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W.P.(MD)No.13151 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2022

CORAM

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

W.P. (MD)No.13151 of 2017

and

W.M.P. (MD)No.10220 of 2017

K.Muneeshwaran

... Petitioner

vs.

1.The Secretary to the Government,
Rural Development and Panchayat Raj Department,
Secretariat, Fort.St.George,
Chennai- 9.

2.The Director,
Rural Development and Panchayat Raj Department,
4th Floor, Panagal Building,
Saidapet, Chennai-15.

3.The District Collector,
Collectorate Premises,
Marthupandiyar Nagar,
Sivagangai, Sivagangai District.

4.The Secretary,
Tamil Nadu Public Service Commission,
Chennai.

... 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 order passed by the 3rd respondent in Na.KA.P3/17826/2015, dated 19.04.2017 and to quash the same as illegal and consequently to direct the 3rd respondent to regularize the service of the petitioner as Junior Assistant from April 2010 instead of 21.12.2012 along with all other service benefits including further promotion as Assistant in the year 2012-2013 and all monetary benefits attached with the service of the petitioner.

For Petitioner	: Mr.S.Kumar
For R1 to R3	: Mr.G.Suriyananth Additional Government Pleader
For R4	: Mr.J.Anand Kumar

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the order passed by the 3rd respondent in Na. KA. P3 / 17826 / 2015, dated 19.04.2017 and consequently to direct the 3rd respondent to regularize the service



of the petitioner as Junior Assistant from April 2010 instead of 21.12.2012 along with all other service benefits including further promotion as Assistant in the year 2012-2013 and all monetary benefits attached with the service of the petitioner.

2.The petitioner was appointed as Panchayat Clerk, vide resolution No.9, dated 29.11.1996 and it is based on the Government Order (Standing).No.230, Rural Development (E5-Department), dated 15.10.1996. For the post of Junior Assistant in the Rural Development Department 10% was allotted to Panchayat Clerks as feeder category according to Government Order Standing.No.240, Rural Development (E5-Department), dated 07.09.2000. The qualification prescribed is that the candidate ought to have served for a minimum period of 7 years along with other required qualification. Apart from that, as per G.O.No.963, dated 28.11.1990, of Rural Development Department, the panel of promotion for the post of Junior Assistant is to be finalized on or before 31st December of every year and the panel is to be furnished within a stipulated time after getting concurrence from the TNPSC. According to Government Order Standing.No.240, Rural Development (E5-Department), dated 07.09.2000, the petitioner is eligible and entitled to be appointed as Junior Assistant by promotion, after completion of 7 years of service as Panchayat Clerk and the petitioner has acquired requested qualifications. After 7 years of service, the petitioner's name was included in the panel of the year 2007 in the post of Junior Assistant and the panel was also published. For the years 2007 to 2010, minimum vacancies alone were arisen and the petitioner's senior in the panel were promoted to the post of Junior Assistant. Thereafter, through G.O. Ms. No.20 of Rural Development (E5) Department, dated 25.01.2008, the percentage of 10% was increased as 20% for the Panchayat Clerk to be appointed as Junior Assistant. At the same time, for the year 2010-2011, nearly 9 vacancies were arisen in the 20% for the post of Junior Assistant meant for Panchayat Clerks. The panel was finalized including the petitioner's name and submitted for the concurrence of 4th respondent. The second respondent submitted the proposal to get concurrence from the fourth respondent and the fourth respondent considered and approved the panel for the promotion for the year 2010-2011. The petitioner was promoted, vide proceedings, dated 21.12.2012.

3.Since there was a delay of 9 months and there was a further delay by the fourth respondent for nearly 24 months, the Government letter No.113, Rural Development and Panchayat Department, dated 04.12.2012, promotion was given to the petitioner and the same is mentioned in the impugned order of the third respondent. The contention of the petitioner is that though the panel for the year 2010-2011 was sent with a delay, the panel for promotion was kept pending for further period for nearly 2 years, which caused considerable delay for the petitioner's promotion nearly 3 years in total without any reason. Because of this delay, further promotion



was affected and was granted in the year 2015 and the petitioner is currently working in Kalayarkovil Panchayat Union, Sivagangai District. Because of this delay, a further promotion is delayed. Therefore, aggrieved over the said delay, the petitioner has filed this Writ Petition.

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4.The respondents have filed a counter affidavit stating that actual vacancy arose only in 2010-2011, hence, the concurrence from the TNPSC was obtained, vide letter, dated 23.11.2012 and the petitioner was promoted on 24.12.2012. According to the respondents, there is no delay at all because, the vacancy was shown for the year 2010-2011. After verification, the papers were placed before the fourth respondent in December 2011. Thereafter, the TNPSC after considering and after scrutinizing all relevant files have granted approval on 23.11.2012. Hence, the respondents prayed to dismiss the Writ Petition.

5.Heard Mr.S.Kumar, learned Counsel appearing for the petitioner, Mr.G.Suriyananth, learned Additional Government Pleader appearing for respondents 1 to 3 and Mr.J.Anand Kumar, learned Counsel appearing for fourth respondent.

6.The contention of the petitioner is that for the year 2010-2011, the petitioner's name was in the panel and he was considered in the available vacancy. The contention of the petitioner is that even that vacancy arose in the year 2010. The respondents have submitted the concerned file to the fourth respondent during the year 2011. Thereafter, the fourth respondent have considered and granted concurrence through letter, dated 23.11.2012. Even though the promotion was given belatedly, the respondent ought to have conferred promotion with effect from 2010 onwards. If that has been granted, the future promotion would have been conferred on the petitioner within a period of one year. Therefore, the petitioner's contention is that because of the delay on the part of the respondents, his future promotion has also been affected.

7.The petitioner relied on judgment rendered by the Supreme Court in ***P.N.Premachandran Vs State of Kerala and others***, reported in **(2004) 1 SCC 245**. The relevant portion of the judgment is extracted under:

"7.It is not in dispute that the posts were to be filled up by promotion. We fail to understand how the appellant, keeping in view the facts and circumstances of this case, could question the retrospective promotion granted to the private respondents herein. It is not disputed that in view of the administrative lapse, the Departmental Promotion Committee did not hold a sitting from 1964 to 1980. The respondents cannot suffer owing to such administrative lapse on the part of the State of Kerala and no fault on their part. It is also not



disputed, that in ordinary course they were entitled to be promoted to the post of Assistant Directors, in the event, a Departmental Promotion Committee had been constituted in due time. In that view of the matter, it must be held that the State of Kerala took a conscious decision to the effect that those who have been acting in a higher post for a long time, although on a temporary basis, but were qualified at the time when they were so promoted and found to be eligible by the Departmental Promotion Committee at a later date, should be promoted with retrospective effect."

8. Therefore, this Court is of the considered opinion that delay in processing cannot be a ground to deny promotion in time. In this present case, in spite of vacancy in the year 2010, the petitioner's name was considered belatedly in the year 2012 and granted in the year 2012. Therefore, this Court is inclined to grant a relief to the petitioner and directing the respondents to confer the promotion with effect from the date of vacancy, i.e., from the year 2010 onwards. Also the respondents are directed to consider the future promotion in time. It is made clear that the promotions are on the available vacancies only.

9. With this direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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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 Secretary to the Government,
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Secretariat, Fort.St.George,
Chennai- 9.



2.The Director,
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3.The District Collector,
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4.The Secretary,
Tamil Nadu Public Service Commission,
Chennai.

+1 CC to M/s.J.ANANDKUMAR, Advocate (SR-13226[F] dated 21/03/2022)

+1 CC to M/s.S.KUMAR, Advocate (SR-13944[F] dated 23/03/2022)

+1 CC to M/s.SPL GP (SR-13463[F] dated 22/03/2022)

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