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W.P.No.723 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2023

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THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.723 of 2020

and

W.M.P.Nos.875 & 876 of 2020

K.Chitra

Special Tahsildar – Social Security Scheme

Maniyanur Post

Salem 636 010

... Petitioner

/Vs/

The State of Tamil Nadu

Represented by its Secretary to Government

Revenue Department

Secretariat

Chennai 600 009

... Respondent

Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the Respondent in G.O.(ID) No.80 S.O. Revenue (Sec3(2)) Dept. dt.14.02.2017 and in G.O.(ID) No.454 Revenue (Sec 3(2)) Department dated 10.12.2018 and quash the same and consequently direct the Respondent to promote the Petitioner to the post of Deputy Collector according to the seniority by placing in the order of seniority in the panel for promotion to the post of Deputy Collector Salem District and benefits as eligible to the Petitioner.



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For Petitioner : Mr.K.M.Vijayan
Senior counsel
for Mr.A.Manojkumar

For Respondent : Mr.G.Nanmaran
Special Government Pleader

ORDER

This Writ Petition has been filed for issuance of Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the Respondent in G.O.(ID) No.80 S.O. Revenue (Sec3(2)) Dept. dt.14.02.2017 and in G.O.(ID) No.454 Revenue (Sec 3(2)) Department dated 10.12.2018 and quash the same and consequently direct the Respondent to promote the Petitioner to the post of Deputy Collector according to the seniority by placing in the order of seniority in the panel for promotion to the post of Deputy Collector Salem District and benefits as eligible to the Petitioner.

2.Heard Mr.K.M.Vijayan, learned Senior counsel, for Mr.A.Manojkumar, learned counsel for the Petitioner and Mr.G.Nanmaran, learned Special Government Pleader for Respondent.



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3.Mr.K.M.Vijayan, learned Senior counsel for the Petitioner submitted that the Petitioner who had served as an Assistant in the revenue department in Perambalur District has been transferred to Salem District by virtue of the proceedings of the Commissioner of Revenue Administration in No.Ser-4(2)/17878/2006, dated 16.10.2006. The above transfer is an one way transfer from Perambalur District to Salem District, at the request of the Petitioner. As per the transfer order, the Petitioner should not claim seniority in Salem District.

4.Mr.G.Nanmaran, learned Special Government Pleader submitted that the Petitioner was originally allotted to Perambalur District as directly recruited Assistant by Tamil Nadu Public Service Commission and joined in Perambalur District Revenue unit on 21.02.2000 as Assistant and subsequently on an one way transfer came to Salem District on 03.11.2006, by foregoing her seniority on personal grounds. Her name was not included in 2006 Deputy Tahsildar Panel in Salem District, as she joined only after 15.09.2006 in Salem District and then she was promoted as Deputy Tahsildar in the year 2012 as per the seniority.



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5.Mr.K.M.Vijayan, learned Senior counsel for the Petitioner submitted that as per the Special Rule for Tamil Nadu Revenue Subordinate Services, amendment to the Rule 5(g) issued vide G.O.Ms.No.133, dated 07.02.1995, the Assistant appointed by direct recruitment in the District revenue unit, who has completed a total period of five years of service and who has passed all the test prescribed and also undergone training as Firka Revenue Inspector for a period of two years successfully, and if his name has also been included in the list of Deputy Tahsildar, he shall be eligible to be included in the approved list of Deputy Tahsildar in the district above his seniors appointed other than by the direct recruitment. This is for refixation of his seniority and also for considering him to be posted against the first vacancy that follows the carried over vacancies. For the sake of clarity, the part of the proviso which cause the amendment is extracted as under:

“Provided also that an Assistant appointed by direct recruitment in the District Revenue Unit, who has completed a total period of five years, passed all the tests prescribed and undergone training as Firka Revenue Inspector for a period of two years successfully, shall be eligible for inclusion of his name in the approved list of Deputy Tahsildars in the District above his seniors appointed other than direct recruitment of for refixation of his seniority over such seniorities, if his name already been included in the list of Deputy Tahsildars. The Consideration of



his claim shall be against the first vacancy that follows the carried over vacancies.”

6.Mr.K.M.Vijayan, learned Senior counsel for the Petitioner drawn my attention to an earlier order passed by this Court in W.P.(MD).No.5137 of 2010 dated 27.03.2012, in which it is held that the person transferred to a different District at his instance, would not lose his right to claim promotion as well as his seniority in the cadre. For better clarity, the relevant portion of the said order is extracted as below:

“13.The Petitioner has no claim that he should be placed above the directly recruited Assistants at Madurai. His claim was to place him below them. However, he cannot be placed below the promotee Assistants. Such a step would affect the morale of employees. The juniors of petitioner would have got promotion long back as Deputy Tahsildar. Merely because he was transferred to a different district at his instance, it cannot be said that he would lose his right to claim promotion as well as his seniority in the cadre. The respondents would be justified only in case the petitioner makes a claim over the other Junior Assistants on the basis of his original seniority at Nagapattinam. The petitioner has no such claim. Therefore, I am of the view that the third Respondent was not justified in passing the impugned order, denying the claim of the Petitioner for promotion.”



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7.Mr.K.M.Vijayan, learned Senior counsel for the Petitioner submitted that the reasoning of the above order has been adopted in the subsequent Writ Petition in *C.Kalyanasundaram Vs. 1.The State of Tamil Nadu, Rep. by its Secretary to Government (W.P.No.3559 of 2014)*, which was allowed on 09.04.2014. The above said W.P.No.3559 of 2014 was filed by one C.Kalyanasundaram, who challenged the above mentioned proviso brought by way of amending Rule 5(g), issued vide G.O.Ms.No.133, dated 07.02.1995. In fact, in the said order, this Court has already observed that even the rule of completing the training can also be relaxed.

8.In the case on hand, the Petitioner has completed five years of service in the transferred District and she had completed other training, but so far as the Firka Inspector training is concerned, she had completed 1.5 years, instead of two years. The inability of the Petitioner to complete two years of Firka Inspector training is not due to any default on the part of the Petitioner but the failure on the part of the appointing authority in deputing her to training.

9.But the Respondent did not consider the case of the Petitioner for relaxation, even though the District Collector recommended for the same. Since the similarly placed persons have got the benefit, the same benefits should



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not be denied to the Petitioner.

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10.In the result, this Writ Petition is allowed and the proceedings of the Respondent in G.O.(ID) No.80 S.O. Revenue (Sec3(2)) Dept. dt.14.02.2017 and in G.O.(ID) No.454 Revenue (Sec 3(2)) Department dated 10.12.2018 are hereby set aside and the Respondent is directed to promote the Petitioner to the post of Deputy Collector according to the seniority by placing in the order of seniority in the panel for promotion to the post of Deputy Collector Salem District and benefits as eligible to the Petitioner. No costs. Consequently, connected Miscellaneous Petitions are closed.

21.11.2023

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order

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To

The Secretary to Government
State of Tamil Nadu
Revenue Department
Secretariat
Chennai 600 009



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R.N.MANJULA, J.

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