



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN  
AND  
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No.2856 of 2021

1. The Secretary to Government,  
Rural Development and Panchayat Raj Department,  
Secretariat,  
Chennai 600 009.
2. The Commissioner of Rural Development and  
Panchayat Raj, Panagal Building,  
Saidapet, Chennai 600 015.

... Appellants/ Respondents

vs.

A.Sekaran

... Respondent/ Petitioner

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 10.12.2020 passed by this Court in W.P.No.28901 of 2013.

Prayer in W.P.No.28901 of 2013:

Writ Petition filed under Section 226 of the Constitution of India Praying for the issuance of a writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 1st respondent issued in leter No. 19087/E1/2013-2 R.D.& P.R. Department dated 12.9.2013 and quash the same and consequentially direct the 1st respondent to promote the petitioner as Joint Director Rural Development and Panchayat Raj Department on par with his Junior Thiru T.Sadayappa Vinayaga Murthy who was promoted as Joint Director on 9.1.2013 with all monetary benefits.

For Appellants : Mr.R.Neelakandan,  
Addl. Advocate General  
assisted by  
Mr.M.Kirthika,  
Government Advocate

For Respondent : Mr.S.N.Ravichandran



## J U D G M E N T

(Judgment of the Court delivered by S.VAIDYANATHAN, J.)

The present Writ Appeal has been preferred challenging the order dated 10.12.2020 passed by the learned Single Judge in W.P.No.28901 of 2013.

2. The Respondent herein is the Writ Petitioner. Before the learned Single Judge, the Writ Petitioner challenged the impugned order dated 12.09.2013 passed by the 1<sup>st</sup> Respondent therein and sought for a direction to the 1<sup>st</sup> Respondent to promote him as Joint Director, Rural Development and Panchayat Raj Department, with all monetary benefits, on par with his junior viz. T.Sadayappa Vinayaga Murthy, who was promoted as Joint Director on 09.01.2013.

3. It is seen that, the Respondent/Writ Petitioner joined the services of the Rural Development and Panchayat Raj Department as a Rural Welfare Officer Grade-II (Grama Sevak) on 11.02.1977 and was promoted as Rural Welfare Officer Grade-I in the year 1980. Thereafter, he was promoted to various posts and lastly, he was promoted to the post of Assistant Director in the year 2008. Though, according to the Respondent/Writ Petitioner, he was eligible to be considered for promotion to the post of Joint Director of Rural Development and Panchayat Raj Department and his name was recommended and included in the panel, vide Serial No.15 of the proceedings dated 20.09.2012, his junior viz. T.Sadayappa Vinayaga Murthy was promoted as Joint Director on 09.01.2013. Aggrieved by the same, the Respondent/Writ Petitioner made a representation to the Appellants on 08.11.2012. As the same was not considered, the Respondent/Writ Petitioner filed W.P.No.19860 of 2013. This Court, by an order dated 25.07.2013, disposed of the said Writ Petition, directing the 1<sup>st</sup> Respondent therein to pass appropriate orders on merits and in accordance with law, within a period of twelve weeks. However, the 1<sup>st</sup> Respondent therein rejected the Writ Petitioner's claim for promotion, vide proceedings dated 12.09.2013, and the same was challenged before the learned Single Judge in W.P.No.28901 of 2013.

4. Before the learned Single Judge, it was the case of the Writ Petitioner that, he was not considered for promotion to the post of Joint Director, due to adverse remarks received from the Reporting Officer, as confirmed by the Reviewing Officer. It is seen that, a copy of the 2<sup>nd</sup> Appellant's communication dated 08.11.2012 to the District Collector, Dharmapuri, enclosing the Confidential Report pertaining to the Writ Petitioner for the period from 27.07.2011 to 31.01.2012, was marked to the Writ Petitioner. However, it is the grievance of the Respondent/Writ Petitioner that, a copy of the said communication, was not



served on him.

5. The learned Single Judge, after going through the pleadings and the documents placed before him, came to the conclusion that, the communication pertaining to Adverse Remarks against the Writ Petitioner, has not been served on him and that, there is discrimination; thereby, the learned Single Judge allowed the Writ Petition and granted the relief sought for by the Writ Petitioner.

6. Learned Additional Advocate General appearing for the Appellants submitted that, the learned Single Judge erred in concluding that, Adverse Remarks were not served on the Writ Petitioner. But, Adverse Remarks were served on the Writ Petitioner and he has accepted the receipt of Adverse Remarks, vide Letter dated 22.11.2012 addressed to the 2<sup>nd</sup> Appellant herein. Hence, the question of arbitrariness does not arise, as the Respondent/Writ Petitioner was not eligible to be considered to the post of Joint Director of Rural Development and Panchayat Raj Department.

7. In reply, learned counsel appearing for the Respondent/Writ Petitioner submitted that, the Respondent/Writ Petitioner retired from service on 31.05.2013 and the crucial date for preparation of panel for promotion was 01.03.2012, on which date, there were no Adverse Remarks/Charge Memo/Disciplinary Proceedings pending against him. He pointed out that, the Writ Petitioner's name was included in the panel for promotion prepared in September 2012, vide S.No.15. However, he was not promoted as Joint Director of Rural Development and Panchayat Raj Department, whereas, his junior viz. T.Sadayappa Vinayaga Murthy was promoted to the said post on 09.01.2013 itself, which compelled him to approach this Court seeking necessary relief.

8. Heard the learned counsel on either side and perused the material documents available on record.

9. Though the finding of the learned Single Judge that, Adverse Remarks against the Respondent/Writ Petitioner, were not furnished to him, may not be correct, the learned Single Judge has not looked into the other aspects, viz. (i) the crucial date for preparation of panel for promotion, which is 01.03.2012 (ii) there were no Charge Memo/Disciplinary proceedings pending against the Writ Petitioner and (iii) the Confidential Report dated 15.10.2012 written by the Joint Director/Project Director, DRDA, Erode, to the effect that, the Writ Petitioner is capable of doing work.

10. It is seen that, the Confidential Report pertaining to



the Respondent/Writ Petitioner for the period from 27.07.2011 to 31.01.2012 was served on the Respondent/Writ Petitioner only after the date of his retirement being 31.05.2013. According to the learned counsel appearing for the Respondent/Writ Petitioner, in terms of the instructions to Government Officials, with regard to the preparation of panel for promotion, it has been categorically mentioned that, once a person demits Office, he has no right to touch a file. In case, an Officer is going to be transferred or demits Office in the middle of the academic year for other reasons whatsoever, he can make necessary entries in the employee's Service Register. But, when the Officer has no lien over the post, the Officer who had made Adverse Remarks has no right to do so.

11. Learned counsel appearing for the Respondent/Writ Petitioner drew the attention of this Court to Clause 477(4) of the Instructions issued by the Government regarding preparation of Panel (as per G.O.Ms.No.707, P & AR Department, dated 02.07.1981), as could be seen at page 165 of the Paper Book filed by the Respondent/Writ Petitioner. For better appreciation, the same is extracted below:

"4. Periodicity : Personal files should be maintained half-yearly in the case of probationers and annually for others. The report should ordinarily be prepared for the calendar year, i.e. for the period ending 31<sup>st</sup> December. The reporting Officer should not normally write the personal file unless he sees the performance of the officer reported upon for a period of at least three months during the period for which the report relates. The personal file should be written when the reporting authority demits office either on transfer or for other reasons, in the middle of the year.

Confidential reports need not be written by the Officer after their retirement on superannuation or in other cases after they demit Office."

12. It is further contended by the learned counsel for the Respondent/Writ Petitioner that, due to enmity with the Respondent/Writ Petitioner, the Official, that too after his retirement, has made Adverse Remarks against the Writ Petitioner.

13. In reply, learned Additional Advocate General appearing for the Appellants submitted that, in case, this Court comes to the conclusion that, the observation of the learned Single Judge with regard to Adverse Remarks is liable to be interfered with,



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To:

1. The Secretary to Government,  
Rural Development and Panchayat Raj Department,  
Secretariat,  
Chennai 600 009.

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

Copy To:

1. The Section Officer,  
Writ Section, High Court,  
Madras.
2. The Section Officer,  
Judicial Department,  
High Court, Madras.

+1cc to Mr.S.N.Ravichandran, Advocate, S.R.No.8913

Writ Appeal No.2856 of 2021

VG-II(CO)  
SB(18/03/2022)