

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2015

CORAM:

THE HON'BLE MR.JUSTICE D. HARIPARANTHAMAN

W.P.Nos.3435 to 3441 of 2015
and M.P.Nos.1 to 1 of 2015

R.K.Palanichamy	..	Petitioner in W.P.3435/2015
K.Rajendran	..	Petitioner in W.P.3436/2015
P.Arumugam	..	Petitioner in W.P.3437/2015
D.Jasodha	..	Petitioner in W.P.3438/2015
S.Vijayalakshmi	..	Petitioner in W.P.3439/2015
D.Jeganathan	..	Petitioner in W.P.3440/2015
V.Vijayan	..	Petitioner in W.P.3441/2015

vs.

The District Collector (PD Section)
Tirupur District, Tirupur. .. Respondent in all WPs

PRAYER in all WPs : Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus to call for the records of the respondent bearing Na.Ka.No.6479/2014-7/V2, dated 19.12.2014 confirming the order bearing Na.Ka.N.6479/2014/V2, dated 15.11.2014 and quash the same insofar it relates to the petitioner and further direct the respondent to include the name of the petitioner in the list of Assistants for the year 2012-2013 in appropriate place based on his feeder category seniority viz., Junior Assistant with all consequential benefits such as retrospective promotion, arrears of pay, etc.,

For Petitioner in all	:	Mr.V.Suthakar
the petitions		
For Respondent in	:	Mrs.M.E.Rani Selvam
all the petitions		Addl. Govt. Pleader

COMMON ORDER

Mrs.M.E.Rani Selvam, learned Additional Government Pleader takes notice for the respondent.

2. The petitioners were appointed as Junior Assistants in the Rural Welfare Department pursuant to the selection by the Tamil Nadu Public Services Commission. All of them came in the zone of consideration for promotion to the post of Assistants for the year 2012-2013. But the names of the petitioners were not included in the

panel of Junior Assistants fit for promotion to the post of Assistant, while the names of the juniors of the petitioners were included. Hence, they are now before this Court seeking for a direction to the respondent to include their names in the panel at an appropriate place and to promote them as Assistants from the date on which their immediate juniors were promoted.

3. The crucial date for including the names of the Junior Assistants in the panel fit for promotion to the post of Assistant for the year 2012-13 is 15.03.2012. Before 15.03.2012, a Junior Assistant should have completed six weeks training at Bhavani Sagar. Admittedly, these petitioners have completed the said training on 18.03.2012. This is one of the reasons for non-inclusion of the names of the petitioners in the panel for the year 2012-13.

4. The next reason for not including the names of the petitioners in the promotion panel is that the probation of the petitioners were declared by the District Collector, Tirrupur, on different dates after 15.03.2012. Since the declaration is made by the District Collector in June 2012, as stated above, the names of the petitioners were not included in the panel.

5. Counter-affidavits are filed by the respondent refuting the allegations of the petitioners.

6. Heard both sides.

7. The aforesaid facts are not in dispute. It is true that for inclusion of the name of a Junior Assistant in the panel for promotion to the post of Assistant in the Rural Development and Panchayat Raj Department, the Government servant should have undergone six weeks training at Bhavani Sagar Institute before the crucial date. It is not the case of the respondent that the petitioners were sent for Bhavani Sagar Training, but the petitioners refused to go for citing one reason or the other. If the Department itself has not sent the Government servant for Bhavani Sagar training, the Government employee should not be blamed for not undergoing the training before the cut off date, namely, 15.03.2012.

8. In fact, this Court in various decisions held that service qualification such as undergoing a training, that is prescribed in the Rules for inclusion of a Government servant in the panel, could not be placed / used against the Government servant, if the fault is not on the side of the Government servant.

9. The two judgments relied on by the learned counsel for the petitioner are directly on the point.

10. This Court in S.Krishnakumar V. The State of Tamil Nadu, rep. by its Secretary, Home Department, Fort St. George, Chennai - 9

and others, (W.P.No.7255 of 2007, dated 04.08.2011), while dealing with a similar issue, in paragraph 8 held as hereunder :

"8. Applying the said judgment, particularly, the principles stating that the petitioner cannot be blamed for not undergoing the training in Bhavani Sagar, the non-inclusion of the petitioner's name in the panel for promotion to the post of Assistant for the year 2005-2006 and denying promotion to the petitioner as Assistant on the date when his juniors were given promotion cannot be justified. However, taking note of the subsequent promotion given to the petitioner, the petitioner shall be notionally promoted for the post of Assistant from the date of promotion given to the petitioner's juniors from 15.12.2005."

11. I had an occasion to deal with a similar issue in P.Suresh Kumar and Others V. The State of Tamil Nadu, rep. by its Secretary to Government, Food, Co-operation and Consumer Protection Department, Chennai and Others, (W.P.No.13852 of 2013, dated 05.06.2013) and held in paragraph 4 of the judgment as hereunder :

"4. I am in full agreement with the contentions raised by the petitioners that they are not at fault for not completing Bhavani Sagar training, when their juniors completed the training. Hence, they cannot be blamed for the same. Now, they were sent to Bhavani Sagar Training belatedly and they have completed the training during 04.01.2012 to 20.02.2012."

12. Likewise, the District Collector issued orders on various dates during June 2012 declaring the probation of the petitioners retrospectively that fell prior to 15.03.2012. It is a different matter that if the declaration of probation is with effect from the date subsequent to the cut off date, namely, 15.03.2012. Admittedly, the declaration of the probation of the petitioners were made with effect from the date which is prior to 15.03.2012.

13. In these circumstances, if the petitioners are not included in the panel at the appropriate place, the same would cause great prejudice to the petitioners in the entire career and the juniors would have a march over them in all the future posts. Hence, I am inclined to issue direction as sought for.

14. At this juncture, the learned counsel for the petitioners submitted that the promotion panel to the post of Deputy Block Development Officer from the post of Assistant is now prepared and service qualification for the said post is one year service as Assistant and one year service as Rural Welfare Officer Grade I and the names of the petitioners may also be included in the said panel.

15. I make it clear that since in view of the order passed by this Court in these writ petitions, the petitioners are to be promoted as Assistants from the date of their juniors were promoted. Applying the same principle, the service qualification of one year in Assistant post and one year in Rural Welfare Officer Grade I post shall also be waived in the case of the petitioners and they shall be promoted by including their names in the panel of Assistants fit for promotion to the post of Deputy Block Development Officer without insisting the service qualification, since it is not the fault of the petitioners in not serving as Assistant or Rural Welfare Officer Grade I for one year.

16. Accordingly, these writ petitions are allowed and a direction is issued to the respondent to include the names of the petitioners at the appropriate place in the panel of Junior Assistants of the year 2012-13 for promotion to the post of Assistant and also to promote the petitioners from the date on which their immediate juniors were promoted and also to include their names in the panel of Assistants fit for promotion to the post of Deputy Block Development Officer, if there is no other legal impediment, without insisting service qualification of one year service as Assistant and one year service as Rural Welfare Officer Grade I, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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To

The District Collector (PD Section)
Tirupur District, Tirupur.

7 cc to Mr.V.Suthakar , Advocate Sr.No.29187

1 cc to Government Pleader Sr.No.28979 & 28985

W.P.Nos.3435 to 3441 of 2015

rj (co)
pmk.3.8.2015