

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04-07-2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.20650 of 2014

A.Seenijabarullahkhan

.. Petitioner

vs.

1. The Government of Tamil Nadu,
Represented by its Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
Fort St George,
Chennai - 600 009.

2. The Director of Rural Development and
Panchayat Raj,
Panagal Building,
Saidapet,
Chennai - 600 015.

3. The District Collector,
Ramanathapuram District,
Ramanathapuram.

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents to include the name of the petitioner in the panel of Junior Assistant for the year 2000-2001 in the appropriate place and grant him all notional benefits such as pay, increment, seniority and pension and also bring him into the regular pension scheme which was in vogue prior to 01.04.2003 by counting his 50% of service rendered by the petitioner in the post of Panchayat Assistant Grade-II along with regular Government Service.

For Petitioner : Mr.K.S.Viswanathan

For Respondents : Mr.M.Bindran,
Additional Government Pleader.

O R D E R

The relief sought for in the present writ petition is to direct the respondents to include the name of the petitioner in the panel of Junior Assistant for the year 2000-2001 in the appropriate place and grant him all notional benefits such as pay, increment, seniority and pension and also bring him into the regular pension scheme, which was in vogue prior to 01.04.2003 by counting his 50% of service rendered by the petitioner in the post of Panchayat Assistant Grade-II along with regular Government Service.

2. The principles settled for inclusion of a name of the person in the panel and promotion are that:-

(1) Promotion per se cannot be claimed as a matter of right by an employee;

(2) All promotions are to be granted strictly in accordance with the Rules in force;

(3) Consideration for promotion is a fundamental right of an employee;

(4) While preparing the panel of persons fit for promotion to the higher post, the names of all eligible employees, who all are aspiring to secure promotions are to be considered; and

(5) Promotions are to be granted by following the seniority.

3. Thus promotion cannot be claimed as a matter of an absolute right by the employees concerned. So also inclusion of the names of the persons in the panel would not confer any right. The right will accrue only after the issuance of promotion order to the employees.

4. In the present case, admittedly, the writ petitioner was appointed as Panchayat Assistant Grade-II on 01.01.1991. 10% of the vacancies in the post of Junior Assistant are reserved for appointment from amongst the persons working in the cadre of Panchayat Assistant Grade-I and II. Thus, the panel of eligible persons, who all are aspiring for the post of Junior Assistant are to be prepared by the Competent Authorities for appointing those persons in the 10% reserved vacancies.

5. In this case, the claim of the writ petitioner is that his name was considered for inclusion of his name in the panel for the year 2000-2001 and for want of Tamil Nadu Public Service Commission (TNPSC) approval, the petitioner was not considered for appointment to the post of Junior Assistant.

6. The learned counsel for the petitioner contended

that the proposal for approval was sent by the Competent Authorities on 18.05.2000 by the District Collector. However, there was an enormous delay on the part of the Tamil Nadu Public Service Commission (TNPSC) in according approval for the purpose of appointing the eligible candidates to the post of Junior Assistant.

7. The learned counsel for the petitioner mainly contended that the administrative delay cannot be the reason for denial of the benefit of appointment to the writ petitioner with reference to the panel of the year 2000-2001. The petitioner has submitted several representations to appoint him as Junior Assistant based on the inclusion of his name in the panel of the year 2000-2001. However, the petitioner was appointed in the year 2007 pursuant to the orders of the Government issued in proceedings dated 26.07.2007.

8. The learned counsel for the petitioner states that several other persons and few juniors to the petitioner were appointed in the year 2006 and they were given the benefits from the date of preparation of panel. Therefore, the similar benefits are to be extended to the writ petitioner also.

9. The question arises whether the writ petitioner can be appointed as Junior Assistant retrospectively with effect from the panel of the year 2000-2001. In other words, the petitioner, admittedly, had not worked as Junior Assistant, as he was appointed as Junior Assistant only pursuant to the proceedings of the Government dated 26.07.2007. Prior to the said proceedings, the petitioner was working as Panchayat Assistant Grade-II and therefore, the appointment of Junior Assistant cannot be granted with retrospective effect.

10. It is not even a promotion. 10% vacancies are reserved for appointment of Panchayat Assistants Grade-I and II to the post of Junior Assistant. Thus, without actually appointing a person in the post of Junior Assistant, the Court cannot order for retrospective appointment in view of the fact that the Tamil Nadu Public Service Commission (TNPSC) granted approval of such appointments only in proceedings dated 11.07.2007 and the consequential proceedings were issued by the government on 26.07.2007.

11. That apart, mere preparation of panel or inclusion of the name of an employee in the panel, would not confer any right, until the actual order of appointment is issued. If at all there is a delay in considering the panel by the Competent Authorities, such delay cannot be a ground to claim appointment or promotion, since inclusion of the name of an employee in the panel would not confer any right. Even the Authorities Competent

are empowered to cancel the panel on certain administrative grounds. When such actions are possible, the employee whose name has been included in the panel, cannot come with a writ petition for retrospective appointment, merely on the ground that his name was included in the panel of the year 2000-2001.

12. This Court is of the considered opinion that the petitioner has approached this Court after a lapse of many years. Even as per the petitioner, his name was considered and included in the panel of the year 2000-2001 and the approval was granted by the Tamil Nadu Public Service Commission (TNPSC) in the year 2007 and the Government issued an order in proceedings dated 26.07.2007 and thereafter, he was appointed as Junior Assistant.

13. The petitioner had not pursued the remedy even after his appointment in the post of Junior Assistant in the year 2007 and contrarily, he filed the present writ petition in the year 2014 i.e., after a lapse of about 7 years from the date of approval of the panel with a prayer to include his name in the panel of Junior Assistant for the year 2000-2001 in the appropriate place and grant him all notional benefits in the cadre of Junior Assistant.

14. Admittedly, the writ petitioner was not appointed as Junior Assistant pursuant to the inclusion of his name in the panel of the year 2000-2001 and the panel itself had been approved by the TNPSC in the post of Junior Assistant only in the year 2007. Therefore, no right accrued to the writ petitioner for appointment prior to the date of approval. Any such right would accrue only after the approval of panel by the Tamil Nadu Public Service Commission (TNPSC) and after passing an order of appointment as Junior Assistant, which was done by the Competent Authorities in the year 2007. Therefore, the petitioner is not entitled to the relief as such sought for in the present writ petition.

15. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

Svn

To

1. The Principal Secretary to Government,
Government of Tamil Nadu,
Rural Development and Panchayat Raj Department,
Fort St George,
Chennai - 600 009.
2. The Director of Rural Development and
Panchayat Raj,
Panagal Building,
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3. The District Collector,
Ramanathapuram District,
Ramanathapuram.

+1cc to Mr.K.S.Viswanathan, Advocate, S.R.No.42759

+1cc to the Government Pleader, S.R.No.42952

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SR-II (CO)
UMA(19/07/2022)