

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

WP.No.1730 of 2012

C.Mani

.... Petitioner

Versus

1. The 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,
Vellore District,
Vellore.

... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a certiorarified mandamus to call for the records of the third respondent herein in his R.C.No.PA3/546/2011 dated 05.12.2011 and quash the same and direct the respondents herein to forthwith consider the representation dated 20.01.2011 of the petitioner herein for revision of his seniority based on the judgment dated 19.04.2005 passed by this Court rendered in W.P.Nos.19960 to 19962 of 1998 and consequential notional promotion with pay fixation in the post of R.W.O. Grade-I/Assistant, Extension Officer, Deputy B.D.O., B.D.O and then in the post of Assistant Director and extend all monetary benefits including arrears of pension due to the petitioner herein in accordance with law.

For Petitioner : Mr.V.R.Rajasekaran

For Respondents : Mr.S.Gunasekaran, AGP

ORDER

The petitioner has approached this Court seeking the following relief:

'To issue a certiorarified mandamus to call for the records of the third respondent herein in his R.C.No.PA3/546/2011 dated 05.12.2011 and quash the same and direct the respondents herein to forthwith consider the representation dated 20.01.2011 of the petitioner herein for revision of his seniority based on the judgment dated 19.04.2005 passed by this Court rendered in W.P.Nos.19960 to 19962 of 1998 and consequential notional promotion with pay fixation in the post of R.W.O. Grade-I/Assistant, Extension Officer, Deputy B.D.O., B.D.O and then in the post of Assistant Director and extend all monetary benefits including arrears of pension due to the petitioner herein in accordance with law'.

2.The case of the petitioner is as follows:

The petitioner originally joined the service of the Agricultural Department as Agricultural Assistant(Village Level Worker) on 09.09.1965. Subsequent to his appointment, all the Village Level Workers, who were the similarly placed persons like the petitioner herein were taken over by the Rural Development Department with the posts. According to the petitioner, he was sent for training commencing from 02.01.1975 to 31.12.1976. After training, the petitioner was posted as Agricultural Assistant, in the office of the District Agriculture Officer, Kodaikanal and then in Vellore District. The post of Village Level Worker was re-designated as Gramasevak Grade II. Subsequently, the petitioner as Gramasevak Grade II was transferred to various places and finally attained the age of superannuation and stood retired from service on 31.05.2005. According to the petitioner, his erstwhile services as Village Level Worker in the Agricultural Department from 09.09.1965 to 19.02.1979 and his services as Gramasevak Grade II during the period from 20.02.1979 to 12.08.1979 was not taken into consideration while fixing the seniority in the equivalent post of Rural Welfare Officer Grade II(herein after referred to as RWO Grade II) in the Rural Development Department.

3.Some of the similarly placed persons namely, RWO Grade II employees working in Chengalpet originally approached the then Tamilnadu Administrative Tribunal in O.A.No.846 of 1989 seeking a direction to fix seniority by counting their services in the Agricultural Department when they are originally absorbed as Village Level Workers. The learned Tribunal by a common order dated 08.11.1991, allowed the original application and directed

the authorities to reckon the seniority of the Rural Welfare Officers from the date of their initial appointment as Village level workers. Against the order passed by the learned Tribunal in O.A.No.846 of 1989, a review application was filed in Rev.A.No.93 of 1992. In some of the original applications, the Tribunal by its order dated 04.11.1998, revised its earlier direction and held that the Village Level Workers were eligible to count their services in the Rural Development Department only from the date of completion of training and not from the date of their initial appointment in the Agricultural Department. As against the above order, a writ petition in W.P.No.19960 of 1998 was filed on behalf of the Village Level Workers, challenging the order passed by the Tribunal in the review application. The Division Bench of this Court which heard the matter, set aside the order passed by the Tribunal in the review application dated 04.11.1998 and restored the original judgment of the Tribunal dated 08.11.1991 granting the relief to the Village Level Workers. The order of the Division Bench passed in the aforesaid writ petition was dated 19.04.2005. Thereafter, an action was initiated by the first and second respondents to revise the seniority of RWO Grade II, for Chengalpet District. An order was passed there to, with effect from 18.07.2005. On revision of seniority of the Rural Welfare Officer Grade II, by counting their services rendered by them in the Agricultural Department, subsequent promotion to the next higher Grade posts of Deputy Block Development Officer, Block Development Officer and Assistant Director were also effected on the basis of eligibility of the employees concerned. The grievance of the petitioner herein that although, the petitioner is a similarly placed person like the other employees, who were covered under the order passed by the Division Bench, no action was initiated by the respondents for revising his seniority on the basis of the ratio laid down by the Division Bench and also in pursuance of the earlier direction passed by the learned Administrative Tribunal in O.A.No.846 of 1989 dated 08.11.1991. In the meanwhile, the Government had also approached the Hon'ble Supreme Court of India by filing a Special Leave Petition against the judgment of the Division Bench dated 19.04.2005 but the same was dismissed on 24.08.2009. Even after the dismissal of the Special Leave Petition on 24.08.2009, no steps were taken by the authorities concerned for revising the seniority of the petitioner. According to the petitioner, that although he entered into service as Village Level worker as early as on 09.09.1965 in the Agricultural Department, his services were regularised for seniority only with effect from 13.08.1979. If his services had been taken into consideration from the date of his initial appointment in the Agricultural Department, the petitioner would have been bestowed with the benefit of promotion as Deputy Block Development Officer/Block Development Officer/ Assistant Director as the case may be on the basis of the revised seniority list. However, in spite of the issue

being settled in favour of the similarly placed employees, the petitioner has not been conferred with the benefit of revision of seniority and the notional benefits in accordance with the re-fixed seniority. Therefore, the petitioner is before this Court seeking the relief as stated supra.

4. Upon notice, Mr.S.Gunasekaran, learned Additional Government Pleader entered appearance for the respondents and filed a detailed counter affidavit. The learned counsel for the respondents would submit that the claim of the petitioner herein cannot be considered for two reasons one is that he was not a party before the Division Bench of this Court, which decided WP.No.19960 of 1998, wherein, this Court has passed final orders on 19.04.2005. Secondly, the petitioner is not entitled for the relief because of the reason that he had foregone his seniority in the Agricultural Department and came on transfer to North Arcot District and where, the District Level seniority alone is maintained. In the said circumstances, the respondents did not consider the claim of the petitioners favourably and in such circumstances, the learned Additional Government Pleader would submit that no interference is called for in the matter. According to the Additional Government Pleader, the third respondent has rightly passed an order on 05.12.2011, rejecting the claim of the petitioner, which communication is impugned in the present writ petition.

5. Per contra, the learned counsel appearing for the petitioner would submit that the order passed by the learned Division Bench of this Court as aforesaid is the judgment in rem and the same is applicable to all the similarly placed employees working in the various other districts and not only in the Chengalpet District. According to him, that the issue has been squarely covered by the decision passed by the Tamilnadu Administrative Tribunal earlier, which was confirmed by a lengthy order passed by the learned Division Bench of this Court dated 19.04.2005. The learned counsel would submit that the reasons put forth on behalf of the respondents that the petitioner was not a party before the Division Bench cannot be a valid reason for denying the benefit to the petitioner. The other reasons which were stated that the petitioner had willingly forgone the seniority was also considered earlier by the Tribunal and also by the Hon'ble Division Bench of this Court and therefore, such reason cannot be validly pressed into service by the respondents. The learned Additional Government Pleader would also submit that there was a long delay by the petitioner before making his representation on 20.01.2011. In fact at this, the learned counsel for the petitioner would draw the attention of this Court that the SLP filed against the order of the Division Bench came to be dismissed only on 24.08.2009 and thereafter, a representation was made and the same was kept pending. In the said circumstances, the petitioner had

approached this Court in W.P.No.4902 of 2011 and this Court was pleased to direct the respondents to consider the representation of the petitioner dated 20.01.2011 on merits and in accordance with law. In response to the said direction, an impugned order of rejection was passed on 05.12.2011, which is under challenge before this Court.

6. Therefore, the learned counsel for the petitioner would contend that there was no lapse on the petitioner's part since the Government itself had been dragging the issue for years together by going before the Hon'ble Supreme Court of India and by implementing the orders in a phased manner in respect of various districts.

7. The learned counsel for the petitioner would also draw the attention of this Court to the recent decision passed by this Court allowing similar claim in WP.No.34361 of 2014 dated 22.09.2017. This Court has allowed the writ petition and the facts were almost similar to the case on hand. As regards the contention regarding the transfer to one particular District is concerned, the learned counsel for the petitioner would submit that in respect of Chengalpeta District even such employees who are identically placed like the petitioner herein had been given the benefit of revised seniority. Therefore, the learned counsel for the petitioner would contend that there is no impediment in granting the relief as prayed for.

8. This Court has given its anxious consideration to the rival submissions of the learned counsel appearing for the parties and perused the materials and the pleadings placed on record. This Court is entirely in agreement with the contention put forth by the learned counsel Mr.V.R.Rajasekaran, appearing for the petitioner for more than one reason. Firstly, the order of the Division Bench dated 19.04.2005 rendered in W.P.Nos.19960 to 19962 of 1998 is squarely applicable to the present case and as rightly contended by the learned counsel that it is a judgment in rem but not a judgment in personam. Therefore, it is incumbent and imperative on the part of the authorities concerned to extend the benefit as directed by the Tamil Nadu Administrative Tribunal and also by the Division Bench of this Court to all the similarly placed persons like the petitioner. Secondly, it has to be seen that treating the petitioner differently from the other similarly placed employees would amount to gross violation of Articles 14 and 16 of the Constitution of India, since there is no intelligible differentiation between the petitioner and the other similarly placed persons for taking out a different view in the matter. All other contentions raised on behalf of the petitioner are well founded and this Court has no hesitation in accepting the same. This Court has taken a uniform view in favour of the employees concerned and passed orders recently on 22.09.2017 in

W.P.No.34361 of 2014 in almost similar circumstances. Therefore, the petitioner has made out a case for grant of relief in all fours.

9. In view of the above discussion and narrative, the writ petition is allowed and the impugned order passed by the third respondent in R.C.No.PA3/546/2011 dated 05.12.2011 is set aside. The respondents are directed to implement the judgment of the learned Division Bench of this Court dated 19.04.2005 in W.P.Nos.19960 to 19962 of 1998 with reference to the seniority of the petitioner with all attendant and consequential benefits and notional promotion to the next higher post as RWO Grade I/Assistant/Extension Officer, Deputy Block Development Officer/Block Development Officer and Assistant Director as the case may be on notional basis. The said exercise shall be completed by the respondents within a period of three months from the date of receipt of a copy of this order. No costs.

s/d-
Assistant Registrar(CS VII)

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 Director,
Commissionerate of Rural Development and Panchayat Raj,
Panagal Building,
Chennai-15.
3. The District Collector,
Vellore District,
Vellore.

+1 CC to Mr.V.R. Rajasekar, Advocate sr 81006.
+1 Cc to Govt. Pleader sr 81479.

W.P.No.1730 of 2012

RR(CO)
SP(03/04/2018)