



WEB COPY



W.P.No.22130 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.22130 of 2022
and
W.M.P.No.21123 of 2022

S.Chandrabose

...Petitioner

-Vs-

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

2.The Director of Collegiate Education,
DPI Campus, College Road,
Chennai – 600 006.

3.The Regional Joint Director of
Collegiate Education,
Tirunelveli Region,
Tirunelveli.

...Respondents

PRAYER: Writ 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 the impugned proceedings issued by the 2nd respondent in



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Na.Ka.No.53299/B3/2019 dated 29.06.2022 and to quash the same and consequently directing the respondents to promote the petitioner to the post of Typist and Assistant retrospectively with effect from 01.02.2002 and 27.07.2005 on par with junior, with all consequential and other attendant service benefits.

For Petitioner : Mr.G.Sankaran, Sr. Counsel
for Mr.S.Nedunchezhiyan

For Respondents : Mr.V.P.R.Elamparithi,
Additional Government Pleader

ORDER

With the consent of both the parties, this Writ Petition is taken up for final disposal.

2. The petitioner was initially appointed as a Watchman in the respondent department on 07.04.1993, after his name was sponsored by the employment exchange. His services were regularized through an order dated 24.10.2002, giving effect to his regularization from 07.04.1993 onwards. Subsequently, he was promoted to the post of Typist on 10.11.2003 and thereafter to the post of Assistant on 08.05.2007.



3. The grievance of the petitioner is that his name was not considered for promotion to the posts of Typist and Assistant on the date on which his juniors were promoted and therefore seeks for notional retrospective promotion.

4. The learned Senior Counsel for the petitioner submitted that though the petitioner was regularly appointed, the delay in passing the regularization order cannot be put against the petitioner. It is his further submission that one K.R.Subramani was wrongly promoted from Watchman to Office Assistant and the petitioner herein was appointed in the place of K.R.Subramani. This mistake committed by the College had deprived the petitioner of his initial promotion to the post of Typist in the year 2002 and thus, such a mistake should not be put against him and therefore, the petitioner would be entitled for retrospective promotion on par with his junior.

5. Per contra, the learned Additional Government Pleader placed reliance on the averments in the counter affidavit and submitted that the initial appointment of the petitioner itself is irregular. The Government Order in G.O.Ms.No.294, Higher Education Department, dated 24.10.2002,



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regularizing the services of the petitioner, was made on sympathetic grounds and since the statutory benefits were restricted from the date of the Government Order, he cannot now claim retrospective promotion.

6. I have given careful consideration to the submissions made by the respective counsels.

7. It is not in dispute that when the petitioner was initially appointed to the post of Watchman, his name was sponsored from the employment exchange. Thereafter, his services were not regularized till 24.10.2002, owing to the mistake committed by the College in wrongly promoting one K.R.Subramani to the post of Assistant from Watchman. The audit objection in this regard had precluded the respondents from regularizing the services of the petitioner, apparently on anticipation that K.R.Subramani, who was earlier promoted to the post of Assistant, may be reverted back to the post of Watchman. Ultimately, in G.O.Ms.No.294, dated 24.10.2002, both the services of the petitioner, as well as K.R.Subramani, were regularized with effect from the date of their initial appointment. The order of regularization does not term the initial appointment of the petitioner as irregular. Rather, the



monetary benefits alone were restricted from the date of the Government Order.

8. I am unable to comprehend as to how the respondents have stated that the petitioner's appointment was irregular. The detailed counter affidavit filed by them only indicates that in view of the wrong promotion given to the erstwhile Watchman, the petitioner's appointment has now been termed to be irregular. Such a stand cannot be factually or illegally sustainable.

9. This apart, the learned Additional Government Pleader pointed out that the petitioner's services were sympathetically regularized. I am not in agreement with such a submission also. When the initial appointment of the petitioner was way back in the year 1993 and the respondents have unilaterally kept his services without regularization over a period of almost 10 years, the petitioner gains a legal right to seek for regularization and thus, the sympathetic approach, as stated in the regularization order, is questionable. Nevertheless, since this Court has found the initial appointment of the petitioner as a regular appointment, the only defence taken in the impugned order, as well as in the counter affidavit, cannot be sustained.



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10. It is also not in dispute that the petitioner's immediate juniors were promoted to the post of Typist and Assistant. While that being so, the petitioner also would be entitled for retrospective promotion from the date when his immediate juniors were promoted.

11. For all the foregoing reasons, the impugned order dated 29.06.2022 passed by the second respondent herein is quashed. Consequently, there shall be a direction to the second respondent to pass appropriate orders, notionally promoting the petitioner to the posts of Typist, Assistant and Superintendent, on par with his immediate juniors. Such orders of notional promotion shall be passed atleast within a period of six (6) weeks from the date of receipt of a copy of this order.

12. Accordingly, the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

01.11.2023

Index:Yes
Neutral Citation:Yes
Speaking order
hvk



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M.S.RAMESH,J.

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