



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.02.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P. (MD)No.24677 of 2018

WEB COPY

1.A.Baskar

2.S.Amutha

3.K.Kalai Selvi

4.C.Anudheepa

5.V.Muthu Lakshmi

6.J.Panimayam

... Petitioners

vs.

1.The Additional Chief Secretary/
Commissioner of Revenue Administration,
Chepauk, Chennai -5.

2.The District Collector,
Kanniyakumari District.

3.The District Revenue Officer,
District Collector's Office, Nagercoil.

4.E.Sekar,
Senior Revenue Inspector,
Thovalai Taluk,
Kanniyakumari District.

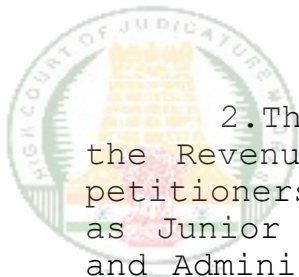
... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the third respondent, vide Na.Ka.No.A3/24460/2017, dated, 16.11.2018 and to quash the same and consequently to direct the respondents 2 and 3 to include the petitioners' name in the panel of assistants drawn for the year 2015 in Kanniyakumari District.

For Petitioner	: Mr.S.Vijayakumar
For R1 to R3	: M/s.D.Farjana Ghoushia Special Government Pleader
For R4	: No appearance

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the third respondent, vide Na.Ka.No.A3/24460/2017, dated, 16.11.2018 and to quash the same and consequently to direct the respondents 2 and 3 to include the petitioners' name in the panel of assistants drawn for the year 2015 in Kanniyakumari District.



2.The brief facts of the case are that the petitioners joined the Revenue Department as Typist through TNPSC on 19.02.2013. The petitioners had successfully completed the Departmental Test as well as Junior Assistant training in terms of G.O.Ms.No.417, Personnel and Administrative Reforms (Per.B) Department, dated 01.12.1993 and have completed probation on 19.02.2015 and are eligible to be posted as Assistants for the year 2015. The crucial date for drawl of panel for the post of Assistant is 15th March every year. Since the petitioners have completed departmental test and under gone training as Junior Assistant for a period of one year, the petitioners are claiming to include in the panel of Assistants for the year 2015. The combined seniority list for Junior Assistant and Typist was drawn by the second respondent, vide proceedings, dated 04.02.2015, but the petitioners name was not in the list. Even though the petitioners have completed departmental test and training for one year as Junior Assistant, the petitioners have not under gone training at Tamil Nadu Land Survey Training Centre, Orathanadu, within the period, due to administrative reasons on the part of the second respondent. Aggrieved over the non-inclusion of the petitioners name, the petitioners submitted a representation, dated 17.04.2017, before the second respondent. The petitioners also submitted that some of the juniors who are in Serial Nos.60,61,62,63,64 and 66 have been given promotion to the post of Assistant over looking the seniority drawn by the second respondent on 04.02.2015. The representation of the petitioners was dismissed stating that there is no lapse on the part of the respondent to send the petitioners for training in Orathanadu. Therefore, the petitioners are not eligible to become Assistants in the year 2015. Aggrieved over the said order, the petitioners preferred an Appeal to the first respondent on 01.08.2017. Since the same was not considered, the petitioners approached this Court in W.P.(MD) Nos.19446, 19447, 19448, 19449, 19450 and 19451 of 2017 and this Court, vide order, dated 06.11.2017, directed the respondents to pass orders on merits.

3. Since the said order was not complied, Contempt Petitions in Cont. P. (MD) Nos.202 to 207 of 2018 were filed individually. The first respondent passed an order setting aside the Collector's order, dated 15.04.2013, as well as the notification of the District Revenue Officer, dated 20.03.2015, promoting M/s.P.Syed Ali Fathima, S.Amalarani, R.Nagaveni, R.Chanddrapraba and J.Geena as Assistants whom the appellants have quoted as juniors and directed the authorities to pass fresh order as per rule in force. Aggrieved over the said order of the first respondent, the above stated persons filed W.P.(MD)No.8245 to 8248 of 2018, to quash the order of the first respondent, dated 17.03.2018 and this Court has set aside the order and directed the respondents to grant sufficient opportunity to the individuals and pass a fresh order. Thereafter, fresh enquiry was conducted by the first respondent on 11.06.2018, even though the enquiry was conducted, the first respondent did not

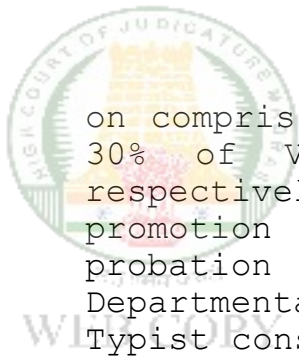


4.Hence, the petitioners approached this Court in W.P.(MD) No.18524 of 2018. Thereafter, the first respondent, vide proceedings, dated 30.08.2018, passed an order upholding the reversion of the above said individuals. The reason stated in the order is as per Rule 34 (a) Annexure V para 8 (A) of the Tamil Nadu Ministerial Service Rules, Junior Assistant or Junior Assistant cum Typist, appointed by recruitment by transfer should complete fundamental training for a period of two months within one year from the date of appointment of the posts. Since the above said individuals has not completed the foundational training as contemplated, they are not qualified for the promotion of the post of Assistants. Therefore, the first respondent directed the appropriate authority to pass a fresh order. In the same order the first respondent directed the second and third respondents to consider the petitioners and others and pass the revision order by considering the claim. The third respondent passed an order, dated 16.11.2018, declining to include the petitioners in the panel drawn in the year 2015 and the reason stated as the petitioners have not undergone separate training on the crucial date of drawal of panel on 15.03.2015. In addition to this, it was observed that Fundamental Rule 9(6)(b) Appendix 1 Annexure 1 would apply for possession of service qualification.

5.The contention of the petitioner is that the first respondent has categorically found that the promotion given to the above said individuals are against the Rule 34 (a) by the Tamil Nadu Ministerial Service Rules. But in the case of the petitioners, they have completed the said training but, the reason adduced is they have not completed the training in the Orathanadu. The admission in the training center is within the domain of the respondents and the petitioners are not having any right to demand for training.

6.In similar cases, this Court has held as far as the Bhavani Sagar Training, as well as the Survey Training in Orathanadu is concerned, the petitioners are sent to the training, based on the availability of vacancy. Each year only 15 to 30 persons will be sent for training. Since it is within the domain of the respondents, the petitioner cannot be blamed for not undergoing training. If the petitioner was sent for training, then they would have completed it. The delay is caused by the respondents by not sending the petitioners for training. There are several judgments where it has been stated that the individuals ought to be considered, if they are qualified otherwise. In the present case, the petitioners are qualified and therefore, the petitioners are requesting to include their name in the panel.

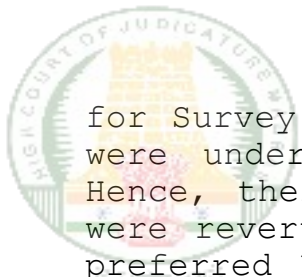
7. The respondents have filed a counter affidavit stating that the panel of Assistants are drawn from the category of eligible Junior Assistants (Junior Revenue Inspectors), Steno Typist, Typist Administrative Officers. Any such panel drawn would be



on comprising of 65% of qualified Junior Revenue Inspectors Typist, 30% of Village Administrative Officers and 5% Steno Typist respectively. Any Junior Revenue Inspectors are considered for promotion as Senior Revenue Inspector, should have completed a probation period of 2 years, besides qualifying the prerequisite Departmental Test and also fundamental training. Any Typist / Steno Typist considered for promotion to the above post should have passed the prescribed Departmental Test. They should undergo a probation period for two years as Typist should have been imparted training as Junior Assistant for a period of one year and should have completed survey training.

8. In the case of Village Administrative Officers, for promotion to the post of Senior Revenue Inspector, the candidate should have put in a service of 6 years in the post of Village Administrative Officer and should have passed the necessary departmental exams. Until the year 2001, Village Administrative Officers were not directly considered for promotion to the post of Assistant. As per the G.O.Ms.No.781, Revenue Department, dated 25.05.1985, any Village Officer who have put in 5 years of service in the post indenting further promotion were converted as Junior Assistant, since the Junior Assistant post and Village Administrative Officers are of the same cadre sharing an identical scale of pay. No separate period of probation has to be observed by a Village Administrative Officer turned Junior Assistant in the post of Junior Assistant. As per G.O.Ms.No.386 Revenue (Service 7-1), department, dated 01.10.2001, the Government has ordered that any qualified Village Administrative Officer, who have put in a period of 10 years service, shall be promoted as Assistant. Later as per the G.O.Ms.No.78, Revenue (Service 7-1) Department, dated 16.02.2015, the Government further modified the rule provision to the effect that any qualified Village Administrative Officer, who have put in a period of 6 years of service in the post shall be promoted as Assistant. In this case, Syed Ali Fatima and others are appointed as Village Administrative Officers of the year 2008 were appointed as Junior Assistant in the year 2013. The individuals joined in the post of Junior Assistant and continued to work as Junior Assistant until 2015. Since the above incumbents, who were in feeder category list of Junior Assistant had passed all the departmental test and completed the fundamental training required for promotion, they were included in the list of Assistants drawn on 20.03.2015. The present petitioners were under Survey Training, on the crucial date. Hence, their names were not considered for promotion as Assistant Revenue Inspector.

9. The claims of the petitioner is for inclusion of their names in the list of Assistants 2015. It was held that as per FR-9 (6) (b) Appendix-1 Annexure-1 Survey and Settlement Training shall be imparted to officials only after completion of their probation in the lower post and that the petitioners having completed their



for Survey training from 12.03.2015 to 15.04.2015. Therefore, they were undergoing training on the crucial date, i.e., 15.03.2015. Hence, their names were not included. Syed Ali Fatima and others were reverted to Village Administrative Officer post and they have preferred W.P.(MD)Nos.23610 to 23613 of 2018 and this Court, vide order, dated 28.11.2018, has directed them to file Revision Petition before the Government and the same is pending. As on date, the said Syed Ali Fathima and others are still working as Village Administrative Officers. Hence, the respondents prayed for dismissal of the Writ Petition.

10. Heard Mr.S.Vijayakumar, learned Counsel appearing for the petitioners and M/s.D.Farjana Ghoushia, learned Special Government Pleader appearing for the respondents 1 to 3.

11. It is an admitted fact that the petitioners Baskar and others have completed the probation and the departmental test and the training for 2 years period. On 18.02.2015, they have not completed the Tamil Nadu Land Survey Training Centre, Orathanadu. According to the respondents, the petitioners were attending the Survey Training from 12.03.2015 to 15.04.2015. The crucial date for inclusion in panel is 15th March of every year. Since the petitioners were undergoing training on the crucial date, the respondents contended that they have not been included. The respondents have relied on FR-9(6)(b) Appendix-1 Annexure-1. This Court has considered the said issue in W.P.(MD)No.4553 of 2018, dated 23.03.2018 and has held that the service qualifications cannot be equated to the qualification of a pass in the departmental test. While the pass in the departmental test may be in the hands of the persons. The undergoing of training is not in the hands of the petitioners. The District Collectors alone can ask them to undergo such training. In the present case, the petitioners are undergoing training on the crucial date. Therefore, on the crucial date the petitioners have passed the departmental test. The only qualification which is missing is that they have not undergone training. In a similar issue like this in Bhavani Sagar training, this Court has held that the respondents are responsible for sending the eligible persons for training and it is not at the hands of the employees. Therefore, this cannot be put against the employees. The petitioner has also relied on Writ Appeal W.A.No.1582 of 2011, Writ Appeal W.A.No.2216 of 2013, dated 03.04.2014 and Writ Petition W.P.No.16761 of 2011, dated 18.02.2013. This Court has held denial of promotion for not possessing the service qualification is unreasonable and arbitrary and the relevant portion is extracted under:

"4.The issue as to whether the person can be denied promotion for not possessing the service qualification, without his default, if he is otherwise qualified, was considered by the Supreme Court in the decision reported



in 1996 (8) SCC 671 [VIJAYWADA GUNTUR TENALI URBAN DEVELOPMENT AUTHORITY AND OTHERS vs. MOVVA RANGA RAO AND OTHERS] and a Division Bench of this Court in W.A.No.509 to 511 of 2008. In the above said judgments, it is held that the Government servant cannot be denied promotion for want of service qualification, if he was not given a chance to acquire the service qualification by the department head. As the department is bound to place the Government servant in a particular post, to acquire the service qualification, the officer/employee cannot be blamed for not possessing such service qualification. The Department head failed to adhere to the direction issued in the above Government Letter dated 11.01.2000. Similar issue was considered by one of us (NPVJ) in the decision reported in 2012 (4) MLJ 535 [A.BADHRACHALAM vs. PRINCIPAL SECRETARY / COMMISSIONER OF REVENUE ADMINISTRATION, CHEPAUK, CHENNAI # 600 005 AND ANOTHER]. In the said judgment, several judgments on this line rendered earlier were followed and held that service qualification can be acquired only if a posting is given in the particular post by the head of the department and the Government servant cannot be blamed. The denial of promotion on that ground alone, if he is otherwise qualified, is unreasonable and arbitrary.

5.Applying the said judgments to the facts of these cases, the writ appeal and the writ petition are disposed of, with a direction to the department to give promotion to the appellant in the post of Joint Commissioner of Labour notionally from 01.05.2009, i.e. from the date of promotion vacancy arose for the year 2008-2009 for the purpose of revision of pension alone. The respondent department is directed to pass orders to that effect and revise his pension and pay the arrears of revised pension, within a period of three months from the date of receipt of a copy of this order. No costs."

12. Hence, this Court is of the considered opinion that the petitioners are eligible to be included in the seniority panel of 2015. Therefore, the impugned order is set aside and the respondents are directed to include the petitioners in the panel of 2015. As far as the Review Application pending before the Government is concerned, the respondents are directed to adhere to the observation stated supra before considering the Review Application of the Syed Ali Fathima and others. The Government is directed to pass a comprehensive order so that the two batches are not litigating further on this issue.



13. With this direction, the Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar (P&A)

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Sub Assistant Registrar(CS)

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Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The Additional Chief Secretary/
Commissioner of Revenue Administration,
Chepauk, Chennai -5.

2. The District Collector,
Kanniyakumari District.

3. The District Revenue Officer,
District Collector's Office, Nagercoil.

+1 CC to M/s.SPL GP (SR-8936[F] dated 28/02/2022)

+1 CC to M/s.S.VIJAYAKUMAR, Advocate (SR-9027[F] dated 28/02/2022)

W.P.(MD)No.24677 of 2018
25.02.2022

RK(22/03/2022) 7P 6C