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W.A.No.1058 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

W.A.No.1058 of 2023
and
C.M.P.No.10566 of 2023

1.The Secretary to Government,
Rural Development & Panchayat Raj Department,
Secretariat, Chennai – 600 009.

2.The Director of Rural Development & Panchayat Raj,
Panagal Building,
Saidapet, Chennai – 600 015.

3.The District Collector,
Villupuram District,
Villupuram – 605 602.

.. Appellants

VS

T.Sreenivasan

.. Respondent

Prayer : Writ Appeal filed under Clause 15 of Letters Patent against order dated 30.06.2021 made in W.P.No.28886 of 2019.



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For Appellants : Ms.Yamuna Devi
Special Government Pleader

For Respondent : Ms.Dakshayani Reddy,
Senior Counsel
For M/s. C.S.Associates

JUDGMENT

(Delivered by Dr. ANITA SUMANTH.,J)

The State is in appeal as against the order of the learned single Judge dated 30.06.2021. We have heard Mrs.Yamuna Devi, learned Special Government Pleader for the appellants and Ms.Dakshayani Reddy, learned Senior Counsel appearing for M/s. C.S.Associates, learned counsel for the respondent.

2. The facts giving rise to the filing of the Writ Petition by the respondent/Writ Petitioner (hereinafter referred to as ‘respondent’/’writ petitioner’/’petitioner’) are as follows:

The petitioner had joined as Typist in the Rural Development and Panchayat Raj Department in 1972. He moved through the ranks and on 21.06.2001, was posted on promotion as Deputy Block Development Officer at the Thiruvallur Collectorate. He was further promoted to the post of Block Development Officer on 08.01.2003 and posted in



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Villupuram block, transferred to the Poonamallee block on 07.06.2007.

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3. The crucial date for drawing of panel for the Rural Development and Panchayat Raj Department is 01.03.2011. There were some delays in the preparation of the seniority list on account of the litigation that had been pending before the Tamil Nadu Administrative Tribunal as well as the High Court at the instance of various employees, and ultimately when the inter se seniority list in the cadre of Block Development Officer (BDO) was settled for promotion to the post of Assistant Director (AD), the Writ Petitioner was accorded the rank 2973A.

4. To be noted, that each district comprises one unit upto the level of BDOs and thereafter the cadres are integrated and drawn into a unified State cadre for the subsequent posts from AD onwards.

5. Based on the seniority list published on 23.09.2009, the Writ Petitioner was promoted to the post of AD with effect from 12.03.2010 and assumed charge. It was only upon coming to join the post that the Writ Petitioner came to aware of certain discrepancies in promotion as one of his juniors had been accorded promotion in the cadre of AD in 2007 itself.

6. He thus sought notional promotion from that date being conscious



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of the Rule that promotion for a period when the candidate has not worked in that post can, at best, only be notional. A representation was made on 06.05.2010 and the District Collector, Villupuram had recommended the same by way of a communication dated 17.06.2010.

7. Since no orders had been passed on his representation, the petitioner approached this Court in W.P.No.155 of 2013 seeking the prayer of inclusion of name in the panel for 2011-12 for the post of Joint Director (JD). His prayer was based on the fact that had he been promoted as AD from 2007 on par with his junior, his name would have found inclusion in the panel 2011-12 for the post of JD. Ultimately and pending W.P.No.155 of 2013, the District Collector, Villupuram recommended his name for inclusion for the post of JD by way of proceedings dated 14.08.2014.

8. Based on those proceedings, W.P.No.155 of 2013 came to be closed on 29.08.2018. The petitioner was aggrieved with the fact that there was no progress made in the matter even after recommendation of the District Collector and had filed a Writ Petition in W.P.No.27621 of 2016 seeking a mandamus directing the respondents to pass orders on the proposal of the District Collector for inclusion of his name in the list for



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appointment in the post of JD.

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9. The Writ Petition was ordered on 14.12.2018 directing the respondents to dispose the representation within a time frame fixed by the Court. The representation had come to be rejected by order dated 22.06.2019 on the ground that at the time of drawal of the panel for JD in the year 2011-12, the question of considering the Writ Petitioner for promotion did not arise as he had superannuated on 30.06.2011. That order had come to be challenged by way of W.P.No.28886 of 2019.

10. After completion of pleadings, the Writ Court has found it fit to allow the Writ Petition finding that the order of rejection had been made on very flimsy grounds. The Court finds that there is no bar on the part of the respondents therein to have considered the candidature of an employee who had superannuated subsequent to the crucial date.

11. To reiterate again, the crucial date in this case falls on 01.03.2011 on which date, the Writ Petitioner was holding the post of AD. The Court also finds that there had been a substantial delay on the part of the respondents in deciding the representation of the Writ Petitioner and hence, such delay cannot enure to his detriment. Ultimately, the respondents were directed to re-consider his request in light of the



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observations made in favour of the Writ Petitioner. It is as against that order that the State is in Writ Appeal.

12. The submissions of the learned Special Government Pleader are to the effect that the learned Judge erred in granting relief to the Writ Petitioner as he had already superannuated as on the date when G.O. dated 10.02.2014 had been issued. She further argues that the Writ Petitioner had already obtained relief by way of inclusion of his name in the panel for AD with retrospective effect from 2007-08 and there could be no further benefit that can be sought by him.

13. She further argues that the present attempt of the Writ Petitioner to seek one more promotion as JD when his services as AD were itself only for a very limited period, is contrary to the Rules.

14. In this connection, she draws attention to an additional affidavit filed on 03.01.2024 where the State relies on G.O.Ms.No.23, Rural Development (E1) Department dated 05.02.1998 prescribing a special rule for appointment to the post of Joint Director of Rural Development. Those Rules require that the candidate aspiring for the post of JD should have rendered services in the category of Divisional Development Officer for a period not less than 2 years. The Writ Petitioner has admittedly not



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served the required period and hence the question of his aspiring to the post of JD does not arise.

15. She relies on a judgment of the Supreme Court in *Government of West Bengal and ors. V. Dr.Amal Satpathi & Others* (2024 INSC 906) for the proposition that promotion to a higher post must be based only on the actual rendering of service in that post. In the absence of actual service, notional financial benefits of the promotional post may not be sought post the retirement of the candidate.

16. Ms.Dakshayani Reddy would commence her submissions relying on Rule 27(17) of the Fundamental Rules of the Tamil Nadu Government, in terms of which, a candidate is permitted to receive the benefit of notional benefits in respect of promotions accorded to him post retirement after due consideration of his case.

17. She would submit that instances are galore when promotions are refused on account of the pendency of charges and it is only subsequently, and many a time post retirement of the candidate, that the charge is dropped, after due enquiry.

18. In such circumstances, the aforesaid Rule and the proviso thereunder enables the State to grant the relief of promotion with notional



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benefits retrospectively even in circumstances when the candidate has retired.

19. Learned Senior Counsel would emphasize that in the present case, the elapse of time has not been on account of any charge or lapse in service but solely on account of the litigation that had been pending in other cases at the relevant point in time and also delays on the part of the State in drawing of the seniority list.

20. In such circumstances, it would be wholly incorrect and unfair of the State to apply such delays to the detriment of the Writ Petitioner. In the context of the insufficiency of service in the post of AD, she relies on two instances, one, G.O.82 Rural Development and Panchayat (E1) Department dated 13.02.2012 and the second, G.O.209 Rural Development and Panchayat (E1) Department dated 16.05.2013, where, invoking Rule 58 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, which is in pari materia with Rule 48 of the Tamil Nadu State and Subordinate Service Rules, the State has been persuaded to, in identical conditions as in the present case, waive the requirement of actual service to enable those candidates to obtain notional benefits retrospectively on promotion, post their dates of superannuation.



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21. Having heard the rival contentions carefully, we are of the view that the State has not made out a case for intervention in order dated 30.06.2021 of the learned Judge. The facts as well as the dates and sequence of events are admitted and the detailed reference to the same in the paragraphs supra, is not repeated again in the interests of brevity. However, to set the discussion and the conclusion in context, we refer very briefly to the critical dates alone.

22. The date of drawal of panel is admittedly 01.03.2011. As on that date, the Writ Petitioner was in service as Assistant Director, having been appointed to that post on 01.03.2010. His date of superannuation is 30.06.2011. He thus retired as AD with service of one year and 3 months. Admittedly, he falls short of service requirement as far as the post of JD is concerned, by a period of 9 months.

23. The inadequacy of service as a pre-qualification for the post of JD was never raised as an argument before the Writ Court. It is for the first time before us that this argument has been raised by way of an additional affidavit, as the counter filed before the Writ Court does not find reference to this fact at all.

24. However, we find that the Government Order on the basis of



which this argument has been raised is dated 05.02.1998 which was prevalent as on the date when the Writ order was passed and when the relevant events have transpired. We thus do not eschew this contention on technical grounds, but deal with same on the merits thereof.

25. Reference to Rule 27(17) of the Fundamental Rules of the Tamil Nadu Government is well placed. The Rule and the Explanation thereunder are extracted below:

Rule 27.- Authorities competent to sanction premature increments and rectify pay anomalies:

(17) In case where a Government servant has been overlooked for promotion/appointment to the next higher post but subsequently promoted/appointed to that higher post after restoration of his original seniority on appeal, his pay shall be fixed on the date of assumption of charge in the higher post on par with the pay of his junior, provided he has drawn the same rate of pay as his junior in the lower post from time to time. If he has not drawn the same rate of pay as his junior in the lower post, his pay shall be fixed, on the date of assumption of charge, at the stage at which he would have drawn pay on that date had he been promoted/appointed to the higher post along with his junior. In cases where seniority has been restored on or after 19th September, 1981, arrears of pay and allowance consequent of fixation of pay shall be admissible w.e.f. the date of assumption of charge in the higher post; in cases where seniority has been restored prior to 19th September, 1981, arrears shall be admissible only w.e.f. the above date.

Provided that in case of Government servants whose names were deferred for inclusion in the panel for promotion to higher post due to pendency of charges, but



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subsequently included in the same panel on exoneration of the charges after the date of their retirement on superannuation on appeal or review, their pay shall be fixed notionally on the date of their retirement on superannuation at the stage at which they would have drawn, had they been promoted or appointed to the higher post along with their junior for the purpose of pension and other monetary terminal benefits.

26. The Fundamental Rules of the Tamil Nadu Government governing the Writ Petitioner would thus enable the State to consider notional promotion in respect of a post on promotion even subsequent to the retirement of the candidate.

27. This position is very clear from a reading of Rule 27(17) and the Explanation thereunder, extracted above. In fact, the proviso states that the reasoning/basis of that Rule is the pendency of charges at the time of retirement which are ultimately dropped post enquiry and such benefit would all the more be applicable in a case such as the present, where there had been no pending charges.

28. As on the date of his retirement, the non-consideration of his promotion as JD was solely on account of the pendency of the representation of the Writ Petitioner, inordinately from 2008 onwards. It is only after the filing of W.P.No.155 of 2013 that ultimately G.O.(D)



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No.69, Rural Development and Panchayat Raj (E1) Department dated 10.02.2014 was issued, revising his seniority on par with his junior from the year 2007-08 onwards.

29. In fact, the only effect of this Government Order was to grant promotion to the post of AD from 2007-08 onwards, thus giving the benefit of 3 years in the post of AD between 2007-08 and 2010 when the petitioner had even in the normal course been promoted to the post of AD.

Had this been done in time, instead of belatedly in 2014, the petitioner would have been very much in service even when the panel was drawn for 2011-12 for the post of JD.

30. As far as the judgment of the Supreme Court in *Dr.Amal Satpathi* (supra) is concerned, the observations and conclusions therein have been rendered in the context of Rule 54(1)(a) of the West Bengal Service Rules, which is extracted below:

“Pay on Officiating Appointment- 54(I)(a): Subject to the provisions of Chapter VII, a Government employee who is appointed to officiate in a post shall not draw pay higher than* “his substantitive pay” in respect of a permanent post, other than a tenure post, unless the officiating appointment involves the asumption of duties and responsibilities of greater importance than those attaching to the post, other than a tenure post, on which he holds a lien, or would hold a lien had it not been suspended:



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31. This may be contrasted with Rule 27(17) of the Fundamental Rules of the Tamil Nadu Government, extracted supra.

32. A comparison of the two would make it more than amply clear that there is difference in approach by the State of Tamil Nadu insofar as the Fundamental Rules of the State enure to the benefit of the Writ Petitioner. There is hence no necessity to refer to the judgment in *Dr.Amal Satpathi* (supra), since the Rule dealt with therein is different.

33. The only thing that remains is to get over the admitted position that the Writ Petitioner has not put in the required service of two years as per the Special Rules under G.O.Ms.No.23, Rural Development (E1) Department dated 05.02.1998, extracted below:

<i>Joint Director of Rural Development</i>	<i>By Promotion</i>	<i>(1) Must have rendered service in the category of Divisional Development Officer for a period not less than two years: Provided that no Divisional Development Officer (now Assistant Director) shall ordinarily be promoted as a Joint Director of Rural Development unless he has service for a period of not less than one year after such promotion.</i>
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34. However, as rightly pointed out, there have been instances



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where the State in consideration of the cases of those aspirants have waived the requirement of 2 years service enabling the candidates to obtain the post on promotion even without the requisite qualificatory service.

35. Reference may be made to the relevant portions of G.O.82 Rural Development and Panchayat (E1) Department dated 13.02.2012 and G.O.209 Rural Development and Panchayat (E1) Department dated 16.05.2013. The relevant portions of the Government Orders are extracted below:

G.O. dated 13.02.2012:

சுருக்கம்

பணியமைப்பு - ஊரக வளர்ச்சி மற்றும் ஊராட்சித் துறை - காஞ்சிபுரம் மாவட்டம் - வட்டார வளர்ச்சி அலுவலராக பணியாற்றி ஓய்வு பெற்ற திரு டி.ஏகநாத நாயுடு அவர்களின் பெயரை 2008-2009ம் ஆண்டு ஊரக வளர்ச்சி இணை இயக்குனர் தற்காலிக தேர்ந்தோர் பெயர் பட்டியலில் சேர்த்தல்- ஆணை வெளியிடப்படுகிறது.

ஊரக வளர்ச்சி மற்றும் ஊராட்சி (இ1) துறை
அரசாணை(ப)எண்.82 நாள்: 13.02.2012

படிக்கப்பட்டவை:

1.அரசாணை (4டி) எண்.4, ஊரக வளர்ச்சி மற்றும் ஊராட்சி (இ1) துறை, நாள் : 29.12.2008.



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2. ஊரக வளர்ச்சி மற்றும் ஊராட்சி ஆணையரின் கடித எண் 19674/2011 ஜி.இ.1.1, நாள் 29.06.2011.

ஆணை:

4. ஊரக வளர்ச்சி மற்றும் ஊராட்சி ஆணையரின் கருத்துருவினை அரசு கவனமாக பரிசீலனை செய்து, தற்போது தனியரது பெயரை இணை இயக்குநர் தேர்ந்தோர் பெயர் பட்டியலில் சேர்ப்பது என்பது அவரது ஓய்வூதிய பயனுக்காக மட்டுமே அன்றி பணிப் பயனுக்காக (SERVICE BENEFIT) அல்ல என்பதாலும், நீதிமன்ற ஆணையின்படி செயல்படுத்த வேண்டியிருப்பதாலும் அதனை ஒரு சிறப்பு நிகழ்வாக கருதி, அரசாணை (4ப) எண்.4, ஊரக வளர்ச்சி மற்றும் ஊராட்சி (இ1) துறை நாள் 29-12-2008ல் வெளியிடப்பட்ட 2008-09ம் ஆண்டுக்கான ஊரக வளர்ச்சி இணை இயக்குநர் தற்காலிக தேர்ந்தோர் பெயர் பட்டியலில் திரு.டி.ஏகநாத நாயுடு என்பவரின் பெயரினை திரு.பி.கலைவாணன் (வரிசை எண்.4) என்பவருக்கு கீழும் திருமதி சி.சரோஜா (வரிசை எண்.4) என்பவருக்கு மேலும் வரிசை எண்.4A ஆக சேர்த்து ஆணையிடப்படுகிறது.

5. தமிழ்நாடு ஊரக வளர்ச்சி பணி சிறப்பு விதி 3ன் படி இணை இயக்குநர் நிலை பதவி உயர்வுக்கு உதவி இயக்குநர் நிலையில் இரண்டு ஆண்டு காலம் பணி புரிந்திருக்க வேண்டும். 2008-2009 ஆம் ஆண்டுக்கான இணை இயக்குநர் தேர்ந்தோர் பெயர் பட்டியலில் அறுதி இட்ட நாளான 01-03-2008 அன்று தனிநபர் அத்தகுதியை நிறைவு செய்யாததினால் 1987 ஆம் ஆண்டு தமிழ்நாடு பணிகள் நடைமுறை நூல் தொகுதி ஒன்றில் பகுதி இரண்டில் உள்ள தமிழ்நாடு மாநில மற்றும் சாரநிலைப் பணிகள் பொதுவிதிகளின் விதி 48கீழ் வழங்கப்பட்டுள்ள அதிகாரங்களின் கீழ் தமிழ்நாடு ஆளுநர் அவர்கள் தனியர் பொருட்டு ஊரக வளர்ச்சி பணி சிறப்பு விதிகளின் விதி 3ஐ தளர்த்தி ஆணையிடுகிறார்.

G.O. dated 16.05.2013:



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சுருக்கம்

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பணியமைப்பு - ஊரக வளர்ச்சி மற்றும் ஊராட்சித்துறை விருதுநகர் மாவட்டம் - திரு சி வரதராஜன், மாவட்ட ஆட்சியர் நேர்முக உதவியாளர் (ஓய்வு) என்பவரின் பெயரினை 2010 - 11ஆம் ஆண்டு ஊரக வளர்ச்சி இணை இயக்குனர் தற்காலிக தேர்ந்தோர் பெயர் பட்டியலில் (First List) சேர்த்து ஆணை வெளியிடப்படுகிறது.

ஊரக வளர்ச்சி மற்றும் ஊராட்சி (இ1) துறை
ஆரசாணை(ப)எண்.209 நாள்: 16.05.2013

படிக்கப்பட்டவை

- 1.அரசாணை (4ப) எண்.3, ஊரக வளர்ச்சி மற்றும் ஊராட்சி (இ1) துறை, நாள் : 06.07.2010.
- 2.ஊரக வளர்ச்சி மற்றும் ஊராட்சி ஆணையர் கடிதம் ந.க.24579/2011/ ஜி.இ.1,1, நாள்: 06.07.2010.

ஆணை:

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4.மேலும் இளையவருக்கு இணையாகத் தனியாரது பெயர் 2010-11ம் ஆண்டு ஊரக வளர்ச்சி இணை இயக்குனர் தற்காலிகத் தேர்ந்தோர் பெயர் பட்டியலில் சேர்க்கப்பட்டதாலும், வயது முதிர்வின் காரணமாக தனியார் பணியிலிருந்து ஓய்வு பெற்றுவிட்டதாலும், தனியார் முழுத்தகுதி பெற்றிருப்பின், துனியரின் இளையவர் பதவி உயர்வில் ஊரக வளர்ச்சி இணை இயக்குனராகப் பணியாற்ற நாள் முதல் (23.07.2010 மு.ப.) அடிப்படை விதி 27-ன் கீழுள்ள முறைமை விதி 17ன் கீழ் கருத்தியலாக ஊதியம் நிர்ணயம் செய்து, தனியார் ஓய்வு பெற்ற நாள் முதல் (31.10.2011) பணப்பயன் வழங்குமாறு ஊரக வளர்ச்சி மற்றும் ஊராட்சி ஆணையர் அறிவுறுத்தப்படுகிறார்.

36. We are in agreement with the order of the Writ Court that the



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delay that has transpired on the part of the State to deal with the representation of the Writ Petitioner is what has stood in the way of a proper consideration of his promotion at the relevant point in time. The delay has also been occasioned by virtue of the failure to prepare the promotion panel in time.

37. Such administrative delays cannot impact the promotional prospects of an employee such as the Writ Petitioner. We agree with the conclusion of the Writ Court that the mere fact that, at the time of drawal of panel in the year 2011-12 the petitioner had retired from service on 30.06.2011, cannot be a reason for rejecting his claim.

38. The petitioner in the writ affidavit has categorically averred that had his request for promotion to AD from the year 2007-08 been considered, as it ought to have, his name would have figured between two candidates, ie., Mohanraj and M.Ammaiyappan who were placed at serial numbers 10 and 11 respectively. Since there were 22 vacancies as on the critical date, the petitioner would have been entitled to have been considered.

39. The vacancy position and the positioning of the petitioner between Mohanraj and M.Ammaiyappan has not been disputed by the



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respondents/appellants in their counter filed in the Writ Petition and neither does the learned Special Government Pleader counter the same now before us.

40. In all, we find no merit whatsoever in the present Writ Appeal and the same is dismissed. No costs. Connected Miscellaneous Petition is also dismissed.

[A.S.M., J] [G.A.M., J]
02.12.2024

Index:Yes
Speaking Order
Neutral Citation:Yes
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DR. ANITA SUMANTH.,J.
and
G. ARUL MURUGAN.,J.

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02.12.2024