
(2011) 08 MAD CK 0178

In the Madras High Court

Case No : Writ Petition No. 7255 of 2007

S. Krishna Kumar

APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

Date of Decision : 04-08-2011

Acts Referred:

Citation : (2011) 8 MLJ 317

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : R. Dhamodaran, for the Appellant; V. Jayaprakashnarayanan, AGP, for the Respondent

Judgement

N. Paul Vasanthakumar, J.—The prayer in the writ petition is to quash the order dated 28.11.2006 and direct the Respondents to include the name of the Petitioner in the appropriate place in the panel for promotion as Assistant for the year 2005 06.

2. According to the Petitioner, even though he was subsequently given promotion as Assistant on 9.7.2007 (panel of Assistant for the year 2007-2008) because of the impugned order, he is loosing his seniority in the Assistant cadre and consequential benefits.

3. The case of the Petitioner is that the Petitioner was appointed as a Record Clerk on compassionate ground due to the death of his father on 31.3.1977, while working as a Fireman in Salem Division. The Petitioner joined in the post of Record Clerk on 1.8.1990 at the Regional Deputy Director (Central) Office, Trichy. He was having qualification for the said post. The Petitioner was promoted as Junior Assistant and he joined in the said post on 22.7.1995 at the office of the Divisional Fire Officer, Salem. The Petitioner passed necessary tests such as Account Test for the Subordinate Officers Part I and the Departmental Test in the Madras Fire Service Manual in the year 2004 and 1995 respectively. The Petitioner was granted periodical increments and he has completed ten years of

service as Junior Assistant on 22.7.2005 and he was given selection grade from the said date. The second Respondent has not sponsored the Petitioner's name for the Civil Service Training at Bhavani Sagar, which is one of the requirements for getting promotion to the post of Assistant.

4. According to the Petitioner, number of his juniors worked in the post of Junior Assistant were sponsored for training and the Petitioner's name was omitted by the Respondents and due to the said fact, the Petitioner was not placed in the panel for promotion of Assistant for the year 2005-2006 drawn by the second Respondent fixing the cut off date as 15.6.2005. The Petitioner submitted a representation to the second Respondent on 2.11.2005, which was forwarded to the third Respondent on 7.11.2005. However, the impugned order was passed rejecting the request of the Petitioner. The panel was implemented by giving promotion and posting orders were issued to persons, whose names were found in the panel as Assistant by order of the second Respondent dated 15.12.2005.

5. It is the specific case of the Petitioner that several of the Petitioner's juniors viz., N.Susheela, A.Muralidharan, etc., who were acting as Assistants were deputed for training in the subsequent batch. The Petitioner having affected by not sending him for training and consequently non-inclusion of his name in the panel for promotion and the denial of promotion, has filed this writ petition contending that sending of his juniors to undergo Bhavani Sagar Training and failure to send the Petitioner on time for training is unjust and merely for that reason, the Petitioner cannot be denied of promotion.

6. Heard the learned Counsel for the Petitioner and the learned Additional Government Pleader for the Respondents. This Court in W.P. No. 13517 of 2009, by order dated 9.4.2010 considered the very same issue and in paragraph-19, it is held as follows:

19. Going through the issue, this Court pointed out that on No. fault of the Petitioners but on account of administrative reasons, the Petitioners could not complete their service qualification to serve in the category of Rural Welfare Officer Grade I. It was pointed out that even though the Petitioners had been in service as Junior Assistant with effect from 1991 and in the post of Rural Welfare Officer Grade I, the Petitioners were not considered for further promotion on account of the non-completion of the service requirements. This Court held that when the Petitioners had successfully completed the departmental examinations, the Petitioner cannot be denied inclusion in the panel on the ground that they did not possess the service qualification - an area which was purely in the hands of the Respondents. Referring to the order of this Court dated 9.10.2006 in W.P. No. 18501 of 2006 (C.Periasamy and Anr. v. The District Collector, Dharmapuri) holding that service qualification cannot be equated to a pass in the departmental test, this Court held: "While the pass in a departmental test may be in the hands of the individual, the posting of the individual to a particular post is not within the hands of the individual." In the circumstances, this Court held that the Respondents should have formulated and implemented a policy

providing equal opportunity to all persons to acquire the service qualifications. This Court pointed out that but for the belated regularisation in 1996, the Petitioner would have undergone the foundation training in Bhavani Sagar Training Institute, the Petitioners were not at fault, they should not have been omitted to be included in the panel.

7. It is also pointed out in the said judgment in paragraph-21 that deputing the Petitioner therein for one year training at Bhavani Sagar Institute cannot be attributed to the Petitioner and he had not qualified himself though inclusion in the promotion panel for seniority cannot be allowed as it would prejudice the Petitioner as he was prevented by the department to undergo the training. Ultimately in paragraphs 28 to 31, it is held thus:

28. It is No. doubt true that in the case of a person who sleeps over his right consciously, the question of showing any indulgence to disturb a well settled seniority will not arise. As already pointed out, on the appeal preferred by Respondents-3 to 5 dismissed, the seniority of the Petitioner remained undisturbed at least upto 2001. There was No. occasion for the Petitioner to entertain any doubt as to the seniority panel to voice his grievance. He came to know of this fact only when the Petitioner's name was not included in the panel prepared for the year 2004 onwards. In the background of this fact, when as per the law declared by this Court, the Petitioner's name should have been considered in the seniority list, he having successfully completed the examination well ahead of Respondents 3 to 5, the delay in challenging the seniority list, by itself, cannot be held against the Petitioner, for the simple reason that the delay on the part of the District Collector had caused serious prejudice to the Petitioner by his not having deputed the Petitioner to undergo the one year stint in the post of Rural Welfare Officer Grade II and for the foundation training in the Bhavani Sagar Training Institute as required under the Service Rules.

29. In the light of the above facts and in fairness to the claim of the Petitioner, taking note of the decisions of this Court as referred to above, the Petitioner merits to have his seniority fixed. I do not find any justification in the plea of the Respondents on the issue of laches. In so doing, I am conscious of the decision of the Apex Court holding that a settled list of seniority and promotion should not be disturbed at a long distance of time vide the decision reported in Malcom Lawrence Cecil D'souza Vs. Union of India (UOI) and Others, and Union of India (UOI) and Another Vs. Narendra Singh, .

30. Going by the fact that the Petitioner had passed all the departmental examinations and the delay in satisfying the service requirement was not attributable to the Petitioner, without disturbing the seniority of Respondents-3 to 5, I feel that Respondents-1 and 2 should place the Petitioner in his original place in the order of seniority that at least in future, if and when the time comes, in the matter of granting promotion, the Petitioner's name should be considered at the first place.

31. With the above observation, I allow this writ petition thereby set aside the order of the first Respondent herein. By so setting aside the impugned order, it is hereby made clear that this Court does not intend to disturb the seniority of Respondents-3 to 5, as they had been in service for quite a long number of years. As already pointed out, Respondents-1 and 2 should consider the Petitioner at the right place of seniority for considering him for further promotion from the post of Assistant to the post of Extension Officer and pass orders within a period of six weeks from the date of receipt of a copy of this order.

8. Applying the said judgment, particularly, the principles stating that the Petitioner cannot be blamed for not undergoing the training in Bhavani Sagar, the non-inclusion of the Petitioner's name in the panel for promotion to the post of Assistant for the year 2005-2006 and denying promotion to the Petitioner as Assistant on the date when his juniors were given promotion cannot be justified. However, taking note of the subsequent promotion given to the Petitioner, the Petitioner shall be notionally promoted for the post of Assistant from the date of promotion given to the Petitioner's juniors from 15.12.2005. The Petitioner is not entitled to get any arrears of salary for the promoted post and the seniority alone is to be given by Respondents 1 and 2. The said notional promotion shall be calculated for all purpose except backwages.

9. The writ petition is disposed with above observations. No. costs.