

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.04.2019
Pronounced on: 12.04.2019

CORAM :
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No. 5860 of 2013
and
MP.Nos.2 to 4 of 2013

K.Thangarasu

... Petitioner

vs.

1. The Secretary to Government,
Revenue Department,
secretariat, Chennai.9.
2. The Principal Secretary and
Commissioner of Revenue Administration,
Chepauk, Chennai - 5.
3. The District Collector,
Namakkal.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of Certiorarified Mandamus, calling for the records relating to the 3rd respondent in his proceedings No.18617/2012/A2 dated 04.02.2013 in respect of non inclusion of the petitioner's name in the panel of Deputy Tahsildar for the year 2008 in Namakkal District, and to quash the same, and consequently, direct the 3rd respondent to include the petitioner's name in Sl.No.8 above R.Subramanian in the panel of Deputy Tahsildar's for the year 2008 vide proceedings No.18617/2012/A2 dated 04.02.2013.

For Petitioner : Mr. S.Vijayakumar

For Respondents: Mr.Akhil Akbar Ali

Government Advocate for R1-R3

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O R D E R

The instant writ petition is for a writ of Certiorarified Mandamus, calling for records relating to the District Collector, Namakkal, in his proceedings No.18617/2012/A2 dated 04.02.2013, in respect of non inclusion of the petitioner in the panel of Deputy Tahsildar for the year 2008, Namakkal District, and to quash the same and to consequently direct the District Collector to include the name of the petitioner at Serial Number.8, above the name of one R.Subramaniam, Deputy Tahsildar,

for the year 2008.

2. The writ petitioner joined as Junior Assistant in the Railway Department, through Tamil Nadu Public Service Commission. He was posted to Taluk Office, Namakkal. He was promoted as Assistant on 24.09.2005. The petitioner is a graduate. The Tamil Nadu Sub-ordinate Service Rules were amended on 07.02.1995. The post of Assistant is filled up by two sources, one by TNPSC and other by promotion from the category of Junior Assistant. The qualification for a direct recruitment Assistant is a graduate. Whereas, the qualification for an appointment of Junior Assistant is SSLC.

3. As per the rules, an Assistant appointed by direct recruitment, who has completed total of 5 years, has passed all the tests and has undergone training for two years is eligible for inclusion in the promotion list of Deputy Tahsildar.

4. The Sub-ordinate Service Rules was amended on 07.02.1995. Under the said amendment, a direct recruit assistant was to be placed on top of a promotee assistant. The effect of the amendment was that the graduate assistant would always be senior to a promotee assistant who must be a graduate or must have passed SSLC. The said Rule was quashed by the Tribunal, but the order of Tribunal was reversed by the High Court by the Judgement dated 10.09.2005 in WP.No.27173 of 2003. This order of the High Court was challenged in the Hon'ble Supreme Court of India.

5. The Hon'ble Supreme Court of India by its judgment in the case of M.Ratnasamy & others Vs. State of Tamil Nadu, reported in (2009) 5 SCC 625, held that, a promotee assistant who is also a graduate would be treated on a par with direct recruitment assistant.

6. According to the writ petitioner, he was entitled to be promoted as a Deputy Tahsildar in the year 2008 itself. The 4th respondent by his order dated 04.12.2013, drew a panel for the appointment of Deputy Tahsildar, for the year 2008. The petitioner name was not considered, but on the other hand, three persons namely, K.Bhaskaran, G.Ravi and one R.Subramaniam, who were non-graduate promotee assistants were considered for promotion. It is this order which is in challenge in the instant writ petition. The contention of the writ petitioner is that he is being a graduate assistant should have been considered prior to the other three persons, who are non-graduate promotee assistant.

7. The petitioner would contend that he was recruited through Group - IV examinations conducted by the Tamil Nadu

Public Service Commission and he was appointed as Junior Assistant and joined in the Government Service on 29.08.2000. After completing his probation, prescribed training and Departmental Test, the petitioner was promoted as Assistant in the year 2005 and subsequently he joined as an Assistant on 29.04.2005.

8. It is submitted that, Revenue Department consists of various categories of posts. Among them, the post of Junior Assistant and Assistant are governed by the Special Rules for the Tamil Nadu Ministerial Service. A person qualified in the cadre of Assistant shall be promoted as Deputy Tahsildar under rule 3(a) of the Special Rules for the Tamil Nadu Revenue Subordinate Service. The post of Deputy Tahsildars and Tahsildars are governed by the Special Rules for the Tamil Nadu Revenue Subordinate Service. The crucial date of publication of the list of Deputy Tahsildars is 15th September of the year. Every year, the Commissioner of Revenue Administration approves the district wise number of vacancies, in the cadre of Deputy Tahsildars for publishing the list of Deputy Tahsildars to the corresponding year. After getting approval from the Commissioner of Revenue Administration, the concerned District Collector will arrange the list of eligible candidates from the list of Assistants in the District Revenue Unit.

9. It is submitted that, while preparing the list of eligible assistants, among other things the following qualifications as specified in rule 7, Annexure III of the Special Rules for the Tamil Nadu Revenue Subordinate Service are being followed of course which are mandatory for every assistant who deserves promotion, to the post of Deputy Tahsildar:-

- 1) Should have passed Criminal-Judicial Test and Account Test part I and II for subordinate officers.
- 2) Test in Maintenance of Revenue Records and Registration.
- 3) The Revenue Tests part I, II and III
- 4) Should have completed the 2 years period of Firka Revenue Inspectors and 2 years period of Assistant.

10. It is submitted that notwithstanding above said qualifications, qualified assistants shall be arranged for promotion by seniority, merit and ability as contemplated in rule 5(f) of the Special Rules for the Tamil Nadu Revenue Subordinate Service. Communal rotation should also be followed in respect of SC/ST candidates under rule 6 of the Special Rules for the Tamil Nadu Revenue Subordinate Service. However, seniority is the major factor for determining the list of assistants within the approved number of vacancies, to be included in the Deputy Tahsildar's list.

11. It is submitted that, the directly recruited Assistants on completion of 5 years of period including 2 years of Firka Revenue Inspector period were included in the list of Deputy Tahsildars after carry over vacancies as per G.O.Ms.No.133, Revenue Department, dated 07.02.1995 in which amendment were issued to Annexure III under rule 7(a) of the Special Rules for the Tamil Nadu Revenue Subordinate Service.

12. It is submitted that challenging this amendment, some promotee assistants filed Special Leave Petition before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court in SLP Nos. 9628/2006 and 8848/2008 dated 08.04.2009 have ordered as follows:-

"For the reason given above these appeals are partly allowed and the impugned judgments partly set aside, and it is held that the impugned rule so far as it places directly recruited Assistants above the promotees for promotion as Deputy Tahsildar shall only apply to those promotees who are non graduates, but it is inapplicable to those promotees who are graduates."

13. It is stated that in pursuant to the above said order, the Government issued instructions to Special Commissioner and Commissioner of Revenue Administration to take necessary action to implement the orders of the Hon'ble Supreme Court of India. The Special Commissioner and Commissioner of Revenue Administration, issued instruction to the District Collectors to implement the order. The Hon'ble Supreme Court has also observed in Para 26 that,

"whether graduate degree is a sufficient basis for classification for promotion vis-a-vis non graduates and whether such classification has rational relation to the nature of duties of a Deputy Tahsildar is, in our opinion, for the State Government to decide and not the Court. Hence we uphold the validity of impugned rule to the extent that it gives preference to the directly recruited Assistants over the promoted Assistants who are non-graduates".

Based upon the above said observation of the Apex Court, the Government issued orders in their letter Ms. No. 392, Revenue Department, dated 30.12.2011, 30.12.2011 and directed not to prescribe degree or graduation as minimum general educational qualification for the post of Deputy Tahsildar.

14. It is submitted that against the drawal of Deputy Tahsildars panels by the District Collectors without following uniformity, several Writ Petitions were filed before this Court. On the Writ Appeal Petitions filed before the Hon'ble Madurai Bench of Madras High Court in its order dated 09.03.2012 in Writ Appeal (MD) Nos. 1285 to 1290 of 2011 has directed the Government to draw the seniority list taking promotees as well as direct recruits forming as one category, draw the panel as on 04.12.1978 and reconsider the promotion subject to the candidates satisfying the criteria required under rules within a period of two months from the date of receipt of copy of this order.

15. Aggrieved by the above said order of the Hon'ble Madurai Bench of Madras High Court, Review Applications were filed before the Hon'ble High Court of Madurai Bench by the Appellants and later it was transferred to the Hon'ble High Court of Madras and the orders was issued in Review Application Nos. 36, 37 and 38/2012 dated 22.09.2012. In the said order the Hon'ble High Court has directed the Government to implement the order passed by this Court in letter and spirit. The Principal Secretary / Commissioner of Revenue Administration, Chennai in his letter No.Ser-3(4)/99429/2009, dated: 35.10.2012 has instructed the District Collectors to redraw the panel of Deputy Tahsildars from 1978 onwards as per seniority based on the above said orders of the Hon'ble Madurai Bench of Madras High Court, dated 09.03.2012 and as per the orders of the High Court, Madras in R.A.No.36, 37 and 38/2012 dated 22.09.2012.

16. State submits that the order of seniority has been followed as per the orders of the Hon'ble Madurai Bench of Madras High Court in its order dated 09.03.2012 in Writ Appeal (MD) Nos. 1285 to 1290 of 2011 dated 09.03.2012, and the Hon'ble High Court, Madras in its order, dated 22.09.2012 in Review Application Nos 36, 37 and 38/2012. It is submitted that Seniority, Merit and Ability have been observed as the main factors while considering a person for the promotion to the post of Deputy Tahsildar as per Rule 5(f) of the Special Rules for the Tamil Nadu Revenue Subordinate Service.

17. Heard the counsel for the parties.

18. A perusal of the counter would show that the seniority has been fixed primarily based on the judgment of the Division Bench dated 09.03.2012, by this Court in Writ Appeal.(MD). No.1285 to 1290 of 2011. The decision of the judgment dated 09.03.2012, passed by this Court, in Writ Appeal.(MD).No.1285 to 1290 of 2011, was challenged before the Hon'ble Supreme Court of India, in CA.No.251 to 256 of 2015. The Hon'ble Supreme Court of India by its order dated 12.03.1999 has set aside. The said

judgment of the High Court had given the following directions,

"19. In the result, the impugned judgement of the High Court is set aside and these appeals are allowed with the following observations and directions:-

(i) Promotions of the Direct recruit Assistants effected between 07.02.1995 and 08.04.2009 and their seniority in their respective positions as on date, shall not be disturbed;

(ii) The benefit extended to the graduate promotee Assistants by placing them on par with Direct recruit Assistants is to be given effect to prospectively from the date of judgment of this Court dated 08.04.2009 rendered in the case of M. Rathinaswami v. State of T.N. reported in (2009) 5 SCC 625;

(iii) After 08.04.2009, the promotion to the post of Deputy Tahsildar from its feeder category, i.e., Direct recruit Assistants and Promotee graduate Assistants, shall be strictly in accordance with the judgment of this Court referred above, i.e., treating Promotee graduate Assistants on par with Direct recruit Assistants. Such promotion shall be given effect to, without reference to any interim order(s) passed by the High Court;

(iv) If any panels are prepared, and promotions are given, after 08.04.2009 for promoting the Assistants to the post of Deputy Tahsildars in Tamil Nadu Revenue Subordinate Service contrary to the judgment of this Court dated 08.04.2009, such panels and promotions have to be revised so as to bring in conformity with the judgment of this Court referred above;

(v) By virtue of the judgment of this Court dated 08.04.2009, referred above, Promotee graduate Assistants are placed on par with Direct recruit Assistants. So far as Promotee non-graduate Assistants are concerned, the amended rule holds the field, which gives preferential treatment to Direct recruit Assistants, over Promotee non-graduate Assistants;

(vi) Promotee non-graduate Assistants, who are impleaded as party respondents in these appeals, are not entitled to any directions in their favour, as much as, all these appeals are preferred by Direct recruit Assistants;

(vii) While implementing the above directions, if the seniority and promotion, of the persons who are already retired or dead, is affected in any manner, payments made on account of such seniority and promotion earlier granted to them during the interregnum period, i.e., from 08.04.2009 till this date shall not be recovered.

(viii) So far as Promotee non-graduate Assistants are concerned, it is open for them to pursue with the Government for appropriate amendment to the Rules, in which event we keep it open to Government to consider

such request on its own merits."

19. A perusal of the order dated 04.02.2013, which is impugned in this proceeding, would show that the panel has been drawn on the basis of the order passed by the Division Bench dated 09.03.2012, in Writ Appeal.(MD).No.1285 to 1290 of 2011. Since the said judgment has been set aside by the Hon'ble Supreme Court of India, the impugned order dated 04.02.2013, passed by 3rd respondent has necessarily to be set aside. The respondents are therefore directed to redraw the entire seniority list / panel, based on the judgment of the Hon'ble Supreme Court in Civil Appeal No. 251 to 256 of 2015. The exercise may be completed within a period of three months from today.

20. The writ petition is allowed. No Costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

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To

1. The Secretary to Government,
Revenue Department,
secretariat, Chennai.9.
2. The Principal Secretary and
Commissioner of Revenue Administration,
Chepauk, Chennai - 5.
3. The District Collector,
Namakkal.

+1 CC to Mr.S.Vijayakumar, Advocate sr 36434.

+1 CC to Govt. Pleader sr 37739.

W.P.No. 5860 of 2013

CA(CO)

SP(09/05/2019)