



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2023

CORAM

THE HON'BLE Mr. JUSTICE **C.V.KARTHIKEYAN**

W.P.No.32896 of 2018

and

W.M.P.Nos.38118 & 38122 of 2018

C.N.Shanmugaraj

.. Petitioner

Vs.

1.The Secretary to Government,
Personnel and Administrative Reforms Department (Training)
Secretariat
Chenna – 600 009.

2.The Director General of Training
163/1 Raja Annamalaipuram
P.S.Kumarasamyraja Salai
Chennai – 600 028.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 1st respondent in Letter No.25279/Training-I/2017-3 Personnel and Administrative Reforms (Training-I) Department dated 03.04.2018 and to quash the same and consequently direct the 1st respondent to consider the claim of the petitioner for the post of Principal in the State Civil Services Training Institute at Bhavanisagar.



For Petitioner .. Mr.T.Ranganathan
For Respondents .. Mr.S.Ravikumar, SGP

ORDER

This writ petition has been filed in the nature of Certiorarified Mandamus seeking records relating to an order of the 1st respondent, the Secretary to Government Personnel and Administrative Reforms Department (Training) at Chennai in Letter No.25279/Training -I/2017-3 Personnel and Administrative Reforms (Training-1) Department dated 03.04.2018 and to quash the same and direct the 1st respondent to consider the name of the petitioner for the post of Principal in the State Civil Services Training Institute at Bhavanisagar.

2.The petitioner had been initially appointed as Typist in the office of the Assistant Commissioner (Excise) at Kancheepuram on 30.04.1993. He had been recruited during the Tamil Nadu Public Service Commission. He was then promoted as Assistant in the year 1996 and posted in the office of



the Commissioner of Land Administration, Chennai. He was then appointed on transfer of service as Lecturer in Computer -cum- System Analyst in the Civil Services Training Institute campus at Bhavanisagar on 01.06.1999. This was on exercise of an option given by the petitioner. The petitioner regrets and deeply regrets that particular decision and that particular posting.

3.Originally when the petitioner was so appointed as Lecturer in Computer -cum- System Analyst, one of the requisite qualification was BCA or MCA with P.G Diploma in Computer Application. The petitioner had qualified himself in M.Com with MCA and also with the P.G.Diploma in Civil Computer Application. It had been stated that therefore he had been so appointed in the Civil Services Training Institute Bhavanisagar. On such appointed his lien with his parent department / Revenue Department had been cut off. The petitioner is also of the opinion that had he continued in the Revenue Department, he would have attained successive promotions.

4.The learned counsel for the petitioner states that the petitioner today would have been promoted as District Revenue Officer. But that is



not the case. The petitioner has to accept the reality that he is still functioning as Lecturer in Computer -cum- System Analyst at Civil Services Training Institute Bhavanisagar.

5.To be so appointed as Lecturer the process for which recruitment was made as originally stipulated in an order dated 13.05.1997 in G.O.Ms.No.126 Personnel and Administrative Reforms Department, was either through Direct Recruitment or through transfer from among the staff of the Civil Service Training Institute, Bhavanisagar or by transfer from any other service. The petitioner came under the third category namely, recruitment by transfer from any other service / Revenue Department. Thereafter the petitioner was also issued with appointment in the post sanctioned in the Government order in G.O.Ms.No.126 referred *supra*. His posting was in G.O.Ms.No.84 Personnel and Administrative Reforms (TRG-I) Department dated 07.05.1999. His services were also regularized in G.O.Ms.No.162 Personnel and Administrative Reforms (TRG-I) Department dated 16.11.2009. The petitioner continued to work as Lecturer in the same institute. It is seen that his probation was declared and services were also regularized.



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6. Thereafter, the respondents came up with yet another policy regarding appointment of Lecturers and when they did so, they remove the category of transfer from any other allied service. The petitioner was also deeply aggrieved by a further development namely, by passing of G.O.Ms.1 Personnel and Administrative Reforms (TRG-I) Department dated 03.01.2006 by which, the recruitment to the post of Lecturer was only either by direct recruitment or recruitment by transfer from among the holders of the post of Lecturers in Department of Technical Education in the Tamil Nadu Educational Services. At that particular point of time, the petitioner was left with neither a sanctioned post nor was his transfer from other department recognized. This anomaly was rectified by the respondents by G.O.Ms.No.68 Personnel and Administrative Reforms (TRG-I) Department 08.06.2009, whereby a saving clause was introduced as Rule No.8, which was as follows:

"8.Saving clause – Nothing contained in these rules shall adversely affect the holder of the post on the date of coming



into force of this rule."

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7. Thereafter on 26.08.2010 the Government had issued G.O.Ms.No.339 Finance (Pay Cell) Department, whereby, on the recommendation of the One Man Commission, with respect to prescribing uniform designation in educational qualification and revised scale of pay to employees in Information Technology, five cadres were established namely, Data Entry Operator, Assistant Programmer, Programmer, System Analyst and Senior System Manager.

8. The petitioner was fitted as System Analyst. The next promotional post for the petitioner was Senior System Manager. The next promotional post, if he was to be considered as Lecturer was Principal of the said training institute. The petitioner reasonably expected that he would be afforded either one of the two promotional post in due course of time. But, however, further a Government order came to be passed in G.O.Ms.No.18 Personnel and Administrative Reforms (G) Department dated 15.02.2013, wherein the respondents had upgraded the post of Computer Programmer to that of Senior System Manager and the Computer Programmer who was



working namely, K.R.Venkatesan was fitted in as Senior System Manager.

With this particular Government order, the prospects of the petitioner to be promoted as Senior System Manager evaporated. The only option available for him was to fall back to his post as Lecturer and seek promotion as Principal of the said training institute. The petitioner had given a representation seeking promotion to him as Principal of the said institute. By the impugned order dated 03.04.2018 such request of the petitioner was rejected. This has necessitated filing of the present writ petition.

9.In the order, by which the respondents had refused to accede to the request of the petitioner to promote him as Principal, they had stated that the post of Principal could be filled only by who could be considered as holding equivalent post of District Revenue Officer. It was stated that the petitioner had been posted on transfer when he was in the post of Assistant in the Revenue Department. It was also stated that his service register does not reflect his educational qualifications and therefore, it had been contended that since he was not working as District Revenue Officer, he could not be considered for the post of Principal.



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10. The learned counsel for the petitioner however, contended that, had the petitioner continued in the Revenue Department by the long passage of time, since he had been initially appointed in the year 1999 as Lecturer for the post more than 23 years, he would have been definitely promoted to the post of District Revenue Officer.

11. It is for this reason that I have stated at the right of the beginning that on hindsight, the petitioner must have very deeply regretted having chosen to move over to the said post of Lecturer in Computer -cum- System Analyst in the Civil Services Training Institute campus at Bhavanisagar. He could have very well remained in the Revenue Department and could have led a more satisfying life, but as it is with the upgradation of the post of Computer Programmer and posting of K.R.Venkatesan as Senior System Manager and the rejection by the respondents to appoint the petitioner as Principal, the entire promotional aspects of the petitioner had melted away and the petitioner is now struck as Lecturer in Computer -cum- System Analyst for the past 23 years. There is no protection of pay according to the learned counsel for the petitioner also.



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12. It is also contended that if, for instance the Principal was on leave, the petitioner was never be considered to be posted as in-charge Principal, but other lecturers alone were considered and the others, according to the petitioner, were his juniors. This is the main cause for the grievance of the petitioner herein.

13. The respondents had filed a counter affidavit and also an additional counter affidavit. In the counter affidavit it had been stated that the petitioner was originally working as Assistant in the Revenue Department and later had been posted as Lecturer in Computer -cum- System Analyst in the Civil Services Training Institute campus at Bhavanisagar. His services were also regularised and probation was also granted and it had been stated that all this has been done only because he had relinquished his parent post. It had also been contended that the post of Principal could be filled only by those who hold an equivalent post of District Revenue Officer and since the petitioner did not qualify for the same, he could not be considered to be appointed as Principal of the said training institute.



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14. An additional counter affidavit had also been filed by the respondents, wherein, they stated about a subsequent event and stated that the petitioner had sought permission to avail leave on every Saturday and Sunday for treatment at Chennai. It was also stated that he had been deputed to Computer Examination Coaching Centre at Chennai and was also deputed to do the Election Commission work for a short period of time. It had however been stated that since the petitioner himself had cited ill health, he could not be appointed as Principal.

15. A reply affidavit refuting all these allegations have been filed by the petitioner herein.

16. Heard arguments advanced by Mr. T. Ranganathan, learned counsel for the petitioner and by Mr. S. Ravikumar, learned Special Government Pleader for the respondents.

17. The facts are clear. The facts are straight forward. The petitioner was working as Assistant in the Revenue Department. He was then, on his



own option appointed as Lecturer in Computer -cum- System Analyst in the Civil Services Training Institute campus at Bhavanisagar. This was in the year 1999. At that particular point of time, the post would certainly have been a grand opening to the petitioner herein to exhibit his talents, since he had qualified himself with M.Com and MCA and also PG Diploma in that particular field. He was categorized as an employee of the Information Technology Department and as a specialist in that particular area as lecturer. His post was regularized, his probation was also declared. This effectively cut his lien with his parent department. He had no option to move elsewhere except on deputation.

18. Thereafter, a One Man Commissioner was appointed to give a nomenclature for the various post of employees in the Information Technology Department and to grant revised scale of pay. Accordingly, five separate posts were filled up and they were in the category of Data Entry Operator, Assistant Programmer, Programmer, System Analyst and Senior System Manager. The petitioner who was appointed as lecturer was equivalent to the System Analyst in the pay scale of 15600 – 39100 + 5400. He had the necessary educational qualifications to be so considered as



System Analyst. The next promotional aspect was Senior System Manager.

The petitioner had reasonably expected to be so promoted as Senior System Manager. But unfortunately, the respondents brought in a policy decision to upgrade the post of Computer Programmer to the post of Senior System Analyst and correspondingly also promoted the Computer Programmer K.R.Venkatesan as Senior System Manager, promoting him over and above the petitioner herein. As lecturer the petitioner reasonably expected to be appointed as Principal of the Institute. He also had the requisite experience, but unfortunately it had been contended by the respondents that to be appointed as Principal one should have the same qualification to be appointed as District Revenue Officer. It is also contended that the petitioner was not a District Revenue Officer and therefore could not be appointed as Principal.

19. The lamentation of the petitioner is that, had he continued in the Revenue Department, he would have got successive promotions and would have been definitely appointed as District Revenue Officer by this date. In this connection, the learned counsel for the petitioner placed strong reliance on the judgment reported in *(2004) 9 SCC 65, State of Tripura and others*



Vs. K.K.Roy. In that particular case, the respondent had been selected by the Tripura Public Service Commission and was appointed as Law Officer -cum- Draftsman in the Directorate of Cooperation, Government of Tripura. It was a single stand alone post. There was no promotional avenue at all. He therefore filed a writ petition that either the post should be upgraded or some promotional avenue should be granted to him. The High Court of Tripura had directed that the appellant / State of Tripura to provide upgraded scale to the respondent therein namely, Grade – III, Grade – II and Grade – I. That was questioned before the Hon'ble Supreme. The Hon'ble Supreme Court had placed reliance on yet another judgment of the Hon'ble Supreme Court reported in ***(1989) 4 SCC 635, Council of Scientific and Industrial Research and Another Vs. K.G.S.Bhatt and Another*** and also of yet another judgment of the Hon'ble Supreme Court reported in ***1990 (Supp) SCC 688, Dr.Ms.O.Z.Hussain Vs. Union of India***. In both the aforementioned judgment the Hon'ble Supreme Court had examined the status of a Government servant who had been appointed to a post which had no promotion avenue and which had no upgradation in pay.

20.In the instant case, the petitioner had been appointed as Lecturer



and the respondents had denied him promotion to the post of Principal.

They had also upgraded the Computer Programmer to the next promotional post to the Senior System Manager. The petitioner was therefore struck for ever as lecturer. The Court should come to his assistance by providing at least the upgradation of pay.

21. In the judgment of the Hon'ble Supreme Court referred *supra*, it had been observed and held as follows:

“2. Questioning the said direction, the appellants are before us.

3. The learned counsel appearing on behalf of the appellant would submit that the High Court went wrong in issuing the aforementioned direction. The learned counsel would urge that the respondent herein did not have any legal right to be promoted to a higher post far less the right to get the scale of pay of Grade I officer of the Tripura Judicial Service. Such a direction by the High Court, the learned counsel would contend, is wholly without jurisdiction. The learned counsel, appearing on behalf of the respondent, however, has supported the said order.

4. Indisputably, the post of Law Officer-cum-Draftsman is a single-cadre post. It is also undisputed that there does not



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exist any promotional avenue therefor. The respondent is holder of a Master's degree as also a degree in Law. He was appointed in the year 1982. If the contention of the appellant is to be accepted, the respondent would be left without being promoted throughout his career. In almost an identical situation, a Bench of this Court in Council of Scientific and Industrial Research v. K.G.S. Bhatt [(1989) 4 SCC 635 : 1990 SCC (L&S) 45 : (1989) 11 ATC 880] held: (SCC pp. 638-39, para 9)

“It is often said and indeed, adroitly, an organisation public or private does not ‘hire a hand’ but engages or employs a whole man. The person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well. (See Principles of Personnel Management, Flipo, Edwin B., 4th Edn., p. 246.) Every management must provide realistic opportunities for promising employees to move upward. ‘The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual



performance, among both non-managerial employees and their supervisors.’ (See Personnel Management, Dr Udai Pareek, p. 277.) There cannot be any modern management much less any career planning, manpower development, management development etc. which is not related to a system of promotions.”

5. The matter came up for consideration again in O.Z. Hussain (Dr) v. Union of India [1990 Supp SCC 688 : 1991 SCC (L&S) 649 : (1991) 16 ATC 521] wherein this Court in no uncertain terms laid down the law stating: (SCC pp. 691-92, para 7)

“Promotion is thus a normal incidence of service. There too is no justification why while similarly placed officers in other ministries would have the benefit of promotion, the non-medical ‘A’ Group scientists in the establishment of Director General of Health Services would be deprived of such advantage. In a welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend to the representations of the Council and its members and provide promotional avenue for this category of officers.”

6. It is not a case where there existed an avenue for promotion. It is also not a case where the State intended to make



amendments in the promotional policy. The appellant being a State within the meaning of Article 12 of the Constitution should have created promotional avenues for the respondent having regard to its constitutional obligations adumbrated in Articles 14 and 16 of the Constitution of India. Despite its constitutional obligations, the State cannot take a stand that as the respondent herein accepted the terms and conditions of the offer of appointment knowing fully well that there was no avenue for promotion, he cannot resile therefrom. It is not a case where the principles of estoppel or waiver should be applied having regard to the constitutional functions of the State. It is not disputed that the other States in India/Union of India having regard to the recommendations made in this behalf by the Pay Commission introduced the Scheme of Assured Career Promotion in terms whereof the incumbent of a post if not promoted within a period of 12 years is granted one higher scale of pay and another upon completion of 24 years if in the meanwhile he had not been promoted despite existence of promotional avenues. When questioned, the learned counsel appearing on behalf of the appellant, even could not point out that the State of Tripura has introduced such a scheme. We wonder as to why such a scheme was not introduced by the appellant like the other States in India, and what impeded it from doing so. Promotion being a condition of service and having regard to the requirements thereof as has been pointed



out by this Court in the decisions referred to hereinbefore, it was expected that the appellant should have followed the said principle.

7. We are, thus, of the opinion that the respondent herein is at least entitled to grant of two higher grades, one upon expiry of the period of 12 years from the date of his joining of the service and the other upon expiry of 24 years thereof.

8. The learned counsel appearing for the appellant, is, however, correct in his submission that the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India could not have issued a writ of or in the nature of mandamus directing the appellant herein to grant a scale of pay which would be equivalent to Grade II or Grade I of the judicial service of the State.

9. For the reasons aforementioned, we direct that the respondent herein be paid two promotions in the next higher scale of pay upon his completion of 12 years and 24 years in service. This appeal is disposed of with the aforementioned directions. No costs."

22. It is thus seen that the Hon'ble Supreme Court had recognized the plight of a person who had no promotion avenue available right throughout his career.



23. The petitioner is one of them. Had he continued in the Revenue Department, he would certainly have been promoted as District Revenue Officer. Today he is not in a post equivalent to the post of District Revenue Officer. He is therefore stagnated in the post of lecturer. He can never be promoted as Principal. He could be promoted as Senior System Manager, but the Computer Programmer, who was junior to the petitioner had been granted further promotion overlooking the petitioner as Senior System Manager.

24. In those circumstances, it is only appropriate that the impugned order is set aside and a direction as given by the Hon'ble Supreme Court is also issued by this Court. Similar directions are issued to the respondents herein to protect the service conditions of the petitioner herein.

25. Therefore, taking into consideration the long period of service put in by the petitioner herein, I would direct the petitioner to give a fresh representation seeking upgradation of pay. This is all the more so, because even the Hon'ble Supreme Court had stated that in exercise of jurisdiction under Article 226 of the Constitution of India, a Mandamus can never be issued for granting of scale, which would be equivalent to Grade – II or Grade – I of the State of Tripura as in that case, but the Hon'ble Supreme



had exercised its jurisdiction to direct the respondent to pay two promotion in the next higher scale of pay.

26.The petitioner may give a fresh representation to the respondent and enclose a copy of the judgment referred above in *State of Tripura Vs. K.K.Roy*. The petitioner may also seek a right of personal hearing. A direction is issued to the 1st respondent to examine the representation granting personal hearing, if sought for and pass appropriate orders with reasons, particularly stating whether the petitioner would have been promoted to the post of District Revenue Officer had he continued in the Revenue Department, within a period of eight weeks from the date of receipt of a copy of this order.

27.In view of the above observations, the impugned order is set aside. This writ petition stands disposed of. No costs. Consequently, connected writ miscellaneous petitions are closed.

22.09.2023

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



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C.V.KARTHIKEYAN,J.

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To

- 1.The Secretary of Government,
Personal and Administrative Reforms Department (Training)
Secretariat
Chenna – 600 009.
- 2.The Director General of Training
163/1 Raja Annamalaipuram
P.S.Kumarasamyraja Salai
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