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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2022

CORAM

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

W.A.NO.2148 OF 2021

P.Chandran

... Appellant

.Vs.

1. The Director,
Rural Development and Panchayat Raj,
Panakal Building, Saidapet,
Chennai - 600 015.

2. The District Collector,
Nilgiris District.

3. The Block Development Officer,
Panchayat Union,
Gudalur, The Nilgiris.

... Respondents

PRAYER:-

Writ appeal is filed under clause 15 of the Letter Patent praying to set aside the order dated 29.01.2020 made in W.P.No.15686 of 2017 and allow the above writ appeal and pass orders.

PRAYER IN W.P.NO.15686 OF 2017:-

Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent in Na.Ka.No.29782/2017/B3, dated 05.06.2017 and the consequent proceedings of the second respondent in Na.Ka.D2.No.31263/2013 dated 06.06.2017, quash the same and consequently direct the respondent to promote the petitioner with retrospective effect from the year 2004 and grant the monetary benefits to the petitioner.



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For Appellant : Mr.S.P.Sudalaiyandi

For Respondents : Mr.P.Ananda Kumar
Government Advocate

JUDGMENT

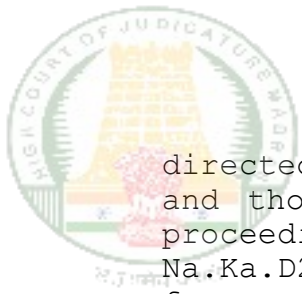
(Judgement of the Court was made by S.VAIDYANATHAN, J.)

This Writ Appeal has been preferred against the order of the learned Single Judge in dismissing the W.P.No.15686 of 2017 dated 29.01.2016.

2. The Appellant/Writ petitioner was appointed as Panchayat Assistant on 28.12.1990 vide appointment letter in Na.Ka.No.A1.No.10077/90 dated 28.12.1990 by the Block Development Officer in Gudalur, Nilgiris/3rd respondent herein and he attained superannuation on 28.02.2013. The grievance of the Appellant/Writ petitioner is that he was fully eligible for promotion to the post of Junior Assistant in the year 2004 and he has also made several representations to the authorities concerned on 28.04.2004, 29.03.2005, 03.06.2006, 26.03.2007 and 10.11.2009 and the same were rejected by the 3rd respondent on 15.05.2013. Aggrieved by the same, the appellant had filed W.P. No.25410 of 2013 in which, this Court, on 07.11.2016, directed the Block Development Officer, Gudalur, Nilgiris/3rd respondent herein to decide the case on merits and in accordance with law, by observing that the impugned order was not passed on merits.

3. Pursuant to the above order, the appellant had sent a detailed representation to the 2nd and 3rd respondents and both the respondents rejected the claim of the appellant vide proceedings in Na.Ka.No.29782/2017/B3, dated 05.06.2017 and Na.Ka.D2.No.31263/2013, dated 06.06.2017 respectively, stating that the appellant had already retired from service on 28.02.2013, prior to the concurrence given by Tamil Nadu Public Service Commission on 05.03.2013 and it was also informed that the next person in the seniority list was already appointed to the post of Junior Assistant. Aggrieved by the same, the appellant filed W.P.No.15686 of 2017 and the same was dismissed vide order dated 29.01.2020 on the ground that the appellant has no legal right to claim promotion retrospectively on par with his juniors. As against the said order passed in W.P.No.15686 of 2017 dated 29.01.2020, the appellant is before this Court.

4. The learned counsel for the appellant submitted that the learned Single Judge in W.P.No.25410 of 2013 dated 07.11.2016



directed the respondent herein to decide the matter on merits and though the Tamil Nadu Public Service Commission, vide its proceedings in Na.Ka.No.29782/2017/B3, dated 05.06.2017 and Na.Ka.D2.No.31263/2013, dated 06.06.2017 rendered an opinion in favour of the appellant to the effect that the appellant was eligible for absorption and promotion as on 05.03.2013, the respondents rejected the appellant's claim on the ground that he retired from service on 28.02.2013. Therefore, the learned counsel for the appellant prays to set aside the order dated 29.01.2020 made in W.P.No.15686 of 2017 and allow this writ appeal.

5. The learned counsel for the appellant in order to support his contention, relied upon the judgment of the Hon'ble Supreme Court in the case of Abhijit Ghosh Dastidar Vs. Union of India and others reported in (2009) 16 SCC 146 wherein it was held that when the juniors to the person therein have been granted promotion, depriving promotion to the candidate may not be justified. He also relied upon the judgment of this Court dated 28.09.2021 in W.A.Nos.930 and 931 of 2021 in which one of us was a party, wherein this Court has held as under:

"10..... We find that once they are eligible to be considered and promoted merely because the writ petitioners have been retired and not served in the promotional post, will not justify the act of the respondent in not granting promotion....."

6. On the other hand, the learned Government Advocate appearing for the respondents contended that on 15.05.2013, the respondents have rejected the appellant's claim on the ground that his request cannot be considered. He further contended that since the appellant attained superannuation on 28.02.2013, the request for considering the case of the appellant for promotion was not feasible and a counter was filed to the said effect. In the counter affidavit, it was conceded that the approval for absorption and promotion of the appellant to the post of Junior Assistant was accorded, in favour of the appellant, but, however, on the date of approval by TNPSC, the appellant had attained superannuation.

7. Heard both sides. Perused the materials available on record.

8. Admittedly, the Appellant/Writ petitioner retired from service on attaining the age of superannuation on 28.02.2013 and the Tamil Nadu Public Service Commission has approved the promotion panel to the post of Junior Assistant on 05.03.2013. It is seen that Government has passed the order in the month of June, 2017 in respect of promotion to the post of Junior



Assistant in the respondent/Department. Therefore, the Appellant/writ petitioner cannot claim promotion as a matter of right, retrospectively on par with his juniors, since he had attained superannuation as early as on 28.02.2013.

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9. The Judgment relied by the learned counsel for the appellant in the case of Abhijit Ghosh Dastidar Vs. Union of India reported in (2009) 16 SCC 146 is not helpful to the appellant because, in the said Judgment though it was stated that depriving promotion to the candidate may not be justified, the Apex Court restricted the claim pertaining to promotion, observing that the petitioner therein is not entitled to pay and allowances for which he has not worked in the higher Administrative Grade Group A. Yet another Judgment relied upon by the learned counsel for the appellant will not enure to the benefit of the appellant on the reasoning that the petitioner therein was denied promotion only on account of the delay in rendering Judgment by this Court and therefore it was held that notional promotion has got to be granted.

10. In the present case on hand, it is not known as to what prevented the appellant to approach this Court to claim promotion during the period of service and there was no adverse orders operating against him or with regard to his promotion. The appellant has slept over the matter for more than a decade and knocked at the doors of this Court belatedly. Though a favourable order was obtained by the appellant, the communication in respect of his eligibility to the post of Junior Assistant was given by Tamil Nadu Public Service Commission only after the date of retirement of the appellant at that time, the appellant was admittedly not in service and therefore, he will not be entitled to the relief sought for.

11. On the whole, we find that there are no errors in the order passed by the learned Single Judge, as an aggrieved person/employee must be vigilant to claim his right at earliest point of time. In this case, failure on the part of the Writ petitioner/Appellant to enforce his rights should not be entertained at this stage.

12. In the result, this writ appeal is dismissed and the relief sought for by the appellant cannot be granted at this stage. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar



smn/mka

To

1. The Director,
Rural Development and Panchyat Raj,
Panakal Building, Saidapet,
Chennai - 600 015.
2. The District Collector,
Nilgiris District.
3. The Block Development Officer,
Panchayat Union,
Gudalur, The Nilgiris.

+lcc to the Government Pleader, S.R.No.9190

W.A.NO.2148 OF 2021

PMK(CO)
PBS/09/03/2022