



W.P.(MD)No.20461 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.(MD)No.20461 of 2021

Vishnu Latha

... Petitioner

Vs.

The Principal District Judge,
Thoothukudi District,
Thoothukudi.

...Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondent to give promotion to the petitioner as Assistant with retrospective effect from the date on which her juniors were promoted with all service and monetary benefits from the dates when it was due.

For Petitioner : Mr.V.Kannan

For Respondent : Mr.D.Venkatesh
Standing Counsel



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ORDER

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(Order of the Court was made by ***S.M.SUBRAMANIAM, J.***)

The relief sought for in the present Writ Petition is to direct the respondents to grant promotion to the petitioner to the post of Assistant with retrospective effect from the date on which her juniors were promoted with all service and monetary benefits.

2. The petitioner was appointed as Junior Assistant on compassionate ground in the judicial department. The petitioner states that she has passed the departmental examinations in Account Test for Subordinate Officers, Criminal and Civil Judicial Test for Members of Judicial Department Part II and Part III in December, 2008. Therefore, she is fully qualified to the post of Assistant in the judicial department. There was an administrative delay in declaring the probation since the petitioner was appointed on compassionate grounds and TNPSC concurrence is to be obtained. However, the services of the petitioner was regularized with retrospective effect from 18.01.2007 in the post of Junior Assistant. Her probation was also declared with retrospective effect on 18.01.2009 i.e., on completion of two years of service from the date of appointment.



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3. The counter filed by the respondent would reveal that Smt.S.Radha is the immediate Junior to the petitioner in the post of Junior Assistant. Further, the counter admits that the immediate Junior to the petitioner Smt.S.Radha was promoted to the post of Assistant with effect from 01.07.2010. However, the petitioner was promoted to the post of Assistant only on 04.09.2015 and posted as Assistant / Bench Clerk – III in Category IV Class IV in District Munsif Court, Srivaikundam. On account of the administrative delay the petitioner has been denied her promotional opportunity on par with her junior and thus, the present Writ Petition is filed.

4. Learned counsel appearing on behalf of the petitioner reiterated that the petitioner suffered on account of the administrative delay caused by the authorities to regularize her services. Such administrative delay should not adversely affect to the service conditions of the petitioner and more so, her junior was promoted to the post of Assistant on 01.07.2010, when the petitioner was fully qualified on that date for promotion to the post of Assistant.



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5. Learned Standing Counsel for the respondent though raised an objection, we are unable to accept the same in view of the counter filed by the respondent. In the counter, it is admitted that Smt.S.Radha is immediate junior to the petitioner in the post of Junior Assistant. Further, it is admitted that the said Smt.S.Radha was promoted to the post of Assistant on 01.07.2010. That being so, denial of promotion to the petitioner is not justified and thus, the petitioner is entitled for the relief. Mere administrative delay in granting regularization or declaring probation could not result in denial of promotion to the higher post.

6. In view of the facts and circumstances, the respondent is directed to promote the writ petitioner to the post of Assistant retrospectively with effect from 01.07.2010, the date on which her immediate Junior Smt.S.Radha was promoted, with all consequential service benefits, but excluding the monetary benefits, which is to be paid from the date of actual promotion to the post of Assistant. The petitioner is to be placed above the name of Smt.S.Radha in the post of Assistant by revising the seniority and her pay is also to be refixed accordingly. The said exercise is directed to be completed within a period of eight weeks from the date of receipt of a copy of this order.



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

(S.M.S., J.) & (V.L.N., J.)

05.12.2023

NCC : Yes / No

Index : Yes / No

SJ

To

The Principal District Judge,
Thoothukudi District,
Thoothukudi.



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