BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 20.12.2021
CORAM
THE HONOURABLE MRS.JUSTICE S.SRIMATHY
W.P.(MD)No.8670 of 2016
and
W.M.P.NO.6932 and 6933 of 2016

R.Sumathy ... Petitioner

vs

The District Collector,
Sivagangai District,
Sivagangai. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the proceedings issued by the respondent in Na.Ka.No.A1/19741/15, dated 05.02.2016 and quash the same and consequently direct the respondent to include the name of the petitioner in the 2015-2016 panel to the post of Deputy Tahsildar, Sivagangai District, on par with her junior
.

For Petitioner : Mr.G.Kannan
for Mr.C.Jeganathan
For Respondent : Mr.R.Ragavendran
Government Advocate

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the proceedings issued by the respondent, dated 05.02.2016 and quash the same and consequently, direct the respondent to include the name of the petitioner in the 2015-16 panel to the post of Deputy Tahsildar, Sivagangai District, on par with her junior.

2. The petitioner was selected as an Assistant in the year 2009 through direct recruitment and was appointed on 07.01.2010. After two years of service, the probation is approved and he has completed seven years of service. The petitioner was transferred from Chennai to Sivagangai on 27.09.2012, in the post of Firka Revenue Inspector at Pallathur, Sivagangai District. The petitioner had passed the Departmental Tests and she was eligible for the promotion to the post of Deputy Tahsildar. The Revenue Assistant is a Group II post and the same is coming under the Tamilnadu Revenue Subordinate Service Rules, which is a separate service and separate rules are framed governing the service conditions of Group II Officers. The said rule was suitably amended by the Government in G.O.Ms.No.133 Revenue, dated 07.02.1995, wherein Rule 3 was amended to the effect

that directly recruited Assistant after completion of five years of service, who have completed all the departmental tests and training as Firka Revenue Inspector for a period of two years is eligible for the next promotional post of Deputy Tahsildar.

3. The petitioner states that the Tamilnadu Ministerial Service is a general rule which is governing all the Ministerial services of all the Departments including Revenue service. The post of Assistant is coming within the purview of Tamilnadu Revenue Subordinate Services and therefore, General Rules cannot be made applicable whenever there is contradictory and inconsistency between two rules.

4. The contention of the petitioner is that the final list was prepared on 04.09.2014 and the crucial date for consideration of promotion is 15.09.2015. The petitioner is eligible for the inclusion of her name in the panel prepared in the year 2015. The petitioner submitted a representation, dated 30.10.2015 and the same was not considered. The petitioner has filed a writ petition in W.P.(MD) No. 23294 of 2015 and this Court vide order, dated 22.12.2015, directed the respondent to consider both the service rules as well as the G.O.Ms.No.133, Revenue Department, dated 07.02.1995 and to pass suitable orders. After considering, the respondents have passed an order which is impugned in this writ petition.

5. The respondent has filed a counter affidavit stating that as per the Rule 38(b)(ii) of Tamil Nadu Ministerial Service Rules, a person who is appointed as Assistant by direct recruitment shall be imparted the trainings prescribed there on and on completion of said trainings and as per seniority of direct recruited Assistant shall be eligible for promotion to any selection category posts provided, he has put in one year service in the Collector's Officer and after he has completed the period of training as Firka Revenue Inspector. The contention of the respondent is that the petitioner has not completed one year of training in Collector’s Officer and the petitioner has completed 11 months 22 days and the petitioner is short of 8 days.

6. Heard Mr.G.Kannan, learned Counsel appearing for the petitioner and Mr.R.Ragavendran, learned Government Advocate appearing for the respondent.

7. The issue for consideration is whether Tamil Nadu Ministerial Service Rules is applicable or the Tamilnadu Revenue Subordinate Service Rule is applicable in the present case. Rule 38 (b)(ii) of Tamil Nadu Ministerial Service Rules is extracted hereunder:

“8. Every person appointed as Assistant by direct recruitment

shall be imparted the training as prescribed below:

Period (1)	*Items of Training (2)*
i. First three months	*1. With Firka Revenue Inspector : One Week* *2. Revenue, Divisional Officer's Office : One Week* *3. Collector's Office: Two Weeks* *4. Foundation Training at the Civil Service Training Institute Bhavanisagar :Two Months*
ii.Next one year	*In Taluk Offices as Assitant dealing with Revenue subjects.*
Iii.Next four weeks	*In Training in Revenue Survey and records maintenance of land.* *Provided they have passed the Revenu Tests, Parts I to III.*
iv.Next two years	*Firka Revenue Inspectors.*
v.Next one year and eight months”	*In Collectors's Office as Assistant.*

8. In the Tamilnadu Revenue Subordinate Service Rule, in Proviso under Annexure III in item (ii), it is stated that the Assistant appointed by direct recruitment ought to serve five years and should pass the departmental test and should also undergo training as Firka Revenue Inspector for a period of two years. The relevant portion is called out hereunder:

> *“Provided also that an Assistant appointed by direct recruitment in the District Revenue Unit, who has completed a total period of five years, passed all the tests prescribed and undergone training as Firka Revenue Inspector for a period of two year successfully shall be eligible for inclusion of his name in the approved list of Deputy Tahsildars in the District above his seniors appointed other than by direct recruitment or for re-fixation of his seniority over such seniors if his name has already been included in the list of Deputy Tahsildars. The consideration of his claim shall be against the first vacancy that follows*

the carried over vacancies."

The Ministerial Rule says that the Assistant ought to undergo one year training in Collector's Office but no such specification stated in the Revenue Service Rule. Since there is inconsistency in the Acts, the one that is applicable for Revenue Department which is a "Special Rule" ought to be taken into account based on the principle Special Rule will prevail over General Rule.

9. Therefore, the impugned order is set aside and this Court is of the considered opinion that the Tamilnadu Revenue Subordinate Service Rule is applicable and the petitioner has already fulfilled the conditions prescribed thereunder. Therefore, the respondent is directed to consider the name of the petitioner for the promotion. At this juncture, the petitioner stated that she was already granted promotion in the year 2016, vide panel, dated 24.09.2016. Now the petitioner is seeking to include in 2015 panel and grant promotion. Therefore, the respondent is directed to grant notional promotion for the year 2015 along with consequential benefits and the exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

10. Therefore, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

The District Collector,
Sivagangai District,Sivagangai.

+1 CC to M/s.C.JEGANATHAN, Advocate (SR-39852[F] dated 21/12/2021)

+1 CC to M/s.SPL.GP (SR-39709[F] dated 21/12/2021)

+1 CC to M/s.C.JEGANATHAN, Advocate (SR-39620[F] dated 20/12/2021)

W.P.(MD)No.8670 of 2016
20.12.2021

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KB(05.03.2022) 4P 5C