



WEB COPY

W.P.(MD)No.9610 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 27.04.2022

PRONOUNCED ON: 19.05.2022

CORAM

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

W.P. (MD)No.9610 of 2016

and

W.M.P. (MD)Nos.7641, 7642 and 17032 of 2016

and 16836 of 2017

T.Mathiarasan

... Petitioner

vs.

1.The Government of Tamil Nadu,
represented by its Prinicipal Secretary,
Rural Development and Panchayat Raj Department,
Fort St.George, Chennai.

2.The Director,
Rural Development and Panchayat Raj Department,
Panagal Building, Saidapet,
Chennai- 600 015.

3.The District Collector,
Thanjavur District, Thanjavur.

4.The Block Development Officer,
(Village Panchayats), Budalur,
Thanjavur 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 pertaining to the impugned memo, dated 12.06.2015 in Na.Ka.No.8314/2014/K.2 and the proceedings, dated 22.05.2014, in Na.Ka.No.04/2014/K.2, passed by the 3rd respondent in so far as placing the petitioner between Punithavathi and Thilagavathi to quash the same and to direct the respondents 2 and 3 to place the petitioner between K.Govindarajan and Mullaivanam in the seniority panel for the post of Block Development Officer.

For Petitioner

: Mr.M.Saravanan

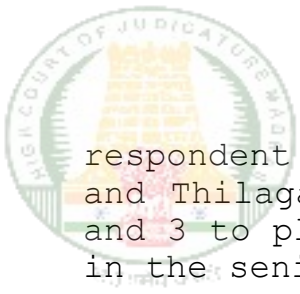
For Respondents

: M/s.D.Farjana Ghoushia

Special Government Pleader

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned memo, dated 12.06.2015 in Na. Ka. No. 8314 / 2014 /K.2 and the proceedings, dated 22.05.2014, in Na. Ka. No.04/2014/K.2, passed by the 3rd



respondent in so far as placing the petitioner between Punithavathi and Thilagavathi to quash the same and to direct the respondents 2 and 3 to place the petitioner between K.Govindarajan and Mullaivanam in the seniority panel for the post of Block Development Officer.

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2. The brief facts of the case are that the petitioner was selected by TNPSC for Group IV service and the petitioner joined the service as Junior Assistant on 31.10.1994. The petitioner passed the required department test on 28.12.1998 and was promoted as Assistant. The petitioner applied for mutual transfer and the second respondent by his proceedings, dated 15.02.2000 transferred the petitioner from Pudukkottai to Thanjavur district in the place of Devadass and the petitioner joined the service on 17.04.2000. The above order of mutual transfer was passed under Rule 20 b (i) of Tamil Nadu Ministerial Service Rules. The said Devadas is senior to the petitioner in service.

3. The contention of the petitioner is that as per Rule 20 (b) (i) the said Devadass was given the petitioner's place in the seniority list in Pudukkottai District. The petitioner's seniority should have been fixed based on the first appointment in the service, i.e., 31.10.1994. The petitioner submitted representations from the date of transfer to the Thanjavur unit to the fixed the petitioner's seniority as per Rule 20 (b) (i). The grievance of the petitioner is that he was not even placed in the seniority list and he was left out from the seniority list. The petitioner's seniority should have been fixed based on the date of his first appointment because the petitioner was transferred in mutual transfer. The petitioner has submitted representations on 09.07.2001, 25.10.2005 and 23.03.2007. By proceedings, dated 02.04.2007, the Joint Director, Regional Institute of Rural Development, Pattukkottai, has forwarded the petitioner's request for fixation. Subsequently, vide proceedings, dated 14.07.2008, the Joint Director has sent another proposal for fixation. Ultimately, vide proceedings, dated 04.04.2008, the third respondent included the petitioner's name in the seniority list as on 01.01.2008. The grievance of the petitioner is that he was placed behind several persons who were juniors in the date of first appointment. The petitioner joined the Thanjavur unit in the year 2000. The petitioner was placed in the seniority list by not taking the date of joining in the year 2000. The petitioner should have been placed in the seniority list, based on the date of appointment and due to the delay caused by the third respondent, the petitioner's name was not included in the seniority list. Consequently, the petitioner was not posted as Rural Welfare Officer Grade I, which is a requirement for promotion as Deputy Block Development Officer. Even the petitioner's representation was forwarded but the same was kept pending.



4. Thereafter, by an order, dated 22.05.2014, the respondents fixed the petitioner's seniority as per Rule 20 b (i) and placed the petitioner between Govindharajan and Mullaivanam. In the order, the third respondent has stated that the petitioner was not posted as Rural Welfare Service Grade I and hence, he is not entitled to promotion with effect from 01.03.2010. The third respondent held that the petitioner is entitled to be promoted notionally and placed between Govindharajan and Mullaivanam, the promotion was granted with effect from 01.03.2010 by citing the delay in serving as Rural Welfare Officer Grade I. Challenging that portion of the order, dated 22.05.2014, the petitioner had preferred an appeal before the second respondent on 23.06.2014. The third respondent, vide letter, dated 12.06.2015, has informed the petitioner that his request to implement the order, dated 22.05.2014, was rejected by the second respondent. In the meanwhile, the respondents have taken steps to promote the petitioner's juniors as Block Development Officers in the third week of May, 2016. Aggrieved over the same, the present Writ Petition is filed.

5. While admitting this Writ Petition, this Court has granted interim stay, dated 06.06.2016. The respondents have filed a vacate stay petition along with counter affidavit. In the counter affidavit, it has been stated that the petitioner was initially appointed as Junior Assistant on 31.10.1994 in Panchayat Development unit of Pudukottai District. Then, promoted as Assistant on 28.12.1998. Subsequently, the petitioner applied for district transfer and the same was allowed, subject to the condition that seniority of the individual will be fixed as per Tamil Nadu Ministerial Service Rules, 20 (b) (i). In respect of Rural Development and Panchayat Raj Department from Junior Assistant to Block Development Officer categories, the "District" is the "Administrative Unit" for all the establishment related matters. The administrative unit described in the above said ruling the Rural Development Unit of Thanjavur district and Pudukkottai district are not one and the same. As per ruling, the date of joining as Assistant, i.e., 28.12.1998, in Pudukkottai district unit could not be taken in the administrative unit of Thanjavur district. Hence, the date of joining as Assistant in Thanjavur district administrative unit is taken into account and his seniority in Thanjavur district is fixed on that basis.

6. The petitioner joined as Assistant in Thanjavur District on 17.04.2000, Hence, the joining date in the district unit is taken into account. Based on that, his name was placed in between Rengasamy and Elangovan as per Thanjavur District Collector's proceedings, dated 04.04.2008. The temporary panel of Deputy Block Development Officers in Thanjavur District has been drawn and published in proceedings, dated 13.01.2016 and appeal provision has been incorporated in the said order and the petitioner herein



without challenging same or preferring appeal within 30 days, has filed the present Writ Petition and therefore, the present Writ Petition is not maintainable. Based on his representation, the petitioner's seniority was refixed, by taking into consideration his date of joining as Assistant in Pudukkottai district, vide proceedings, dated 22.05.2014. Since the petitioner completed the period of Rural Welfare Officer Grade I only on 15.12.2009, his name was included in the panel for consideration for the promotion to the Deputy Block Development Officer with effect from 01.03.2010. Therefore, the respondents prayed to dismiss the Writ Petition.

7. Heard Mr.M.Saravanan, learned Counsel appearing for the petitioner and M/s.D.Farjana Ghoushia, learned Special Government Pleader appearing for the respondents and perused the records.

8. The claim of the petitioner is that since his seniority was not fixed after joining the Thanjavur unit, the petitioner was not allowed to undergo Rural Welfare Officer Grade I training immediately after joining the Thanjavur unit. The petitioner has joined Thanjavur district on 17.04.2000 as Assistant. Thereafter, the petitioner's seniority was fixed vide proceedings, dated 04.04.2008. Since there was a belated fixation of seniority the petitioner was not sent for Rural Welfare Officer training within one year from 2000. After fixing the seniority on 04.04.2008, the petitioner was sent for training and the petitioner has completed training on 15.12.2009. Thereafter, his name was included in the panel for the promotion to the Deputy Block Development Officer with effect from 01.03.2010. As rightly pointed out by the learned Counsel appearing for the petitioner, there is a delay of 8 years in fixing the seniority. If the respondents had fixed the seniority in the year 2000 itself, the petitioner would have completed the training in Rural Welfare Officer in the year 2001 itself. The training in Bhavani Sagar or the Rural Welfare Officer or any training for the Junior Assistant post are considered as service qualification. Belated training is a reason attributed on the respondents and there is no mistake on the part of petitioner.

9. This Court has decided in several cases that if there is delay in sending for training, the benefit ought to be granted to the employee. This Court in W.P.(MD)No.19364 of 2015, dated 31.03.2016, in the case of **A.G. Murali Vs Government of Tamil Nadu** has held as under:

"6. Indisputably, sending an employee for further training is within the wisdom of the immediate employer viz., the second respondent in the instant case. The fact remains that the petitioner was not included in the panel for the year 2009-10 only on the ground that he did not undergo requisite training. It is also not denied that the petitioner's juniors were sent for training and were



promoted. As such, it is clear that for no fault of the petitioner, he has been penalized which cannot be appreciated.

7. In a similar circumstance, this Court in *S. Balakrishnan v. The Director of Treasuries and Accounts, Chennai* and another [W.P.No.1141 of 2009], disposed of on 17.04.2009, held that no employee can be denied promotion on the ground that he did not undergo training for the prescribed period, when the Department did not send him for training and the same was subsequently confirmed by a Division Bench of this Court in *W. A. No. 1747 of 2009*, dated 24.02.2010.

8. The petitioner cannot be blamed for not undergoing training and the non-inclusion of the petitioner's name in the panel for promotion to the post of Assistant Treasury Officer / Senior Superintendent for the year 2009-2010 and denying promotion to him as Assistant Treasury Officer / Senior Superintendent on the date when his juniors were given promotion, cannot be justified. In my considered opinion, the petitioner should be treated on par with his immediate junior, as otherwise, it would amount to clear violation of Article 14 of the Constitution of India. Further, taking note of the subsequent promotion given to the petitioner, he shall be notionally promoted for the post of Assistant Treasury Officer / Senior Superintendent from the date of promotion given to his junior.

In the result, the Writ Petition is allowed in the following terms and the impugned order passed by the second respondent is hereby quashed.

(i) The petitioner shall be given promotion as Assistant Treasury Officer/Senior Superintendent, by including his name in the panel for promotion for the year 2009-2010.

(ii) The seniority in the post of Assistant Treasury Officer / Senior Superintendent shall be fixed based on the original seniority, i.e., above S. Chandramohan, having Sl. No. 89/2009-2010.

iii) The petitioner shall not be entitled for backwages in the post of Assistant Treasury Officer/Senior Superintendent from the date of promotion.



But his promotion shall be given effect to notionally, retrospectively from the date on which his immediate Junior was promoted and his salary will be calculated notionally for the above post for the purpose of fixing his future salary and for further promotion.

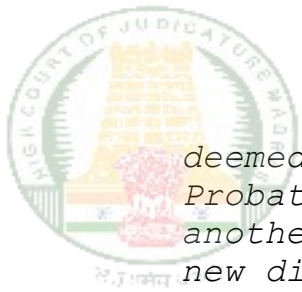
(iv) The respondents shall issue consequential order giving promotion to the petitioner as Assistant Treasury Officer/Senior Superintendent within a period of 8 weeks from the date of receipt of a copy of this order.

However, there shall be no order as to costs."

10. This Court is of the considered opinion that the belated service training cannot be put against the employee, more so when the delay is due to the reason the respondents have not fixed the seniority of the petitioner and has not send the petitioner for training from 2000 onwards. Therefore, the petitioner is entitled to fix his seniority from the date of joining in the Thanjavur Unit i.e. from the year 2000.

11. The next claim is that the petitioner's seniority date ought to be taken into account from the date of joining in the original place, i.e., 31.10.1994 as per Rule 20 b (i) of Tamil Nadu Ministerial Service Rules. But the respondents have stated that the claim of the petitioner is against the Rule 20 b (i). The relevant portion of the rule is extracted hereunder:

"20. Transfers of probationers and approved probationers: (a) Notwithstanding anything contained in rules 12 to 16 and 19, a probationer or an approved probationer may, in special cases and on grounds of administrative necessity, be transferred with the mutual consent of the appointing authorities and the authorities nominated by the head of the department for the purpose of allotment of candidates where there is more than one appointing authority, in the departmental unit concerned -- (i) from one office in a departmental unit to another office in the same departmental unit; (ii) temporarily from an office in one departmental unit to an office in another departmental unit if both the offices belong to a department in which full members are ordinarily subject to transfers from one departmental unit to another; and (iii) permanently from an office in one departmental unit to an office in another departmental unit: Provided that a transfer under clause (iii) shall be made only with the consent of the Commission except in the case of Gujarathi knowing Assistants of the Commercial Taxes Department. Provided further that the consent of the Commission may be



deemed to have been accorded in the cases of transfer of Probationers and Approved Probationers from one unit to another unit, necessitated consequent on the formation of new district.

(b) The grounds of administrative necessity referred to in sub-rule (a) may be presumed to exist and the Commission's consent referred to in that sub-rule may be presumed to have been given in the case of mutual transfers permanently from an office in one departmental unit to an office in another departmental unit if the persons desiring mutual transfers agree -

(i) that the senior among the Assistants/Junior Assistants mutually transferred (on the basis of the date of their first appointment to the service) be given the same rank in the departmental unit to which he is transferred, which was held by the person in whose place he comes to that departmental unit and the junior of them takes his rank in the administrative unit of the departmental unit to which he is transferred with reference to the date of his first appointment in the service; and

(ii) that they will forego the travelling allowance for their journeys to the departmental units to which they are transferred."

12. On perusal of the Rule it is seen that the rule states "the junior of them takes his rank in the administrative unit of the departmental unit to which he is transferred with reference to the date of his first appointment in the service". Admittedly the petitioner is the junior and the mutually transferred person is the senior, then the date would be the date of his first appointment in the service. The rule is not stating from the "date of appointment in the unit", but states that the "date of first appointment in the service". Therefore, this Court is of the considered opinion that the petitioner is entitled to fix the date of seniority from the "date of first appointment in the service".

13. Based on the above discussions this Court is of the considered opinion that the petitioner is entitled to fix the date of seniority from the "date of first appointment in the service" as stated in Rule 20(b)(i) of the Tamil Nadu Ministerial Service Rules i.e. from 31.10.1994 and the petitioner is entitled to be considered for promotion in the post of Deputy Block Development Officer with effect from 2001. Therefore, the respondents are directed to confer notional promotion from 2001 and grant the monetary benefits applicable to the petitioner.



14.The learned Counsel appearing for the petitioner submitted that since the petitioner is unwell due to cancer, the petitioner is pleading to grant the benefits at the earliest so that the petitioner can enjoy the fruits during his life time. Therefore, the respondents are directed to grant the benefits and implement the order within a period of four weeks from the date of receipt of a copy of this order.

15.With the above direction, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Vacation Officer

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/ /2022

Sub Assistant Registrar(CS)

Tmg

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 Prinicipal Secretary,
Rural Development and Panchayat Raj Department,
Fort St.George, Chennai.
- 2.The Director,
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W.P.(MD)No.9610 of 2016

19.05.2022