BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 21.12.2021
CORAM:
THE HONOURABLE MRS.JUSTICE S. SRIMATHY
W.P(MD) No. 14691 of 2017

K. Radhakrishnan : Petitioner

..vs..

1.The Secretary to Government,
Commercial Taxes and Registration Department,
Secretariat, Chennai - 600 009.

2.The Principal Secretary to Government,
Commercial Taxes,
Chepauk, Chennai - 600 005.

3.The Joint Commissioner of Commercial Taxes,
Commercial Tax Department Buildings,
K.K.Nagar, Madurai - 625 020. : Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of to issue a Writ in the nature of Writ of Certiorarified Mandamus to call for the records in pursuant to the impugned order passed by the third respondent in Na.Ka.No.2090/2014/A5, dated 12.01.2016 and quash the same and consequently, direct the respondents notionally promote the petitioner in the post of Junior Assistant in the panel year 2000 and to grant consequent promotion in the cadre of Assistant and Deputy Commercial Tax Officer on par with his Junior and to grant all attendant and monetary benefits within the stipulated time that may be fixed by this Court.

For Petitioner : Mr. M. Saravana Kumar
For Respondents : Mrs. D. Farjana Ghoushia
Special Government Pleader

O R D E R

The present Writ Petition is filed to quash the impugned order dated 12.01.2016 and consequently direct the respondent give notional promotion to the petitioner in the post of Junior Assistant in the panel year 2000 and to grant consequent promotion in the cadre of Assistant and Deputy Commercial Tax Officer on par with his junior and grant all attendant and monetary benefits.

2. The petitioner was initially appointed as Field Surveyor on consolidated pay during the Up-date Registry Scheme as per the proceeding dated 08.03.1984. After completing six years of service in the cadre of Field Surveyor, he was allotted to Commercial Tax Department and posted as Record Clerk on 23.08.1990 and joined duty on 31.08.1990, then, promoted as Junior Assistant on 28.03.2007 and again promoted as Assistant on 16.07.2010 and retired on 31.08.2015. The grievance of the petitioner is that the petitioner served in the Commercial Tax Department from 31.08.1990 to 31.08.2015 for a period of 25 years and the petitioner ought to have been elevated as Assistant Commercial Tax Officer and Deputy Commercial Tax Officer. The petitioner was not elevated because his initial promotion from the cadre of Record Clerk was not given on completion of seven years of service on par with the Juniors. But he was promoted as Junior Assistant from the post of Record Clerk after completion of more than 10 years. Hence, his further elevation as Assistant Commercial Tax Officer and Deputy Commercial Tax Officer could not be achieved for no fault of the petitioner. The petitioner submitted a representation on 12.08.2014 for notional promotion. Based on the representation, the Principal Secretary and the Commercial Taxes Department has called for a report from the Joint Commissioner (CT), Madurai for not promoting the petitioner as Junior Assistant after completion of 7 years vide letter dated 07.04.2015. The contention of the petitioner is inspite of Principal Secretary letter, the Commercial Tax Officer has not submitted any report to the Principal Secretary. Hence, the petitioner preferred W.P(MD).No.20872 of 2015 before this Court with a prayer directing the respondents to pursue further action on the reference letter dated 07.04.2015 and take a decision on the petitioner's representation dated 12.08.2015. This Court vide letter dated 25.11.2015 has directed the third respondent to send appropriate response to the petitioner's representation within a period of six weeks. The petitioner submitted that the third respondent ought to have submitted the remarks to the second respondent, but, contrary, the third respondent passed the present impugned order stating no vacancy available in the cadre of Junior Assistant from 2000 to 2005 in the department and therefore, the Junior Assistant promotion was granted in the year 2006. Aggrieved over the said letter, the petitioner has preferred the present Writ Petition to quash the same and direct the respondents to give notional promotion and other consequential benefits.

3. The third respondent has filed a counter stating that the petitioner is claiming seniority for the post of Junior Assistant in the year 2000 on par with the his Junior R. Uthiravathi. The petitioner joined in the Department on 31.08.1990 as Record Clerk, before that the petitioner was served as contract

employee from 09.03.1984 on consolidated pay. The said R.Uthiravathi joined in the Department on 15.07.1985 as Office Assistant and subsequently, he qualified to get promotion as Junior Assistant. Accordingly, he was considered for Junior Assistant post in the year 2000 and the same was reported to the Commercial Tax Department. The second respondent vide letter dated 05.01.2016 has observed that since R. Uthiravathi, Office Assistant is senior to the petitioner and therefore, he was promoted as Junior Assistant in the year 2000. Even though the petitioner is eligible for promotion as Junior Assistant he was not promoted as Junior Assistant till 2005 for want of vacancy. Therefore, he was promoted in the year 2006, as per the proceedings of Deputy Commissioner (CT), Madurai in proceeding dated 27.03.2007. Thereafter, the second respondent directed the third respondent to give suitable reply in this regard. Accordingly, the impugned order dated 12.01.2016 was issued by the third respondent. The petitioner has claimed seniority after the lapse of 17 years and has filed the present Writ Petition after promotion and it is beyond the period of limitation as per Section 40(6) of the Tamil Nadu Government (Conditions of Service) Act, 2016, the petitioner has to claim his seniority within three years from the date of his appointment to the said post. The petitioner's name was included in the year 2006 for the post of Junior Assistant and was promoted on 27.03.2007. Therefore, the petitioner ought to have challenged in the year 2007. Subsequently, the petitioner was promoted as Assistant in the year 2010. Then, the petitioner has not challenged in the year 2010. Therefore, the petitioner's claim is beyond the period of limitation and therefore, this Court ought to dismiss the claim of the petitioner on the principles of latches.

4. Heard the learned counsel appearing on either side and perused the materials available on record.

5. As per Section 40(6) of the Tamil Nadu Government (Conditions of Service) Act, 2016, the employee if aggrieved ought to have challenge the seniority list within a period of three years and the petitioner cannot be allowed to challenge the seniority beyond the period of three years. Moreover, as rightly pointed out by the respondents the petitioner has challenged the seniority list after retirement and seeking notional promotion with consequential benefits. The petitioner has challenged the seniority list after retirement, even though it will not affect the persons in the seniority list, the same cannot be entertained after a lapse of so many years, that too after the lapse of 14 years. This Court is of the considered opinion that it is a short cut method to get monetary benefits. Therefore, equity cannot be showen on the petitioner. The contention of the petitioner that

this Court has directed the petitioner to grant the same and the Principal Secretary also has directed the concerned authorities to give the reasons for not granting the promotion after 7 years. On perusing this Court order in the earlier Writ Petition, this Court has simply directed the second respondent to pass an order and the same cannot be taken as if a positive direction is given to the petitioner. The petitioner relies on Principal Secretary letter, dated 07.04.2015 has directed to enquire why the promotion was not granted to the petitioner and directed to explain the delay in granting the promotion. The respondents have explained the same vide letter dated 05.01.2016 wherein it is stated that the immediate junior viz., R. Uthiravathi, was compared by the petitioner. The said R. R. Uthiravathi is senior to the petitioner who joined as Record Clerk on 15.07.1985 and was promoted in the year 2000. The petitioner has joined as Record Clerk on 31.08.1990. Thereafter, for want of vacancy the petitioner was not granted the post of Junior Assistant. When the vacancy arose in the year 2005, the petitioner was granted the promotion vide proceeding dated 27.03.2007. The promotion is not a right though the petitioner has the right to be considered for promotion. As rightly stated by the respondents the petitioner was considered for promotion when the vacancy arose. This Court is of the considered view that the petitioner was promoted when the vacancy arose and therefore, there is no infirmity as alleged by the petitioner.

6. Accordingly, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (WRITS)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

trp

To

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Chepauk, Chennai - 600 005.

3.The Joint Commissioner of Commercial Taxes,
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