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W.P.No.8296 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.8296 of 2018 and
W.M.P.No.10260 of 2018 and
W.M.P.No.10142 of 2019

R.Thiyagarajan

... Petitioner

Vs

1.The State of Tamil Nadu rep. By its
Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat, Chennai – 9.

2.The Director of Rural Development and Panchayat Raj,
Panagal Building,
Saidapet, Chennai – 15.

3.The District Collector,
Nagapattinam, Nagapattinam District.

4.V.Pichumani

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified mandamus to call for the records connected in Pro.Na.Ka.No.3623/RD4/2016, dated 14.02.2017 of the 3rd respondent and quash the same insofar as in not inclusion of the petitioner's name in the Deputy Block Development Officer panel for the year 2015 and consequently direct the respondents 1 to 3 to include the name of the petitioner in the panel for promotion to the post of Deputy Block Development Officer for the year 2015 on par with junior Mr.V.Pichumani and promote the petitioner on par with juniors as Deputy Block Development Officer with all benefits.



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For Petitioner : Mr.A.R.Suresh
for Mr.K.Arumugam

For RR 1 to 3 : Mr.R.U.Dinesh Rajkumar
Additional Government Pleader

ORDER

The prayer sought for herein is for a Writ of Certiorarified mandamus to call for the records connected in Pro.Na.Ka.No.3623/RD4/2016, dated 14.02.2017 of the 3rd respondent and quash the same insofar as in not inclusion of the petitioner's name in the Deputy Block Development Officer panel for the year 2015 and consequently direct the respondents 1 to 3 to include the name of the petitioner in the panel for promotion to the post of Deputy Block Development Officer for the year 2015 on par with junior Mr.V.Pichumani and promote the petitioner on par with juniors as Deputy Block Development Officer with all benefits.

2. The petitioner was appointed as Junior Assistant on 08.01.2010 at the respondent Department and he was sent for training at Bhavani Sagar on 23.02.2012. He completed the training on 10.04.2012 and the examinations were completed by him on 04.10.2012. Though his service was regularised with effect from the original appointment date on 08.01.2010 the probation of the petitioner was declared only on



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04.10.2012 i.e. after completing the exam as well as the training. Even that declaration of probation belatedly is a wrong exercise, according to the petitioner, nevertheless atleast the 04.10.2012 can be taken as a completion of probation, therefore the petitioner would be entitled to get included in the panel fit for promotion to the post of Assistant for the year 2012.

3. In this context, the petitioner compared one junior viz., Pichumani the 4th respondent herein who entered into service as Junior Assistant on 07.01.2010 whereas the petitioner joined on 08.01.2010. Therefore, next to the said Pichumani the name of the petitioner should have been included in the panel fit for promotion to the post of Assistant whereas the said Pichumani was included and given promotion on 05.11.2012 whereas the petitioner had not been included in the said panel for promotion for the post of Assistant. However, he was considered and granted promotion to the post of Assistant only on 31.01.2013.

4. Assuming that the petitioner was given promotion as Assistant on 31.01.2013, his further promotion to the post of Deputy Block Development Officer become due in the year 2015 as the petitioner



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completed two years, out of which, one year Rural Welfare Officer, one year as Assistant. Therefore, for the panel year 2015 with the crucial date 01.03.2015 the name of the petitioner ought to have been included for the promotion to the post of Deputy Block Development Officer but that has also not been done by the respondent stating that the petitioner has completed the two years i.e. one year as Rural Welfare Officer and one year as Assistant only on 06.03.2015, therefore, his name was not included for the panel year 2015 with the crucial date of 01.03.2015 instead they included the name of the petitioner only in the year 2016 by taking into account the crucial date as 01.03.2016.

5. That is how the promotion to the post of Deputy Block Development Officer to the petitioner got delayed whereas his immediate junior has got promoted in the year 2015 itself as Deputy Block Development Officer.

6. Therefore, the seniority list and the panel prepared, revised and released by the respondents in this regard dated 14.02.2017 i.e. final seniority list and panel is under challenge in this writ petition.



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7. At the outset, the learned counsel appearing for the petitioner on instruction would submit that, even though the prayer of certiorari sought for to quash the final seniority list and panel dated 14.02.2017, the petitioner confined his prayer only to the extent seeking for a writ of mandamus to give a direction to the respondents to include the name of the petitioner in the panel fit for promotion to the post of Deputy Block Development Officer for the panel year 2015 by taking into account the crucial date 01.03.2015 and accordingly if the promotion for the petitioner to the post of Deputy Block Development Officer is given, the petitioner would be satisfied.

8. I have heard Mr.R.U.Dinesh Rajkumar, learned Additional Government Pleader appearing for the respondents who relied upon the following averments made in the counter affidavit:

“6.Regarding the averments in para 2 of the affidavit of the petitioner, it is submitted that Pichumani, Junior Assistant the 4th Respondent has passed the Account Test as early as 8.1.2012 and therefore he was declared to have completed the period of probation with effect from 8.1.2012. As the said Pichumani has fulfilled the requisite qualification for promotion as Assistant, he was promoted as Assistant with effect from 5.11.2012, whereas the petitioner had passed the account test on 4.10.2012 and was promoted only with effect from 30.1.2013, after the declaration of probation in the cadre of Junior Assistant. It



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is also admitted that the petitioner's request for declaration of probation on par with his junior was rejected by the Government vide Govt.Lr.No.5668/Pa.A-4/2016-1 Dated 6.6.2016. Where in it was discussed in detail. It is submitted that the name of the petitioner was included in the panel for promotion as Assistant as on 15.3.2013. It is however submitted that the seniority in the cadre of Assistant is not disputed by the petitioner.

7.Regarding the averments in para 3 of the affidavit of the petitioner, it is submitted that the following qualifications are prescribed for promotion as Deputy Block Development Officer as per the amended rule to the Special Rules for the Tamil Nadu Panchayat Development Subordinate Service

Vide G.O.Ms.No.9, Rural Development and Panchayat Raj (E4), 25th January 2010.

- (1) Must possess the Minimum General Educational Qualifications*
- (2) Must have passed the Departmental Test for Officers of Panchayat Development Department and Panchayat Development Account Test conducted by the Tamil Nadu Public Service Commission; and*
- (3) Must have served as Rural Welfare Officer, Grade – I and Assistant or Accountant for a period of not less than one year in each post.”*

In fact the petitioner has though completed the period of service of one year in the post of Rural Welfare Officer Grade-I, the petitioner has completed one year of service as Assistant only on 6.3.2015 i.e. after the crucial date for the preparation of panel for promotion as Deputy Block Development Officer. The crucial date for promotion was dated 1.3.2015. Hence the name of the petitioner has not been included in the panel for promotion as Deputy Block Development Officer as on 1.3.2015 and the name of the petitioner was included in the panel for promotion as on 1.3.2016 vide Sl.No.17. Hence there is no merit on the contention of the petitioner.”



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WEB COPY 9. By relying upon these averments, the learned Additional Government Pleader would contend that, the petitioner since has belatedly completed the examinations after Bhavani Sagar training, his probation was declared only with effect from 04.10.2012. Therefore, he could not be included in the panel fit for promotion as Assistant on par with the 4th respondent on 05.11.2012. However, on 31.01.2013 the petitioner's name had been included in the panel and promotion was given as Assistant. After the promotion was given on 31.01.2013 as per the conditions imposed for getting promotion to the post of Deputy Block Development Officer, the petitioner should have been completed one year experience as Rural Welfare Officer Grade I and another one year experience as Assistant.

10. Insofar as the petitioner's case is concerned, on promotion as Assistant on 31.01.2013 the petitioner was posted as Rural Welfare Officer and he completed the same for one year. Thereafter he was posted as Assistant with effect from 03.03.2014, hence he completed one year only on 06.03.2014 as Assistant. However, in the meanwhile the crucial date for the panel year 2015 falls on 01.03.2015, on that date since the



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petitioner did not complete the one year Assistant experience as he completed only on 06.03.2014, his name could not be included in the panel for the year 2015 by taking the crucial date as 01.03.2015.

11. I have considered these submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

12. Insofar as the petitioner promotion atleast from Assistant cadre admittedly was taken place on 31.01.2013, from that date if he is able to complete the one year Rural Welfare Officer post and another one year as Assistant, then he would be eligible to be considered for promotion to the next cadre i.e. Deputy Block Development Officer. In this context, it is the case of the respondents that, on 31.01.2013 on getting promotion to the post of Assistant he was posted as Rural Welfare Officer and he had worked in that capacity till 03.03.2014 and only on 03.03.2014 he was given postings as Assistant. In that post, he completed only one year on 06.03.2015, therefore he completed the two years period after five days of crucial date i.e. on 01.03.2015.



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13. However, the fact remains that from 31.01.2013 the petitioner completed one year experience as Rural Welfare Officer on 31.01.2014.

Therefore, on the next day on 01.02.2014 if he is given the Assistant post, he would have completed the same also by 01.02.2015 i.e. well before the cut off date on 01.03.2015. However, belatedly after one month the posting of Assistant was given to the petitioner on 03.03.2014 and from 03.03.2014 or after the joining date in the Assistant post, if the one year period is to be calculated, certainly it would be come on 06.03.2015.

14. In this context, if the stand taken by the respondents is accepted, then there will be a situation like this would arise, where, illustratively if a person is promoted as Assistant and he is posted as Rural Welfare Officer or Assistant for a period of 3 or 4 years or even two years, thereafter, an alternative post either Rural Welfare Officer or Assistant as the case may be is given to the said incumbent thereafter he has to complete one year in that post.

15. Therefore, after completing the entire period he has been either in Rural Welfare Officer or Assistant and subsequently one year in either



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of these posts then only such incumbent can seek claim for promotion for inclusion in the panel by taking the crucial date as 1st March of every year.

16. In that case, if a person is working as Rural Welfare Officer for three years and thereafter posted as Assistant, where, he completed another one year then $3 + 1 = 4$ years, he has to spend to get the promotion to the next category i.e. Deputy Block Development Officer. Whereas for instance a junior to the said incumbent completed the Rural Welfare Officer post one year and thereafter immediately posted as Assistant where also he completed $1 + 1 = 2$ within which he can complete the two years service as required and accordingly he will be considered for promotion in the next panel year by taking the 1st March of every year, thereby the juniors certainly march over the seniors well ahead of one or two years even prior to them. This kind of situation wherein if any incumbent is placed, that reasons cannot be attributable for not completing one year or not completing two years service in these two posts i.e. Rural Welfare Officer and Assistant and that could be attributable only to the employer.



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17. In that case, the delay caused by the employer in giving posting to the incumbent shall be treated as continuous period in the next alternative post given either Rural Welfare Officer or Assistant as the case may be or vice-versa and accordingly the two years successful completion in both the posts of Rural Welfare Officer and Assistant shall be combinedly taken into account and based on which, the eligible persons can be inducted in the panel fit for promotion by taking into account the crucial date i.e. 1st March of that year,.

18. Otherwise there will be a great confusion among the incumbents in the same category where depending upon the nature of postings given to these people or delayed action on the part of the employer, juniors will always march over the seniors and that will be detrimental to the service hierarchy and hence, this Court feels that the period from 31.01.2013 to 31.01.2014, where, the petitioner admittedly worked as Rural Welfare Officer shall be treated as one year completion as Rural Welfare Officer and from 01.02.2014 till 01.02.2015 shall be treated as completion of one year as Assistant and therefore, the petitioner can be treated as eligible to be considered for inclusion in the panel fit for promotion to the post of Deputy Block Development Officer



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by taking the crucial date as on 1st March 2015 and accordingly his name shall be included in the said panel.

19. Otherwise there would be a great injustice to people like the petitioner which cannot be compensated as the promotional avenue is an essential service condition which cannot be denied without any valid reasons.

20. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:

(i) That there shall be a direction to the respondents to include the name of the petitioner for the panel year 2015 by taking into account the crucial date as 01.03.2015 for the post of Deputy Block Development Officer and accordingly place him in the appropriate place based on the seniority among those who got promoted in the said panel year i.e., 2015 and consequently he shall be given promotion from that date.

(ii) It is made clear that if such a promotion is given to the petitioner, that shall be treated only as a notional



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promotion for which the petitioner is not entitled for any salary difference by way of backwages. However, that period of promotion shall be treated as a service period as a continuity of service for all other service and attendant benefits including the future promotion. The aforestated shall be undertaken by the respondents within a period of eight weeks from the date of receipt of a copy of this order.

21. With this direction, this Writ Petition is disposed of. No costs.

Consequently, connected miscellaneous petitions are closed.

28.07.2022

Index : Yes
Speaking Order : Yes
Sgl

To

- 1.The Secretary to Government,
State of Tamil Nadu
Rural Development and Panchayat Raj Department,
Secretariat, Chennai – 9.
- 2.The Director of Rural Development and Panchayat Raj,
Panagal Building,
Saidapet, Chennai – 15.
- 3.The District Collector,
Nagapattinam, Nagapattinam District.



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R. SURESH KUMAR, J.

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