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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.11568 OF 2011

AND

M.P.NO.2 OF 2011

M.Rajesh Kumar

...Petitioner

Vs

- 1.The Government of Tamil Nadu,
Rep. by its Secretary,
Rural Development Department,
Fort St. George,
Chennai - 600 009.
- 2.The Director of Rural Development,
Panagal Building, Saidapet,
Chennai - 600 015.
- 3.The District Collector,
Sivagangai District.

...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the third respondent in his proceedings Mu.Mu (P3)/67469/2002 dated 23.01.2003, proceedings of the second respondent in 52138/07/C3 dated 02.02.2008 and proceedings of the first respondent in Letter No.18365/P.A-4/2010-3 dated 14.01.2011, quash the same and consequently direct the respondents to give promotion to the petitioner as Assistant/R.W.O. Grade I with effect from 2000 with all monetary and other attendant benefits.

For Petitioner : Mr.K.Raja

For Respondents : Mr.E.Veda Bagath Singh,
Special Government Pleader

ORDER

With the consent of both the parties, this writ petition is taken up for final disposal.



2. The petitioner herein was initially appointed as a Junior Assistant in Thanjavur District on 21.04.1994, in which post, he had worked till 10.12.1998. Thereafter, he was transferred to Sivagangai District on 14.12.1998. The petitioner's probation was declared on 31.05.1999, after he had passed the required departmental test. Thereafter, he had underwent the foundational training in Civil Services Training Institute, Bhavanisagar from 26.05.2000 to 05.07.2000 and on completion of the training on 05.07.2000, he was ordered to serve as Rural Welfare Officer Grade-II. Subsequently, he was promoted as an Assistant/Rural Welfare Officer Grade-I on 26.05.2003.

3. The petitioner's grievance is that his name was not included in the year 2000 panel for Rural Welfare Officer Grade-II, since he had not possessed the required service qualification and also on the ground that his juniors, who were also transferred from Thanjavur to Sivagangai, were able to complete their probation in Thanjavur, have been included in the panel.

4. The issue as to the non-completion of the service qualification, including the foundational course training in time, came up for consideration before this Court in various occasions and in the case of A.Radha Vs. Government of Tamil Nadu, Commercial Taxes and Registration Department, passed in W.P.No.23689 of 2012 dated 10.03.2022, this Court had placed reliance on a decision of the Hon'ble Division Bench of this Court in the case of Government of Tamil Nadu, Environment and Forest Department Vs. K.Anbalagan and others passed in W.A.No.2682 of 2019, dated 07.07.2021, for the proposition that the non-completion of the mandatory training in time, cannot be put against the employee. The relevant portion of the order reads as follows:-

"6. In similar circumstances, an Hon'ble Division Bench of this Court in the case of Government of Tamil Nadu, Environment and Forest Department Vs. K.Anbalagan and others passed in W.A.No.2682 of 2019, dated 07.07.2021, had held that failure on the part of the authorities in not deputing the employees for the mandatory training in time, cannot be put against them, for the purpose of interfering with their promotion. The relevant portion of the judgement reads as follows:-

"7. No doubt, the above said Rule 5 stipulates other qualification such as Vaigai Dam Training as mandatory. However, unless the appellants depute the respondents for such training at the appropriate time, they could not be expected to complete the same.



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The respondents, who are the employees, may not compel the appellants to depute them for the training. The alleged non-completion of the training by the writ petitioners/respondents herein within the stipulated period of not their fault and the same cannot be put against them, disentitling them for getting their promotion. It is also pointed out that the juniors to the respondents have marched ahead of them by getting a promotion. Therefore, the contention of the learned State Government Counsel that a person can be promoted based on merit and ability apart from seniority and the departmental promotion committee alone is competent to recommend the person fit for promotion cannot be accepted.""

5. Likewise, an Hon'ble Division Bench of this Court in the case of G.Sonaimuthu Vs. The Government of Tamil Nadu, Department of Rural Development and Panchayat Administration passed in W.A. (MD) No.1006 of 2016, dated 30.08.2017, had held that non-possession of the service qualification cannot be quoted as a reason for non-inclusion of the Government servant's name in the promotional panel. This order reads as follows:-

"2. The writ petitioner was appointed as a Junior Assistant in the year 1996. The next promotional post is that of Assistant. To be eligible for being promoted as an Assistant, one should have served as Rural Welfare Officer. But the said post was not in existence during 1996 to 1998. On the ground of non possessing the said service qualification, the writ petitioner was not included in the list of Assistants in the year 1999. In the very nature of things, the writ petitioner could not have acquired the said service qualification. Yet his request for inclusion in the list for Assistants in the year 1999 was rejected by the impugned order dated 07.11.2006 issued by the second respondent. The same was challenged by filing WP(MD) No.2281 of 2007. The learned Judge dismissed the writ petition. Aggrieved by the same, the present writ appeal has been filed.

3. The learned counsel appearing for the writ petitioner brought to our attention the decision of the learned Single Judge of this Court reported in (2012) 1 MLJ 634 S.Sasisivanandam vs. District Collector, Thoothukudi District and another. This Court after referring to earlier



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authorities held that the employee cannot be blamed for non-possession of the said service qualification and that he cannot be denied the benefit of inclusion in the promotion panel. We approved the said view while allowing WA(MD) No.410 of 2017 dated 08.08.2017 filed by a similarly placed employee. The facts of this writ appeal are similar.

4. We therefore set aside the order dated 02.03.2012 dismissing WP(MD) No.2281 of 2007. The second respondent is directed to grant promotion to the appellant herein as Assistant with all consequential service benefits by notionally including him in the 1999 panel of Assistants. This writ appeal stands allowed."

6. In the instant case also, the respondents have stated that the probation of the petitioner was declared on 31.05.1999 only on completion of the required departmental test. Thereafter, he was subjected to the foundational training course at Bhavanisagar, which he had completed on 05.07.2000. Hence, the belated completion of the service qualification, cannot deny the inclusion of the petitioner's name in the panel for the year 2000, as held in the aforesaid decisions. Thus, the reasons assigned by the respondents for not including the petitioner's name in the year 2000 panel for the post of Rural Welfare Officer Grade-II cannot be sustained.

7. In the light of the above observations, the impugned orders passed by the respondents dated 23.01.2003, 02.02.2008 and 14.01.2011 are quashed. Consequently, there shall be a direction to the respondents to notionally promote the petitioner as Rural Welfare Officer Grade-II, by including his name in the panel for the year 2000 and place his seniority above his immediate junior, and the subsequent promotion to the post of Assistant/Rural Welfare Officer Grade-I, along with all service and monetary benefits, within a period of 12 weeks from the date of receipt of a copy of this order.

8. The Writ Petition stands allowed, accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

hvk



To

1. The Secretary to Government,
Rural Development Department,
Fort St. George, Chennai - 600 009.

2. The Director of Rural Development,
Panagal Building, Saidapet,
Chennai - 600 015.

3. The District Collector,
Sivagangai District.

+1cc to Mr.K.Raja, Advocate, Sr.No.17109

+1cc to the Government Pleader, Sr.No.17782

W.P.No.11568 of 2011
and
M.P.No.2 of 2011

SPD(CO)
RVM(30/03/2022)