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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WRIT PETITION NO.14499 OF 2014

Y.Panneerselvam

... Petitioner

Vs.

1. The Director of Rural Development and
Panchayat Raj, Panagal Buildings,
Saidapet, Chennai - 15.
2. The Director of Town Panchayats,
Kuralagam, Chennai - 108.
3. The District Collector,
Collectorate, Salem District.
4. The Assistant Director,
Town Panchayat Department,
Salem - 636 001.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the first respondent herein in Roc.No.14823/2014/E2 dated 28.03.2014 and quash the same and consequently, direct the respondents herein to transfer the petitioner from Rural Development and Panchayat Raj Department to Town Panchayat Department in Salem district with due seniority and consequential service benefits.

For Petitioner : Mr.Ravi Shanmugam

For Respondents : Mr.M.Bindran
Additional Government Pleader



O R D E R

The order dated 28.03.2014 rejecting the claim of the writ petitioner for promotion to the post of Office Assistant and thereafter, as Junior Assistant, is under challenge in this writ petition.

2. The petitioner was appointed as sanitary worker in Yercaud Town Panchayat in regular vacancy through District Employment Exchange and after conducting interview. The services of the writ petitioner was regularized in proceedings dated 30.04.1992. The petitioner served as sweeper in Yercaud Town Panchayat on regular basis and thereafter, pursuant to G.O.Ms.No.217, Municipal Administration and Water Supply Department, dated 28.08.1997, the Government had converted Yercaud Town Panchayat as Panchayat Union and the petitioner was accommodated in the re-designated post of Water Supply Cleaner in Yercaud Town Panchayat as the said post was not originally available in the Yercaud Panchayat Union. The petitioner states that the post of Water Supply Cleaner is equivalent to the post of Office Assistant and by way of conversion, the petitioner ought to have been appointed in the post of Office Assistant, however, he continued in the post of Water Supply Cleaner.

3. Learned counsel appearing for the petitioner mainly contended that the petitioner was serving in the post of Water Supply Cleaner for about 28 years despite the fact that there is an avenue for promotion. When the respondents have sated that the post of Water Supply Cleaner is equivalent to the post of Office Assistant, the petitioner must be promoted as Office Assistant and thereafter, as Junior Assistant. When the posts of Water Supply Cleaner and Office Assistant are equal in scale of pay, then, the petitioner also must be provided with an opportunity for promotion by posting him in the post of Office Assistant in other Panchayat Union or by converting the post of Water Supply Cleaner as Office Assistant as the case may be.

4. With reference to the opportunity of promotion to be provided to the employees working in the same post and stagnated, learned counsel appearing for the petitioner relied on the judgment of this Court dated 29.11.2007 passed in W.P.No.16618 of 2006 wherein, the principle laid down by the Hon'ble Apex Court has been extracted, which reads as under:

"3. But as per the judgment of the Supreme Court reported in 1989 (4) SCC 635 (CSIR -vs- K.G.S.Bhatt), wherein under similar circumstances, though there is no provision in the concerned rules, the Central Administrative Tribunal has allowed the application



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filed by the petitioner therein by providing promotion. The said order in fact is contra to the provisions of the relevant rules. But the Apex Court at para 9 of the abovesaid judgment has observed,

"9. The person is recruited by an organisation not just for a job, but for a whole career. One must therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well. Every management must provide realistic opportunities for promising employees to move upward. "The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both non-managerial employees and their supervisors". There cannot be any modern management much less any career planning, manpower development, management development etc. which is not related to a system of promotion. The appellant appears to have overlooked this basic requirement of management so far as respondent 1 was concerned till NR & AS was introduced."

and upheld the judgment of the Central Administrative Tribunal. In the counter affidavit filed in the case on hand also, it is disputed that there is no avenue for promotion to the post Vocational Instructor.

4. Subsequent to the abovesaid judgment, the same view has been taken by the Apex Court in the judgment reported in 1990-Supp.688 = AIR 1990 SC 311 (O.Z.Hussain -vs- Union of India), wherein para 7 it has been held thus:

"7. This Court, has on more than one occasion, pointed out that provision for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective. Promotion is thus a normal incidence of service. There too is no justification why while similarly placed officers in other ministries would have the benefit of promotion, the non-medical 'A' Group scientists in the establishment of Director General of Health Services would be deprived of such advantage. (In a Welfare State, it is necessary



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that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend to the representations of the Council and its members and provide promotional avenue for this category of officers.) It is, therefore, necessary that on the model of rules framed by the Ministry of Science and Technology with such alterations as may be necessary, appropriate rules should be framed within four months from now providing promotional avenue for the 'A' category scientists in the non-medical wing of the Directorate."

5. So also in the decision reported in 2004 (9) SCC 65 (State of Tripura - vs - K.K.Roy), in para 6, it has been held thus:-

"6. It is not a case where there existed an avenue for promotion. It is also not a case where the State intended to make amendments in the promotional policy. The appellant being a State within the meaning of Article 12 of the Constitution should have created promotional avenues for the respondent having regard to its constitutional obligations adumbrated in Articles 14 and 16 of the Constitution of India. Despite its constitutional obligations, the State cannot take a stand that as the respondent herein accepted the terms and conditions of the offer of appointment knowing fully well that there was no avenue for promotion, he cannot resile therefrom."

5. Learned Additional Government Pleader objected the case of the petitioner stating that the petitioner is eligible to get promotion only if rule permits and the post of Water Supply Cleaner is not a feeder category for promotion to the post of Office Assistant and therefore, the case of the petitioner cannot be considered. When the post of Water Supply Cleaner has not been included as feeder category for promotion to any post, the case of the petitioner cannot be considered and therefore, the order of rejection is in accordance with the rules in force.

6. The third respondent District Collector, in his counter, admitted that the post of Office Assistant is equivalent to that of the post of Water Supply Cleaner. However, the post of Water Supply Cleaner is not a feeder category post as that of the



Office Assistant, which is a feeder category for promotion to the post of Junior Assistant.

7. The post of Office Assistant is admittedly a feeder category for promotion to the post of Junior Assistant. The third respondent/District Collector admitted the fact that the post of Water Supply Cleaner is equivalent to that of the post of Office Assistant. That being the factum, the post of Water Supply Cleaner also to be incorporated as a feeder category for promotion to the post of Junior Assistant or at least, the petitioner ought to have been posted as Office Assistant enabling him to get promotion to the post of Junior Assistant. Contrarily, the petitioner need not be allowed to work in the same post for several years, when opportunities are available for promotions. Mere non-inclusion of the post of Water Supply Cleaner as feeder category for promotion to the post of Office Assistant, the opportunity of an employee by posting him as Office Assistant and thereafter, promote him as per rules need not be denied unnecessarily. In other words, when a post is not included in the feeder category in the rules and such post is equivalent to the post, which is a feeder category for promotion in the rules, then the person working in the non-feeder post may be accommodated in a feeder post in accordance with the seniority enabling him to get an opportunity for promotion in accordance with the principles stated by the Hon'ble Apex Court cited supra.

8. In the present case, avenues are available. The petitioner is fully qualified for the post of Office Assistant and Junior Assistant. While so, the third respondent would have taken action to post the petitioner as Office Assistant in anyone of the Panchayat Union and thereafter, grant promotion as per the rules in force or initiate action to include the post of Water Supply Cleaner, which is equivalent to the post of Office Assistant as feeder category for promotion to higher post. Either of the action ought to have been taken by the third respondent/District Collector, but, the petitioner is allowed to stagnate in the single post for several years.

9. In view of the facts and circumstances, the reason stated in the order impugned that the post of Water Supply Cleaner is not a feeder category is correct in accordance with the rules. The respondents ought to have initiated steps to transfer the petitioner to the post of Office Assistant and thereafter, consider him for promotion.

10. Accordingly, the respondents are directed to consider the case of the petitioner for posting him as Office Assistant, which is equivalent to the post of Water Supply Cleaner and



thereafter, consider him for further promotion in accordance with the rules in force and by affording an opportunity to all eligible persons, who are all similarly placed.

This Writ Petition is disposed of with the above direction.
No costs.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

gm

To

1. The Director of Rural Development and
Panchayat Raj, Panagal Buildings,
Saidapet, Chennai - 15.
2. The Director of Town Panchayats,
Kuralagam, Chennai - 108.
3. The District Collector,
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+1cc to the Government Pleader, S.R.No.35886

Writ Petition No.14499 of 2014

MG(CO)
RLP(05/07/2022)