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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.9892 of 2016
and
W.M.P.Nos.8879 & 8880 of 2016

R.Periyasamy

...Petitioner

-Vs-

1.The State of Tamil Nadu,
Rep. by its Secretary,
Home (Courts) Department,
Fort St. George, Chennai - 9.

2.The Director of Prosecution (i/c),
Prosecution Department,
Tamil Nadu Slum Clearance
Board Complex,
2nd Floor, No.5, Kamarajar Salai,
Chennai - 600 005.

3.The Deputy Director of Prosecution,
Prosecution Department, Trichy - 1.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for records relating to the second respondent's proceedings made in R.C.No.571/A1/DOP/2016 dated 02.03.2016, quash the same and to consequently direct the respondents 1 to 3 to forthwith consider and promote the petitioner as Assistant Public Prosecutor Grade-I from the date on which his immediate junior was promoted as such with all consequential benefits both service and monetary.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.P.Ganesan,
Additional Government Pleader



ORDER

With the consent of both the parties, this writ petition is taken up for final disposal.

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2. The petitioner herein is aggrieved against the inaction on the part of the respondents in granting promotion to him to the post of Assistant Public Prosecutor Grade-I, as well as the promotion granted to his immediate junior, namely J.Rasheetha.

3. The petitioner herein was appointed as an Additional Public Prosecutor Grade-II on 10.09.2013. He had completed his probation on 09.09.2015 and accordingly, his appointment was regularized with effect from 10.09.2013 onwards. In this background, the promotion panel for the post of Additional Public Prosecutor Grade-I was drawn on 27.01.2016, by fixing the crucial date for promotion as 01.09.2015. Though the petitioner's name found place in Serial No.6 of the promotional panel dated 27.01.2016, he was not granted with the promotion, whereas his immediate junior, namely J.Rasheetha found in Serial No.7, was granted promotion. In this background, the petitioner seeks for promotion with effect from the date on which his immediate junior was promoted.

4. The learned counsel for the petitioner would submit that when the panel for promotion was drawn on 27.01.2016, his services were already regularized with effect from 10.09.2013 and therefore, there is no justification on the part of the respondents in denying promotion.

5. Per contra, the learned Additional Government Pleader appearing for the respondents would place reliance on the averments in the counter affidavit and submit that, as on the crucial date, the petitioner had not completed his probation and therefore, there was no infirmity in not granting promotion to the petitioner.

6. It is a settled proposition of law that when the regularization is declared, it would revert back to the original date of appointment. In the petitioner's case, he was regularized with effect from 10.09.2013. Though the crucial date of the panel was fixed as 01.09.2015, the promotional panel was drawn only on 27.01.2016. As on that date of the panel, the petitioner's appointment was regularized.



7. In this case, the date of drawing of the panel gains significance, since as on that date, the petitioner's services were regularized. While that being so, it would be impermissible for the respondents to calculate the crucial date as 01.09.2015 and stated that the petitioner was under probation as on that date. Hence, this Court is of the affirmed view that when the petitioner's name was rightly included in the promotional panel as fit to be promoted to the post of Additional Public Prosecutor Grade-I, the view of the respondents that he was under probation as on the crucial date, may not be correct.

8. In the light of the above observations, the impugned order dated 02.03.2016, insofar as it relates to the petitioner herein, stating that the petitioner is not eligible for inclusion in the panel, is quashed. Consequently, the second respondent herein is called upon to pass appropriate orders granting promotion to the petitioner herein from the date on which his immediate junior, namely J.Rasheetha, was promoted to the post of Additional Public Prosecutor Grade-I and the consequential promotion orders, along with all the service and monetary benefits. The second respondent shall endeavour to pass such orders atleast within a period of two (2) weeks from the date of receipt of a copy of this order.

9. The Writ Petition stands allowed, accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

hvk

To:

- 1.The Secretary,
Home (Courts) Department,
Fort St. George, Chennai - 9.
- 2.The Director of Prosecution (i/c),
Prosecution Department,
Tamil Nadu Slum Clearance
Board Complex,
2nd Floor, No.5, Kamarajar Salai,
Chennai - 600 005.



3.The Deputy Director of Prosecution,
Prosecution Department, Trichy - 1.

+lcc to Mr.L.Chandra Kumar, Advocate SR.No.2945
+lcc to the Government Pleader, SR.No.3425

W.P.No.9892 of 2016
and

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MT (CO)
CB(31/01/2022)