



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.02.2017

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THE HONOURABLE **MR. JUSTICE M.V.MURALIDARAN**

W.P (MD) .No.7718 of 2013

M.Sivashanmuga Prakasam

... Petitioner

Vs.

1.The Secretary to Government,
Rural Development and
Panchayat Raj Department,
Secretariat, Chennai.

2.Director,
Rural Development and
Panchayat Raj Department,
4th Floor, Panagal Building,
Saidapet, Chennai 600 015.

3.The District Collector,
Trichy.

4.The Secretary,
Tamil Nadu Public Service Commission,
Chennai.

... Respondents

(R4 is impleaded vide order dated 17.11.2016
in WMP(MD)No.15688 of 2016)

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, call for the records of the 1st respondent in letter No.16105/Pa.A7/2011-6 dated 3.10.2011 and quash the same as arbitrary, capricious and illegal and consequently direct the respondents to grant notional promotion as per the recommendation of the 2nd respondent in Na.Ka.No.3845/2001/A2 dated 31.3.2001 and grant all monetary and other benefits to the petitioner.



For Petitioner : Mr.Ganapathi Subramanian

For Respondent : Mr.K.Guru

Additional Government Pleader

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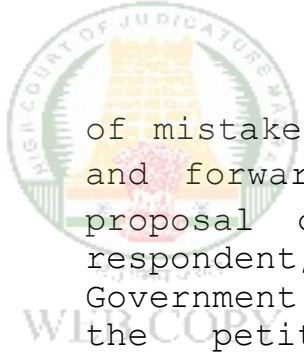
O R D E R

The petitioner has filed this writ petition for the issuance of Writ of Certiorari Mandamus to call for the records of the 1st respondent in Letter No.16105/Pa.A7/2011-6 dated 03.10.2011 and quash the same as arbitrary, grant notional promotion as per the recommendation of the 2nd respondent in Na.Ka.No.3845/2001/A2 dated 31.03.2001 and grant attended monetary and other benefits to the petitioner.

2.The case of the petitioner is that he was inducted in service as Part Time Clerk on 01.03.1984 at Mekudi Village Panchayat, Manikandam Panchayat Union, Trichy District. Thereafter the petitioner's service was regularized from 29.12.1990 vide proceedings of the then Block Development Officer, Manikandam Panchayat Union in Na.Ka.No.A3/8259 dated 29.12.1990 and he became a full time employee and has rendered service with unblemished record of service for 26 years and retired from service on 28.02.2011 on the eve of superannuation. In the course of his service, the government has passed the G.Os. Vide G.O.Ms.No.58 Rural Development Department dated 30.03.1998 providing that the Panchayat Assistants alike of this petitioner are eligible to be promoted as Junior Assistant, such that their appointment will be proportionately at 10% of the estimated vacancy of every year.

3.Accordingly for the year 1998-99 there was total vacancy of 31 post, out of which three post have to be filled from Panchayat Assistant. Hence the 3rd respondent vide his proceedings in Na.Ka.Tha.4/16097/99 dated 05.10.2000 recommended the petitioner's name and others to the 1st respondent through the 2nd respondent to promote as a Junior Assistant for the relevant year 1998-1999. The 2nd respondent, in consequence vide his proceedings in Na.ka.No.3845/2001/B2 dated 31.03.2001 recommended the petitioner's name for promotion in the panel year of 1998-99 to the 4th respondent herein.

4.The learned counsel appearing for the petitioner submits that however, 1st respondent having found some mistakes over the details prepared by the 3rd respondent, sought for rectification



of mistakes. The 3rd respondent there upon rectified the mistakes and forwarded the list to the 4th respondent herein. The said proposal came to be pending for the concurrence of the 4th respondent, since then there was a ban order issued by the Government. However, during the pendency of the list containing the petitioner's name for approval, the petitioner on superannuation retired on 28.02.2011. Hence, thereafter excluding the petitioner's name, a list containing all other name that appear in the earlier list, was forwarded afresh by the 3rd respondent, wherein all the persons in the latter list was appointed by the 3rd respondent based on the concurrence given by the 4th respondent on 16.07.2013. Therefore the petitioner made a representation before the respondents herein to grant notional promotion as per the recommendation of the 2nd respondent dated 31.03.2001 and grant all the monetary and other benefits in accordance with that of the post of junior assistant. The said claim of the petitioner was rejected by the 1st respondent herein by the impugned order.

5.The learned counsel appearing for the respondents 1 to 3 filed counter affidavit stating that the petitioner is not entitled for the relief claimed, since the petitioner got retired from his service on 28.02.2011 even prior to the concurrence made by the 1st respondent on 16.07.2013. On perusal of the counter filed by the 3rd respondent, it is disclosed vide paragraphs 6 and 8 respectively that the petitioner's name has been recommended for the promotion as a junior assistant in the panel year 1998-1999 wherein the petitioner's name was placed as serial No.10 in the panel.

6.The relevant portion of the counter is extracted below:

Para 6 - "with regards to the averments made in para-6 of the affidavit, it is respectively submitted that the third respondent recommended the list of eligible persons including petitioner's name to the first respondent through the 2nd respondent for the promotion of Junior Assistant for the panel year 1998-1999 and in the prepared list, the petitioner's name was placed as Serial No.10.

Para 8 - Since, the Tamil Nadu Public Service Commission pointed out certain mistakes, after rectifying the same, the third respondent prepared a new list and sent it the same for getting concurrence of the petitioner the above prepared list to the post of Junior Assistant was pending for the concurrence of Tamil Nadu Public Service Commission. In these above circumstances, the petitioner retired from service on 28.02.2011 attaining superannuation".



7.I heard Mr.P.Ganapathi Subramanian, learned counsel appearing for the petitioner and Mr.K.Guru, learned Additional Government Pleader, appearing for the respondents and perused all the records.

8.From the above said submission made by the 3rd respondent, it is obvious that a list of eligible candidate to be promoted as a Junior Assistant including the petitioner's name is being forwarded to the 1st respondent for concurrence at his end, however, pointing some defects in the panel sent by the 3rd respondent, the proposal was kept pending by the 1st respondent. In pursuant to the intimation made by the 1st Respondent, the mistakes are being rectified by the 3rd respondent himself and thereafter concurrence was been issued by the 1st respondent on 16.07.2013. While so, in the meanwhile the petitioner got retired from service on 28.02.2011 due to the superannuation.

9.The sole contention raised by the respondents herein is that on the eve of concurrence, the petitioner was not in service and thus he is not entitled to the reliefs claimed.

10.This Court finds that the said contention of the respondent do not hold good and have much force, since during the service period of the petitioner, the panel containing the petitioner's name is duly being recommended by the 3rd Respondent and the same is received by the 1st Respondent. However, due to some mistake crept in the panel, the same was not processed by the 1st Respondent.

11.The records reflect that the petitioner is being recommended for promotion as Junior Assistant for the panel year 1998-1999 and the same was kept under process for all these years till 2013. Furthermore this court finds that there is neither delay nor latches on the part of the petitioner and the delay is caused only on rectification of some defects caused by the 3rd Respondent while preparing the proposal, besides that except this petitioner all other candidates in the said panel is being promoted as Junior Assistants.

12.In view of the foregoing discussions, the petitioner is entitled to get paper promotion and the writ petition is disposed of with the following direction.

13.In the result:

a) this writ petition is disposed of with a direction to the 4th respondent/ Secretary, TNPSC, Chennai to pass orders on the Government Letter No.16105/Pa.A7/2011-6 dated 03.10.2011 sent by the 1st respondent and to pass



orders within a period of 8 weeks from the date of receipt of a copy of this order;

b) further the 1st respondent is directed to pass appropriate orders on receipt of the reply from the TNPSC/4th respondent herein within a period of 8 weeks thereafter, for giving notional promotion with all attending, monetary and other benefits to the petitioner. No cost.

Sd/-

Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar

To

1.The Secretary to Government,
Rural Development and
Panchayat Raj Department,
Secretariat, Chennai.

2.The Director,
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3.The District Collector,
Trichy.

4.The Secretary,
Tamil Nadu Public Service Commission,
Chennai.

Vs/skn

AE/KP/SAR2/12.04.2017/5P/5C

Pre-Delivery order made in
W.P (MD) .No.7718 of 2013
15.02.2017