

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.07.2020
DELIVERED ON : 18.08.2020

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.8558 of 2020 and W.M.P No.10397 of 2020

A.Gobinath

...Petitioner

Vs.

1. State of Tamil Nadu,
Rep by its Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
Fort St.George, Chennai - 600 009.
2. Director,
Commissionerate of Rural Development,
Panagal Building, Chennai 600 015.
3. District Collector
Kancheepuram District
Kancheepuram.
4. District Collector
Chengalpattu District
Chengalpattu.

...Respondents

Prayer:Writ Petition filed under Section Article 226 of the Constitution of India praying Writ of Certiorarified Mandamus, calling for the entire records relating to the proceeding in Na.Ka.No.04/2020/Pa/Aa.2 dated 06.06.2020 on the file of the 4th respondent herein and quash the same and consequently direct the 4th respondent herein to publish a revised panel by including the name of the petitioner herein in the panel of Assistants fit for promotion as Deputy Block Development Officer for the year 2020-21 based on his revised seniority published on 21-02-2020 and without insisting one year service qualification in the post of Assistant and extend all monetary benefits notionally in the post of Assistant and extend all monetary benefits notionally on par with his junior S.Ambika Devi.

For Petitioner
For Respondents

:Mr.V.R.Rajasekaran
:Mr.J.Ramesh, Additional
Government Pleader

O R D E R

The matter is taken up through web hearing.

2.This writ petition is filed with the following prayer:

"To issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the proceeding in Na.Ka.No.04/2020/Pa/Aa.2 dated 06.06.2020 on the file of the 4th respondent herein and quash the same and consequently direct the 4th respondent herein to publish a revised panel by including the name of the petitioner herein in the panel of Assistants fit for promotion as Deputy Block Development Officer for the year 2020-21 based on his revised seniority published on 21-02-2020 and without insisting one year service qualification in the post of Assistant and extend all monetary benefits notionally in the post of Assistant and extend all monetary benefits notionally on par with his junior S.Ambika Devi"

3.The facts and circumstances that have given rise to the filing of the writ petition are stated hereunder.

4.The petitioner was appointed as Junior Assistant in the Panchayat Development Unit of Kancheepuram District on compassionate grounds. He joined service on 02.03.2009 and according to him he had passed all the departmental tests by 30.05.2011. Although the petitioner had discharged his duties efficiently and diligently without any complaints, the competent authority had not passed any orders regularising his services in the post of Junior Assistant for considerable length of time.

5. Ultimately, the Government issued orders only on 12.01.2017 regularising the appointment of the petitioner as Junior Assistant with effect from his original date of joining ie., 02.03.2009. The petitioner in the meanwhile appeared to have completed his departmental training on 26.04.2017. The grievance of the petitioner is that despite being appointed in 2009, the administrative delay in regularizing him as Junior Assistant had an adverse impact on his career prospects, particularly with regard to his further promotions to the post of Assistant and to the post of Deputy Block Development Officer.

6.According to the petitioner, he was fully qualified to be promoted as Assistant with effect from 30.05.2011 and had passed all the departmental tests to make him eligible in all respects. However, unfortunately when his juniors were promoted on 30.11.2012, the petitioner was omitted to be promoted only for the reason that his probation was not declared by then.

Eventually, after declaration of his probation in the year 2018 ie., on 01.06.2018, the petitioner came to be promoted as Assistant only on 05.03.2019. In the circumstances, the petitioner approached the respondents for granting of notional promotion in the post of Assistant and in the post of Deputy Block Development Officer on par with his junior one S.Ambika Devi.

7. Since the assignment of proper seniority did not take place in the feeder post, the petitioner was deprived of further promotions to the post of Assistant and Deputy Block Development Officer along with his juniors at the appropriate time. In the said circumstances, he was constrained to approach this Court by filing W.P.No.17480 of 2019 seeking direction to the respondents to fix his seniority by giving him notional promotion and monetary benefits on par with his juniors. The petitioner had also filed yet another writ petition in W.P.No.17848 of 2019 challenging the order dated 21.01.2019 of the third respondent in rejecting the claim for notional promotion and also the proceedings dated 18.06.2019 overlooking the petitioner to the post of Deputy Block Development Officer. The petitioner had to approach this Court in the second writ petition as in the meanwhile his claim for notional promotion was rejected and also he was denied further promotion to the post of Deputy Block Development Officer in the year 2019.

8. This Court, by a common order dated 17.09.2019 in W.P.No.17480 and 17848 of 2019, has disposed of the writ petitions by giving the following directions.

" (i) The third respondent is directed to grant notional promotion as Assistant in the Department on par with his Junior Ambigadevi after getting necessary orders from the Government and further the 3rd respondent shall fix the seniority in between the petitioner and Ambigadevi.

(ii) If any proposals is received from the 3rd respondent in this regard, the 1st respondent shall pass appropriate orders on the same. The 1st and 3rd respondents have to complete the exercise within a period of 24 weeks from the date of receipt of a copy of this order."

9. In pursuance to the above directions, the third respondent refixed the seniority of the petitioner on par with his juniors in the post of Assistant in the published seniority list dated 21.02.2020. According to the petitioner he had completed one year of service in the post of Assistant as on 19.03.2020. While so, the fourth respondent herein has invited

proposals for drawing up of a panel of Assistants fit for promotion to the post of Deputy Block Development Officer for the year 2020-21. A panel was thereafter drawn up and published on 06.06.2020. However, in the said panel, the petitioner's name did not figure. On enquiry, the petitioner was informed that as he has not completed one year of service as Assistant in actuality, therefore he was not included in the panel for the year 2020-21. In the said circumstances, the panel drawn upto 06.06.2020 is the subject matter of challenge in the present writ petition.

10. Mr.V.R.Rajasekaran, learned counsel for the petitioner briefly narrated the facts and circumstances of the case. Learned counsel would submit that it was entirely the fault of the respondents in not regularising the services of the petitioner in the post of Junior Assistant and the inordinate administrative delay in declaring his probation as Junior Assistant for a period of nearly eight years has resulted in denial of due promotions of the petitioner to the next higher grades at the appropriate time when the petitioner's juniors were considered and promoted.

11. Even in the present panel for the year 2020-21, the objection in regard to the consideration of promotion is because of the fact that the petitioner has not completed one year of service as on 15.03.2020 as he was short by few days and hence his name was not included.

12. Learned counsel would submit that once the respondents have taken decision to restore the seniority of the petitioner in the appropriate place by considering his appointment as Junior Assistant with effect from 02.03.2009, all the service benefits, as a corollary of the fixation of seniority had to follow necessarily and imperatively. According to him, the petitioner ought to have been treated as deemed to have completed the necessary service qualification and for the fault of the Government, the petitioner cannot be visited with adverse consequence. The delay undoubtedly will have a recurring impact in his entire career prospects and therefore the same has to be rectified at some point of time.

13. Learned counsel would also rely on a decision rendered by a learned Single Judge of this Court in W.P.No.13517 of 2019 dated 09.04.2010. According to the learned counsel, in similar circumstances the learned Judge has allowed the writ petition filed by the petitioner therein. In particular, the learned counsel has drawn the attention of this Court to paragraphs 21, 29, 30 and 31, which are extracted hereunder.

"21. It is also an admitted fact that based on the petitioner's successful completion of the departmental examination, he was also temporarily promoted as Assistant. However, surprisingly, when the seniority list was drawn thereafter, the petitioner's name did not figure in the place in which it was originally there, for the simple reason that the petitioner did not obtain the requisite qualification by undergoing the one year stint as a Rural Welfare Officer Grade-II for a period of one year before the crucial date for the preparation of panel on 1.3.1987 and that the petitioner did not have his foundation training in the Bhavani Sagar Training Institute before the crucial date. In this, as rightly pointed out by the learned counsel for the petitioner, the letter dated 23.4.1994 from the Director of Rural Development to the Collector of All Districts (except Madras), assumes significance. The said letter reads as follows:

" Sub: Service qualification - Some instructions to be followed while issuing posting orders - Regarding.

It has been brought to the notice of the Director of Rural Development and it was noted that the interchange of personnel from one post to another has not been done effectively, under Single Service Rules, which in turn has resulted in many senior personnel not acquiring the necessary service qualifications. And the affected personnel moved the Tamil Nadu Administrative Tribunal and T.A.T. had also agreed with, that it is because of the failure on the part of the District Administration to give them necessary postings in the different posts as prescribed. Postings are not to be done as a matter of choice of the individuals. The Departmental authorities should ensure that the due opportunities are given to all the staff to secure service qualification. No seniors should be denied of promotion on account of his failure to acquire service qualifications, unless some default on his part. Hence appointing authorities are requested to have a clean watch so as to avoid unnecessary workload and Administrative inconvenience in day to day

routine work. The receipt of this circular may kindly be acknowledged.

Sd/- For Director of Rural Development / true copy / Superintendent. "

Going by the said letter and applying the decision of this Court in W.P.No.12362 of 2007 dated 24.10.2007 (K.Kumaresan Vs. District Collector, Tiruvannamalai), following the earlier decision of this Court dated 9.10.2006 in W.P.No.18501 of 2006 (C.Periasamy and another Vs. The District Collector, Dharmapuri), I have no hesitation in accepting the plea of the petitioner that the failure on the part of the District Collector in deputing the petitioner for working as a Rural Welfare Officer Grade II and for one year training in the Bhavani Sagar Training Institute cannot be attributed to the petitioner that he had not qualified himself for inclusion in the promotion list and for seniority. Consequently, the default of the Administration cannot be allowed to prejudice the petitioner to cite the same as the default of the petitioner in not qualifying himself departmentally for the purpose of consideration in the seniority list for further promotion as Assistant.

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29. In the light of the above facts and in fairness to the claim of the petitioner, taking note of the decisions of this Court as referred to above, the petitioner merits to have his seniority fixed. I do not find any justification in the plea of the respondents on the issue of laches. In so doing, I am conscious of the decision of the Apex Court holding that a settled list of seniority and promotion should not be disturbed at a long distance of time vide the decision reported in (1976) 1 SCC 599 (Malcom Lawrence Cecil D'Souza Vs. Union of India) and (2008) 2 SCC 750 (Union of India Vs. Narendra Singh).

30. Going by the fact that the petitioner had passed all the departmental examinations and the delay in satisfying the service requirement was not attributable to the petitioner, without disturbing the seniority of respondents-3 to 5, I

feel that respondents-1 and 2 should place the petitioner in his original place in the order of seniority that at least in future, if and when the time comes, in the matter of granting promotion, the petitioner's name should be considered at the first place.

31. With the above observation, I allow this writ petition thereby set aside the order of the first respondent herein. By so setting aside the impugned order, it is hereby made clear that this Court does not intend to disturb the seniority of respondents-3 to 5, as they had been in service for quite a long number of years. As already pointed out, respondents-1 and 2 should consider the petitioner at the right place of seniority for considering him for further promotion from the post of Assistant to the post of Extension Officer and pass orders within a period of six weeks from the date of receipt of a copy of this order."

14. According to the learned counsel, a similar objection was raised and the learned Judge has dismissed the objections and allowed the writ petition and granted the substantive relief to the petitioner therein on approaching the Court though belatedly. Learned counsel submits that the observation of the order passed in the said case will squarely apply to the factual matrix of the present case as well.

15. Learned counsel for the petitioner has also drawn the attention of this Court to the decision rendered by a learned Single Judge of this Court in W.P.No.16427 of 2015 dated 12.06.2015 in which, under identical circumstances the learned Judge disagreed with the submissions of the Government and allowed the writ petition. He would particularly draw the attention of this Court to Paragraphs 15 and 16, which are extracted herein.

"15. I make it clear that in view of the order passed by this Court in this writ petition, the petitioner is to be promoted as Assistant from the date of her juniors were promoted. Applying the same principle, the service qualification of one year in Rural Welfare Officer Grade-I post shall also be waived in the case of the petitioner and she shall be promoted by including her name in the panel of Assistant fit for promotion to the post of Deputy Block Development

Officer without insisting the service qualification, since it is not the fault of the petitioner in not serving as Rural Welfare Officer Grade I for one year.

16. Accordingly, this writ petition is allowed and a direction is issued to the respondent to include the name of the petitioner at the appropriate place in the panel of Junior Assistants of the year 2012-13 for promotion to the post of Assistant and also to promote the petitioner from the date on which her immediate juniors were promoted and also to include her name in the panel of Assistants fit for promotion to the post of Deputy Block Development Officer, if there is no other legal impediment, without insisting service qualification of one year service as Assistant and one year service as Rural Welfare Officer Grade I, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed."

16. Learned counsel would also draw the attention of this Court to the decision of the Division Bench of this Court dated 18.01.2018 in W.A.No.499 of 2016 affirming the above order passed by the said learned Single Judge as found in paragraph 6, which is extracted hereunder.

"6. The learned single Judge rightly allowed the writ petition by observing that it was only on account of the delay in sending her to undergo the training, she could not pass the test before the cut off date. The learned Judge was correct in his finding that the respondent should be considered for promotion without insisting the service qualification of one year as Assistant. We do not find any reason to take a different view in the matter."

17. He therefore submitted that the writ petition may be allowed in terms of the order passed by both the learned Single Judges as well as the Division Bench.

18. Mr.J.Ramesh, learned Additional Government Pleader entered appearance on behalf of the respondents and a detailed counter affidavit has been filed. According to the counter affidavit, the directions passed by this Court in two writ petitions mentioned above have been complied by placing the petitioner in the temporary seniority list of Assistants dated 21.02.2020. In the counter affidavit, it has also been stated that the petitioner herein has joined as Assistant after grant

of regularization only on 19.03.2019 and there was a short fall of two days towards completion of one year service in the said cadre as on 15.03.2020. In fact the counter affidavit squarely blames the petitioner for joining the promoted post a little late, which only prevented him from completing the one year service as Assistant by two days. The counter affidavit also blames the petitioner for originally submitting the records belatedly, which caused the delay in regularizing the services of the petitioner as Junior Assistant.

19. Mr.J.Ramesh, learned Additional Government Pleader has made submissions on the lines of the counter affidavit, resisting the claim of the petitioner. In effect the submission of the respondents is that the petitioner has not completed one year service as Assistant and therefore he became ineligible to be included in the present panel of 2020-21, but however he would be included in the subsequent panel for 2021-22 for promotion to the post of Deputy Block Development Officer.

20. This Court considered the submissions of Mr.V.R.Rajasekaran, learned counsel for the petitioner and Mr.J.Ramesh, learned Additional Government Pleader for the respondents, particularly with reference to the facts as narrated above on behalf of the petitioner which have not been controverted by the respondents. However, certain reasons were stated in the counter affidavit for not granting regularization to the petitioner in time. Even assuming that the reason for the delay was partially due to the petitioner, nevertheless the delay of eight long years to regularize the services is not properly explained. From the available facts, this Court is of the considered view that the respondents have to be ultimately held responsible for the inordinate delay.

21. Be that as it may. The fact of the matter is that the long delay has had an adverse impact on the promotional aspects of the petitioner in considering him for promotions to the next higher grades. When eventually and rightly the Government thought fit to restore the petitioner's seniority in consideration of his initial date of appointment as Junior Assistant in 2009, the natural corollary of such action should lead to extension of all consequential benefits, in particular, promotion. Mere restoration of the seniority without the benefit of promotion to the next higher grades becomes inane and is of no consequence or significance to the petitioner's career. In service law, matter of promotion is always linked to seniority, more so, when the mode of appointment to the next higher grades is on the basis of seniority in the feeder grades.

22. It is needless to hold that when the respondents have not taken the decision promptly to regularize the petitioner from the date of his initial appointment as Junior Assistant, the adverse effect of such delay attributable to the respondents cannot befall the petitioner. This Court is unable to appreciate as to how on a specious plea that the petitioner had not completed one year of service as Assistant, he can be denied further promotion to the post of Deputy Block Development Officer. The faultless petitioner cannot be allowed to suffer postponement of promotion for the delayed action of the respondents. On the other hand, fairness demands that the ominous effect of the delay required to be salvaged.

23. The petitioner having worked for more number of years as Junior Assistant without any promotion, the petitioner can very well be equated with Assistants who were fortunate to have completed their one year of service as Assistant and were promoted to the next higher posts. Moreover, when juniors were considered for promotion, the petitioner being a senior, ought to have been considered along with them, regardless of the fact whether he had completed one year of service in the post of Assistant or not. Denial of promotion in such circumstances would not stand the test of equality principles enshrined in Articles 14 and 16 of the Constitution of India. The stipulation of one year service in the post of Assistant at best can have application in the normal circumstances and the respondents cannot be allowed to take refuge under the stipulation prejudicial to the interest of the petitioner, when the respondents are found to be responsible for the bringing about a situation forming the basis of the petitioner's legitimate grievances and claim. The decisions relied on by the learned counsel are squarely applicable to the factual matrix of the present case and therefore this Court is of the considered view that the petitioner is entitled to succeed.

24. In conclusion, this Court has no hesitation in allowing the writ petition and therefore the writ petition is allowed and the proceedings in Na.Ka.No.04/2020/Pa/Aa.2 dated 06.06.2020 on the file of the 4th respondent herein is quashed insofar as non-inclusion of the petitioner in the panel and consequently the respondents are directed to include the name of the petitioner in the panel for promotion to the post of Deputy Block Development Officer for the year 2020-21, on the basis of the revised seniority list published on 20.01.2020, by waiving off the one year service qualification in the post of Assistant. On such promotion being granted, the respondents are also directed to extend all the benefits to the petitioner on par with his juniors like seniority, monetary benefits etc.,

25. The respondents are directed to pass appropriate orders in compliance with the above directions within a period of six weeks from the date of receipt of a copy of this order. The writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

KST / MRM

To

1. The Principal Secretary to Government of Tamil Nadu,
Rural Development and Panchayat Raj Department,
Fort St.George, Chennai - 600 009.
 2. Director,
Commissionerate of Rural Development,
Panagal Building, Chennai 600 015.
 3. District Collector
Kancheepuram District
Kancheepuram.
 4. District Collector
Chengalpattu District
Chengalpattu.
- +1 CC to Mr.V.R.Rajasekaran, Advocate sr 27255.

W.P.No.8558 of 2020

SKS (CO)

SP (24/08/2020)

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