



W.P.No.15546 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 18.07.2023	Pronounced on 01.08.2023
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CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

W.P.No.15546 of 2012
and M.P.No.1 of 2013

T.Sam Raj

... Petitioner

Vs.

1.The State of Tamil Nadu
Rep. by its Secretary to Government,
Higher Education Department,
Fort St.George,
Chennai – 600 009.

2.The Director of College Education,
College Road,
Nungambakkam,
Chennai – 600 006.

... Respondents

Prayer: Writ Petition has been filed under Article 226 of Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records relating to the order passed by the 1st respondent in கடித எண் 7791/ஜி2/2011-2, நாள் 14.02.2012 and quash the same and thereby give notional promotion to the petitioner as Bursar on and from 28.02.2008 and give all attended benefits to the petitioner.



W.P.No.15546 of 2012

For Petitioner : Mr.A.R.Nixon

For Respondents : Mr.L.S.M.Hasan Fizal
Additional Government Pleader

ORDER

This writ petition has been filed challenging the order passed by the 1st respondent in கடித எண் 7791/ஜி2/2011-2, நாள் 14.02.2012 and seeking notional promotion to the petitioner as Bursar from 28.02.2008 and monetary benefits for the delayed promotion.

2. The service matrix of the petitioner is that the petitioner herein was appointed as Typist on 25.02.1977 and thereafter, he was promoted as Assistant and Superintendent and finally he was promoted as Bursar at Government Arts College for Women, Krishnagiri, from 06.11.2009. The petitioner was qualified in Account Test part II and he was given promotion as Bursar vide G.O.Ms.No.378, Higher Education, dated 29.10.2009. Accordingly, he joined as Bursar on 06.11.2009 and retired as Bursar on 28.02.2011 on attaining the age of superannuation.



W.P.No.15546 of 2012

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3. The grievance of the petitioner appears to be delayed promotion and according to the petitioner if the service of the petitioner was regularized as Superintendent as on 18.12.2004, he could have been promoted as Bursar on and from 28.02.2008 and because of non regularisation of the petitioner's service on 28.02.2008, his name was not included in the panel of promotion that was published on 28.02.2008 and hence, he made a representation on 15.10.2010 and also filed a writ petition in W.P.No.6214 of 2011 and the same was disposed of by this court on 16.03.2011 with direction to the respondents to dispose of the representation of the petitioner in accordance with law. Thereafter, the impugned order was passed whereby the representation of the petitioner was rejected. Hence, this writ petition.

4. It is also pertinent to note that the petitioner filed a writ petition in W.P.No.4045 of 2003 seeking promotion to the post of Superintendent from Assistant.

5. After perusing the counter affidavit filed by the 2nd respondent, this Court finds that the petitioner was given promotion as Superintendent in Directorate of Collegiate Education vide proceedings dated 06.12.2004, as per



W.P.No.15546 of 2012

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Rule 39(a)(i) of Tamil Nadu State and Subordinate Services and also based on the order passed by this Court in W.P.No.4044 of 2003 and interim orders issued in W.M.P.No.5096 of 2003 in W.P.No.4045 of 2003 and the same was mentioned in the above said proceedings that his seniority and regularisation will be decided based on the final order passed in W.P.No.4045 of 2003. After passing final order dated 27.03.2008 by this Court, the petitioner's service in the post of Superintendent was regularized in Directorate of Collegiate Education vide proceedings dated 10.10.2008. Thereafter, his name has been included in the panel for the post of Bursar for the year 2008-2009 and he was promoted as Bursar vide G.O.Ms.No.378, Higher Education, dated 29.10.2009.

6. It is further to be noted that the petitioner's service in the post of Superintendent was not regularized at the time of approving of the panel (from the post of Superintendent) for the post of Bursar for the year 2007-2008 vide G.O.Ms.No.48, Higher Education, dated 28.02.2008 and also at the time of issuing posting orders for the post of Bursars in the G.O.Ms.No.49, Higher Education Department, dated 28.02.2008. In view of the above reasons his arguments that he would have been accommodated and promoted as Bursar had 100% vacant posts of Bursars been filled up by recruitment by transfer as per



W.P.No.15546 of 2012

the rules existing prior to the amendment of rules instead of 75% vacant post by recruitment by transfer and 25% vacancies by direct recruitment as per rules amendment made in the G.O.Ms.No.364, Higher Education (G2) Department, dated 08.09.2008 cannot be accepted.

7.(a). Furthermore, it is to be noted that the petitioner's service was not regularized in the post of Superintendent and he was not considered in the panel for the post of Bursar for the year 2007-2008. As stated supra, the plea raised by the learned counsel for the petitioner that instead of promoting 100% vacant posts of Bursars by recruitment by transfer as per the rules existing prior to the amendment of rules, as per G.O.Ms.No.49 dated 28.02.2008, 75% (41) of posts of Bursar vacancies were filled up by recruitment by transfer and remaining 25% (14) of posts of Bursar vacancies were not filled up as they are to be filled up by direct recruitment.

7.(b). On that day the petitioner's service was not regularized in the post of Superintendent and therefor, the petitioner's name was not included in the panel for the post of Bursar for the year 2007 to 2008 and hence, his request for service benefits in the post of Bursar does not arise that the promotion is belated. Therefore, the petitioner's request for retrospective promotion as Bursar



W.P.No.15546 of 2012

with effect from 28.02.2008 cannot be countenanced.

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7.(c). To sum up the service particulars and also judicial orders and the Rule 39(a)(i) of the Tamil Nadu State Service and Subordinate Rules, the petitioner was not given promotion as Superintendent in view of the proceedings dated 06.12.2004 based upon the direction given by this Court in W.P.No.4044 of 2003 and interim orders passed in W.P.No.4045 of 2003.

8. It remains to be stated that in W.M.P.No.5096 of 2003 in W.P.No.4045 of 2003, this Court, by order dated 16.04.2003, directed the Government not to make any appointment or promotion contrary to the requirement of the Rules. Though the petitioner has passed the departmental tests for Deputy Inspector post, he seeks retrospective promotion even before final order passed in this case.

9. In this regard, it is relevant to refer the judgment of the Hon'ble Supreme Court reported in **(2022) 6 SCC 105** in the case of ***Union of India and Another Vs. Manpreet Singh Poonam and Others***, wherein the Hon'ble



W.P.No.15546 of 2012

Supreme Court has held that the petitioner has no vested right to promotional post and his right is restricted to only consideration for promotion and not for promotion by dates. When the plea has been raised for retrospective promotion/ vacancy in the promotional post the Hon'ble Supreme Court held that mere existence of vacancy per se will not create right in favour of the employee for retrospective promotion when vacancies in promotional posts are specifically prescribed under the Rules which also mandates clearance through selection process.

10. It is also to be noted that his seniority and the regularization has to be decided based on the final orders passed in W.P.No.4045 of 2003 and it appears from the records that the above said writ petition was disposed of by this Court on 27.03.2008. In other words, it is after the cut off period namely 28.02.2008 alone. The writ petition appears to be disposed of whereby the petitioner's service in the post of Superintendent was regularized by the 2nd respondent herein by proceedings dated 10.10.2008. Only thereafter, his name was included in the panel for the post of Bursar for the year 2008-2009 and consequent to that he was promoted on 29.10.2009. Therefore, I find that regularization of the petitioner's service as Superintendent was subject to the



W.P.No.15546 of 2012

result of the final order passed in W.P.No.4045 of 2003. Only based on such judicial order dated 27.03.2008, he was promoted as Superintendent. Therefore, the retrospective promotion as a Bursar from 28.02.2008 cannot be countenanced and hence, I find that there is no merit in this case and the order of rejection passed by the 1st respondent herein does not call for any interference by this Court and this writ petition is liable to be dismissed.

11. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

01.08.2023

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order
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W.P.No.15546 of 2012

To

1.The Secretary,
Higher Education Department,
Fort St.George,
Chennai – 600 009.

2.The Director of College Education,
College Road,
Nungambakkam,
Chennai – 600 006.

RMT.TEEKAA RAMAN.J,

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W.P.No.15546 of 2012

Pre-delivery Judgment made in
W.P.No.15546 of 2012

Dated: 01.08.2023