IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 17.12.2019	Delivered on 20.12.2019

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.Nos.24117 of 2013 & 1895 of 2019
and
WMP Nos.1909, 2097 & 29339 of 2019

1.N.Vadivel
2.E.Kalaiyarasi
3.P.Kaveri

.. Petitioners
in W.P.No.24117 of 2013

1. K.Manigandan,
Senior Revenue Inspector,
Special Tahsildar Office,
(Stamp duty)
Tiruvannamalai District,
Pin 606 601.

2. A.Thamizharasi
Senior Revenue Inspector,
Office of District Collector,
Tiruvannamalai District,
Pin 606 601.

3. A.Shamshanth Begam
Senior Revenue Inspector,
Office of District Collector,
Tiruvannamalai District,
Pin 606 601.

..Petitioners
in W.P.No.1895 of 2019

.Vs.

1.The Principal Secretary/
Commissioner of Revenue Administration,
Chepauk,
Chennai-5.

2.The District Collector,
Thiruvannamalai.

3.The District Revenue Officer,
Thiruvannamalai.

4. M.Tamilarasi,
Senior Revenue Inspector,
O/o.District Collector,
Tiruvannamalai Dt-606 601.

5. A.Shamshanth Begam,
Senior Revenue Inspector,
O/o.District Collector,
Tiruvannamalai Dt-606 601.

6. S.Manjunathan,
Taluk Supply Officer, Polur Tk,
Tiruvannamalai Dt.

7. K.Manikandan,
Revenue Assistant,
O/o.The Special Tahsildar (Stamp Duty),
Taluk Office,
Tiruvannamalai Tk & Dt.

8. K.Arulkumar,
Revenue Inspector, Santhavasal Firka
Polur Tk,Tiruvannamalai Dt. .. Respondents
in W.P.No.24117 of 2013

[R4 to R8 are impleaded vide order dt.23.04.2019
made in WMP Nos.1903 & 7538/2019 in
WP.No.24117/2013 by SSJ]

1. The Addl Chief Secretary/
Commissioner of Revenue Administration,
Chepauk,
Chennai-5.

2. The District Collector,
Thiruvannamalai.

3. The District Revenue Officer,
Thiruvannamalai.

4. N.Vadivel
Revenue Assistant
Taluk Office, Cheyyar,
Tiruvannamalai Dt.

5. E.Kalaiyarasi
Revenue Assistant,
Taluk Office,
Tiruvannamalai.

6. P.Kaveri,
Revenue Assistant,
Kalasapakkam Raluk,
Tiruvannamalai Dt.

..Respondents
in W.P.No.1895 of 2019

PRAYER in W.P.No.24117/2013: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the third respondent in his proceedings No.A3/38896/12 dated 21.05.13 and to quash the same and consequently direct the third respondent too include the petitioners' name in the panel of Assistants for the year 2012.

PRAYER in W.P.No.1895 of 2019: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the third respondent to consider the claim of the petitioners for cancelling the order of promotion of the respondents 4 to 6 as Revenue Assistants by inclusion of their names in the panel for the year 2012, revert them to their Original Posts, in the light of the Judgment dated 12.12.2018 in W.A.No.1247 of 2015, and restore the seniority of the petitioners in the cadre of Revenue Assistant and consider their names for empanelment for promotion as Deputy Tahsildars for the year 2018 at the proper place and to promote them.

W.P.No.24117 of 2013
For Petitioners: Mr.S.Vijayakumar

For R 1 to R3 : Mr.P.S.Sivashanmugasundaram
Special Government Pleader

For R 4 & R 5 : Mr.Balan Haridas
for Mr.J.Muthukumaran

W.P.No.1895 of 2019
For Petitioners: Mr.Balan Haridas
for Mr.J.Muthukumaran

For R 1 to R3 : Mr.P.S.Sivashanmugasundaram
Special Government Pleader
in both W.Ps

For R 4 to R 6 : No Appearance

COMMON ORDER

The above Writ Petitions are taken together since the issue involved is common.

2.The petitioners in W.P.No.24117 of 2013 have challenged the proceedings of the 3rd respondent dated 21.05.2013 and have sought for inclusion of their names in the panel of Assistants for the year 2012.

3.The petitioners in W.P.No.1895 of 2019 have sought for the cancellation of the promotion of the petitioners in W.P.No.24117 of 2013 and to revert them to their original post and to restore the seniority of the petitioners in the cadre of Revenue Assistant and consider their names for empanelment for promotion as Deputy Tahsildars for the year 2018.

4.Initially, the W.P.No.24117 of 2013 was allowed by this Court by an order dated 29.08.2013. It will be relevant to extract the order passed by this Court.

> "2. The petitioners were serving as Typists in the Revenue Department, Thiruvannamalai District. They were recruited through the TNPSC. The petitioners successfully completed the departmental tests and also training offered at Tamil Nadu Land Survey Training Centre, Orathanadu on 9.3.2012 and 13.03.2012. They also completed the probation.
> 3. The petitioners were eligible for further promotion to the post of Assistant in the Revenue Department in the year 2012. However, the petitioners were not considered for promotion. As there was no indication of their promotion, the petitioners approached the third respondent and requested him to consider their case on par with the Junior Assistants who were selected through the TNPSC. The third respondent informed the petitioners that he would seek instructions from the first and second respondent and take appropriate decision. While so, the third respondent sent the impugned communication dated 21.5.2013 that the petitioners were not eligible for promotion to the post of Assistant for the year 2013 on

account of non-possession of service qualification as Junior Assistant in the year 2012 panel.

4. The petitioners have filed this Writ Petition to quash the order dated 21.5.2013 of the third respondent and consequently, to include the petitioners' name in the promotion panel for Assistants for the year 2012.

5. The learned Additional Government Pleader has fairly submitted that in view of the order dated 14.06.2013 passed in W.P.No.15108 of 2013 in M.Jayabharathi and 9 others vs. The Additional Chief Secretary/Commissioner of Revenue Administration, Chepauk, Chennai, this impugned order has to be quashed and a direction has got to be issued to consider the claim of the petitioners.

6. The said judgment was rendered based on the order dated 14.02.2013 passed in W.P.No.28666 and 30475 of 2012 in K.Ahamed Ali and 14 others vs. The Principal Secretary/Commissioner of Revenue Administration, Chepauk, Chennai 5 and two others.

7. In view of the submissions made by the learned counsel appearing for the parties, the Writ Petition is allowed and the impugned order is set aside and third respondent is directed to include the names of the petitioners in the promotion panel for the post of Assistants for the year 2012 at an appropriate place. The respondents are directed to complete the aforesaid exercise within a period of eight weeks from the date of receipt of a copy of this order. No costs".

5.This order became a subject matter of challenge in the appeal filed by the official respondents in W.A.No.814 of 2016 and the appeal was dismissed by an order dated 15.07.2016. The order is extracted hereunder:

"By order dated 29.08.2013, the learned Single Judge, by following the earlier orders passed by this court in W.P.Nos.28666 and 30475 of 2012 dated 14.02.2013, allowed the Writ Petition No.24117 of 2013 filed by the respondents herein/writ petitioners, and directed the District Revenue Officer, Tiruvannamalai,/3rd respondent/3rd appellant herein, to include the names of the writ petitioners/respondents herein in the promotion panel for the post of Assistant for the year 2012 at the appropriate place.

2. The appellants/State would contend in their grounds that as per G.O.Ms.No.417 P & AR Department dated 01.12.1993, the Typists shall undergo training as Junior Assistant for a period of one year by allotting a few subjects covering different aspects of the Department and he/she shall be allowed to dispose of the files without detrimental to the typing work. It is also contended that The Principal Secretary/Commissioner of Revenue Administration, Chennai, in his Circular Roc.No.Ser 4(1) 22579/2012 dated 25.10.2012 has instructed all the District Collector to ensure imparting of one year training as Junior Assistant to Typists without any reference to vacancy in Junior Assistant cadre and issue order for such training on the date of completion of probation itself so that this issue does not crop up again and also instructed to follow G.O.Ms.No.16 P&AR Department(Per-B) Department dated 21.02.2002.

3. The learned Special Government Pleader appearing for the appellants/State, submits that the Service Rules cannot be ignored at any cost by any authority in the Department. However, as per the direction issued by the learned Single Judge, the Government has complied with the order dated 29.08.2013 and hence, the prayer sought for in the Writ Appeal has become infructuous. However, the learned Special Government Pleader, has made a plea that this subsequent development taken place in the present issue, may not be treated as a precedent as the Government Authorities are bound to follow the Executive Instructions issued by the Head of the Department-cum-the Principal Secretary and Commissioner of Revenue Administration.

4. We have gone through the order of the learned Single Judge and anxiously considered the submissions made on the side of the appellants/state.

5. Since already the order of the learned Single Judge has been complied with, this Writ Appeal is dismissed as infructuous, however, making it clear that the above judgment is made on the facts of the case and taking note of the subsequent developments and hence, the same shall not to be followed as a precedent. No costs. Consequently, connected CMP is closed.

6.The Division Bench had taken into consideration the fact that the Government had complied with the order passed by the learned Single Judge and had promoted the petitioners and therefore the Division Bench came to a conclusion that the appeal itself has become infructuous.

7.The respondents 6 to 8 filed an appeal independently in W.A.No.1247 of 2015, challenging the order passed in W.P.No.24117 of 2013. The Division Bench of this Court, by an order dated 12.12.2018, allowed the appeal and had set aside the order made in W.P.No.24117 of 2013 and remanded back the matter for fresh consideration.

8.It is pursuant to the above said order, WP.No.24117 of 2013, is again being considered on merits and in the meantime, the private respondents have impleaded themselves in this writ petition as R 4 to R 8. They have also filed an independent writ petition in W.P.No.1895 of 2019, challenging the promotion given to the petitioners and they have sought for consequential reliefs.

9.Mr.S.Vijayakumar, learned counsel appearing on behalf of the petitioners submitted that the petitioners joined service in the year 2009, as Typist and they were regularized by the 2nd respondent by his proceedings dated 18.01.2011. The learned counsel further submitted that the 3rd respondent had issued an order on 09.09.2011, declaring the probation of the petitioners and the petitioners have also completed land survey training on 09.03.2012. The learned counsel submitted that the crucial date for preparing the panel for promotion falls during the month of March every year and in the present case, it fell on 15.03.2012. The learned counsel submitted that the petitioners were entitled to be considered for promotion to the post of Assistants. However, the petitioners were not sent for training as Junior Assistants for a period of one year and the same was put against the petitioners. The petitioners therefore approached this Court and orders were passed in their favour and the petitioners were promoted to the post of Assistants and subsequently, the petitioners were also promoted to the post of Deputy Tahsildar and they are functioning in the said post for the last two years. The learned counsel submitted that the impleaded respondents were directly recruited only during December 2012 and January 2013 and therefore, they were not entitled to be considered for promotion and they were not even in the zone of consideration at the time when the promotion was due to the petitioners.

10.The learned counsel for the petitioners placed reliance upon the following judgments:

I. K.Ahmed Ali .Vs. Principal Secretary, Common order made in W.P.Nos.28666 and 30475 of 2012 dated 14.02.2013.

II. M.Jayabharathi and Others .Vs. Additional Chief Secretary made in W.P.No.15180 of 2013 dated 14.06.2013

III. Additional Chief Secretary .Vs. M.Jayabharathi and others made in W.A.No.2216/2013 dated 03.04.2014.

IV.G.Mahesh and Others .Vs. Secretary to Government made in W.P.No.4553 of 2018 dated 28.03.2018.

11.By placing reliance on the above judgments, the learned counsel submitted that the issue involved in this case is squarely covered by the above judgments and the petitioners cannot be found fault for not having undergone the training and the same has been condoned by this Court in all the judgments that has been referred supra.

12.The learned counsel appearing on behalf of the respondents 4 to 8, submitted that Rule 30(c) of the Tamil Nadu Ministerial Service Rules makes it mandatory for a Typist to undergo training as Junior Assistant for one year to become eligible to be considered for promotion to the post of Assistant. The learned counsel submitted that the petitioners completed their probation only on 09.09.2011 and they could be sent for training only after the completion of the probation and therefore, the petitioners were not entitled to be considered for promotion to the post of Assistants on the crucial date i.e, on 15.03.2012. The learned counsel submitted that the peculiar facts of this case and the issue that has been raised, has not been considered in any of the judgments referred by the learned counsel for the petitioners. The learned counsel submitted that respondents 4 to 8 continue to stagnate in the post of Assistant and their entitlement to be promoted to the post of Deputy Tahsildar is yet to be considered due to the pendency of the writ petition. Therefore, left with no other alternative, an independent writ petition has been filed before this Court in W.P.No.1895 of 2019.

13.Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader appearing on behalf of the official respondents heavily relied upon the counter affidavit that has been filed in both the writ petitions. The learned counsel submitted that the petitioners did not complete the training as Junior Assistants as prescribed under Rule 30(c) of the Tamil Nadu Ministerial Service Rules and therefore, they were not entitled for promotion to the post of Assistants. The learned counsel submitted that the petitioners were promoted to the post of Assistants only in compliance of the orders passed by this Court. Otherwise, the petitioners were not entitled for promotion. The learned counsel submitted that the petitioners can be sent for training only on the completion of probation which was declared only on 09.09.2011. Therefore, obviously the petitioners were not entitled for being considered to be included in the panel on the crucial date i.e., on 15.03.2012. The learned counsel submitted that the claim made by respondents 4 to 8 will be considered depending upon the result of these writ petitions.

14.This Court has carefully considered the submissions made on either side and the materials available on record.

15.The issue that falls for consideration in the present case has been doing its rounds for quite a long time and it is evident from the judgments that have been cited by the learned counsel for the petitioners. Those were all cases where the petitioners were willing to undergo the training for one year and they were not sent for training by the department. Therefore, this Court had held consistently that something which was not within the control of the candidates should not be put against them and that cannot be made as a ground to revert them from their promoted post at a later point of time. In none of the above judgments, the issue with regard to whether an employee is entitled to be sent for training only after the completion of probation was not directly in issue. In the present case, the official respondents have specifically taken a stand that a candidate will be sent for training only after the completion of the probation period. In the present case, the petitioners had completed their probation on 09.09.2011. There is no dispute with regard to this fact. If the one year training is calculated from this date, the petitioners obviously do not fulfill the requirements to be considered for promotion to the post of Assistant on the crucial date i.e., on 15.03.2012. If the petitioners had not been sent for the training for one whole year after their probation was declared, it is possible to consider the claim of the petitioners for promotion to the post of Assistants during the crucial date in the year 2013. The reason being that the petitioners had no control with regard to sending them for training by the department after their probation was declared. To that extent, the above judgments will squarely apply to the case of the petitioners also.

16.Insofar as the respondents 4 to 8 are concerned, they were directly recruited to the post of Assistant during December 2012 and January 2013 and the petitioners cannot be placed above them in seniority since the petitioners did not possess the requisite qualification as provided in the Tamil Nadu Ministerial Service Rules during the crucial date i.e., on 15.03.2012. The further grievance of the private respondents is that they are continued in the post of Assistants and they are yet to be considered for promotion to the post of Deputy Tahsildar.

17.If this issue had arisen for fresh consideration, an appropriate order could have been passed with regard to the promotion of the petitioners to the post of Assistants, without completing the one year training as required under Rule 30(c) of the Tamil Nadu Ministerial Service Rules after their probation was declared on 09.09.2011. However, there is a subsequent development whereby the petitioners were promoted as Assistants pursuant to the orders passed by this Court while initially allowing the writ petition. Thereafter, the petitioners have also been further promoted to the post of Deputy Tahsildar and they are functioning in the said post for the last two years. Therefore, this Court does not want to disturb the present status of the petitioners.

18.However, it is important to protect the interest of respondents 4 to 8. These respondents were directly recruited to the Post of Assistants during December 2012 and January 2013. The pendency of this writ petition has been put against them for being considered for further promotion to the post of Deputy Tahsildar. Even though, this Court has decided not to interfere with the status of the petitioners at this length of time, the inter se seniority between the petitioners and the respondents 4 to 8 will have to be necessarily considered by the official respondents. The respondents 4 to 8 must be considered for promotion to the post of Deputy Tahsildar from the time they became entitled for such a promotion. After deciding the inter se seniority between the petitioners and respondents 4 to 8, the seniority of the respondents 4 to 8 can be fixed in the post of Deputy Tahsildar. It is made clear that the promotion of the petitioners to the post of Assistants pursuant to the orders passed by this Court, should not be the criteria for deciding the seniority and the seniority has to be decided strictly in accordance with the eligibility of the candidates at the stage of being considered for the post of Assistants, strictly in accordance with the rules. This exercise shall be completed within a period of six weeks form the date of receipt of copy of this order and respondents 4 to 8 shall be promoted to the post of Deputy Tahsildar and fitted in the seniority as per their entitlement. The consequential service benefits and monetary benefits shall also be given to respondents 4 to 8.

Both the writ petitions are disposed of with the above directions. No costs. Consequently, the connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

KP
To
1. The Principal Secretary/
Commissioner of Revenue Administration,
Chepauk,
Chennai-5.

2. The Addl Chief Secretary,
Commissioner of Revenue Administration,
Chepauk,
Chennai-5.

3. The District Collector,
Thiruvannamalai.

4. The District Revenue Officer,
Thiruvannamalai.

+1 CC to The Govt. Pleader sr 106802.
+1 CC to Mr.J.Muthukumaran, Advocate sr 106000.
+1 CC to Mr.S.Vijayakumar, Advocate sr 105964.

W.P.Nos.24117 of 2013 & 1895 of 2019

SSD(CO)
SP(13/01/2020)