



W.P.(MD)No.7261 of 2020

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.7261 of 2020
and W.M.P(MD)Nos.6703 to 6705 of 2020

M.Sundarapandian

... Petitioner

Vs.

1.Tamil University,
Rep. By its Vice-Chancellor,
Tamil University,
Thanjavur – 613 010

2. Tamil University,
Rep. By its Registrar-in-charge,
Thanjavur – 613 010

3.D.Revathi

4.M.Karthikeyan

... Respondents

Prayer:Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order in Na.Ka.No.A3/3576/2018 dated 17.03.2020 on the file of the respondent No.2 and the consequential

1/11



W.P.(MD)No.7261 of 2020

impugned Final Seniority List on the file of the respondent No.2 dated 18.03.2020 and quash the same as illegal and consequentially for a direction, directing the respondent to re-fix the Seniority by way of placing, the petitioner above the respondents 3 and 4 and provide promotion to the petitioner in the post of Superintendent within the time period stipulated by this Court.

For Petitioner	: Mr.T.Aswin Rajasimman for Mr.T.Lajapathi Roy
For R1 & R2	: Mr.K.Ragatheesh Kumar for M/s.Isaac Chamber
For R3	: Mr.M.Neduncheziyan
For R4	: Mr.A.P.Muthu Pandian

ORDER

This Writ Petition is filed for issuance of Writ of Certiorarified Mandamus to quash the impugned order in Na.Ka.No.A3/3576/2018 dated 17.03.2020 on the file of the respondent No.2 and the consequential impugned Final Seniority List on the file of the respondent No.2 dated 18.03.2020 and for consequential direction to the respondent No.2 to re-fix the seniority by way of placing the petitioner above the respondents 3 and 4 and provide promotion to the petitioner in the post of Superintendent within the time period stipulated by this Court.

2/11



W.P.(MD)No.7261 of 2020

WEB COPY

2. The case of the petitioner is that the petitioner was appointed as Junior Assistant in Tamil University on 19.05.2006 and he completed his graduation in the year 1991 and later, the petitioner completed the post graduation. The petitioner also completed Ph.D degree. For the past 10 years, the petitioner was not considered for promotion to the post of Assistant to Tamil University. Several juniors who joined in service after the appointment of the petitioner were promoted as Assistants. Hence, the petitioner has filed W.P(MD)No.5928 of 2016. During the pendency of the Writ Petition, several others were promoted on the same date along with the petitioner. The respondents No.3 and 4 were also promoted as Assistants on 31.12.2016. As per Rule 35(a)(a) of the Tamil Nadu State and Subordinate Service Rules, the seniority of a person in a service, class, category or grade shall where the normal method of recruitment to that service, class, category or grade is by more than one method of recruitment, unless the individual has been reduced to a lower work as a punishment, be determined with reference to the date on which he is appointed to the services, class, category or grade; Provided that where the junior appointed to a service, class, category or grade, earlier than the

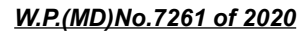


W.P.(MD)No.7261 of 2020

WEB COPY

senior appointed by the same method of recruitment, the senior shall be deemed to have been appointed to the service, class, category or grade on the same day on which the junior was so appointed. However, contrary to the said Rule, seniority was fixed and the respondents 3 and 4 were placed above to the petitioner and the same is contrary to Section 40(2) of Tamil Nadu Government Servant Conditions of Service Act, 2016 also.

3. The essential qualification prescribed for the post of Assistant by direct recruitment is a University Degree and Typewriting Higher Grade in Tamil and English and should have passed the departmental test. For promotion to the post of Superintendent, 2 years of experience as Assistant is the criteria. Therefore, the petitioner is qualified for promotion to the post of Superintendent. However, the second respondent has published the temporary panel/seniority list in which the respondents 3 and 4 were kept below the petitioner's name and the petitioner was with a legitimate expectation that he will be promoted in the existing 5 vacancies in the post of Superintendent in view of



4. The learned counsel for the petitioner would submit that admittedly, the petitioner is senior to the respondents 3 and 4 and they were appointed and entered into service after the date of appointment of the petitioner. However, the Assistant promotion was given to the petitioner as well as the private respondents on 31.12.2016. Accordingly, he prayed for allowing this writ petition.



W.P.(MD)No.7261 of 2020

WEB COPY

5. Per contra, the learned Senior Counsel appearing for the respondents 1 and 2 would submit that admittedly the panel was prepared for the post of Assistant on 02.03.2016. However, the Government granted permission for filling up 11 posts of Assistant on 17.11.2015. However, the petitioner did not possess the technical qualification for the post assistants on 02.03.2016 and he became fully qualified with technical qualification only in August 2016 and though the respondents 3 and 4 are fully qualified for the promotion to the post of Assistant they are not considered at the time on misconception that their initial entry was in self-financing course. Aggrieved by the same, the respondents 3 and 4 have objected for not giving promotion to them on the ground that their initial appointment was against the sanctioned post and bound to consider them for the promotion as Assistants on par with other employees. For non-consideration, the third respondent has filed W.P(MD) No. 10475 of 2019 and this Court by order dated 27.04.2019 issued a direction to the respondents therein to consider the representation of the third respondent dated 28.09.2019 seeking to prepare the revised seniority list on merits and in accordance with law.



W.P.(MD)No.7261 of 2020

Pursuant to which, the impugned order came to be passed and the same cannot be interfered with.

6. The learned Senior Counsel would further submit that on 02.03.2016, 7 posts of Assistants were filled up in which the respondents 3 and 4 were eligible for consideration for the post of Assistant on the said date. The petitioner is not eligible and only on 31.06.2016 the petitioner is qualified himself for the said post and therefore he prays for dismissal of this Writ Petition.

7. The learned counsel appearing for the respondents 3 and 4 would submit that the objection of the respondents 3 and 4 was considered on the same day and they were given promotions on 31.12.2016 and the said orders passed by the second respondent does not warrant interference and he prays for dismissal of this Writ Petition.

8. Heard both sides.



W.P.(MD)No.7261 of 2020

WEB COPY

9. The petitioner entered into service in the year 2006 whereas the respondents 3 and 4 entered into service in the year 2007. Admittedly the petitioner is senior to the respondents 3 and 4. The point for consideration is whether the petitioner is entitled to be considered for promotion for the post of Assistant on 02.03.2016. Admittedly, the petitioner did not possess required qualification on 02.03.2016 whereas the promotion was given to the petitioner as well as the respondents 3 and 4 on 31.12.2016. For not consideration to the post of Assistant on 02.03.2016, the third respondent has filed W.P(MD)No.10475 of 2019 and this Court by its order dated 27.04.2019 issued a direction to the respondents therein to consider the representation of the petitioner dated 28.09.2018 seeking to prepare the revised seniority list and pass appropriate orders on merits and in accordance with law. Pursuant to that, enquiry was conducted and during the enquiry, the petitioner as well as the respondents 3 and 4 have submitted their representations. After considering their representations orders have been passed stating that the respondents 3 and 4 were eligible for the post of Assistant on 02.03.2016 and on the particular date, the petitioner was not eligible. The petitioner



W.P.(MD)No.7261 of 2020

has filed W.P(MD)No.5928 of 2016 before this Court. This Court by its order dated 24.03.2021 has held that the Government vide Letter dated 17.11.2015, granted permission to fill up 33 Non-teaching posts and as per the Syndicate Resolution, seven persons, who possessed necessary educational qualifications for the post of Assistant, were promoted as Assistants. The petitioner did not qualify for the post of Assistant as on 02.03.2016. He became fully qualified only on 21.10.2016. Accordingly, he was given temporary promotion on 31.12.2016. The petitioner claims that his juniors were promoted to the post of Assistant prior to his promotion. However, at the relevant point of time, the petitioner was not possessed the qualifications prescribed for the post of Assistant. Hence, the prayer sought for by the petitioner is misconceived.

10. In view of the above, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

19.12.2022

Index : Yes/No
Internet : Yes/No
CM

9/11



W.P.(MD)No.7261 of 2020

WEB COPY To

1. The Principal Secretary,
Municipal Administration and Water Supply Department,
Chennai – 9
2. The Director of Town Panchayats,
Office of Director of Town Panchayats,
Kurulaagam,
Chennai – 108.
3. The District Collector,
District Collector's Office,
Trichy – 1,
Trichy District.
4. The District Collector,
District Collector's Office,
Karur, Karur District.
5. The Assistant Director of Town Panchayats,
Office of Assistant Director of Town Panchayats,
District Collector's Office, Trichy -1
6. The Executive Officer,
Town Panchayats,
Old Jayankonda Chollapuram,
Karur District.
7. The Assistant Director of Town Panchayats,
Office of Assistant Director of Town Panchayats,
Dindigul Collector's Office,
Dindigul, Dindigul District.



WEB COPY



W.P.(MD)No.7261 of 2020

M.DHANDAPANI,J.

CM

W.P.(MD)No.7261 of 2020
and W.M.P(MD)Nos.6703 to 6705 of 2020

19.12.2022