

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2017

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.8511 of 2013

and

M.P.No.1 of 2013

K.H.Saleem

..Petitioner

Vs.

1. The Government of Tamil Nadu
rep. by Secretary to Government,
Rural Development and Panchayat Raj
Department, Fort St. George,
Chennai - 9.
2. Commissioner of Rural Development
and Panchayat Raj,
Panagal Building, Saidapet,
Chennai - 15.
3. The Collector of the Nilgiris,
Udhagamandalam - 643 001.
4. Personal Assistant to Collector
(Development),
Collectorate,
Udhagamandalam - 643 001.

5. D.Nandhakumar
6. B.Raman
7. J.Janardhanan
8. K.Jayabalan
9. K.Sreetharan
- 10.K.Jayasankar
- 11.B.Bhojan

..Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the entire records leading to the issue of the seniority list of Assistants in the Rural Development and Panchayat Raj Department, The Nilgiris District, for the years 2005 to 2009 covered by six separate proceedings bearing Na.Ka.D2

No.66401/2005 dated 01.02.2006 (2005 list placing petitioner at Sl.No.41) Na.Ka.D2 No.24899/2008 dated 20.05.2008 (2006 list placing petitioner at Sl.No.57), Na.Ka.D2 No.24899/2008 dated 24.12.2009 (2007 list placing petitioner at Sl.No.53) Na.Ka.D2 No.24899/2008 dated 24.12.2009 (2008 list placing petitioner at Sl.No.38 below Thiru.D.Nandakumar and 8 others), Na.Ka.D2 No.12432/2009 dated 24.12.2009 (2009 list placing petitioner at Sl.No.22 below Thiru.D.Nandakumar and 7 others), Na.Ka.D2 No.12432/2009 dated 18.05.2011 (2009 list placing petitioner at Sl.No.22 below Thiru.D.Nandakumar and 7 others) and quash the same only insofar as the erroneous placement of the petitioner in the above seniority list is concerned and direct the respondents 1 to 4 herein to redraw the seniority list for the years 2005 to 2009 and place the petitioner above the 5th respondent Thiru.D.Nandakumar his immediate junior in the Junior Assistant Cadre of the Nilgiris District in all the above mentioned seniority lists and promote the petitioner to the post of Deputy Block Development Officer with all service and monetary benefits and arrears of pay and increments and all other attendant benefits.

For Petitioner ... Mr.S.P.Sudalaiyandi

For Respondents ... Mr.R.A.S.Senthilvel,
Addl. Govt. Pleader for R1 to R4
No appearance for R5 to R11

ORDER

Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for respondents 1 to 4.

2.The petitioner has filed the present writ petition, seeking the following prayer:

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the entire records leading to the issue of the seniority list of Assistants in the Rural Development and Panchayat Raj Department, The Nilgiris District, for the years 2005 to 2009 covered by six separate proceedings bearing Na.Ka.D2 No.66401/2005 dated 01.02.2006 (2005 list placing petitioner at Sl.No.41) Na.Ka.D2 No.24899/2008 dated 20.05.2008 (2006 list placing petitioner at Sl.No.57), Na.Ka.D2 No.24899/2008 dated 24.12.2009 (2007 list placing petitioner at Sl.No.53) Na.Ka.D2 No.24899/2008 dated 24.12.2009 (2008 list placing petitioner at Sl.No.38 below Thiru.D.Nandakumar and 8 others), Na.Ka.D2 No.12432/2009 dated 24.12.2009 (2009

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3.The case of the petitioner is that he was appointed originally as Junior Assistant on 31.07.1995 and thereafter his services came to be regularised on 16.12.1996. The petitioner was transferred to Nilgiris District and joined duty on 01.06.1997 and thereafter he was promoted as Assistant on 22.10.1999. According to the petitioner, he was originally shown as senior to the private respondents arrayed in this writ petition but subsequently in the seniority list of Assistant from 2006 onwards, he has been shown junior to respondents 5 to 11. According to him, his appointment was earlier to the appointment of respondents 5 to 11 and therefore showing of seniority of respondents 5 to 11 above him is contrary to the Rules and cannot be countenanced in law.

4.On notice, Mr.R.A.S.Senthilvel, learned Additional Government Pleader entered appearance on behalf of respondents 1 to 4 and also filed his counter statement. In para 4 of the counter statement, it has been fairly stated that respondents 5 to 11 were originally appointed in 1995/1996 itself on compassionate grounds, prior to the appointment of the petitioner herein. However, the Government subsequently passed order in 2001 regularising the services of respondents 5 to 11 retrospectively from the date of initial appointment. In the said circumstances, the private respondents were rightly shown as seniors to the petitioner, whose services were admittedly regularised as Junior Assistant only on 16.12.1996.

5.Learned counsel appearing for the petitioner would strenuously urge this Court that the petitioner having earned his promotion as Assistant in 1999 cannot be depressed in the seniority list subsequently in 2006 and in any event, the retrospective regularisation of the private respondents cannot take away the right of the petitioner for proper fixation of

seniority. From the perusal of the pleadings and materials on record, it ought to be seen that the seniority list showing the petitioner as junior to private respondents is circulated in 2008 itself and subsequently, the same has been maintained on following years. However, the petitioner has chosen to challenge the seniority list only in 2013. Moreover, there is no valid explanation from the petitioner as to how he can claim seniority over and above respondents 5 to 11 when the retrospective regularisation granted to the private respondents is not put to challenge. The learned counsel would also rely on the decision of a Division Bench of this Court in Secretary to Government, Tamil Development, Culture and Religious Endowments Department, Chennai and another Vs. M.Pugalendran and another ((2006) 2 MLJ 330).

6.This Court has gone through the decision relied on by the learned counsel for the petitioner and found that the factual matrix of the case is entirely different and the ratio laid down therein cannot be applied in the factual matrix of the present case. Even otherwise, in the matters of seniority, it is incumbent on the party to approach this Court to regularise the appointment in order to avoid the situation of unsettling the settled position of seniority inter se between the parties. In this case, there is no proper explanation as to why the petitioner has chosen to approach this Court in 2013 when his seniority was admittedly revised to his disadvantage in 2006, which list was circulated in 2008. Even otherwise, it appears that the petitioner has no case against respondents 5 to 11.

7.In such view of the matter, the writ petition lacks substance and merits and therefore, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

1. The Secretary to Government,
Rural Development and Panchayat Raj
Department, Fort St. George,
Chennai - 9.

2. The Commissioner of Rural Development
and Panchayat Raj,
Panagal Building, Saidapet,
Chennai - 15.

3. The Collector of the Nilgiris,
Udhagamandalam - 643 001.

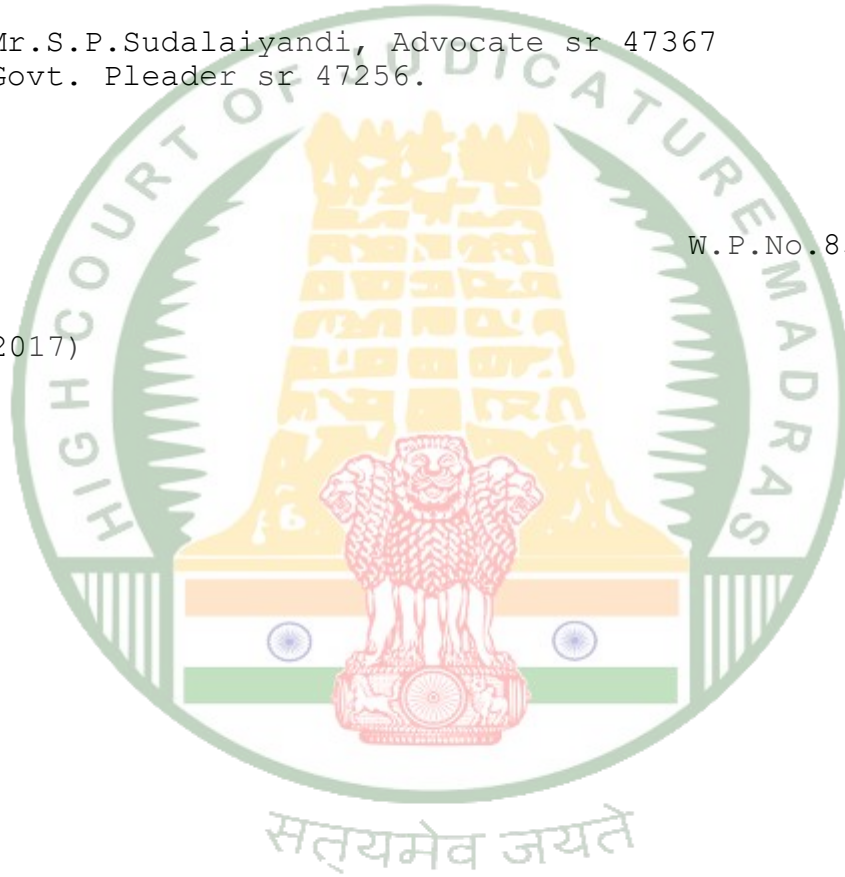
4. The Personal Assistant to Collector
(Development),
Collectorate,
Udhagamandalam - 643 001.

+1 CC to Mr.S.P.Sudalaiyandi, Advocate sr 47367

+1 CC to Govt. Pleader sr 47256.

W.P.No.8511 of 2013

GMI (CO)
SP(08/08/2017)



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