No.1365 of 2011

A.Jawahar Ali ... Writ Petitioner/Appellant

-vs-

1.The Principal Secretary,
Commercial Taxes & Registration Department,
Fort St.George,
Chennai-600 009.

2.The Commissioner of Commercial Taxes,
Ezhilagam,
Chepauk,
Chennai-600 005.

3.B.Devendhiraboopathy
Joint Commissioner(CT),
Office of the Commercial Taxes,
Chepauk, Chennai.

4.P.Sitrarasu
Joint Commissioner(CT),
Chennai Central Division,
Greems Road, Chennai. ... Respondents

(Respondents 3 & 4 impleaded as party respondents vide
Court order dated 21.08.2013 made in M.P(MD)No.1 of 2013 by
NPVJ & PDSJ)

PRAYER : Writ Appeal has been filed under Clause 15 of the Letters Patent, against the order passed in W.P.(MD)No.573 of 2010 dated 14.10.2011.

Prayer in WP(MD). 573/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF CERTIORARIFIED MANDAMUS, to call for the records relating to the impugned order of the 1st respondent dated 12.11.2009, issued in the Govt. letter No. 5201/A/E-1/2007-18 and quash the same and direct the respondents to promote the petitioner as the Assistant Commissioner of Commercial

Taxes for the year 2006-07 with effect from the date on which his juniors were promoted and to place the petitioner above his juniors in the seniority and to pay all the attended benefits and seniority consequential arrears arising thereon to the petitioner.

For Petitioner : Mr.Mohammad Imran
for M/s.Ajmal Associates

For R-1 & R-2 : Mr.R.Ragavendharan

JUDGMENT

(Judgment of the Court was made by V.BHARATHIDASAN,J.)

This Writ Appeal has been filed against the order dated 14.10.2011 passed in W.P.(MD)No.573 of 2010 dismissing the petitioner's writ petition.

2. The writ petition has been filed challenging the order passed by the Principal Secretary, Commercial Taxes and Registration Department, Chennai, rejecting the request of the appellant/writ petitioner to promote him to the post of Assistant Commissioner of Commercial Taxes (formerly known as Commercial Tax Officer). According to the appellant, he was working as Deputy Commercial Tax Officer, and he is eligible to promote as Assistant Commissioner for the year 2006-2007. The appellant's promotion has been denied on the ground that he had not passed the Account Test for the Executive Officers, which is one of the pre-requisite qualifications for promotion to the post of Assistant Commissioner of Commercial Taxes.

3. The contention of for the appellant/writ petitioner is that, even though the appellant had not passed the Account Test for Executive Officers, he has passed the Account Test for Subordinate Officers Part-I and Part-II and it was equivalent to that of pass in the Account Test for Executive Officers. Hence, the appellant is also eligible for promotion to the post of Assistant Commissioner of Commercial Taxes. On that ground, he has challenged the order passed rejecting his request seeking promotion.

4.The learned Single Judge has dismissed the writ petition on the ground that even though pass in the Account Test for Subordinate Officers Part-I and Part-II is equivalent to pass in the Account Test for Executive Officers, the Tamil Nadu Commercial Taxes Services Rules, prescribes the qualification for the promotion to the post of Assistant Commissioner of Commercial Taxes, as pass in the Account Test for Executive Officers, unless the said Rule is suitably amended, the writ petitioner cannot claim that both the qualifications are equal. Now, challenging the said order, the present writ appeal has been filed by the appellant/writ petitioner.

5. The learned counsel appearing for the appellant would contend that, in the counter-affidavit filed by the respondents, it has been specifically admitted that the pass in Account test for Subordinate Officers Part -1 and Part – II, is equivalent to that of pass in Account Test for Executive Officers, hence his promotion cannot be rejected on the ground that, he has not cleared the Account Test for Executive Officers.He would further submit that some of the similarly placed officials like the appellant, who have passed the Account Test for Subordinate Officers Part-I and Part-II, were given promotion to the post of Assistant Commissioner of Commercial Taxes and that benefit should be necessarily extended to the appellant/writ petitioner. Merely because the Rule is not amended, the appellant's right to get promotion cannot be denied.

6. Per contra, the learned counsel appearing for the respondents 1 and 2 would submit that, Special Rule 4 r/w Rule 1-A of the Annexure to the Tamil Nadu Commercial Taxes Services Rules, prescribes the qualification for the promotion to the post of Assistant Commissioner as "must have passed in the Account Test for Executive Officers". Admittedly, the appellant did not pass the Account Test for Executive Officers and therefore, his claim cannot be considered.

7. We have considered the rival submissions made on either side and perused the materials available on record.

8.The Special Rule 4 r/w Rule 1-A, of the Annexure to the Tamil Nadu Commercial Taxes Services Rules, prescribes the qualification for the promotion to the post of Assistant Commissioner as follows:

"1-A Recruitment by Transfer from Tamil Nadu Commercial Taxes Sub-ordinate Service.	(i) Must have passed - (a) <u>The Account Test for Executive Officer</u> (b) Departmental Test in Commercial Taxes Acts Parts I, II and III. (c) Book-keeping."

9. As on today, the said Rule is not amended and the appellant did not possess the qualification as he has not passed the Account Test for Executive Officers, merely because the appellant has passed the Account Test for Subordinate Officers Part -I and Part – II, which is said to be equivalent to that of pass in the Account Test for Executive Officers, the appellant cannot claim promotion till the said Rule is suitably amended. The learned Single Judge considering the same has rightly dismissed the writ petition. We find no irregularity or infirmity in that order and hence, we find no merit in the appeal and the writ appeal is liable to be dismissed.

10. In the result, the writ appeal is dismissed. No Costs.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pm

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Principal Secretary,
Commercial Taxes & Registration Department,
Fort St.George,
Chennai-600 009.

2.The Commissioner of Commercial Taxes,
Ezhilaga,.
Chepauk.
Chennai-600 005

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-30282[F] dated 27/09/2021)

W.A.(MD)No.1365 of 2011
24.09.2021

MGJ(27.10.2021) 4P 4C