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WP.No. 12038 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2023

CORAM:

THE HONOURABLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

Writ Petition No. 12038 of 2016
and
WMP.No. 10406 of 2016

S.K. Ramachandran

...Petitioner

Versus

The Principal Secretary/Commissioner
Civil Supplies and Consumer Protection
Chepauk, Chennai-600 005.

...Respondent

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records connected with the proceedings issued in Se.Mu.No.A1/3780/2012, dated 29.02.2016 passed by the respondent herein and quash the same and consequently, to direct the respondent to fix the seniority from the date of the petitioner's first appointment i.e., from on 16.10.1965 with all attendant benefits with 8% interest.

For Petitioner	: Mr.S.Ilamvaludhi
For Respondent	: Mr.M. Shahjahan Special Government Pleader

ORDER

This writ petition has been filed challenging the impugned order in



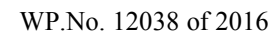
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herein, quash the same and issue a consequential direction to the respondent to fix the seniority of the petitioner from the date of his first appointment i.e., on 16.10.1965 with all attendant benefits with 8% interest.

2. The petitioner joined service in Survey and Land Records Department during the year 1956. Subsequently, he was transferred to Civil Supplies Department where his service was regularized in the post of Assistant on 21.04.1966. During the course of his service, the Commissioner of Civil Supplies Department drawn a panel for promotion to the post of Superintendent during November, 1965 in which the name of the petitioner was included in Serial No.1. On 21.11.1969, the petitioner was promoted to the post of Accountant in the scale of pay of Superintendent in which he joined on 20.04.1970.

3. It is an admitted fact that the petitioner was thereafter reverted to the post of Assistant. However, during September, 1974 he was once again promoted to the post of Superintendent. According to the petitioner, one Mr.William Chandran David joined Civil Supplies Department only during the year 1968 whereas he has joined in the post of Assistant on 29.04.1966 in the Civil Supplies Department. Similarly one Mr.Venkat



“When rules are issued with retrospective effect, persons already promoted should be protected. If at all, any additional qualifications prescribed in the Rules, are considered necessary even for existing incumbents, reasonable time should be allowed to them to acquire the qualifications and their seniority should be protected, if they acquired the qualifications. A panel cannot be prepared after the issue of the rules, ignoring the promotions made earlier. Such promotions made earlier cannot be reversed. Consequently persons who joined in the department later and claiming seniority by virtue of their service outside the department. The rules having been given effect retrospectively from 1966, panels if at all should have been prepared for each



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year with reference to the vacancies of that year among persons qualified and eligible at that time, persons appointed earlier and working in higher posts from an earlier date cannot be considered for a panel as on 31.01.1978 as if that is the first appointment. The entire procedure adopted and the basis for the Government orders are incorrect and not proper. Accordingly, the orders in G.O.Ms.No. 52, Co-operative Food and Consumer Protection Department dated 05.02.1992 are set aside. The applicant should be given seniority with all consequential benefits from the date of his first appointment.”

However the order passed by the Tribunal has not been complied with. Therefore, the petitioner has filed contempt petition in Cont. P. 530 of 1995 in O.A.No. 4740 of 1994. At the same time, the department had filed Review Application in Rev. Appln. No. 68 of 1996 seeking to review the order dated 15.09.1994. The Tribunal by order dated 27.02.2003 dismissed the Review Application and directed the department to implement the order dated 15.09.1984 passed in O.A. No. 4740 of 1994. Even thereafter the department did not comply with the directions issued by the Tribunal. Therefore, the petitioner has filed W.P. No. 25872 of

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2006 before this Court. This Court by order dated 12.01.2012 directed the



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respondent to implement the order passed by the Tribunal by fixing the seniority and to confer all consequential benefits to the petitioner.

Pursuant to such direction issued by this Court, the respondent passed the order dated 29.02.2016 rejecting the claim of the petitioner. Aggrieved by the same, the present writ petition is filed.

4. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondent and perused the materials available on record.

5. It is not in dispute that a direction was issued by the Tribunal in O.A.No. 4740 of 1994 on 15.09.1994 in favour of the petitioner. As per the direction of the Tribunal, the petitioner has to be conferred with seniority and promotion to further post. It is to be noted that one Mrs. Saraswathi was senior than the petitioner in the post of Superintendent. It is also not in dispute that by the order dated 29.02.2016, which is impugned in this writ petition, the seniority of the petitioner has been restored from 16.10.1965, the date on which he joined the Civil Supplies Department as Assistant. However, as far as the claim for promotion is concerned, admittedly one Mrs.Saraswathi was senior than the petitioner in the post as Superintendent. Until, the retirement of the petitioner



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herein, the said Saraswathi was holding the post of Superintendent. Even as per the order, which is impugned in the writ petition, the said Saraswathi was included in the panel of Superintendent in Serial No. 36 and the petitioner herein was included in Serial No. 38A. It is also not in dispute that the said Saraswathi retired from service on 31.05.1992. On the other hand, the petitioner retired much before the retirement of the said Saraswathi. Therefore, when a person, who is senior than that of the petitioner was in service as on the date when the petitioner retired from service, the claim of the petitioner for conferment of promotion from the post of Superintendent cannot be acceded to.

6. It is also seen from the records that after the retirement of the petitioner, the said Saraswathi retired from service. In such circumstances, this Court does not find any reason to interfere with the order passed by the respondent. The order passed by the respondent, refusing to confer notional promotion and consequential monetary benefits, cannot be said to be perverse inasmuch as the senior to the petitioner by name Saraswathi was in service holding the post of Superintendent as on the date when the petitioner retired from service on attaining the age of superannuation. Therefore, there is no merit in the claim of the petitioner. The writ petition is devoid of merits and



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accordingly, it is dismissed. No costs. Consequently, connected

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Miscellaneous Petition is closed.

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To

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