

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2015

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.P.No.35176 of 2015

And

M.P.No.1 of 2015

M.Abulkalam Azad

... Petitioner

Vs.

- 1 The Special Commissioner/
Secretary to Government,
Rural Development and Panchayat Raj Department,
Fort St.George,
Chennai-600 009.
 - 2 The District Collector,
Dharmapuri District,
Dharmapuri.
 - 3 The Personal Assistant to District Collector (Development),
Dharmapuri District,
Dharmapuri.
 - 4 S.V.Kamala
- ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to grant the petitioner with promotion to the post of Assistant on par with the petitioners immediate junior the fourth respondent by taking into consideration of the fact that the petitioners services were regularized with effect from the initial date of appointment i.e. 12.05.1999 vide G.O.Ms.No.8, Rural Development and Panchayat Raj (E3) Department, dated 03.02.2011 and that the petitioner's probation was declared vide proceedings of the third respondent in Na.Ka.No.41635/2010/K3 dated 28.02.2011 with effect from 31.12.2001 afternoon and accordingly further direct the respondents to consequentially promote the petitioner to the post of Deputy Block Development Officer on par with the petitioner's immediate junior fourth respondent herein and to fix the seniority of the petitioner just above his immediate junior, the 4th respondent herein.

For Petitioner : Ms.Dakshayani Reddy

For Respondents : Mr.V.Jayaprakash Narayanan (R1 to R3)
Special Government Pleader

O R D E R

By consent, the writ petition is taken up for final disposal.

2.The father of the petitioner was working as a Block Development Officer in Morappur Panchayat Union, Dharmapuri District and he died in harness on 10.07.1998. The petitioner submitted a representation seeking appointment on compassionate grounds and accordingly it was considered and he was given appointment as Junior Assistant on 12.05.1999 and according to him, ever since the date of appointment, he is performing his duties satisfactorily and without any blemish. The petitioner's services were regularized by the 3rd respondent vide proceedings in Na.Ka.No.5726/99/K3 dated 03.04.2000 with effect from the date of initial appointment i.e. on 12.05.1999. But since the concurrence of the Tamilnadu Public Service Commission was not obtained before regularizing the services of the petitioner, the petitioner was reverted to the post of Junior Assistant with effect from 09.09.2004. Subsequently, the concurrence of the Tamil Nadu Public Service Commission was obtained and the petitioner's services were regularized vide G.O.No.8, Rural Development and Panchayat (E3) Department dated 03.02.2011 with retrospective effect from the date of initial appointment i.e. with effect from 12.05.1999.

3.The petitioner would further state that he has completed the departmental test within five years and was also deputed for training in Bhavani Sagar and his probation was also successfully declared in Na.Ka.No.41635/2010/K3 dated 28.02.2011 with retrospective effect from 01.01.2002 and in consequence, he claims that he is fully eligible for inclusion of his name in the panel for promotion to the post of Assistant for the year 2002. It is further stated that the petitioner's immediate juniors have been promoted by virtue of the fact of inclusion of their name in the panel for promotion they were promoted as Assistant by including their names in the panel for promotion as on 01.03.2004 and however, his name has been omitted and the reason appears to be on account of the non regularisation of his service and consequential non declaration of his probation and it was only due to administrative reasons.

4.It is further submitted that the petitioner was promoted to the post of Assistant with effect from ***15.07.2011** and the next avenue of promotion from the post of Assistant is to the post of Deputy Block Development Officer and the name of the juniors to the petitioner have been included in the panel prepared for the year 2011 and she got her promotion and also due for further promotion and in this regard the petitioner has pointed out the said infirmity and submitted a detailed representation dated 11.06.2013 to the second respondent through proper channel and submitted another representation dated 12.06.2014 and since no orders have been passed, came forward to file this writ petition.

5.The learned counsel appearing for the petitioner would submit that in the light of the fact that his services were regularised with effect from the date of his initial appointment from 12.05.1999 and his probation was also successfully declared on 28.02.2011 with retrospective effect from 01.01.2002, his name should have been included in the panel for promotion for the year 2002 and he should be given promotion retrospectively with effect from 01.03.2004 when his immediate junior was given promotion and he should have been promoted to the post of Deputy Block Development Officer and since it has not been done, he is constrained to approach this Court.

6.It is further submitted by the learned counsel appearing for the petitioner that the matter in issue is squarely covered by the order of this Court dated 05.06.2015 made in W.P.No.959 of 2015 and the order of this Court dated 19.02.2014 made in W.P.No.15889 of 2013 which was confirmed by the order of the Hon'ble Division Bench of this Court dated 28.05.2015 made in W.A.Nos.302, 425 and 855 of 2014 and prays for appropriate orders.

7.This Court also heard the submissions of Mr.V.Jayaprakash Narayanan, learned Special Government Pleader who accepts notice on behalf of the respondents 1 to 3.

8.This Court taking into consideration the fact that the petitioner was also promoted to the post of Assistant with effect from ***15.07.2011** and in the light of the above facts and circumstances, directs the second respondent to consider and dispose of the petitioner's representation dated 11.06.2013 and 02.06.2015 on merits and in accordance with law and pass orders within a period of six weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner and till then, one post of Deputy Block Development Officer shall be kept vacant and it is made clear that keeping one post of Deputy Block Development Officer vacant is subject to the disposal of the above said representations.

9.The writ petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is also closed.

-s/d-

Assistant Registrar(CCC)

Dated : 17.11.2015

***Corrected as per the Order
of this Court dated 20.11.2015
and made herein in WP.35176/15
Sd/- Assistant Registrar(CCC)
Dated : 24.11.2015**

True Copy

Sub-Assistant Registrar

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To

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|---|--|--|
| 1 | The Special Commissioner/
Secretary to Government,
Rural Development and
Panchayat Raj Department,
Fort St.George,
Chennai-600 009. | To be substituted to
the Order already
despatched on
17.11.2015 and made
herein. |
| 2 | The District Collector,
Dharmapuri District,
Dharmapuri. | |
| 3 | The Personal Assistant to
District Collector (Development),
Dharmapuri District,
Dharmapuri. | |

+ 1 cc to Mr.P.Nethaji, Advocate SR 61657

+ 1 cc to Govt.Pleader SR 61465

+1cc to M/s.Dakshayani Reddy, Advocate, S.R.No.63345

W.P.No.35176 of 2015

And

M.P.No.1 of 2015

tej(co)
prk17/11

CA(24.11.2015)