

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.K.MISRA  
AND  
THE HONOURABLE MR.JUSTICE R.SUDHAKAR

W.P.No.15675 of 2000

R.Natarajan

.. Petitioner

vs.

1. Union of India, represented by  
the Secretary to Government,  
Law Department, Pondicherry.

2. The Chief Judge, Pondicherry.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of certiorarified mandamus, calling for the records relating to the issue of Memo No.791/JD/A/2000, dated 13.3.2000 of the second respondent and to quash the same and to consequently, direct the respondents to consider the name of the petitioner for promotion to the post of Senior Clerk in Grade-III(a) of the Pondicherry Judicial Subordinate Service with effect from the date on which the petitioner's immediate junior in the post of Junior Clerk was promoted with all consequential benefits.

For petitioner: Mr.Bharatha Chakravarthy

For respondents: Mr.T.Murugesan, Govt.Pleader (Pondicherry)

ORDER

(The Order of the Court was made by P.K.Misra,J.)

Heard the learned counsels appearing for the parties.

2. The present writ petition has been filed by the petitioner challenging the order dated 13.3.2000, passed by the second respondent (Chief Judge, Pondicherry), refusing to grant promotion to the petitioner to the next higher post of Senior Clerk in the Pondicherry Judicial Subordinate Service.

3. The facts giving rise to filing of the present writ petition are as follows :-

The petitioner was initially appointed on 12.4.1977 as Lower Division Clerk in the common cadre of ministerial post under the General Administration Department, Government of Pondicherry. Subsequently, he was deputed to the Pondicherry Judicial Subordinate Service inspite of the fact that he had not passed any typewriting test. He continued as such and was confirmed by order dated 1.3.1982. Thereafter, he was denied promotion even though his juniors got promotion, on the ground that he had not passed the departmental typewriting test. He made several representations for grant of promotion. It was also pointed out that by G.O.Ms.No.30 dated 9.4.1981, passing of such test was dispensed with in respect of appointees appointed prior to 1977. The representation having been rejected by order dated 13.3.2000, the present writ petition was filed. During pendency of such writ petition, by order dated 13.8.2004 he has been promoted as Senior Clerk. Even though the petitioner had now got promotion, his grievance is to the effect that he has to be promoted with effect from the date on which his juniors were promoted. In this connection, it has been submitted by the learned counsel for the petitioner that even though past financial benefits may not be given, the petitioner should be deemed to have been promoted at least from the date on which his immediate junior has been promoted and on that basis, the benefits should be calculated notionally at least from 13.8.2004, if not earlier.

4. A counter affidavit has been filed on behalf of the Government of Pondicherry. In such counter affidavit, it has been admitted that the petitioner was appointed as Lower Division Clerk in the common cadre of ministerial post and he was transferred from Electricity Department to the Judicial Department by order dated 1.3.1979. It is further admitted that the Pondicherry Judicial Subordinate Service was formally constituted only after introduction of Pondicherry Judicial Subordinate Service Rules, 1979, which came into force on 30.6.1979. In the counter affidavit, it has been indicated for recruitment as Clerk in the Pondicherry Judicial Subordinate Service, a person is required to pass typewriting test. It has been further submitted that even though the petitioner had come to the Judicial Department on transfer, even before the Rules were enforced, he should have passed the typewriting test as a condition precedent for the purpose of drawal of increments. It has been further indicated in the counter affidavit that by order No.30 dated 9.4.1981 issued by the General Administration Department granting exemption regarding passing of typewriting test to Lower Division Clerks, who had been appointed prior to 1977, it was stipulated that such person would not be entitled to any arrear increments prior to October, 1976. It is contended in the counter

affidavit that since the petitioner has not passed the typewriting test, he was not eligible to be promoted. In para 25 of the counter affidavit, reference has been made to letter dated 5.7.2004 issued by the Chief Judge Pondicherry, which is to the following effect :-

" ..... Thiru.R.Nadarajan, Junior Clerk, who was originally appointed as Lower Division Clerk under direct recruitment by the General Administration Department, Pondicherry on 17.4.1977 i.e. prior to October, 1977 which is the recruitment year for the Lower Division Clerks and prior to the coming into force of the Pondicherry Judicial Subordinate Service Rules, 1979, is deemed to have been granted exemption from passing departmental test in Typewriting with effect from 09.04.1981 as per order No.30, dt.09.04.1981 read with Memorandum No.3-10/79-GAD(Exam), dt.29.04.1981 of the General Administration Department. However he is not entitled to any arrears of increment for the period prior to 09.04.1981, the date of exemption."

5. Having heard the learned counsels appearing for the parties and having gone through various materials on record including the letter of the Chief Judge, Pondicherry, which has been extracted above, we are of the view that there was no justification for not promoting the petitioner earlier. The petitioner had already been confirmed under the Pondicherry Judicial Subordinate Service notwithstanding the fact that he had not passed any typewriting test. The Rules nowhere contemplate that for getting promotion, a person is required to pass typewriting test. Moreover, the Chief Judge having issued letter dated 5.7.2004 to the effect that the present petitioner is deemed to have been granted exemption in passing typewriting test with effect from 9.4.1989, there cannot be any embargo for considering the case of the petitioner for promotion from the earlier date on which his juniors were promoted.

6. The submission made by the learned counsel for the petitioner to the effect that at least such promotion should be deemed to be given with effect from the date on which his immediate junior was promoted without giving financial benefit for the past period, appears to be a fair submission. As a matter of fact, the learned counsel for the respondents has no serious objection to such submission.

7. Having regard to all these aspects, we direct that the petitioner shall be deemed to have been notionally promoted with effect from the date on which his immediate junior was promoted and

on that basis, the increments shall be calculated notionally, but no financial benefit would be made available prior to the date of actual promotion, that is to say, 13.8.2004 and on the basis of such notional increment, the pay scale of the petitioner in the promoted post shall be re-fixed and the actual benefit would be made available with effect from 13.8.2004. This order may be carried out within a period of four months from the date of communication of this order. The writ petition is disposed of accordingly. No costs.

30.1.2006

cs/dpk

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government,  
Union of India,  
Law Department, Pondicherry.

2. The Chief Judge, Pondicherry.

1 cc to Mr.D.Bharatha Chakravarthy, Advocate, SR.4092

1 cc to Senior Government Pleader-cum-Senior Public Prosecutor for  
Pondicherry, SR.3528

km (co)

dv/27.3.06

W.P.No.15675 of 2000

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