

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 27-01-2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.Nos.17895, 17897 & 17900 OF 2019

M.Baskaran Petitioner in W.P.No.17895/2019

N.Rajan Babu Petitioner in W.P.No.17897/2019

K.M.Palani ... Petitioner in W.P.No.17900/2019

-vs-

The District Collector,
Tiruvannamalai District,
Tiruvannamalai. Respondent in all W.Ps.

Common prayer: Writ Petitions under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records pertaining to the order bearing Na.Ka.No.3905/2018/Pa.Aa.1, dated 22.06.2019, and quash the same.

For Petitioners: Mr.Suthakar,V.

For Respondent : Mr.P.S.Sivashanmugasundaram,
Special Govt.Pleader.

COMMON ORDER

A common issue has arisen for consideration in all these Writ Petitions; therefore, they are taken up together and being disposed of in common.

2. All the three writ petitioners joined the service as Assistants. The Seniority List of Assistants in Tiruvannamalai District was not settled for a long period from the year 1996 onwards. Pursuant to the directions issued by the Director of Rural Development Department in the year 2015, a Seniority List was prepared, which became the subject matter of challenge in W.P.No.12809 of 2016 and other connected matters, wherein, an interim order was passed by this Court on 26.07.2017 and the same is extracted hereunder :

'4. In this view of the matter and to maintain a balance of convenience, this Court has

to adopt a pragmatic approach in respect of promotions. Stalling the entire promotions in a Department will certainly cause inconvenience not only to the employees, but also to the public in general. All Government Departments are serving for the public in the interest of public and stalling the promotions may be depriving the right of some individuals working in the Department, but certainly will affect the smooth running of the administration. Accordingly, this Court is of the opinion that certain modification in the interim order of stay granted is required under these circumstances.

5. It is brought to the notice of the Court that subsequent seniority list panels in the higher cadres are issued by the Department. However, the right of the writ petitioners in these writ petitions are to be preserved and respondents 1 and 2 are at liberty to proceed with the promotion in respect of all the qualified and eligible candidates. Accordingly, the interim order already granted by this Court is restricted only in respect of the writ petitioners and in all other respects, the Department is at liberty to proceed with the seniority promotion orders."

3. Based on the above order, the first respondent, by his proceedings, dated 27.03.2018, passed an order, granting temporary promotion to five candidates to the post of Block Development Officer. Out of these five candidates, the three writ petitioners were also given temporary promotion under Rule 39 (a) (i) of the Tamil Nadu State and Subordinate Service Rules, in short, "the Rules", which finds place under Section 47 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, in short, "the Act".

4. The said temporary promotion again became the subject matter of challenge on the ground that the Seniority List was not properly drawn and, without doing the same, temporary promotions have been given. Some of the aggrieved persons had made representations to that effect to the respondent and they approached this Court by filing W.P.Nos.8232-8238 of 2018, wherein this Court passed an order on 25.04.2019, directing the respondents to consider the objections/appeals filed by the petitioners therein and to pass orders in accordance with law within a period of twelve weeks. It is brought to the notice of the Court that pursuant to the orders passed by this Court, the Seniority List has been revised, but, however, the panel is yet to be drawn.

5. In the meantime, Charge Memos came to be issued against all the three writ petitioners under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. In two of the writ petitions, the Charge is that the petitioners had participated in the general strike and thereby caused disruption to the essential services. In so far as the writ petition pertaining to K.M.Palani, who is the petitioner in W.P.No.17900 of 2019, is concerned, the Charge is to the effect that he did not properly supervise the disbursement of the amount that was made by the President of the Panchayat, who had committed misappropriation and thereby caused loss. The Charge Memos were issued subsequent to the temporary promotion that was granted to the petitioners.

6. After the issuance of Charge Memos, the impugned proceedings, dated 22.06.2019, came to be issued by the respondent-District Collector, Tiruvannamalai, whereby, the temporary promotions were cancelled and the petitioners were reverted back to the post of Deputy Block Development Officers. The said order of reversion has now become the subject matter of challenge in these Writ Petitions.

7. Learned counsel for the petitioners submitted that as on the date when the petitioners were temporarily promoted as Block Development Officers, no Charge was pending against them and even though the petitioners were promoted temporarily under Rule 39 of the Rules, they can be reverted back only when they are replaced by members of service, who are entitled for regular promotion under the Rules. The learned counsel also submitted that similarly if there are seniors, who are entitled to be considered for promotion, then, the petitioners can be reverted and the seniors brought into regular promotion, in which case, the petitioners can be relieved of the temporary promotion. According to him, these were not the grounds on which the petitioners were reverted to the post of Deputy Block Development Officers. He submitted that the petitioners were reverted only on the ground that there was a subsequent Charge Memo, issued under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, and the same is not sustainable. Further, the learned counsel submitted that the order of reversion passed by the respondent was not for want of vacancy, but it was passed only based on the Charge Memo, and, by virtue of the interim orders passed by this Court, the petitioners are continuing to function as Block Development Officers and the impugned proceedings passed by the respondent are liable to be interfered with by this Court.

8. The respondent has filed a counter in all the three Writ Petitions.

9. In the Counter Affidavit, the respondent has taken a very clear stand that the petitioners were promoted only on temporary basis and based on the orders passed by this Court in W.P.Nos.8232-8238 of 2018, the representations/appeals filed by the petitioners therein were considered and a panel was redrawn. A further stand has been taken in the Counter to the effect that a Charge Memo has been issued under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and, therefore, it is not proper to continue the temporary promotions till the conclusion of the disciplinary proceedings.

10. Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader, appearing for the respondent, submitted that the moment the respondent decided to redraw the panel for promotion to the post of Block Development Officer, the petitioners cannot be considered for promotion, since disciplinary proceedings are pending against them for a Charge Memo, that has been issued under Rule 17 ((b). He further submitted that the promotion that was given to the petitioners was purely temporary and the same can be withdrawn at any point of time without assigning any reason. According to him, by virtue of the subsequent redrawing of the panel, those persons who are eligible can be placed in lieu of the petitioners and, therefore, the petitioners have lost their right to challenge the order passed by the respondent in view of the disciplinary proceedings that were initiated against them and which are pending as on date.

11. This Court has carefully considered the submissions made on either side and also the material available on record.

12. It is seen from the records that there was a prolonged grievance to the effect that Seniority List for the post of Block Development Officer has not been settled and the List has not been drawn. Every time, promotion happens only by taking recourse to Rule 39 (a) (i) of the Rules. This Rule deals with 'temporary promotions' and the corresponding provision thereof is Section 47 of the newly enacted Act, namely, the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. Temporary promotions are given only to immediately fill vacancies owing to an emergency and in public interest and the persons, who are temporarily promoted, will be replaced as soon as possible by the members of service, who are entitled to promotion under the Act/Rules. Therefore, temporary promotions are resorted to only to tide over a situation and it can never be a replacement for a regular promotion, which has to be done in accordance with the Service Rules.

13. In the present case, the Seniority List that was drawn became a subject matter of challenge in the Writ Petitions filed before this Court in W.P.No.12809 of 2016 and other connected matters, wherein, initially, Stay was granted and, subsequently, it was modified by an order, dated 26.07.2017, which modification order has already been extracted supra. After the said order was passed, the respondent, vide his proceedings, dated 27.03.2018, again resorted to temporary promotions under Rule 39 (a) (i) of the Rules and the petitioners were granted temporary promotions. Some of the persons, who were aggrieved by the said temporary promotions, approached this Court by questioning the fixation of seniority and for a direction to the authorities to consider the objections/appeals and revise the seniority. This Court also passed an order on 25.04.2019, directing the authorities to pass appropriate orders thereon within a period of twelve weeks. The petitioners were served with Charge Memos by the respondent. These Charge Memos were shown as the cause of action for passing the impugned proceedings by the respondent, dated 22.06.2019, whereby, the petitioners were reverted back to the posts of Deputy Block Development Officers.

14. The respondent has taken a stand in the Counter Affidavit to the effect that the petitioners were only granted temporary promotions and the same can be cancelled at any time, thereby reverting back the petitioners, without assigning any reason. This stand taken by the respondent in the Counter Affidavit will have to be decided and seen if it is in line with Rule 39 (a) (i) of the Rules, which is, presently, Section 47 of the Act. A plain reading of the Rule shows that the persons, who are temporarily promoted, can be replaced by members of service, who are entitled for promotion under the relevant Service Rules. This can happen in a case where a proper seniority list is drawn and the senior persons replace the temporary promotees, who are juniors to them. In such a scenario, the Rule itself provides that temporary promotees can be replaced.

15. In the present case, the petitioners were not reverted for want of vacancies and it is an admitted fact that there are vacancies to the post of Block Development Officer.

16. The main ground that has been taken against the petitioners is that there was a subsequent Charge Memo that was issued against the petitioners and, therefore, the temporary promotions were cancelled and the petitioners reverted back to the post of Deputy Block Development Officers. In this context, it is to be seen, whether this ground is sustainable and if it is in line with the relevant rules.

17. Rule 39 contemplates a situation where disciplinary proceedings are pending as on the date of consideration of a candidate for promotion. In the instant case, admittedly, no disciplinary proceedings were pending against the petitioners as on the date when they were temporarily promoted. Therefore, the respondent cannot rely upon Rule 39 (d) or Section 47 (4) in the present enactment. The petitioners were granted temporary promotion not owing to any disciplinary proceedings pending against them as on the date when they were considered for temporary promotion.

18. In view of the above, this Court is of the considered opinion that the respondent could not have passed the impugned order, reverting the petitioners to the post of Deputy Block Development Officer, only for the reason that a Charge Memo has subsequently been issued to the petitioners under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. In doing so, the reversion order becomes punitive in nature and, therefore, it cannot be passed without affording an opportunity to the petitioners.

19. The lone ground that has been taken by the respondent is that pursuant to the orders passed by this Court in W.P.No.8232-8238 of 2018, the Seniority List has been revised; the list has already been drawn and the respondent is in the process of promoting the eligible candidates to the post of Block Development Officer. Till-date, nothing has been placed before this Court to show that a panel has been drawn for considering the eligible candidates to the post of Block Development Officer. If such a panel is drawn, then, obviously, the eligibility of the petitioners to be considered for promotion to the post of Block Development Officer will become a contentious issue, since Charge Memos are pending against them under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. That stage has not reached as of now. The impugned proceedings of the respondent do not give this as a reason for cancelling the temporary promotions and reverting the petitioners to the post of Deputy Block Development Officer.

20. In view of the above discussion, this Court is of the considered view that the impugned proceedings of the respondent, dated 22.06.2019, require interference. The impugned proceedings do not satisfy the requirement of Rule 39 of the Rules, which, at present, is Section 47 of the Act. The impugned proceedings of the respondent are also punitive in nature, since they have only taken into consideration the subsequent Charge Memos, issued against the petitioners. It is made clear that this order does not stand in the way of the respondent in drawing a Panel and considering the persons for regular promotion to the post of Block Development Officer. In such

circumstances, Rule 39 (c), which is the corresponding provision in Section 47 (3) of the Act, will automatically come into play and the regular promotees will replace the temporary promotees. Until that process is done by the respondent, the petitioners are entitled to continue in the post of Block Development Officer.

21. In the result, the impugned proceedings of the respondent, dated 22.06.2019, are quashed and these Writ Petitions are allowed. No costs. Consequently, the connected W.M.P.Nos.17299,17301,17305,27626, 27627 and 27629 of 2019 are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The District Collector,
Tiruvannamalai District,
Tiruvannamalai.

+1 CC to The Govt. Pleader sr 6700.

W.P.Nos.17895,17897&17900/2019

NR(CO)
SP(27/02/2020)

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