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W.A.No.167 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2023

CORAM :

**THE HON'BLE MR. JUSTICE R. MAHADEVAN
AND
THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ**

**W.A.No.167 of 2023
and
C.M.P.No.1603 of 2023**

1.The Secretary to Government,
Government of Tamil Nadu,
Labour and Employment Department,
Chennai - 600 009.

2.The Commissioner of Labour,
Chennai - 600 006.

... Appellants

Vs.

Mrs.V.Chitra

... Respondent

Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 18.11.2020 passed by the learned Judge in W.P.No.23852 of 2013.

For Appellants : Mr.C.Kathiravan
Special Government Pleader

For Respondent : M/s.Lita Srinivasan



W.A.No.167 of 2023

JUDGMENT

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(Judgment of the Court was delivered by R. MAHADEVAN, J.)

This intra-court appeal is directed against the order of the learned Judge passed in W.P.No.23852 of 2013 on 18.11.2020.

2. The facts leading to filing of this writ appeal, are as follows:

2.1. The respondent/writ petitioner was initially appointed as Inspectress of Factories in the Tamilnadu Factories Service through direct recruitment vide G.O.Ms.No.743, Labour and Employment Department dated 18.10.1977. While so, the Government issued G.O.Ms.No.17 Labour and Employment Department dated 09.02.1993, transferring the post of Inspectress of Factories to the Department of Labour and re-designating it as Inspectress of Labour to be treated as an addition to the category of Labour Officer in the Tamil Nadu Labour Service. In the said G.O., it was further stated that necessary amendment to the service Rules will be issued separately. However, no further action was taken to amend the rules, so as to fix the seniority in the combined category of Labour Officers, due to which, the respondent was not considered for promotion, but the juniors appointed much later her appointment were promoted and placed above her. Therefore, she preferred OA.No.2628 of 1994, in which, the Tamil Nadu Administrative Tribunal, Chennai, by order dated 18.05.1994, directed the appellants to consider the claim



W.A.No.167 of 2023

of the respondent for promotion with reference to her seniority in the category of Labour Officer immediately. Thereafter, the Government passed G.O.Ms.No.86, Labour and Employment Department dated 08.10.2002, as per which, the seniority of the respondent was fixed in the cadre of Labour Officers below one A.Gnanasekaran reckoning the date of her joining in the Labour Department i.e., 05.03.1993. Challenging the same, the respondent preferred WP.No.18488 of 1999, which was disposed of, by order dated 25.02.2003, by remitting OA.No.2628 of 1994 enabling the respondent to amend the prayer and permitting her to seek the relief of setting aside G.O.Ms.No.86, Labour and Employment Department dated 08.10.2002. Pursuant to the same, the said original application was revived and the respondent was permitted to amend the prayer sought in O.A.No.2628 of 1994 accordingly. By order dated 20.08.2003, the said original application was disposed of, by directing the appellants to amend the service rules by including the category of Inspector of Labour in the category of Labour Officers and to fix the respondent's seniority in the cadre of Labour Officers with reference to the date of her joining on 07.11.1977. Even thereafter, the respondent was not given any promotion and she retired from service on 01.04.2004. Therefore, she preferred WP.No.23852 of 2013 seeking a direction to the appellants to promote the respondent with all monetary benefits.

2.2. Denying the allegations made in the writ petition, the appellants filed a detailed counter affidavit, *inter alia* stating that pursuant to the order of the



W.A.No.167 of 2023

Tribunal, the Government issued G.O.Ms.No.305, Labour and Employment Department, dated 02.12.2004, thereby cancelling the earlier G.O.Ms.No.86 dated 08.10.2002 and refixing the seniority of the respondent as 94(a) above G.Sundaramoorthy (95) and below K.Ramunnikutty Menon (94). Subsequently, G.O.Ms.No.308, Labour and Employment Department, dated 09.12.2004, came to be issued, including the post of Inspectress of Labour as an addition to the category of Labour Officer in the special Rules for Tamil Nadu Labour Service. Thereafter, G.O.(2D) No.53, Labour and Employment Department, dated 17.09.2010, came to be issued, thereby promoting the respondent as Assistant Commissioner of Labour (redesignated as Deputy Commissioner of Labour) retrospectively, on par with her junior G.Sundaramoorthy for the panel year 1985-86; and that, by G.O.(D) No.404, Labour and Employment Department, dated 10.08.2015, the respondent was promoted as Deputy Commissioner of Labour (redesignated as Joint Commissioner of Labour) for the year 1990-1991 above the name of her junior G.R.Rajaraman and accordingly, her seniority was revised and pay was notionally fixed on par with her junior. However, she was not considered for promotion to the post of Joint Commissioner of Labour (redesignated as Additional Commissioner of Labour), as she was having either adverse remarks in annual confidential report or punishment, from the panel year 1997-98 to till her retirement upto 31.03.2004. Therefore, it was stated in the Government Letter No.1699/E14/2016-12, Labour and Employment department, dated 23.04.2019,



W.A.No.167 of 2023

that the post of Joint Commissioner of Labour (now Additional Commissioner of Labour) is second level post and appointment to that post is made by selection on performance basis and the respondent was not considered for the said post by including her name in the panel fit for promotion.

2.3. During the pendency of the writ petition, at the instance of the respondent, the prayer made therein was amended by quashing the aforesaid communication dated 23.04.2019 issued by the Government and directing the appellants to promote the respondent as Joint Commissioner of Labour (now Additional Commissioner of Labour) from April 1995 when her immediate junior G.Sundaramoorthy was promoted and notionally fix her pay and pension and accordingly disburse the terminal benefits.

2.4. By the order impugned herein, the learned Judge, after considering the arguments put-forth by the learned counsel on either side, allowed the writ petition and directed the appellants to re-fix the seniority of the respondent in the light of the order of the Tribunal dated 18.05.1994 in OA.No.2628 of 1994 and grant promotion on par with her junior G.Sundaramoorthy, notionally, and pay all the monetary, service, terminal and pensionary benefits due to her. Aggrieved by the same, the appellants have come up with this appeal.



W.A.No.167 of 2023

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3. The learned Special Government Pleader appearing for the appellants would contend that as directed by the Tribunal in O.A. No. 2628 of 1994, the seniority of the respondent / writ petitioner was refixed in the post of Assistant Commissioner of Labour on par with her junior G.Sundaramoorthy and she was promoted as Assistant Commissioner of Labour (now redesignated as Deputy Commissioner of Labour) and Deputy Commissioner of Labour (now redesignated as Joint Commissioner of Labour) and her pay was also fixed. Adding further, the learned Special Government Pleader submitted that the post of Joint Commissioner of Labour (now redesignated as Additional Commissioner of Labour) is a second level post, having higher responsibilities and higher pay, which require an officer, must have merit and ability. Whereas, the respondent was having adverse remarks during the panel years 1997-98 and 1998-99 and lack of an Annual Confidential Report for the period from 01.01.1999 to 14.09.2000. Furthermore, the Government issued a Nil Panel for promotion to the post of Joint Commissioner of Labour (redesignated as Additional Commissioners of Labour) for the year 1999-2000. That apart, the respondent was awarded "Warning" vide proceedings dated 25.05.2001 under Rule 17(a) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, 1955, and since the warning period overlapped with the panel period of 2001-2002, her name could not be considered for inclusion. Subsequently, she received punishment of stoppage of increment for three months without cumulative effect vide proceedings dated



W.A.No.167 of 2023

26.06.2022, which was later modified as censure by G.O.(D)No.1130, Labour and Employment Department dated 11.12.2003. Considering the respondent's adverse remarks in her confidential report or the imposition of punishment from the panel year 1997-1998 until her retirement on 31.03.2004, her promotion as Joint Commissioner of Labour (now redesignated as Additional Commissioner of Labour) was deferred. Without properly appreciating all these factors, the learned Judge erred in allowing the writ petition and directing the appellants to grant notional promotion to the respondent on par with her junior G.Sundaramoorthy and pay all the benefits by the order impugned herein, which will have to be set aside.

4. Per contra, the learned counsel for the respondent submitted that the the learned Judge after analysing the entire facts and circumstances of the case, has rightly allowed the writ petition by setting aside the order passed by the appellant authorities and hence, the same need not be interfered with by this court.

5. Heard the learned counsel on either side and also perused the materials placed before this court, including the original records pertaining to the respondent herein.



W.A.No.167 of 2023

6. There is no dispute *qua* initial appointment of the respondent as Inspectress of Factories in the Tamil Nadu Factories Service by direct recruitment *vide* G.O.Ms.No.743 Labour and Employment Department dated 18.10.1977. It is also not in dispute that by G.O.Ms.No.17, Labour and Employment Department dated 09.02.1993, the post of Inspectress of Factories was transferred to the Labour Department and re-designated as Inspectress of Labour, treating it as an addition to the category of Labour Officer in the Tamil Nadu Labour Service. It was specifically stated in the said G.O that necessary amendment to the service rules to that effect, will be issued separately.

7. Originally, the respondent had filed O.A.No.2628 of 1994 before the Tamil Nadu Administrative Tribunal, seeking direction to the appellants to fix her seniority in the Labour Officer category and for consequential promotion. The Tribunal, *vide* order dated 18.05.1994, directed the appellant authorities to promptly consider the respondent's claim for promotion based on her seniority in the cadre of Labour Officer. Based on the same, the Government issued G.O.Ms.No.86 dated 08.10.2002, fixing the seniority of the respondent at Sl.No.249(a), after the seniority of the direct recruitee in the year 1993 viz., A.Gnanasekaran (249), pending amendment to the special rules. Challenging the same, the respondent filed W.P.No.18488 of 1999. The learned Judge, by order dated 25.02.2003, disposed of the said writ petition by remanding the matter to



W.A.No.167 of 2023

the Tribunal and permitting the respondent to amend the prayer. Accordingly, the respondent preferred M.A.No.760 of 2003 in O.A.No.2628 of 1994 seeking to quash the said G.O., and to fix her seniority with reference to her joining as Inspectress of Factories with effect from 07.11.1977. The Tribunal had disposed of the said original application, *vide* order dated 20.08.2003, the operative portion of which, reads as follows:

"11. It has been already held by the High Court that the applicant is entitled to get her seniority from her initial date of appointment in the Factories Department since the post itself was transferred to Labour Department. Seniority given to her in the Factories Department shall not be erased or ignored. Therefore since the impugned G.O. has fixed the seniority reckoning with her joining in the Labour Department in 1993 the said G.O. is to be set aside as illegal since it has unjustly deprived the seniority of the applicant which she has already earned in the Factories Department. The High Court has held that applicant's seniority has to be reckoned from 1977 when she joined as Inspectress of Factories and her seniority must be fixed accordingly in the cadre of Labour Officer from 1977. So among the persons who are working as Labour Officers in 1993 the applicants seniority must be fixed reckoning her seniority from 7.11.77 and not the date on which she joined the Labour Department. Since the G.O. has wrongly fixed the seniority reckoning the date of joining in the Labour Department it is liable to be set aside and is hereby set aside. So direction is issued to the respondents to amend the service rules to Include the category of Inspector of Labour in the category of Labour Officers and fix seniority of the applicant in the cadre of Labour Officers fixing her seniority with reference to the date of her joining on 7.11.77. This application is allowed as prayed for."

It is important to note here that the aforesaid order was passed by the Tribunal, based on the observations made by this court in W.P.No.18488 of 1999 by order dated 25.02.2003 and the same was not challenged by the appellant authorities and hence, it has reached finality.

8. Admittedly, the respondent retired from service on 31.03.2004 on reaching the age of superannuation. However, pursuant to the order of the



W.A.No.167 of 2023

Tribunal as referred to above, G.O.Ms.No.305 dated 02.12.2004 came to be issued, cancelling the earlier G.O.Ms.No.86 dated 08.10.2002 and re-fixing the respondent's seniority at Sl.No.94(a) above one G.Sundaramoorthy (95) and below K.Ramunnikutty Menon (94) in the cadre of Labour Officer, pending amendment to the special rules. Subsequently, the post of Inspectress of Labour was included as an addition to the category of Labour Officer in the Special Rules for Tamil Nadu Labour Service *vide* G.O.Ms.No.308 Labour and Employment Department, dated 09.12.2004. Furthermore, through respective G.O.(2D)No.53 dated 17.09.2010 and G.O.(D)No.404 dated 10.08.2015, the respondent was promoted as Assistant Commissioner of Labour and Deputy Commissioner of Labour retrospectively.

9. The grievance of the respondent before the writ court was that she was not considered for promotion to the post of Joint Commissioner of Labour (now redesignated as Additional Commissioner of Labour) on par with her immediate junior G.Sundaramoorthy and therefore, sought appropriate direction to the appellant authorities to promote her to the said post and notionally fix her pay and pension and accordingly, disburse the terminal benefits. In this regard, the learned Judge in paragraph 8 of the order impugned herein, has pointed out that though the appellants stated that the respondent was suffering punishment and also adverse remarks in the confidential report, which denied her of the opportunity of promotion, a perusal of the records reveal that on the crucial date



W.A.No.167 of 2023

when the case of Sundaramoorthy was considered for promotion, the respondent was neither suffering any punishment nor was there any adverse remarks attached to her, and there being no stigma attached to the respondent on the said crucial date, denial of promotion to her is wholly unjustified.

10. The appellants raised the very same grounds as were made before the writ court for denial of promotion to the respondent to the post of Joint Commissioner of Labour, that she was having adverse remarks for the period from 09.06.1997 to 31.12.1998, 01.01.1998 to 30.06.1998, 01.07.1998 to 31.12.1998; there was no annual confidential report for the period from 01.01.1999 to 14.09.2000; and thereafter, the respondent was suffering from punishment till her date of retirement i.e., upto 31.03.2004. To verify these factual aspects, this court directed the appellants to produce the original files pertaining to the respondent herein. Accordingly, the files were produced before this court for examination. Upon a thorough scrutiny of the records and the Form of confidential report of General Lists and Administrators, it becomes apparent that the respondent had not been subjected to any punishment, such as, "warning" or "censure" during the periods from 01.01.1997 to 08.06.1997, 09.06.1997 to 31.12.1997, 01.01.1998 to 30.06.1998 and 01.07.1998 to 31.12.1998 and till her retirement; no report was available for the period from 01.01.1999 to 14.09.2000; and that, for the periods from 15.09.2000 to



W.A.No.167 of 2023

20.06.2001, 30.07.2001 to 11.06.2002, 12.06.2002 to 08.11.2002, in the 10th column of the confidential report, as against the question, whether the officer had been punished during the reporting period and if so, whether a copy of the order of punishment had been placed in the personal file (specifying the details of the punishment and any lapses), it was stated that "could not be reported for want of S.R. of this officer"; and for the rest of the years, in the 10th column of the confidential report, it was mentioned as "Nil." In such circumstances, the denial of promotion to the respondent for the post of Joint Commissioner of Labour (now redesignated as Additional Commissioner of Labour), citing adverse remarks in the confidential report and currency of punishment by the appellant authorities, that too, without any supportive materials, is highly arbitrary. Therefore, this court finds no infirmity or illegality in the order so passed by the learned Judge in the writ petition.

11. Accordingly, this writ appeal fails and is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D,J.] [M.S.Q, J.]
03.10.2023

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Index: Yes / No.

Speaking order/ Non-speaking order

Neutral Citation: Yes / No.



W.A.No.167 of 2023

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To

- 1.The Secretary to Government,
Government of Tamil Nadu,
Labour and Employment Department,
Chennai - 600 009.
- 2.The Commissioner of Labour,
Chennai - 600 006.



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W.A.No.167 of 2023

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r n s

W.A.No.167 of 2023 &
C.M.P.No.1603 of 2023

03.10.2023