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W.A.No.1313 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2023

CORAM

THE HON'BLE Mr. JUSTICE R.SURESH KUMAR
AND
THE HON'BLE Mr. JUSTICE K.KUMARESH BABU

W.A.No.1313 of 2012

A.Rajaram (Died)

2.Prema

3.Aarthi

4.Gowtham Rajaram

[Appellants 2 to 4 are brought on record
as legal representatives of the deceased
sole appellant vide order dated 07.03.2022
made in CMP.No.3108 of 2022]

... Appellants

Vs.

1.The State of Tamil Nadu represented by
Secretary to Government,
Labour & Employment Department,
Fort St. George, Chennai – 600 009.

2.The Commissioner of Labour,
DMS Compound, Teynampet,
Chennai – 600 006.

3.The Secretary,
Tamil Nadu Public Service Commission,
Mount Road, Chennai – 600 002.

... Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent Act, praying
to set aside the order dated 05.06.2012 made in W.P.No.36989 of 2007
passed by this Court.



WEB COPY



W.A.No.1313 of 2012

For Appellants : Mr.N.Balamurali Krishnan
for Appellants 2 to 4

For Respondents : Mr.K.V.Sajeev Kumar
Special Govt. Pleader for R1 & R2
: Mr.R.Bharanidharan
Standing Counsel for R3

JUDGMENT

(Judgment of the Court was delivered by R.SURESH KUMAR, J.)

This writ appeal has been directed against the order passed by the Writ Court dated 05.06.2012 in W.P.No.36989 of 2007.

2. The appellant was appointed as Assistant Inspector of Labour by direct recruitment after selection through the TNPSC in the concerned department on 12.05.1980.

3. After he joined in service, the seniority list among the direct recruits as well as the promotees to the post of Assistant Inspector of Labour was issued by the Department, whereunder, according to the appellant and other similarly placed persons, the quota-rota system was not followed in fixing the seniority, therefore they have gone to the Tamil Nadu Administrative Tribunal and filed Original Applications in



W.A.No.1313 of 2012

O.A.Nos.685, 2469, 2470 of 1991 and 6003 of 1994. The O.A.No.685 of 1991 was filed by the appellant - Rajaram.

4. Ultimately the Tribunal, by order dated 02.11.2001, having set aside the seniority list prepared by the Department, directed the Department to prepare a fresh seniority list by adopting the quota-rota system.

5. This judgment has been confirmed by a Division Bench of this Court, where, the writ petitions filed by the Government was disposed by the Division Bench order dated 23.01.2004.

6. Pursuant to these judgments, the respondent Department decided to prepare the fresh seniority list by adopting the quota-rota system, under which, it will be a ratio of 1:2, one will be the direct recruit and 2 will be the promotees, accordingly the revised seniority list was published by memorandum dated 16.04.2004. In that seniority list, the name of the appellant in Sl.No.270 has been made by stating that, the existing seniority of the appellant was 451 and the revised seniority is 475. Therefore again aggrieved over the same, the appellant filed writ



W.A.No.1313 of 2012

petition in W.P.No.36989 of 2007, similarly aggrieved person filed another writ petition i.e. W.P.No.31634 of 2007.

7. Both the writ petitions were heard together and disposed by a common order by the Writ Court dated 05.06.2012 whereby the learned Judge had taken the view that, since the Court had already approved the basis for fixing the seniority and the seniority has been properly fixed, there was no case made out for quashing the impugned orders i.e. the seniority list dated 16.04.2004 and accordingly those writ petitions were dismissed including the writ petition filed by the appellant, as against the said order, the present writ appeal has been directed.

8. Heard Mr.N.Balamurali Krishnan, learned counsel appearing for the appellants who would submit that, a list had been prepared by the appellant himself based on the date of promotion of promotees as well as the date of joining service by the direct recruits.

9. According to him, a person who has been promoted to the post only in the year 1989 has been placed well ahead of the appellant whereas the appellant who joined service on 12.05.1980 has been pushed



W.A.No.1313 of 2012

back to 475th rank in the revised seniority list which was impugned before the Writ Court and like this several such juniors who are promotees had been placed ahead of the direct recruits even then the quota-rota system claimed to have been followed. Challenging the same, the said writ petition when was filed, the learned Judge has not considered it in proper perspective, therefore the said order passed by the Writ Court is infirm, hence he seeks indulgence of this Court.

10. We have heard Mr.K.V.Sajeev Kumar, learned Special Government Pleader appearing for respondents 1 to 2 who would submit that, the illustrative chart prepared by the appellant even if it is taken into account the person who has been specified by the appellant that he was promoted only in the year 1989 despite that he has been placed ahead of the appellant is concerned, in fact that individual was promoted on 21.12.1973 itself to the post of Assistant Inspector of Labour.

11. When that being the position, the appellant since joined in service as Assistant Inspector of Labour only on 12.05.1980 after 7 years at no stretch of imagination, he can seek seniority over those persons who got appointed 7 years back and naturally those persons who already been



W.A.No.1313 of 2012

promoted well before the appellant can march over them. Therefore absolutely there has been no infirmity in the said order dated 16.04.2004 giving the revised seniority list to all those both promotees as well as direct recruits by adopting the quota-rota system, he contended.

12. We have considered the said submissions made by the learned counsel for both sides and have perused the materials placed before this Court.

13. The reason for such an illustration given by the appellant side, the learned counsel would contend that, the claim made by the Department that the promotion was given sometime in 1973 not in 1989 is concerned, in 1973 the promotion was given only on *ad hoc* basis but actual promotion was given to them based on the substantive vacancies only in the year 1989. Therefore such a promotion given to the promotees on permanent basis alone shall be taken into account for the purpose of applying the quota-rota system and fixing the date of seniority and therefore the earlier date of *ad hoc* promotion since has been taken into account that cannot be the criteria to fix the seniority, he contended.



W.A.No.1313 of 2012

WEB COPY 14. However, in this regard even though the Tribunal has observed in one place in their order that there were 241 substantive vacancies, on what basis that has been arrived at has not been stated. Moreover, when a promotion is given i.e., only in vacancies already available, and all vacancies which are available are only substantive vacancies.

15. In this context, it is to be noted that, when this kind of posts like Assistant Inspector of Labour where there is more than one source of appointment like the present one, one is promotion and another is by direct recruitment and if the post earmarked for direct recruitment is not filled up for long years because of the delay in recruitment process, this kind of *adhoc* promotions would be given as the promoted post cannot be kept vacant for long years.

16. Here in the case also such an *adhoc* promotions had been given long years back and they had been working in the promoted post for several years, thereafter only the direct recruits have come into picture and they entered into service. At the time they entered into service the persons who already been promoted in the category for want of



W.A.No.1313 of 2012

substantive vacancies normally would be reverted and in this case according to the respondents, 24 such promotees have been reverted for want of substantive vacancies, beyond which, according to the respondents, there were no need to make any such reversion, because, all of them who had been accommodated by way of *adhoc* promotion are only in substantive vacancies.

17. This issue cannot be gone into in any further detail. Moreover, insofar as this appellant is concerned, during his service he faced disciplinary proceedings and there were charges framed against him, enquiry conducted and Enquiry Officer also seems to have been given a report that the charges framed against him was not proved, however the Disciplinary Authority had not agreed upon and therefore he had issued a notice to the delinquent i.e. the appellant. For the said notice he had given a reply and when it was at that stage, the very appellant died on 16.04.2021, though he was superannuated on 31.03.2014 he was not permitted to retire because of the pendency of the disciplinary proceedings, therefore as of now only the legal heirs got impleaded for the appellant to get the retirement benefits.



W.A.No.1313 of 2012

18. In this context, the learned Special Government Pleader for the respondents 1 and 2 would submit that, because of the pendency of this writ appeal where he seeks for the claim of the fixing the seniority and the consequential notional promotion etc. the death-cum-retirement benefits payable to the appellant was not disbursed as he was facing the disciplinary proceedings even after the superannuation and only recently i.e. on 16.04.2021 since he died because of the pendency of this writ appeal so far his retiral benefits has not been disbursed, he contended.

19. We have taken note of all these developments and also have gone through the order which is impugned passed by the Writ Court. The Writ Court had taken note of all these aspects especially the direction given by the Tribunal, which was confirmed by the Division Bench, pursuant to which only the seniority list was prepared where the promotees who already have been given promotions well before this direct recruits and entered into service, had worked for the said post for several years. Based on their seniority the quota-rota system was applied as 1:2 and accordingly the said seniority list was prepared. Again 24 persons have been given promotion and 5 persons since have been reverted, the system followed and adopted by the respondent Department,



W.A.No.1313 of 2012

having been gone through was accepted by the Writ Court. The reasoning given by the learned Judge in accepting the impugned seniority list, in our considered view, is not a flawed one and therefore we do not find any error in the approach of the learned Judge who passed the impugned order, therefore the said order does not warrant any interference at our hands.

20. Insofar as the death-cum-retirement benefits payable to the appellant is concerned, as he died in the year 2021 and by virtue of that, the disciplinary proceedings initiated against him has become abated, he is entitled to get the service benefits, therefore the respondent Department can calculate the same and pay the said benefits to the appellant within a period of eight weeks from the date of receipt of a copy of this judgment. Since the appellant is no more, the present legal heirs of the appellant, who are all the parties herein, are entitled to get such benefits within the time indicated above.

21. It is submitted by the learned Special Government Pleader for the respondents 1 and 2 that, the appellant already filed a writ petition in Madurai Bench of this Court in W.P.(MD)No.22407 of 2015 and here



W.A.No.1313 of 2012

another writ petition in W.P.No.30695 of 2014 filed before this Court. He would further submit that, these writ petitions were filed challenging the order of suspension as well as the disciplinary proceedings/charge memo.

22. In view of the death of the delinquent/Government employee, all these challenges have become infructuous and also the respondent Department/employer already passed an order that, the disciplinary proceedings have become abated. The pendency of those writ petitions will not stand in the way for disbursing the death-cum retirement benefits to the legal heirs of the deceased employee as directed above.

23. With these observations and direction, this Writ Appeal is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

(R.S.K., J.)

(K.B., J.)

19.07.2023

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
Sgl



W.A.No.1313 of 2012

To
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W.A.No.1313 of 2012

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W.A.No.1313 of 2012

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