IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.NO.12692 OF 2012

R.Thirugnanam ...Petitioner

Vs.

1. The State of Tamil Nadu
   Rep. by Secretary to Government
   Revenue Department
   Secretariat, Chennai - 600 009.

2. The Special Commissioner
   Commissioner for Revenue Administration
   Chepauk, Chennai - 600 005.

3. The District Collector
   Perambalur District,
   Perambalur. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the first respondent in Letter No.19078/Ser 3(2)/ 2006-9 dated 14.04.2012 and quash the same and consequently direct the respondents to prepare the revised panel for the year 2001 for the post of Deputy Tahsildar in enlarged Perambalur District based on the existing vacancies as per the reports submitted by the third respondent in Na.Ka.No.A2/15556/2010 dated 08.07.2011 and consequently include the name of the petitioner in the panel and to promote him to the post of Deputy Tahsildar retrospectively with consequential promotion to the post of Tahsildar etc., with all monetary and attendant benefits including arrears of salary with interest.

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For Petitioner : Mr.A.R.L.Sundaresan
Senior Counsel for Mr.R.Bharat Kumar

For Respondents : Mr.A.Kumar
Additional Advocate General - VII
Assisted by Mr.P.Chinnadurai
Additional Government Pleader

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O R D E R

The petitioner was appointed as Junior Assistant in the Revenue Department in the year 1987. He was promoted as Assistant in the year 1993. He was transferred to Perambalur District in the year 2001 and joined the Office of the District Collector, Perambalur, on 01.08.2001. During 2001, erstwhile Perambalur District was bifurcated as Perambalur District and Ariyalur District. Again in the year 2002, the Government issued orders in G.O.(Ms) No.167, Revenue Department, dated 19.04.2002 merging Ariyalur District with Perambalur District keeping the Headquarters of the enlarged Perambalur District at Perambalur. The next avenue of promotion from the post of Assistant is to the post of Deputy Tahsildar. As per Rules, the Government is supposed to prepare promotion panel every year. The crucial date is being 15th September of every year. The third respondent, District Collector, sent a proposal for drawing a single panel of Deputy Tahsildars consisting of five persons in the year 2001 for the enlarged Perambalur District as against six vacancies approved for the erstwhile Ariyalur District. The same was rejected by the Government. Aggrieved over the same, the petitioner has approached this Court in W.P.No.7427 of 2006. This Court, vide order dated 12.07.2010 in W.P.No.7427 of 2006, directed the Joint Commissioner for Revenue Administration to forward the proposal of the District Collector, Perambalur, to the first respondent namely, Secretary to Government, Revenue Department, and a further direction was given to consider and pass orders accordingly.

2. While the matter stood thus, the second respondent has called for the details of non-preparation of panel from the third respondent District Collector. Vide proceedings in Na.Ka.No.A2/15556/ 2010 dated 08.07.2011, the third respondent has also forwarded the further proposal by clarifying that due to merger of the Ariyalur and Perambalur Districts, out of six posts, two posts were reduced leaving four posts to be filled up, for which, a panel was prepared in the year 2001 for only one post and other three posts were kept open. Against which, the petitioner issued a legal notice and the first respondent, in the impugned letter No.19078/Ser3(2)/2006-9 dated 14.04.2012 has stated that the panel for the years 2001, 2002, 2003 and 2004 for Deputy Tahsildar have been issued as "Nil" panel. Since "Nil" panel have been issued for the years 2001, 2002, 2003 and 2004, no juniors to the petitioner were included in the panel of Deputy Tahsildar. The panel of Deputy Tahsildar was published only for the year 2005 and since "Nil" panel was ordered to be issued, the request of the petitioner to include him in the panel of Deputy Tahsildar was rejected". Challenging the said order dated 14.04.2012, the petitioner is before this Court.

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3. The learned Additional Advocate General appearing for the respondents would vehemently contend that there was an anticipation of reduction of vacancies in the post of Deputy Tahsildar due to merger of two Districts, namely, Ariyalur and Perambalur Districts. The first respondent anticipating the reduction of these posts, directed not to prepare the panel and fill up the vacancies till the merger takes place. As anticipated, two posts were reduced, but none of the juniors of the petitioner were promoted. Mere inclusion in the panel will not entitle the petitioner for any promotion and therefore, the petitioner was not deprived of any promotional opportunity and therefore, the rejection order is very much valid and does not require any interference.

4. I have considered the rival submissions.

5. Admittedly, there were four vacancies fell vacant to the post of Deputy Tahsildar. The third respondent, District Collector, has rightly sent a proposal for drawing the panel for the year 2001. In a similar circumstance, when the non-inclusion of the name in the panel was complained before this Court, a direction was given to the first respondent to consider and pass orders. It is also relevant to point out that preparation of panel of eligible persons on the crucial date of every year is a mandatory exercise to be done by the Government. The person eligible for that year will have preference for promotion for the available vacancies of that year only. Merging the panel or clubbing the panel for the subsequent years will deprive the eligible candidates to compete with the petitioner along with his juniors for that particular year, will amount to treating unequals with equals and thereby violative of Articles 14 and 16 of the Constitution of India.

6. This Court as well as the Hon'ble Supreme Court has decided against the clubbing of panels and non-preparation of year wise panel. Therefore, it is clear that the panel should be prepared every year and the eligible candidates should be placed there, as per their eligibility of the respective years. In that view of the matter, when eligible candidates are available and the posts were also available for promotion, preparing a "Nil" panel, that too for consecutive five years is illegal and contrary to the rules. In spite of the third respondent District Collector notifying the first respondent that there are vacancies from the year 2001, the rejection of request of the petitioner by the impugned letter again is erroneous, illegal and amounts to justifying the illegal and arbitrary decision taken by the first respondent. In that view of the matter, the impugned letter is clearly violative of the statutory rules, as well as tainted with clear non-application of mind. Such arbitrary exercise of power is liable to be set aside.

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7. Accordingly, the impugned letter No.19078/Ser 3(2)/ 2006-9 dated 14.04.2012 of the first respondent is set aside and a direction is issued to the third respondent to prepare year wise panel for the years 2001, 2002, 2003, 2004 and 2005 separately and forward the same to the first respondent for passing appropriate orders.

8. The learned Senior Counsel appearing for the petitioner would submit that the promotion is based is on the seniority, on the basis of the panel. The petitioner has not suffered any punishment or disciplinary proceedings. If no currency of punishment during the check period or that no disciplinary proceedings were pending, the petitioner should be promoted according to his merit and eligibility, as per the panel to be drawn in the year 2001 onwards.

9. In the considered opinion of this Court, the petitioner, if found eligible, will be considered for further promotion according to law. The respondents are directed to complete the exercise within a period of three months from the date of receipt of a copy of this order.

10. The writ petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

TK

To

1.The Secretary to Government
Government of Tamil Nadu
Revenue Department
Secretariat, Chennai - 600 009.

2.The Special Commissioner
Commissioner for Revenue Administration
Chepauk,
Chennai - 600 005.

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3.The District Collector
  Perambalur District
  Perambalur.

+1cc to Mr.R.Bharath Kumar, Advocate, S.R.No.9123

+1cc to the Government Pleader, S.R.No.9995

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