



W.P.No.17752 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:28.06.2023

Delivered on: 21.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.17752 of 2019

&

W.M.P.No.17166 of 2019

G.Damodaran

...Petitioner

Vs

- 1.The State of Tamil Nadu
Rep. by the Secretary to Government
Personnel and Administrative Reforms
Department Secretariat Chennai - 600 009.
- 2 The State of Tamil Nadu
Rep. by the Principal Secretary to
Government Industries Department
Secretariat Chennai - 600 009.
- 3 The Principal Secretary to Government
Higher Education Department
Secretariat Chennai - 600 009.
- 4 The Secretary
TNPSC Chennai - 600 003.
- 5 S.Kumar

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to G.O.(4D) No.32 (P and AR (H1) Department dated 05.10.2017 in so far as the petitioner and G.O.(4D) No.35 P and AR(H1) Department dated 08.11.2018 on the file of the 1st respondent and quash the same and consequently direct the respondents to include the name of the petitioner in the Panel for Promotion to the post of Section Officer for the year 2017-18 at Sl.No.32(a) in between Thiru P.Muthukumar (Sl.No.32) and Thiru S.Kumar (Sl.No.33) and consequently grant promotion as Section Officer with effect from 02.04.2018 along with attendant benefits.

For Petitioner : Mr.Richard Wilson
for
M/s. Wilson Associates

For Respondents : Mr.P.Kumaresan, AAG assisted by

Mr.T.Chezhiyan, AGP for R1 to 3

Mr.R.Bharanidharn, Standing counsel for
TNPSC for R4

ORDER

The petitioner has filed the present Writ Petition to quash the G.O.No.(4D) No.32 dated 05.10.2017 in so far as the petitioner and G.O.(4D)



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35 dated 08.11.2018 on the file of the 1st respondent and to consequently direct the respondents to include the name of the petitioner in the panel for promotion to the post of Selection Officer 2017-18 at Sl.No.32(a) between P.Muthukumar-Sl.No.32 and S.Kumar Sl.No.33 and to consequently grant promotion as Section Officer, with effect from 02.04.2018, together with all attendant benefits.

2. The case of the petitioner is that he joined as Assistant in the Industries Department by way of direct recruitment, by the Tamil Nadu Public Service Commission on 10.08.2007. He was temporarily promoted as Assistant Section Officer on 10.02.2009 in the very same department. His service as Assistant Section Officer was regularized with effect from 08.02.2011 as per G.O.4D No.33 dated 19.05.2014. In the meantime, since notification No.176 dated 16.11.2008 had been issued by the TNPSC for direct recruitment to the post of Section Officer, the petitioner appeared successfully. However his name was withheld on the ground that his educational qualification was not equal to the required 10+2+3 pattern.



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However, only after lapse of 18 months viz., 10.05.2011, the TNPSC intimated that the petitioner was selected holding that his education qualification of 10+3+2 was equal to 10+2+3 pattern. The petitioner was given posting orders on 17.05.2011 which was received by him 23.05.2011. The petitioner submitted a requisition letter to the Industries Department on 02.06.2011 seeking to relieve him so that he can join the Higher Education Department. The petitioner was relieved on 09.06.2011, on which date itself the petitioner joined the Higher Education Department. In the meantime, inter se seniority of Assistant Section Officers for the year 2009 was fixed vide G.O.Ms.No.111 dated 11.11.2016. Pursuant to the said seniority list, a regular panel of Assistant Section Officers for the year 2017-18 was prepared. However, the petitioner's name was not included in the said panel. The petitioner filed an Appeal to the Government which was disposed of on 08.11.2018 stating that his service qualification in the post of Assistant Section Officer would be reckoned only from the date of his regular appointment. The petitioner challenges the said proceedings on the ground that the 1st respondent has taken contrary stands when it came to other



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persons who were promoted from the post of Assistant Section Officer to Section Officer by relaxing the qualification. Infact, the 1st respondent has filed a counter justifying the relaxation considering that other concerned persons in the Writ Petition had completed more than six years of regular service as Assistant Section Officers as on the crucial date. The petitioner also cites an instance of another person by name Satish Kumar where the delay period was relaxed and his promotion was also given effect to and implemented. The petitioner's specific contention is that the delay was only eight days and the delay was not because of any fault, act or omission on the part of the petitioner, but only because of the delay caused by the 2nd respondent in relieving the petitioner. Moreover, the delay of 18 months also was occasioned because of the inaction of the TNPSC in retaining his name, while clearing the other candidates with the same qualification. But for these delays, the petitioner would have been eligible for inclusion of his name in the panel promotion for the post of Section Officer for the year 2017-18 itself. On all these above grounds, the petitioner has filed the present Writ Petition.



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3. Respondents 1 to 3 have filed their counter stating that his eligibility for selection was questioned after the Government issued orders in G.O.Ms.No.107 dated 18.08.2009 in and by which degree obtained after passing SSLC and Plus Two alone were recognised for appointment/promotion in public services and only under such circumstances the selection of the petitioner was not notified and the time taken to ascertain from the competent authorities about the petitioner's eligibility cannot be termed as delay. With regard to delay in issuing the relieving orders, it is stated that administrative procedures take time and the same cannot be termed as delay and that the petitioner admittedly did not possess six years of service qualification prescribed for appointment to the post of Section Officer in Annexure referred to in R.3 of Special Rules for Tamil Nadu General Service Class (Class XII). Further it is also stated that eventhough the petitioner was already working as Assistant Section Officer with effect from 08.02.2011, his services would be forfeited as soon as he was relieved from the post of Assistant Section Officer i.e., with effect from 09.06.2011 to enable him to join in the direct recruit post of Assistant Section Officer and



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therefore the relevant date for consideration would only be 09.06.2011 and not earlier. The respondents, therefore sought for dismissal of the Writ Petition.

4. The 4th respondent TNPSC filed a counter wherein it is stated that the results of some candidates like the petitioner were withheld and when one similarly placed candidate had moved this Court in W.P.No.8576 of 2010 and this Court has ruled in favour of the petitioner on 22.07.2010, the Commission decided to release the said results of the said petitioner and also other candidates. Moreover, the petitioner who got selected can at best have a legitimate expectation be considered for appointment according to the Rules and till such time he is appointed, he is merely a selectee and same does not confer any special right on the petitioner.

5. The petitioner filed a rejoinder reiterating the averments set out in the affidavit in support of the Writ Petition and stating that he was relieved from one department of Secretariat to enable him to join in another



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department of the same Secretariat in the same post and therefore there being no difference between one department of Secretariat and another and all being limbs of same Establishment viz., the Secretariat, the petitioner's service being regularised on 08.02.2011 he was fully eligible for being included in the panel for appointment to the post of Section Officers for the year 2017-18 on the crucial date viz., 01.06.2017 by which time he had completed six years.

6. Heard Mr.Richardson Wilson, learned counsel for the petitioner and Mr.P.Kumaresan, learned Additional Advocate General, assisted by Mr.T.Chezhiyan,AGP for the respondents 1 to 3 and Mr.R.Bharanidharan, Standing counsel for the 4th respondent. The 5th respondent though served has not chosen to appear either in person or through any counsel.

7. This Court has considered the rival contentions and submissions put forth by the counsel and also gone through the records filed by way of typedsets and also the counter affidavits and rejoinder filed by the respective



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parties.

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8. At the outset, it is an admitted fact that the petitioner was short only by 8 days in meeting the cut off date. The petitioner cites two reasons for the delay. Firstly, because of a delay of more than 18 months in verification of his certificates and secondly, the delay in relieving him from the earlier post in the different department of the Secretariat.

9. It is contended by the learned counsel for the petitioner that the delay was purely on account of the respondents including the TNPSC and the petitioner cannot be held responsible for the delay and consequently made to suffer.

10. On the other hand, it is contended by the learned Additional Advocate General and counsel for the TNSPC that the question of delay does not arise at all since the respondents can also not be faulted for the delay. In so far as the 18 months period consumed by the TNPSC, it is contended that



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they did not voluntarily delay the matter and since the issue was at large before the Courts, a decision could not be taken as to whether 10+3+2 course could be equated to 10+2+3. Only after the Court held that both had to be treated on par, the petitioner's application was cleared and he cannot take advantage of the situation and attribute the delay on the respondents and thereby seek inclusion of his name for the panel year 2017-18. It is also contended that the petitioner was rightly included in the subsequent year's panel as and when he fell within the zone of consideration and therefore there is no irregularity or illegality in the actions of the respondents.

11. No doubt, it is a peculiar case where the delay cannot be attributed either to the petitioner or the respondents and it was only in view of an interpretation of a particular issue, the delay had occasioned. However, at the same time it is to be seen that when the petitioner has neither been the reason for the delay nor contributed for the delay, he cannot be made to suffer especially when he was selected in all other aspects he would have qualified for being included in the promotion panel 2017-18, but for the delay. The



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petitioner admittedly joined the services as an Assistant in Industries Department on 10.08.2007 and he was temporarily promoted on 10.02.2009 as Assistant Section Officer. His services were regularized with effect from 08.02.2011 which fact is not disputed. However, it is the contention of the respondents that when the petitioner has resigned and sought for employment by direct recruitment even though for the same post, it would have to be considered as a fresh appointment and cannot be treated as continuity of service. In so far as this contention is concerned, the request of the petitioner for relieving him assumes relevance. On 02.06.2011, the petitioner wrote to the Additional Secretary to Government, Industries Department informing the department that he was selected for direct recruitment and he may be relieved to facilitate him to join Higher Education department, without losing service benefits. The said request was acceded to and the Principal Secretary to Government, in and by office proceedings No.166 dated 09.06.2011, relieved the petitioner from the post of Assistant Section Officer. In and by office proceedings No.145 dated 21.06.2011, the petitioner was appointed provisionally, subject to result of Writ Petitions that were pending relating to



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recruitment, before this Court. It is also seen from the communication in office proceedings No.231 dated 04.09.2011, the petitioner's date of appointment is mentioned as 09.06.2011. The requirement for being appointed to the post of Section Officer is as follows:

1. The candidate must hold any Bachelor's degree of any University recognised by the University Grants Commission for the purpose of its grant;
2. Must have rendered service for a period not less than six years in the category of Assistant Section Officer in the department of Secretariat other than Law and Finance. Only distinguishable factor in respect of the qualification for being appointed to Section Officers by way of recruitment by transfer from other services was the requirement to have previous drafting experience of not less than 7 years in the service in which he was working.

12. It is seen from the above that there is no distinction is made with regard to direct recruitments and persons being promoted from service in any department, i.e., promotee candidates. Ultimately, the petitioner's services were regularised on 09.06.2011. The cut off date is 01.06.2017. Viewed from



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this angle, there is a delay of 8 days alone. This has been put against the petitioner in denying him inclusion in the promotion panel of the year 2016-17. However, the fact remains that the service of the petitioner originally promoted as Assistant Section Officer on 10.12.2009 were regularised with effect from 08.12.2007. Viewed from this angle, the petitioner had qualified by meeting the eligibility criteria of six years. As already seen above, if the joining date of 09.06.2011 is taken into account he misses the bus by 8 days. It is also seen that in some cases the respondents have relaxed the rule and condoned the delay. Infact one instance is G.O.Ms.No.181 dated 21.06.2017, where a Assistant Section Officer has made an representation to include his name in the panel year for a particular year. The same was not included for the reason that he had not completed the period of probation before the crucial date. However, on appeal the respondents have held that the result of the individual was withheld for want of community verification report and therefore the rule was relaxed and the concerned person name was included in the panel year. Similar instances have also been pointed out by the Writ Petitioner even in the affidavit in support of the Writ Petition. Even viewed



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from this angle, the petitioner cannot be discriminated when, several other persons have been considered and the delay in their cases on account of verification of certificates was condoned, there is no reason why in the petitioner's case the delay of 8 days cannot be condoned. As already pointed out earlier the delay cannot be attributed to the petitioner on any account whatsoever. The delay was only on account of interpretation of the educational qualification. No doubt, the said delay cannot be attributable to the TNPSC or the respondents as well. But at the same time, in the interest of justice and to do substantial justice, especially considering that there are several instances where such delays have been condoned, the petitioner cannot be denied relief citing delay which was admittedly not on his account. The question of administrative delay may not have any relevance here. The Courts have held that the administrative delay should not be held against the petitioner. However, in this case this Court has already found that the delay cannot be termed as administrative delay and the respondents also were not at fault. However, in the letter and spirit of the judgments rendered by the Hon'ble Supreme Court as well as this Court, time and again, it is reiterated



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that only relief should be given to an aggrieved person who did not contribute to the delay and therefore the question of delay being administrative or not does not have any bearing at all.

13. For all the above reasons, the petitioner is entitled to relief and his name be included in the panel year for 2017-18.

14. Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

21.07.2023.

Internet:Yes
Index:Yes/No
Neutral Citation:Yes/No
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Pre-delivery order in
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