

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :17.09.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.Nos. 17480 & 17848 of 2019
and

W.M.P.Nos. 16963 & 17251 & 17253 of 2019

A.Gobinath

Assistant

No.1/103, Mettu Street,
Nellikuppam Village and Post,
Thiruporur Taluk,
Kancheepuram District.

...Petitioner in both writ petitions

Vs

1. State of Tamil Nadu

rep by its Principal Secretary to Government,
Rural Development and Panchayat raj Department,
Fort St.George, Chennai - 9.

2. Director,

Commissionerate of Rural Development and Panchayat Raj,
Panagal Building, Chennai - 15.

3. District Collector,
Kancheepuram District,
Kancheepuram.

... Respondents in both writ petitions

Prayer in W.P.No. 17480 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ order or direction in the nature of writ of Mandamus, directing the 3rd respondent herein to forthwith fix the seniority of the petitioner herein in the post of Assistant on par with his junior in accordance with the instructions issued by the Government in Lr.No.21072/ep-7/3001-3 dated 31.01.2002 and consequently sanction all monetary benefits due to the petitioner herein in the post of Assistant by notionally promoting the petitioner herein on par with his Junior S.Ambika Devi.

Prayer in W.P.No. 17848 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ order or direction in the nature of writ of Certiorarified Mandamus, calling for the entire records relating to the

proceedings in Na.Ka.No. 6094/2018/Pa.Aa.3 dated 21.01.2019 and Na.Ka.No.11667/2019/Pa.Aa.2 dated 18.06.2019 on the file of the 3rd respondent herein and quash the same and consequently direct the 3rd respondent herein to include the name of the petitioner herein in the panel of Assistants fit for promotion as Deputy Block Development Officer for the year 2019-20 by fixing the seniority of the petitioner herein in accordance with the instructions issued in Government Lr.No.21072/ep-7/3001-3 dated 31.01.2002 and without insisting one year service in the post of Assistant and extend all monetary benefits notionally on par with his junior S.Ambika Devi.

For Petitioner : Mr.V.R.Rajasekaran
(in both Writ Petitions)
For Respondents : Mrs.A.Srijeyanthy
Additional Government Pleader
(in both Writ Petitions)

C O M M O N O R D E R

The prayer sought for in the Writ Petition No.17480 of 2019 is for issuance of a Writ of Mandamus, directing the 3rd respondent herein to forthwith fix the seniority of the petitioner herein in the post of Assistant on par with his junior in accordance with the instructions issued by the Government in Lr.No.21072/ep-7/3001-3 dated 31.01.2002 and consequently sanction all monetary benefits due to the petitioner herein in the post of Assistant by notionally promoting the petitioner herein on par with his Junior S.Ambika Devi.

2. The prayer sought for in W.P.No. 17848 of 2019 is for issuance of a Writ of Certiorarified Mandamus, calling for the entire records relating to the proceedings in Na.Ka.No. 6094/2018/Pa.Aa.3 dated 21.01.2019 and Na.Ka.No.11667/2019/Pa.Aa.2 dated 18.06.2019 on the file of the 3rd respondent herein and quash the same and consequently direct the 3rd respondent herein to include the name of the petitioner herein in the panel of Assistants fit for promotion as Deputy Block Development Officer for the year 2019-20 by fixing the seniority of the petitioner herein in accordance with the instructions issued in Government Lr.No.21072/-7/3001-3 dated 31.01.2002 and without monetary benefits notionally on par with his junior S.Ambika Devi.

3. Since the petitioner in both writ petitions are same and the facts are also related to one another, matters are clubbed together and a common order is passed.

4. The case of the petitioner is that he was appointed as Junior Assistant in the Panchayat Development Unit of Kancheepuram District on compassionate ground. He joined in the service on 02.03.2009. He has passed all the departmental test by 30.05.2011. Government has issued order on 12.01.2017 regularising his appointment as Junior Assistant w.e.f 02.03.2009. He has completed training on 26.04.2017. Administrative delay of eight years in regularising his appointment as Junior Assistant had caused cascading effect in sending him for training and declaration of his probation. Government has issued orders on 01.06.2018 declaring that he has completed his probation on 30.05.2011. He was placed at S.No. 51 in the seniority list of Junior Assistants prepared as on 01.01.2010. He was qualified to be promoted as Assistant w.e.f 30.05.2011 after passing the department tests. He was not considered for promotion on 30.11.2012 along with his juniors due to the administrative delay in regularization of his appointment and declaration of his probation in the post Junior Assistant. He was promoted as Assistant only on 05.03.2019 consequent to the orders dated 01.06.2018 of the Government declaring his probation. Had the respondents herein have regularized his appointment without any delay, he would have been promoted as Assistant on 30.11.2012 along with his Juniors in the post of Junior Assistant, got promotion as Assistant and then Deputy Block Development Officer.

5. The learned Additional Government Pleader would submit that this Court may issue a direction to the third respondent/District Collector to pass appropriate orders within a reasonable time.

6. The learned Additional Government Pleader would further submit that if this Court grants Interim Stay as prayed for by the petitioner for the Panel Call Letter issued in R.C.No.11667/2019/PA2, dated 18.06.2019, it would cause irreparable hardship to the District Administration to fill up the present 9 vacancies of Deputy Block Development Officer and to further fill up the future 13 vacancies likely to be arisen before 28.02.2020. Even though the petitioner has been promoted as Assistant on 05.03.2019 in the same office of the Kundrathur Panchayat Union, the petitioner has not shown any personal interest to join in the post of Assistant immediately at Kundrathur Panchayat Union for the reason that the petitioner has claimed for Selection Grade in the cadre of Junior Assistant and therefore the petitioner has joined duty as Assistant only 19.03.2019 purposively to get Selection Grade in the Cadre of Junior Assistant and the petitioner is going to complete the one year qualifying service of Assistant only on 18.03.2020, i.e. after 15.03.2020 and therefore at this juncture, the petitioner seems to be eligible for promotion as Deputy Block Development

Officer only during the panel year 2021-2022.

7. On perusal of the records, it is seen that the petitioner was appointed as Junior Assistant on compassionate ground in the year 2019 and his services were regularized in the year 2010. Subsequently, his services were regularised from the date of initial appointment. The subsequent regularisation order was passed on the ground that initially the petitioner's father's death certificate produced by the petitioner was found erroneously approved by the Deputy Thasildhar, but the same is not correct and therefore queries were raised by the Government. Thereafter, it was came to light that the petitioner has given correct Death Certificate duly approved by the Thasildhar, Thiruporur. The Correct Declaration Form has been submitted by the petitioner only on 23.08.2016. Therefore the petitioner could not find fault with the respondent for the delay in Regularization Order issued by the Government and only for the above foregoing delay committed by the petitioner, the Government was able to issue the Regularisation order on 12.01.2017. However, considering the fact that the respondents himself in his counter admitted that the petitioner was declared probation on 30.05.2011, the petitioner would be notionally appointed as Assistant on par with his Junior after getting necessary order from the Government.

8. In view of the above, this Court is inclined to pass the following directions;

(i) The third respondent is directed to grant notional promotion as Assistant in the Department on par with his Junior Ambigadevi after getting necessary orders from the Government and further the 3rd respondent shall fix the seniority in between the petitioner and Ambigadevi.

(ii) If any proposals is received from the 3rd respondent in this regard, the 1st respondent shall pass appropriate orders on the same. The 1st and 3rd respondents have to complete the exercise within a period of 24 weeks from the date of receipt of a copy of this order.

9. With the above directions, the present writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
The State of Tamil Nadu
Rural Development and Panchayat raj Department,
Fort St.George, Chennai - 9.

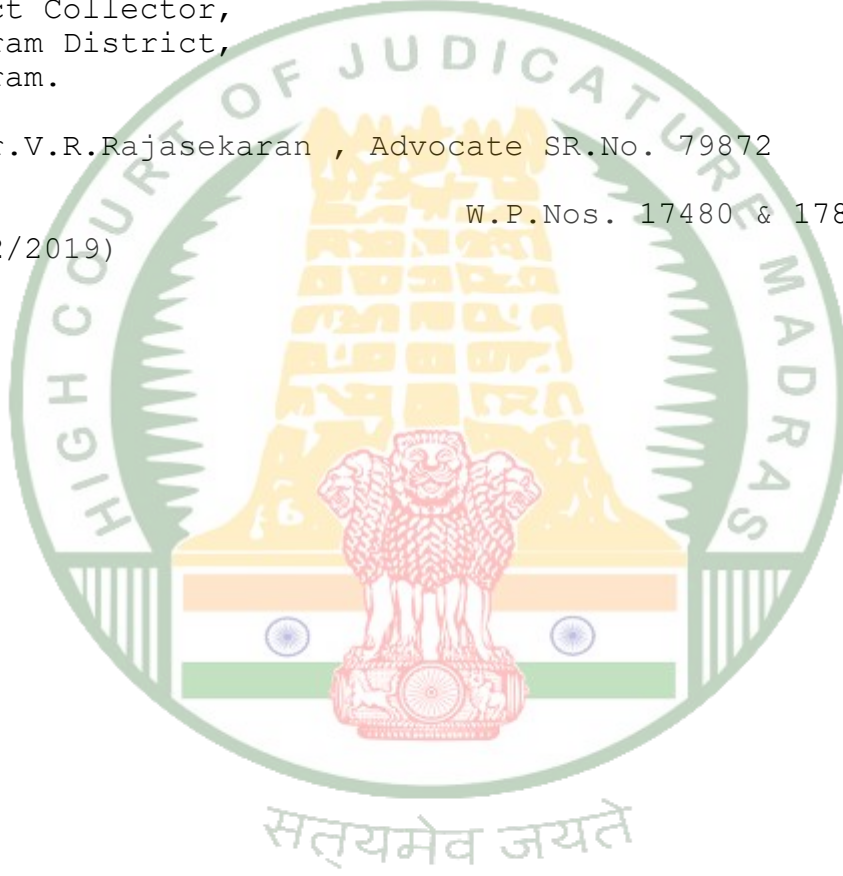
2. Director,
Commissionerate of Rural Development and Panchayat Raj,
Panagal Building, Chennai - 15.

3. District Collector,
Kancheepuram District,
Kancheepuram.

+lcc to Mr.V.R.Rajasekaran , Advocate SR.No. 79872

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A.SK(02/12/2019)



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