IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2022

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.5988 of 2015
and
M.P.No.2 of 2015

V.Suresh Babu
(Deputy Commercial Tax Officer,
Air Cargo, Chennai),
G.52, PWD Quarters,
Todhunter Nagar,
Saidapet,
Chennai - 600 015. ... Petitioner

vs

The Principal Secretary/ Commissioner of
Commercial taxes,
Ezhilagam, Chepauk,
Chennai - 600 005. .... Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records in respect of the List of Approved candidates fit for appointment as Assistant Commercial Tax Officers (re-designated as Deputy Commercial Tax Officers) for the year 2011 drawn and communicated by the Respondent in his Proceedings No.P2/319/2011 dated 20.07.2011 and quash the same and direct the respondent to redraw the List restricting it to 109 persons who were actually appointed as Assistant Commercial Tax Officers (re-designated as Deputy Commercial tax Officers) during the year 2011.

For Petitioner : Mr.Adithya Reddy

For Respondent : Mr.S.K.Vasanthamala
Government Advocate (Tax)

ORDER

This writ petition has been filed challenging the proceedings of the respondent dated 20.07.2011 and to direct the respondent to redraw the List of Approved candidates fit for appointment as Assistant Commercial Tax Officers (re-designated as Deputy Commercial Tax Officers) for the year 2011, restricting it to 109 persons who were actually appointed as Assistant Commercial Tax Officers (re-designated as Deputy Commercial tax Officers) during the year 2011.

2. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondent.

3. The main contention raised by the learned counsel for the petitioner is that the List of Approved Candidates fit for appointment as Assistant Commercial Tax Officers (re-designated as Deputy Commercial Tax Officers) for the year 2011, includes the persons who were not appointment

as Assistant Commercial Tax Officers during the year 2011 but appointed so only in the year 2012, is in violation of Rule 4 of Part-II General Rules of the Tamil Nadu State and Subordinate Service Rules. He would further state that the crudial date of drawal of panel for promotion to the post of Assistant Commercial Tax Officers is 01.03.2011 and the said Rule clearly states that the list of approved candidates, so prepared, shall be in force for a period of one year only and shall lapse at the end of the year. He would further submit that out of 409 candidates fit for appointment as Assistant Commercial Tax Officers in the panel draw for the year 2011, only 109 persons have been promoted and 300 persons were left out and not promoted in the year 2011. He would further state that when the panel was drawn in the year 2011, the petitioner's name was not included as he did not pass the Accountancy Exam and thereafter, in August, 2011 itself, he passed the exam and became eligible to the said post. But the respondent, instead of drawing a fresh panel in March 2012, the left out 300 candidates in the panel drawn in the previous year i.e., 2011, were promoted and thus, many persons who were juniors to the petitioner were appointed as Deputy Commercial Tax Officers by overriding the petitioner's seniority.

4. Learned counsel for the petitioner would also draw the attention of this Court to the judgment passed by this Court in W.A.No.425 of 2022 etc. batch wherein similar issue has been dealt with. The relevant portion of the said judgment is extracted hereunder:

> *12. At the outset, it is useful to extract Rule 4 of the Tamil Nadu State and Subordinate Services Rules, and the same is reads as hereunder:-*
>
> > *"**4. Approved candidates** - (a) All first appointments to a service or class of category or grade thereof State or Subordinate, whether by direct recruitment or by recruitment by transfer or by promotion, shall be made by the appointing authority from a list of approved candidates. *All appointments made by transfer, from one class to another class and from one category to another category, in the same service carrying identical scale of pay shall be made by the appointing authority from a list of approved candidates. Such list shall be prepared in the prescribed manner by the appointing authority or any other authority empowered in the Special rules in that behalf ** and shall be displayed in the Notice Board in the Office of the appointing authority.** The list shall also be communicated to all persons concerned by Registered post whose names are found in the list as well as to persons senior to the Junior most person included in the list whose names have not been included in the list. Where the candidates in such list are arranged in their order of preference appointments to the service shall be made in such order:*

***(w.e.f. 25.7.2003 Vide G.O.Ms.No.130 P&AR(S) Dept. dt.29.4.2004 & G.O.Ms.No.99 P&AR(S) Dept. dt. 2.8.2005)*

**[G.O.Ms.No.284, P & AR (S), dt.1-12-97 came into force on 1-12-97].*

Provided that the list of approved candidates for appointment by promotion and by recruitment by transfer to all the categories of posts in the Tamil Nadu State and Subordinate Services shall be prepared annually against the estimated number of vacancies expected to arise during the course of a year. The estimate of vacancies shall be prepared taking into account the total number of permanent post in a category; the number of temporary posts in existence; the anticipated sanction of new posts in the next year; the recruitment post of leave reserves; the anticipated vacancies due to retirement and promotion, etc., in the course of the year and the number of candidates already in position in that category. The list of approved candidates, so prepared, shall be inforce for a period of one year only and shall lapse at the end of the year. <u>The candidates whose names were included in the previous list, but were not appointed, shall be considered, if eligible for inclusion in the list of next year along with their seniors if any whose names were not included in the previous list either because they were found not suitable or because they were not technically qualified when the previous list was drawn up.</u>

......"[emphasis supplied]

13. It is also relevant to extract Rule 8 of the Special Rules for Tamil Nadu Elementary Education Subordinate Service Rules, which reads as follows:-

> *"8.Preparation of annual list of approved candidates:- For the purpose of drawing up of the annual list of approved candidates for appointment to that post in the service by promotion, the crucial date on which the candidates should be qualified shall be the 1st January of every year. "*

14. Thus, it is clear from the reading of the above rules that the promotion has to be effected only from the approved list of candidates. Further, the list has to be drawn up with reference to the crucial date, which is the first January of every year, by estimating the vacancies that are due to arise during the year and while so doing, the candidates whose names were included in the previous list but, were not appointed shall be considered if eligible for inclusion in the list of next year, along with the seniors, if any whose names were not included in the previous list, either because they were not suitable or because they were not technically qualified in the previous list. Thus, if the respondents No.4 & 5, in the Writ Petitions, became qualified subsequently, they had to be included properly in the list, the appropriate seniority position. Seniors in the service, once they obtain necessary educational qualification/technical qualification, even on a later date will not become Juniors as it is only the date of entering into the services, which would be *determining factors for fixing the seniority and position in the promotion panel and not on the date of acquiring of qualification. This legal position has been clearly laid down in the Judgment V.Dhanasekaran and Ors. Vs. M.Ganesan and Ors., MANU/TN/9188/2007 : (2007) 6 MLJ 533. Therefore, once respondents No.4 & 5 in the Writ Petitions, acquired the qualification, they have to be treated as seniors to the Writ Petitioners, in the matter of promotion.*

15. We do not agree with the findings of the learned Single Judge, the extraordinary Covid 19 situation cannot result in non-conduct of the exercise of promotion, thereby, directing the first to carry out the exercise with reference to the year 2020. Even under normal circumstances, it is for the employer to grant the promotions depending on the exigency services. Especially, in Covid 19 situation and extraordinary circumstances the official respondents No.1 to 3, are very well justified the non-grant of promotion in the year 2020.

16. Now, the other contention which is raised in this case is that in respect of the vacancies that arose in the year 2020 as of the crucial date i.e., 01.01.2020, the respondents No.4 & 5 were not qualified. The said submission is again untenable. The degree certificates are produced before this Court in and by which, it is seen that the respondent No.4 in the Writ Petition was awarded the degree pursuant to the examination held in the year May 2019 and the respondent No.5 in the Writ

Petition, had acquired the qualification, pursuant to the examination held in the year December 2019. It has been held by the this Court, in K.Pandiyan v. Director of Elementary Education that the qualification of the person is deemed to be have been acquired as on the date of the final examination and it is not on the date of entry into the service records or date of issue of degree certificate. Therefore, in view of the law laid down by this Court in the above Judgment, it cannot also be contended that as on the crucial date i.e., 01.01.2020, the respondents No.3 and 4, did not have the requisite qualification. Thus, seen from any angle, the order of the learned Single Judge, is liable to be interfered with.

17. In the result, all the Writ Appeals stand allowed. The order of the learned Single Judge, dated 10.01.2022 passed in W.P.Nos.4973 and 4981 of 2021 is set aside. Consequently, the Writ Petitions in W.P.Nos.4973 & 4981 of 2021 stand dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

5. The above factual legal position will squarely apply to the facts and circumstances of the present case. Therefore, the impugned proceedings dated 20.07.2011 passed by the respondent is quashed and the respondent is directed to consider the case of the petitioner for promotion to the post of

Assistant Commercial Tax Officers (ACTO) (re-designated as Deputy Commercial Tax Officers), if he is otherwise qualified. The above exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.

6. The Writ Petition is allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

12.12.2022

Index:Yes/No
Speaking/Non-speaking order
vsi

To

The Principal Secretary/ Commissioner of
Commercial taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

J.NISHA BANU,J.

Vsi

W.P.No.5988 of 2015

12.12.2022