

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:19.08.2019

Coram

The Hon'ble Mr. Justice V.PARTHIBAN

W.P.No.19530 of 2019

&

W.M.P.No.19022 of 2019

M.Jayaprakash

...Petitioner

Vs.

1.The Secretary to Government of Tamil Nadu,
Home Department, Fort St.George,
Chennai - 9.

2.The Transport Commissioner,
Chepauk, Chennai - 5.

....Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Mandamus directing the respondents to grant promotion to the petitioner as Assistant from the year 2006-07 and as Superintendent from 28.06.2013 on par with his juniors and include him in the promotion panel for Motor Vehicle Inspector (NT) along with appropriate pay fixation from the respective dates with all arrears and consequently release all withheld increments from the year 2003.

For Petitioner

...

Mr.V.Vijay Shankar

For Respondents

..

Mr.J.Pothiraj, Spl.G.P.

ORDER

The petitioner was initially appointed as Junior Assistant on 02.08.1995 in Tamil Nadu Public Service Commission (TNPSC). He was promoted as Assistant in 1996 and as Assistant Section Officer in 2002. According to the petitioner, his probation was also declared on 05.01.2001. According to him, on account of his family circumstances, he applied for departmental transfer to the Transport Department from Public Service Commission. His request was accepted and finally by order dated 07.04.2003, the second respondent notified petitioner's appointment as Junior Assistant through departmental transfer. At that time when such transfer took place, it was stated in the order that the petitioner has to forego his seniority in respect

of his service rendered in Service Commission. His seniority will be fixed at the last place of the approved probationer list of the Transport Department. The petitioner accepted the condition and joined as Junior Assistant in the Transport Department on 21.04.2003.

2.The petitioner, in the Transport Department, was duly qualified for promotion to the post of Assistant, as he having passed all the departmental and accounts tests and also completed his training at Bhavani Sagar Institute. Although the petitioner's name was originally included in the panel for promotion as Assistant for the panel year 2004-05, however, the second respondent by his proceedings dated 29.07.2005 indicated that the petitioner was not to be given promotion as Assistant on account of pendency of declaration of probation by the Government. On the issue of declaration of probation, it appears that series of correspondences were exchanged between various officials of both the respondents as to whether any relaxation was required by the Government. Finally, by letter dated 22.05.2018, the first respondent stated that relaxation was not required and necessary orders will be issued by the appointing authority, declaring the probation of the petitioner.

3.At this, the second respondent directed the RTO, Namakkal, under whom the petitioner was working at that point of time, to issue necessary orders. Pursuant thereto, by proceedings dated 02.07.2018, the RTO, Namakkal, issued orders declaring the probation of the petitioner with effect from 20.04.2005 in the cadre of Junior Assistant. Thereafter, taking note of the declaration of probation with effect from 20.04.2005, the second respondent, by his proceedings dated 25.01.2019 directed that the petitioner's name deemed to have been included in the panel for promotion to the post of Assistant for the panel year 2006-2007 and placed at Sl.No.18 below Mr.P.Elumalai and above one Mr.C.Kumaravel. The said C.Kumaravel died and the next immediate junior was one Mr.Rajmohan. It was further directed that the petitioner's pay shall be fixed with effect from the respective dates, under Rule 27 of the Fundamental Rules (FR) applicable to the State Government employees.

4.While matters stood thus, according to the petitioner both his immediate senior and junior Mr.P.Elumalai and Mr.Rajmohan were given further promotion as Superintendent on 28.06.2013 and later the said two persons were included in the approved panel for next promotion to the post of Motor Vehicle Inspector (Non-technical). In the said circumstances, the petitioner has submitted his representation seeking consequential promotion to the post of Superintendent with effect from 28.06.2013, as given to his immediate junior and

senior and also inclusion of his name for promotion to the post of Motor Vehicle Inspector (Non-technical). According to the petitioner, in view of delay in taking decision in regard to the declaration of probation, his pay remained static for the last 16 years, as the annual increments due for the past 16 years from 2003 have not been sanctioned. Further, his pay as Assistant has also not been properly fixed with effect from 2006-2007 and as Superintendent with effect from 28.06.2013. The petitioner submitted a comprehensive representation on 13.12.2018. Since, no response was forthcoming, the petitioner is before this Court, with the present writ petition.

5.Shri.V.Vijay Shankar, the learned counsel appearing for the petitioner would submit that the authority concerned himself has passed a detailed order on 25.01.2019 granting inclusion of the name of the petitioner for promotion to the post of Assistant for the year 2006-2007 by assigning him Sl.No.18, after Mr.P.Elumalai, who is at Sl.No.17. It will be useful, to appreciate the claim of the petitioner, to extract the entire order passed by the second respondent as under;

"Proc.R.No:R2/65631/2014 (E.O.No:16/2019) dated 25.01.2019.

Sub: Establishment - Transport Department- Thiru.M.Jayaprakash, Junior Assistant, Regional Transport Office, Namakkal(North) - Request for inclusion of his name in the panel of fully qualified Junior Assistants fit for promotion to the post of Assistants for the panel year 2006-07- Orders passed

Ref: 1.Transport Commissioner, Chennai proceedings in R.No.R2/17950/2003 (E.O.No.142/2003) dated 07.04.2003.

2.Transport Commissioner, Chennai proceedings in R.No.65631/R2/14 (E.O.No.86/2018) dated 15.02.2018.

3.Government letter No.2409/Tr.IV/2017-4 dated 25.05.2018.

4.Transport Commissioner, letter in R.No.65631/RB1/14 dated 19.07.2018.

ORDER:

Thiru M.Jayaprakash, was appointed in this department as Junior Assistant on Departmental Transfer from Tamil Nadu Public Service Commission, and joined duty as Junior Assistant on 21.04.2003 F.N in Regional Transport Office, Trichy vide reference 1st cited.

The individual has passed the departmental test as follows:-

S.No.	Name of the Departmental Tests	Month and year of passing
1.	Account Test for Subordinate Officers, Part-I	December - 2003
2.	Tamil Nadu Government Office Manual - Test	May - 1995
3.	Motor Vehicles Act, 1988 - Test	December - 2003

It is submitted that, even though the individual has passed all the departmental tests and eligible for the post of Assistant, in May 2005, his name was not considered for inclusion in the panel of Assistant for the year 2006-2007, due to non declaration of completion of his probation period.

As the individual was appointed in this department on Departmental Transfer from Tamil Nadu Public Service Commission Service to Ministerial Service, a proposal was sent to Government so as to regularise the services of the individual under Rule 3 (g) of Special Rules for Tamil Nadu Ministerial Service. Consequently, the services of the individual was regularized by the Transport Commissioner from the date of joining in this department w.e.f., 21.04.2003 vide reference 2nd cited.

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Further, while the individual was working in TNPSC, has undergone the Foundational Training at Bhavanisagar from 25.02.2009 to 24.04.2000 and completed the training successfully on 24.04.2000 itself.

Hence, based on the Government letter 3rd cited and instruction was issued in this office letter 4th cited, to the Regional Transport Officer, Namakkal (North) to declare completion of his probation period satisfactorily on 20.05.2005 A.N. i.e., retrospective effect.

Therefore, the Regional Transport Officer, Namakkal (North) was addressed to send panel proforma to include his name in the panel of Assistant for the year 2006-2007 along with his recommendation. Accordingly, the Regional Transport Officer, Namakkal (North) has sent the panel proforma along with due recommendation.

In this connection, it is stated that the position of the immediate junior and senior to the individual, in the panel of Assistant for the year 2006-2007 are as follows:

Panel Seniority No.	Name of the Assistant (Tvl.)	Date of regularization	Date of declaration of probation	Departmental test passed on		
11	E.Oliyan	25.08.2000	06.09.2002	Dec-02	Dec-03	May-05
12	S.Neelavenidevi	28.08.2000	31.08.2002	May-02	Dec-03	May-02
13	D.Sivakumar	29.08.2000	30.08.2002	May-03	Dec-04	May-05
14	S.Tamilselvi	31.08.2001	30.08.2003	Dec-01	Dec-02	Dec-02
16	D.Rajeswari	05.09.2001	04.09.2003	Dec-02	May-05	Dec-05
17	P.Elumalai	28.11.2001	27.11.2003	May-03	Dec-04	May-00

In this case, the service particulars and departmental test passed details of the Thiru M.Jayaprakash, Junior Assistant is furnished as follows:

Name of the Assistant (Tvl.)	Date of regularization	Date of declaration of probation	Departmental test passed on		
M.Jayaprakash (DOB:20.06.1964)	21.04.2003 F.N	20.04.2005 A.N	May-1995	Dec-03	May-05

Therefore, the individual is eligible for inclusion in the panel of Assistant drawn for the year 2006-2007 in serial No. as 18. i.e., after Thiru.P.Elumalai (Sl.No.17).

Accordingly, the name of Thiru M.Jayaprakash, Junior Assistant, Regional Transport Office, Namakkal (North) is restored and included in the panel of fully qualified Junior Assistants/Typists/Steno-Typists for promotion to the post of Assistant for the year 2006-2007, approved by the Transport Commissioner, Chennai - 5 vide proceedings in R.No.25305/R2/2006, (E.O.No.354/2006) dated 01.08.2006 by assigning him in serial No.18 i.e., after Thiru.P.Elumalai, Serial No.17.

Consequently, Thiru M.Jayaprakash is promoted as Assistant notionally w.e.f. the date on which his Junior Thiru C.Kumaravel was promoted, and he is entitled to fix his pay as per Ruling (17) under Rule 27 of the Fundamental Rule."

6.The learned counsel for the petitioner, therefore, would submit that once the petitioner was found to be eligible for inclusion of his name for promotion to the post of Assistant in the year 2006-2007, and placed at Sl.No.18, after one P.Elumalai, who is at Sl.No.17, automatically, the petitioner ought to have been considered for promotion along with his immediate senior and also along with his immediate junior, who were promoted admittedly as Superintendents on 28.06.2013. However, despite repeated representations from the petitioner's side requesting for promotion to the next higher grade of Superintendent and also inclusion of his name at appropriate place for promotion to the post of Motor Vehicle Inspector (Non-technical), the petitioner was allowed to languish in the same pay without consequential revision, increment, promotion etc. Once the second respondent has taken a decision that the petitioner was fully qualified and eligible for promotion to the

post of Assistant for the year 2006-2007, as a natural consequence of such finding, the petitioner ought to have been granted further benefits as a fall out of inclusion in the panel of Assistant drawn for the year 2006-2007. Therefore, the petitioner's claim in all fours is liable to be allowed, since, non-promotion of the petitioner to the next higher post and also proper fixation of pay cannot be countenanced both in law and on facts.

7. After notice Mr. J. Pothiraj, learned Special Government Pleader, entered appearance for R1 and R2 and a detailed counter affidavit has been filed on behalf of the respondents.

8. According to the learned Special Government Pleader, the petitioner is not entitled for the relief for the simple reason that as per Special Rules for the Transport Department, the petitioner has to fulfill the following conditions:-

"(i) Account Test for Subordinate Officers, Part I:

(ii) Departmental Test on the Motor Vehicles Act, 1939 (Central Act IV of 1939), the Tamil Nadu Motor Vehicles Taxation Act, 1974 (Tamil Nadu Act 13 of 1974) and the rules and Notifications made thereunder;

(iii) Service for a period of not less than-

(a) two years as Assistant in the Offices of the State Transport Authority or State Transport Appellate Tribunal or joint Transport Commissioner or Deputy Transport Commissioner or Assistant Accounts Officer (Internal Audit Wing); and

(b) one year as Accountant in any of the Offices of Regional Transport Officer of the Transport Department."

9. The learned Special Government Pleader therefore would submit that the petitioner has not acted as Assistant in two years as per the above Special Rules of the Transport Department nor one year as Accountant. Therefore, the petitioner was not eligible to be promoted as Superintendent, as he has not fulfilled the criteria as mentioned above.

10. The facts as narrated above are not in dispute at all. The principal point of objection on behalf of the respondents is that the petitioner having not qualified in terms of the Special

Rules, in terms of the experience mentioned, which is extracted above, he is not eligible to be considered along with his immediate senior or junior, since such comparison is not called for. Unless or until the petitioner is eligible to be considered, he cannot compare himself with his immediate senior or junior, who were found eligible and granted promotion with effect from 28.06.2013.

11. According to the learned Special Government Pleader, the petitioner's immediate Senior and Junior have completed the required service norms and therefore, their names are all also to be considered for inclusion in the panel for Motor Vehicle Inspector (Non-Technical) for the panel year 2019-2020. However, it is admitted that the seniority of the petitioner was restored, vide proceedings of the Transport Commissioner, dated 25.01.2019 and his pay fixation was ordered as per Ruling 17 Rule 27 of the Fundamental Rules.

12. In fact, in the counter affidavit it is repeated that the petitioner did not completed the service norms as required under Rule 30(b) of the Special Rules of the Tamil Nadu Ministerial Service Rules. According to the learned Special Government Pleader the petitioner would be considered for promotion to the post of Superintendent on completion of service norms as provided under Rule 30(b) of the Special Rules of Tamil Nadu Ministerial Service Rules.

13. By way of reply, the learned counsel for the petitioner would submit that once the petitioner was included retrospectively for the panel year 2006-07, for promotion to the post of Assistant, the petitioner was deemed to have completed the service norms as held by the Hon'ble Supreme Court of India. The learned counsel would draw the attention of this Court to the decision of the Hon'ble Supreme Court of India in Union of India & others Vs. K.B. Rajoria [(2000) 3 SCC page 562]. He would draw the attention of this Court to paragraph No.21 of the decision, which is extracted hereunder;

"21. The notional promotion was given to Krishnamoorti to right the wrong that had been done to him by his supersession on 22.02.1995. If Krishnamoorti is denied the right to be considered for promotion to the post of Director General on the basis of such notional promotion, particularly when the relevant provisions so provide, it would result in perpetuating the wrong done to him. That is exactly what the High Court has done."

14. The learned counsel also would rely on the Division Bench decision of this Court in The Tamil Nadu Electricity Board, represented by its Secretary Vs. G. Sethuraman [(2005) 3

M.L.J. 604]. He would draw specific reference to paragraph No.14, which is extracted hereunder;

"14.In the present case, the legal fiction which has been created by order dated 07.06.1996 is that the writ petitioner is deemed to have been retrospectively promoted as Executive Engineer from 09.06.1988. Hence full effect must be given to this legal fiction, and for all purposes we have to treat it as if the writ petitioner had in fact been promoted as Class I officer from 09.06.1988, and our eyes should not boggle half way. For these reasons, we fully agree with the view taken by the learned Single Judge in the impugned judgment."

15.The learned counsel for the petitioner further would rely on a decision of this Court in S.Krishnakumar Vs. State of Tamil Nadu rep by its Secretary, Home Department & others [(2011) 8 M.L.J. 317], wherein the learned Judge in paragraph 8 has held as follows:-

"8.Applying the said judgment, particularly, the principles stating that the petitioner cannot be blamed for not undergoing the training in Bhavani Sagar, the non-inclusion of the petitioner's name in the panel for promotion to the post of Assistant for the year 2005-2006 and denying promotion to the petitioner as Assistant on the date when his juniors were given promotion cannot be justified. However, taking note of the subsequent promotion given to the petitioner, the petitioner shall be notionally promoted for the post of Assistant from the date of promotion given to the petitioner's juniors from 15.12.2005. The petitioner is not entitled to get any arrears of salary for the promoted post and the seniority alone is to be given by respondents 1 and 2. The said notional promotion shall be calculated for all purpose except backwages.

16.The learned counsel for the petitioner would therefore submit that the petitioner cannot be faulted with for not completing the service norms and by virtue of inclusion of the petitioner's name for Assistant for the panel year 2006-2007, he is deemed to have completed the service norms for the purpose of promotion to the next higher post. Therefore, the contention raised on behalf of the respondents cannot be countenanced.

17.Considered the submissions made by the learned counsels appearing for the parties and perused the materials and

pleadings placed on record.

18.As per the proceedings of the Second respondent dated 25.01.2019, it could be seen that the petitioner was included in the panel year 2006-2007 for promotion to the post of Assistant and he was also assigned new seniority at Serial No.18, below one Mr.Elumalai and above one Mr.C.Kumaravel ,who died and the next immediate Junior Mr.Rajmohan. Once the seniority has been assigned to the petitioner and those two individuals, viz., immediate senior and immediate junior were granted promotion to the next higher grade, i.e. Superintendents, this Court is unable to see as to how the petitioner can be singled out for promotion to the post of Superintendent in 2013.

19.The objections raised on behalf of the respondents that the petitioner has not completed the service norms in terms of the provisions of the Special Rules is preposterous for the simple reason that it was not the fault of the petitioner that he was allowed to complete the service norms but not completed the same. The petitioner was prevented from completing the service norms due to the delay in taking a decision by the authorities concerned in declaring his probation of his entry post of Junior Assistant. Thereafter, a decision was taken in 2019, after a period of several years and the seniority of the petitioner was rightly restored and promoted as Assistant for the panel year 2006-2007. In such circumstances, the natural corollary of such retrospective inclusion of the petitioner's name in the panel year 2006-2007 for promotion to the post of Assistant would confer consequential benefits on the petitioner as well for further promotion to the post of Superintendent and also inclusion of his name in the post of Motor Vehicle Inspector(Non-Technical).

20.When the facts are not in dispute regarding the promotion of the petitioner's immediate Senior and Junior as Superintendents with effect from 28.06.2013, this Court is unable to comprehend the stand taken by the respondents that the petitioner herein is not entitled to be considered for promotion to the post of Superintendent along with his immediate Senior and Junior on the basis of the petitioner not completing the service norms. In fact, the decisions relied on by the learned counsel for the petitioner as aforementioned and the relevant portions of the decisions, which are extracted above, would clearly support the claim of the petitioner herein. Once the petitioner's inclusion was ante-dated for promotion to the post of Assistant for the panel year 2006-2007, the objections regarding non-completion of service norms for promotion to the higher post have to necessarily fail. The petitioner, in such circumstances ought to be treated as having completed such service norms, but for the delay in taking a decision by the

authorities concerned in declaring his probation after several years.

21. From the entirety of the narrative, the petitioner was not responsible for any delay for the decision taken by the second respondent, as the officials, who are involved in the decision making in regard to the petitioner's claim, were exchanging series of correspondences and finally the favourable order was passed by the second respondent very recently on 25.01.2019. Therefore, the petitioner cannot suffer any detriment in view of the delay in the decision taken by the authorities concerned and on that account he cannot be denied his further promotion to the higher post and proper fixation of pay. If the promotion to the next higher post and proper fixation of pay is to be denied on the basis of the objections raised on behalf of the respondents, that would amount to penalizing the petitioner for no fault of his. On account of administrative delay, due to red-tapism, the petitioner's right to be considered for promotion to the next higher post along with his immediate Senior and Junior cannot be negated or denied, as such denial or negation would be violative of Articles 14 and 16 of the Constitution of India, besides the same being unreasonable and arbitrary.

22. It is also rather unfortunate that in view of the long administrative delay in settling the issue in regard to the declaration of the petitioner's probation, which was due several years before, the petitioner's pay has remained static for the last 16 years, since 2003 and due to non-fixation of proper pay and allowances, the petitioner must have been put to untold hardship and suffering. The petitioner has already suffered grave injustice due to administrative delay and in the said circumstances, he cannot be allowed to suffer further injustice by denying him due promotion as Superintendent with effect from the date of promotion of his immediate Senior and Junior, on 28.06.2013. In fact, the respondents, on their own, in all fairness, ought to have set right the anomaly, but on the other hand, the relief as claimed by the writ petitioner is being opposed on the basis of fragile objection, which cannot be accepted as being a valid piece of submission.

23. For the above said reasons, the writ petition is allowed, the respondents are directed to grant promotion to the petitioner as Assistant for the panel year 2006-2007 and grant him further promotion as Superintendent with effect from 28.06.2013, on par with his immediate Junior, and also include the petitioner's name in the promotional panel for Motor Vehicle Inspector (Non-technical) along with his immediate

Junior, for the panel year in which his immediate Junior was included.

24.The respondents are directed to grant appropriate pay fixation to the petitioner by granting him all increments due to him as admissible and release all consequential arrears of pay and allowances for the regulated period.

25.The respondents are directed to pass appropriate orders by granting promotion, fixation of pay and all other attendant benefits within a period of eight weeks from the date of receipt of a copy of this order.

26.In the result, the writ petition stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-II)

//True copy//

Sub Assistant Registrar

msh/mrm

To

1.The Secretary to Government of Tamil Nadu,
Home Department, Fort St.George,
Chennai - 9.

2.The Transport Commissioner,
Chepauk, Chennai - 5.

+1cc to Mr.V.Vijay Shankar, Advocate SR.No.70686

+1cc to Government Pleader, High Court, Madras SR.No.7115

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EV(CO)
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