



W.P.(MD) No.19148 of 2018

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.08.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD) No.19148 of 2018

S.Nageswaran

... Petitioner

Vs.

1.The District Collector,
Tiruchirapalli District,
Tiruchirapalli.

2.The Regional Special Deputy Collector,
Refugee Camp,
Kottapattu,
Tiruchirapalli East Taluk,
Tiruchirapalli.

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, calling for the records of the first respondent i.e., the District Collector, Tiruchirapalli, relating to the impugned orders passed in Na.Ka.A3/16791/2018, dated 18.08.2018 and quash the same and consequently, direct the first respondent i.e., the District Collector, Tiruchirapalli to promote the petitioner as Junior Assistant since such rejection cannot be made on the ground raised in the impugned order, within a specified



W.P.(MD) No.19148 of 2018

time frame that may be fixed by this Court.

For Petitioner : Mr.S.Viswalingam

For Respondents : Mr.G.Suriyaananth
Additional Government Pleader

ORDER

The petitioner's request for promotion to the post of Junior Assistant has been rejected by the District Collector / first respondent herein, through the impugned order, dated 18.08.2018, by stating that as per the five requirements for such promotion, the petitioner should have undergone one year training as a Record Clerk, which he has not undertaken. The other requirements for the promotion have been fulfilled by the petitioner, which aspect is not in dispute. Thus, the only reason for rejection is that the petitioner had not undergone the training as a Record Clerk for one year.

2. For the purpose of subjecting the petitioner for such training, the respondents herein, have to depute him to undergo such training. If such deputation for one year training is not undertaken by the respondents, they cannot cite their own lacuna as an impediment for promoting the petitioner.



W.P.(MD) No.19148 of 2018

WEB COPY

3. In identical circumstances, in the case of ***S.Sasisivanandam Vs. District Collector, Thoothukudi District, Thoothukudi and another*** reported in ***(2012) 1 MLJ 634***, it has been held that when the matter of posting of an employee to a particular post lies within the domain of the concerned Authority and when the employee cannot be blamed for not acquiring the service qualification regarding the said posts, denial of benefit of inclusion of employee's name in the panel for promotion on such ground, is not justified.

4. Similar views have also been taken in the case of ***K.Ahamed Ali and others Vs. The Principal Secretary / Commissioner of Revenue Administration, Chepauk, Chennai and others*** in ***W.P.Nos.28666 & 30475 of 2012***, in the following manner:

“9. Reliance was placed upon the order passed by the Government in G.O.Ms.No.16, Personnel and Administrative Reforms Department dated 21.02.2002, wherein it is stated that no typist shall be eligible for promotion as Assistant or to the posts, which carry the scale of pay of Assistant in any Department, unless he or she undergone training as Junior Assistant for a period of one year without detrimental to their Typist



W.P.(MD) No.19148 of 2018

WEB COPY

work.

10. In the light of the said rule proposition, the petitioners who have not underwent the training for a period of one year as a Junior Assistant, are not eligible for promotion. It is only, if the Typists complete their training for a period of one year, their names can be included in the panel for promotion and the probable date by which the petitioners can be deemed to have undergone such training can only be in February 2013 and therefore, the promotion given to them was rightly cancelled by the Department.

11. Mr.S.Vijayakumar, the learned counsel appearing for the petitioners stated that in no other District in Tamil Nadu this practice has been adopted and only in Villupuram District, en masse the typists were reverted and at no point of time, the petitioners have declined for undergoing training. On the other hand, for no fault of theirs, they have never been deputed for such training and this cannot be held against them.

12. He also stated that in similar circumstances, one A.Badhrachalam, a candidate from Krishnagiri District successfully challenged his non-inclusion in the panel for the post of Deputy Tahsildar for the year 2011 only on the ground that he was not sent for training.



W.P.(MD) No.19148 of 2018

WEB COPY

13. This court vide order dated 17.04.2012 in W.P.No. 9354 of 2012 [A.Badhrachalam vs. The Principal Secretary/Commissioner of Revenue Administration, Chepauk, Chennai 600 005 and another] has held that the power of posting an employee in a particular post lies within the domain of the concerned authority. However, an employee cannot be blamed for non-possessing of required service qualification and denial is not justified.

14. He also referred to one other decision of this court decided in identical circumstances in W.P.No.37729 of 2006 dated 28.01.2010 [P.Vijayaraghavan vs. The Special Commissioner and Commissioner for Revenue Administration, Ezhilagam, Chepauk, Chennai 600 005 and another]. In that case, the petitioner belonged to the Dharmapuri District and in para Nos.10 and 11 of the said order, this court has observed as follows:

"10. Since the first respondent did not insist one year training as Junior Assistant for other Typists, the same has to be considered by the first respondent in the case of the petitioner also. Hence, the impugned order is liable to be quashed. Accordingly, the same is quashed and the first respondent is directed to consider the



WEB COPY



W.P.(MD) No.19148 of 2018

claim of the petitioner for inclusion in the panel of Junior Assistant/Typists of the year 1997-1998 for promotion to the post of Assistant in the light of the Government letter No.97664/93-1 dated 16.12.1998 and grant relaxation for training as Junior Assistant for one year as given to other Typists during 1994.

11. Accordingly, the writ petition is allowed. The first respondent is directed to complete the said exercises within a period of twelve weeks from the date of receipt of a copy of this order. No costs."

The said matter was taken up on appeal by the State Government in W.A.No.123 of 2012 and the Division Bench of this court by order dated 20.01.2012, dismissed the writ appeal and in para No.2 and 3, it was observed as follows:

"2. It appears that promotion to the respondent/writ petitioner was denied mainly on the ground that he had not undergone one year training as junior assistant. The learned Single Judge found the other similarly situated typists were given the benefit of promotion without they having undergone the said training and therefore the



W.P.(MD) No.19148 of 2018

WEB COPY

respondent/writ petitioner should also get the same benefit.

3. We do not find any error in the impugned order. The writ appeal is therefore dismissed. ..."

15. The learned counsel for the petitioners also produced one other decision of this court in identical circumstances, in relation to Labour department matter in the case relating to [T.Tamilarasi and and two others vs. The Government of Tamil Nadu, rep.by its Secretary, Labour and Employment Department, Fort St.George, Chennai] By a common order dated 22.11.2007 in W.P.Nos.23081, 23083 and 31714 of 2007, this court took a similar position. In that case, the court placed reliance upon the judgment of the Supreme Court reported in (1996) 8 SCC 762 [State Bank of India and others vs. Kashinath Kher and others] and at Para 10 of the said judgment it is held as follows:

"10. Having considered the respective contentions, the question arises whether the action taken by the appellant in making the officers who have not completed the required service of the line assignment and rural/semi-



WEB COPY



W.P.(MD) No.19148 of 2018

urban service and considering their case, found them fit and placed them in List B is violative of Article 14? We find that the stand taken by the Bank appears to be just and fair on the facts of the case. It would be seen that from 1986 onwards no promotions have been made. Despite directions issued in 1986 as a one-time measure directing all the circles to post the officers to line assignment and for rural/semi-urban assignment from 1989, no steps have been taken at the circle level to comply with the directions given by the Board and the Executive Committee. Consequentially, officers, who are otherwise eligible and entitled to be considered were made ineligible for no fault of theirs. Under those circumstances, it necessitated to relieve hardship to such officers due to the inaction or skilful manoeuvre at circle level. Fortuitous circumstances in the case of some officers who completed the criteria would be a ground for them to steal a march over officers who are otherwise eligible and they cannot be made to suffer injustice; denial of their legitimate expectation of consideration of their cases for



W.P.(MD) No.19148 of 2018

WEB COPY

promotion would be unjust and unfair. It is true, as rightly contended by Ms Nisha, that the criteria being conditions of service cannot be relaxed. Service conditions being essential conditions cannot be relaxed and it is not the case of the appellant-Bank that they have done that exercise. What the Board has done is giving an opportunity to the officers, who are otherwise eligible, to complete the required service conditions and then they would be given promotion, on completion of requisite conditions thereof. In view of the fact that they did not have the opportunity to serve and complete the qualifying service, with a view to see that those who had the advantage of completing the service would not steal a march over the seniors, they equally adopted an equitable principle of putting the officers in List B and giving them seniority after promotion below his immediate senior in MMGS-II so that injustice will not be meted out to such officers for no fault of theirs. The procedure adopted by the Bank is just, fair and reasonable."



W.P.(MD) No.19148 of 2018

WEB COPY

5. Likewise, in the case of ***Tmt.A.Radha Vs. Government of Tamil Nadu, Rep. by Secretary to Government, Commercial Taxes and Registration Department, Secretariat, Chennai - 600 009 and others*** in ***W.P.No.23689 of 2012***, dated 10.03.2022, this Court has held as follows:

“6. In similar circumstances, an Hon'ble Division Bench of this Court in the case of Government of Tamil Nadu, Environment and Forest Department Vs. K.Anbalagan and others passed in W.A.No.2682 of 2019, dated 07.07.2021, had held that failure on the part of the authorities in not deputing the employees for the mandatory training in time, cannot be put against them, for the purpose of interfering with their promotion. The relevant portion of the judgement reads as follows:-

"7. No doubt, the above said Rule 5 stipulates other qualification such as Vaigai Dam Training as mandatory. However, unless the appellants depute the respondents for such training at the appropriate time, they could not be expected to complete the same. The respondents, who are the employees, may not compel the appellants to depute them for the training. The alleged non-completion of the training by the writ



WEB COPY

W.P.(MD) No.19148 of 2018

petitioners/respondents herein within the stipulated period of not their fault and the same cannot be put against them, dis-entitling them for getting their promotion. It is also pointed out that the juniors to the respondents have marched ahead of them by getting a promotion. Therefore, the contention of the learned State Government Counsel that a person can be promoted based on merit and ability apart from seniority and the departmental promotion committee alone is competent to recommend the person fit for promotion cannot be accepted."

6. In the instant case, when the duty to subject the petitioner to undergo the training of Record Clerk lies in the domain of the respondents herein, denying the benefits of promotion, without subjecting the petitioner to undergo such training, is unjustifiable, in the light of the above said decisions.

7. When the petitioner herein had specifically submitted that the respondents have not deputed him for the training as a Record Clerk during his service, the respondents have not denied the same in their counter



W.P.(MD) No.19148 of 2018

affidavit. As a matter of fact, they were given opportunities to file an additional counter affidavit on 18.07.2022, 01.08.2022 and 08.08.2022, during which hearings, they have only sought for further time for filing of such affidavit. Even in the written instructions given by the District Collector to the learned Additional Government Pleader, dated 20.08.2022, a reference has been made that two other employees, who were deputed for the one year training, but not the petitioner herein. Thus, by applying the ratio laid down in the aforesaid decisions, this Court is of the view that since the mandatory one year training as Record Clerk was not extended to the petitioner by the respondents herein, such failure cannot be put against the petitioner herein and consequently, he would be entitled for the promotion to the post of Junior Assistant from the date on which his immediate Junior was promoted.

8. Accordingly, the impugned order passed by the first respondent in Na.Ka.A3/16791/2018, dated 18.08.2018, is hereby quashed and consequently, there shall be a direction to the first respondent to forthwith pass appropriate orders promoting the petitioner as Junior Assistant from the date on which his Junior was promoted, together with all service and monetary



W.P.(MD) No.19148 of 2018

benefits, within a period of six weeks from the date of receipt of a copy of this order.

9. This writ petition stands allowed. No costs.

22.08.2022

Index : Yes
Speaking Order

TM

To

- 1.The District Collector,
Tiruchirapalli District,
Tiruchirapalli.
- 2.The Regional Special Deputy Collector,
Refugee Camp,
Kottapattu,
Tiruchirapalli East Taluk,
Tiruchirapalli.



WEB COPY



W.P.(MD) No.19148 of 2018

M.S.RAMESH,J.

TM

W.P.(MD) No.19148 of 2018

22.08.2022