

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2015

CORAM:

THE HONOURABLE Mr.JUSTICE.T.RAJA

W.P.No.4538 of 2007 (T)
(O.A.No.8109 of 2001)

K.Subramanian

... Petitioner

Vs.

1.The Director of Rural Development
Saidapet
Chennai - 15

2.The District Collector
Thiruvallur

3.The Commissioner
Kadambattur Panchayat Union
Kadambattur

4.J.Shekar
Pallippattu Panchayat Union
Thiruvallur Taluk

.... Respondents

This petition is came to be numbered by transfer of O.A.No.8109 of 2001 from the file of Tamil Nadu Administrative Tribunal praying this Court to call for the records and set aside the order of promotion in Se.mu.ka.No.33632/2001/pa.a4 dated 4.12.2001 passed by the second respondent and promote the applicant as Office Assistant.

For Petitioner : Mr.R.Karunagaran

For Respondents : Mr.R.Govindasamy
Additional Government Pleader for R1 to R3

No Appearance for R4.

ORDER

Mr.K.Subramanian, challenging the impugned order passed by the second respondent, the District Collector, Thiruvallur in

Se.mu.ka.No.33632/2001/pa.a4 dated 04.12.2001 giving promotion in favour of the four respondent J.Shekar, filed O.A.No.8109 of 2001 stating that the second respondent in order to facilitate the fourth respondent, who is very junior to the petitioner, has given promotion and transferred to Kadambattur Panchayat Union. Further he had stated that the petitioner, who was appointed as night watchman on 02.11.1978 at Kadambattur Panchayat Union, has rendered 24 years unblemished service and even after being regularized by order dated 02.11.1988, the petitioner has been denied promotion inspite of his repeated representations. Again contending that the fourth respondent being a Junior, joined duty only in 1990 on compassionate ground, overlooking the petitioner, has been given promotion and transferred to Kadambattur Panchayat Union. Pointing out to this Court G.O.Ms.No.114, Rural Development Department E-5 dated 04.05.2000 giving power to the second respondent to promote the fourth respondent, the learned counsel submitted that if the said Government Order permits the second respondent to promote the fourth respondent, the same yardstick should be applied to the petitioner for his promotion as Office Assistant. Therefore, when the fourth respondent, who was appointed on compassionate ground in the year 1990 as Office Assistant was promoted, there cannot be any justification for the second respondent District Collector to refuse a similar promotion to the petitioner when he has already served as night watchman for about 24 long years. He has also placed on record G.O.Ms. No.210, Rural Development Department dated 14.10.1992 to say that when a Collector of Thanjavur District has sent a proposal to ratify his action in appointing Thiru.V.Viswanathan as Office Assistant without the required educational qualification in Valangaiman Panchayat Union, the Director of Rural development has recommended and sent a proposal to the Government and after careful examination, the Government accepted the recommendation of the Director of Rural Development granting relaxation with regard to the educational qualification and appointed the said V.Viswanathan as regular Office Assistant in Valangaiman Panchayat Union, Thanjavur District. When the said V.Viswanathan was having only 6th std., as educational qualification, the petitioner, who failed in 10th std., should have been considered for promotion to the post of Office Assistant.

2. A detailed reply has been filed by the third respondent. The learned Additional Government Pleader appearing for the respondent would submit that the writ petition is liable to be dismissed as the petitioner has misplaced his prayer while comparing his case with the fourth respondent. In fact, J.Sekar, the fourth respondent was not appointed as alleged by the petitioner as night watchman and he was directly appointed as Office Assistant and subsequently transferred from one place to the petitioner's place. Therefore, the fourth respondent was not given any promotion. Secondly, after the petitioner was appointed as night watchman on 02.11.1978 at Kadambattur Panchayat Union, his services were regularized by the

District Collector, Thiruvallur, the second respondent herein, by proceedings in R.C.No.14101/97/PA3 dated 05.11.1997 and the regularization order of the Collector was ratified by the Government in G.O.No.(2D) 67, R.D (ES) Dept., dated 12.10.2006 and he has been working as night watchman till his superannuation on 31.01.2009. He would further submit that when the petitioner, who was working as night watchman from the date of his appointment namely 02.11.1978 and after his regularization with effect from 02.11.1988 on completion of his 10 years of service, cannot be given promotion as claimed by him. That apart, there was no such person appointed after the petitioner as night watchman was given any promotion and therefore, the petitioner cannot have any grievance. It is the further submission of the learned Additional Government pleader that G.O.Ms.No.210, Rural Development Department dated 14.10.92 accepting the proposal of the Director of Rural Development recommending the proposal of the Thanjavur District Collector appointing one V.Viswanathan as Office Assistant is nothing to do with the prayer made by the petitioner. In fact, Mr.Viswanathan originally worked as night watchman in the Valangaiman Panchayat Union from 01.02.1979 to 10.05.1981 and subsequently, he was promoted as Office Assistant from 11.05.2001 to 30.11.2002 and reverted as night watchman from 01.12.1982 to 02.06.1987, and again he was promoted as office Assistant from 03.06.1987. As the said Viswanathan has passed only 6th standard, the District Collector, Thanjavur after appointing him as Office Assistant, requested the Director of Rural Development to ratify his action in appointing the said Viswanathan as Office Assistant as he was not having required educational qualification. Therefore, the Director of Rural Development recommended his proposal and that was accepted by the Government and granted relaxation in favour of V.Viswanathan to function regularly as Office Assistant in Valangaiman Panchayat Union.

3. As no rule whatsoever has been produced by the petitioner in support of his prayer for promotion and as no junior as averred by the petitioner was promoted in Thiruvallur District after the petitioner was appointed as night watchman, the prayer for promotion in comparison with the fourth respondent is untenable. Admittedly, in the present case, the fourth respondent was appointed directly as Office Assistant on compassionate ground in the year 1990. When the fourth respondent was appointed directly as Office Assistant, the contention of the petitioner that the fourth respondent was given promotion to the post of Office Assistant from the post of night watchman is liable to be rejected. That apart, the petitioner, after being regularized by the order of the District Collector with effect from 02.11.1988 in the cadre of night watchman got the benefit of ratification by the Government in G.O.No.(2D) 67, R.D (ES) Dept., dated 12.10.2006 and after serving till 31.01.2009, retired from service. Therefore, the petitioner is expected to place on record any rule or provision to show that the respondent having taken work for 24 long years from the petitioner in the post of night watchman

has violated the rule in not giving promotion. In the absence thereof, this Court is not able to appreciate the prayer made by the petitioner in his favour.

4. Accordingly, the writ petition is dismissed. No costs.

gpa

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1.The Director of Rural Development
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Chennai - 15

2.The District Collector
Thiruvallur

3.The Commissioner
Kadambattur Panchayat Union
Kadambattur

4.The Commissioner,
Pallippattu Panchayat Union
Thiruvallur Taluk

+ 1 cc to Mr.R.Karunakaran, Advocate SR 12837

+ 1 cc to the Government Pleader SR 12612

jp(co)
prk25/5

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