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W.A.No.1095 of 2017 & C.M.P.No.15342 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2023

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR
and
THE HON'BLE MRS. JUSTICE K. GOVINDARAJAN THILAKAVADI

Writ Appeal No.1095 of 2017
and
C.M.P. No. 15342 of 2017

P. Dillibai

.. Appellant

Versus

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

2.The Director of Pension,
DMS Complex, Teynampet,
Chennai – 600 006.

.. Respondents

Writ Appeal filed under Clause 15 of Letter Patent, to set aside the
orders passed by this Court in W.P.No.12082 of 2017 dated 04.07.2017.

For Appellant

..

Mr. A. Maheshnath

For Respondents

..

Mr. S. Silambanan,
Additional Advocate General
Assisted by Mr.G.Ameedius,
Government Advocate, and



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benefits called as Department of Pension. Upon formation of such department, all the posts in the office of Deputy Director of Social Security (Directorate of Small Savings and Social Security) was brought under the administrative control of Directorate of Pension with effect from 01.09.1994. However, no separate Service Rules have been framed for the Directorate of Pension and no *inter se* seniority has been ordered between the staff appointed in the Directorate of Pension and those staff absorbed from the other departments. Therefore, the staff absorbed from the Directorate of Social Security have been considered for promotion based on Adhoc Rules framed for Directorate of Small Savings and Social Security. According to the petitioner, the Directorate of Small Savings and Social Security has requested to place the incumbents working in their department on deputation but the staff have not been absorbed periodically. It is contended that the petitioner had passed all the departmental tests and is fully eligible for promotion to the post of Assistant Treasury Officer from the post of Superintendent. Seeking promotion to the said post, she had given a representation on 25.11.2016, but it has not been considered.

4.The petitioner, aggrieved by the non-consideration of her representation dated 25.11.2016, has filed WP No. 1473 of 2017 before this



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Court for a Mandamus directing the Second respondent to pass orders promoting her to the post of Assistant Treasury Officer, drafted from the Directorate of Small Savings and Social Security, by considering her eligibility as per the Adhoc Rules and Service Rules for the Directorate of Small Savings and Social Security based on her representation dated 25.11.2016 with all consequential benefits.

5.By order dated 20.01.2017, the writ petition was disposed of by issuing a direction to consider the representation dated 25.11.2016 of the petitioner on merits. Pursuant to such direction, an order dated 31.03.2017 was passed by stating that the claim of the petitioner will be considered as and when vacancy in the post of Senior Superintendent arises in future on the basis of seniority. Challenging the order dated 31.03.2017, the petitioner has filed WP No. 12082 of 2017 before this Court.

6.The learned Single Judge, on considering the rival submissions, refused to interfere with the order dated 31.03.2017 on the ground that none of the junior of the petitioner have been given promotion to the higher post and therefore, the department is right in not considering her claim for higher promotion. It was also observed by the learned Single Judge that promotion



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can never be claimed as a matter of right, but it is subject to availability of vacancy, seniority and merits of the incumbents. Feeling aggrieved by the order dated 04.07.2017, the present appeal is filed.

7.The learned counsel appearing for the appellant would contend that the staff absorbed from the Directorate of Small Savings and Social Security are governed by Adhoc Rules. The Directorate of Small Savings and Social Security is no longer in existence after the formation of Department of Pension by the Government vide G.O. Ms. No.707, Finance (Pension) Department dated 22.08.1994. However, no separate Service Rules have been framed for the Directorate of Pension and *inter se* seniority has not been fixed. The promotion to the incumbents were given after getting permission from the Government. Thus, the persons originally recruited in the erstwhile Social Security Wing, who were subsequently absorbed in the Directorate of Pension, are considered for promotion based on the order of permission issued by the Government. Accordingly, the appellant was also given promotion to the post of Assistant and further promotion to the post of Superintendent based on the Adhoc Rules maintained for erstwhile Directorate of Small Savings and Social Security. While so, the appellant is eligible for being promoted to the next avenue of promotion to the post of Assistant Treasury Officer (ATO). In fact,



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there was a post of Assistant Treasury Officer absorbed from the Deputy Director of Social Security as per G.O. Ms. No.531, Finance (Pension) Department dated 28.06.1994 and on merger, the said post has to be filled with regular promotion with qualified person. But the further promotion to the post of ATO has been denied inspite of the appellant possessing all the requisite qualification. However, the promotion was denied on the specious plea that there is no vacancy since the post of ATO/Senior Superintendent is held by one Deva Narayanan on deputation from the Treasuries and Accounts Department. According to the learned counsel, the post of ATO ought to have been filled by conferring regular promotion and it cannot be filled by deputation from the Treasuries and Accounts Department when eligible persons are available for such promotion from among those who were absorbed from the erstwhile Directorate of Small Savings and Social Security. Even though the respondents in the counter affidavit have given certain facts and figures, they have not mentioned anything in the impugned order about the post held by Mr. Deva Narayanan or the ineligibility of the appellant to hold the post. Further, in the impugned order, the second respondent has not adverted to the fact as to whether the post of ATO retained by the erstwhile Directorate of Small Savings and Social Security for being filled up by those who were absorbed from that department or it was taken over by the newly



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constituted Directorate of Pension. The second respondent also did not consider the fact that the petitioner-appellant was due for promotion on 31.12.2017 and therefore, non-consideration of her claim for promotion to the higher post is unsustainable. The learned Single Judge, without taking note of the above facts, has dismissed the writ petition and it calls for interference by this Court.

8.The learned Additional Advocate General appearing for the respondents submitted that the qualification for promotion to the post of Superintendent Grade-II and Assistant Treasury Officer are prescribed in G.O. Ms. No.1305, Finance Department dated 25.11.1978. The appointment to the posts shall be made by transfer from among the holders of the post of Sub-Treasury Officer Grade-I/Accountant Grade-II in the Tamil Nadu Treasury and Accounts Subordinate Service respectively. However, the Department of Small Savings and Social Security, in which the petitioner was originally appointed, got merged with the Directorate of Pension. As per the merger, totally 117 posts got merged and they were ordered to be filled up by re-deployment only. Therefore, the Director of Treasuries and Accounts as well as the Director of Small Savings and Social Security were requested to place the incumbents of the posts mentioned in annexure to G.O. Ms. No.531,



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Finance (Pension) Department dated 28.06.1994 along with the work attended to by them to the Directorate of Pension with effect from 01.09.1994 and they will be treated as on deputation from their parent department. Therefore, the posts from the various Departments merged with Department of Pension and the employees working in these posts were also ordered to be redeployed in the Directorate of Pension and the said posts had been filled by the Treasuries and Accounts Department.

9.The learned Additional Advocate General further submitted that the post of Superintendent will be filled up from the following post namely, (i)Assistant Accounts Officer, (ii)Assistant Treasury Officer and (iii)Senior Superintendent. He further submitted that the post of Senior Superintendent exists only in Treasuries and Accounts Department and as per the Government Order in G.O. Ms. No.531, Finance (Pension) Department dated 28.06.1994 and in G.O.Ms.No.707 Finance (Pension) Department dated 22.08.1994. The post of Senior Superintendent in Directorate of Pension has to be filled by the Treasuries and Accounts Department. He further stated that P. Devanarayanan had continued in the post of Senior Superintendent even before and after the retirement of the appellant. On transfer of P. Devanarayanan one P.Richard Patrick, who is senior to the appellant had been posted from the Treasuries and



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Accounts Department and he joined the Directorate of Pension on 26.07.2019

in the place of P.Devanarayanan, much after the retirement of the appellant.

Therefore, according to the learned Additional Advocate General, the appellant was not considered for promotion for the post of Senior Superintendent for the reasons that at the time, the said P.Devanarayanan has been posted as Senior Superintendent, who is senior to her and when a senior is very much available, the appellant cannot be considered for promotion. It is further categorically stated by the learned Additional Advocate General that no junior to the appellant had been promoted by depriving the promotion of the appellant. Even the appellant has not stated in the affidavit that her juniors were given promotion by overlooking her claim for promotion. Therefore, the learned Single Judge is right in dismissing the writ petition filed by the appellant and he prayed for dismissal of this writ appeal.

10.We have heard the learned counsel for the appellant and the learned Additional Advocate General appearing for the respondents. At the outset, it has to be pointed out that even in the affidavit filed in support of the Writ Petition, the petitioner has not attributed any *mala fide* on the part of the respondents in overlooking her claim for promotion or any of her junior was conferred with promotion. When there is no vacancy to be filled to



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accommodate the appellant, the respondents cannot be found fault with. In fact, even in the order dated 31.03.2017, which was impugned in the writ petition, it was only stated that the claim of the appellant will be considered as and when vacancy to the post of Senior Superintendent arises in future. It is an admitted fact that at the time when the order dated 31.03.2017 was passed one Mr. Devanarayanan was holding the post of Senior Superintendent and he is senior than the appellant. The further fact remains that on 31.12.2017 the appellant retired and even as on the date of retirement, Mr. Devanarayanan held the posts. Therefore, it is evident that there is no post available to accommodate the appellant. In such circumstances, the learned Single Judge is wholly justified in holding that the appellant cannot, as a matter of right, seek for promotion and there is no illegality or infirmity in the order of rejection dated 31.03.2017 passed by the second respondent.

11. In this context, we are fortified by the decision of the Delhi High Court reported in *2013 SCC OnLine Del 1428, Union of India and Another Vs. KL Taneja and Another* wherein, in an identical circumstances, it was held that unless the appellant satisfies that his or her right for promotion has been denied by the respondents either by violating the specific rules or his or her juniors have been promoted to the higher post, no relief could be granted.



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Applying the ratio laid down by the Delhi High Court to the present case, we are of the view that in the absence of any alleged malafide against the respondents or any specific plea that the claim of the appellant for promotion to the higher post was unduly overlooked by accommodating her junior, no relief could be granted to the appellant. Moreover, the appellant retired from service on 31.12.2017 and as on the date of her retirement, there is no vacancy to accommodate her to the higher promotional post. At any angle, there is no illegality or irregularity in the order passed by the writ Court in W.P.No.12082 of 2017 dated 04.07.2017. There is no merits in the writ appeal and the same is liable to be dismissed.

12. Accordingly, the writ appeal fails and it is dismissed. No costs. Connected Civil Miscellaneous Petition is closed.

(D.K.K.J) (K.G.T.J)

13.03.2023

Index: Yes/No
Internet: Yes/No
Speaking order : Yes/No
Neutral Citation : Yes/No
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To

- 1.The Principal Secretary to Government,
Finance Department,
Secretariat, Fort St. George,
Chennai – 600 009.
- 2.The Director of Pension,
DMS Complex, Teynampet,
Chennai – 600 006.



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D. KRISHNAKUMAR, J.
and
K. GOVINDARAJAN THILAKAVADI, J.

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