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W.P. No.8677 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. No.8677 of 2018

and

W.M.P.No.10600 of 2018

M.Narendiran

... Petitioner

Vs.

- 1.State of Tamil Nadu rep. By its
Principal Secretary to Government,
Rural Development and
Panchayat Raj Department,
Fort St. George, Chennai – 9.
- 2.Director, Commissionerate of Rural Development
and Panchayat Raj, Panagal Building,
Chennai – 15.
- 3.The District Collector,
Kancheepuram District, Kancheepuram.

... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to Na.Ka.No.11540/2017/Pa.Aa.3, Development Unit, dated 16.11.2017 on the file of the 3rd respondent herein and quash the same and consequently direct the respondents herein to forthwith promote the petitioner herein as Deputy Block Development Officer and



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re-fix the seniority of the petitioner herein above his Junior R.Jayakumar [S.No.53(அ)] in the seniority list of Assistant published as on 01.01.2012 and grant notional benefits in the post of Assistant and Deputy B.D.O. respectively w.e.f. 01.03.2011 and 19.11.2014 on par with his Junior K.Kumar.

For Petitioner : Mr.V.R.Rajasekaran

For Respondents : Mr.R.U.Dinesh Rajkumar
Additional Government Pleader

ORDER

The prayer sought for herein is for a writ of certiorarified mandamus calling for the records relating to Na.Ka.No.11540/2017/ Pa.Aa.3, Development Unit, dated 16.11.2017 on the file of the 3rd respondent herein and quash the same and consequently direct the respondents herein to forthwith promote the petitioner herein as Deputy Block Development Officer and re-fix the seniority of the petitioner herein above his Junior R.Jayakumar [S.No.53(அ)] in the seniority list of Assistant published as on 01.01.2012 and grant notional benefits in the post of Assistant and Deputy B.D.O. respectively w.e.f. 01.03.2011 and 19.11.2014 on par with his Junior K.Kumar.

2.The petitioner was appointed as Junior Assistant in the



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Panchayat Development Unit of Kancheepuram District on compassionate ground and he joined in the service on 18.07.2007.

Though a proposal was sent on 02.08.2007 for regularisation, due to administrative delay, the Government had issued orders only on 15.05.2013 regularising the appointment of the petitioner as Junior Assistant with effect from 18.07.2007.

3. His name was placed in S.No.37 in the seniority list dated 02.04.2009 of Junior Assistants/Rural Welfare Officer Grade-II published as on 01.01.2009. The persons got subsequently appointed as Junior Assistants on compassionate grounds naturally would be placed from S.No.38 to 45 in the said seniority list.

4. In this regard, according to the petitioner, one K.Kumar was appointed as Junior Assistant on 27.08.2008 and the said Kumar is junior to the petitioner as well as eight others appointed as Junior Assistant during 18.07.2007 to 18.02.2008 on compassionate grounds and ranked between S.No.38 to 45, therefore, accordingly the said K.Kumar was placed at S.No.47 in the seniority list of Junior Assistants.

5. The petitioner had completed two years probation within the



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three years continuous period of service and also passed all the department test by 31.05.2010 i.e, within the time prescribed under Rule 32 of the Tamil Nadu Ministerial Service Rules (hereinafter called as 'Special Rules').

6. The other Junior Assistants who were ranked between 38, 39 and 42 have also satisfactorily completed their probation and passed the test. However, the 3rd respondent since has not declared the probation of the petitioner, had not sent the petitioner for training at Bhavanisagar which is a mandatory one which was delayed due to administrative reasons. However, in the meanwhile, all other Junior Assistants who were ranked at S.Nos.38, 39 and 42 i.e. below the petitioner, were sent for such training and they immediately completed the training and passed the test also.

7. Thereafter belatedly the 3rd respondent sent the petitioner for training only on 29.06.2013 after receipt of the orders of regularisation dated 15.05.2013 from the Government for regularising the appointment of the petitioner and thereafter only the petitioner was completed the training on 05.04.2014.



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8. Therefore, in this regard, there was an administrative delay of nearly six years in regularising the service of the petitioner and because of which, the petitioner otherwise should have been sent for training in 2010 itself, however belatedly he was sent for training only after 2013. Therefore, such a delay caused in sending the petitioner for training cannot be attributable on the petitioner and it is admittedly the administrative delay on the part of the respondents. Therefore, on that basis the seniority of the petitioner cannot be pushed back than the juniors who were admittedly juniors to the petitioner as stated supra.

9. In this context, the petitioner though has subsequently been promoted as Assistant and in respect of the other posts called the Deputy Block Development Officer, the promotion has not been given, by citing the seniority which has been fixed on the basis of the completion of the training at Bhavanisagar and therefore, challenging these orders passed in this regard by the respondents, the present writ petition has been filed.

10. Heard Mr.V.R.Rajasekaran, learned counsel appearing for the petitioner who having relied upon the rules viz., Rule 34 of the Special Rules would submit that, assuming that if at all the petitioner has to



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complete the training within a stipulated period of probation and within which if the petitioner could not complete the training, the reason for not completed the training is not attributable on the petitioner, because, admittedly the petitioner had been sent training only in the year 2013 i.e., after receipt of the regularisation order from the Government.

11. Therefore, the learned counsel would submit that, because of the delay caused by the respondents the petitioner should not be penalised and his seniority should not be adversely affected, by thus, he would be entitled to get the promotion on par with his junior one K.Kumar for the post of Assistant and correspondingly to the post of Deputy Block Development Officer and therefore he seeks indulgence of this Court to issue a direction to that effect to the respondents and to quash the orders which are impugned herein.

12. Heard Mr.R.U.Dinesh Rajkumar, learned Additional Government Pleader for the respondents who also relied upon the rule viz., Special Rules. By relying upon the said rule, i.e., Rule 34 of the Special Rules with Annexure V attached therewith, the learned Additional Government Pleader also argued that, within the prescribed



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period of probation, the training should have been completed by the petitioner who was appointed as Junior Assistant and admittedly since he has not completed the training and though he has been belatedly sent for training only in 2013, even in the first attempt in training, he was not able to complete the test conducted therein, in fact only after 8 months, in the second attempt only he had completed the test successfully. Therefore, the delay cannot be said to be made only because of the administrative delay caused by the department in sending the petitioner for training but also after sending the training that was caused by the petitioner as he could not clear the test in the first attempt and he has completed the test only in the second attempt.

13. Therefore, the learned Additional Government Pleader, by relying upon a Government instruction in this regard issued by the Government of Tamil Nadu, Personal and Administrative Reforms Department, Fort St. George, Chennai – 9 dated 24.11.1988, has submitted that, in the Panchayat Development Department which is a parent department of the petitioner, the Junior Assistant appointed should undergo the training and after completion of the training and completion of not less than three years serving in the Government, then only he



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would be considered to be eligible for promotion and here in the case in hand, since the petitioner has completed the training only in 2013 i.e. well after the training completed by others like the Kumar whose case has been compared by the petitioner, the claim made by the petitioner that he is entitled to get promotion on par with his junior one Kumar is not feasible for compliance.

14. I have considered the said submissions made by the learned counsel on either side.

15. Insofar as the relevant rule viz., Rule 34 of the Special Rules read with Annexure V of the said Rule is concerned, no doubt Rule 34(a) says persons appointed to the service, whether by direct recruitment or by recruitment by transfer from another service, as the case may be, in the categories or posts specified in column (1) of Annexure V shall pass the tests or undergo the training or acquire the qualification specified in the corresponding entry in column (2) within the period stated in or as otherwise required by the corresponding entry in column (3) thereof.

16. If we look at Annexure V, the relevant serial number is 8



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which speaks about the Junior Assistants appointed by direct recruitment on or after the 3rd July 1974, since the petitioner was appointed as Junior Assistant in 2009, the foundational training for a period of two months should have been completed within a prescribed period of probation i.e. maximum period of 3 years within which the 2 years period successfully should be completed by the petitioner i.e., the Junior Assistant within which the training of 2 months also should have been successfully completed by the Junior Assistant concerned. Here in the case in hand, in 2013 since the petitioner has been sent for training he was able to complete the training though immediately but the test conducted therein was successfully completed by the petitioner or passed out the training only after 8 months.

17. Assuming that, there was a period of 8 months delay in completing the training, that 8 months delay cannot push back the petitioner far off from his juniors and therefore in this context, the delay caused by the respondents in sending the petitioner for training for about 4 years and more is not a delay caused by the petitioner, as the petitioner was appointed on 08.07.2007 the regularisation order had come only on 15.05.2013, immediately thereafter on 29.06.2013 only the petitioner had



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been sent for training, therefore the period between 18.07.2007 and 29.06.2013 i.e., for six years is the delay caused only by the Government i.e. the respondents/Department in sending the petitioner for training.

18. The regularisation is the routine process and for which the proposal seems to have been sent as early as on 02.08.2007, however the Government taken it and kept it pending for passing orders of regularisation in favour of the petitioner for about six years and ultimately passed orders only on 15.05.2013. Absolutely there is no reason for delaying such order to be passed in favour of the petitioner for regularising his service on the part of the respondents has been made out before this Court, therefore such a delay cannot be put against the petitioner as if that the petitioner since should have completed the training within two years period of probation, since he has not completed the training, belatedly only he completed the training in 2013, he would not be entitled for such a seniority. If that kind of stand is taken, that will run contra to the rule as in this case admittedly there was a delay of six years in sending the petitioner for training.



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19. In that view of the matter, this Court is not inclined to accept the defense taken by the respondents as projected by the learned Additional Government Pleader appearing for the respondents to sustain the impugned orders denying the seniority as well as the corresponding promotion sought for by the petitioner.

20. For the aforestated reasons and discussions, this Court is inclined to dispose of this writ petition with the following orders:

That the impugned orders are quashed and as a sequel, there shall be a direction to the respondents to consider the candidature of the petitioner for placing him in the seniority list after taking the 8 months delay caused by the petitioner in completing the training/test conducted in the year 2013 as admittedly the petitioner had failed in the first attempt and become successful in the second attempt, accordingly the petitioner shall be placed in the appropriate place in the seniority list fit for promotion to the post of Assistant and thereafter correspondingly the notional promotion of petitioner for the post of Assistant as well as the subsequent promotion if he is eligible, for the Deputy Block



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Development Officer, also be conferred notionally and from this date, the petitioner would be entitled to get all other monetary benefits for such promoted posts. The needful as indicated above 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 petition is closed.

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Index : Yes

Speaking Order : Yes

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R.SURESH KUMAR, J.

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