



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.12.2020

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) .No.18305 of 2015

K.S.Kandasamy

... Petitioner

-Vs-

1.The Principal Secretary to the Government
Revenue Department (Services-III)
Secretariat, Fort St. George,
Chennai-9.

2.The Additional Chief Secretary and Commissioner
of Revenue Administration, Ezhilagam,
Chepauk, Chennai-5.

3.The District Collector,
Madurai District, Collectorate,
Madurai-20.

... Respondents

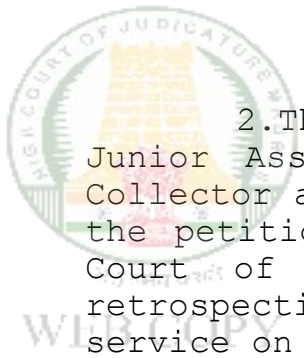
Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to re-fix the seniority of the petitioner in pursuant to the decision dated 08.04.2009 rendered by the Hon'ble Supreme Court of India made in Civil Appeal No.2251 of 2009 and consequently directing the respondents to provide all service, monetary and pensionary benefits to the petitioner.

For Petitioner : Mr.J.Parekh KUmar

For Respondents : Mr.S.Dhayalan
Government Advocate

ORDER

The relief sought for in the present writ petition is to direct the respondents to re-fix the seniority of the petitioner pursuant to the decision, dated 08.04.2009 rendered by the Hon'ble Supreme Court of India made in Civil Appeal No.2251 of 2009 and consequently direct the respondents to provide all monetary and pensionary benefits to the petitioner.



2.The petitioner states that he was initially appointed as Junior Assistant and finally promoted upto the level of Deputy Collector and retired from service on 28.02.1998. The grievances of the petitioner is that as per the Judgment of the Hon'ble Supreme Court of India, he is entitled for notional promotion with retrospective effect. Admittedly, the petitioner retired from service on 28.02.1998.

3.The learned counsel for the petitioner made an attempt to convince this Court with reference to the facts and circumstances which was already adjudicated by the Hon'ble Supreme Court of India. This Court is of the considered opinion that the said findings arrived cannot be re-adjudicated in the present writ petition. However, it is relevant to extract the Judgment of the Hon'ble Supreme Court of India in Civil Appeal Nos.251-256 of 2015, dated 12.03.2019, which is in continuation of the earlier litigations of the Hon'ble Supreme Court of India as follows:-

"...19.In the result, the impugned Judgment of the High Court is set aside and these appeals are allowed with the following observations and directions:-

(i)Promotions of the Direct Recruit Assistants effected between 07.02.1995 and 08.04.2009 and their seniority in their respective positions as on date, shall not be disturbed;

(ii)The benefit extended to the graduate promotee Assistants by placing them on par with Direct Recruit Assistants is to be given effect to prospectively from the date of Judgment of this Court dated 08.04.2009 rendered in the case of M.Rathinaswami Vs. State of Tamil Nadu reported in (2009) 5 SCC 625;

(iii)After 08.04.2009, the promotion to the post of Deputy Tahsildar from its feeder category, i.e., Direct recruit Assistants and Promotee graduate Assistants, shall be strictly in accordance with the Judgment of this Court referred above, i.e., treating Promotee graduate Assistants on par with Direct recruit Assistants. Such promotion shall be given effect to, without reference to any interim order(s) passed by the High Court;

(iv)If any panels are prepared, and promotions are given, after 08.04.2009 for promoting the Assistants to the post of Deputy Tahsildars in Tamil Nadu Revenue Subordinate Service contrary to the Judgment of this Court dated 08.04.2009, such panels and promotions have to be revised so as to bring in conformity with the Judgment of this Court referred above;



(v) By virtue of the Judgment of this Court, dated 08.04.2009, referred above, Promotee graduate Assistants are placed on par with Direct recruit Assistants. So far as Promotee non-graduate Assistants are concerned, the amended rule holds the field, which gives preferential treatment to Direct recruit Assistants, over Promotee non-graduate Assistants;

(vi) Promotee non-graduate Assistants, who are impleaded as party respondents in these appeals, are not entitled to any directions in their favour, as much as, all these appeals are preferred by Direct recruit Assistants;

(vii) While implementing the above directions, if the seniority and promotion, of the persons who are already retired or dead, is affected in any manner, payments made on account of such seniority and promotion earlier granted to them during the interregnum period, i.e., from 08.04.2009 till this date shall not be recovered

(viii) So far as Promotee non-graduate Assistants are concerned, it is open for them to pursue with the Government for appropriate amendment to the Rules, in which event we keep it open to Government to consider such request on its own merits.."

4. The Hon'ble Supreme Court of India adjudicated with reference to the entire facts and circumstances as well as the issues and held in paragraph No.19(ii) of the Judgment that the benefit extended to the graduate promotee Assistant by placing them on par with Direct recruit Assistants is to be given effect to prospectively from the date of Judgment of this Court dated 08.04.2009 rendered in the case of **M.Rathinaswami Vs. State of Tamil Nadu** reported in (2009) 5 SCC 625.

5. When the Apex Court of India in clear terms held that the promotions are to be considered with retrospective effect from the date of the Judgment on 08.04.2009, it is pertinent to note that the petitioner is not at all in service during the year 2009. The petitioner retired from service on 28.02.1998 itself. The writ petition itself is filed after a lapse of 10 years, the Judgment was delivered in the year 2009. The present writ petition is filed in the year 2015. Now the petitioner is aged about 79 years of old. The facts and circumstances already adjudicated by the Hon'ble Supreme Court of India in Judgment, dated 08.04.2009 as well as the Judgment, dated 12.03.2019 cannot be re-adjudicated in the present writ petition and the respondents are also in the process of implementing the Judgment and the learned Government Advocate also states that all the eligible cases in accordance with the Hon'ble Supreme Court Judgment would be considered by the Government by following the directions issued by the Hon'ble Apex Court of India.



This being the submissions made, this Court is of the considered opinion that no further consideration is required and the implementation of the Judgment of the Hon'ble Supreme Court of India is in progress.

6. Accordingly, the writ petition stands disposed of. No costs.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar (CS)

Sji

To

1. The Principal Secretary to the Government
Revenue Department (Services-III)
Secretariat, Fort St. George,
Chennai-9.

2. The Additional Chief Secretary and Commissioner
of Revenue Administration, Ezhilagam,
Chepauk, Chennai-5.

3. The District Collector,
Madurai District, Collectorate,
Madurai-20.

+1 CC to SPL GP (SR-25126[F] dated 11/12/2020)

+1 CC to Mr.P.SRINIVAS, Advocate (SR-25182[F] dated 11/12/2020)

W.P. (MD) .No.18305 of 2015
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VB (22.12.2020) 4P 6C