

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE :19.08.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS. 29012/2013, 19049/2014 & 38152/2016

and

M.P.Nos.1,2/2013, 1/2014, 1/2015 & W.MP.No.32690/2016

S.Ravi .. Petitioner in all WPs

- Vs -

1. The Secretary to the Government,
Housing and Urban Development Dept,
Fort St. George, Chennai 600 009.
2. Tamil Nadu Housing Board,
Rep. By its Chairman and Managing Director,
439, Annasalai,
Nandanam, Chennai 600 035. .. Respondents in all WPs.

Prayer in WP.No.29012/2013:

Petition filed under Article 226 of the Constitution of India, praying this Court to issue a writ of certiorarified Mandamus call for the records of the 2nd respondent in Proceedings NO.PNT4/15954/2013 dated 30.09.2013, quash the same and consequently directing the 2nd respondent to consider the representation of petitioner and promote him to the post of Section Officer/ Assistant Revenue Officer and also direct the respondents to pay the notional service benefits from the date of appointment of petitioner as Junior Assistant for the post of Assistant to 24.02.2009, and as Assistant from 25.02.2009 to 08.12.2011 and from 09.12.2011 for the post of Superintendent and for post of Section Officer/Assistant Revenue Officer from 30.09.2013.

Prayer in WP.No.19049/2014:

Petition of 2016 filed under Article 226 of the Constitution of India, praying this Court to issue a writ of certiorarified Mandamus call for the records of the 2nd respondent in proceedings Memo No.PNT4/17309/2014 dated 25.06.2014, quash the same and consequently directing the 2nd respondent to consider the representation of the petitioner and to promote him to the post of Section Officer/ Assistant Revenue Officer and also

direct the respondents to pay the notional service benefits from the date of appointment of petitioner as Junior Assistant for the post of Assistant from 9.12.2011 to 24.02.2009, and as Assistant from 25.02.2009 to 08.12.2011 and from 09.12.2011 for the post of Superintendent and for post of Section Officer/Assistant Revenue Officer from 30.09.2013.

Prayer in WP.No.38152/2016:

Petition of 2016 filed under Article 226 of the Constitution of India, praying this Court to issue a writ of certiorarified Mandamus call for the records of the 2nd respondent in Letter No.PNT-1/26889/2015 dated 31.03.2016, quash the same and consequently directing the 2nd respondent to promote him to the post of Section Officer/ Assistant Revenue Officer and also direct the respondents to pay the notional service benefits from the date of appointment of petitioner as Junior Assistant from 05.12.1991 to 24.02.2009, and as Assistant from 25.02.2009 to 08.12.2011 and from 09.12.2011 for the post of Superintendent and for post of Section Officer/Assistant Revenue Officer from 30.09.2013.

In all WPs.

For Petitioner : M/S.A.Edwin Prabakar

For Respondents: Mr.S.Thangavel, Spl.G.P for R1
: Mr.R.Bharathkumar for R2

COMMON ORDER

These writ petitions filed by the very same petitioner, to call for records of the 2nd respondent vide Proceedings Nos.PNT4/15954/2013 dated 30.09.2013, proceedings Memo No.PNT4/17309/2014 dated 25.06.2014, and Letter No.PNT-1/26886/2015 dated 31.03.2016, and to quash the same and consequently directing the 2nd respondent to promote him to the post of Section Officer/ Assistant Revenue Officer and also direct the respondents to pay the notional service benefits from the date of appointment of petitioner as Junior Assistant from 05.12.1991 to 24.02.2009, and as Assistant from 25.02.2009 to 08.12.2011 and from 09.12.2011 for the post of Superintendent and for post of Section Officer/Assistant Revenue Officer from 30.09.2013.

2.The case of the petitioner is that the petitioner joined as NMR in the 2nd respondent's Board in the year 1986 and subsequently the government issued G.O.Ms.No.400, Housing and Urban Development Department dated 02.05.1990, and granted permission to the Chairman Housing Board to regularise the services of the NMRs in the Tamil Nadu Housing Board who have been appointed initially through/not through Employment Exchange and who have put in continuous service/break in service of 5 years as on 07.12.1988. Though the petitioner was appointed as

NMR in the year 1986, the petitioner's service was regularised by an order of the 2nd respondent dated 05.12.1991 and the department created Work Charge establishment in the category of Work Assistant, vide 2nd respondent Memo No.E.Spl.2/47138/92-2, the petitioner was appointed as Work Assistant in the work charge establishment. Even though the petitioner has rendered 20 years of service, however the respondents have not given any promotion, for which the petitioner and other aggrieved persons made a representation to the Housing Board Authorities. The Housing Board Authorities considered his explanation and rejected the petitioner's request. Challenging the same the present Writ Petition was filed with the above said prayer.

3. Learned counsel appearing for the petitioner submitted that the Housing Board itself has created two establishments namely one is regular establishment and another one is Work charge establishment. The petitioner's service were regularised and he was appointed under work charge establishment and there is no promotional avenue in the said category. However, persons, who have been recruited in the regular establishment have got promotional avenue and even when vacancies are existing in the regular establishment, the persons from the work charge establishment are not considered to be filled up in the said post. Therefore, the petitioners service were stagnated without any promotion. Considering the plight of the petitioner and other similarly situated persons, they were given promotion as Junior Assistant in the year 1994 and Typist in the year 2012 and Assistant in the year 2014 and except for these promotions, no promotion was not granted. Hence the petitioner is entitled for notional promotion from the date of his initial appointment and as and when the promotion avenue arise in the regular establishment. Accordingly, he prayed for allowing this petition.

4. None appears for the respondent. However, considering the fact that the petition has been filed in the year 2013, this Court is inclined to consider the materials available on record and dispose the case on merits.

5. The facts in issue are not in dispute. The petitioners were initially recruited as NMR and their services were regularised by applying G.O. Ms. No.400 dated 2.5.90 on completion of 5 years of service as NMR. Pursuant to the said Government Order, the services of the petitioner were regularised with effect from 5.12.91. It is to be pointed out here that the services of the petitioner were absorbed under a separate establishment, viz., the 'Work Charge Establishment', as the absorption/recruitment of the petitioners were not in consonance with the recruitment rules by following the rules of reservation and roster system. Their appointment was on the basis of G.O. Ms. No.400.

6. It is the case of the petitioners that persons similarly situated like the petitioners were granted promotion, while the petitioners were denied of promotion to the next higher post, even after their absorption, due to which they submitted a representation, on which the Housing Board considered their case sympathetically and they were promoted as Junior Assistant/Typist vide Board's Proceeding in the year 2012 and, thereafter, they were granted further promotion as Assistant in the year 2014. However, it to be pointed out that their promotion is not under the regular establishment, but under the work charge establishment, which was a special establishment, carved out on the basis of G.O. Ms. No.400.

7. The main grievance of the petitioners is that the members of the regular establishment were granted promotion immediately on the arising of vacancies, while the petitioners were not considered for promotion in the said vacancies. Though such a grievance is raised by the petitioners, the said contention does not merit acceptance for reasons more than one.

8. As already pointed out, the services of the petitioners were regularised in pursuance to G.O. Ms. NO.400 in a separate work charge establishment. They have not been absorbed under the regular establishment as their absorption is not on the basis of any recruitment process by following the rules, reservation and roster. Further, the promotion is granted to the members of the regular establishment, on the basis of merit and ability and on their being in the feeder category, the petitioners, not falling in the feeder category to be considered for promotion, for all intent and purposes, cannot equate themselves with persons, who have been recruited through regular appointment channels by following the rules, reservation and roster. The work charge establishment is wholly different from the regular establishment as the work charge establishment has been carved out only for the purpose of accommodating the petitioners. The two establishments are wholly two different entities and one cannot overlap the other as their recruitment channels are totally different. Unless and until the Government, by way of policy, takes a decision to merge the two establishments at a particular point, this Court cannot come to the rescue of the petitioners by granting the relief sought for. The prayer sought for by the petitioners is wholly misconceived. The two different establishments, being allowed to function by the Government, due to its policy, this Court, in exercise of its inherent power, cannot interfere with the policy decision of the Government and it is for the Government to take a decision in the matter with regard to merging of the two different establishments.

9. For the reasons aforesaid, this Court is not inclined to grant the relief as sought for by the petitioners. Accordingly, these writ petitions fail and the same are dismissed. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Secretary to the Government,
Housing and Urban Development Dept,
Fort St. George, Chennai 600 009.
2. Tamil Nadu Housing Board,
Rep. By its Chairman and Managing Director,
439, Annasalai,
Nandanam, Chennai 600 035.

+lcc to Government Pleader,
High Court, Madras in SR.27404 dt:21.8.2020

W.P. NOs. 29012/2013,
19049/2014 & 38152/2016

MR(CO)
RV(17/09/2020)

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