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W.P.No.7253 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.7253 of 2016

G.Alagappan

... Petitioner

Vs.

1.The Inspector General of Registration,
O/o. The I.G of Registration,
Santhome High Road,
Chennai-600 028.

2.Tamilsuvai

...Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus Calling for the records of the first respondent in proceedings No.36048 dated 30.09.2015 and quash the same and direct the first respondent to consider the case of the petitioner for national promotion as Sub Registrar Grade II on the basis of seniority in the post of Assistant Which is a feeder category and without reference to second proviso to General Rule 36(a) and may be pleased to issue such further order as may be necessary in the circumstances of the case.



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For Petitioner : M/s.V.Rengarajan
For Respondents :
(for R1) : M/s.L.S.M.Hasan Fizal, AGP
(R2) : M/s.Sivakumar

ORDER

Aggrieved by the rejection of his request for promotion as Sub Registrar Gr.II taking into account his seniority in the grade of Assistant over the 2nd respondent, the petitioner is before this Court.

2. It is the case of the petitioner that he had joined the services of the Registration Department as an Office Assistant on 27.05.1977 and was promoted to a Record Clerk on 01.06.1989. Thereafter, he was promoted to the post of Junior Assistant by proceedings of the 1st respondent dated 26.03.1993 in which post he had joined on 08.07.1993. The petitioner would submit that his service throughout was unblemished.

3. By proceedings No.6061/K5/96 dated 14.07.1997 of the 1st respondent, the petitioner's seniority as a Junior Assistant was fixed at



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Serial No.752. The Seniority was over and above of that the 2nd respondent. Thereafter, by proceedings dated 29.11.2000 of the 1st respondent, the petitioner's name was included in the select list for promotion as Assistant for the year 2000-01 and at that point in time the petitioner's name was at Serial No.26 and his seniority was 752. The petitioner was also temporarily appointed as an Assistant vide proceedings of the 1st respondent dated 21.12.2000.

4. The petitioner would submit that he had joined duty as Assistant on 04.01.2001 and his service was regularised in the said post with effect from 04.01.2001 vide proceedings of the Additional Inspector General Registration dated 17.03.2003. On 08.02.2010, the seniority list of the Assistants was issued. The seniority of the petitioner was 747 as of 01.04.2009 and 656 as of 01.01.2010, while the seniority of the 2nd respondent was 942 and 846, respectively. Likewise, as per the proceedings of the 1st respondent dated 25.02.2011, the petitioner's seniority was 365 and the 2nd respondent was 548. Therefore, the petitioner would submit that being senior to



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the 2nd respondent, the petitioner is eligible for the post of Sub Registrar Gr.II. Since the respondents were not considering the same, the petitioner had filed W.P. No.19532 of 2015 and by an order dated 03.07.2015, this Court had directed the 1st respondent to consider the case of the petitioner for notional promotion as Sub Registrar Gr.II.

5. Pursuant to the direction of this Court the 1st respondent had considered the representation and rejected the petitioner's claim stating that the 2nd respondent and one M.Shanmugavembu were originally appointed as Record Clerks. Their original appointment was on a higher post and the 2nd respondent was senior to the petitioner and therefore, the petitioner's grievances could not be addressed. Therefore, the petitioner has come forward with the writ in question.

6. The 1st respondent has filed a detailed counter affidavit giving reasons as to why the petitioner could not be considered for promotion and stating that the 2nd respondent was senior to the petitioner.



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7. Heard the counsels on either side and perused the records.

8. From the counter it appears that Rule 36(a) of the Tamilnadu State and Subordinate Service Rules governs the promotion. Rule 36 36(a) of the Tamilnadu State and Subordinate Service Rules reads as follows:-

36. (a) Promotion—No member of a service or class of a service shall be eligible for promotion from the category in which he was appointed to the service unless he has satisfactorily completed his probation in that category:

Provided that a member of a service or class of a service who, having satisfactorily completed his probation in the category in which he was appointed to the Service, has been promoted to the next higher category shall, notwithstanding that he has not been declared to have satisfactorily completed his probation in such higher category be eligible for promotion from such higher



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category :

**Provided further that if scales of pay of posts in the feeder categories are different, the persons holding post carrying a higher scale of pay in the feeder category shall be considered first and that, if no qualified and suitable persons holding post in that feeder category are available, the persons holding post carrying the next higher scale of pay in descending order in other feeder categories shall be considered."*

9. The petitioner was appointed as an Office Assistant on 27.05.1977, whereas the the 2nd respondent was appointed as a Record Clerk on 20.01.1983. The feeder category for Junior Assistant was from the categories of a Record Clerk, Office Assistant etc. However, the post of Record Clerk carries a higher scale of pay than the Office Assistant. Therefore, the 2nd respondent was considered for inclusion in the revised panel of Junior Assistant for the year 1990-91. The petitioner was promoted as a Record Clerk with effect from



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01.06.1989 and promoted to the post of Junior Assistant in the year 1993. In the feeder category of a Record Clerk the petitioner was junior to the 2nd respondent.

10. It appears that from the years 1990-91 to 2005-2006, the panel of Junior Assistants were not prepared in keeping with Rule 36 (a) of the Tamil Nadu State and Subordinate Service Rules. Therefore, R.Balasubramaniam, who was a Record Clerk had filed W.P.No.20610 of 2006 before this Court. The said Writ Petition was disposed of on 10.10.2006 with the following directions:-

"Accordingly, the impugned order dated 26.12.1994 is set aside and the matter is remitted back to the first Respondent for fresh consideration in accordance with the second proviso to Rule 36(a) of the General rules for Tamil Nadu State and Subordinate Services Rules. If upon such reconsideration the first Respondent finds the petitioner eligible as on the date on which the order of promotion was issued viz., on



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17.10.1994, the petitioner shall be promoted to the post of Junior Assistant, with effect from the date on which his juniors were promoted. The monetary benefits arising out of such promotion shall be fixed notionally, to enable the petitioner to receive the revised pay from the date of his actual promotion, though he will not be entitled to the arrears arising out of the same. The above exercise shall be completed by the first Respondent within a period of three months from the date of receipt or production of copy of the order."

11. On the basis of these directions, the Government had issued orders for fixing the seniority. Further, it is stated that the crucial date for drawal of panel for the post Assistant was 15 March and the petitioner on passing the departmental test in May 1999 was immediately included in the next panel of Assistant for the year 2000-01. Further, it is seen that the 2nd respondent had passed the departmental test in 1993, whereas the petitioner had passed it only in



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1999. The 2nd respondent was considered in the panel of Assistant for the year 1994-95. Whereas, the petitioner was included in the panel of Assistant for the year 2000-01 and promoted as Assistant with effect from 04.01.2001. The 2nd respondent had qualified for being promoted to the post of Sub Registrar Gr.II in the year 2010-11 and the petitioner had retired from service on 31.05.2012.

12. In view of the above discussions, it is clear that the petitioner was junior to the 2nd respondent and therefore, the rejection of his request by the 1st respondent appears to be justified and consequently, the Writ Petition stands dismissed. No costs.

29.07.2024

(shr)

Index : Yes/No

Speaking Order: Yes/No

Neutral Citation : Yes/No

To

1.The Inspector General of Registration,
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Santhome High Road,
Chennai-600 028.



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P.T. ASHA. J.,

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