BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 07.09.2021
CORAM
THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**
W.P(MD)No.11711 of 2014
and
W.M.P(MD)Nos.2 and 3 of 2014

E.Mohan ... Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
Office of the Commissioner of Commercial Taxes,
Chepauk, Chennai-5.

2.The Joint Commissioner (CT),
Madurai Division, Madurai.

3.The Assistant Commissioner (CT),
Palani-I, Madurai Division,
Dindigal.

4.Mr.Ramamoorthy ... Respondents

Prayer : Writ Petition 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 proceedings of the first respondent in Proc.No.P2/319/2011, dated 20.07.2011 and the consequential impugned proceedings of the first respondent in U.O.Note.No.P2/25486/2012, dated 22.11.2013 and Ref.No.P2/25486/2012, dated 21.03.2013 and to quash the same as illegal and consequently, to direct the first respondent to promote the petitioner to the post of Deputy Commercial Tax Officer by considering him to have been qualified for inclusion in the panel of Assistants qualified to be promoted as Deputy Commercial Tax Officer for the year 2011-2012.

For Petitioner : Mr.Prem Ayyadurai
for M/s.Ajmal Associates
For R1 to R3 : Mr.M.Lingadurai
Government Advocate

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ORDER

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the proceedings of the first respondent, dated 20.07.2011, and the consequential proceeding of first respondent, dated 22.11.2013, and another proceedings, dated 21.03.2013, and consequently, to direct the first respondent to promote the petitioner to the post of Deputy Commercial Tax Officer.

2.Heard Mr.Prem Ayyadurai, learned Counsel appearing for the petitioner and Mr.M.Linga Durai, learned Government Advocate appearing for the respondents 1 to 3.

3.The petitioner, at the time of filing of this Writ Petition, was working as an Assistant in the office of the third respondent. The petitioner joined in service under the Commercial Taxes Department, as a Record Clerk on 15.02.1989 and the petitioner was promoted as Junior Assistant in the year 1996 and thereafter, as Assistant in the year 2006. It is the case of petitioner that the next avenue of promotion to the petitioner is to the post of Deputy Commercial Tax Officer.

4.The first respondent called for panel of Assistant under the Commercial Taxes Department for being considered for promotion to the post of Deputy Commercial Tax Officer for the year 2011. The petitioner was also one among the persons, who was included in the list to be considered for promotion to the post of Deputy Commercial Tax Officer for the year 2011. However, the first respondent, by the impugned proceeding, dated 20.07.2011, published a temporary list of qualified Assistants for being considered for appointment to the post of Deputy Commercial Tax Officer. It is stated that the petitioner's name was not found in the panel. Thereafter, the petitioner submitted a representation to the first respondent on 31.07.2011 questioning the omission of petitioner's name. Thereafter, the first respondent, by proceedings, dated 12.11.2012, sought views of the second respondent and later, the second respondent recommended that the petitioner can be considered for promotion to the post of Deputy Commercial Tax Officer. However, the first respondent rejected the request of the petitioner for including his name in the temporary panel for Deputy Commercial Tax Officer for the year 2011 by the impugned proceeding, dated 21.03.2013. Aggrieved by the same, the above Writ Petition is filed.

5.It is admitted that as per Tamil Nadu Commercial Taxes Subordinate Service Rules, a candidate to be considered for promotion as Deputy Commercial Tax Officer should have the following qualification:

> "*A Pass of diploma in the Accountancy Examination conducted by the Institute of Charted Accounts, or a pass in the Accountancy Examination by the Lower Grade conducted by the Board of Examination, Tamil Nadu or any equivalent examination that may be prescribed in that behalf by the State Government.*
>
> Provided that a person who has passed the Commercial

Book - Keeping of the Local Fund Audit Department test conducted by the Tamil Nadu Public Service Commission in the Examination held upto and inclusive of May 1983 or the Government Technical Examination in Book-Keeping by the Lower Grade shall be deemed to have possessed the above qualification. (G.O.Ms.No.402, CT & RE Department, dated, 06.04.1983)”.

6.It is a specific case of the petitioner that he obtained informations from the Public Information Officer to the effect that passing of Book Keeping examination, as optional subject in SSLC Public examinations, held in March 1974, was declared equivalent to a pass in the Government Technical Education in Book Keeping by lower grade. The learned Counsel for the petitioner relied upon the said information furnished under RTI Act, dated 07.06.2013. In view of the said clarification, this Court is of the view that the petitioner has equivalent qualification in Book Keeping and that the petitioner, who passed Book Keeping, as one of the subjects in SSLC examination should be considered to be fit for promotion. By the impugned order, the petitioner's qualification was held to be insufficient, as a pass in Book Keeping, as one of the subjects in SSLC certificate, is not equivalent to Accountancy. The reason stated in the impugned order, is therefore, wrong and the petitioner, who has passed the Book Keeping, as one of the subjects in SSLC in March 1974, should be considered, as possessing the prescribed qualification.

7.In the entire counter affidavit, the specific averments made in the affidavit filed in support of this Writ Petition with reference to the petitioner's qualification by passing Book Keeping, as one of the subjects in SSLC held in March 1974, have not been dealt with. Despite a specific ground is raised by the petitioner with reference to his qualification, there is no whisper in the counter affidavit disputing the legal submission of the learned Counsel appearing for the petitioner. It is also brought to the notice of this Court about the promotion of another person, who has the same qualification as the petitioner possess.

8.Since the petitioner's qualification is clarified to be equivalent and the respondents have given promotion to the persons, who are similarly placed, it is not open to the respondents 1 to 3 to advance an argument contrary to the position conceived by the respondents while accepting the qualification in the case of other candidates. Such a discriminatory attitude shown by the respondents cannot be appreciated.

9.As a result, this Court is inclined to allow this Writ Petition. Accordingly, this Writ Petition is allowed and the impugned orders passed by the first respondent, dated 22.11.2013 and 21.03.2013, are set aside. The respondents 1 to 3 are directed to promote the petitioner to the post of Deputy Commercial Tax Officer notionally by considering him as qualified for the year 2011-12. Though the petitioner attained the age of superannuation in the year 2014, the first respondent is directed to promote the petitioner to post of Deputy Commercial Tax Officer notionally by treating him as qualified for inclusion in the panel of Assistant to be promoted to the post of Deputy Commercial Tax Officer for the year 2011-2012 and give him the monetary benefits. The entire exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

gbg/cmr

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

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2.The Joint Commissioner (CT),
Madurai Division, Madurai.

3.The Assistant Commissioner (CT),
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+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-28488[F] dated 08/09/2021)
+1 CC to M/s.GP (SR-28521[F] dated 08/09/2021)

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RD(17.09.2021) 4P 6C