



Writ Petition No.25383 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 17.04.2024

PRONOUNCED ON : 29.04.2024

CORAM

**THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Petition No.25383 of 2019
WMP.No.24929 of 2019**

R.Ganesh ... Petitioner

Vs

- 1.Union of India,
Rep., by the Secretary,
Ministry of Finance,
New Delhi.
- 2.The Director,
Directorate of Enforcement,
Government of India,
6th Floor, Lok Nayak Bhavan,
New Delhi – 110003.
- 3.The Assistant Director (Estt)
Directorate of Enforcement,
Government of India,
6th Floor, Lok Nayak Bhavan,
New Delhi – 110003.
- 4.The Joint Director,
Director of Enforcement,



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Government of India,
Shastri Bhavan,
26, Haddows Road,
Chennai – 600 006.

5.The Central Administrative Tribunal,
Chennai Bench,
Rep., by its Registrar
High Court Buildings,
City Civil Court Complex,
Chennai ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus, calling for the records of the fifth respondent in OA.No.132 of 2014, dated 20.09.2018 and the consequential order passed in Review Application No.4 of 2019, dated 27.02.2019 confirming the order passed by the third respondent in its Ref.No.A-26/1/2011, dated 30.01.2014 and quash the same and consequently direct the respondents to promote the petitioner as Assistant Enforcement Officer on the basis of the examination held in February 2014 with all consequential service benefits including the pay fixation, seniority and other benefits.

For Appellants :Mr.Vijay Shankar

For Respondent :Mr.V.Chandrasekaran for R1

Mr.S.Rajendrakumar for RR2 to 4



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R5 Tribunal

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ORDER

(Order of the Court was made by Mr.K.KUMARESH BABU.,J.)

This Writ Petition had been preferred challenging the order of the Central Administrative Tribunal wherein the claim of the petitioner with regard to his promotion as Assistant Enforcement Officer was re-jected.

2.Heard Mr.Vijay Shankar, learned counsel appearing for the petitioner and Mr.V.Chandrasekaran for learned counsel appearing for the first respondent and S.Rajendrakumar, learned Standing counsel appearing for the respondents Department 2 to 4.

3.The learned counsel appearing for the petitioner would submit that the petitioner had joined in the services as a Lower Division Clerk in the year 1995 and was promoted as a Upper Division Clerk in the year 2008. As per the old Recruitment Rules, the petitioner was entitled to participate in the limited competitive examination for the post of Assistant Enforcement Officer. Under the old Rules, the eligibility for Upper



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Division Clerk to participate in the Limited Competitive Examination was five (5) years of regular service. However, by amendment to the said Rules, the eligibility was increased to 9 years of regular service. He would submit that no Limited Competitive Examination for the post of Assistant Enforcement Officer had not been held for almost nine years and therefore, when they had conducted the said test for filling up the vacancies, the old Rules would have to only be made applicable and not the new Rules. He would further submit that even as per new Rules, when a junior is eligible to appear for the said examination, a Senior was given an opportunity to write the said examination, if the said Senior had put in half the service that is required. In the present case, he would submit that one of his junior had been permitted to appear in the said examination based upon the orders passed by the CAT, Eranakulam and when that being so, the petitioner who had put in five years of service in the post of UDC has half the qualifying service completed and would be eligible for writing the examination.

4.By an interim order of the Tribunal, the petitioner was permitted to write the examination and he had been successful in the



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examination, but however, the junior who was permitted to write the examination, as per the order of the Ernakulam Bench was not successful.

He would further submit that the note appended to the new Rules only speaks about the eligibility and not the actual promotion. Therefore, when the junior had been permitted to write the examination and the petitioner, based upon the interim orders, was permitted to write the examination, the failure on the part of his junior to clear the examination cannot be put against the petitioner by contending that the junior has not been promoted. Even though the Tribunal at the first instance had allowed the application filed by the petitioner on remand by this Court and had dismissed the case of the petitioner. He had also relied upon the judgment of the Hon'ble Apex Court in the case of *Kubwant Singh & Ors., vs. Daya Ram & Ors.*, reported in *(2015) 3 SCC 177*, and contend that when the vacancies that had arisen prior to the amendment would have to be only filled up based upon the old Rules and not the amended Rules. For all these reasons, he would seek interference of the order passed by the Tribunal.

5. Countering his arguments, Mr.S.Rajendran Kumar the learned Standing counsel appearing on behalf of the respondent Department



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would submit that admittedly, the petitioner had been promoted as an UDC only on 06.06.2008 and that even as per the old Rule, he would be eligible for writing the LDCE examination on completion of five years i.e., only on 05.06.2013. Therefore the reliance placed upon by the judgment of the Hon'ble Apex Court by the learned counsel appearing for the petitioner in the case of **Kulwant Singh & Ors.**, referred supra, cannot be made applicable to his case for the reason that for the vacancies that had arisen prior to 2013 Rules, even if sought to be filled under the old Rule, he would not be eligible to write the examination for the vacancies prior to 2013, as he did not fulfil the eligibility condition.

6.He would further submit that only if his junior had been promoted to the post of Assistant Enforcement Officer, then the claim of the petitioner could be entertained. But in this case, he would submit that the junior with whom, the petitioner seeks to compare, has firstly not been promoted and secondly his claim for writing the examination had been upheld by the Ernakulam Bench by applying note 2 of the amended Rules. He would submit that note 2 of the amended Rules entitles a person who had rendered service on regular basis prior to 01.01.2006 and based upon



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the revised pay structure of the 6th Central Pay Commission had rendered service in corresponding grade pay or pay scales. He would submit that the said junior had entered into the service of the department much before the petitioner and that he had been receiving the corresponding grade pay/pay scale which was also directed to be counted as a qualifying service by the Tribunal. Therefore by interpreting the New Rules, the Ernakulam Bench had found that the petitioner's junior to be eligible, the same yardstick cannot be extended to the petitioner, since he did not have corresponding grade pay/pay scale, as in the case of his junior. In that context, he would submit that Eranakulam Bench had not held that his junior had been eligible to write the examination based upon the old Rules. Therefore, he would submit that there is no error or infirmity in the order passed by the Tribunal, which requires interference by this Court.

7.We have heard the rival submissions made by the learned counsel appearing on either side and perused the materials placed on record.

8.The contention of the petitioner is that when the vacancies are



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sought to be filled up that arose prior to the amendment Rules, then such vacancies could only be filled up based upon the un-amended Rules and that when his junior was found to be eligible to be participate in the examination by application of Rule 1, the petitioner should also be permitted.

9.The contention of the petitioner as supported by the judgment of the Hon'ble Apex Court, cannot be applicable to the facts of the case. As rightly pointed out by the learned Standing counsel appearing for the respondents Department, the petitioner cannot be found to be qualified to be promoted for the earlier vacancies that arose prior to the amendment, since he fulfils his qualifying service of five years in the post of UDC only in the year 2013. If the said Rule had not been amended, the petitioner would have been eligible to only compete in the LDCE only for the vacancies that arose from the year 2013 and not before that. Therefore, we do not find any merits in the first contention raised by the petitioner.

10. The claim of the petitioner even under the new Rules is based upon note 1 to the said amended Rules. The said note clearly indic-



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ates that when his junior is being considered for promotion, then the Senior or could also be considered, provided they have the requisite qualifying or eligibility service by more than half of such qualifying or eligibility service of two years whichever is less.

11. A reading of the final order passed in the case of the junior of the petitioner, it could be seen that the said judgment in favour of the junior had come to be passed by interpreting the new Rules and he had not been permitted to write the examination under the old Rules. In service jurisprudence, the employees right to be considered for promotion, but not the grant of actual promotion. The note 1 appended to the amended Rules, would only entitle a Senior employee to be considered for promotion, when his junior is being considered for promotion, if they had fully qualified the eligibility service.

12. In the present case, even though they have been permitted to write the examination, the junior did not fall under the zone of consideration for promotion. When that being so, even though the petitioner had passed the examination, since his junior was not considered



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for promotion as he had failed the examination, the petitioner also cannot be considered for promotion by strict reading of the said note appended to the Rules.

13. In such view of the matter, we are not inclined to interfere with the order passed by the Tribunal. It has been brought to our notice that the petitioner had been promoted in the year 2018 on completion of 9 years of regular service, pursuant to him successfully clearing the LDCE examination.

14. In fine, the Writ Petition fails and the same is accordingly dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

(D.K.K.,J.)

(K.B., J.)

29.04.2024

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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