



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.11.2016

CORAM:

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN
and
THE HONOURABLE MRS. JUSTICE J. NISHA BANU

W.A(MD) No. 1429 of 2016
and
C.M.P. (MD) No. 10757 of 2016

1. The Government of Tamil Nadu,
represented by its Secretary to Government,
Rural Development Department,
Fort St. George,
Chennai-600 009.
2. The Commissioner of Rural Development
and Panchayat Raj Department,
Panagal Building,
Saidapet, Chennai-600 015.
3. The District Collector, (PD) Section,
Virudhunagar District,
Virudhunagar. ... Appellants/Respondents

Vs.

V. Raj,
Deputy Block Development Officer,
District Rural Development Agency,
Collectorate, Virudhunagar. .. Respondent/Petitioner

PRAYER: The Writ Appeal is filed under Clause 15 of Letter Patent Act praying to set aside the order passed by this Court in W.P. (MD) No. 4808 of 2013, dated 14.07.2016.

Prayer in WP(MD). 4808/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF CERTIORARI FIED MANDAMUS to call for the records pertaining to G.O. (3D) No. 43, Rural Development and Panchayat Raj (E3) Department dated 09.12.2011 passed by the first respondent and quash the same in so far as fixing of seniority of the petitioner by placing him in most in the seniority list of Deputy Block Development Officer as on 09.12.2011 and further direct the respondents to reckon the seniority of the petitioner in the cadre



of Deputy Block Development Officer with effect from 1.5.2001 i.e. the date on which he was posted as Deputy Block Development Officer with all consequential service benefits such as retrospective promotion and pay benefits within the time limit that may be stipulated by this Hon'ble Court.

WEB COPY

For Appellants : Mr.A.K.Baskarapandian
Special Government Pleader

For Respondent : Mr.G.Thalaimutharasu

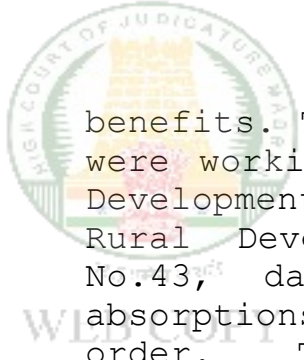
JUDGMENT

(Judgment of this Court was delivered by M.SATHYANARAYANAN, J.)

The Official Respondents in W.P.(MD)No.4808 of 2013 are the appellants and aggrieved by the order dated 14.07.2016 passed in the writ petition in and by which they were directed to fix the seniority of the first respondent/writ petitioner as Assistant, taking into account the date of commencement of his functioning as Assistant in the District Collectorate at Cuddalore, came forward to file this writ appeal.

2. A perusal of the materials placed before this Court would disclose among other things that the respondent/writ petitioner herein, after completing Higher Secondary Course, had also acquired the qualification in ITI and was appointed as Radio Supervisor on 04.08.1981, in the Rural Development Department at Tirunelveli, by way of direct recruitment and got his promotion as Technical Assistant on 01.11.1997. It is a stand of the respondent/writ petitioner that the post of Radio Supervisor as well as Technical Assistant belonged to Tamil Nadu Local Administration Radio and Television Maintenance Organisation in the Rural Development Department and the duties and responsibilities of the Radio Supervisor is to maintain Television and Radio, which belong to respective Village Panchayat, in a good and sound condition.

3. The respondent/writ petitioner would further state that after the introduction of the Tamil Nadu Panchayats Act, 1994 much impetus has been given to self governance at Village Panchayat Level and consequently the maintenance of Television and Radio belonging to Village Panchayat became the responsibility of the respective Village Panchayat Presidents. Accordingly the first respondent has passed G.O.Ms.No.229, Rural Development (E4) Department, dated 30.08.2000 and directed the Authorities to hand over the Radio and Television sets available at Village Panchayat to the respective Village Panchayat Presidents for future maintenance and it has been further mentioned in the above said order that the employees, who are hitherto in-charge of maintenance of Television and Radio of Village Panchayat will be absorbed in other services with pay protection and other eligible



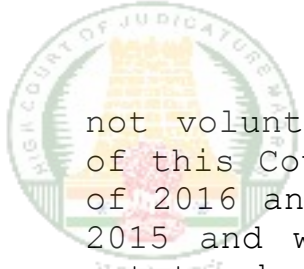
benefits. The Government had also decided to post the persons, who were working as Technical Assistant (Television) as Deputy Block Development Officer and the Radio Supervisor as Assistant in the Rural Development Department and accordingly passed G.O.(3D) No.43, dated 09.12.2011; however has indicated that their absorptions can be only from the date of issuance of the said order. The respondent herein/the writ petitioner and one Mr.R.Natarajan made a challenge to the said order on the ground of fixing of seniority by placing them in the bottom most seniority of Deputy Block Development Officer as on 09.12.2001, on the ground that admittedly the dissolving of the said organisation is not their voluntary act, but the act of the concerned Authorities and as such their past services should also be taken into consideration for the purpose of reckon the seniority.

4. The third respondent, opposing the said claim, had filed the counter affidavit, on the ground that the services of the individuals like the petitioners could not be regularised in the cadre of Deputy Block Development Officer from 01.05.2001 itself and as per G.O.Ms.No.587 RD & LA Department, dated 12.04.1984, the persons who have to be given promotion to the post of Deputy Block Development Officer, must have passed the Department test for Officers of Panchayat Development Department and the Panchayat Development Account test conducted by the Tamil Nadu Public Service Commission and as such their claim cannot be considered and would further contend that they have to undergo training in various categories i.e. clerical jobs and field works related to Assistants and Rural Welfare Officers and in the absence of such experience, they cannot be accommodated as claimed by them and prayed for dismissal of the writ petition.

5. The learned Judge, considering the rival submissions, had taken note of the order dated 26.03.2015, passed in W.P.Nos.27207 and 27208 of 2012 wherein similar issue came up for consideration and also taking note of the fact in the above cited order, the above cited G.O.(3D) No.43, dated 09.12.2011, was set aside insofar as Class (b) and (e) are concerned had allowed the writ petition. Challenging the legality of the same, the Official Respondents have filed this Writ Appeal.

6. Mr.A.K.Baskarapandian, learned Special Government Pleader appearing for the appellants would contend that challenging the legality of the common order dated 26.03.2015 made in W.P.Nos.27207 and 27208 of 2012, the writ appeals in W.A.Nos.1460 and 1461 of 2016 have been filed and are yet to be listed for admission and prays for interference.

<https://hcservices.ecourts.gov.in/hcservices>
 7. Mr.G.Thalaimutharasu, learned Counsel appearing for the first respondent/writ petitioner would contend that the dissolving of the organisation and their absorption admittedly,



not voluntarily act on their part and also invited the attention of this Court to the judgment dated 23.06.2016, made in W.A.No.736 of 2016 and the judgment dated 09.08.2016, made in W.A.No.1762 of 2015 and would further submit that the similar orders were also put to challenge by the very same Official respondents 1 and 2 and both Writ Appeals came to be dismissed, subject to the observations that insofar as the promotion is concerned, unless the concerned individual satisfies the criteria or condition required thereof, the said exercise cannot be done and therefore, prays for dismissal of this writ appeal.

8. This Court paid it's best attention to the rival submissions and also perused the materials placed before this Court.

9. As rightly contended by the learned Counsel for the respondent/writ petitioner, the dissolving of the organisation in which the petitioner was working, was not his act, but the act is on the part of the concerned Authorities and therefore, while accommodating them in terms of G.O.(3D) No.43, dated 09.12.2011, passed by the first respondent, their past services should also be taken into service and admittedly the appointment of the petitioner was to a permanent post. The Division Bench of the Principal Bench has taken into consideration the said aspect while disposing of W.A.No.736 of 2016 and it is relevant to extract the judgment dated 23.06.2016 made in the Writ Appeal which is as follows:

"JUDGMENT

(Judgment of the Court was made by HULUVADI G.RAMESH,J.)

Heard the learned Special Government Pleader for the appellants and so also the learned Counsel representing the respondent.

2.It appears that the respondent had filed the writ petition questioning the fixation of seniority and for a further direction to reckon his seniority in the cadre of Assistant from the date of his initial appointment and for retrospective promotion and other benefits which flows from such absorption. Although the learned Single Judge has granted the relief of absorption in the post of Assistant with effect from the date on which the respondent joined the post and to release the benefits accrued on such absorption to him, with regard to the relief of promotion etc., the learned Single Judge has only directed the appellants to consider the case of the respondent based on the service rules or guidelines applicable and on fulfillment of the norms laid down by the Government in this regard. Such being the case, there is no question of contending that an adverse order is being issued against the Government. Rather the Officers, who are responsible, have to take note of the direction of the learned Single Judge in proper perspective for



considering the case of the respondent for promotion as to whether he satisfied the criteria or condition required thereof and to do the needful in accordance with law. Such being the case, the appeal being redundant and without merit is dismissed. It is for the appellants to do the needful in accordance with law within a period of two months from the date of receipt of a copy of this order. Consequently, C.M.P.No.9500 of 2016 is also dismissed. No costs."

10. In the light of the above cited judgment, this Court is of the view that the seniority of the respondent/writ petitioner has to be reckoned as Assistant from 01.05.2001 and he should be accorded due placement in the seniority list and insofar as the claim for promotion is concerned, it is open to the Official respondents to consider his claim subject to the satisfaction of the criteria for the conditions required thereof.

In the result, this Writ Appeal is dismissed, subject to the above said observations. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar.

To

1.The Secretary to Government,
The Government of Tamil Nadu,
Rural Development Department,
Fort St.George,
Chennai-600 009.

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

3.The District Collector, (PD) Section,
Virudhunagar District,
Virudhunagar.

+1CC to M/S.G.Thalaimutharasu, Advocate, SR.No. 71998

+1CC to the Special Government Pleader, SR.No. 72429

W.A(MD)No.1429 of 2016

and

C.M.P. (MD)No.10757 of 2016

23.11.2016