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W.P.Nos.38846 of 2016 & 31801 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.38846 of 2016 & 31801 of 2017

and

W.M.P.Nos.33299 of 2016 & 34944 of 2017

P.Mahendran

...Petitioner in both W.Ps

Vs.

1.The Secretary to Government,
Housing and Urban Development Department,
Fort St.George,
Chennai – 09.

2.The Managing Director,
Tamilnadu Housing Board,
Nandanam,
Chennai – 35.

..Respondents in both W.Ps

Prayer in W.P.No.38846 of 2016 : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in connection with the impugned order passed by him in Letter No.PNT-2/15686/2015 dated 25.4.2016 and quash the same and further direct the respondents to promote the petitioner as Accounts Officer on par with his junior.



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Prayer in W.P.No.31801 of 2017 : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in connection with the impugned order passed by him in Memo No.PNT 2/16859/2015-2 dated 17.02.2017 and the consequential rejection order in Memo No.PNT.2/16859/2015-1 dated 17.02.2017 and to quash the same and further direct the respondents to promote the petitioner as Accounts Officer on par with his junior.

For Petitioner	: Mr.P.Venkatraman [in both W.Ps]
For R1	: Mr.T.Sampath Kumar Government Advocate [in both W.Ps]
For R2	: Mr.D.Veerasekaran For Tamil Nadu Housing Board [in both W.Ps]

COMMON ORDER

The order of rejection, rejecting the claim of the writ petitioner for retrospective promotion to the post of Accounts Officer on par with his junior is under challenge in the writ petition in W.P.No.38846 of 2016.

2. The petitioner states that he was initially engaged as NMR/daily wage employee in the second respondent Board on 05.09.1984. The services



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of the writ petitioner was regularized with effect from 09.01.1990 in the post of Work Assistant. The petitioner was promoted as Junior Assistant on 26.06.2012 and further, promoted to the post of Assistant on 28.05.2014. The writ petitioner was finally promoted to the post of Divisional Accounts Officer on 14.08.2014 and retired from service during the pendency of the writ petition.

3. The learned counsel for the petitioner mainly contended that one Mr.V.Sivasubramanian was promoted to the post of Accounts Officer. As per the provisional Seniority list of work charged establishment, the name of the writ petitioner was placed in Sl.No.151 and the name of his junior Mr.V.Sivasubramanian was placed in Sl.No.256. However, his junior Mr.V.Sivasubramanian was promoted to the post of Accounts Officer, but the petitioner was not considered.

4. In this regard, the petitioner submitted several representations, which were not considered. Finally, the impugned order has been passed, stating that the petitioner is not entitled for retrospective promotion on par with his junior to the post of Accounts Officer. Thus, the petitioner is



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constrained to move the present writ petition.

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5. The learned counsel appearing on behalf of the 2nd respondent objected the said contentions by stating that the petitioner was promoted to the post of Junior Assistant in the year 2012 and the said Mr.V.Sivasubramanian was promoted in the year 2010. Therefore, even at the initial stage, Mr.V.Sivasubramanian was promoted earlier than the petitioner in the Feeder category and thus, the petitioner is not senior to the said Mr.V.Sivasubramanian.

6. The contention of the respondent is that Government Order issued in G.O.Ms.No.51, Finance (FR II) Department dated 14.01.1977 cannot be considered straight away for promoting the petitioner to the post of Junior Assistant. He was initially regularized in the post of Work Assistant and thereafter, promoted to the post of Junior Assistant. Promotion was granted in accordance with the Service Regulations and further, considering the NMR Services rendered by the writ petitioner.



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7. However, the fact remains that the said Mr.V.Sivasubramanian referred by the petitioner was promoted to the post of Typist in the year 2010 and the petitioner was promoted to the post of Junior Assistant in the year 2012. Thus, the petitioner is junior to the said Mr.V.Sivasubramanian.

8. That apart, seniority fixed in the cadre of Junior Assistants/Typists cannot be unsettled now after several years. The petitioner was further promoted to the post of Assistant from Junior Assistant and thereafter, to the post of Divisional Accountant and retired from service. The settled seniority in the post of Junior Assistant cannot be unsettled after getting promotion to further higher post, more so, the petitioner was retired from service.

9. In the event of unsettling the settled seniority after several years, many employees would be prejudiced and thus, this Court is of an opinion that the petitioner if at all aggrieved, had not pursued the remedy, when he was promoted to the post of Junior Assistant in the year 2012 and now after securing two more promotions as Assistant and Divisional Accountant, he cannot unsettle the seniority in the cadre of Junior Assistant.



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10. The writ petitioner herein filed yet another writ petition in W.P.No.31801 of 2017, questioning the order of rejection dated 17.02.2017, declining his request to promote him to the post of Accounts Officer on par with his junior with retrospective effect.

11. In view of the fact that the petitioner is not entitled for promotion to the post of Assistant and Divisional Accountant, which was sought for by him in W.P.No.38846 of 2016, question of considering him for further promotion to the post of Accounts Officer would not arise at all. This Court has held that the seniority was settled long back to the writ petitioner in the cadre of Junior Assistant and Assistant and therefore, now it cannot be unsettled for the purpose of considering the case of the petitioner for promotion to the post of Accounts Officer. The petitioner has already retired from service.

12. This being the facts and circumstances established, the petitioner is not entitled for the relief as such sought for in the present writ petitions and the reasons stated in the orders impugned are candid and convincing.

13. Accordingly, both the writ petitions stand dismissed. No costs.



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Consequently, connected miscellaneous petitions are closed.

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Index : Yes
Speaking order: Yes
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To

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S.M.SUBRAMANIAM, J.

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