

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2016

CORAM:

THE HON 'BLE MR. JUSTICE B.RAJENDRAN

Writ Petition No.27671 of 2015

T.Selvakumar

... Petitioner

Versus

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

Prayer:- Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records bearing Na.Ka.No.6479/2014-1/V2, dated 19.12.2014, confirming the order bearing Na.Ka.No.6479/2014-V2, dated 15.11.2014, quash the same, in so far as it relates to the petitioner in the list of Assistants for the year 2012-13 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 : Mr.V.Suthakar

For Respondent : Mr.S.Gunasekaran, AGP.,

O R D E R

This writ petition has been filed by the petitioner, challenging the impugned order, dated 19.12.2014, mainly on the ground that the requirement to complete one year as Junior Assistant, is not a bar, when a person is able to establish that the period, which require to the post, was not completed only because he was not given an opportunity or higher posting by the Department.

2. It is the submission of the learned counsel for the petitioner that when the petitioner has got all the eligible criteria or qualification to be promoted and posted to the post of Junior Assistant, the non-completion of the one year period in that post cannot be treated as a bar. He further submitted that the service qualification can be termed as a qualification, especially, when it is proved that the petitioner is not responsible for the alleged deficiency or delay or lacuna, in filing the case. In this connection, the learned counsel relied

upon two Division Bench judgments of this Court, in cases of The District Collector, Thoothukudi District v. S.Sasisivanandam, in W.A.No.391/2012, dated 28.10.2014 and M.Madhanagiri v. The Commissioner of Rural Development and Panchayat Raj, Saidapet and another, in W.A.No.2672 of 2012, dated 19.01.2015.

3. The learned Additional Government Pleader appearing for the respondent would contend that the eligibility criteria for the promotion to the next higher post of Assistant is that, the candidate: (a) must have passed tests for officers of the Panchayat Development Department and Panchayat Department Account Test; (b) Must have served as Junior Assistant for One Year and (c) must be an approved probationer.

4. A detailed counter affidavit has been filed by the respondent and in the counter affidavit, he has specially stated that since the petitioner was not served as Junior Assistant for one year, as on the crucial date, i.e., 15.03.2015, his name was not included in the panel for the post of Assistant for the year 2012-13. He further submitted that the petitioner was appointed as a Rural Welfare Officer, Grade - II with effect from 11.02.2010 and subsequently, he was promoted to the post of Junior Assistant on 13.02.2012. Therefore, according to the respondent, the eligibility criteria of one year as Junior Assistant, to acquire the post of Assistant, has not been completed by the petitioner.

5. This Court has carefully considered the submissions made by the learned counsel for both sides and perused the materials available on record.

6. A careful analysis of the impugned order would go to show that the petitioner was rejected to the post of Assistant on the ground that he has not completed one year of service in the cadre of Junior Assistant as on 15.03.2012 and the appeal petitions, dated 27.06.2014 and 24.10.2014, for inclusion in the list of Assistants for the year 2012-13 were made belatedly.

7. However, on an analysis of the facts and materials available on records would disclose that, originally, the petitioner was appointed on 06.10.1993, as Record Clerk, and thereafter, he was promoted to the post of Rural Welfare Officer, Grade II, on 13.10.2010 and subsequently, he was appointed in the cadre of Junior Assistant on 12.02.2010, but he was not given the posting, as Junior Assistant, therefore, he was working only as Rural Welfare Officer, Grade - II. Had the petitioner had been given posting as Junior Assistant on 12.02.2010, instead of Rural Welfare Officer, Grade II, which

post was equivalent to Junior Assistant, he would have come within the ambit of eligibility criteria.

8. This Court is of the firm view that the two Division Bench judgments, relied upon by the learned counsel for the petitioner, squarely covers the issue raised in this writ petition.

9. In the case of The District Collector, Thoothukudi District v. S.Sasisivanandam, in W.A.No.391/2012, dated 28.10.2014 it has been held as follows:-

"2. In the said judgment, several judgments on this line rendered earlier were followed and held that service qualification can be acquired only if a posting is given in the particular post by the Head of the Department and the Government Servant cannot be blamed. The denial of promotion on that ground alone, if he is otherwise qualified, is unreasonable and arbitrary. Applying the said judgment dated 04.09.2007 to the facts of this case, the learned Single Judge has rightly allowed the writ petition in the above terms. There is no merit in this Writ Appeal."

10. In the case of M.Madhanagiri v. The Commissioner of Rural Development and Panchayat Raj, Saidapet and another, in W.A.No.2672 of 2012, dated 19.01.2015, it has been held as follows:-

"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.36347/99-1, P & AR (S) Department, dated 11.1.2000, which was communicated to all the Heads of Department, which reads as follows:-

1. 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 of experience by posing 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.

....

8. Applying the said judgments to the present case, the order of the 2nd respondent dated 31.3.2008 as affirmed by the learned Single Judge in W.P.No.19381 of 2010, dated 14.06.2012 are set aside and the writ appeal is allowed....."

11. In view of the above said legal principles enunciated by the Division Bench decisions of this Court, the impugned order, in the instant case, has to be set-aside and the same is set-aside.

12. In the result, the writ petition is allowed and the matter is remitted back to the authority concerned, to pass necessary orders afresh, on merits and in accordance with the rules framed therefor, by including the name of the petitioner, in the list of Assistants for the year 2012-13, in appropriate place, based on his Feeder Category Seniority viz., Junior Assistant, with all consequential benefits such as retrospective promotion, arrears of pay, etc., No costs. Consequently, the connected WMP is closed.

Sd/-

Asst. Registrar.

/true copy/

Sub Asst. Registrar.

srk

To

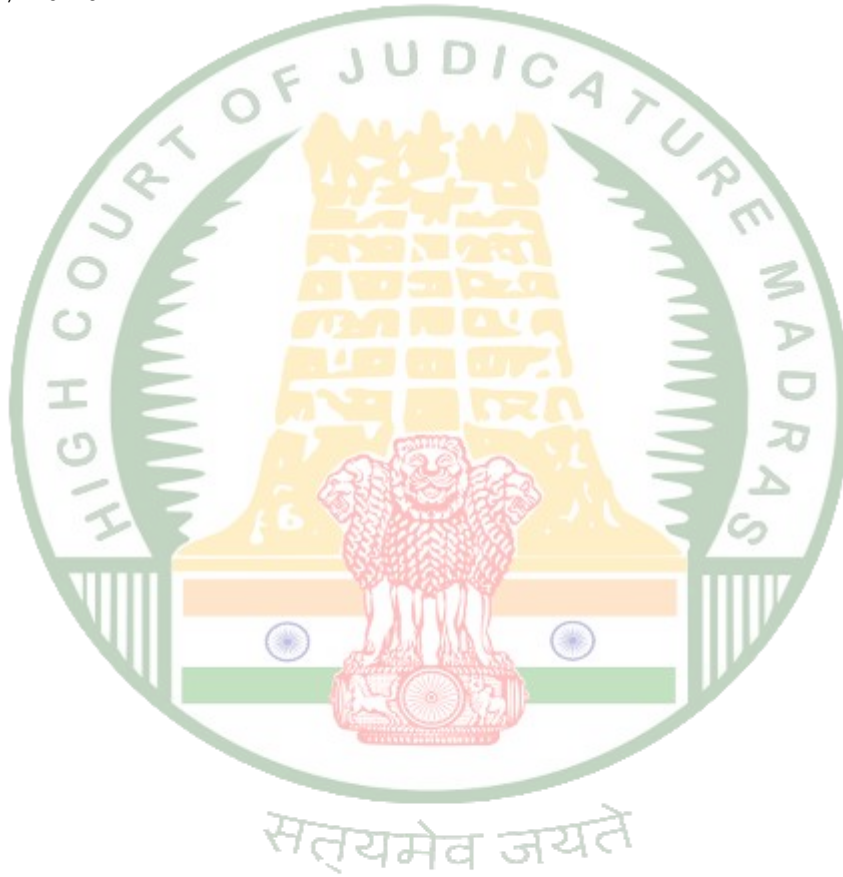
1. The District Collector (PD Section),
Tiruppur District, Tirupur

+1 CC to V. Suthakar, Advocate, Sr.No.46836

W.P.No.27671 of 2015

CTR (CO)

MD : 14/09/2016



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