

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Friday, the Fifth day of February Two Thousand Twenty One

PRESENT

The Hon`ble Mr Justice V.PARTHIBAN

WMP No.8398 Of 2020

IN WP.7040 of 2020

P.NALLASIVAN

[PETITIONER]

Vs

1 THE STATE OF TAMIL NADU, [RESPONDENTS]
REP BY ADDITIONAL CHIEF SECRETARY TO GOVERNMENT,
REVENUE AND DISASTER MANAGEMENT DEPARTMENT,
SERVICE WING (SER.) SECTION, SECRETARIAT,
CHENNAI 600 009

2 THE PRINCIPAL SECRETARY /
COMMISSIONER OF REVENUE,
ADMINISTRATION, CHEPAUK,
CHENNAI 600 005

3 THE DISTRICT COLLECTOR,
THOOTHUKUDI DISTRICT,
THOOTHUKUDI 628 101

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to issue an order INTERIM DIRECTION, directing the 1st respondent to give temporary promotion to the petitioner as Deputy Collector (in WMP.No.8398/2020) pending disposal of the writ petition 7040/2020.

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MRS.NALINI CHIDAMBARAM Senior Counsel for MRS.C.UMA, Advocate for the petitioner and of MR.J.POTHIRAJ Government Pleader for respondents the court made the following order:-

This miscellaneous petition is filed to direct the first respondent to give temporary promotion to the petitioner as Deputy Collector pending disposal of the writ petition.

2. The petitioner was appointed as Junior Assistant on 19.02.1986 in the Tamil Nadu Ministerial Service. After bifurcation of the erstwhile Tirunelveli District, he was posted as Junior Assistant in the Tuticorin Revenue Unit. The petitioner was promoted as Assistant in 1993 and was further promoted to the post of Deputy Tahsildar in the Tamil Nadu Revenue Subordinate Service in 2007. For promotion to the post of Tahsildar, Rule 7(b) and 8(a) of the Tamil Nadu Revenue Subordinate Service prescribed qualification viz., that the Deputy Tahsildar shall not be entitled to have his name included in the list of approved candidates for appointment to the post of Tahsildar, if he has not completed the police training for two months and have exercised magisterial powers for the period of four months among the other qualifications.

3. The petitioner herein fulfilled all other qualifications including police training, but, unfortunately, he did not complete the magisterial training when he came within the zone of consideration for promotion to the post of Tahsildar for the panel year 2011. The crucial date for preparation of the panel was 01.07.2011. Thereafter, the petitioner underwent magisterial training from 28.07.2011 to 24.11.2011. In response to the number of representations from the revenue officers, the Government issued G.O.Ms.No.274, Revenue Department dated 21.09.2011, relaxing the conditions of magisterial training for consideration for promotion to the post of Tahsildar. However, unfortunately, the said Government Order was issued after the cut off date on 01.07.2011 and therefore, the petitioner herein could not be included in the panel. Subsequently, the petitioner was included in the panel and was promoted as Tahsildar by proceedings dated 31.12.2012 and has been working as Tahsildar till date.

4. While so, a temporary list of panel was prepared for the panel year 2016-17, containing the list of several candidates in the cadre of Tahsildar for promotion to the next higher post of Deputy Collector. Unfortunately, the petitioner did not find his name included in the list whereas his juniors were included. The petitioner having been overlooked in the matter of further promotion to the post of Deputy Collector, has been representing to the authority ever since and unfortunately, it transpired that every year from 2016-17, the petitioner's name has not been included in the panel for promotion, resulting in more than 200 juniors of the petitioners being promoted to the post of Deputy Collector, overlooking the seniority of the petitioner.

5. According to the petitioner, originally when the relaxation was granted by the Government by G.O.Ms.No.274, Revenue Department dated 21.09.2011, the petitioner could not get the benefit of relaxation in view of certain clarification pending before the Government. Thereafter, it appeared that some correspondences were being exchanged as between the officials in that regard. But,

ultimately for four panel years, the petitioner could not be promoted though he was fully eligible for the same. When he finally approached the authority, an order was passed on 05.02.2020 by the first respondent rejecting the claim of the petitioner. The petitioner is before this Court challenging the rejection order.

6. Mrs.Nalini Chidambaram, learned senior counsel for the petitioner would strenuously submit that pending writ petition, the petitioner could be promoted to the post of Deputy Collector, since in the normal circumstances, the disposal of the writ petition may take considerable time, particularly, when the respondents have been repeatedly taking time for filing of counter affidavit. She would infact draw the attention of this Court to the proceedings dated 24.12.2019 from the second respondent to the Additional Chief Secretary, wherein, the claim of the petitioner was found justifiable. Despite the same, the claim has been rejected on erroneous consideration.

7. In any event, the learned senior counsel would submit that atleast in the latest panel year 2019-20, the petitioner could be promoted without prejudice to his right in the writ petition for claiming promotion as Deputy Collector for the panel year 2016-17.

8. Mr.J.Pothiraj, learned Special Government Pleader appeared in the matter and opposed grant of any interim orders.

9. In fact, this Court has repeatedly granted time to the respondents to file their counter affidavit. Despite number of adjournments being granted obliging the respondents, but till date, no counter affidavit has been forthcoming. However, the learned Special Government Pleader made his oral submissions on the basis of his instructions. According to the learned Special Government Pleader, the issue of entitlement of the petitioner for the panel year 2016-17, has still not been settled finally and therefore, no direction could be issued for promotion. When this Court confronted the learned Special Government Pleader as to whether the petitioner suffers any other disqualification for consideration, the learned Special Government Pleader would submit on instructions that the petitioner is otherwise eligible, but certain clarifications are required as to whether he is entitled to be promoted for the panel year 2016-17.

10. This Court in consideration of the above narrative, is of the view that the petitioner cannot be denied his promotion to the next higher post of Deputy Collector for indefinite period citing certain extraneous reasons for non grant of promotion to him even for the subsequent years. Whether the petitioner is entitled to be promoted as Deputy Collector for the panel year 2016-17 or not, will have to be decided when the writ petition is finally disposed of, after filing of the counter affidavit by the respondents. However, till the

disposal of the writ petition, the petitioner deserves to be promoted at least in the latest panel year as admittedly more than 200 officers overtaken him in the matter of the subject promotion.

11. As rightly contended by the learned senior counsel for the petitioner, the disposal of the writ petition may take considerable time and till the disposal, the denial of promotion to the petitioner even for the subsequent years, would cause undue hardship and also would inflict humiliation on him viz., that several juniors would be working in the higher post. Therefore, fairness demands that the petitioner ought to be considered atleast for the latest panel year 2019-20 or any subsequent panel, if it is prepared and should be granted promotion forthwith without prejudice to his rights projected in the pending writ petition. The interim direction is imperative in this case, since admittedly the petitioner has not come under any cloud nor he is suffering from any disqualification for promotion to the post of Deputy Collector.

12. In the above circumstances, W.M.P.No.8398 of 2020 in W.P.No.7040 of 2020, stands allowed. The respondents are directed to consider the claim of the petitioner for promotion as Deputy Collector either for the year 2018-19, 2019-20 or 2020-21, which ever is more beneficial to the petitioner pending disposal of the writ petition. It is made clear that the petitioner's promotion is subject to his right as to whether he is entitled to be granted promotion as Deputy Collector for the panel year 2016-17. The respondents are also directed to pass appropriate orders in this regard, within a period of four weeks from the date of receipt of a copy of this order.

13. Post the writ petition for hearing in the first week of March 2021.

-sd/-

05/02/2021

/ TRUE COPY /

Sub Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

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THOOTHUKUDI 628 101

Order

in
WMP.8398/2020

in
WP.7040/2020

Date :05/02/2021

From 26.2.2001 the Registry is issuing certified
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