

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:20.04.2017

CORAM

The Honourable MR. JUSTICE M.SATHYANARAYANAN

W.P.Nos.1948&1949 of 2009

S.N.Prasad ..Petitioner in WP.No.1948/2009

G.Devadoss ..Petitioner in WP.No.1949/2009

Vs

1. The Government of Tamilnadu,
Represented by its Secretary,
Housing and Urban Development Department,
Fort St.George,
Chennai 600 009.
2. The Managing Director,
Tamil Nadu Housing Board,
No.493, Anna Salai, Nandanam,
Chennai 600 035. ... Respondents in both WP.s

Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus calling for the concerned records from the 1st and 2nd respondents, Quash the order of the 1st respondent bearing letter No.4386/VeVa-1(2)/03-40 dated 27.12.2006 and the consequential order of the 2nd respondent in memo No.PNT1/39887/94 dated 20.03.2007 and consequently direct the respondents to fix the pay scale of the petitioner in the post of Junior Assistant in accordance with FR 27 (17) and promote the petitioners to the post of Assistant from the date of issuance of G.O. Nilai No.304 Housing and Urban Development (Ve.Va.1-2) Department dated 05.07.2001 with all monetary benefits and attendant benefits, award costs.

For Petitioners in both WPs : Mr.Balan Haridas

For R1 in both WPs : Mr.A.Kumar, Spl.GP

For R2 in both WPs : Mr.V.Anandamoorthy

COMMON ORDER

The issue to be adjudicated in these writ petitions is one and the same and hence, both the writ petitions are disposed of by this common order.

2 WP.No.1948/2009:-

[a] The petitioner joined the services of the 2nd respondent as Non Muster Roll [NMR] employee on 02.02.1976 and was working as a Non Provisionalised Work Charged Establishment from 02.08.1976. The 1st respondent vide G.O.Ms.No.567 dated 28.04.1980, had directed the 2nd respondent to give appointment to the NMRs and employees working in Non Provisionalised Work Charge Establishment upto 31.12.1977 subject to satisfying educational qualification, age requirement to the relevant post as on 31.12.1977.

[b] It is the claim of the petitioner that he possesses necessary educational qualification and fulfillment of the criteria enumerated in the above cited Government Order and as such, he was entitled to be appointed as Junior Assistant right from the year 1980. The petitioner would further aver that however he was appointed as Junior Assistant on 18.06.1990 and the 2nd respondent had appointed many unqualified NMRs and Non Provisionalised Work Charge Establishment as Junior Assistants during the year 1980 itself and in this regard, he has also submitted a representation to give appointment as Junior Assistant from May 1980. The 2nd respondent, after satisfied with the stand taken by the petitioner, also made a positive recommendation in the form of Resolution No.7.08 dated 30.03.1998 and recommended the appointment of the petitioner as Junior Assistant with effect from May 1980 and it was forwarded to the 1st respondent for approval. The 1st respondent, vide G.O.Ms.No.304 dated 05.07.2001, has also approved the said Board Resolution and ordered the petitioner's refixation of seniority along with ten other Junior Assistans with effect from May

1980 and since it has not been complied with, the petitioner has submitted representations dated 04.01.2006 and 02.06.2006 respectively and the said representations were rejected by the 1st respondent vide impugned order dated 27.12.2006 on the ground that in the light of the conditions contained in the said Government Order, prior to the date of Government Order, the benefits cannot be conferred on them and the said order was communicated to the petitioner by the 2nd respondent vide impugned order dated 20.03.2007 and challenging the legality of the said orders, the petitioner came forward to file the present writ petition.

The petitioner who is similarly placed like that of the petitioner in WP.No.1948/2009 also made a similar claim and it was rejected by the respondents 1 and 2 vide impugned orders and thereafter, the petitioner also submitted a representation on 10.04.2007 to re-consider the said issue and he was informed vide communication of the 2nd respondent dated 12.06.2008 that similar kind of request was already considered and rejected on 27.12.2006 by the 1st respondent and therefore, his petition for reconsideration, cannot be considered.

3 Mr.Balan Haridas, learned counsel appearing for the petitioners would submit that the petitioners are willing to abide by conditions stipulated in G.O.Ms.No.304 of the 1st respondent dated 05.01.2007 ; but the fact remains that as on date, they are remaining as Junior Assistants and no further promotion has been given to them and it would be suffice to direct the 2nd respondent to grant further promotion to the petitioners.

4 Per contra, Mr.V.Anandamoorthy, learned Standing Counsel appearing for the 2nd respondent has drawn the attention of this Court to the counter affidavit and would submit that the panel for Junior Assistant for the year 1991-92 in which the petitioners were appointed, is yet to be approved by the Government and in the light of the G.O.Ms.No.304 of the 1st respondent dated 05.01.2007, the petitioners are not entitled to get any retrospective effect earlier to the said Government Order and therefore, the request made by them were rightly rejected by the 1st respondent and it was communicated by the 2nd respondent and prays for dismissal of these writ petition.

5 Heard the submissions of Mr.A.Kumar, learned Special Government Pleader appearing for the 1st respondent and perused the materials placed before it.

6 It is the submission of the learned counsel for the petitioners that they will abide by G.O.Ms.No.304 of the 1st respondent dated 05.01.2007 and they have not been accorded with the benefit of further promotion, though the said Government Order says that the petitioners can derive the benefit of further promotion from the post of Junior Assistant.

7 A perusal of the above cited Government Order would disclose that the 1st respondent, taking into consideration the resolution of the 2nd respondent, directed the 2nd respondent to refix the seniority of the petitioners and eight others as Junior Assistant with effect from the date of Government Order and also made it clear that the petitioners are not entitled to derive any financial benefits arising out of the same and they can be accorded with the

benefit of promotion based on their seniority from the date of issuance of the Government Order.

8 The grievance expressed by the petitioners is that though they are acting as Junior Assistants for very many years and that they have voluntarily retired from service on 04.04.2007 and 30.06.2005 respectively, they have not been accorded with the benefit of promotion, solely for the reason that their panel for Junior Assistant for the year 1990-1991 in which they were appointed was not approved by the 1st respondent.

9 Since G.O.No.304 of the 1st respondent dated 05.01.2007, fixing the seniority of the petitioners notionally with effect from the date of the Government Order without any monetary benefits and it also makes it clear that they are entitled to the benefit of further promotion, there may not be any impediment on the part of the 1st respondent in not approving the panel from Junior Assistant for the year 1990-1991.

10 In the result, both the writ petitions are disposed of and the 1st respondent shall take necessary and further steps to approve the panel of Junior Assistant for the year 1990-1991, in which the petitioners were appointed, if not already approved and pass appropriate orders within a period of ten weeks from the date of receipt of a copy of this order and communicate the same to the 2nd respondent, who shall, on receipt of the same, shall pass orders as to the conferment of the benefit of promotion to the petitioners, if they are otherwise eligible and confer all consequential benefits within a further period of eight weeks thereafter and communicate the decision taken, to the petitioners. No costs.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

AP

To

1. The Secretary,
Government of Tamilnadu,
Housing and Urban Development Department,
Fort St.George,
Chennai 600 009.

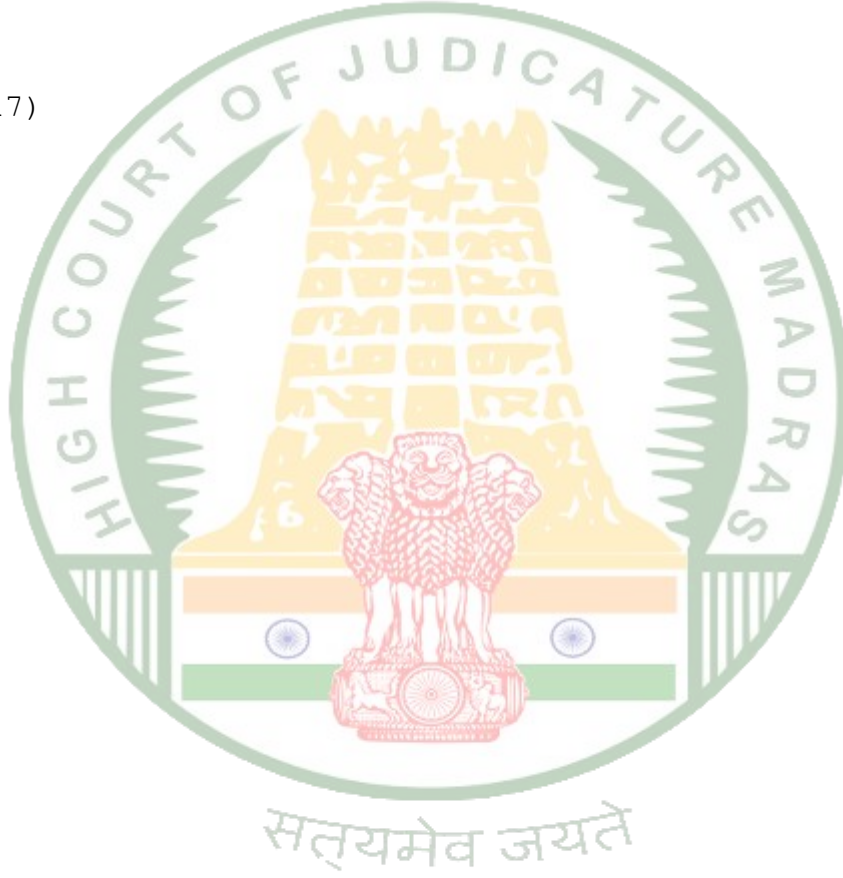
2. The Managing Director,
Tamil Nadu Housing Board,
No.493, Anna Salai, Nandanam,
Chennai 600 035.

+2CC TO Mr.Balan Haridass,Advocate sr.24608 & 24007

+1cc to Government Pleader sr.24341

W.P.No.1948 & 1949 of 2009

rj(co)
ss(8/5/2017)



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