

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 08.10.2018
CORAM
THE HONOURABLE Mr. JUSTICE R.SURESH KUMAR
W.P.No.28217 of 2004
and
W.P.M.P.No.34264 of 2004

Gunasekaran

..Petitioner

VS

1.The State of Tamilnadu Rep. By its
Secretary to Government,
Rural Development Department.
Chennai-9.

2.The Director of Rural Development,
Panagal Building,
Saidapet, Chennai-15.

3.The District Collector,
Thiruvavarur District,
Thiruvavarur.

4.Usha Rani
Assistant,
Block Development Office,
Mannargudi.

...Respondents

Writ Petition filed under Article 226, to direct the respondents 1 and 3 to fix the seniority of the petitioner in the Post of Assistant above the fourth respondent Smt.Usha Rani by promoting him with retrospective effect and consequently to promote the petitioner to the post of Extension officer on par with the fourth respondent Usha Rani with all monetary and other consequential service benefits.

For Petitioner : Ms.Swathi Subramaniam
For Respondents : Mr.K.Ravi kumar
Additional Government Pleader
For R1 to R3

O R D E R

The prayer sought is writ of Mandamus to direct the respondents 1 and 3 to fix the seniority of the petitioner in the Post of Assistant above the fourth respondent Smt.Usha Rani by promoting him with retrospective effect and consequently to

promote the petitioner to the post of Extension officer on par with the fourth respondent Usha Rani with all monetary and other consequential service benefits.

2. The necessary facts which are required to be noticed for the disposal of this writ petition are as follows:

The petitioner was initially appointed as Surveyor /Draftman in the Survey Department from the year 1983-1990 and subsequently, he had been absorbed in the Rural Development Department as Junior Assistant and accordingly he joined on 17.09.1990. Similarly, the fourth respondent also Joined as Junior Assistant on the same date along with the petitioner. However, age wise, the petitioner is senior. Therefore, in the category of the Junior Assistant, the petitioner has been placed above the fourth respondent.

3. Thereafter, the service of the petitioner was regularized in the post of Junior Assistant vide G.O.Ms.No.12, Social Welfare Department, dated 12.01.1998 and subsequently in G.O.Ms.No.37, Rural Development Department, dated 16.02.2000. It was stated categorically that, the service of the petitioner was regularized with effect from his respective date of initial appointment i.e. from 17.09.1990. Thereafter, the petitioner had been sent to Bhavanisagar for training and he was promoted for the post of Assistant on 17.09.2000.

4. Subsequently, the petitioner was due for promotion to the post of Extension Officer. However, he was not promoted on the ground that, he did not complete the training at Bhavanisagar. Subsequently, the petitioner completed the training along with the fourth respondent/Usha Rani at Bhavanisagar.

5. In view of the belated completion of the training, the probation had not been declared in respect of the petitioner as well as the the fourth respondent.

6. In this regard, the fourth respondent after having completed Bhavanisagar training, had approached the respondent and the government issued order in G.O.(ID) No.358, Rural Development Department, dated 04.07.2002 and accordingly, her probation was declared retrospectively with effect from 13.11.1992, based on which, she was considered for promotion to the post of Extension Officer.

7. Where as the said declaration insofar as the petitioner was not immediately considered. Therefore, the petitioner had approached the Tamilnadu Administrative Tribunal by filing O.A.NO.6455/2002 where, by order dated 05.08.2002, the tribunal has passed an order, giving direction to the respondents that,

since, the petitioner had been allowed to work and had been admittedly promoted as Assistant, the Government was directed to declare the probation of the petitioner and regularize his appointment so that in the course of the time, he can get the promotion.

8. Pursuant to the direction issued by the Tribunal, the respondent Government issued G.O.(3d).No.204, Rural Development Department, dated 22.04.2003, whereby probation of the petitioner had been declared with effect only from 29.12.1997 with monetary benefits.

9. In this context, it is the case of the petitioner that, even though the fourth respondent was junior to him, she was placed at fifth position in the seniority list; whereas petition has been placed after the 4th respondent. In view of this wrong fixation of seniority, the fourth respondent was placed at the 5th place whereas the petitioner had been shown at 31st place. The petitioner's prospects of promotion and other service benefits would be based only on such placement in the seniority, therefore, in that circumstances, the petitioner has approached this Court by filling the present writ petition with the afore said prayer.

10. I have heard Ms. Swathi Subramaniam, learned counsel appearing for the petitioner, who would submit that, both the petitioner and the fourth respondent were appointed and joined as Junior Assistant on the same date. The petitioner was age wise senior than the fourth respondent. In this context, the learned counsel for the petitioner has brought to the notice of this Court, the Order of the 3rd respondent dated 04.11.1996, wherein the seniority of the petitioner and the fourth respondent and other similarly placed Junior Assistant of that district had been issued. According to the seniority list, the petitioner's name was placed in Serial No.62, whereas the fourth respondent was placed in Serial No.63. Admittedly, the fourth respondent was junior to the petitioner. The learned Counsel brought to the notice of this Court that, the petitioner and the fourth respondent completed the training at Bhavanisagar together.

11. Subsequently, like the petitioner, the fourth respondent's probation had also been declared, though belatedly. Based on the orders of the tribunal, the first respondent issued G.O.(3D) No.204, dated 22.04.2003, declaring his promotion only with effect from 29.12.1997 with money benefits. The seniority of the petitioner fixed at 31st place; whereas the fourth respondent was placed at 5th position. Therefore the petitioner is denied the chance of getting promotion to the next category namely Extension Officer and therefore, the said denial to the

petitioner is arbitrary and also against the principles of natural justice, hence, it is liable to be interfered with.

12. Per contra, Mr.K.Ravi Kumar, learned Additional Government Pleader appearing for the respondent would submit that, as per the relevant rules, the petitioner should have completed all the tests and Bhavanisagar training within the maximum period of five years. Though the petitioner joined in service in the year 1990, within the said period, he has not completed Bhavanisagar training.

13. Subsequently, the petitioner had approached the Government for giving relaxation fixed on the five years rule, based on the orders passed by the Tamilnadu Administrative Tribunal. The Government, therefore, decided to extend the probation period up to 29.12.1997 and accordingly, the petitioner was declared to have completed the probation period by 29.12.1997.

14. Therefore, since, the petitioner had not completed probation in time and completed only in the extended period, as per the government order and the rule, he cannot seek any parity along with the fourth respondent, whose probation had been declared with effect from 1992. Therefore, based on the date of declaration of the probation between the petitioner and the fourth respondent, the seniority had been fixed and accordingly in the post of Assistant the petitioner placed at 31st place and the fourth respondent was placed at fifth place. Therefore, the prayer as sought for, cannot be considered as the petitioner had not completed the probation in time.

15. I have heard the rival submissions of either side and also have perused the materials placed before this Court.

16. It is not under dispute that both the petitioner and the fourth respondent joined in service on the same day. It is also not in dispute that, the petitioner was senior, age wise, and therefore, in the list of seniority for the post of Junior Assistant issued by the 3rd respondent by order dated 04.11.1996, the petitioner had been placed at Serial No.62, whereas the fourth respondent had been placed at Serial No.63. Even though the petitioner had completed the departmental tests and Bhavanisagar Training, the same was not done within the five years period.

17. Meanwhile, the fourth respondent had also not completed the Bhavanisagar training within the period and infact, both the petitioner and the fourth respondent had been sent to Bhavanisagar for training at the same point of time. The learned counsel for the petitioner submitted that, both the petitioner

and fourth completed had completed the training on the same date. When that being so, probation was declared for the fourth respondent w.e.f. 1992, whereas for the petitioner, it was done in the year 1997 only. The petitioner approached the Tamilnadu Administrative Tribunal and filed O.A.No.6455 of 2002. The tribunal by an order dated 05.08.2002 directed the Government to regularize their appointments and to declare the probation. In compliance of the directions issued by the Tamil Nadu Administrative Tribunal, the first respondent issued order in G.O.(3D) No.204 dated 22.04.2003 declaring the probation of the petitioner with effect from 29.12.1197 with monetary benefits.

18. According to the petitioner, the respondent have failed to give it retrospectively to his date of appointment while considering the seniority and promotion and this has resulted in gross injustice to him as the fourth respondent have been placed above him in the seniority list. According to the petitioner, he is placed at Sl.No.31, whereas the fourth respondent has been placed at Sl.No.5. The petitioner would contend that, he should be placed at fourth position. Admittedly, the petitioner is senior to the fourth respondent age wise also.

19. Even though, the Government has regularized the appointment of the petitioner based on the directions given by the Tamil Nadu Administrative Tribunal, the Government has failed to fix the seniority list properly. This has resulted in the petitioner approaching this Court. The petitioner has been placed at Sl.No.31. Whereas the fourth respondent joined duty on the same day and they completed the training at Bhavanisagar on the same day, she was placed at S.No.5 at seniority list.

20. In view of the above facts and circumstances, the following orders are passed in this writ petition:

1. The third respondent is directed to refix the seniority of the petitioner afresh. The petitioner shall be placed one position above to the fourth respondent;
2. Based on the correct seniority, the petitioner shall be considered for further promotion. If the promotion has already been given during the pendency of the writ petition by considering actual seniority, further, promotion should also be effected from the date of the fourth respondent has got promoted. It is seen from the records that, the petitioner was aged about 48 years, at the time of filing this Writ Petition. Probably he should have attained superannuation at this time. In that case, if the fourth respondent was given promotion in the mean while, the petitioner should be given promotion notionally from that date. The above said exercise shall be undertaken by the

respondents within a period of eight weeks from the date of receipt of a copy of this order.

21. With this directions, this Writ Petition is allowed as indicated above. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

rli

To

1.The State of Tamilnadu Rep. By its,
The Secretary to Government,
Rural Development Department.
Chennai-9.

2.The Director of Rural Development,
Saidapet, Chennai-15.

3.The District Collector,
Thiruvarur District,
Thiruvarur.

+lcc to Government Pleader sr.67691

+lcc to M/s.R.Prem Narayan, Advocate sr.69358

W.P.No.28217 of 2004
and

W.P.M.P.No.34264 of 2004

bp(co)
nr 24/10/2019

WEB COPY