

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2017

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.34361 of 2014 and
M.P.No.1 of 2014

1.C.Doraisami
2.A.Paramasivam

... Petitioners

Vs.

1.State of Tamil Nadu
Rep by its Secretary to Government,
Rural Development and Panchayat Raj
Department,
Fort St.George, Chennai-9.

2.The Director,
Commissionerate of Rural Development and
Panchayat Raj,
Panagal Building, Chennai-15.

3.The District Collector,
Coimbatore District, Coimbatore.

.... Respondents

Prayer : Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus, to direct the respondents 1 and 2 herein to forthwith promote the petitioners herein notionally as Assistant Director of Rural Development on par with juniors based on the notional promotion given to the petitioners as B.D.O. On 03.05.2011, pursuant to the Judgment dated 19.04.2005 in W.P.No.19960 of 1998 etc., and consequently extend all monetary benefits including difference in pay and pension to the petitioners herein in the post of Assistant Director in accordance with law.

For Petitioners
For Respondents

: Mr.V.R.Rajasekaran
: Mr.Zakkir Hussain
Additional Government Pleader

O R D E R

Heard Mr.V.R.Rajasekaran, learned counsel appearing for the petitioners and Mr.Zakkir Hussain, learned Additional Government Pleader appearing for the respondents.

2. The petitioners have approached this Court for seeking the following relief,

"To issue a Writ of Mandamus, to direct the respondents 1 and 2 herein to forthwith promote the petitioners herein notionally as Assistant Director of Rural Development on par with juniors based on the notional promotion given to the petitioners as B.D.O. On 03.05.2011, pursuant to the Judgment dated 19.04.2005 in W.P.No.19960 of 1998 etc., and consequently extend all monetary benefits including difference in pay and pension to the petitioners herein in the post of Assistant Director in accordance with law."

3. The case of the petitioners is as follows:

The petitioners 1 and 2 have joined as Village Level Worker on 03.05.1965 and 03.11.1970 respectively in the Agricultural Department, Coimbatore. Subsequently, both the petitioners were absorbed as Gramasevak Grade-II in the Rural Development Department. The post of Gramasevak Grade-II was re-designated as Rural Welfare Officer Grade-II. Originally the service of the petitioners in the post of Village Level Workers was not taken into consideration while fixing their seniority in an equivalent post of Rural Welfare Officer Grade-II, herein after referred to as RWO Grade-II.

4. Since the service rendered by the employees as Village Level Worker was not taken into account for the further purpose of their seniority, several employees like the petitioners had approached the then Tamil Nadu Administrative Tribunal in O.A.No.846 of 1989, seeking to re-fix their seniority by counting the service rendered by them as Village Level Worker in the Agricultural Department. The learned Tribunal in the batch of cases by common order dated 08.11.1991, allowed the original applications by directing the respondents to reckon the seniority from the date of their original appointment as Village Level Worker in the Agricultural Department.

5. The above said order passed by the learned Tribunal was upheld by the Hon'ble Division Bench of this Court in its common Judgment dated 19.04.2005 in W.P.Nos.19960 to 19962 of 1998 and W.P.No.7591 of 1999 etc., The said Judgment of the Hon'ble Division Bench dated 19.04.2005, became final on the dismissal of Special Leave Petition filed against the Judgment.

6. On the basis of the above orders passed by the Tamil Nadu Administrative Tribunal and the Hon'ble Division Bench of this Court, the Village Level Workers were assigned the seniority on

the basis of their original appointment in the Agricultural Department. They were also granted notional promotion to the next higher grades. As far as the Coimbatore District was concerned, the third respondent implemented the common Judgment of the Hon'ble Division Bench dated 19.04.2005, only on 11.03.2011 and the petitioners were granted due seniority after counting their initial service rendered by them as Village Level Workers from 03.05.1965 and 03.11.1970 in the Agricultural Department respectively.

7. Thereafter, the third respondent by proceedings dated 03.05.2011, granted notional promotion to the petitioners to the post of RWO Grade-I/Assistant, Deputy Block Development Officer and Block Development Officer based on the revised seniority published on 11.03.2011. Both the petitioners were granted notional promotion in the post of Block Development Officer with effect from 08.04.1999 and 01.08.2000 respectively. Thereafter, the third respondent had sent necessary proposal to the second respondent on 03.11.2011, for inclusion of the names of the petitioners in the state wide seniority list for Block Development Officer.

8. The grievance of the petitioners was that in respect of the proposal sent by the third respondent on 03.11.2011, no follow up action was taken by the second respondent for inclusion of the names of the petitioners in the state wide seniority list for Block Development Officer. In view of the non inclusion of their names in the state wide seniority list, the petitioners were denied further promotion to the post of Assistant Director, Rural Development on par with juniors. In the said circumstances, the petitioners submitted a detailed representations on 29.10.2013 to the respondents 1 and 2 for fixing state wide seniority in the post of Block Development Officer and grant notional promotion to the post of Assistant Director on par with juniors. However the representations submitted by the petitioners have not evoked any response and therefore, the petitioners are before this Court seeking issue a Mandamus to the respondents.

9. The learned counsel appearing for the petitioners would submit that while implementing the order passed by the Hon'ble Division Bench of this Court dated 19.04.2005, all admissible benefits had been conferred on the petitioners except the inclusion of their names in the state wide seniority list of Block Development Officer for the purpose of promotion to the next higher cadre viz., Assistant Director, Rural Development. He would submit that in the meanwhile, the petitioners on attaining the age of superannuation, retired from service on 30.06.2005 and 30.04.2007 respectively.

10. According to the learned counsel for the petitioners, the inaction on the part of the respondents 1 and 2 in preparing the state wide seniority list on the basis of re-fixed seniority of the petitioners and on the basis of the notional promotion granted to the petitioners upto the level of Block Development Officer has caused an irreparable loss and hardship and by reason of such inaction, the due promotion to the petitioners has been denied during their period of service in the Department.

11. The learned counsel for the petitioners would also submit that the state wide seniority list of Block Development Officer is only a consequential action to be taken after re-fixation of the seniority by the third respondent and grant of notional promotion to the petitioners vide proceedings dated 03.11.2011. In spite of the proposal sent by the third respondent, the issue was not dealt with promptly by the competent authority and because of that, the petitioners had been deprived of their due promotion and denied their legitimate career progression during the period of their service with the Department.

12. Upon notice, the learned Additional Government Pleader entered appearance and filed a detailed counter. The substance of the counter affidavit is that the petitioners could not be further promoted to the post of Assistant Director, Rural Department, only on the ground that they did not put any required service qualification for the subject appointment and therefore, their names could not be included in the state wide seniority list of Block Development Officer. Except stating that the petitioners did not fulfil service qualification, no other point has been stated in the counter for denying the promotion to the petitioners as Assistant Director, Rural Development.

13. At this, the learned counsel for the petitioners would draw the attention of this Court in G.O.[K.Dis] No.51, Rural Development Department and Panchayat Raj dated 27.01.2015 and also G.O.[K.Dis] No.52, Rural Development Department and Panchayat Raj dated 27.01.2015, wherein, the appointment to the feeder post were ratified and on the basis of which several employees were also granted relaxation and further promoted to the post of Assistant Director. According to him, the petitioners' juniors were also considered for relaxation by aforesaid Government Order. They were granted relaxation and granted further promotion.

14. Therefore, the learned counsel for the petitioners would submit that the petitioners were entitled to parity in the matter of promotion and as such the contention of the learned counsel appearing for the respondents that the petitioners did not possess service qualification cannot be countenanced both in

law and on facts.

15. This Court has given its anxious consideration to the submissions made by the learned counsels for the parties and also perused the materials and pleadings placed on record. There is a considerable force in the contention of the learned counsel for the petitioners that the petitioners having been given the benefit of Judgment of Hon'ble Division Bench of this Court dated 19.04.2005, upto the Level of Block Development officer and by re-fixing the seniority cannot be denied further promotion to the next higher post of Assistant Director, Rural Development on the basis of re-fixed seniority.

16. This Court is unable to persuade itself to the submission made on behalf of the respondents that in the absence of service qualification, the petitioners cannot be considered for promotion in the higher panel viz., Assistant Director, Rural Development. As rightly contended by the learned counsel for the petitioners that in identical circumstances, several employees including the juniors of the petitioners have been granted relaxation and accommodated in the higher post. This Court does not see any justification for denying such benefit to the petitioners herein who are similarly placed like other employees who have been conferred the benefit of relaxation, even otherwise.

17. This Court is of the considered view that once the seniority is re-fixed on the basis of the orders passed by the Tamil Nadu Administrative Tribunal and also the Division Bench of this Court, there is no reason or impediment for the respondents to deny the notional promotion to the petitioners upto the level they are entitled to. In this case, after re-fixation of seniority and after having promoted the petitioners upto Block Development Officer level, there is no valid reason for denying them further promotion on the basis of such re-fixed seniority on notional basis.

18. For the above reason, this Court has no hesitation in allowing this writ petition and the respondents 1 and 2 are directed to grant promotion to the petitioners as Assistant Director of Rural Department on par with their juniors on notional basis without insisting on service qualification, in terms of the Judgment of Hon'ble Division Bench of this Court dated 19.04.2005 in W.P.Nos.19960 to 19962 of 1998 and W.P.No.7591 of 1999 and extend all monetary benefits including differences in pay and pension to the petitioners in the post of Assistant Director. The said direction shall be complied with by the respondents 1 and 2 within a period of two months from the date of receipt of a copy of this order.

19. With the above direction, the writ petition is allowed.
No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gsk

To

- 1.The Secretary to Government
State of Tamil Nadu
Rural Development and Panchayat Raj
Department,
Fort St.George, Chennai-9.
- 2.The Director,
Commissionerate of Rural Development and
Panchayat Raj,
Panagal Building, Chennai-15.
- 3.The District Collector,
Coimbatore District, Coimbatore.

+2 ccs to Mr.V.R.Rajasekaran Advocate sr 69726
+1 cc to the Government Pleader sr 70611

WEB COPY

W.P.No.34361 of 2014

rv(co)
aa09/11/2017