



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.02.2020

CORAM:

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

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**W.P (MD) No.10418 of 2015**

P.Roselet

.. Petitioner

Vs.

- 1.The Government of Tamil Nadu,  
rep. by its Secretary,  
Rural Development,  
Secretariat,  
Chennai.
- 2.The Director of Rural Development,  
Department,  
Panagal Building,  
Saidapet,  
Chennai.
- 3.The District Collector,  
Kanyakumari District at  
Nagercoil.
- 4.Vargheese
- 5.R.Sobanam
- 6.Sasikala
- 7.Gandhiammal
- 8.Thomas Xavier Dritto
- 9.G.Ratheesh Chandra Mohan
- 10.Newton
- 11.Sumathi
- 12.P.Nagarajan

... Respondents

**PRAYER:** Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 3<sup>rd</sup> respondent in D7/84390/98-1, dated 14.05.1999, insofar as not



fixing the seniority of the petitioner in the category of Assistant/Rural Welfare Officer Grade I in between Mr.K.Neelakandan (Sl.No.160) and P.Indirabai (Sl.No.161) and the order of the 2<sup>nd</sup> respondent in R.C.No.66865/1999-C3 dated 09.04.2002 and quash the same and promote the petitioner on par with the promotion of the immediate junior with effect from 10.04.1995 and to consequently grant all monetary and other attendant benefits.

For petitioner : Mr.R.J.Karthick

For respondents 1 to 3 : Mr.D.Muruganandham,  
Addl. Government Pleader

For respondents 4 to 11 : No appearance

**ORDER**

This petition has been filed by the petitioner challenging the order passed by the 3<sup>rd</sup> respondent dated 14.05.1999 placing her seniority in between Serial No.175 and 176, instead of Serial Nos.160 and 161, and the order of the 2<sup>nd</sup> respondent dated 09.04.2002 rejecting the petitioner's appeal for placing him in between Serial Nos.160 and 161.

2. Learned counsel for the petitioner submitted that the petitioner was appointed as Typist in the Office of the Tamil Nadu Public Service Commission, Chennai, on 16.05.1983 through Employment Exchange and her service was regularised on 25.06.1984 along with similarly placed persons on absorption to regular Government service. In the year 1992, she was transferred and joined as Junior Assistant. The petitioner has passed the Departmental Examinations on 19.11.1993 and as such, she became eligible to be promoted as Assistant on 19.11.1993 itself. While fixing seniority in the category of Junior Assistant, the petitioner was wrongly placed at Serial No.238 and based on the same, she was given promotion as Assistant on 01.01.1996. Only after issuance of the provisional seniority list of Assistant, the petitioner came to know that her seniority has been wrongly fixed. Hence, the petitioner made a representation on 18.01.1999, in this regard, to the 2<sup>nd</sup> respondent. On considering the same, the 2<sup>nd</sup> respondent refixed the seniority of the petitioner in the category of Junior Assistant from Serial No.238 to 221.A. Consequently, the petitioner ought to have been placed in between Serial Nos.160 and 161 in the category of Assistant. But, that was not done. Hence, the petitioner had sent a representation, in this regard, to the 3<sup>rd</sup> respondent. The third respondent, instead of placing the petitioner in between Serial Nos.160 and 161, had placed the petitioner in between Serial Nos.175 and 176, that is as Serial



3. Learned counsel for the petitioner would further submit that aggrieved by the same, the petitioner had preferred an appeal before the 2<sup>nd</sup> respondent. But, the 2<sup>nd</sup> respondent, by the impugned order dated 09.04.2002, rejected the appeal holding that the petitioner does not possess the service qualification of Rural Welfare Officer Grade II and that her junior was not promoted. As against the above orders, the petitioner had filed O.A.No.6399 of 2002 on the file of the Administrative Tribunal and after abolition of Tribunal, it was transferred as W.P.No.11741 of 2007 and this Court, by order dated 19.12.2001, had dismissed the same on the ground that the necessary parties ie., the persons ranked in Serial Nos.161 to 175, have not been impleaded and such order was confirmed in the writ appeal also, but liberty was granted to the petitioner to file a fresh writ after impleading necessary parties. Subsequently, the petitioner has filed this writ petition impleading the respondents 4 to 12 herein.

4. Learned counsel for the petitioner would further submit that it is the 2<sup>nd</sup> and 3<sup>rd</sup> respondents, who had failed to send the petitioner for one year service as Rural Welfare Officer Grade II and since they evaded in sending the petitioner to one year service, the petitioner cannot be denied promotion on that ground. Except the respondents 4 to 12 herein, who are juniors to the petitioner, others were retired from service and therefore, the retired persons were not impleaded. By placing them above the petitioners, they have been given promotion by which the petitioner has been prejudiced. Thus, he prayed to allow this petition.

5. The learned Additional Government Pleader appearing for the official respondents submitted that though the petitioner completed the departmental test in the year 1993, she completed the service qualification as Rural Welfare Officer Grade II only on 22.07.1995 which is one of the requisite qualification for promotion as Assistant, as per G.O.(3D) 3 Rural Development (E4) Department, dated 03.06.1994. Therefore, the petitioner became eligible for inclusion in the panel for promotion as Assistant in the year 1996 only and according to her seniority, she was given promotion as Assistant on 01.01.1996. He would further submit that none of the juniors to the petitioner were promoted as Assistant in the years 1994 and 1995, without the service qualification as Rural Welfare Officer Grade II and therefore, the relief sought for by the petitioner need not be granted. Thus, he prayed to dismissed this writ petition.

6. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents 1 to 3 and perused the records carefully.



7. According to the petitioner, she had passed all the department tests on 19.11.1993, but she was promoted as Assistant only on 01.01.1996 and requested to assign her seniority taking into consideration of her acquiring test qualification for promotion as Assistant on 19.11.1993. According to the respondents, though the petitioner completed the departmental test in the year 1993, she completed the service qualification as Rural Welfare Officer Grade II only on 22.07.1995 and she became eligible for inclusion in the panel in the year 1996 only and therefore, her seniority cannot be again refixed.

8. Admittedly, sending the petitioner for one year service as Rural Welfare Officer Grade II was only in the hands of the respondents 1 to 3. Having failed to send her for one service, now she cannot be denied promotion on that ground. In similar circumstances, in the case of M.Chandrasekar Vs. the Director of Rural Development Chennai, (W.P.Nos.47872 and 47885 of 2006 and 7791 of 2007), by order dated 04.09.2007, this Court has held in paragraph No.8 as follows:

"8.Under these circumstances, the petitioners cannot be denied the benefit of inclusion in the panel, on the ground that they did not possess the service qualification. After all, the service qualification cannot be equated to the qualification of a pass in the departmental test. While the pass in a departmental test may be in the hands of the individual, the posting of the individual to a particular post, is not within the hands of the individual. Therefore, the respondents ought to have formulated and implemented a policy providing equal opportunity to all persons to acquire the service qualifications. Since the respondents have failed to do so, the petitioners were not at fault and on that ground, they should not have been omitted to be included in the panel."

9. A learned Single Judge of this Court, in similar circumstances, in the case of S.Sasisivanandam Vs. the District Collector, Tuticorin and another, reported in 2011 SCC (Mad) 1757 : (2012) 1 Mad LJ 634, by following the above decision, has quashed the impugned order therein and directed the respondents therein to include the name of the petitioner therein in the panel of Rural Welfare Officer Grade I fit for promotion to the post of Extension Officer for the year 2002 and also promote the petitioner from the date on which his immediate junior was promoted.



10. As stated earlier, for non sending for one year service, the petitioner cannot be found fault with and it is only the respondents 1 to 3 have failed to send her for such service and therefore, based on the same, the seniority of the petitioner cannot be fixed below to her junior and she denied promotion on par with her junior.

11. The other ground on which the respondents 2 and 3 denied to refix the seniority of the petitioner and to promote her is that none of her juniors was promoted as Assistant based on that seniority. In the seniority list of Junior Assistant issued by the third respondent dated 12.05.1999, the petitioner's name was placed at Serial No.221(a) and her juniors name mentioned as E.Chelladurai (222), T.Rajalingam (223), S.P.Rohinikumsti (224), J.Helanthangam (225), etc. As the above juniors were sent to one year service by the respondents 1 to 3 overlooking the seniority of the petitioner, they completed their one year service earlier and also departmental tests, and therefore, they became seniors to the petitioner in the seniority list of Assistant dated 14.05.1999. It is not known as to why the petitioner has been discriminated. The official respondents have not assigned any reason for sending the petitioner to such service belatedly.

12. Admittedly, the petitioner completed all the departmental tests on 19.11.1993. In the confirmed seniority list of Assistant, dated 14.05.1999, the name of the petitioner was placed at serial No.175(a) holding that though she has passed departmental test as early as on 19.11.1993, she completed one year service only on 22.07.1995. As discussed above, it cannot be accepted, as there is no fault on the side of the petitioner. Therefore, the seniority of the petitioner ought to have been fixed in between serial No.160 and 161, but the 3<sup>rd</sup> respondent has erroneously fixed the seniority of the petitioner in between Serial Nos.175 and 176 and the same was confirmed by the second respondent. Therefore, the impugned orders are liable to be set aside.

13. In view of the fact that the petitioner has been erroneously placed in between Serial No.175 and 176, instead of Serial No.160 and 161, the immediate junior to the petitioner by name P.Indira Bai (161) and others were promoted in the hierarchy level at the earliest rather than the petitioner. Now, the petitioner as well as the juniors to the petitioners were retired from service and therefore, no prejudice would be caused to the respondents 4 to 12.

14. In view of the above, the impugned orders are set aside and the respondents 1 to 3 are directed to notionally



promote the petitioner on par with her immediate junior by name P.Indira Bai (Sl. No.161) and grant all service and monetary benefits. The abovesaid exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.

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15. This Writ Petition stands disposed of accordingly.  
No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

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To

1.The Secretary to Government,  
Rural Development Department,  
Secretariat,  
Chennai-600 009.

2.The Director of Rural Development Development,  
Panagal Building,  
Saidapet,  
Chennai-600 015.

3.The District Collector,  
Kanyakumari District at  
Nagercoil.

+1 CC to Mr.R.SUBRAMANIAN, Advocate ( SR-6652[F] dated  
17/02/2020 )

+1 CC to SPL.GP ( SR-6771[F] dated 18/02/2020 )

Order made in  
W.P (MD) No.10418 of 2015  
17.02.2020

KM (29.05.2020) 6P 6C