



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.04.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.8162 of 2018

M.Kanagasabapathy

... Petitioner

-Vs-

The District Collector,
Tirunelveli District,
Collectorate Complex,
Tirunelveli.

... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, to direct the respondent to grant notional promotion as Deputy Tahsildar on par with the petitioner's juniors, who were promoted on 31.05.2014 with all pensionary and other terminal benefits to the petitioner in the cadre of Deputy Tahsildar.

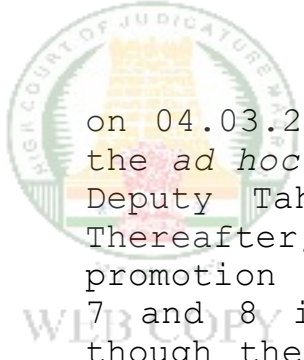
For Petitioners	: Mr.C.Arul Vadivel @ Sekar
For Respondent	: Mr.D.Muruganantham Additional Government Pleader

ORDER

The prayer sought for in this Writ Petition is for a writ of Mandamus, to direct the respondent to grant notional promotion as Deputy Tahsildar on par with the petitioner's juniors, who were promoted on 31.05.2014 with all pensionary and other terminal benefits to the petitioner in the cadre of Deputy Tahsildar.

2.Heard Mr.C.Arul Vadivel @ Sekar, learned counsel, appearing for the petitioner, and Mr.D.Muruganantham, learned Additional Government Pleader, appearing for the respondent.

3.The petitioner was appointed as Village Administrative Officer on 26.04.1984 and he was promoted as Revenue Assistant on 08.07.2008. Thereafter, the petitioner was given *ad hoc* promotion as Deputy Tahsildar on 04.03.2014 along with 14 others. In the said *ad hoc* promotion order, dated 04.03.2014, the petitioner's name was found at Serial No.6. There were four persons above the petitioner and the fifth post reserved for SC community was kept vacant as there is no suitable candidate. On the same date i.e.,



on 04.03.2014 the three persons i.e., the first three persons of the *ad hoc* promotion list dated 04.03.2014 were given promotion as Deputy Tahsildars and the order also passed to that effect. Thereafter, on 31.05.2014, the respondent has given regular promotion for further three candidates, who were in serial Nos.4, 7 and 8 in the *ad hoc* promotees list, dated 04.03.2014. Even though the petitioner was found place at Serial No.6 in the said *ad hoc* promotees list, dated 04.03.2014, instead of giving promotion to the petitioner, the juniors of the petitioner were given promotion, who were situated at Serial Nos.4, 7 and 8 as Deputy Tahsilar by proceedings of the respondent, dated 31.05.2014.

4.The obvious reason for not considering the candidature of the petitioner for giving promotion of Deputy Tahsildar is that, on the date of giving promotion to the three persons i.e., on 31.05.2014, the petitioner superannuated and retired from service. The fact remains that the petitioner had been in service till 31.05.2014 in the afternoon and therefore, when consideration has been shown and regular promotion has been given to two of his juniors, the said promotion should have also been given to the petitioner. Therefore, the action on the part of the respondent, in not granting promotion to the petitioner on permanent basis to the post of Deputy Tahsildar, has affected the service of the petitioner as he would not get service benefits as he had not been promoted as such and therefore, the petitioner in order to get orders from the respondent giving him notional promotion as Deputy Tahsildar on permanent basis from 31.05.2014, on which date he exactly superannuated, he made detailed representation on 13.03.2018 to the respondent and even before that the petitioner has made several requests and the same had not been considered by the respondent. Therefore, the learned counsel appearing for the petitioner would submit that the said mistake committed by the respondent shall be directed to be rectified and order to that effect giving notional promotion to the petitioner shall be directed to be given. Therefore, the petitioner has approached this Court with this writ petition with the aforesaid prayer.

5.The learned Additional Government Pleader appearing for the respondent would submit that, no doubt the petitioner's name had been included in the *ad hoc* promotees list, dated 04.03.2014 at Serial No. 6 and he has been promoted on *ad hoc* basis as Deputy Tahsildar on temporary basis. It is also not in controversy that three persons, who were seniors to the petitioner, whose name have also been included in the said *ad hoc* promotes list, had been subsequently given promotion. However, when the turn of the petitioner comes, the same was considered by the respondent for giving promotion and since the petitioner is superannuated and retired from service, there had been no option for the respondent to consider the candidature of the petitioner and accordingly his name has been left and two of his juniors situated at Serial Nos.7



and 8 had been considered and such regular promotion towards the post of Deputy Tahsildar had been given on 31.05.2014 as exactly on the same date of the petitioner's retirement from service and he was not able to be considered by the respondent for such promotion.

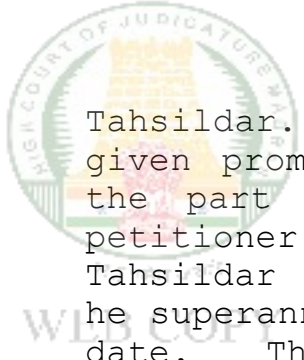
WEB COPY

6.I have considered the said rival submission made by the learned counsel appearing on both sides.

7.It is not in controversy that the petitioner had been given *ad hoc* promotion along with others by an order, dated 04.03.2014. Apart from the petitioner, 14 persons have also been included in the *ad hoc* promotees list, out of which, the petitioner was situated at Serial No.6. The fifth post, since was reserved for SC candidate, and there was no suitable candidate for the said post, the post was kept vacant. Therefore, the four senior persons in serial Nos. 1 to 4 had already been given promotion based on the seniority list. When the turn comes, the respondent has not considered the petitioner's name and two persons, who are juniors to the petitioner, were given regular promotion on 31.05.2014. The reason probably would be that the petitioner had superannuated and retired from service on 31.05.2014.

8.On a perusal of the said order of regular promotion dated 31.05.2014, it is seen that the same could have been passed by the respondent after considering the same that on the very same date i.e., on 31.05.2014 the petitioner was superannuated and retired. After having referred the documents, such regular promotion was given to the persons including two of the Juniors of the petitioner and the decision could have been taken by the respondent office well before 31.05.2014. Assuming that on 31.05.2014 the petitioner had superannuated and retired from service, he retired from service only in afternoon on 31.05.2014, therefore, till such time he had been very well in the office and therefore, when he was in the office and when the consideration has been shown to give promotion to junior persons of the petitioner, certainly the respondent should have included the name of the petitioner also for regular promotion and such promotion could have been given to the petitioner even by an order dated 31.05.2014 and simultaneously on the same date of promotion, the petitioner's order of retirement to retire from service at his superannuation, could have been issued.

9.These kind of orders are passed on the same date, as in this case also, on 04.03.2014 itself *ad hoc* promotion have been given for 15 persons including the petitioner's name and on the same date three persons i.e., the first three persons in the *ad hoc* promotees list have been given regular promotion like that the respondent could have passed order on 31.05.2014 including the name of the petitioner promoting him on regular basis as Deputy



Tahsildar. While so, on consideration two of his juniors were given promotion, therefore there cannot be any justification on the part of the respondent not to consider the name of the petitioner for giving promotion to the petitioner as Deputy Tahsildar on 31.05.2014 as exactly on the said date, even though he superannuated, he had been in the office till afternoon on such date. Therefore, that action on the part of the respondent leaving the petitioner from the list of regular promotion, dated 31.05.2014, in the opinion of this Court is unjustifiable and arbitrary exercise. Therefore, the petitioner is entitled to seek for a direction in this regard. In that view of the matter, this Writ Petition is disposed of with the following direction:-

"that the respondent is directed to consider the request of the petitioner, dated 10.03.1997 by taking into account that the petitioner was in service till 31.05.2014 in afternoon and he had already been given *ad hoc* promotion as early as on 04.03.2014 and on the very same date i.e., on 31.05.2014 two of his juniors had been given promotion as Deputy Tahsildar on regular basis and pass orders thereon for the purpose of granting service, retirement and pensionary benefits. Such order shall be passed by the respondent within a period of six weeks from the date of receipt of a copy of this order."

No costs.

Sd/-

Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar (CS-II)

To

The District Collector,
Tirunelveli District,
Collectorate Complex,
Tirunelveli.

+ 1 CC TO Mr.C.ARUL VADIVEL @ SEKAR, ADVOCATE IN SR No. 64276
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 64481

TA

TE/SV/SAR-2 : 23/11/2018 : 4P/4C

W.P. (MD) No.8162 of 2018
27.04.2018