



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.01.2021

DELIVERED ON : 03.08.2021

WEB COPY

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD)No.7229 of 2013

S.Ravikumar

... Petitioner

Vs.

1.The Principal Secretary and Commissioner of
Revenue Administration,
Revenue Department,
Chennai -5.

2.The Special Commissioner & Commissioner
for Revenue Administration,
Chepauk,
Chennai - 600 005.

3.The District Collector,
Thirunelveli District,
Thirunelveli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 2nd respondent in his proceedings in Na.Ka.No.Pani.3(4)/64801/2007, dated 31.03.2015 and quash the same as illegal and consequentially to direct the respondents to treat the appointment of the petitioner as Assistant w.e.f. the date on which his junior was appointed and consequentially to confer all the consequential benefits thereon. (Prayer amended as per order of this Court dated 19.12.2018 in W.M.P. (MD).No.5772 of 2017)

For petitioner

: Mr.M.Ajmal Khan,
Senior Counsel for
M/s.Ajmal Associates

For respondents

: Mr.J.Gunaseelan Muthaiah,
Additional Government Pleader

ORDER

This Writ Petition has been filed by the petitioner challenging the order of the 2nd respondent dated 31.03.2015 and for a direction
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to the respondents to treat the appointment of the petitioner as Assistant with effect from the date on which his junior was appointed.

2. The learned counsel appearing for the petitioner submitted that in the year 2001, the petitioner was selected through TNPSC for the post of Assistant in the Revenue Department of the Government of Tamil Nadu, held for the vacancies of the year 1996-1999 and he was allotted to Tirunelveli District Revenue Unit. In TNPSC examination, the petitioner had secured 840.87 marks and one Mr.Kasi and Mr.Premkumar secured low marks than him. While so, out of total 69 candidates selected for Tirunelveli Revenue Unit, the above said two juniors to the petitioner and other 15 candidates (totally 17 candidates) alone were given appointment by the 3rd respondent/District Collector, Tirunelveli in the year 2001 and other 52 candidates, including the petitioner, were not given appointment stating that the said 52 posts were surrendered as there was no vacancy. He would further submit that after a long legal battle and as per the direction of the Hon'ble Administrative Tribunal, they were given appointment in the year 2004, by the Government Order (Miscellaneous) No.293, Revenue (Work.6(2) Department, dated 14.06.2004. In the said Government Order, it has been categorically stated that the posting should be given without affecting seniority among the selected candidates. As per Rule 9(6) (3) of the Fundamental Rules and Rule 35(a) of the Tamil Nadu State and Subordinate Service Rules, the respondents ought to have been treated the petitioner on par with his juniors, who were given appointment in the year 2001. Further, as per Rule 35(aa), if the junior happens to be appointed earlier than the senior, the senior shall be deemed to have been appointed on the same day on which junior was appointed and as such, the petitioner should have been given seniority from the date on which his junior was appointed, but the respondents failed to do so.

3. The learned counsel for the petitioner would further submit that in the year 2006 the juniors of the petitioner, who were appointed in the year 2001, were enlisted in the panel for promotion to the post of Deputy Tahasildar. The petitioner submitted a representation to the District Collector requesting to include his name also in the said panel for promotion on par with his juniors. But, the said request was rejected by the District Collector. Aggrieved by the same, the petitioner presented an appeal before the Additional Chief Secretary / Commissioner of Revenue Administration, Chennai. In the meantime, the petitioner filed this writ petition with a prayer to direct the respondents to treat the appointment of the petitioner as Assistant with effect from the date on which his junior was appointed and to confer all the consequential benefits. During the pendency of this writ petition, the Additional Chief Secretary / Commissioner for Revenue Administration, Chennai, has passed an order dated 31.03.2015 rejecting the request of the petitioner. The said order is now under challenge in this case by

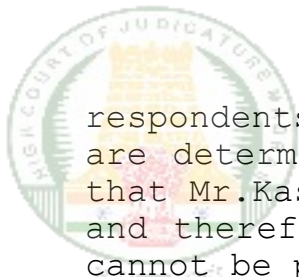


4. The learned counsel for the petitioner would further submit that the respondents rejected the request of the petitioner to restore the seniority and to promote him as Deputy Tahsildar from the year 2006, only on the ground that at that time, the petitioner did not have required qualification and experience. But, when the petitioner cannot be blamed for not undergoing training or obtaining necessary qualification for promotion, the petitioner ought to have been given promotion by relaxation the qualification for promotion. In support of his contention, the learned counsel for the petitioner relied on the decision of this Court in the case of **S.Krishnakumar vs. State of Tamil Nadu and 9 others**, reported in (2011) 8 MLJ 317. Thus, he prayed to set aside the impugned order and to direct the respondents to treat the appointment of the petitioner as Assistant with effect from the date on which his junior was appointed and to confer all the consequential benefits.

5. The learned Additional Government Pleader appearing for the respondents submitted that the petitioner was recruited as Assistant in Group II services by the TNPSC during the year 2001 and allotted to Tirunelveli District. The petitioner's name was assigned in Serial No.42 in the allotment list of 69 candidates. The District Revenue Officer, Tirunelveli has appointed 17 candidates ie., the candidates in Serial Nos.1 to 17 and surrendered 52 candidates as there was no vacancy. As per the direction of the Administrative Tribunal, the District Revenue Officer, Tirunelveli in his proceedings, dated 23.07.2004, appointed 24 candidates, including the petitioner. The seniority and the rank of the candidates selected are determined by the Tamil Nadu Public Service Commission on merits and also applying the rule of reservation. Though the petitioner stated that he secured 840.87 marks in the recruitment, Mr.Kasi and Mr.Premkumar who secured low marks than him, have been appointed on 13.09.2001 itself and the petitioner is appointed in the year 2004 and hence, both the said persons are senior to the petitioner and the petitioner has got no right to claim the seniority equated to the candidates appointed in the year 2001. The appeal filed by the petitioner seeking to include his name in the panel of Deputy Tahsildar for the year 2006 was rightly rejected by the second respondent holding that the petitioner is not qualified on the crucial date ie., on 15.09.2006 to include his name in the panel for promotion to the post of Deputy Tahsildar for the year 2006. Thus, he prayed to dismiss this writ petition.

6. Heard the learned counsel appearing for both sides and perused the records carefully.

7. The main contentions of the learned counsel for the petitioner is that he belongs to MBC category and he secured 840.87 marks in the recruitment and though Mr.Kasi and Mr.Premkumar had secured less marks than him, they have been given appointment in the year 2001 itself. However, they cannot be placed above him in the seniority based on such appointment and that the petitioner may be given promotion on par with his juniors. According to the

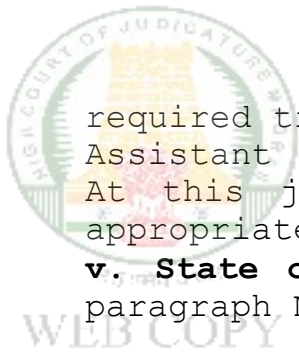


respondents, the seniority and the rank of the candidates selected are determined by the TNPSC on merits and rule of reservation, and that Mr.Kasi and Mr.Premkumar were appointed in the year 2001 itself and therefore, the petitioner, who was appointed in the year 2004, cannot be placed above them in the seniority list.

8. It is well settled that seniority list should be prepared only on the basis of the marks secured by the candidates and not on the basis of rule of reservation. In this case, the contention of the petitioner that the candidates, who secured low marks than the petitioner, were given appointment in the year 2001 itself and that he secured more marks than Mr.Kasi and Mr.Premkumar, who were appointed in the year 2001 itself and he is senior to them, have not been disputed by the respondents by producing the seniority list prepared by the TNPSC on the basis marks secured. Further, the document produced by the petitioner in the typed set of papers would go to show that he secured more marks than Mr.Kasi. It is also not disputed that though the TNPSC allotted 69 direct Assistants to Tirunelveli District Revenue Unit, only 17 candidates alone were given appointment and other 52 candidates were not given appointment for no fault of them and though there was vacancy, they were left in the lurch stating that there was no vacancy and only after a long legal battle and based on a direction given by the Administrative Tribunal, those candidates, who were left in the lurch, were reconsidered for appointment in the year 2004 and they have been appointed, pursuant to G.O.Ms.No.293 dated 14.06.2004. In the said G.O. itself, it has been categorically stated that while making reappointment, the respondents must see that the over all seniority of the candidates maintained by TNPSC shall not be affected. When that be so, the contention of the respondents that the petitioner cannot be equated with the appointees of the year 2001, cannot be countenanced.

9. As stated earlier, in the year 2001, the petitioner was not given appointment for no fault of him and it was only on the fault of the respondents, the petitioner joined duty in the year 2004. Rule 35(a) and (aa) of the Tamil Nadu State and Subordinate Service Rules categorically says that the juniors appointed by a particular method or recruitment, happen to be appointed to a service, class, category or grade, than the senior appointed on the same method of recruitment, the senior shall be deemed to have been appointed to the service on the same day on which the junior was so appointed. Therefore, the petitioner shall be deemed to have been appointed on the same day on which his junior was appointed and as such, the seniority of the petitioner shall be taken on par with his junior. Merely because the juniors of the petitioner were given appointment in the year 2001 itself, it cannot be taken that they became senior to the petitioner.

10. When the petitioner requested to include his name in the panel for promotion for the post of Deputy Tahsildar for the year 2006, it was rejected only on the ground that he has not undergone



required training and completed five years of service in the post of Assistant as on the crucial date of promotion ie., on 15.09.2006. At this juncture, this Court is of the view that it would be appropriate to refer to a decision of this Court in **S.Krishnakumar v. State of Tamil Nadu**, reported in **(2011) 8 MLJ 317**, wherein at paragraph Nos.6 to 8 this Court held as follows:

"6..... This Court in W.P.No.13517 of 2009, by order dated 9.4.2010 considered the very same issue and in paragraph-19, it is held as follows:-

"19. Going through the issue, this Court pointed out that on no fault of the petitioners but on account of administrative reasons, the petitioners could not complete their service qualification to serve in the category of Rural Welfare Officer Grade I. It was pointed out that even though the petitioners had been in service as Junior Assistant with effect from 1991 and in the post of Rural Welfare Officer Grade I, the petitioners were not considered for further promotion on account of the non-completion of the service requirements. This Court held that when the petitioners had successfully completed the departmental examinations, the petitioner cannot be denied inclusion in the panel on the ground that they did not possess the service qualification - an area which was purely in the hands of the respondents. Referring to the order of this Court dated 9.10.2006 in W.P.No.18501 of 2006 (C.Periasamy and another Vs. The District Collector, Dharmapuri) holding that service qualification cannot be equated to a pass in the departmental test, this Court held: "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." In the circumstances, this Court held that the respondents should have formulated and implemented a policy providing equal opportunity to all persons to acquire the service qualifications. This Court pointed out that but for the belated regularisation in 1996, the petitioner would have undergone the foundation training in Bhavani Sagar Training Institute, the petitioners were not at fault, they should not have been omitted to be included in the panel."

7. It is also pointed out in the said judgment in paragraph-21 that deputing the petitioner therein for one year training at Bhavani Sagar Institute cannot be attributed to the petitioner and he had not qualified himself though inclusion in the promotion panel for seniority cannot be allowed as it would prejudice the petitioner as he was



prevented by the department to undergo the training. Ultimately in paragraphs 28 to 31, it is held thus:-

"28. It is no doubt true that in the case of a person who sleeps over his right consciously, the question of showing any indulgence to disturb a well settled seniority will not arise. As already pointed out, on the appeal preferred by respondents 3 to 5 dismissed, the seniority of the petitioner remained undisturbed at least upto 2001. There was no occasion for the petitioner to entertain any doubt as to the seniority panel to voice his grievance. He came to know of this fact only when the petitioners name was not included in the panel prepared for the year 2004 onwards. In the background of this fact, when as per the law declared by this Court, the petitioners name should have been considered in the seniority list, he having successfully completed the examination well ahead of respondents 3 to 5, the delay in challenging the seniority list, by itself, cannot be held against the petitioner, for the simple reason that the delay on the part of the District Collector had caused serious prejudice to the petitioner by his not having deputed the petitioner to undergo the one year stint in the post of Rural Welfare Officer Grade II and for the foundation training in the Bhavani Sagar Training Institute as required under the Service Rules.

29. In the light of the above facts and in fairness to the claim of the petitioner, taking note of the decisions of this Court as referred to above, the petitioner merits to have his seniority fixed. I do not find any justification in the plea of the respondents on the issue of laches. In so doing, I am conscious of the decision of the Apex Court holding that a settled list of seniority and promotion should not be disturbed at a long distance of time vide the decision reported in (1976) 1 SCC 599 (Malcom Lawrence Cecil DSouza Vs. Union of India) and (2008) 2 SCC 750 (Union of India Vs. Narendra Singh).

30. Going by the fact that the petitioner had passed all the departmental examinations and the delay in satisfying the service requirement was not attributable to the petitioner, without disturbing the seniority of respondents 3 to 5, I feel that respondents-1 and 2 should place the petitioner in his original place in the order of seniority that at least in future, if and when the time comes, in the matter of granting promotion, the petitioners name should be considered at the first place.

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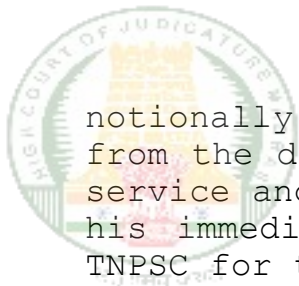


writ petition thereby set aside the order of the first respondent herein. By so setting aside the impugned order, it is hereby made clear that this Court does not intend to disturb the seniority of respondents 3 to 5, as they had been in service for quite a long number of years. As already pointed out, respondents-1 and 2 should consider the petitioner at the right place of seniority for considering him for further promotion from the post of Assistant to the post of Extension Officer and pass orders within a period of six weeks from the date of receipt of a copy of this order. "

8. Applying the said judgment, particularly, the principles stating that the petitioner cannot be blamed for not undergoing the training in Bhavani Sagar, the non-inclusion of the petitioners name in the panel for promotion to the post of Assistant for the year 2005-2006 and denying promotion to the petitioner as Assistant on the date when his juniors were given promotion cannot be justified. However, taking note of the subsequent promotion given to the petitioner, the petitioner shall be notionally promoted for the post of Assistant from the date of promotion given to the petitioners juniors from 15.12.2005. The petitioner is not entitled to get any arrears of salary for the promoted post and the seniority alone is to be given by respondents 1 and 2. The said notional promotion shall be calculated for all purpose except backwages."

11. The dictum laid down in the above case can be applied in this case also. In this case, in the impugned order itself, it is stated that the petitioner had completed departmental examination, however, as on crucial date of promotion, he was not qualified. As stated earlier, he could not join in the service and complete required training for no fault of him. In that event, the respondents could have considered the case of the petitioner to include his name in the panel for promotion of the year 2006 by relaxing the required qualifications or on completion of required qualification for promotion, the seniority of the petitioner could have been restored and he could have been considered for next higher level of promotion on the basis of original seniority fixed by TNPSC. But, the respondents have failed to do so and by the impugned order, the respondents abruptly rejected the request of the petitioner. Hence, this Court is inclined to interfere with the impugned order.

12. In this case, the petitioner has been raising the issue of seniority from the inception. It is seen that the petitioner has already been promoted to the post of Deputy Tahsildar. In view of



notionally promote the petitioner to the post of Deputy Tahsildar from the date on which his junior was promoted and to grant all the service and monetary benefits by fixing his seniority over and above his immediate juniors as per the rank/seniority list published by TNPSC for the selection held in the year 2006.

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13. In the result, this Writ Petition is allowed and the impugned order dated 31.03.2015 is set aside and the respondents are directed to notionally promote the petitioner to the post of Deputy Tahsildar from the date on which his junior was promoted and to grant all the service and monetary benefits by fixing his seniority over and above his immediate juniors, as per the rank/seniority list published by TNPSC for the selection held in the year 2006. No costs.

Sd/-

Assistant Registrar (AE)

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Sub Assistant Registrar(CS)

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To

1.The Principal Secretary and Commissioner of
Revenue Administration,
Revenue Department,
Chennai -5.

2.The Special Commissioner & Commissioner
for Revenue Administration,
Chepauk,
Chennai - 600 005.

3.The District Collector,
Thirunelveli District,
Thirunelveli.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-25161[F] dated
04/08/2021)

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03.08.2021

MGJ(10.08.2021) 8P 5C