(2012) 09 MAD CK 0025

In the Madras High Court

Case No : Writ Petition (MD) . No. 12597 of 2012

R. Karunanithi, Assistant Commissioner — APPELLANT

Vs

State of Tamil Nadu and Another — RESPONDENT

Date of Decision : 26-09-2012

Acts Referred:

Citation : (2013) 28 MLJ 497

Hon'ble Judges : Vinok K. Sharma, J

Bench : Single Bench

Advocate : M. Ganesan, for the Appellant; M. Govindan, Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Vinok K. Sharma, J.—The petitioner prays for issuance of a Writ in the nature of certiorari to quash G.O. Ms. No. 54 dated 30.3.2012

ordering the petitioner to be eligible for promotion for the year 1999, for the reason that his immediate junior Thiru. M. Perumal (SC Category)

(1996/Rank No. 20) was included at Sl. No. 1 in the list of Commercial Tax Officers for the year 1999 in (SC) category. The impugned order is

in favour of the petitioner. The learned counsel for the petitioner vehemently contends that the petitioner was fully eligible for promotion in the year

1998 itself for having cleared all the tests for promotion, therefore, he should have been empanelled for the year 1998 and not 1999.

2. In support of this contention, learned counsel for the petitioner contends, that once the petitioner was eligible and had qualified the test, there

was no reason for the respondents to ignore the petitioner from being empaneled, specially when the order of punishment which was basis to ignore the petitioner was set aside, thereafter, no impediment was there to include the petitioner in the panel year 1998.

3. On consideration, I find no force in the contention of the learned counsel for the petitioner. A person does not get right of promotion only on

eligibility, but as and when promotions are actually made. In this case, the petitioner was not considered for promotion on account of punishment

awarded to him. The order of punishment on appeal did not stand on the test of scrutiny of law and was quashed.

4. Therefore, the petitioner was restored the position which existed prior to punishment, which gave him right to be considered for promotion over

and above his immediate junior. It is not in dispute that the benefit of promotion over and above his immediate junior has been granted to the

petitioner.

5. The petitioner has no absolute right on ground of eligibility for promotion, as it is for employer to see when promotions are made. No rule has

been shown which stipulates automatic promotion on eligibility alone.

6. The another contention of the learned counsel for the petitioner is, that under the Standing Order 168(3) of the Tamil Nadu Commercial Tax

Manuals, Volume III, if a person is qualified on the crucial date of panel, he is entitled to automatic empanellment cannot also be accepted for the

reason, that an employee gets right, if promotions against available post, subject to the decision of employer to fill up the posts. The petitioner has

not shown if any junior to petitioner was promoted in the year 1998.

7. It was for the employer to fix the number of vacancy to be filled up by promotions, for a particular year, as already noticed above, the relief to

which the petitioner was entitled to, has already been granted.

8. The impugned order can not be said to be adverse to petitioner.

9. The petitioner suffered because of the pendency of the punishment order which was withdrawn by the department, and consequential benefits

following there from also stand granted. No legal right of the petitioner has therefore been infringed, as he has been promoted with effect from the

date of promotion of his immediate junior, that too, by placing him at No. 1 (SC) category. The Writ Petition being totally misconceived is order to

be dismissed. No costs.