



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.10.2020

CORAM:

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**

W.P. (MD) Nos.11829 & 11830 of 2013

and

M.P (MD) Nos.2, 2, 3 and 3 of 2013

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1.U.Pichaipandi ... Petitioner in WP.11829 of 2013
2.M.Kumaresan ... Petitioner in WP.11830 of 2013

Vs.

1.The District Collector,
Sivagangai District,
Sivagangai.
2.The Block Development Officer,
Devakottai Panchayat Union,
Sivagangai District.

3.Mr.John Joseph

4.Mr.S.Mageshwaran ... Respondents in both W.Ps.

COMMON PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned order of the 1st respondent in proceedings Na.Ka.B3/7221/2010, dated 21.01.2013 and Na.Ka.B3/17930/2010 dated 28.06.2013 respectively and quash the same.

For Petitioners : Mr.P.Subbaraj
(in both W.Ps.)

For Respondents : Mr.P.Mahendran
(R1 & R2) Addl.Govt.Pleader
(in both W.Ps.)

For Respondents : Mr.D.Sasikumar
(R3 & R4)
(in both W.Ps.)

COMMON ORDER

The promotion order of the contesting respondents are under challenge in these two writ petitions.



2. As far as W.P.(MD)No.11829 of 2013 is concerned, the petitioner was appointed as Hand Pump Operator at Kottambatti, Madurai District, on 09.03.1990 and his services were also regularized in proceedings, dated 05.07.2010, in the post of Office Assistant at Devakottai Panchayat Union, Sivagangai District.

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3. The petitioner states that the benefit of Selection Grade was given by the Block Development Officer. The seniority list was published in proceedings, dated 26.03.2012 and as per the said seniority list, the name of the writ petitioner - U.Pichai Pandi was included in Sl.No.62(I) and the name of the contesting respondents were placed in Sl.Nos.64 & 65. Relying on the said seniority list, the learned counsel for the petitioner reiterated that the petitioner is senior to the contesting respondents 3 and 4 and therefore, the petitioner is entitled for retrospective promotion to the post of Junior Assistant. It is contended that the petitioner is fully qualified and fit for promotion to the post of Junior Assistant. In spite of the fact that he was placed above the names of the respondents 3 and 4 in the seniority list, dated 26.03.2012, he was not promoted to the post of Junior Assistant. Thus, the petitioner is constrained to move the present writ petition.

4. The petitioner in W.P.(MD)No.11830 of 2013, Mr.M.Kumaresan was appointed as Hand Pump Operator at Kottambatti, Madurai District, on 14.04.1990 and his services were also regularized in proceedings, dated 05.07.2010 in the post of Office Assistant at S.Pudhur Panchayat Union, Sivagangai District. He was also given Selection Grade, by the Block Development Officer. As per the seniority list issued by the 1st respondent in proceedings, dated 26.03.2012 and 13.05.2012, the name of the writ petitioner - Mr.M.Kumaresan was included in S.No.62(O) and the names of the contesting respondent Nos.3 and 4 were included in Sl.Nos.64 and 65. Thus, the petitioner claims that he is senior to the respondents 3 and 4 and accordingly, he is entitled to the post of Junior Assistant on par with his juniors.

5. The learned Additional Government Pleader appearing on behalf of the respondents 1 and 2 disputed the grounds raised by the writ petitioners by stating that the seniority list referred in the writ petition is a provisional seniority list and the final seniority list was published, after receiving the objections from the candidates. The tentative list published on 26.03.2012 would not confer any right on the employees. The tentative list was published in order to receive objections from all other employees and in the present case also, on receipt of objections and representations from the affected candidates, the final seniority list was published and communicated by the competent authorities on 05.07.2013. As per the final redrawn seniority list, which was published considering certain appeals from the aggrieved persons communicated to the employees, the petitioner Mr.U.Pitchaipandi was included in Sl.No.70(2). The other writ petitioner Mr.M.Kumaresan



was included in Sl.No.70(291). However, the respondents 3 and 4 were placed in Sl.Nos.64 and 65 respectively. Thus, the respondents 3 and 4 were promoted to the post of Junior Assistant.

6. It is stated that the petitioners were appointed as Office Assistants by transfer to Sivagangai District Unit from Madurai District unit only on 12.07.2007. Both the petitioners were transferred on the same day, but the respondents 3 and 4 were appointed in the regular establishment long before and joined the duty on 25.06.2001 itself. The petitioners have not acquired the requisite service qualifications of 7 years of service in the category of Office Assistant, prescribed in G.O.No.240, Rural Development and Pachayat Raj Department, dated 07.09.2000, at the time of consideration for promotion to the post of Junior Assistant by the appointment committee. The petitioners would be eligible only after completion of 7 years of service in the post of Office Assistants and both the petitioners had completed only on 12.04.2014. Thus, the petitioners had not fulfilled the eligibility criteria fixed by the Government, for considering the candidates for promotion to the post of Junior Assistant.

7. The fact remains that the writ petitioners had relied upon the tentative list wherein, their names are placed above the respondents 3 and 4. However, on receipt of objections from the aggrieved persons, the final seniority list was redrawn and published in proceedings, dated 05.07.2013, which was not under challenge. As per the final seniority list, dated 05.07.2013, the respondents 3 and 4 are senior to the writ petitioners. This apart, the writ petitioners transferred from Madurai District Unit to Sivagangai District Unit and the respondents 3 and 4 were appointed long before the transfer of the writ petitioners in the regular establishment on 25.06.2001. This being the factum established, the writ petitioners are not entitled for the relief as such sought for in the present writ petitions and accordingly, the writ petitions are devoid of merits and stands dismissed. No costs. Consequently, the connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (co)

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Sub Assistant Registrar (CS)

MPK



To

1.The District Collector,
Sivagangai District,
Sivagangai.

2.The Block Development Officer,
Devakottai Panchayat Union,
Sivagangai District.

+2 CC to Mr.D. SASIKUMAR, Advocate (SR-20324,20323[F] dated
16/10/2020)

+2 CC to Mr.P. SUBBARAJ, Advocate (SR-20289[F] dated 16/10/2020)

+1 CC to SPL GP (SR-20457[F] dated 16/10/2020)

W.P. (MD) Nos.11829 & 11830 of 2013
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VB (23.11.2020) 4P 8C