

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2015

CORAM

THE HONOURABLE MR.JUSTICE N.PAUL VASANTHAKUMAR
AND
THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

W.A.No.2672 of 2012

M.Madhanagiri ... Appellant/Petitioner

Vs.

1.The Commissioner of Rural
Development and Panchayat Raj,
Panagal Building,
Saidapet, Chennai-600 015.

2.The District Collector (PD Section),
Krishnagiri,
Krishnagiri District.

... Respondents /Respondents

Writ Appeal is preferred under Clause 15 of the Letters Patent against the order dated 14.6.2012 made in W.P.No.19381 of 2010.

Petition under Article 226 of the constitution of India to issue a writ of certiorarified mandamus directing the 2nd respondent to call for the records pertaining to the proceeding bearing Roc.No. 6744/2008/K dt 31.3.2008 and quash the same in so far it relates to the petitioner and further direct the respondents to include the name of the petitioner in the list of Extension Officer (now re-designated as Deputy Block Development Officer) in the appropriate place as on 1.3.2008 with all consequential benefits such as retrospective promotion refixation of seniority pay etc.

For Appellant : Mr.V.Suthakar

For Respondents : Mrs.A.Shrijayanthi
Special Government Pleader

JUDGMENT

(Delivered by N.PAUL VASANTHAKUMAR, J)

Heard Mr.V.Suthakar, learned counsel appearing for the appellant and Mrs.A.Shrijayanthi, learned Special Government Pleader appearing for the respondents.

2. This writ appeal is filed against the order made in W.P.No.19381 of 2010, dated 14.6.2012, wherein the appellant has prayed to quash the order dated 31.3.2008 passed by the 2nd respondent insofar as it relates to the appellant and further direct the respondents to include the name of the appellant in the list of Extension Officer (now re-designated as Deputy Block Development Officer) in the appropriate place as on 01.3.2008 with all consequential benefits such as retrospective promotion, re-fixation of seniority, pay etc. The said writ petition was dismissed by the learned single Judge by order dated 14.6.2012, against which, the writ appeal is filed.

3. The contention of the appellant, as per the affidavit filed in support of the writ petition before the learned single Judge was that he was initially appointed as Masalchi at Thali Panchayat Union with effect from 22.10.1973 and thereafter, he was promoted as Office Assistant at Thali Block from 06.3.1976 till 04.10.1982 and thereafter, he was transferred as Office Assistant and posted to the office of the Divisional Development Office, Hosur from 14.10.1982 till 21.01.1991 and on 28.1.1991, the appellant was appointed as Junior Assistant against the vacancy reserved for the post of Junior Assistant from the cadre of Office Assistant.

4. The appellant earlier filed W.P.No.1680 of 1985 before this Court challenging the order of transfer from Thali Panchayat Union to the office of the Divisional Development Office, Hosur on the ground that due to the transfer, his chances of appointment as Junior Assistant will be affected. The said writ petition was transferred to the Tamil Nadu Administration Tribunal and re-numbered as T.A.No.1263 of 1989 and the Tamil Nadu Administrative Tribunal has allowed the said T.A.No.1263 of 1989 and held that the appellant is entitled to reckon his seniority in the cadre of Office Assistant from 06.3.1976 for the purpose of appointment/promotion to the post of Junior Assistant. The appellant's service was regularised as Junior Assistant with effect from 14.10.1987 based on his original date of appointment as Office Assistant at Thali Block with effect from 06.3.1976. The appellant successfully completed the period of probation in the cadre of Office Assistant on 05.3.1977 and the next avenue of promotion from the post of Junior Assistant/Rural Welfare Officer Grade-II was that of Assistant/Rural Welfare Officer, Grade-I.

5. According to the appellant, he has passed all the departmental tests for promotion to the cadre of Assistant as early as on 31.5.1998. The 2nd respondent - District Collector, Krishnagiri wrote a letter to the 1st respondent - Commissioner of Rural Development and Panchayat Raj and sought for certain clarification with regard to the declaration of probation for appointment of the appellant as Junior Assistant, as he had passed all the departmental tests after the date of entry into service,

namely 14.10.1987. The 1st respondent wrote a reply letter stating that declaration of probation for appellant in the cadre of Junior Assistant will not arise, as his probation was declared in the lower cadre, namely, Office Assistant and further directed the 2nd respondent to consider the claim of the appellant for promotion as Assistant from the date on which he had passed the departmental tests. Ultimately, the appellant was promoted as Assistant/Rural Welfare Officer, Grade-I on 16.11.2006. The contention of the appellant is that he ought to have been promoted as Assistant/Rural Welfare Officer, Grade-I from 01.6.1998, as he has completed all the departmental tests while serving in the post of Junior Assistant as on 31.5.1998. On 05.2.2008, the District Collector, Krishnagiri issued proceedings in and by which the appellant was placed as Assistant/Rural Welfare Officer, Grade-I as on 01.3.1999 in the appropriate place on the ground that he had passed all departmental tests as on 31.5.1998. Even though the appellant's name was retrospectively included in the cadre of Assistant from the year 1999, he could not reap the benefits as the next avenue of promotion from the post of Assistant to the post of Extension Officer on the ground that he has not put in one year service as Assistant. The said order was challenged in W.P.No.19381 of 2010 and the learned single Judge dismissed the writ petition.

6. The issue as to "not acquiring of service qualification can be put against the officer while considering him for promotion" was already considered by the Government in Government Letter No.36347/S/99-1, P & AR(S) Department, dated 11.1.2000, which was communicated to all the heads of department, which reads as follows:

"I am directed to state that in certain departments of the Government, training or working experience in a particular wing is a requirement for promotion, appointment to higher post as per Special Rules for such posts. However due to some reasons or the other, the officers are not allowed to acquire the training or experience by posting them to such wing as required in the Special Rules. As a result, it ultimately affects the individual's career and also requires relaxation of relevant service rules. It is not the responsibility of the individual to be sent for training or posted in a particular wing in which working experience is required for promotion/appointment to higher post under special rules, etc. but it is the responsibility of the Department concerned to send him for promotion/appointment to gain experience.

2. In this connection, the following observations of Tamil Nadu Administrative Tribunal in O.A.No.3068 of 1997.

"It is for the respondents to post the persons in different units to gain experience as

required by the rules to make them eligible for promotion appointment and it is not necessary for the applicant to ask for it. It is the responsibility of the department to send persons to other Corporations in such a manner that everyone has equal chance of acquiring a kind of experience insisted upon by the rules unless for a valid reason is denied an opportunity of acquiring experience. This is a part of job of cadre management in a rational manner. This responsibility cannot be shifted to be shoulders of the applicant. Therefore, there is no force in the contention of the respondents, that the appellant has not asked for such a posting in a Corporation."

3. In view of the circumstances mentioned in para 1 and 2 above, the Departments of Secretariat and the Head of Department are therefore requested to post the officers to the particular training/wing in which working experience is required for promotion/appointment to higher post under special rules at the earliest, strictly on the basis of seniority and if any, official does not join the training or post in the particular wing when given, he may be informed about the adverse effect of avoiding the posing and a declaration as specified in the Annexure to the letter may be obtained from him and added to his Service Register and Personal File.

4. The above instructions should be strictly adhered to with a view to avoiding any complaints in this regard."

The Hon'ble Supreme Court in the decision reported in 1996 (8) SCC 671 (Vijaywada Guntur Tenali Urban Development Authority and others v. Movva Ranga Rao and others) and this Court in the judgment reported in 2012 (4) MLJ 535 (A. Badhrachalam v. Principal Secretary/Commissioner of Revenue Administration Chepauk, Chennai and another) and in W.A.No.1582 of 2011, dated 18.2.2013 and the judgment made by this Bench in W.A.No.391 of 2012, dated 28.10.2014 considered similar issue.

7. The learned Special Government Pleader appearing for the respondents submits that the issue raised in this writ appeal is covered by the said judgment of this Bench namely W.A.No.391 of 2012, dated 28.10.2014.

8. Applying the said judgments to the present case, the order of 2nd respondent dated 31.3.2008 as affirmed by the learned single

Judge in W.P.No.19381 of 2010, dated 14.6.2012 are set aside and the writ appeal is allowed. The appellant having retired from service on 30.9.2010, the respondents are directed to give notional promotion to the appellant from the date of promotion given to his immediate junior, only for the purpose of re-fixation of pension and the other retirement benefits from the date of retirement. The said exercise is directed to be completed by the respondents and pass necessary orders, within a period of three months from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar
Dated:30.1.15

True Copy

Sub Assistant Registrar

To

1.The Commissioner of Rural Development and Panchayat Raj,
Panagal Building,
Saidapet, Chennai-600 015.

2.The District Collector (PD Section),
Krishnagiri, Krishnagiri District.

+1 cc to Mr.V.Suthakar, Advocate,SR.2532

+1 cc to Government Pleader,SR.2516.

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