
(2014) 12 MAD CK 0205

In the Madras High Court

Case No : Writ Appeal No. 2105 of 2012, M.P. Nos. 1 and 2/2012

The Director of Local Fund Audit

APPELLANT

Vs

V. Ramanathan

RESPONDENT

Date of Decision : 08-12-2014

Acts Referred:

Citation : (2014) 12 MAD CK 0205

Hon'ble Judges : P.R. Shivakumar, J;N. Paul Vasantha Kumar, J

Bench : Division Bench

Judgement

P.R. Shivakumar, J.

1. This writ appeal has been filed challenging the order dated 15.03.2011 made by a learned single Judge of this court in W.P.No. 14223/2007.

2. The respondent V.Ramanathan was initially appointed as Typist under General Rule 10(a)(i) of the Tamil Nadu Subordinate Services Rules with effect from 25.06.1984. His services were regularised by virtue of Special Regularisation Scheme. He completed his probation in the post of Typist on 03.07.1986 and he got himself qualified to be promoted as Assistant Inspector in May 1985. For the year 1987-88, totally 49 vacancies in the post of Assistant Inspector came to be notified and the said 49 vacancies were to be filled up in the following manner:

Direct Recruitment : 39

Promotees : 10

Out of the 10 posts meant for promotees, 8 posts were to be filled up from Junior Assistants and 2 posts were to be filled up from Typists.

3. For the year 1987-88, a panel came to be prepared in which the respondent's name was found at Sl.No. 10 in the list of persons to be promoted to the cadre of Assistant Inspector. The respondent was promoted and his promotion as Assistant Inspector was regularised with effect from 22.03.1988. However, since

one R.R.Krishnan, who was selected through Service Commission was found to be senior to the respondent, the panel was revised by removing the name of the respondent from the panel and including the name of the said R.R.Krishnan. Such a revision of the panel resulted in the reversion of the respondent to his original post of Typist on 23.12.1988. Later on, the respondent came to be promoted as Assistant Inspector on 06.05.1995 on the basis of his seniority. However, one Lalitha, who was in Sl.No. 5 meant for Typist was found to be eligible for promotion even in the previous year i.e. 1986-87 and she was given promotion with retrospective effect. By moving the name of Lalitha to the panel of the previous year (1986-87), R.R.Krishnan was moved to Sl.No. 5 and the respondent's name should have been included in the panel at Sl.No. 10.

4. The respondent made a representation to the second appellant to regularise him in the post of Assistant Inspector with retrospective effect from 09.12.1987 when the vacancies arose. Based on the said representation, the Government was addressed as to whether the date of regularisation of the respondent was to be fixed either as 09.12.1987 or as 06.05.1995, the date on which he was given promotion. The Government, by its letter dated 06.08.2002 clarified that the respondent's regularisation as Assistant Inspector had to be made from 06.05.1995 and not from 09.12.1987. Based on the said letter of the Government, the first respondent issued the impugned order dated 22.10.2002 denying the request of the first respondent for his retrospective regularisation in the post of Assistant Inspector with effect from 09.12.1987.

5. Meanwhile, the respondent preferred an application before the Tamil Nadu Administrative Tribunal in O.A.No. 53/1989 challenging the order of reversion dated 23.12.1988 reverting him to the post of Typist from that of Assistant Inspector. The said original application was dismissed by the Tamil Nadu Administrative Tribunal and a review petition filed by the petitioner was also dismissed. Under the said circumstances alone, challenging the order of the first appellant dated 22.10.2002 made in his proceedings Na.Ka.No. P&Nil (5)/26914/97, the respondent filed O.A.No. 846/2003 on the file of the Tamil Nadu Administrative Tribunal. Due to the abolition of the said Tribunal, the same came to be transferred to this court and re-numbered as W.P.No. 14223/2007.

6. A learned single Judge of this court, by order dated 15.03.2011, held that the rejection of the request of the respondent herein for regularisation of his services with effect from 09.12.1987 could not be justified. Accordingly, the learned single Judge set aside the impugned order of the first appellant dated 22.10.2002 and directed the appellants to regularise the services of the respondent as Assistant Inspector from the date on which he was temporarily promoted as Assistant Inspector i.e. from 09.12.1987. The learned single Judge also directed the appellants to pay all back wages and the attendant charges to the respondent herein within a period of four months from the date of receipt of a copy of the order passed in the writ petition. The said order of the learned single Judge dated 15.03.2011 made in W.P.No. 14223/2007 is challenged by the appellants in

the present appeal.

7. No doubt the respondent might have pleaded for his retrospective regularisation in the post of Assistant Inspector with effect from 09.12.1987, the date on which he was originally promoted on temporary basis. The mistake in the panel came to be rectified by moving Lalitha, who was in Sl.No. 5 to the previous year's panel and promoting her with retrospective effect, which caused the movement of R.R.Krishnan to Sl.No. 5, whereupon the respondent was included at Sl.No. 10 in the panel for the year 1987-88. Since R.R.Krishnan, whose name had been moved to Sl.No. 5, pursuant to which the respondent became entitled to be placed in Sl.No. 10, he has come forward with an affidavit stating that he would be satisfied if his services in the post of Assistant Inspector was regularised from 02.01.1989, the date on which R.R.Krishnan joined as Assistant Inspector, with notional fixation of pay and monetary benefits from 06.05.1995 onwards, the date on which he was again promoted as Assistant Inspector. The said affidavit is recorded.

8. It is the contention of the respondent that when R.R.Krishnan was promoted as Assistant Inspector who was in Sl.No. 5 of the panel for the year 1987-88 the petitioner, whose name should have been included at Sl.No. 10 in the said panel ought to have been given promotion, as there were sufficient number of vacancies to accommodate the respondent also. The said contention of the respondent that there were sufficient number of vacancies as on 02.01.1989 when R.R.Krishnan joined as Assistant Inspector so as to accommodate the respondent also, is not disputed by the appellants.

9. In view of the affidavit signed on 07.12.2014 and filed by the respondent and in view of the admission made on behalf of the respondent that as on 02.01.1989, the date on which R.R.Krishnan joined as Assistant Inspector, there were vacancies sufficient to accommodate the respondent who should have been placed at Sl.No. 10 in the panel for the year 1987-88, we are of the considered view that the respondent shall be entitled to regularisation in the post of Assistant Inspector from 02.01.1989. As admitted by the respondent in the affidavit filed by him, though his services as Assistant Inspector are regularised with effect from 02.01.1989, he shall be entitled to notional fixation of his pay from the said date and monetary benefits shall be given from 06.05.1995, the date on which he was actually promoted as Assistant Inspector subsequent to his reversion as Typist.

In the result, the writ appeal is disposed of modifying the order of the learned single Judge dated 15.03.2011 made in W.P.No. 14223 of 2007 in terms of the affidavit of the respondent dated 07.12.2014 by directing his regularisation in the post of Assistant Inspector from 02.01.1989 with notional fixation of pay from the said date and with monetary benefits from 06.05.1995. The appellants are directed to implement the order of this court within a period of four weeks from the date of receipt of a copy of this order. However, there shall be no order as to cost. Consequently, the connected miscellaneous petitions are closed.