



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P (MD)No.2214 of 2012

and

M.P. (MD)No.1 of 2012

and

W.M.P. (MD)No.6257 of 2016

A.Kanthiah

... Petitioner

Vs.

1.The Secretary to Government,
Labour and Employment Department,
Fort St.George,
Chennai.

2.The Director of Employment and Training,
Guindy,
Chennai-32.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records pertaining to the impugned order of the first respondent in letter No.31722/P1/2010-6, dated 30.09.2011 and quash the same and direct the respondents herein to confer retrospective promotion upon the petitioner to the post of Principal and Deputy Director and Joint Director w.e.f, 21.05.1992 and 01.06.2001 retrospectively with all attendant monetary and pension benefits.

(Prayer amended vide order dated 18.01.2001 made in WMP(MD)No.6256 of 2016)

For Petitioner : Mr.R.Vijayakumar

For Respondents : Mr.M.Muthugeethaiyan
Special Government Pleader

ORDER

This Writ Petition is filed seeking for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order of the first respondent in letter No.31722/P1/2010-6, dated 30.09.2011 and quash the same and direct the respondents herein to confer retrospective promotion upon the petitioner to the post of Principal and Deputy Director and Joint Director w.e.f, 21.05.1992 and 01.06.2001 retrospectively with all attendant monetary and pension benefits.



2. The case of the petitioner is that the petitioner was appointed as Supervisor (Electrical) under Rule 10(a)(i) of the General Rules for the State and Subordinate Services, by the second respondent, vide proceedings dated 01.11.1972 and further he was selected and appointed as Supervisor (Electrical) through the Tamil Nadu Public Service Commission (in short "TNPSC") in May 1977. Thereafter, his services were regularized with effect from 01.10.1977 instead of 1972. Subsequently, the petitioner was promoted as Training Officer on 03.12.1980. After promotion, the petitioner and five others made a representation to the first respondent to regularize their services from the date of their initial appointment. Thereby, the first respondent passed an order in G.O.(2D)No.85, dated 09.12.1992 conferring retrospective regularization of the petitioner's service with effect from 16.11.1972. Further the said Government Order conferred the eligibility of the petitioner's increments including the arrears from the date of initial appointment ie., from 16.11.1972 and further, the second respondent was directed to refix the seniority of the petitioner.

3. The petitioner would further aver that he was originally promoted as Training Officer on 06.12.1980 on the basis of the TNPSC selection and in view of the retrospective regularization, the seniority in the cadre of training officer was refixed with effect from 14.05.1977, by an order dated 24.04.1998. The petitioner's seniority was also refixed as Assistant Training Officer based on the retrospective regularization. Thereafter, the petitioner was promoted as Principal on 05.05.1999, based upon his TNPSC seniority. Thereafter, a panel was prepared on 30.05.2001 for the promotion to the post of Deputy Director of Training. However, the petitioner's name was not included in the panel, since the petitioner was holding the TNPSC seniority not from the date of his initial appointment ie., from 16.11.1972, which was his original selection. As against the non-inclusion of his name in the promotion panel, the petitioner filed O.A.No.6875 of 2001, before the Tamil Nadu Administrative Tribunal and the Tribunal, vide its order dated, 23.10.2001, directed the respondents herein to consider the petitioner's representation for inclusion of the petitioner's name in the panel within a period of three months. In compliance of the said order, the first respondent passed an order dated 11.02.2002, by stating that since there were various cases pending before the Tribunal, the petitioner's case will be considered later. Hence his request was not considered. Accordingly, the case was deferred for the time being. Thereafter, the petitioner was retired on 31.03.2004. Even prior to his retirement, the petitioner made a representation on 27.02.2002, for refixation of seniority and grant promotion to the post of Deputy Director of Training, by considering his services from the year 1972. Again after his



retirement, the petitioner made representations on 25.04.2005, on 15.08.2008 and finally on 06.10.2010 for the very same relief. However, the first respondent passed the impugned order dated 30.09.2011, by rejecting the representations on the ground that the petitioner was retired, while preparing the promotion panel for the post of Deputy Director/Principal in the year 2005, vide G.O.(D) No.810, dated 16.06.2005. Challenging the said impugned order, the present writ petition has been filed by the petitioner.

4. Learned Counsel appearing for the petitioner would submit that though the petitioner was initially appointed as 10(a)(i) Supervisor (Electrical) in the year 1972 by the second respondent, thereafter, he was selected and appointed to the said post through TNPSC in the year 1977. On earlier occasion, the petitioner ventilated his grievance before the first respondent for retrospective regularization of his service with effect from his initial appointment and that was also considered by the proceedings of the first respondent in G.O.(2D)No.85, dated 09.12.1992. In the light of the above Government Order, the petitioner's seniority has to be considered right from the year 1972 and not on the basis of Tamil Nadu Public Service Commission selection. The petitioner's juniors were granted promotion to the post of Deputy Director/Principal in the year 1992 and the petitioner's promotion was considered only in the year 1999. The petitioner did not challenge his juniors' promotion in the year 1992 on the ground that the petitioner's seniority was refixed only in the year 1998 and thereby, he has not challenged the earlier promotion granted in favour of his juniors.

5. Learned Counsel for the petitioner would further submit that the petitioner was promoted as Principal with effect from 05.05.1999 and thereafter, his name was not included in the panel prepared to the post of Deputy Director for the year 2000-2001 on the ground that the petitioner's seniority was wrongly fixed based on the TNPSC selection and thereby, the petitioner made representation in the year 2002, prior to his retirement. However, no order was passed. Again, he made representations in the year 2005, 2008 and 2010 and finally the impugned order was passed in the year 2011. Challenging the same, the present writ petition is filed.

6. Learned Counsel appearing for the petitioner would further submit that the petitioner's name has to be considered right from the year 1992 and further, his case was rejected only the ground that his seniority was fixed based on the TNPSC selection, which is unsustainable one. Hence, he seeks a direction to the first respondent to refix the petitioner's seniority to the post of Principal and Deputy Director/Principal with effect from 21.05.1992 and 01.06.2001 respectively on par with his junior with all monetary and service benefits.

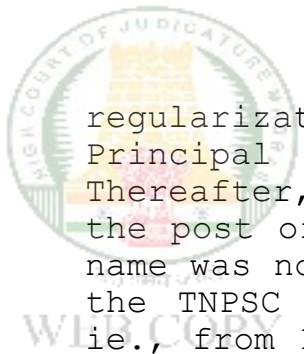


7. Per contra, learned Special Government Pleader appearing for the respondents would submit that admittedly the petitioner was appointed by the second respondent in the year 1972. Thereafter, he was appointed in the year 1977, through TNPSC selection. However, the Government passed G.O.(2D)No.85, Labour and Employment Department, dated 09.12.1992 and refixed the seniority from the year 1972. Considering the earlier seniority, he was granted promotion as Principal in the year 1999 and he was retired from service on 31.03.2004. However, the petitioner has not taken any steps immediately after his juniors' promotion to the post of Principal and refix the seniority from the date of his initial appointment in the year 1972 to the post of Deputy Director /Principal and further his request was also deferred with, vide order of the first respondent dated 11.02.2002 and that order was also not challenged by the petitioner before the Court of law. Further, the petitioner was retired from service in the year 2004 and after six years from the date of his retirement, the petitioner made representation seeking to refix his seniority in the post of Principal and grant notional promotion as Deputy Director and refix his terminal benefits, which cannot be entertained on the ground of laches. The settled things cannot be unsettled after a long time. Hence, he prays for dismissal of the writ petition.

8. Heard the learned Counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents and perused the materials placed on record.

9. The facts in the present case are not in dispute. the petitioner was appointed as Supervisor (Electrical) by the second respondent, on 01.11.1972 and further he was selected and appointed as Supervisor (Electrical) through the Tamil Nadu Public Service Commission (in short "TNPSC") in May 1977. Thereafter, his services were regularized with effect from 01.10.1977 instead of 1972. Thereafter, the petitioner was promoted as Training Officer on 03.12.1980. After promotion, the petitioner and five others made a representation to the first respondent to regularize their services from the date of their initial appointment. Thereby, the first respondent passed an order in G.O.(2D)No.85, dated 09.12.1992 conferring retrospective regularization of the petitioner's service with effect from 16.11.1972. Further the said Government Order conferred the eligibility of the petitioner's increments including the arrears from the date of initial appointment ie., from 16.11.1972 and further, the second respondent was directed to refix the seniority of the petitioner.

10. The petitioner was originally promoted as Training Officer on 06.12.1980 on the basis of the TNPSC selection and in view of the retrospective regularization, the seniority in the cadre of training officer was refixed with effect from 14.05.1977, by an order dated 24.04.1998. The petitioner's seniority was also refixed



regularization. Thereafter, the petitioner was promoted as Principal on 05.05.1999, based upon his TNPSC seniority. Thereafter, a panel was prepared on 30.05.2001 for the promotion to the post of Deputy Director of Training. However, the petitioner's name was not included in the panel, since the petitioner was holding the TNPSC seniority not from the date of his initial appointment ie., from 16.11.1972, which was his original selection. As against the non-inclusion of his name in the promotion panel, the petitioner filed O.A.No.6875 of 2001, before the Tamil Nadu Administrative Tribunal and the Tribunal, vide its order dated, 23.10.2001, directed the respondents herein to consider the petitioner's representation for inclusion of the petitioner's name in the panel within a period of three months. In compliance of the said order only, the first respondent passed an order dated 11.02.2002, by stating that since there were various cases pending before the Tribunal, the petitioner's case will be considered later. Accordingly, the case was deferred for the time being.

11. Admittedly, the petitioner was retired on 31.03.2004. Though the petitioner claimed that he made representations in the year 2002, 2005, 2008 and 2010, he did not take any steps to dispose of the same. Admittedly, the first respondent passed the impugned order, based on the representation of the petitioner dated 06.10.2010, which was made after a period of six years from the date of the his retirement. All those issues are settled prior to his retirement itself and the petitioner did not take any steps for the period of six years and there is no proper explanation for the delay in making representation to the first respondent. Hence the petitioner suffered from laches and apart from that, all those settled things cannot be unsettled after so many years and it would definitely affect the persons, who were granted subsequent promotions.

12. At this point of time, it is relevant to extract paragraph No.27 of the decision rendered by the Honourable Supreme Court in ***State of Uttaranchal and another Vs. Shiv Charan Singh Bhandari and Others*** reported in ***(2013)12 Supreme Court Cases 179***, wherein it is held as follows:

"27. We are absolutely conscious that in the case at hand the seniority has not been disturbed in the promotional cadre and no promotions may be unsettled. There may not be unsettlement of the settled position but, a pregnant one, the respondents chose to sleep like Rip Van Winkle and got up from their slumber at their own leisure, for some reason which is fathomable to them only. But such fathoming of reasons by oneself is not countenanced in law. Anyone who sleeps over his right is bound to suffer. As we perceive neither the Tribunal nor



the High Court has appreciated these aspects in proper perspective and proceeded on the base that a junior was promoted and, therefore, the seniors cannot be denied the promotion."

13. In view of the above, this writ petition sans merit and, accordingly, the same is dismissed. Consequently, connected Miscellaneous Petitions are also dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

SSL

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 Secretary to Government,
Labour and Employment Department,
Fort St.George,
Chennai.

2.The Director of Employment and Training,
Guindy,
Chennai-32.

+1 CC to SGP (SR-2606[F] dated 01/02/2021)

W.P (MD)No.2214 of 2012

29.01.2021

VR (CO)

NR (09/02/2021) 6P : 4C