

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.25327 of 2014

K.Asaithambi

... Petitioner

Vs.

1. The District Collector,
Nagapattinam District
Collectorate,
Nagapattinam.

2. The Personal Assistant to
District Collector (Development),
Collectorate, Nagapattinam District.

3. S.Paulraj

... Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the entire records which culminated in issuing the proceedings in Na.Ka.584/Voo.Va.2/2014 dated 25.08.2014 on the file of the first respondent, quash the same and consequently direct respondents 1 and 2 to give notional promotion to the petitioner in the cadre of Assistant with effect from 10.09.2011 the date on which his immediate junior - the third respondent was given such promotion with all consequential service and monetary benefits including further promotion to the post of Deputy Block Development Officer.

For Petitioner .. Mr.S.Mani

For Respondents .. Mr.T.M.Pappaiah,
Spl. Govt. Pleader for R1 & R2
Mr.E.P.Senniyangiri for R3

ORDER

Challenging the proceedings of the first respondent dated 25.08.2014 and for a consequential direction to respondents 1

and 2 to give notional promotion to the petitioner in the cadre of Assistant with effect from 10.09.2011 the date on which his immediate junior - the third respondent was given such promotion with all consequential service and monetary benefits including further promotion to the post of Deputy Block Development Officer, the present writ petition has been filed.

2.The case of the petitioner is as follows:

(i)The petitioner was appointed as Junior Assistant on compassionate grounds on 03.12.2000. After joining as Junior Assistant, the petitioner had also passed several departmental tests, as stated in the affidavit filed in support of the writ petition. His services came to be regularised as Junior Assistant on 13.06.2008 with effect from the date of his original appointment on 03.12.2000. Thereafter, the petitioner was sent for training and completed the training successfully on 20.12.2010. The petitioner has therefore become fully qualified for promotion to the next cadre viz., the post of Assistant.

(ii) On 31.05.2011, a panel was drawn by respondents 1 and 2 for promotion to the post of Assistant from among the eligible Junior Assistants/Rural Welfare Officers etc., by taking the crucial date for promotion as 01.03.2011. In the panel, the name of the petitioner was included at Sl.No.3. But, eventually, the petitioner was not granted promotion only on the ground that his probation was not declared and therefore, not entitled to be promoted as Assistant. Overlooking the claim of the petitioner, the third respondent, who is admittedly junior to the petitioner, had been promoted to the post of Assistant on 10.09.2011.

(iii) While the matter stood thus, subsequently by order dated 11.07.2013, the Government had declared the petitioner's probation notionally with effect from 31.05.2009. By the said notional declaration, the petitioner became entitled to be promoted as Assistant with effect from 10.09.2011, the date on which the third respondent came to be promoted. After declaration of the probation, the petitioner came to be promoted as Assistant on 05.11.2013. The grievance of the petitioner is that he ought to have been granted promotion with effect from 10.09.2011 and not in 2013. According to the petitioner, the third respondent, who

was promoted on 10.09.2011, was seven years junior to him. In view of the belated declaration of probation, the entire career progression of the petitioner has been stalled and the third respondent, who availed promotion ahead of the petitioner and further being promoted to the post of Deputy Block Development Officer as against the petitioner, who was still holding the post of Assistant.

(iv) In the above situation, a representation was given to respondents 1 and 2 and the same came to be rejected on 25.08.2014 stating that the promotion granted to the petitioner was in order. The said rejection order is the subject matter of challenge in the present writ petition.

3. Heard the learned counsel for the parties.

4. Learned counsel for the petitioner would also cite a decision passed by this Court in W.P.No.26675 of 2011 (S.E.Suresh Vs. The Secretary to Government, Higher Education G2 Department, Fort St. George, Chennai - 9 and others) dated 16.08.2013. In the said decision, it is clearly stated that the delay in declaration of probation cannot be a reason for denying promotion to the employee at the appropriate time. In the instant case, the delay in declaration of probation cannot be therefore countenanced both in law and on fact. Even assuming there was any valid reason, the fact that the effect of the belated declaration of probation cannot affect the service benefits of the petitioner in view of the declaration of probation retrospective with effect from the date of initial appointment in 2000.

5. Upon notice, Mr.T.M.Pappaiah, learned Special Government Pleader has entered appearance and filed counter affidavit. According to respondents 1 and 2, the petitioner, though entered into service as early as in the year 2000, has not passed required special test within five years from the date of appointment and thereby he became ineligible to continue in the post. However, his case was recommended to the Government for relaxation of Rules and therefore, the probation period was extended and declared subsequently. According to the counter affidavit, the petitioner has passed the required test only on 31.05.2009 and thereafter he was rightly promoted as assistant on 05.11.2013.

6. Upon consideration of the rival submissions of the advocates, perusing the documents and the pleadings filed in support of the writ petition, it is to be noted that though the

petitioner is stated to have passed all the required departmental tests only in 2009, nevertheless the fact remains that his probation was declared notionally with effect from the date of initial appointment in 2000. In such an event, needless to mention that the petitioner is entitled to be considered for promotion on par with his juniors atleast with effect from 10.09.2011 the date on which his immediate junior viz., the third respondent was promoted. Once the probation was declared with effect from the date of original appointment i.e. from 03.12.2000, all other service benefits will have to be granted as admissible to the petitioner. Except stating that the declaration of probation has been delayed due to non-passing of the required departmental tests by the petitioner, there is no other ground or reason stated in the counter affidavit for grant of promotion to the petitioner as Assistant with effect from 10.09.2011.

7. In the said circumstances, this Court has no hesitation in allowing the writ petition as prayed for. Accordingly, the writ petition is allowed. The impugned order of the first respondent dated 25.08.2014 is hereby set aside and a direction is issued to respondents 1 and 2 to grant notional promotion to the petitioner in the cadre of Assistant with effect from 10.09.2011 with all consequential and attendant benefits including seniority and further promotion. The said direction shall be complied with within a period of two months from the date of receipt of a copy of this order. No costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

सत्यमेव जयते
Sub Asst. Registrar

mmi

To

1. The District Collector,
Nagapattinam District
Collectorate,
Nagapattinam.

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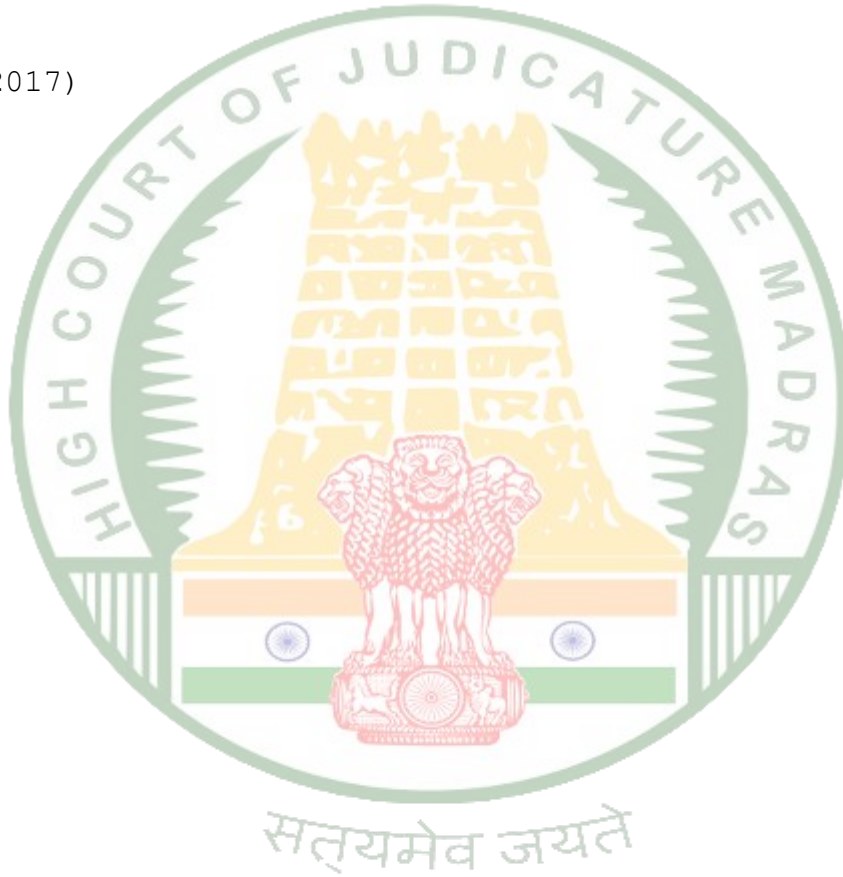
2. The Personal Assistant to
District Collector (Development),
Collectorate, Nagapattinam District.

+1cc to Mr.S.Mani, Advocate Sr. 46994

+1cc to the Government Pleader High Court, Madras Sr. 47258

W.P.No.25327 of 2014

VGII(CO)
VR(19/07/2017)



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