IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.02.2022

Pronounced on : 04.03.2022

Coram

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A. No.1386 of 2021

A. Duraisingam ...Appellant/Petitioner

Vs.

1. Government of Tamil Nadu,
   Represented by Principal Secretary to Government,
   Commercial Taxes and Registration Department,
   Secretariat, Chennai - 600 009.

2. The Principal Secretary/Commissioner of Commercial Taxes,
   Chepauk, Chennai - 6000 005. ...Respondents/Respondent

Prayer:Writ appeal is filed under clause 15 of the Letter Patent praying to set aside the order dated 21.07.2020 in W.P.No.28099 of 2013 and allow this writ appeal.

Prayer in W.P. No. 28099/2013:

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Mandamus directing the 1st respondent to include the name of the petitioner in the panel for the year 2009-2010 for promotion as Assistant Commissioner (Commercial Taxes) approved in G.O. Ms. No.8, Commercial Taxes and Registration Department, dated 22.1.2010 in the appropriate place therein, to grant notional promotion as such with consequential benefits including higher pensionary benefits.

For Appellant : Mr.M. Ravi

For Respondents : Mr.Richardson Wilson

Additional Government Pleader

JUDGMENT

MOHAMMED SHAFFIQ, J.

This intra Court appeal is filed challenging the order of the learned single Judge in Writ Petition No.28099 of 2013 dated 21.07.2020 whereby the appellant's prayer to include his name in the panel for the year 2009- 2010 for promotion as Assistant Commissioner (Commercial Taxes) approved in G.O.Ms.No.8 was rejected.

2. The appellant joined the Commercial Tax Department as Office Assistant on 01.05.1971. The appellant was promoted as Deputy Commercial Tax Officer in the year 2007 which was upgraded /re-designated as Commercial Tax Officer from the year 2008. While drawing the panel for the year 2009 to the post of Assistant Commissioner, the crucial dated was fixed as 01.01.2009. The qualification for being considered for the post of Assistant Commissioner was set out in Rule IV read with Annexure 1 A (ii) and (iii) of the Special Rules for the Tamil Nadu Commercial Taxes Service and the relevant portion of which reads as under:

1A. Recruitment by transfer from the Tamil Nadu Commercial Taxes Subordinate Service	(i) Must have passed- (a) The Account Test for Executive Officer. (b) Departmental Test in Commercial Taxes Acts Part I,II and III. (c) Book-keeping. (ii) Must not have completed 57 years of ages. This age limit shall be applied with reference to the first day of July of the year in which the report to the Commission about his fitness for inclusion in the list become due. (prior to 01.07.1971 - 47 years) (prior to 25.04.1979 - 50 years) (prior to 27.06.1991 - 55 years) (iii) Must have not less than two years of service in all as Commercial Tax Officers engaged in assessment work.
Note - (1) The qualification mentioned in terms (i) and (ii) above should be acquired before the 1st day of January of the year in which the report to the Commission about the candidate's fitness for inclusion in the list becomes due. (2) A person who was holding the post of Manager in the Office of the Tamil Nadu Sales Tax Appellate Tribunal on 9th March 1960, is entitled to count his service in such post prior to that date towards service as Commercial Tax Officer engaged in assessment work.	

(Emphasis supplied)

A reading of the above would indicate that the following criteria ought to be satisfied cumulatively:

a. The candidate must not have completed 57 years of age.

b. The candidate must not have less 2 years of service as Commercial Tax Officer.

c. The candidate must have been engaged in assessment work for more than 2 years as Commercial Tax Officer.

3. Admittedly, the appellant does not satisfy any of the three criteria as would be evident from the following undisputed factual position:-

a. The appellant has crossed 57 years as on 01.01.2009.

b. The appellant has not completed two years of service as Deputy Commercial Tax Officer or Commercial Tax Officer. This would be evident from the fact that even according to the appellant there is a short fall of 21 days in completing the two years of service as Deputy Commercial Tax Officer.

c. The appellant was not engaged in assessment work for 2 years as Commercial Tax Officer - The appellant was engaged in the assessment work only for 1 year 5 months and 20 days.

It is the case of the appellant that there has been relaxation of the above qualification and persons who did not satisfy the above criteria have been included in the panel as could be seen from the following Table:

(i) Persons who have crossed 57 years of age	9 persons
(ii) Persons who have not completed 2 years of Service in Assessment Circle	26 persons
(iii) Persons who have not completed 2 years of service in Assessment Circle and who had crossed 57 years of age	6 persons

4. It is the case of the appellant that having relaxed the conditions with regard to age and service in assessment circle, the respondents ought to have included the appellant's name in the panel by relaxing the condition that the candidate must have not less than 2 years of service as Commercial Tax Officer. The claim of the appellant that he ought to be included in the panel drawn for the post of Assistant Commissioner for the year 2009 ought to fail for the following reasons:-

a. There is no challenge to the qualifications set out in the Tamil Nadu Commercial Tax Special Rules.

b. The relaxation is only with regard to the age and service in assessment circle. There has been no relaxation with regard to the condition that the candidates must have completed two years of service as Commercial Tax Officer, in any of the 41 instances, which has been referred to in the grounds of appeal by the appellant.

c. The submission of the appellant that his name ought to be included in the panel for appointment of Assistant Commissioner by relaxing the condition relating to service in assessment Circle as Commercial Tax Officer ought to be rejected inasmuch as relaxation being in the nature of a concession cannot be claimed as a matter of right. We intend to clarify that the above observations are made without examining the legality of the relaxation of the eligibility criteria as the said issue is not raised before us and thus not required to answer the same

d. It is also found by the learned Single Judge there has been delay on the part of the appellant to approach this Court inasmuch as the writ petition has been filed only after superannuation of the appellant. Though, the approved panel was published on 22.01.2010 there has been no steps taken to challenge/question the same until 10.03.2013 when the appellant filed a representation. The appellant has chosen to file the representation only on 10.03.2013 i.e., after superannuation on 31.05.2010. It is trite law that Courts would come to rescue, only to those who were vigilant about their rights. In this case there has been delay on the part of the appellant in questioning the panel that too after superannuation which is yet another reason which had weighed in the mind of the learned Judge to reject the prayer of the appellant.

5. We agree with the reasoning of the learned single Judge. In view of the same, we see no reason to interfere with the order of the learned Judge. Thus, the writ appeal stands dismissed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To.
1. Government of Tamil Nadu,
   Principal Secretary to Government,
   Commercial Taxes and Registration Department,
   Secretariat, Chennai - 600 009.

2. The Principal Secretary/Commissioner of Commercial Taxes,
   Chepauk, Chennai - 6000 005.

+1 CC to The Special Governemnt Pleader (T) sr 14799.

W.A. No.1386 of 2021

RP(CO)
SP(22/03/2022)