

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 15.09.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.18400 OF 2013

V.Mohan

..Petitioner

- Vs -

The District Collector  
Nagapattinam.

..Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus directing the respondent to grant notional promotion to the petitioner as Assistant from the year 2010 on par with his juniors who were granted promotion as Assistants in the light of Govt.'s letter No.6692/E7/2003-5 dated 30.7.2004 and G.O. 389, Rural Development and Panchayat Raj Department dated 26.7.12 which declares the probation of the petitioner retrospectively w.e.f. 31.12.2009 with all benefits and in the light of judgment of this Hon'ble Court vide Para 19 in W.P. No.25114 of 2008 dated 6.7.2011 with all consequential pension and retirement benefits by disposing of petitioner's representation dated 3.4.2013 and further representation dated 5.6.2013 within a stipulated time as prescribed by this Hon'ble Court.

For Petitioner : No Appearance

For Respondents: Mr. A.N.Thambidurai, Spl. GP

ORDER

It is the case of the petitioner that he was appointed on 15.12.1983 as Office Assistant in the Rural Development Department pursuant to him being sponsored by the Employment Exchange. After putting in 13 years, the petitioner was appointed as Junior Assistant by transfer of service on 1.3.96. The petitioner retired on attaining the age of superannuation on 31.7.12. It is further averred by the petitioner that though the petitioner completed two years of probation on 1.3.98 within a continuous period of three years, however, in view of his not completing the departmental tests, his probation was not declared. The petitioner completed the departmental tests on 31.12.2009 and proposal was forwarded to the Government for declaration of probation. Probation of the petitioner was declared vide G.O. No.389, Rural Development and Panchayat Raj Dept., dated 26.7.2012 w.e.f. 31.12.2009.

2. It is the further averment of the petitioner that the respondent issued seniority list of Junior Assistants, Rural Welfare Officers Grade-II and Typists as on 1.1.2010, wherein the name of the petitioner was included vide proceedings of the respondent dated 28.1.2010. It is the case of the petitioner that though he came out successful in all the departmental tests on 31.12.2009 and became full member in the cadre of Junior Assistant, however, the respondent was not promoted as Assistant. The petitioner was overlooked for promotion in view of non-declaration of his probation in the year 2010. Further, even in the year 2011, juniors to the petitioner were granted promotion. In such a backdrop, the petitioner submitted representation to the respondent on 30.4.2013, which was followed with another representation on 5.6.2013. Since no action was taken by the respondent on the said representation, the petitioner has come forward with this writ petition.

3. In spite of repeated adjournments, there is no representation for the petitioner. Since the matter is of the year 2013 and the matter pertaining to notional promotion, this Court is inclined to take up the matter on merits and deal with the same.

4. This Court heard the learned Special Government Pleader appearing for the respondents with reference to the grounds raised in the writ petition and perused the materials available on record.

5. A perusal of materials available on record reveal that the petitioner joined as Office Assistant in the year 1983 and, thereafter, was appointed as Junior Assistant on transfer of service in the year 1996. It is an admitted fact that the petitioner had not completed the departmental tests till 31.12.2009 and, therefore, his probation was not declared. However, the petitioner completed the departmental tests on 31.12.2009 and subsequent to the proposal forwarded by the respondent, the Government had issued G.O. No.389 dated 26.7.12 declaring the probation of the petitioner retrospectively from 31.12.09.

6. It is the claim of the petitioner that he having completed his departmental tests on 31.12.2009 and his probation having been declared w.e.f. the said date vide G.O. No.389 dated 26.7.2012 and, therefore, he ought to have been granted notional promotion on and from the year 2010.

7. It is an admitted fact that persons entering Government service ought to complete the requisite departmental tests and the training within the time prescribed so as to be considered

for declaration of their probation. However, it is the admitted case of the petitioner that he had completed his departmental tests only on 31.12.2009, i.e., almost 16 years after his appointment in government service. A perusal of G.O. No.389 dated 26.7.2012 reveals that the petitioner had not only completed the departmental tests only on 31.12.2009, but has also not completed the mandated training at Bhavanisagar within the prescribed period of five years. It further transpires from the said Government order that the persons should complete the departmental tests and training at Bhavanisagar within a period of five years from the date of their entering into service. On the proposal being forwarded by the respondent, the Government, after careful consideration, as a special case, relaxing the requisite rules, for the purpose of enabling the petitioner to continue in service and also for the purpose of increment and retirement benefits alone, have issued the Government Order. The petitioner cannot be treated to be a person, who has completed the requisite tests and training within the prescribed time and the inaction of the Government had deprived him of his regular promotion. However, converse is the case here. The petitioner not having completed the training and the tests within the prescribed time, the Government, as a special case, relaxing the rules, has declared the probation of the petitioner for the purpose of increment and retirement benefits alone. Such being the case, the claim of the petitioner for promotion cannot be granted, as he was not conferred with such a benefit by the said Government Order. If the petitioner was really aggrieved, the course that was open to him was to challenge the Government Order. Without challenging the said Government Order and after receiving all the benefits that was conferred based on the Government Order, the petitioner cannot turn around and seek notional promotion citing the said Government Order, when the said Government Order, in unequivocal terms, has not granted the said benefit to the petitioner. The petitioner, if at all is aggrieved, should challenge the Government Order and submitting a representation and, pleading inaction on the said representation and praying this Court to issue a mandamus is wholly unsustainable.

8. For the reasons aforesaid, this writ petition is devoid of merits and, accordingly, the same is dismissed. However, in the circumstances of the case there shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

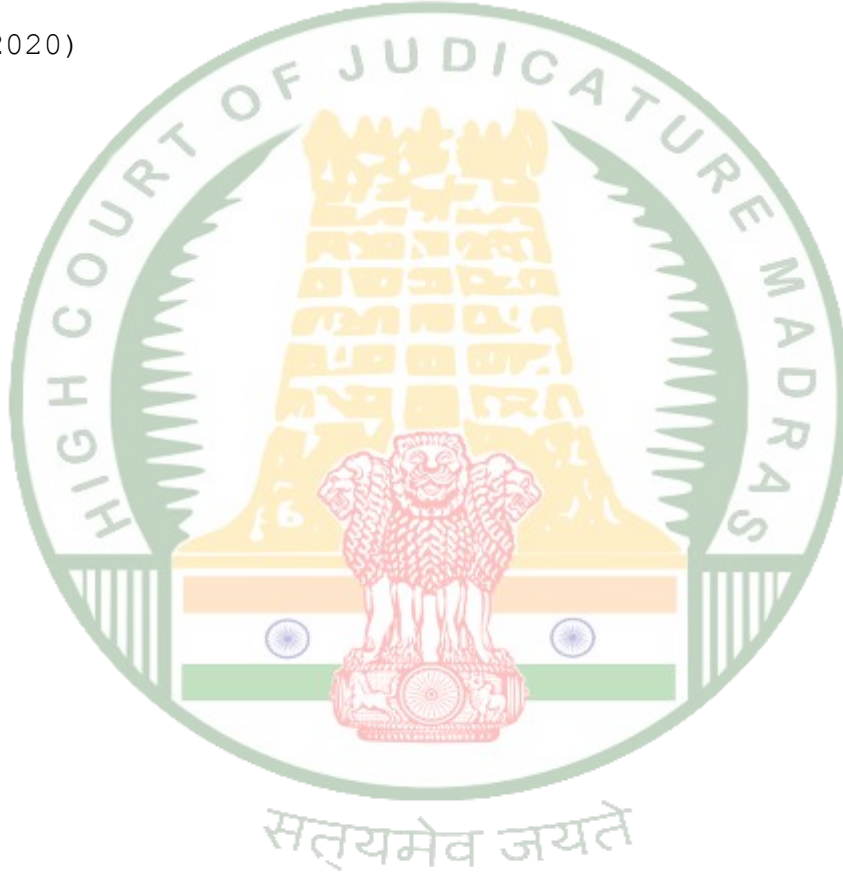
To

1. The District Collector  
Nagapattinam

+1cc to the Government Pleader, High Court, Madras  
in SR.NO..30246 dated:15/9/2020

W.P. NO. 18400 OF 2013

MR (CO)  
RV (06/10/2020)



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