

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.32923 of 2016
and
W.M.P.No.28468 of 2016

R.Kannan

... Petitioner

Vs.

1.State of Tamil Nadu
rep. by its Secretary,
Rural Development and Panchayat Raj Department,
Fort St. George,
Chennai-600 009.

2.The District Collector,
Dharmapuri District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, to direct the 2nd respondent herein to consider the objections given by the petitioner vide letter dated 26.08.2016 given in respect of the proceedings of the 2nd respondent in Na.Ka.No.9809/2015/D2, dated 24.08.2016, in the light of the orders passed by this Court in W.P.No.16697 of 2007 reported in 2012 (1) MLJ 634 and as confirmed by the Division Bench of this Court in W.A.No.391 of 2012 dated 28.10.2014 and order dated 12.01.2010 in W.P.No.12274 of 2005 and consequently, to direct the 2nd respondent to include the name of the petitioner in the seniority list for promotion to the post of Deputy Block Development Officer and grant promotion to the petitioner.

For Petitioner : Mr.Dakshayani Reddy
For respondents : Mr.R.Venkatesh, GA

* * * * *

ORDER

This writ petition has been filed by the petitioner praying for issuance of a Writ of Mandamus, to direct the 2nd respondent herein to consider the objections given by the petitioner vide letter dated 26.08.2016 given in respect of the proceedings of the 2nd respondent in Na.Ka.No.9809/2015/D2, dated 24.08.2016, in the light of the orders passed by this Court in W.P.No.16697 of 2007 reported

in (2012) 1 MLJ 634 [S.Sasisivanandam Vs. District Collector, Thoothukudi District and anothers] as confirmed by the Division Bench of this Court in W.A.No.391 of 2012 by order dated 28.10.2014, as well as the order of this Court dated 12.01.2010 in W.P.No.12274 of 2005 [S.Devarajan Vs. The Director of Rural Development, Panagal Buildings, Saidapet, Chennai and another] and consequently, to direct the 2nd respondent to include the name of the petitioner in the seniority list for promotion to the post of Deputy Block Development Officer and grant promotion to the petitioner.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner as follows_

2-1.The petitioner was originally appointed to the post of Junior Assistant with effect from 19.12.2008 and he worked as such till the year 2010. The petitioner's appointment was on compassionate grounds on the death of his father Raman, who passed away on 18.08.2002. The petitioner's service had to be regularised by the 1st respondent and accordingly, vide Government Order No.132, dated 21.08.2013, the petitioner's service was regularized in the post of Junior Assistant with effect from initial date of appointment i.e., 19.12.2008. Subsequently, by G.O.No.467, dated 28.10.2014, the petitioner's probation was declared with effect from 19.12.2010. The petitioner completed the basic training as well as passed all the departmental tests even before the year 2009.

2-2. It is further stated by the petitioner that unless and until, the petitioner completes the training in Bhavanisagar, he could not have been promoted to the post of Assisant. Due to the administrative reasons, the petitioner's service was regularized only in the year 2013, with effect from the date of initial appointment. Hence, only in the year 2013, the petitioner was sent to Bhavanisagar Training. Due to the administrative delay in regularizing the service of the petitioner, the petitioner's juniors were promoted to the post of Assistant and the petitioner was granted promotion to the post of Assistant only with effect from 09.05.2015 and lost his seniority. Hence, the petitioner had appealed to the 2nd respondent to revise his seniority in the post of Assistant. Considering the factual aspects, the 2nd respondent has also revised the seniority of the petitioner in the post of Assistant vide proceedings dated 02.06.2016 and the petitioner was notionally granted promotion in the post of Assistant with effect from 01.03.2011, the date on which his immediate juniors were promoted to the post of Assistant. Thereafter, only on 01.09.2015, the petitioner was posted as Rural Welfare Officer Grade-I. The petitioner's further promotion from the post of Assistant is to the post of Deputy Block Development Officer. For the purposes of promotion to the post of Deputy Block Development Officer, one year service in the post of Rural Welfare Officer Grade-I is

fixed as an experience qualification. It is stated that the post of Rural Welfare Officer Grade-I is equivalent to the post of Assistant.

2-3. It is further stated by the petitioner that now the 2nd respondent has prepared the Seniority List for the promotion to the post of Deputy Block Development Officer vide proceedings dated 24.08.2016 and in the said promotion panel, the name of the petitioner has not been included, stating that he fell short of one year service experience in the post of Rural Welfare Officer Grade-I. Against the said promotion panel, the petitioner has made his objections vide letter dated 26.08.2016 and requested to include his name in the Seniority List for the promotion to the post of Deputy Block Development Officer. Since the petitioner's request was not considered by the respondents, the petitioner has come forward with the present writ petition.

3. When the matter is taken up for consideration, the learned counsel for the petitioner would submit that the petitioner's name was not included in the promotion panel to the post of Deputy Block Development Officer only on the ground that he is not having the one year service experience in the post of Rural Welfare Officer Grade-I. The crucial date for preparing the promotion panel for the post of Deputy Block Development Officer is 01.03.2016. The petitioner was posted as Rural Welfare Officer Grade-I only on 01.09.2015. It is the specific submission of the learned counsel for the petitioner that the respondents are the authorities to post the petitioner as Rural Welfare Officer Grade-I, as such the petitioner cannot be found fault with for the delay in posting the petitioner in the post of Rural Welfare Officer Grade-I, though he was promoted to the post of Assistant with effect from 01.03.2011. In support of his contention, the learned counsel for the petitioner has also relied upon the decision of this Court, in an identical matter, reported in (2012) 1 MLJ 634 [S.Sasisivanandam Vs. District Collector, Thoothukudi District and another], wherein a learned single Judge of this Court has held that when the matter of posting of an employee to a particular post lies in the domain of the concerned authority and when the employee cannot be blamed for not acquiring the service qualification regarding the said post, denial of benefit of inclusion of employee's name in the Panel for promotion on such ground is not justified. The said decision of the learned Single Judge was upheld by the Division Bench of this Court in W.A.No.391 of 2012, dated 28.10.2014. For the same proposition, the learned counsel for the petitioner has also relied upon the decision of this Court in W.P.No.12274 of 2005, dated 12.01.2010 [S.Devarajan Vs. The Director of Rural Development, Panagal Buildings, Saidapet, Chennai and another]. Thus, by relying upon the above decisions, the learned counsel for the petitioner sought for a direction to the respondents to include the petitioner's

name in the Seniority List for the promotion to the post of Deputy Block Development Officer.

4. Heard the learned Government Advocate appearing for the respondents and perused the materials available on record.

5. Considering the facts and circumstances of the case and the submissions made on either side, without expressing any opinion on the merits of the claim made by the petitioner, this Court directs the petitioner to give a fresh representation/objection to the 2nd respondent within a period of two weeks from the date of receipt of a copy of this order. On receipt of such representation/objection, the 2nd respondent is directed to consider the same in the light of the orders passed by this Court in W.P.No.16697 of 2007 reported in (2012) 1 MLJ 634 [S.Sasisivanandam Vs. District Collector, Thoothukudi District and anothers] as confirmed by the Division Bench of this Court in W.A.No.391 of 2012 by order dated 28.10.2014, as well as the order of this Court dated 12.01.2010 in W.P.No.12274 of 2005 [S.Devarajan Vs. The Director of Rural Development, Panagal Buildings, Saidapet, Chennai and another], and to pass appropriate orders on merits and in accordance with law, within a period of four weeks thereafter.

With the above terms, the writ petition is disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

1.The Secretary,
State of Tamil Nadu
Rural Development and Panchayat Raj Department,
Fort St. George,
Chennai-600 009.

2.The District Collector,
Dharmapuri District.

+1 cc to M/s.Dakshayani Reddy, advocate, sr.71864

+1 cc to Govt.Pleader, sr.71662.
ksj(co)
krd 23/12

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and

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