



W.P.No.228 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESEVED ON: 23.12.2021

DELIVERED ON: 11.01.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.228 of 2008

M.Perumal

..

Petitioner

VS.

- 1.The State of Tamil Nadu,
Rep. By the Commissioner and Secretary
to Government of Tamil Nadu,
Municipal Administration and Water
Supply Department,
Fort St.George, Chennai-600 009.
- 2.The Commissioner of Town Panchayats,
Kuralagam, Chennai-600 108.
- 3.Mr.C.Thiruvengadam,
Assistant Director of Town Panchayats,
Trichy Zone, Office at the Collectorate Campus,
Trichy.
- 4.The Assistant Director of Town Panchayats,
Dindigul Zone,
Dindigul.

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Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents 1 and 2 to promote the petitioner as Assistant Director of Town Panchayats with effect from the date of his junior was promoted and pay him all consequential benefits within a stipulated period.

For Petitioner : M/s.A.Arulmozhi

For Respondents : Mr.V.M.Ravichandran,
Special Government Pleader
assisted by Mr.P.Anandakumar,
Government Advocate

ORDER

The prayer in this writ petition is for a Mandamus directing the respondents 1 and 2 to promote the petitioner as Assistant Director of Town Panchayats with effect from the date of his junior was promoted and pay him all consequential benefits within a stipulated period.

2. The case of the petitioner is that he was initially appointed in the Department of Town Panchayat as Junior Assistant on 01.07.1963 and subsequently, promoted to the post of Executive Officer Grade II on 17.05.1978. The petitioner became eligible to be promoted as Executive Officer – Special Grade in August 1997 and placed in SL.No.117 of the seniority list communicated by the Director of Town Panchayat, vide



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proceedings dated 19.04.1993. In the meanwhile, the petitioner was served with a Charge Memo dated 12.01.1996 in Na.Ka.No.27470/95/Aa2 by the Director of Town Panchayat for certain alleged lapses and an enquiry was conducted under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, resulting in punishment order dated 16.10.1997, imposing the punishment of reversion from the post of Executive Officer Selection Grade to the post of Executive Officer Grade I.

3. Challenging the same, the petitioner has filed O.A.No.8907 of 1997 before the Tamil Nadu Administrative Tribunal and an order of interim stay was granted for reversion and vide final orders dated 21.06.2022, the Tribunal has set aside the order of reversion. While O.A.No.8907 of 1997 was pending, the petitioner's junior Mr.R.Rasappan, who was in Sl.No.119 of the seniority list dated 06.04.1993 was promoted to the post of Executive Officer Special Grade, vide proceedings of the Director of Town Panchayat dated 14.08.1997. The petitioner has filed O.A.No.1612 of 1998 before the Tamil Nadu Administrative Tribunal, challenging the promotion given to said Mr.R.Rasappan and for a consequential direction to promote the petitioner to the post of Executive Officer Special Grade from the date promotion of his



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junior with all attendant benefits. In the interregnum, the petitioner was permitted to retire on 30.06.2002, vide orders of the Director of Town Panchayat dated 29.08.2002 in Proc.No.17879/00.

4. O.A.No.1612 of 1997 was transferred to the file of this Court and renumbered as W.P.No.27590 of 2005 and this Court had passed final orders in the said writ petition on 15.03.2006 by directing the respondents to implement the order of the Tribunal made in O.A.No.8907 of 1997 dated 21.06.2002 within a period of four weeks from the date of receipt of the order, if there is no other legal impediment. The petitioner has also made a representation to the respondents to grant him the denied benefits of promotion with effect from the date of promotion of his junior. The second respondent, vide order dated 25.04.2006, has accepted the fact that the petitioner was denied promotion only on account of pendency of proceedings under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules and stated that the petitioner's junior was promoted to the post of Executive Officer- Special Grade on 14.08.1997. By the same order, the second respondent has granted promotion to the petitioner by including his name in the promotion panel dated 13.06.1997 at Sl.No.17A between



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Sl.Nos.17 and 18 and granted promotion with effect from 14.08.1997 i.e., the date on which Thiru R.Rasappan was promoted as Executive Officer – Special Grade.

5. According to the petitioner, as he is entitled for promotion and other attendant consequential benefits which were denied in view of the reversion order, which was set aside by the Tribunal by order dated 21.06.2002, he has submitted representation to the second respondent on 28.06.2006 praying for granting denied promotion to the post of Assistant Director, since his junior one C.Thiruvengadam, the third respondent herein, who was in Sl.No.130 of the seniority list dated 06.04.1993, has bypassed the petitioner, who was in Sl.No.117. The petitioner has submitted another representation on 20.04.2007 and since the said representation was not considered by the respondents for quite long time, the petitioner has filed the present writ petition.

6. The second respondent has filed a detailed counter affidavit denying the averments made in the writ petition and stated that one V.Thiruvengadam was promoted as Executive Officer Selection Grade with effect from



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13.01.1986, whereas the petitioner was promoted to the said post with effect from 09.10.1985 and hence they were placed at Sl.Nos.130 and 117 respectively in the seniority list among the Executive Officer Selection Grade appointed prior to 01.04.1990 and continued in service as on 01.01.1993, published by the second respondent dated 06.04.1993. However, V.Thiruvengadam was given next promotion as Executive Officer Special Grade with effect from 19.09.1997 and granted subsequent promotion after completion of one year in the feeder post as Assistant Director of Town Panchayat with effect from 09.09.1999. Whereas the petitioner had retired from service on 30.02.2002 and his promotion as Executive Officer Special Grade was granted with retrospective effect from 14.08.1997, vide proceedings of the second respondent in Na.Ka.No.1455/2003/B1 dated 25.04.2006. Since the petitioner did not have minimum experience in the feeder post and moreover, promotion to the post of Assistant Director of Town Panchayat is based on merit and ability to suit the post, the petitioner was not eligible for Assistant Director of Town Panchayat, which is a kind of superlative post responsible for entire Town Panchayats, in the respective zone.



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7. It is further stated in the counter affidavit that the petitioner was not affected by the award of punishment in disciplinary proceedings dated 16.10.1997, as the same was stayed by the Tribunal, vide interim order in O.A.No.8907 of 1997 and subsequently set aside and therefore, the petitioner, without reversion, continued in service and retired from service on attaining superannuation on 30.06.2002. Since the petitioner was not reversed to lower post and retired in the same post without reversion, enjoyed with all entitlements, there is no question of consequential benefits and therefore, the writ petition itself is not maintainable.

8. It is also stated in the counter affidavit that the petitioner was granted retrospective promotion as Executive Officer Special Grade with effect from 14.08.1997, vide order dated 25.04.2006, even after his retirement from service on 30.06.2002, without considering any merit and ability, as he had considerable years of service in the feeder post of Executive Officer Selection Grade and whereas, he should have at least one year experience in the feeder post of Executive Officer Special Grade for promotion to the superlative post of Assistant Director of Town Panchayats in the Commissionerate of Town Panchayat and the petitioner had no such



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experience and on that ground also, the present writ petition is not maintainable.

9. The learned counsel appearing for the petitioner would submit that the petitioner is entitled for consequential promotion with attended benefits which were denied due to the punishment order, which was set aside by the Tamil Nadu Administrative Tribunal and the second respondent, vide proceedings dated 25.04.2006, having accepted the fact that the petitioner was denied promotion only due to the initiation of proceedings under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules and having granted notional promotion in the post of Executive Officer Special Grade with effect from the date of promotion given to his junior one Rasappan dated 14.08.1997, ought to have considered the request of the petitioner for promotion to the post of Assistant Director of Town Panchayat and therefore, prays for appropriate orders. The learned counsel for the petitioner, in support of his submissions, has placed reliance on the following decisions:

(i) C.O.Arumugam and Ors. v. State of Tamil Nadu & Ors. [1991 Suppl 2 SCC 199]



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(ii) *J.Jayaprakash v. The Government of Tamil Nadu and Another*

WEB COPY [W.P.No.28355 of 2013 dated 11.08.2017]

(iii) *Government of Tamil Nadu and Anr. v. J.Jayaprakash*

[W.A.No.2056 of 2019 dated 29.10.2020]

(iv) *M.Nagoor Mohideen v. The Secretary to Government of Tamil Nadu and Others [2009 (3) CTC 848].*

10.Mr.V.M.Ravichandran, learned Special Government Pleader for the respondents has drawn the attention of this Court to the counter affidavit of the second respondent, wherein it has been stated that the petitioner was awarded with punishment of reversion to the post of Executive Officer-Grade I from the post of Executive Officer Selection grade, vide charges framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules dated 16.10.1997 and the same was set aside by the Tribunal in O.A.No.8907 of 1997 dated 25.06.2002 and hence, the petitioner continued in service in the same post without reversion till he attained superannuation on 30.06.2002, due to interim order passed by the Tribunal. The grievance of the petitioner that his opportunity of promotion to the post of Executive Officer Special Grade denied, citing pendency of charge memo



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was addressed positively and he was granted promotion with retrospective effect vide order dated 25.04.2006, without insisting merit and ability, even after the date of his superannuation on 30.06.2002. It is further stated in the said counter affidavit that the petitioner attained the age of superannuation on 30.06.2002, while working as Executive Officer Selection Grade and his promotion to the post of Executive Officer Special Grade was issued retrospectively, vide order dated 25.04.2006 and hence the petitioner did not possess minimum experience of one year in the feeder post of Executive Officer Special Grade for considering promotion to the post of Assistant Director of Town Panchayats, who is responsible for entire Town Panchayats within the respective zone and therefore, the prayer sought for by the petitioner cannot be granted and prays for dismissal of this writ petition. The learned Government Advocate, in support of his submissions, has placed reliance on the following decisions:

***(i) Surabhi Employees Trade Union v. Kerala State Handicrafts Apex
[Kerala High Court Order dated 09.01.2002]***

***(ii) Union of India and Another v. M.Bhaskar and Ors. [1996 Supp (2)
SCR 358]***



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(iii) Allahabad High Court decision in Lalji Singh v. Hon'ble High Court of Judicature at Allahabad [Order dated 17.09.2018 in W.A.No.22172 of 2016]

11. This Court has anxiously considered the rival submissions and also perused the materials placed before it.

12. The fact remains that the petitioner was imposed with punishment of reversion from the post of Executive Officer Selection Grade to the post of Executive Officer Grade I and it was put to challenge by the petitioner in O.A.No.8907 of 1997 before the Tamil Nadu Administrative Tribunal and interim stay was granted for reversion and vide final orders dated 21.06.2002, the Tribunal has set aside the order of reversion and the petitioner was also permitted to retire on attaining superannuation on 30.06.2002. It is also not in dispute that on account of pendency of punishment, the petitioner was denied promotion to the post of Executive Officer Special Grade and one Mr.Rasappan, who was junior to the petitioner was promoted to the post of Executive Officer Special Grade and it was challenged by the petitioner in



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O.A.No.1612 of 1997, which was transferred to the file of this Court in W.P.No.27590 of 2005 and it was disposed of on 15.03.2006 by directing the respondents to implement the earlier order of the Tribunal dated 21.06.2002 in O.A.No.8907 of 1997 and the second respondent has also passed an order dated 25.04.2006, granting retrospective promotion to the petitioner with effect from 14.08.1997, i.e., the date on which one Rasappan was promoted as Executive Office Special Grade.

13. The main grievance of the petitioner is that one V.Thiruvengadam was given promotion as Executive Officer Special Grade with effect from 19.09.1997 and granted subsequent promotion as Assistant Director of Town Panchayat with effect from 09.09.1999 and whereas the petitioner was deprived of the said promotion as Assistant Director of Town Panchayat and he was given retrospective promotion as Executive Officer Special Grade with effect from 14.08.1997, on par with his junior one R.Rasappan, only in pursuant to the order passed by this Court in W.P.No.27590 of 2005 dated 15.03.2006 and as on 14.08.1997, the petitioner is deemed to have gained the post of Executive Officer Special Grade and therefore, he is entitled for subsequent promotion to the post of Assistant Director of Town Panchayat



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with effect from 09.09.1999, i.e., the date on which V.Thiruvengadam was given promotion as Assistant Director of Town Panchayat.

14. It is the stand of the second respondent in the counter affidavit that the claim of the petitioner for granting notional promotion to the post of Assistant Director of Town Panchayat cannot be considered as the petitioner did not possess the minimum experience of one year in the feeder post i.e., Executive Officer Special Grade and moreover, the promotion to the post of Assistant Director of Town Panchayat was subject to merit and ability to suit the post and therefore, the petitioner was not eligible for promotion as Assistant Director of Town Panchayat, which is a kind of superlative post responsible for entire Town Panchayats in the respective zones. It is also the stand of the respondents that the petitioner was granted retrospective promotion with effect from 14.08.1997, vide order dated 25.04.2006, as Executive Officer Special Grade, without considering merit and ability, even after his retirement from service on 30.06.2002 and hence, his claim for consequential promotion as Assistant Director of Town Panchayat is totally unsustainable.



15. Let this Court considers the decisions relied on by the learned
counsel for the parties.

Petitioner's side

15.1. In ***C.O.Arumugam and Others v. State of Tamil Nadu and Ors.***

Reported in ***1991 Supp 2 SCC 199***, it was held as under:

*“5. As to the merits of the matter, it is necessary to that every civil servant has a right to have his case considered for promotion according to his turn and it is a guarantee flowing from Article 14 and 16(1) of the Constitution. The consideration of promotion could be postponed only on reasonable grounds. To avoid arbitrariness, it would be better to follow certain uniform principle. **The promotion of persons against whom charge has been framed in the disciplinary proceedings or charge-sheet has been filed in criminal case may be deferred till the proceedings are concluded. They must, however, be considered for promotion if they are exonerated or acquitted from the charges. If found suitable, they shall then be given the promotion with retrospective effect from the date on which their juniors were promoted.**”*



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15.2. In ***Jayaprakash v. The Government of Tamil Nadu and another [W.P.No.28335 of 2013 dated 18.07.2017 – Madras High Court]***, it was held as under:

“7. Once the punishments are set aside by the appellate authority itself, the claim of the petitioner ought to be considered as if there was no punishment and as such, the right to promotion of the petitioner during the relevant time as Sub Registrar Grade I and District Registrar cannot be negated in view of the subsequent development as narrated above.”

The said judgment of the learned Single Judge of this Court was challenged by the Government in W.A.No.2056 of 2019, wherein a Division Bench of this Court, vide order dated 29.10.2020, has upheld the views of the learned Single Judge of this Court.

Respondents' Side

15.3. In ***Surabhi Employees Trade Union v. Kerala State Handicrafts Apex Cooperative Society Ltd. [Order dated 09.01.2002 – Kerala High Court Judgment]***, it was held as under:

“22. The qualification required for promotion as Commercial Manager under Ext. R2(a) special rules are graduation with co-operative training or B.Com (with co-



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operation) with minimum 5 years' experience in the feeder category. The feeder categories are Finance Officer and Craft Development Officer. Though the petitioner was a Finance Officer, she was not a graduate. Nor does she have the other qualification mentioned above. if the petitioner has a case that Ext. R2(a) rules have been framed violating the provision in Clause 17(b) aforementioned it was for her to challenge the same in appropriate proceedings. It is to be mentioned here that the petitioner did not even choose to challenge the order of appointment given to the 5th respondent (Ext. P4 in O.P. 9888/95). It is only the order of regularisation that is challenged in this O.P. I am of the view that the above lapse stand in the way of the petitioner getting any relief in the present O.P. ***In this connection it is also to be mentioned that the petitioner has already retired in the year 1999 and the grant of notional promotion which is pressed during hearing today is not going to help her in any manner in so far as she could never work in the post of Commercial Manager or equivalent post during her tenure of office under the first respondent. This O.P. is hence dismissed.***

(emphasis supplied)

15.4. In ***Lalji Singh v. Hon'ble High Court of Judicature at Allahabad and another [Order dated 17.09.2018 – Allahabad High Court]***, it was held that:



*“The contention of the learned counsel for the petitioner that since the unamended Rules, 1976 there was no requirement to have minimum experience, therefore refusal to promote on ground of lack of experience is arbitrary and unjustified is unacceptable, inasmuch as, the unamended Rule 20(d) of the Rules 1976 provided, as an alternative, that the post of Joint Registrar could be filled by promotion from amongst the Deputy Registrars on seniority, subject to suitability. **In absence of any specific provision as to what could be regarded suitable, for efficiency of administration, criteria of suitability for the post could be laid by the Appointing Authority that is the Chief Justice. Hence, if on report of the Committee, Hon'ble Chief Justice took a decision that minimum experience on the feeder cadre post would be necessary for shouldering the responsibility of the post of Joint Registrar, it cannot be said that the decision was arbitrary or against the Rules, 1976.**”*

(emphasis supplied)

15.5. In *Union of India v. M.Bhaskar and Ors. [Order dated 06.05.1996 in Appeal (Civil) No.5410 of 1991 – Supreme Court]*, it was held as under:

“14. In this appeal, a separate argument was advanced on behalf of respondent no. 1, Prakash Chandra Ojha, who hags approached the Patna Bench of the CAT with the



grievance that he was unjustly and illegally denied promotion to Grade-I Commercial Inspector in 1990, despite his having been promoted as Commercial Inspector Grade-II by an order dated 21.9.1989, which was made effective from 11.10.1988, because of which he had become eligible for promotion to Grade-I on 11.10.1990, as the eligibility condition was completion of 2 years of experience in Grade-II. The Patna Bench held that the exclusion of this respondent from the list of eligible candidates for the selection meant for 1990 was wrong.

*15. The aforesaid decision has been challenged in this appeal by the Union of India by contending that 2 years' period of experience has to be reckoned, not from 11.10.1988, but from 21.9.1989. There is no dispute that the eligibility condition is 2 years experience in Grade-II. Now, this respondent having really started working in Grade-II pursuant to the order of 21.9.1989, he could not have gained experience prior to the date he had joined pursuant to this order. **The mere fact that his promotion in Grade- II was notionally made effective from 11.10.1988 cannot be taken to mean that he started gaining experience from that day, because to gain experience one has to work. Notional promotions are given to take care of so me injustice, inter alia, because some junior has come to be promoted earlier. But we entertain no doubt that the person promoted to higher grade cannot gain experience from the***



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date of the notional promotion; it has to be from the date of too actual promotion.” (emphasis supplied)

16. Now coming to the case on hand, admittedly, the petitioner had retired from service on attaining the age of superannuation on 30.06.2002 and he was already given notional promotion after retirement in the cadre of Executive Officer Special Grade with effect from 14.08.1997, on par with his junior Rasappan. As regards his claim for promotion to the post of Assistant Director of Town Panchayat is concerned, this Court is of the view that even assuming for the sake of arguments that the petitioner is deemed to have been in service as Executive Officer Special Grade and possessed one year experience in the feeder post on 09.09.1999 i.e., the date on which his junior V.Thiruvengadam was given promotion as Assistant Director of Town Panchayat, he cannot be presumed to have got promoted as Assistant Director of Town Panchayat for the reason that the said post is not based on seniority but only subject to merit and ability. The Hon'ble Supreme Court in the decision in *Union of India v. M.Bhaskar (cited supra)* also emphasized the proposition that ***“a mere fact that promotion in Grade II was notionally made cannot be taken to mean that the candidate started gaining experience from that day, because to gain experience, one has to work.***



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Notional promotions are given to take care of some injustice, inter alia,

because some junior has come to be promoted earlier". Therefore, keeping in view the aforesaid settled legal proposition, the claim of the petitioner did not deserve consideration.

17. The Writ Petition lacks merit and accordingly, it is dismissed. No costs.

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Index : Yes / No

Internet : Yes / No

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To

1.The Commissioner and Secretary to Government of Tamil Nadu,
The State of Tamil Nadu,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai-600 009.

2.The Commissioner of Town Panchayats,
Kuralagam, Chennai-600 108.

3.Mr.C.Thiruvengadam,
Assistant Director of Town Panchayats,
Trichy Zone, Office at the Collectorate Campus, Trichy.



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4. The Assistant Director of Town Panchayats,
Dindigul Zone,
Dindigul.



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D.KRISHNAKUMAR. J

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Order in
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