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W.P.No.27318 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.27318 of 2022

S. Jayashankar

... Petitioner

Vs.

1.The Additional Chief Secretary/
Commissioner of Sugar,
“Aavin Illam” 2nd Floor,
3-A, Pasumpon Muthuramalinganar Salai,
Nandanam, Chennai – 35.

2.The Managing Director/Commissioner,
Subramaniya Siva Co-op Sugar Mills Ltd.,
Gopalapuram,
Alapuram Post,
Pappireddipatty Taluk,
Dharmapuri District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to promote the petitioner as Office Manager, with effect from 01.07.2022, with all attendant benefits, by considering the petitioner's representation dated 26.09.2022.



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For Petitioner : Mr.P. Kannan Kumar

For Respondents : Mrs.V. Yamuna Devi,
Special Government Pleader

ORDER

Heard the learned counsel for the petitioner, as well as the learned Special Government Pleader appearing for the respondents.

2. When the petitioner's name was not included in the provisional seniority list dated 01.03.2022 for the post of Office Manager, he had given a representation on 16.03.2022. In view of the non-consideration of the representation, he had filed a Writ Petition in W.P.No.13225 of 2022 and by an order dated 25.05.2022, this Court had clarified that the petitioner was promoted retrospectively as Superintendent with effect from 25.05.2017 and since he possess the required experience, his candidature is entitled for inclusion. The relevant portion of the order reads as follows:-

.....

“8. In the present case, the provisional seniority list of Superintendent for promotion to the post of Office



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Manager on 01.04.2021 was published on 1.03.2022. The officials, who were promoted as Superintendent during the years 2018, 2019 and 2020 are included in the provisional list for promotion. When the petitioner was promoted as Superintendent retrospectively with effect from 25.05.2017, the said date is to be reckoned for the purpose of seniority and accordingly, the petitioner would be eligible for inclusion of his name in the panel. However, promotion is to be granted subject to the compliance of other rules in force. Thus, the name of the petitioner is to be considered for inclusion of his name in the provisional seniority list of Superintendent for promotion to the post of Office Manager as on 01.04.2021 and promotions are to be considered, if the petitioner is otherwise eligible for promotion in accordance with the rules in force. The said exercise is directed to be done by the respondents within a period of four weeks from the date of receipt of a copy of this order.”

3. Subsequent to the order passed by this Court, the petitioner's request has been rejected on 01.07.2022, by placing reliance on G.O.Ms.No.132, Industries MIC.2 Department, dated 10.11.2018,



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reiterating that 3 years experience in the post of Superintendent is a preliminary requirement for promotion to the post of Office Manager and since the petitioner was promoted only on 07.10.2021, his candidature cannot be considered for promotion.

4. The reason assigned in the present impugned order dated 01.07.2022, is not only illogical but also illegal. When the promotion order of the petitioner dated 07.10.2021, promoting him to the post of Superintendent, was granted with retrospective effect from 25.05.2017, he is deemed to have been promoted on 25.05.2017 itself. Merely because the promotion order, promoting him to the post of Superintendent, was issued on 07.10.2021, it does not mean that he was promoted only on 07.10.2021. The second respondent, in the said promotion order dated 07.10.2021, had clearly stated that the petitioner is promoted to the post of Superintendent with effect from 25.05.2017. If that be so, the petitioner is deemed to have completed three years of service in the post of Superintendent and as such, his candidature requires to be considered for further promotion to the post of Office Manager.



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5. Incidentally, this Court, in the earlier Writ Petition, had clarified this aspect and subsequently stated that the service in the post of Superintendent is to be reckoned from 25.05.2017 only and in spite of such a direction, the first respondent has passed the order dated 01.07.2022, which is totally in disobedience of the earlier order of this Court dated 25.05.2022 passed in WP.No.13225 of 2022.

6. Though the petitioner herein has sought for issuance of a writ of mandamus, this Court is of the view that since the order of the first respondent dated 01.07.2022 is *per se* illegal, the same requires to be interfered with. Accordingly, by invoking the powers of this Court under Article 226 of the Constitution of India, the prayer in the Writ Petition is modified into one of issuance of writ of certiorarified mandamus for quashing the order dated 01.07.2022.

7. In the result, the order dated 01.07.2022 passed in RC.No.4101/SL2/2021-II on the file of the first respondent, is hereby quashed. Consequently, there shall be a direction to the respondents



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herein, to forthwith pass orders including the petitioner's name in the provisional seniority list dated 01.03.2022 and place him before his juniors and promote him to the post of Office Manager with effect from the date on which his immediate junior was promoted, together with all monetary and service benefits. Such order shall be passed at least within a period of four (4) weeks from the date of receipt of a copy of this order.

8. Accordingly, the Writ Petition stands allowed. No costs.

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Index: Yes
Speaking order
Internet: Yes
Neutral Citation: Yes

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To

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M.S.RAMESH,J.

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