IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2025

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR
AND
THE HONOURABLE Dr. JUSTICE A.D. MARIA CLETE

W.A.No.366 of 2023

S.Ravi .. Appellant

Vs.

1.The State of Tamil Nadu
Rep. by its Secretary to Government
(Finance) L.F. Department
Fort St. George, Secretariat
Chennai 600 009

2.The Director
Local Fund Audit Department
No.571, 4th Floor, Anna Salai
Chennai 600 035 .. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent challenging the order dated 21.09.2022 passed in W.P.No.15893 of 2016.

For Appellant : Mrs.AL.Ganthimathi
Senior Counsel for Ms.S.Meenakshi

For Respondents : Mr.M.Alagu Goutham
Government Advocate

JUDGMENT

(Delivered by R.SURESH KUMAR, J.)

This intra-court appeal has been directed against the order dated 21.09.2022 passed by the writ Court in W.P.No.15893 of 2016.

2. The appellant was the writ petitioner, who was initially appointed as Assistant Inspector in the Department of Local Fund Audit and was promoted to various categories like Deputy Inspector, Inspector, Assistant Director, Deputy Director and also Joint Director.

3. While the appellant was working as Joint Director, since he attained the age of superannuation on 31.10.2014, he retired from service.

4. The next avenue for promotion to the appellant is the post of Chief Internal Auditor and Chief Auditor of statutory boards.

5. For giving such promotion to the post of Chief Internal Auditor or the Chief Auditor, panel would be prepared every year by taking the 1st September as crucial date. For the year 2012-13, there has been no panel prepared and for the

year 2013-14 also, even though a panel was prepared, where one Tmt.N.Vembu was a senior most and she was recommended to be considered for the post of Chief Internal Auditor.

6. The Government having considered the rule position which was in vogue, where those who is posted as Chief Internal Auditor or Chief Auditor must have at least one year service and the said Tmt.N.Vembu, since did not have one year service as she was on the verge of retirement, the Government, instead of posting her as Chief Auditor, had given only Officer on Special Duty in the State Trading Schemes Audit Department, which is a scale of pay equivalent to that of Chief Auditor, that was the Government Order issued in G.O.Ms.No.443 Finance (Local Funds) Department, dated 30.05.2014 (in short "G.O.Ms.443").

7. The said Tmt.N.Vembu, on the next day *i.e.,* on 31.05.2014, retired from service and thereafter, the appellant would be the senior most, therefore, he could have been considered either to the post of Chief Auditor or at least to the post of Officer on Special Duty with equal pay to the post of Chief Auditor. The gesture shown to Tmt.N.Vembu was not shown to the appellant and therefore,

non-preparation of panel for the year 2013-14 by including the appellant for promotion to the post of Chief Internal Auditor and also non-consideration of the appellant's name even for the Officer on Special Duty, is a clear discrimination and violation and therefore, on that ground, even though the appellant retired long back *i.e.*, on 31.10.2014, he had approached this Court by filing the said writ petition in the year 2016 seeking such a relief as prayed for therein.

8. The learned writ Court, after considering the said factual matrix and also the fact that the filling up of the vacancy position is the prerogative of the employer and therefore, was of the view that the employee cannot seek for any mandamus to prepare the panel as a matter of right. The learned Judge also has held that even though the name of the employee has been in the panel, that would not automatically confer any right on the employee to seek such promotion and that right is also not available to the employee and for all these reasons, the learned Judge has dismissed the said writ petition through the impugned order.

9. Assailing the impugned order, Mrs.AL.Gandhimathi, learned Senior

Counsel appearing for the appellant has stated that, first of all the panel for the year 2013-14 should have been prepared as there has been a clear vacancy because of the retirement of Tmt.N.Vembu, who was the senior most and above the appellant. Once the said Tmt.N.Vembu retired on 31.05.2014, certainly, the next panel should have been prepared by taking the crucial date 1st September 2014, which the respondent department have failed to do, only purposely to avoid giving such promotion to the appellant. Secondly, following the relevant rule that the appellant, who seek such promotion, must have one year service to left and he does not have such one year service, at least he could have been considered for Officer on Special Duty which gesture had already been shown to the immediate senior *viz*., Tmt.N.Vembu and failure to give such a gesture to the appellant is also unlawful and discriminate and therefore, on these grounds, the prayer sought for by the appellant was not properly considered by the writ Court and hence, the order of the writ Court requires interference, she contended.

10. The learned Government Advocate appearing for the respondents would submit that, even for giving such promotion to the senior to the appellant *i.e.,* Tmt.N.Vembu, since there has been no minimum service of one year available,

she was not considered for giving such promotion. That is the reason why the Government issued G.O.Ms.443 referred *supra* for grant of such benefit to Tmt.N.Vembu, when she retired on the next day *i.e.*, on 31.05.2014. Thereafter, there has been no scope for preparing the panel 2013-14 and assuming that there had been a panel prepared for the year 2013-14 and the name of the appellant had been included, even then, the appellant would not have been in a position to seek such promotion for lack of one year service. He would also submitted that moreover, preparation of panel is the discretion due to administrative contingency and exigency of the department concerned and therefore, as a matter of right, the preparation of panel cannot be sought for by an employee. This position since has been reiterated in many number of decisions that was followed by the learned Judge, hence it cannot be found fault with.

11. We have considered the rival submissions made by both sides and perused the materials placed before this Court.

12. Insofar as the preparation of the panel for the year 2013-14, no malafide

has been alleged by the appellant before the writ Court or here, as none of the officials who are in-charge of preparing the panel has been named to establish such a malafide. Therefore, the said ground raised by the appellant side that only to prevent the appellant from becoming the Chief Auditor, the panel of the year 2013-14 has not been prepared, has no substance to sustain.

13. Insofar as the discrimination point that has been raised by the learned Senior counsel for the appellant that the gesture shown to Tmt.N.Vembu by issuance of G.O.Ms.433 referred *supra* by the department, since has not been shown to the appellant herein, that discrimination would lead to denial of such conferment of the Officer on Special Duty status to the appellant, thereby the pensionary benefits which otherwise he is entitled to, since has been denied, that is also another ground, at least that plea raised by the writ petitioner before the writ Court ought to have been allowed was the contention of the appellant's counsel.

14. We have not impressed with this submission of the learned Senior Counsel for the reason that, so far as Tmt.N.Vembu is concerned, during her service, her name has been included in the panel and she has been recommended

for promotion to the post of Chief Auditor. However, the Government since was not in a position to confer such a promotion to Tmt.N.Vembu, for the reason that she did not have that one year service to be left, she was conferred the status of Officer on Special Duty.

15. However, in the case of appellant, no such panel was prepared and as has been rightly pointed out by the learned writ Court, such a right is not vested with the employee to seek for preparation of panel and since, no panel was prepared, the question of considering the name of the appellant for the promotion to the post of Chief Auditor, did not arise at that time.

16. If there had been a panel prepared for the year 2013-14, in which the name of the appellant had been included and a recommendation had been made by the Head of the Department to the Government to consider the name of the appellant at that time, the Government might have considered that the appellant also do not have the one year service to left and therefore, the Officer on Special Duty gesture could have been shown and such a status could have been conferred on him. But, that position is not available insofar as the case of the petitioner.

Since it is being the difference between Tmt.N.Vembu and the appellant, even the ground of discrimination as raised by the appellant is not available and therefore, that ground also is not supporting the case of the appellant.

17. Therefore, the reasoning given by the learned Judge in rejecting the plea of the appellant through the impunged order is to be approved, as we do not find any plausible reason to interfere with the same in view of the aforesaid discussion.

In the result, this writ appeal fails and is accordingly dismissed. No costs.

(R.S.K., J.) (A.D.M.C., J.)
17.03.2025

gya
Index:Yes/No
Neutral Citation: Yes/No

R. SURESH KUMAR, J.
AND

A.D. MARIA CLETE, J.

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To
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