IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.34184 of 2013

R.Nadarajan .... Petitioner

vs

1.The Special secretary to the Government,
Department of Finance (T&A-II),
Secretariat,
Chennai - 600 029.

2. The Commissioner of Treasuries and Accounts,
Treasuries and Accounts Department,
Chennai - 600 015. .... Respondents

Writ Petition filed under Article 226 of the Constitution to issue a Writ of Certiorarified Mandamus challenging G.O.Ms.No.367 Finance (T & A II) Dept. dated 30.12.2011 to call for the records of the first respondent and to quash the same and consequently direct the respondents to include the name of the petitioner in the panel of Superintendent for the 2006-2007 and to promote (presumptive) the petitioner as on date his junior was promoted.

For Petitioner : Mr.Malarvizhi Udayakumar

For Respondents : Mr.J.C.Durairaj
Additional Government Pleader

ORDER

This writ petition has been filed by the petitioner challenging the rejection of appeal filed the petitioner seeking to include his name in the panel of Superintendent for the year 2006-2007 or 2007-2008.

2. The case of the petitioner is that the petitioner entered service as Junior Assistant on 01.11.1973 and promoted as Accountant on 17.11.1986. The next avenue of promotion is Superintendent/ Sub Treasury Officer. The petitioner applied for exemption of Rule 4(3) of Tamil Nadu Treasuries and Accounts Subordinate Service Special Rules from passing department test for promotion as Superintendent/ Sub-Treasury Officer on 28.07.2005 on attaining 53 years of age in accordance to G.O.Ms.No.1120 P & AR Department dated 30.10.1984 and subsequent instruction issued in Government Letter No.9140/ Per.M/89-11, P & AR Dept. dated 20.11.1989. Based on the representation of the petitioner, the Government issued orders in G.O.(2D) No.63 Finance (T & A II) Dept. dated 22.12.2006, relaxing Rule 4(3) of Tamil Nadu Treasuries and Account Subordinate Services

Special Rules in favour of the petitioner. In the meantime, the Commissioner Treasuries and Accounts Chennai/ 2nd respondent published the panel for promotion of Accountants as Superintendent/ Sub Treasury officers for the year 2005-2006, in which, the petitioner juniors' name were included. In the next panel for the year 2006-2007 published by the respondent on 14.07.2007, the petitioner's name was not included and the petitioner retired from service on 28.02.2008. The petitioner sent representation dated 14.08.2007 to the respondent, but the respondent vide order dated 11.09.2009, rejected the same stating that the crucial date for the panel was 01.04.2006 and as the relaxation order was issued by the Government only on 22.12.2006, the relaxation would take effect only from the date of issuance of the order from 22.12.2006. As on the date of approval and preparation of the panel, the petitioner was eligible and his name should have been included in the panel for the year 2006-2007. The petitioner applied for relaxation from passing departmental exam on 28.07.2005, but the Government issued order after one and a half years, i.e., on 28.12.2006. The petitioner preferred an appeal on 24.09.2007, but the request of the petitioner was rejected vide G.O.Ms.No.64 Finance (T & A II) Dept. dated 28.02.2008, which was serviced on the petitioner only on

02.09.2010. One more representation to review the matter was given by the petitioner on 01.12.2009, after his retirement and the reminders were sent till 2012. Under RTI Act, the petitioner requested for the stage of review petition, whereby the petitioner was informed that his request was rejected vide G.O.Ms.No.367 Finance (T & A II) Dept. dated 30.12.2011, rejecting the appeal. Hence, this writ petition.

3. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents.

4. Learned counsel for the petitioner would submit that the petitioner was fully qualified for the post of Superintendent before the date of approval of the panel i.e., on 14.07.2007. All the petitioner's juniors were promoted but the petitioner was not promoted even after being fully qualified. The delay in issuing the order of relaxation cannot adversely affect the petitioner. G.O.Ms.No.367 dated 30.12.2011 was communicated to the petitioner only on 22.03.2012. Even though the petitioner was not fully qualified on the crucial date i.e., on 01.04.2006, he became fully eligible on 22.12.2006 i.e., before the panel could be prepared on 14.07.2007. The purpose of granting relaxation to the petitioner is defeated by the impugned order. Therefore, he would pray to direct the respondents

to include the name of the petitioner in the panel for promotion of Accountants as Superintendent/ Sub Treasury officers for the year 2006-2007 and to promote him as on date his junior was promoted.

5. Per contra, the learned Additional Government Pleader would submit that the exemption of G.O.Ms.No.367 dated 30.11.2011 would only have prospective effect. By virtue of the concessional order issued by the first respondent in G.O.(2D) No.63 finance (T&A II) dated 22.12.2006, the petitioner did not possess the required qualification on the crucial date i.e., 01.04.2006 and thus, he was not eligible for inclusion in the panel of Superintendent/Sub Treasury Officer for the year 2006. Since the petitioner was not fully qualified on the crucial date, 01.04.2006. The petitioner is entitled to avail exemption order in G.O.(2D) No.63 dated 22.12.2006, in the panel for the year 2007-2008 only. Hence, there is no violation of law and the rejection order has been issued by the first respondent in accordance with law. Hence, he would pray to dismiss the writ petition.

6. This Court considered the submissions made on either side and perused the materials available on record.

7. Admittedly, the petitioner did not pass the Department test for promotion as Superintendent/ Sub Treasury Officer. Therefore, he applied

for exemption of Rule 4(3) of Tamil Nadu Treasuries and Accounts Subordinate Services Special Rules from passing the department test on 28.07.2005, on attaining 53 years of age, in accordance to G.O.Ms.No.1120 P & AR Department dated 30.10.1984 and the subsequent instruction issued by the Government letter No.9140/Pe.M./89-11 P & A R Dept., dated 20.11.1989. Based on the representation of the petitioner, the Government issued G.O(2D)No.63 Finance (T & A II) Dept. dated 22.12.2006, relaxing Rule 4(3) of the Tamil Nadu Treasuries and Account Subordinate Service Special Rules, in favour of the petitioner.

8. It is seen that the panel for the year 2005-2006 was issued by the 2nd respondent on 09.12.2005, prior to the receipt of the exemption order from the Government and thus, the name of the petitioner was not considered. In the panel for the year 2006-2007, the name of the petitioner was not considered due to non-receipt of G.O. on the crucial date for the year 2006, i.e., 01.04.2006. The relaxation would take effect only from the issuance of the order from 22.12.2006 and the crucial date for the panel for the year 2006 was 01.04.2006. The pre-requisite qualification is considered only on the crucial date of the panel and not on the date of issue of order. The petitioner was not fully qualified on the crucial date i.,e 01.04.2006.

The petitioner is entitled to avail the exemption order in G.O.(2D)No.63 Finance (T& A) Dept. dated 22.12.2006 in the penal for the year 2007-08 only. The panel of Superintendent/ Sub-Treasury Officer for the year 2007 -1008 was issued by the 2nd respondent on 04.8.2008 after the petitioner retired on 28.02.2008. Therefore, the non-inclusion of the petitioner name in the panel of Superintendent/ Sub Treasury Officer for the year 2006-2007, cannot be stated as unfair and unjust. Therefore, this Court finds is no illegality or infirmity in the impugned order passed by the first respondent and thus, the writ petition is liable to be dismissed.

9. In the result, the Writ Petition stands dismissed. No costs.

17.03.2023

Index:Yes/No
Speaking/Non-speaking order
vsi

To

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2. The Commissioner of Treasuries and Accounts,
Treasuries and Accounts Department,
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J.NISHA BANU,J.

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