



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 01.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. No.12615 of 2020

V.Ravishankar

...Petitioner

Vs

1.The Secretary to Government
Revenue and Disaster Management
(Service Wing)
Fort.St.George, Chennai-9

2.The Principal Secretary
Commissioner of Revenue Administration
Chepauk, Chennai-5

3.The District collector
Erode District

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the 1st Respondent in connection with the Impunged order passed by him in GO (1D) No.237 Revenue and Disaster Management (Service wing) SER 3(2) department dated 11.6.2020 and quash the same and direct the respondents to include the name of the petitioner in the Panel of Deputy collector for the year 2013 and further direct the Respondents to consider his claim for Promotion as Tahsilar for the year 2016 at Erode District at par with his junior with consequential service and monetary benefits.

For Petitioner ... Mr.K.Venkatramani,
Senior Counsel,
for Mr.M.Muthappan

For Respondents ... Mr.G.Nanmaran,
Special Government Pleader,
for respondents 1 to 3

O R D E R

The case of the petitioner is that he was directly recruited as Assistant by the Tamil Nadu Public Service in the year 2006 and was appointed to the service on 01.09.2008. After his appointment, he has successfully completed his probation in the cadre of Assistant. In the year 2013, the petitioner came within the zone of consideration for promotion to the next higher post of Deputy Tahsildar in Erode District. The petitioner belongs to the Most Backward Community (MBC).



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2. While his name was to be considered for promotion to the post of Deputy Tahsildar, as a consequence of his estrangement with his wife, a complaint was lodged against the petitioner, and this led to his arrest and remand to the judicial custody on 05.06.2013 and shortly thereafter, he was released on bail.

3. In view of the petitioner being taken into custody and detained for more than 48 hours, the petitioner was placed under deemed suspension from 06.06.2013, by an order dated 11.06.2013. However, subsequently, by order dated 01.08.2013, the suspension came to be revoked and the petitioner was reinstated into service.

4. The grievance of the petitioner is that when the temporary panel of Deputy Tahsildar for the year 2013 was drawn-up, his name was not included, whereas his junior's name, one Thiru.N.Balasubramanian, who was a directly recruited assistant in the subsequent 2008 year batch was included at S.No.13 and was promoted. According to the petitioner, no reasons have been disclosed to him for his non-inclusion for the panel year 2013.

5. According to the petitioner, he subsequently, learnt that his name was not included on the ground that he was facing a criminal case registered against him in Crime No.5/2013 for offence under Sections 294(B), 498(A), 506(i) and Section 4 of the Tamil Nadu Protection of Women Harassment Act, 1998 on the basis of the complaint by his wife.

6. In the meanwhile, the petitioner had earlier approached this Court in W.P.No.31434 of 2013 and sought a direction to consider his claim for promotion as Deputy Tahsildar by including his name for the panel year 2013. This Court, after hearing the counsels representing the rival parties, issued a direction on 18.12.2013 directing the respondents to pass appropriate orders in terms of the guidelines for promotion issued in G.O.Ms.No.368, P & AR Department, dated 18.10.1993. In pursuance of the direction, the claim of the petitioner was rejected vide order dated 19.03.2014 stating two reasons for not considering his claim favourably: (i) a criminal case is pending against him; (ii) he has not completed five years of qualifying service as Assistant.

7. Being aggrieved by the rejection of his request, the petitioner once again was constrained to approach this court in W.P.No.21104 of 2014, challenging the rejection order and for consideration of his claim for promotion for the panel year 2013. In the meanwhile, according to the petitioner, a charge-sheet came to be filed before the Judicial Magistrate, Rasipuram, in C.C.No.176 of 2013. Ultimately, after a prolonged trial, the petitioner came to be acquitted vide criminal court judgment dated 26.11.2015. The grievance of the petitioner is that once he had been acquitted of all the charges on merits, and the fact that during the crucial time of consideration of the panel of 2013, he was neither under suspension nor was facing any charges, he ought to have been granted promotion for the said panel year, particularly when his junior



Thiru.N.Balasubramanian was promoted in that panel year.

8. The petitioner has also filed one more writ petition in W.P.No.526 of 2016 to consider his representation said to have been made on 05.12.2015, after he was acquitted by the criminal Court. This Court, vide order dated 19.01.2016, was pleased to issue a direction, directing the District Revenue Officer, Erode District, to consider the representation of the petitioner dated 05.12.2015 and pass orders on merits within a period of four weeks. Thereafter, an order was passed treating the period of suspension from 06.06.2013 to 04.08.2013 as 'spent on duty' for all purposes in terms of the Tamil Nadu Fundamental Rules. Subsequently, the petitioner was also promoted as Deputy Tahsildar for the panel year 2016. As a consequence of his promotion, his seniority came to be fixed at S.No.3A as against the seniority of his junior Thiru.N.Balasubramanian at S.No.2A. In the said circumstances, the petitioner is before this Court once again for the relief as prayed for in the writ petition.

9. Mr.K.Venkataramani, learned Senior Counsel, would submit that the denial of promotion to the petitioner as Deputy Tahsildar for the panel year 2013 was without any justification. When the panel was drawn-up during October, 2013 and promotion was effected to one Thiru.N.Balasubramanian, in the same panel, the petitioner also ought to have been accommodated and promoted ahead of the said Thiru.N.Balasubramanian. According to the learned Senior counsel, at that point of time, the petitioner was neither under suspension nor was facing any charges. The suspension which was earlier imposed on him came to be revoked in August, 2013 itself and when the panel was drawn-up on 28.10.2013, he had also completed five years of service. The petitioner having entered service as assistant on 01.09.2008, had completed five years of service on 31.08.2013 itself. As a matter of fact, the charge sheet in the criminal case was filed only on 26.11.2015. Therefore, according to the learned Senior Counsel, on the crucial date of consideration of the panel year 2013, there was nothing adverse pending against the petitioner and therefore, there was no legal impediment for him to be considered and promoted.

10. The learned Senior Counsel would further clarify the position that the ultimate rejection order passed by the first respondent dated 11.06.2020, which is the subject matter of challenge in this writ petition, stated that none of the juniors of the petitioner was considered in the temporary panel of the year 2013 and therefore, the question of promoting the petitioner even otherwise for the panel year 2013 did not arise. The reasons set forth in the impugned communication cannot be correct, as admittedly the petitioner became due for promotion in the year 2013 and in the absence of any legal impediment or bar, it is immaterial whether any of his juniors were in the zone of consideration or not. What was due to the petitioner in 2013 cannot be denied in the face of the reasons stated in the



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11. According to the learned Senior Counsel, in any event, even the criminal case which was registered against the petitioner in the year 2013 had ended in acquittal and also the fact that the suspension period had been regularized by the Department itself as 'spent on duty' for all purposes, in which event, the benefit which was due otherwise to the petitioner ought to have been extended to him at the appropriate date and it cannot be deferred to a subsequent date. He would, therefore, implore this Court to allow the writ petition as prayed for.

12. On behalf of the respondents, a detailed counter-affidavit has been filed. In the counter-affidavit, it has been stated that the said Thiru.N.Balasubramanian who was said to be a junior to the petitioner was in fact senior to him in terms of the rank assigned to him by the Tamil Nadu Public Service Commission. It is stated in the counter-affidavit that in terms of proceedings dated 11.04.2016 which had also been served on the petitioner in relation to the seniority of Assistants for the year 2018, the said Thiru.N.Balasubramanian was placed at Sl.No.2A and the petitioner was placed at Sl.No.3A, which seniority position had become final. Therefore, the contention that the junior had been accommodated ahead of the petitioner is factually incorrect and is liable to be rejected as an erroneous submission.

13. As far as subsequent years were concerned, viz. 2014-15, during that time, the criminal case was pending against the petitioner and therefore, he was rightly not considered. One another important factor has been stated in the counter-affidavit is that the petitioner, who was appointed on 01.09.2008, had not completed five years of service on 31.08.2013. He was suspended from service on the basis of the complaint given by his wife and the suspension came to be revoked only on 05.08.2013. As such, the said period stood excluded and cannot be counted and therefore, he was considered to be not eligible, having not completed five years of service, on the date of drawing up of the panel.

14. In the counter-affidavit, it is further averred as under in paragraph 14, explaining the rule position on the subject-matter:

"14. The recommendation of the Principal Secretary/Commissioner of Revenue Administration was examined by Government. Sub-Section (II)(1), Part A of Schedule XI under Section 7(1) of Tamil Nadu Government Servants (Condition of Service) Act, 2016, inter-alia provides as follows:

xxxxxx

On exoneration or acquittal from the charges, a member of service shall be considered for promotion or appointment with retrospective effect from the date on which his immediate junior was promoted, if he is otherwise qualified for such promotion."



15. The learned Special Government Pleader Mr.G.Nanmaran, made his submissions reiterating the above position adopted by the respondents. He would therefore submit that the petitioner's case cannot be countenanced both in law and on facts and requested this Court to dismiss the writ petition as devoid of merits and substance.

16. This Court considered the submissions of the learned Senior Counsel for the petitioner and learned Special Government Pleader for the respondents, perused the materials and pleadings placed on record.

17. The factual narrative as recorded above is not in controversy. The opposition to the grant of relief to the petitioner in this writ petition are two fold: (i) pendency of criminal case; (ii) the petitioner has not completed five years of mandatory service for him to be considered for promotion to the post of Deputy Tahsildar for the panel year 2013. According to the respondents, the petitioner having been placed under suspension from 06.06.2013 to 04.08.2013 cannot be said to have completed five years period when the promotion to the post of Deputy Tahsildar was considered on 28.10.2013. The further case of the respondents was that in terms of the rule position as explained in paragraph 14 of the extracted averment, none of the petitioner's junior was promoted and therefore, the question of promoting the petitioner at that point of time did not arise.

18. This Court is unable to appreciate the stand of the respondents for the following reasons and grounds:

(a) Firstly, at the time when the panel was drawn-up in October, 2013, as rightly contended by the learned Senior Counsel for the petitioner, the petitioner was neither under suspension nor was facing any charges. Therefore, the criminal case which was initiated against him cannot be said to be the legal impediment for consideration of his promotion for the panel year 2013.

(b) As far as the co-related objection is considered namely the non-completion of five year period, the same would also not hold water for the simple reason that the Department itself has, vide proceedings dated 04.01.2016, regularized the suspension period 'as duty for all purposes' in terms of the relevant provisions of the fundamental rules. Once the suspension period has been regularized, the period had to be counted for all purposes, including for promotion. In that event, the petitioner automatically ought to have been considered as eligible for the subject promotion in the panel year 2013. Therefore, the said contention on behalf of the respondents is to be discountenanced as being factually incorrect and cannot be sustained.

(c) As regards the principal contention by the respondents that in terms of the rule position as explained above, the petitioner was not to be considered, as none of his juniors was promoted in the panel year 2013, appears to be a strange submission in



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the facts and circumstances of the case. The fact of the matter is that the petitioner became eligible to be considered for promotion for the panel year 2013 as Deputy Tahsildar. That being the factual scenario how does the non-promotion of his junior become relevant while denying promotion to the petitioner on that account? When the petitioner had become fully eligible for promotion for the panel year 2013, regardless of the fact whether any of his junior was eligible to be promoted or not, he ought to have been promoted in the first place, in the absence of any legal impediment for such promotion. The reply by the respondents on this aspect is probably because of the fact that the petitioner had staked his claim on the basis of his junior being promoted (Thiru.N.Balasubramanian) ahead of him in 2013. But the consideration of this Court is on a different perspective viz. that de hors the issue of whether Thiru.N.Balasubramanian was senior or junior, when the petitioner in his own right was eligible to be considered for promotion in the year 2013, the issue of non-promotion of any junior to the petitioner is legally immaterial.

(d) In the above circumstances, the stand taken by the respondents vis-à-vis the rule position is fallacious and cannot be countenanced both in law and on facts. The question of inter-se claim of senior versus junior would assume legal significance only when seniority being overlooked and junior being promoted in a particular panel year. As far as the present claim is concerned, what ultimately emerged is, not the seniority that was sought to be overlooked as claimed by the petitioner. But it is the independent right of the petitioner to be considered for promotion that has been overlooked for no valid reasons.

(e) In such circumstances, this Court has to come to an inevitable conclusion that the petitioner is entitled to be considered for promotion for the panel year 2013 as Deputy Tahsildar in his own right without any reference to his juniors being eligible or promoted in the same year or not?

19. In the conspectus of the above discussion, this Court finds that the rejection order which is impugned in this writ petition dated 11.06.2020 cannot be countenanced both in law and on facts and is liable to be interfered with.

20. The writ petition is therefore allowed. The impugned order in GO (1D) No.237, Revenue and Disaster Management (Service Wing) SER 3(2) Department, dated 11.06.2020, passed by the first respondent, is hereby set aside and the respondents are directed to grant the benefit of promotion to the petitioner as Deputy Tahsildar on par with the persons who were promoted in the panel year 2013 and grant him consequential and other service benefits.



21. However, it is made clear that the petitioner is not entitled to the arrears of pay while ante dating his promotion as Deputy Tahsildar from the year 2013 but shall be entitled to all benefits on notional basis.

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22. The respondents are directed to pass appropriate orders in this regard within a period of eight weeks from the date of receipt of a copy of this order. There will be no order as to costs. Consequently, W.M.P.No.15571 of 2020 is closed.

Sd/-

Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

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To

- 1.The Secretary to Government,
Revenue and Disaster Management,
(Service Wing),
Fort.St.George, Chennai-9.
- 2.The Principal Secretary,
Commissioner of Revenue Administration,
Chepauk, Chennai-5.
- 3.The District collector,
Erode District.

+1cc to Mr.M.Muthappan, Advocate SR. No.5964

W.P. No.12615 of 2020

NMI (CO)
PR (11/03/2022)