



WEB COPY



WP No.11868 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2023

CORAM

THE HON'BLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

Writ Petition No.11868 of 2018
and
W.M.P.Nos.13851, 13852 & 13853 of 2018

V. Anbazhagan

.. Petitioner

Versus

1.The Secretary to Government
Tourism, Culture and Religious Endowments Department
Secretariat
Chennai – 600 009.

2.The Director,
Department of Museums
Egmore, Chennai – 600 008.

3.S. Dhanasekar,
Superintendent,
Government Museum
Egmore, Chennai – 600 008.

4.M. Sampath
Assistant
Government Museum
Egmore, Chennai – 600 008.

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to (i) Impugned Relaxation of Special Rules for the Tamil Nadu Ministerial Service to exempt from possession of degree qualification for promotion to the post of



WP No.11868 of 2018

Office Superintendent order vide G.O.(Ms) No.241 dated 15.11.2017 on the file of the 1st respondent, (ii) subsequent Impugned Promotion Order made in Na.Ka.No.4060/2016 E2 dated 18.11.2017, and (iii) Impugned Proposal vide Lr.No.2743/2017/E2 dated 17.11.2017 on the file of the 2nd respondent and to quash the same by directing the 1st and 2nd respondents to promote the petitioner for the post of Superintendent at Government Museum, Chennai based on the representations dated 11.01.2017, 23.05.2017, 07.06.2017, 28.06.2017, 23.08.2017 and 15.11.2017 on the file of the 2nd respondent and the representations dated 22.11.2017 and 10.01.2018 to the 1st respondent, within the stipulated time as fixed by this Court.

For Petitioner .. Mr. S. Kumara Devan

For R1 & R2 .. Mr. D. Gopal, Government Advocate

For R3 .. Mr. V. Sivalingam,
for M/s. C.S. Associates

For R4 .. No appearance

ORDER

This Writ Petition has been filed praying to issue a Writ of Certiorari, to call for the records relating to (i) Impugned Relaxation of Special Rules for the Tamil Nadu Ministerial Service to exempt from possession of degree qualification for promotion to the post of Office Superintendent order vide G.O. (Ms) No.241 dated 15.11.2017 on the file of the first respondent, (ii) subsequent Impugned Promotion Order made in Na.Ka.No.4060/2016 E2 dated 18.11.2017 and (iii) Impugned Proposal vide Lr.No.2743/2017/E2 dated 17.11.2017 on the file of the second respondent and to quash the same and



WP No.11868 of 2018

consequently direct the respondents 1 and 2 to promote the petitioner for the post of Superintendent at Government Museum, Chennai based on the representations dated 11.01.2017, 23.05.2017, 07.06.2017, 28.06.2017, 23.08.2017 and 15.11.2017 sent to the second respondent and the representations dated 22.11.2017 and 10.01.2018 to the first respondent, within the stipulated time.

2. On perusal of the affidavit filed in support of the writ petition, it could be evident that the petitioner was appointed as Junior Assistant by order dated 14.06.2001 in the Tourism, Culture and Religious Endowments Department. On such appointment, he was posted in Government Museum, Ooty, where he joined duty on 25.06.2001. On 31.12.2001, the petitioner passed the department tests. However, his service was not regularized for some time.

3. It is the grievance of the petitioner that as per G.O. Ms. No. 143 dated 11.11.1998, his service ought to have been regularized even in the year 2003. However, the appointing authority, for the reasons best known, did not pass any order to regularise his service within two or three years. Ultimately, his service was regularized on 20.07.2011 as per G.O. (2D) No.8 Tourism and



WP No.11868 of 2018

Culture (MA 1) department dated 20.07.2011, with retrospective effect from the date of joining namely 25.06.2001. Subsequently, on 03.07.2013, the petitioner was promoted to the post of Assistant. The next avenue of promotion is to the post of Superintendent.

4. The further grievance of the petitioner is that on 02.03.2016, a draft seniority list was prepared, in which his name was included in Sl.No.4. He was anticipating to get promotion to the post of Superintendent. However, the second respondent promoted the third respondent, to the post by violating Rules 13A and 30B of the Tamil Nadu Ministerial Service Rules. The petitioner also made several allegations in the affidavit filed in support of the writ petition to the effect that the third and fourth respondents, who are not having the requisite educational qualification, have been promoted to the higher post, but he was grossly discriminated in the matter of promotion to the post of Superintendent. The petitioner therefore submitted representations on 22.11.2017 and 10.01.2018 to consider him for promotion to the post of Superintendent on the basis of his experience and merits as also the educational qualification. Notwithstanding the same, the third respondent, who was promoted to the post of Superintendent, was permitted to join duty on 18.07.2018, by relaxing Special Rules for the Tamil Nadu Ministerial Service



WP No.11868 of 2018

Rule to possess a decree qualification. It is under these circumstance, the petitioner has filed the present writ petition for the relief aforesaid.

5. The Respondents 1 and 2 filed counter affidavit contending *inter alia* that Rule 30(b) read with Annexure IV of the Special Rules for the Tamil Nadu Ministerial Service prescribes B.A., or B.Sc., Degree of any University recognized by the UGC as the qualification for promotion to the post of Superintendent. It also provides alternative provision to exempt the prescription of the aforesaid qualification in individual cases by the Government, if they are otherwise qualified and suitable for the post. By complying with the above norms, exemption was granted to the third respondent from possessing a decree qualification by the Government, as he was senior most in the category of Assistants. Such promotion conferred to the 3rd respondent is in accordance with the Rules and procedures hitherto followed. In fact, the conferment of promotion to the third respondent is not an isolated case. Earlier ten individuals have been promoted to the post of Superintendent in the Tourism Department by giving exemption from possessing the requisite educational qualification. Such promotions were granted by taking note of the fact that they are senior most in the category of Assistants. In this case, the third respondent was senior most person in the category of Assistant than the petitioner and therefore,



WP No.11868 of 2018

while conferring promotion to him, the possession of educational qualification was relaxed by the Government in exercise of the power conferred under the Rule. Simultaneously, the fourth respondent was the senior most in the category of Assistant now and therefore, proposals have been sent to the Government to exempt the educational qualification to be possessed by him so as to confer him promotion to the post of Superintendent.

6. In the counter affidavit, it was also stated that as per Rule 3(1) of the Tamil Nadu Ministerial Service Rules, the promotion to the post of Office Superintendent shall be made from among the category of Assistant in the Government Museum. If no qualified candidate is available in the Government Museum, then resort shall be made by recruitment by transfer of a person from other departments. It is also submitted that subsequently two other posts were upgraded as Superintendent for which no decree qualification was prescribed. This is done in other departments and in general the senior most Assistant was promoted as Office Superintendent. Therefore, the respondents 1 and 2 justified the promotion conferred to the respondents 3 and 4 to the post of Superintendent by relaxing the educational qualification to be possessed by them. It is also stated that the petitioner cannot have any say in the matter of discretion exercised by the Government to confer promotion to a senior most



WP No.11868 of 2018

person in the cadre of Assistant. The respondents 1 and 2 therefore prayed for dismissal of this writ petition.

7. Heard the learned counsel for the petitioner, the learned counsel for the respondents 1 and 2 and learned counsel appearing for the contesting third respondent.

8. At the outset, it must be stated that a Government Servant is not entitled for promotion as a matter of right. Conferment of promotion to a Government Servant is a matter to be considered by the appointing authority based on the existing service Rules, Regulations, including the eligibility of the person such as educational qualification, seniority and other requirements. In the present case, the petitioner was appointed to the post of Junior Assistant and he joined duty on 25.06.2001. His service was not regularized atleast for a decade and his service came to be regularized only on 20.07.2011 with retrospective effect from the date of joining duty. He was thereafter conferred with the further promotion for the post of Assistant on 03.07.2013. The petitioner claimed that he is entitled and fully qualified for promotion to the post of Superintendent, however, he was grossly overlooked. The specific grievance of the petitioner appears to be that the respondents 3 and 4 does not



WP No.11868 of 2018

possess the requisite qualification prescribed to get promoted to the post of Superintendent. On the other hand, he is fully qualified, however, by overlooking his candidature, promotion was conferred to the respondents 3 and 4, by giving relaxation to the educational qualification to be possessed by them.

9. For conferment of relaxation of educational qualification, the Government is the competent authority. In the present case, proposals were sent to the Government for relaxing the educational qualification to be possessed by the respondents 3 and 4 so as to confer them promotion. This was done mainly on the reason that the respondents 3 and 4 are the senior most in the cadre of Assistant, however, they did not possess the requisite educational qualification required. The department thought it fit that the experience and the potential of the respondents 3 and 4 has to be fully tapped even though they did not require the requisite educational qualification. Accordingly, proposals were sent to the Government by the Appointing Authority to exempt the educational qualification to be possessed by them and it cannot be said to be illegal.

10. Admittedly, the petitioner is junior to the respondents 3 and 4. Even though the respondents 3 and 4 did not possess the requisite educational



WP No.11868 of 2018

qualification required for conferring promotion to the post of Superintendent, proposals were sent to exempt it. It is to be mentioned that educational qualification alone cannot always be a criteria for conferring promotion, but merit, other eligibility and experience also are the criteria to be considered.

11. In the counter affidavit reference was made to the fact that in similar fashion, ten other Assistants, who did not possess the requisite qualification were conferred promotion to the post of Superintendent by relaxing the educational qualification to be possessed by them. Thus, the conferment of promotion to the respondents 3 and 4 by relaxing the educational qualification to be possessed by them is not an isolated event and there are precedents in the Department. In any event, relaxing the educational qualification, to be possession by a promotee is a discretion vested with the Government. In this case, the Government, on sound reasoning, particularly the fact that the respondents 3 and 4 are senior most persons available in the cadre of Assistant, have decided to relax the educational qualification to be possessed by them and consequently, conferred them promotion. Such discretion exercised by the Administrator to confer promotion to the senior most persons in the cadre of Assistant cannot be said to be illegal warranting interference by this Court. Thus, there is no illegality or irregularity on the part of the



WP No.11868 of 2018

respondents 1 and 2 in conferring promotion to the respondents 3 and 4 in this case. Moreover, the third respondent joined duty in the promoted post on 30.01.2017 and at this stage also this Court is not inclined to set the clock back, doing so would only reign in chaos in the administration. In any event, when the third respondent, being the senior most person in the cadre of Assistant than the petitioner, the promotion conferred to him cannot be said to be illegal.

12. It is submitted that the 4th respondent is about to retire and a vacancy to the post of Superintendent will arise in future. If it is so, the petitioner may be considered to that post, if he is otherwise eligible.

13. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

16.03.2023

Index: Yes/No
Internet: Yes/No
smv

To

1. The Secretary to Government
Tourism, Culture and Religious Endowments Department

<https://www.mhc.tn.gov.in/judis>



WP No.11868 of 2018

Secretariat
Chennai – 600 009.

WEB COPY

2.The Director
Department of Museums
Egmore, Chennai – 600 008.

3.S.Dhanasekar
Superintendent
Government Museum,
Egmore, Chennai – 600 008.

4.M.Sampath
Assistant
Government Museum,
Egmore, Chennai – 600 008.



WEB COPY



WP No.11868 of 2018

V. BHAVANI SUBBAROYAN, J

smv

WP No. 11868 of 2018

16.03.2023