



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:10.12.2021

CORAM:

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.(MD).No.2610 of 2018

and

W.M.P.(MD).Nos.2808, 2809 and 12508 of 2018

S.Gunasekaran

... Petitioner

vs.

1.The State of Tamil Nadu

represented by its Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat,
Chennai 600 009.

2.The Director,

Rural Development and Panchayat Raj,
Panagal Maligai,
Saidapet,
Chennai.

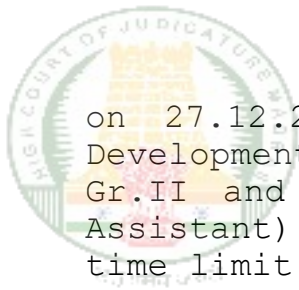
3.The District Collector and
Inspector of Panchayats,
Thanjavur District,
Thanjavur.

4.Personal Assistant to Collector (Development),
Thanjavur District Collectorate,
Trichy Road,
Thanjavur.

5.The Block Development Officer,
Thiruvidaimaruthur Panchayat Union,
Thiruvidaimaruthur,
Thanjavur District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records relating to the G.O.(1Pa.)No.105, Rural Development and Panchayat (Pa.A.7) Department dated 07.03.2017 and order Na.Ka.No.142/2017/Ka.3 dated 05.05.2017 passed by the third respondent and quash the same and consequently, direct the respondents to declare completion of probation of the petitioner as



on 27.12.2009 A.N. and promote the petitioner as Deputy Block Development Officer (considering the one year service put in as RWO Gr.II and duly relaxing the requirement of one year service as Assistant) and grant all the service and monetary benefits within a time limit to be fixed by this Court.

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For Petitioner : Mr.A.Thirumurthy

For R1 to R4 : Mr.A.K.Manikkam
Special Government Pleader

For R5 : No Appearance

O R D E R

The issue for resolution is the entitlement of the petitioner to be included for promotion to the post of Deputy Block Development Officer, considering one year service put in RWO Gr.II and relaxing the requirement of one year service as Assistant.

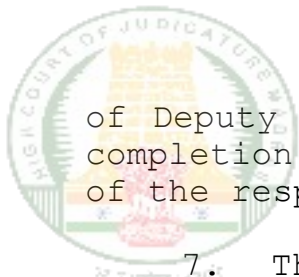
2. The petitioner had been appointed on compassionate ground in the post of Junior Assistant in Thanjavur Rural Development Unit on 09.10.2001. However, the appointment did not take effect, in view of the ban on recruitment between the years 2001 - 2006, leading to the petitioner approaching this Court in W.P.No.207 of 2006.

3. The writ petition came to be ordered on 13.03.2006, directing the District Collector and Inspector of Panchayat / R3 to implement the order in G.O.(D).No.265 dated 09.10.2001, within a time fixed by this Court. He was thereafter in respect of an order dated 17.04.2006 temporarily appointed him as Junior Assistant.

4. The petitioner would submit that he had completed the period of probation on 23.04.2008 and hence, he became eligible for declaration of probation on 27.12.2009. This was not done. Moreover, in spite of having completed all departmental requirements in the year 2009 itself, he had not been deputed to undergo Civil Services Training at the Civil Services Training Institute, Bhavanisagar.

5. He was ultimately sent for training in the year 2016, after a lapse of nine years and nine months from his appointment and his services regularised from the date of appointment ie., on 24.04.2006, vide G.O.(Pa).No.10 Rural Development and Panchayat (E.3) Department, dated 07.01.2016.

6. In the interregnum, several employees, who had been recruited along with the petitioner had come to be promoted and the petitioner questions his non-inclusion for the promotion to the post



of Deputy Block Development Officer pointing out that the delay in completion of training cannot be attributed to him and Is the fault of the respondent.

7. The counter and additional counter rely upon Rule 26(a)(2) of the Fundamental Rules of Government of Tamil Nadu, that states that in cases where the passing of an examination or test confers on a Government Servant the title to any right, benefit of concession, such title should be deemed to have accrued on the day following the last day of the examination or test which he passed.

8. In cases where the examination or test can be passed in installments, the title to the right, benefit or concession will be deemed to have accrued on the day following the last day of the examination in the subject or subjects in which he had passed. Since the training in this case, was completed only in the year 2016 the respondents would justify his non-inclusion in the promotion panel.

9. I disagree. The sole condition to be satisfied for an employee to be deputation on training, is the completion of departmental tests, which the petitioner had successfully completed in 2009. Then again, probation, that ought to have been declared upon his completion of two years, was also not done, again, for no fault of his.

10. Both the aforesaid are admitted by the respondents and there is no whisper either in the counter or in the course of submission before me, either to the effect that that the petitioner had not passed the requisite tests or completed probation in the year 2009 itself.

11. Evidently, he petitioner has no control on when he was deputed to undergo the training and admittedly, in this case, he has been sent only in the year 2016 for training, for no fault of his. Since the delay in deputation for training is solely attributable only to the respondents, the petitioner having no control and not been disqualified in any manner for such training, I am of the view that the petitioner should succeed.

12. As regards the minor punishment of censure that has been imposed on the petitioner in the year 2016, this would have no bearing in the matter, insofar as with the declaration of probation in 2009, the promotion of the petitioner would also be effective from that date.

13. Reference to Fundamental Rule 26(a)(2) is thus of no avail to the respondents as it relates to an ideal situation and not one where the respondent is seen to have delayed matters unnecessarily and illegally, such as the present. The impugned orders are thus set aside and probation is declared as on 27.12.2009 with all effect to be given including promotion. This Writ



Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

akv

Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The State of Tamil Nadu
represented by its Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat, Chennai 600 009.
- 2.The Director,
Rural Development and Panchayat Raj,
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- 3.The District Collector and
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- 5.The Block Development Officer,
Thiruvidaimaruthur Panchayat Union,
Thiruvidaimaruthur,
Thanjavur District.

+1 CC to M/s.A.THIRUMURTHY, Advocate (SR-38207[F] dated 10/12/2021)

+1 CC to M/s.SPL GP (SR-38332[F] dated 13/12/2021)

W.P. (MD) .No.2610 of 2018

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