IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.09.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.Nos.23517 & 23523/2019 & WMP.Nos.23317 & 23328/2019

V.Madeswaran ... Petitioner in WP.No.23517/2019

K.Eswaran ... Petitioner in WP.No.23523/2019

Versus

1.The State of Tamil Nadu rep.by its
Principal Secretary to Government
Commercial Taxes and Registration
Department, Secretariat, Chennai 600 009.

2.The Additional Chief Secretary / Commercial
Tax Commissioner, Chepauk, Chennai 600005.

3.The Joint Commissioner of Commercial Tax
O/o.The Joint Commissioner of Commercial Taxes
Salem Division, Salem Post and District.

4.The Deputy Commissioner of Commercial Tax
O/o.The Deputy Commissioner of Commercial Tax
Dharmapuri Post, Dharmapuri. ... Respondents in both the Writ Petitions

Prayer in WP.No.23517/2019: - Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus to call for the records in pursuant to the impugned order passed by the 4th respondent in his proceedings Na. Ka. 702 / 2018 / A1 dated 10.9.2018 and quash the same and consequently direct the respondents to permit the petitioner to continue in the post of Office Assistant by transfer of service as per promotion order made by the 4th respondent in proceedings Na.Ka. 702/ 2018/ A1 dated 22.6.2018 and to grant all attendant and monetary benefits to the petitioner in the cadre of Office Assistant.

Prayer in WP.No.23523/2019: - Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus to call for the records in pursuant to the impugned order passed by the 4th respondent in his proceedings Na. Ka. 702 / 2018 / A1 dated 10.9.2018 and quash the same and consequently direct the respondents to permit the petitioner to continue in the post of Office Assistant by transfer of service as per promotion order made by the 4th respondent in proceedings Na. Ka.702/ 2018/ A1 dated 22.6.2018 and to grant all attendant and monetary benefits to the petitioner in the cadre of Office Assistant.

For Petitioners in both
Writ Petitions : Mr.M.Saravana Kumar
For Respondents in both
Writ Petitions : Ms.K.Vasantha Mala, GA

COMMON ORDER

(1) The issues raised in both the writ petitions are similar and both the petitioners are also similarly placed and therefore, a common order is passed.

(2) Both the writ petitioners seek a certiorarified mandamus seeking records with respect to an order passed by the 4th respondent in both

the writ petitions, Deputy Commissioner of Commercial Taxes, Dharmapuri, in Na.Ka.No.702/2018/A1 dated 10.09.2018 in both cases and to quash the same and to direct the respondents to permit the petitioners in both the writ petitions to continue in the post of Office Assistants by transfer of service as per promotion order earlier made by the 4th respondent in proceedings dated 22.06.2018.

(3) The petitioners had been selected and appointed as Sweepers by the respondents since their names had been sponsored by the District Employment Exchange and the petitioners joined the service on 30.08.2012 in the office of the Assistant Commissioner of Commercial Tax at Krishnagiri and Hosur respectively. The respondents also granted special time scale of pay to the petitioners by an order in G.O.Ms.No.385, Finance Department, dated 01.10.2010 with effect from 09.01.2017. Both petitioners claim that they are eligible to be further promoted as Office Assistants. In this connection, the petitioners had given separate representations in January 2018 that they may be considered for promotion by transfer of service or by promotion to the post of Office Assistant.

(4) The 3rd respondent, Joint Commissioner of Commercial Taxes, Salem, had directed the 4th respondent to examine the representations and pass appropriate orders. The 4th respondent, Deputy Commissioner of Commercial Taxes at Dharmapuri, had considered the said applications and had granted promotion to the petitioners herein by proceedings dated 22.06.2018. Thereafter, without issuing any further notice to the petitioners herein, by the impugned proceedings of the 4th respondent dated 10.09.2018, the petitioners were reverted back to the post of Sweepers. This has been the immediate cause for filing the present writ petitions.

(5) The learned counsel for the petitioners contended that the petitioners had been appointed in accordance with G.O.Ms.No.68, Commercial Taxes and Registration Department, dated 14.10.2016. It is thus contended that their services have been protected and that since there were no promotional aspects available, they were eligible to be protected to the next immediate post as Office Assistants. It had been contended that the only qualification required was seniority as Sweepers and that the candidate should not have any Disciplinary

Proceedings pending against him. It is therefore contended that without notice, the Impugned Orders have been passed.

(6) When the writ petition came up for consideration, a learned Single Judge of this Court, in the order dated 04.03.2022, examining the reasons stated by the respondents that the petitioners had been appointed on special time scale of pay and not on regular time scale of pay and therefore, they are not eligible to be promoted as Office Assistants since the post of Office Assistant would come under what may be termed as 'regular time scale of pay', had observed as follows:-

> *"2.The reason stated by the Respondents was that the Petitioners were appointed on special time scale of pay and as it was not on regular time scale of pay, their promotion, which has been made inadvertently, has been cancelled by the impugned orders. However, Learned Counsel for the Petitioners points out that the persons similarly placed to the Petitioners have been promoted earlier by Order in Na. Ka. No. 6875/06(A1) dated 23.01.2007 passed by the Assistant Commissioner (Commercial Taxes), Dharmapuri and they continue to hold that post till date and that there is no explanation as to how*

persons in special time scale of pay would not be entitled to promotion when a bare reading of the promotion rule does not contain any such prohibition as claimed by the Respondents. Learned Government Advocate appearing for the Respondents seeks time to file additional Counter-Affidavit in that regard."

(7) It is thus seen that a categorical observation had been made by my learned Predecessor that there is no explanation as to how persons in special time scale of pay like the petitioners herein would not be entitled to promotion when a bare reading of the promotion Rules does not contain any such prohibition. In this connection, my learned Predecessor had also examined the case of persons similarly placed who have been promoted in Order in Na.Ka.No.6875/06[A1] dated 23.01.2007 of the Assistant Commissioner [Commercial Taxes], Dharmapuri. Thereafter, the respondents have filed an additional counter affidavit wherein again they had reiterated that the petitioners have been selected under the special time scale of pay and since the post of Office Assistant would come under regular time scale of pay, the petitioners cannot seek such promotion . It had been contended

however that pay protection would be granted and the petitioners would be granted increments as and when they fall due. But however, it had been very seriously objected that promotion could never be granted to the petitioners herein.

(8) In this connection, the learned Government Advocate appearing for the respondents also referred to a judgment of a Division Bench of the Madurai Bench dated 18.03.2021 in a batch of writ appeals in WA[MD].No.576/20120 batch ***[The State rep.by the Additional Chief Secretary, Commercial Taxes and Registration [A1] Department and Others Vs. K.Mariappan and Others]***. The respondents therein had filed writ petitions claiming that G.O.[2D] No.68, Commercial Taxes and Registration [A1] Department dated 14.10.2016, should be quashed.

(9) It must be kept in mind that the petitioners herein had been appointed by the respondents under the said Government Order. Therefore, the respondents therein stood on a different footing and cannot be equated to the petitioners herein. The stand by the respondents therein was that they sought parity with those who had been similarly placed in

the School Education Department. A learned Single Judge of Madurai Bench had allowed the writ petitions filed by the writ petitioners therein, necessitating the Writ Appeals to be filed.

(10) The Division Bench had very specifically held that the respondents do not belong to the Education Department and therefore, drawing a parallel to that particular Department was not correct. The Division Bench had held in paragraph No.18 as follows:-

> *"19. Each and every case should be decided on its own merits. In the case on hand, the Writ petitioners have not proved the main creteria that is they are doing equal work. Only the employer has rights to decide the salary. However, the Government can consider the representations of the writ petitioners, considering the present cost of living. Though, the learned Single Judge of this Court gone through the Judgment of Apex Court and pass an Order in favour of the Writ petitioners, the ratio and principles are not applicable to this case. "*

(11) This particular reasoning was read with advantage by the learned Government Advocate on behalf of the respondents. But however, a perusal of the order granting promotion shows that on application of mind and on examining the representation given, promotion had been granted to the petitioners herein. It had been granted after examining the Letter dated 15.02.2018 of the Additional Chief Secretary / Commissioner and also the Letter of the Joint Commissioner, Salem dated 28.02.2018, the Letter of the Assistant Commissioner, Hosur, dated 13.02.2018 and the Letter of the Assistant Commissioner, Krishnagiri dated 14.02.2018. Therefore, it cannot be stated that the promotion granted was irregular or had been granted bypassing the Rules and Regulations.

(12) The petitioners had continued to work in the promoted post from the date of promotion, i.e., 22.06.2018 till the date of the Impugned Order, namely, 10.09.2018. There is no reference in the Impugned Orders that the petitioners had been put on notice before the reversion from the post of Office Assistant to the post of Sweeper.

(13) Therefore, since there is a violation of principles of natural justice

even though the promotion is termed as only temporary, but still, since the petitioners are, as on date, working as Sweepers and there has been no stay granted on such reversion, the Impugned Orders are interfered with to the limited extent that the respondents should put the petitioners on notice that they are ineligible to be promoted as Office Assistants and on examination of that particular aspect, may state reasons and the petitioners may give their explanation to such reasons and thereafter, the explanations may or may not be considered by the respondents.

(14) The Impugned Orders, are therefore, converted as show cause notices as to why promotion to the petitioners should not be interfered and the petitioners be reverted to the post of Sweepers. The petitioners may submit their explanations in writing to the said show cause notices and further orders may therefore be passed by the respondents. Till such time, the petitioners may continue to work as Sweepers, but if they are ever eligible to be promoted, their names should be considered for such promotion in spite of the fact that they had approached this Court by filing the present writ petitions.

(15) The Impugned Orders, are therefore, converted as show cause notices. The petitioners may give their explanations to the same and let further orders be passed.

(16) The writ petitions stand **disposed of.** No costs. Consequently, connected miscellaneous petitions are closed.

27.09.2023

AP
Internet : Yes

To

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State of Tamil Nadu
Commercial Taxes and Registration
Department, Secretariat, Chennai 600 009.

2.The Additional Chief Secretary / Commercial
Tax Commissioner, Chepauk, Chennai 600005.

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C.V.KARTHIKEYAN, J.,

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