

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P(MD)No.13354 & 13355 of 2013

and

M.P.(MD)No.1 of 2015

C.Prabakaran ...Petitioner in W.P.(MD)No.13354/2013

H.Abzal Sheriff ...Petitioner in W.P.(MD)No.13355/2013

Vs.

1.The Secretary to Government,
Department of Commercial Taxes and Registration,
Fort St. George, Chennai- 600 009.

2.The Commissioner of Commercial Taxes,
Ezhilagam, Chempauk, Chennai- 600 005.

3.The Joint Commissioner of Commercial Taxes,
Trichy Division,
Thiruchirappalli.

... Respondents in both W.P.s

PRAYER in W.P.(MD)No.13354 of 2013: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to revise the petitioner's appointment as junior assistant with effect from his date of appointment (viz 19.05.1993) and further direct the respondents to provide subsequent promotions by taking in to account of the service rendered by the petitioner in the cadre of record clerk with effect from 19.05.1993 and in the cadre of Junior Assistant with effect from 17.05.1999 and in the cadre of Assistant with effect from 30.08.2006 and in the cadre of Deputy Commercial Tax Officer with effect from 25.07.2012 along with back wages and other monetary benefits within a time frame as may be stipulated by this Court.

2.The petitioners were appointed as Record Clerks in the year 1993 vide proceedings, dated 19.05.1993 and 06.09.1993 respectively. The petitioners were designated as Junior Assistant with effect from 17.05.1999 and 27.06.2002 respectively.

3.It is the case of the petitioners is that they are entitled to be appointed as a Junior Assistant with effect from the date of appointment in terms of G.O.(Ms).No.1499, Labour and Employment (Q1) Department, dated 03.08.1999.

4.It is submitted that unaware of the Government Regulation, the petitioners' accepted the employment as a Record Clerk on Compassionate Ground even though both of them had passed S.S.L.C. which was the qualification prescribed for the post of Junior Assistant. In this connection, they referred to para 2(iii) of G.O.(Ms).No.1499, dated 03.08.1989 which reads as under:-

"The appointing authorities under no circumstances should appoint a dependent to a lower post when the dependent possess the qualifications required for the post of Junior Assistant/Typist on the ground of non availability of vacancy in the office or department or the dependents not willing to work in other departments. In such circumstances they should follow the existing procedure of approaching the collector of District for providing a suitable vacancy as suggested in G.O.(Ms).No.1179, P&AR, dated 14.10.1979."

PRAYER in W.P.(MD)No.13355 of 2013: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to revise the petitioner's appointment as junior assistant with effect from his date of appointment (viz 06.09.1993) and further direct the respondents to provide subsequent promotions by taking in to account of the petitioner's service rendered in the cadre of record clerk with effect from 06.09.1993 and in the cadre of junior Assistant with effect from 27.06.2002 and in the cadre of Assistant with effect from 31.05.2008 along with back wages and other monetary benefits within a time frame as may be stipulated by this Court.

(In both W.P.s)

For Petitioner : Mr.J.Pooventhera Rajan

For Respondents : Mr.A.Thiyagarajan
Additional Government Pleader

COMMON ORDER

The petitioners have filed the present writ petitions for issuance of a Writ of Mandamus, directing the respondents to revise the petitioners' appointment as Junior Assistant with effect from their date of appointment (viz..19.05.1993 and 06.09.1993) respectively and further direct the respondents to provide subsequent promotions by taking in to account of the petitioners' service rendered in the cadre of Record Clerk with effect from 19.05.1993 and 06.09.1993 respectively and in the cadre of Junior Assistant with effect from 27.06.2002 and in the cadre of Assistant with effect from 30.08.2006 and 31.05.2008 respectively along with back wages and other monetary benefits within a time frame as may be stipulated by this Court.

5.The learned counsel for the petitioners submitted that under similar circumstances, the two of the employee like the petitioners had filed W.P.(MD)No.69 of 2010 and W.P.(MD)No.1685 of 2010 and had obtained an order dated 22.04.2010 and 06.08.2010 for treating his initial date of appointment as Junior Assistant with consequential relief.

6.Against the order, the respondents also preferred an appeal before the Division Bench which were disposed vide orders, dated 21.02.2011 in W.A.(MD)No.641 of 2010 and W.A.(MD)No.908 of 2010 without backwages. Similar relief was also granted to another employee in W.P.(MD)No.7896 of 2011.

7.As similar reliefs has also been given by implementing G.O.(Ms).No.95, Commercial Tax and Registration (A2) Department, dated 11.07.2013 and G.O.(Ms).No.99, Commercial Tax and Registration (A2) Department, dated 11.07.2013, wherein, Juniors have been given the benefit of being appointed as Junior Assistant from the date of their initial appointment, the petitioners should also be given the same benefit. Accordingly, these Writ Petitions stand allowed. No costs. Consequently, connected Miscellaneous Petition is closed.