



W.P.No.27669 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2023

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.27669 of 2021 and
W.M.P.No.29219 of 2021

M.Y.Sirajuddin

... Petitioner

Vs.

1.The Secretary to Government,
Labour and Employment Department,
Secretariat,
Fort St. George,
Chennai 600 009.

2.The Commissioner of Labour,
DMS Campus,
Teynampet, Chennai 600 006.

3.The Public Information Officer/
Under Secretary to Government,
Labour Welfare and Skill Development Department,
Secretariat, Fort St. George,
Chennai 600 009.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the first respondent dated 31.08.2021 in Letter No.11189/E1/2021-3 communicated to the petitioner vide letter



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dated 01.09.2021 of the third respondent in Letter No.14765/E1/2021-1 and to quash the same and consequently direct the first respondent to issue promotion to the petitioner as Labour Officers for the panel year 2009-2010 and further to refix the pay scale and pension accordingly with consequential arrears of pay and pension and other allowances and benefits.

For Petitioner : Mr.R.Syed Mustafa

For Respondents : Mr.P.Sanjai Gandhi
Government Advocate

ORDER

This Writ Petition has been filed seeking issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the first respondent dated 31.08.2021 in Letter No.11189/E1/2021-3 communicated to the petitioner vide letter dated 01.09.2021 of the third respondent in Letter No.14765/E1/2021-1 and to quash the same and consequently, direct the first respondent to issue promotion to the petitioner as Labour Officer for the panel year 2009-2010 and further, to refix the pay scale and pension accordingly with consequential arrears of pay and pension and other allowances and benefits.



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2. Heard Mr.R.Syed Mustafa, learned counsel for the petitioner and Mr.P.Sanjai Gandhi, learned Government Advocate for the respondents.

3. The petitioner has retired from service on 31.03.2010. At the time of retirement he was working as Deputy Inspector of Labour. The claim of the petitioner is that he is qualified to be promoted as Labour Officer and his name has been included for the promotion panel for the year 2009-10. Since there was some administrative delay in sanctioning the promotion panel in a proper manner, the petitioner could not get promotion during his service. The petitioner got superannuation and retired on 31.03.2010.

4. The limited contention of the petitioner is that had the promotion panel was prepared at the relevant time, the petitioner would have got promotion even before his superannuation. Since the petitioner was not at fault for the delay in getting promotion and he got qualified to be promoted for the vacancies arose in the year 2009 itself, he has given a



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representation to the respondents to consider his promotion and give him all attendant and consequential benefits. But vide letter dated 31.08.2021, the petitioner's request was rejected by stating that the promotion panel has to be prepared only in accordance with G.O.Ms.No.368 dated 18.10.1993.

5. According to the petitioner, the above Government Order has got nothing to do with the claim of the petitioner. His only contention is that had the Department sent the promotion panel in time as it is expected by the Government, the petitioner's name would have very much found place in the list and he would have got promotion even while he was in service.

6. However, the learned Government Advocate appearing for the respondents submitted that the promotion panel has to be sent before the crucial date of 15th November of every year. The revised proposal was sent to the Government by the second respondent on 18.03.2010. Since the petitioner had the impending superannuation on 31.03.2010, as per the pension rules, his name was not included and hence the petitioner is



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not entitled to the relief as prayed by him.

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7. The attention of this Court was drawn to Note (a) of Part D of the Tamil Nadu Government Servants (Conditions of Service) Act 2016 and claimed that it is not obligatory on the part of the second respondent to send the name of those persons who is due to retire on 31.03.2010. For the sake of clarity, Note (a) of Part D is extracted as under:

"Note - (a) Particulars in respect of persons retired and those whose relinquishment of right for promotion has been accepted and final orders accepting such relinquishment have been issued by Government, need not be furnished."

8. It is correct to state that the name of the retired persons ought not to have been included in the promotion panel had they were not qualified during their service for the promotion relating to the particular year. Even according to the respondents, the crucial last date for preparation of the promotion panel is 15th November of each year. Had the list was prepared on or before 15th November 2010, the list would not



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have excluded the petitioner.

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9. There is no quarrel on the point that there was 38 vacancies pertaining to the year 2009 in the cadre of Labour Officer. As per the seniority list, the petitioner stands in 10th position. So the petitioner is well within 38 vacancies that has arisen in the year 2009. In fact, considering the likelihood of the next promotion of the petitioner, the second respondent has called for the dossiers of the persons who were then in the cadre of Deputy Inspector of Labour. In the communication dated 23.07.2009, the petitioner's dossiers have also been called for, for considering him for promotion. No doubt, there was an administrative delay in sending the promotion panel in a proper manner before the petitioner got retired.

10. The rule in respect of Note (a) of the Tamil Nadu Government Servants (Conditions of Service) Rules has been interpreted by the respondents in a manner that the list should not include those persons who were qualified at the time when the promotion panel is due and who



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were to retire later. The rule should be simply understood that if the particulars in respect of persons retired and those who relinquished the right for promotion are sent, accepted and acted upon by passing promotion orders, that is not going to serve any purpose.

11. The issuance of orders through promotion to the next cadre by requiring the person concerned to join in the promoted post is something different from the entitlement of a person to get promotion. The petitioner comes under the second category. Since the petitioner was not in service at the time when promotion panel was sent and even if his name is included, the Government could not have issued any positive orders in the cadre of promoted post. However that does not deprive the right of the petitioner for claiming promotion which was defeated due to the delayed action on the part of the second respondent. Since the petitioner was very much available in the Department at the time when vacancies available and on the crucial date before which the promotion panel ought to have been prepared, the delay on the part of the administrative machinery cannot be put against the petitioner.



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12. The learned Government Advocate further submitted that the petitioner was acquiesced to the rejection of his entitlement and after a huge delay, has come out with this petition claiming the same after ten years.

13. However, the learned counsel for the petitioner submitted that the petitioner has submitted his representation in the year 2013 and his last representation is given in the year 2020 and that alone evoked a response from the second respondent in the 2021 and thereafter the petitioner had appeared before the first respondent and then only he has filed this Writ Petition. The petitioner who was not working as Labour Officer, is not entitled to get any monetary benefit for the period between the date when his promotion fell due and the date of retirement. However, he is entitled to pensionary benefit commensurating with the post of Labour Officer in view of his entitlement for his promotion before retirement.

14. In view of the above stated reasons, this Writ Petition is allowed to the extent that the petitioner is entitled to get pensionary



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benefits by notionally fixing the benefit from the date of retirement commensurating with the post of Labour Officer and granting actual monetary benefits from the date of filing this Writ Petition. The respondents are directed to pass appropriate orders in this regard within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

29.11.2023

Index : Yes
Internet : Yes/No
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R.N.MANJULA, J.

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To

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DMS Campus,
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