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W.P.No.7218 of 2015

IN THE HIGH COURT OF JUDICATURE OF MADRAS

RESERVED ON : 18.04.2022

DELIVERED ON : 19.07.2022

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.7218 of 2015

J.Duraisingam

... Petitioner

Vs

1.The State of Tamil Nadu,
Rep. by the Chief Secretary to Government,
Public (Special A) Department,
Fort St. George, Chennai – 600 009.

2.The Additional Chief Secretary/Commissioner
of Revenue Administration, Chepauk,
Chennai – 600 005.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in G.O.No.Rt.No.2961 Public (Special.A) Department dated 01.08.2014 and quash the order dated 01.08.2014 and consequently direct the first respondent to promote the petitioner as District Revenue Officer from 08.06.1996, the date on which petitioner's junior was promoted, with full monetary benefits from the said date.



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For Petitioner : Mr.V.Ayyathurai,
Senior Counsel for
Mr.M.Sivavarthan

For Respondents : Mr.C.Selvaraj,
Additional Government Pleader.

ORDER

The brief facts of the case are as follows:

(i) While the petitioner herein was serving as a Tahsildar, he was subjected to disciplinary proceedings and was imposed with the punishment of stoppage of increment for six months without cumulative effect on 18.11.1990. The petitioner's immediate junior viz., one M.Govindarajan was given accelerated promotion as Deputy Collector in the year 1991, on the basis of reservation, as he belongs to Scheduled Caste (SC) community. The petitioner was thereafter, promoted as Deputy Collector on 03.11.1994 and was included in the regular list of Deputy Collector for the year 1993-1994. When his name of immediate junior was included in the panel for District Revenue Officer (DRO) for the year 1995 and promoted on 08.08.1996, the petitioner filed an application in O.A.No.2270 of 1997 before the Tamil Nadu Administrative Tribunal (TAT) seeking for inclusion of his name in the



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panel of DRO for the year 1995. During the pendency of the OA, he retired from service as Deputy Collector on 30.11.1997.

(ii) On 23.02.1998, the TAT had allowed the petitioner's original application, by placing reliance on a decision of the Hon'ble Supreme Court and observed that after the promotion to the post of Deputy Collector, he should have been considered as senior to M.Govindarajan as Deputy Collector and his name should have been considered for 1995 DRO's panel also. With such an observation, the TAT had directed the State to consider the petitioner's candidature by including the name of the petitioner in the DRO's panel for the year 1995, by treating him as senior to M.Govindarajan and promote him, if found fit, as DRO from the date on which his junior was promoted. However, by an order dated 03.09.1998, the Government rejected the request of the petitioner, by placing reliance on G.O.Ms.No.368, Personnel and Administrative Reforms Department, dated 18.10.1993, which orders for a check period of five years on the crucial date for preparation of panel for DRO for the year 1995, during which, the employee should not have been undergone a punishment. The further reason adduced in the said order dated



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03.09.1998 was that the petitioner had not completed two years of probation period in the post of Deputy Collector. The challenge to this order of rejection was dismissed on 29.06.2010. While the further intra Court appeal in W.A.No.1884 of 2010 filed by the petitioner was pending, G.O.Ms.No.368, Personnel and Administrative Reforms (Personnel-S) Department, dated 18.10.1993 was quashed by a Full Bench of this Court on 27.04.2011 in the case of ***DIG of Police, Thanjavur Vs. V.Rani and others*** reported in ***2011 3 CTC 129***.

(iii) In view of the decision of the Hon'ble Full Bench, the petitioner's writ appeal came to be allowed on 25.11.2013. In the said order, the Hon'ble Division Bench had directed the Department to reconsider the claim of the petitioner for promotion, after the punishment of withholding of increment for six months was over. It was further held that while passing orders as stated above, the Department shall also take note of the orders of the TAT in O.A.No.2270 of 1997 dated 23.02.1998. In consequence to the orders of the Hon'ble Division Bench, the present impugned order dated 01.08.2014 has been passed, rejecting the request of the petitioner for promotion as the DRO. In the impugned order, four reasons were assigned viz., that the petitioner cannot compare himself



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with that of his junior, who belongs to SC community; that he did not complete two years of probation period in the post of Deputy Collector as per Rule 2(a)(iv) of the Special Rules for Tamil Nadu Civil Service, on the crucial date i.e., on 01.04.1995; that the petitioner did not have minimum service period of one year before superannuation; and that the punishment suffered by the petitioner on 18.11.1990 is within the check period of five years. Challenging the said impugned order, the present Writ Petition has been filed.

2. Heard Mr.V.Ayyathurai, learned Senior counsel for Mr.M.Sivavarthan, learned counsel appearing for the petitioner and Mr.C.Selvaraj, learned Additional Government Pleader for the official respondents.

3. On consideration of the submissions of the learned Senior Counsel for the petitioner, I am of the view that the order impugned in the present writ petition, cannot be sustained for the following reasons:

4. Insofar as the first reason assigned in the impugned order that



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the petitioner cannot compare himself to his junior M.Govindarjan, since he was promoted on preferential basis by applying the rule of reservation for SC candidates is concerned, the legality of such a decision was dealt with by a Hon'ble Division Bench of this Court in the case of ***A.Paranjothi Vs. Y.Amarnath and others*** in ***W.A.Nos.1157 & 1158 of 2015, dated 31.08.2015***, in which it was held that even in merit promotions, seniority will be the deciding factor between the candidates.

The relevant portion of the order reads as follows:

“16. By inviting the attention to Regulation 22 of the Regulations of the Board, both the learned counsel appearing for the respondents submitted, that as per the regulations applicable to the employees of the Board, 10% of the promotions subject to a minimum of at least one to Board Services in supervisory or managerial grades shall be made, on grounds of merit, and the balance 90% promotions in these grades in all promotions to the lower grades, on the basis of only seniority. Regulation 22 further states, that promotion to fill the vacancies, not set apart for merit promotion in the supervisory and managerial categories, will also be decided on the basis of seniority. Even in merit promotions, seniority will be the deciding factor as between the candidates, eligible for being considered for such promotions, and the Board shall



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be the deciding authority, for making merit promotions.”

5. Likewise in the case of ***S.Panneer Selvam and others Vs Government of Tamil Nadu & others*** reported in **2016 (4) CTC 189**, the Hon'ble Supreme Court had held that the rule of reservation under Article 16(4) of the Constitution is confined only to initial appointments and cannot extend to reservation in the matter of promotion. Such an observation was made in the following manner:

“18. Constitutional validity of Clauses (4A) and (4B) of Article 16 of the Constitution was challenged in M. Nagaraj And Ors. vs. Union of India And Ors., (2006) 8 SCC 212. The question that came up for consideration was whether by virtue of impugned Constitutional Amendments, the power of Parliament was so enlarged as to obliterate any or all of the Constitutional limitations and requirements upholding the validity of the said Articles with certain riders. On the concept of ‘Catch-up Rule’ and consequential Seniority, this Court held as under:-

“79. Reading the above judgments, we are of the view that the concept of “catch-up” rule and “consequential seniority” are judicially evolved concepts to control the extent of reservation. The source of these concepts is in service jurisprudence. These concepts cannot be elevated to the status of an axiom like secularism, constitutional sovereignty, etc. It cannot be said that by insertion of the



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concept of “consequential seniority” the structure of [Article 16\(1\)](#) stands destroyed or abrogated. It cannot be said that “equality code” under Articles 14, 15 and 16 is violated by deletion of the “catch-up” rule. These concepts are based on practices. However, such practices cannot be elevated to the status of a Constitutional principle so as to be beyond the amending power of Parliament. Principles of service jurisprudence are different from Constitutional limitations. Therefore, in our view neither the “catch-up” rule nor the concept of “consequential seniority” is implicit in clauses (1) and (4) of [Article 16](#) as correctly held in *Virpal Singh Chauhan*, (1995) 6 SCC 684.”

19. In Nagaraj case, Court further considered two questions viz.:-

(1) Whether there is any upper-limit beyond which reservation is not permissible?

(2) Whether there is any limit to which seats can be reserved in a particular year; in other words, the issue is whether the percentage limit applies only on the total number of posts in the cadre or to the percentage of posts advertised every year as well? Answering the said questions in paras (121) and (123), this Court held as under:-

“121. The impugned constitutional amendments by which Articles 16(4-A) and 16(4-B) have been inserted flow from [Article 16\(4\)](#). They do not alter the structure of [Article 16\(4\)](#). They retain the controlling factors or the compelling reasons, namely, backwardness and inadequacy of representation which enables the States to provide for reservation keeping in mind the overall efficiency of the State administration



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under [Article 335](#). These impugned amendments are confined only to SCs and STs. They do not obliterate any of the constitutional requirements, namely, ceiling limit of 50% (quantitative limitation), the concept of creamy layer (qualitative exclusion), the sub-classification between OBCs on one hand and SCs and STs on the other hand as held in *Indra Sawhney*, 1992 Suppl. (3) SCC 217, the concept of post-based roster with inbuilt concept of replacement as held in *R.K. Sabharwal*, (1995) 2 SCC 745.

123. However, in this case, as stated above, the main issue concerns the “extent of reservation”. In this regard the State concerned will have to show in each case the existence of the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency before making provision for reservation. As stated above, the impugned provision is an enabling provision. The State is not bound to make reservation for SCs/STs in matters of promotions. However, if they wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance with [Article 335](#). It is made clear that even if the State has compelling reasons, as stated above, the State will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling limit of 50% or obliterate the creamy layer or extend the reservation indefinitely.”

The Constitution Bench judgment in Nagaraj case (supra) was subsequently followed in [Shiv Nath Prasad vs. Saran Pal Jeet Singh Tulsi And Ors](#), (2008) 3 SCC 80; and [Chairman And Managing Director, Central Bank of India And Ors. vs. Central Bank of India SC/ST Employees'](#)



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Welfare Association And Ors., 2015 (1) SCALE 169.”

In the light of the above dictums, the reasoning adopted by the respondents that the petitioner cannot compare himself to a SC employee, cannot be sustained.

6. The second and third reasons adduced in the impugned order is that the petitioner did not complete two years probation period in the post of Deputy Collector as per Rule 2(a)(iv) of the Special Rules for the Tamil Nadu Civil Service on the crucial date i.e., on 01.04.1995 and that he did not have a minimum service of one year before superannuation. Both these reasons have been relaxed by the respondents themselves on various occasions.

7. In G.O.(2D)No.172, Revenue Department, dated 12.07.2019, the Government relaxed Rule 2A and 3(a) of the Special Rules of Tamil Nadu Civil Service in favour of a Tahsildar for not following rule of reservation and for non completion of one year service as Tashildar before the crucial date, so as to include his name in the list of Deputy Collectors for the year 1991-1992. Similar relaxations have also been given in



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G.O.Ms.No.1647, Public (Special-A) Department, dated 27.09.1988 in the case of V.Krishnan; G.O.Ms.No.1842, Public (Special) Department, dated 17.12.1990 in the case of T.G.Pandarinathan; G.O.Ms.No.893, Public (Special A) Department, dated 25.07.1997 in the case of B.Kannaiyan; and G.O.Ms.No.1919, Public (Special A) Department, dated 30.12.2007 in the case of L.Paulraj. All these aforesaid four employees were considered for inclusion in the panel of DROs from the post of Deputy Collectors, after extending due relaxations.

8. This apart, the TAT in its order dated 23.02.1998, passed in O.A.No.2270 of 1997, had specifically found that the petitioner's candidature ought to have been considered as senior to M.Govindarajan as Deputy Collector and should have been included in the DRO's panel for the year 1995. With such an observation, the Department was directed to include his name in 1995 DRO's Panel by treating him as senior to M.Govindarajan as Deputy Collector and promote him as DRO. When this issue came for consideration before this Court, the Hon'ble Division Bench, in the order passed on 25.11.2013 in W.A.No.1884 of 2010, had allowed the appeal by setting aside the order of the learned Single Judge



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and directed the department to reconsider the petitioner's claim seeking promotion, after the punishment of withholding of increment for six months was over. The Hon'ble Division Bench had further directed the Department to take note of the orders passed by the TAT also in O.A.No.2270 of 1997, dated 23.02.1998. The relevant portion of the order reads as follows:

“2. In the light of the said judgment rendered by the Full Bench after the disposal of the writ petition by the learned Single Judge, this writ Appeal is allowed by setting aside the order of the learned Single Judge dated 29.06.2010 and remitting the matter to the 1st respondent to re-consider the claim of the appellant seeking promotion after the punishment of withholding of increment for six months was over and pass appropriate orders, within a period of three months from the date of receipt of a copy of this order. while considering the claim of the appellant, the respondent is also directed to take note of the orders passed by the Tribunal in O.A.No.2270 of 1997 dated 23.02.1998. It is pertinent to point out that the appellant having retired from service on 30.11.1997, is not entitled to get any monetary benefits, but is entitled to get only the benefits notionally for the purpose of revision of pension and other service benefits. No costs.”



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9. On the contrary, the respondents had totally ignored the directions of the TAT, as well as that of the Hon'ble Division Bench. In the aforesaid decision, the direction of the Division Bench to the respondents was to consider the petitioner's request for promotion “after the punishment” as well as the TAT's order that had also directed the respondents to include the petitioner's name in the DRO's panel for the year 1995, above his junior M.Govindarajan. Both these directions were consciously omitted by them, which is not only improper, but also illegal.

10. The last reason assigned in the impugned order is that the petitioner had suffered a punishment within a check period of five years. This reason also cannot be sustained since the check period of five years was introduced in G.O.Ms.No.22 Personal and Administrative Reforms Department dated 24.02.2014. A Division Bench of this Court in the case of *K.Rajalakshmi Vs. The Principal Secretary to Government* passed in *W.A.No.983 of 2015, dated 14.09.2016*, had quashed the G.O.Ms.No.22 Personal and Administrative Reforms Department dated 24.02.2014, insofar as it suggests the check period. The relevant portion of the order



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reads as follows:

"12. Therefore, it is clear that the impugned G.O. is with several ambiguities, based on which, the appellant herein and the writ petitioner are denied promotion, even after the expiry of currency of punishment on the ground of 'check period' or treating 'Censure' as an embargo for granting promotion. Hence, the impugned G.O., insofar as it suggests the 'check period' and treats the 'Censure' as an embargo for granting promotion, which was already condemned by a Full Bench of this court, cannot be maintained as a valid one. In view of the above, the order of the learned Single Judge passed in W.P.No.243 of 2015 is set aside and the impugned G.O. is quashed, insofar as it suggests the 'check period' and treats the 'Censure' as an embargo for granting promotion....."

11. Above all, the second and fourth reasons cited viz., that the petitioner did not complete two years probation in the post of Deputy Collector and that he had suffered punishment within the check period of five years is concerned, where the same reason assigned by them in the earlier round of rejection dated 03.09.1998. As stated above, the order of rejection dated 03.09.1998, when challenged, went up before the Hon'ble Division Bench in W.A.No.1884 of 2010, whereby the order came to be



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quashed and fresh orders were directed to be passed by the Department.

While that being so, both these reasons assigned in the earlier rejection order dated 03.09.1998, have once again been cited in the subsequent order dated 01.08.2014, which is impermissible in law. On this ground also, the impugned order cannot be sustained.

12. In view of the aforesaid discussion, the petitioner would be entitled for notional promotion to the post of DRO. However, he shall not be entitled for any monetary benefits for the period between his date of promotion till the date of superannuation as observed by the Hon'ble Division Bench in its order passed in W.A.No.1884 of 2010.

13. In the above circumstances, the impugned order dated 01.08.2014 is quashed. Consequently, there shall be a direction to the first respondent herein to pass appropriate orders granting notional promotion to the petitioner as District Revenue Officer from the date on which his junior viz., M.Govindarajan was promoted and thereby revise his scale of pay so, as to enable him to receive pension based on the revised scale in the post of DRO. It is made clear that the petitioner is not



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entitled for the salaries payable to the post of DRO, from the date of his notional promotion till the date of his retirement. The first respondent shall pass such orders atleast within a period of eight (8) weeks from the date of receipt of a copy of this order.

14. This Writ Petition stands allowed. No costs.

19.07.2022

Index: Yes
Speaking order
vsm

To

- 1.The Chief Secretary to Government,
State of Tamil Nadu,
Public (Special A) Department,
Fort St. George, Chennai – 600 009.
- 2.The Additional Chief Secretary/Commissioner
of Revenue Administration, Chepauk,



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M.S.RAMESH,J.

Vsm/DP

**Pre-Delivery Order made in
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