



W.P.No.1715 of 2012

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE J. SATHYA NARAYANA PRASAD

W.P.No.1715 of 2012

D. Vasudevan

... Petitioner

Vs.

1. The State of Tamil Nadu
Rep.by its Secretary to Government
Health & Family Welfare Department
Secretariat, Chennai 600 009.

2. The Director of Medical and Rural
Health Services,
Chennai 600 006.

... Respondents

PRAYER : Writ Petition filed under Article 226 of Constitution of India, seeking Writ of Certiorarified Mandamus calling for the records relating to the proceedings in Health and Family Welfare (AA1) Department Letter No.56353/AA1/2008-7 dated 08.08.2011 on the file of the first respondent and quash the same and consequently direct the respondents to promote the petitioner notionally to the post of Administrative Officer by including his name in the panel drawn for promotion to the post of Administrative Officer for the year 2006-2007 with all consequential benefits and pass further suitable orders.



WEB COPY



W.P.No.1715 of 2012

For Petitioners : Mr.P.Ganesan
For Respondents : Mr.V. Nanmaran
Additional Government Pleader

ORDER

This writ petition has been filed to for the records relating to the proceedings in Health and Family Welfare (AA1) Department Letter No.56353/AA1/2008-7 dated 08.08.2011 on the file of the first respondent and quash the same and consequently direct the respondents to promote the petitioner notionally to the post of Administrative Officer by including his name in the panel drawn for promotion to the post of Administrative Officer for the year 2006-2007 with all consequential benefits and pass further suitable orders.

2. The learned counsel appearing for the petitioner submitted that the petitioner was appointed as Junior Assistant on 01.12.1970 in Primary Health Centre, Vellore and promoted as Assistant in the year 1985, Office Superintendent during the year 1999 and further promoted as Junior Administrative Officer on 21.06.2006. The next avenue of promotion is to the post of Administrative Officer. Though he has served for years together, without giving any room for any complaint he was not given the promotion to



W.P.No.1715 of 2012

WEB COPY

the post of Administrative Officer. In fact the second respondent called for the details of the eligible Junior Administrative Officers for the year 2006-2007 by communication dated 31.01.2007 in which the petitioner's name was also included in Serial No.13. However, he was not given the promotion and his juniors have marched over him. When the order of promotion was given to his juniors, petitioner reached the age of superannuation and retired on 30.09.2007. There was a delay in the promotional process, especially the panel which deprived the petitioner of getting his promotion as Administrative Officer. When the petitioner reached the age of superannuation on 30.09.2007, there were 59 vacancies notified for the year 2006-2007. Therefore, claiming notional promotion to the post of Administrative Officer, the petitioner has filed W.P.No.8067 of 2008 before this Court for Mandamus and the said writ petition was disposed of on 01.02.2011 directing the petitioner to submit a representation afresh and on receipt of the same the respondents were directed to consider it and pass orders. The learned counsel further submitted that pursuant to the direction issued by this Court on 01.02.2011 in W.P.No.8067 of 2008, the petitioner submitted a detailed representation dated Nil to the respondents and in the representation he has specifically mentioned the names of similarly placed persons like the petitioner to whom notional promotion was



W.P.No.1715 of 2012

WEB COPY

given by the respondents and requested to extend the same benefit to the petitioner as well. The second respondent by proceedings dated 09.05.2011 forwarded the representation of the petitioner to the first respondent and thereafter the first respondent by the impugned proceedings in Health and Family Welfare (AA1) Department Letter No.56353/AA1/2008-07 dated 08.08.2011 rejected the claim of the petitioner for notional promotion on the only ground that after retirement, he is not entitled for such promotion. Aggrieved by the above order passed by the first respondent, the petitioner has come forward with the present writ petition.

3. Counter affidavit was filed on behalf of the respondents dated 30.11.2017. The learned Additional Government Pleader appearing for the respondents submitted that the second respondent by proceedings dated 31.01.2007 has called for the particulars for preparing the panel for the post of Administrative Officer for the year 2006-2007 including the petitioner for which the crucial date was 01.09.2006. On receipt of service particulars/personal files and other related documents, necessary proposal was sent to Government for approval of panel for the post of Administrative Officer for the year 2006-2007 in respect of eligible Junior Administrative Officers



W.P.No.1715 of 2012

WEB COPY

vide Ref.No.6680/E2/3/2007 dated 31.05.2007. The petitioner has retired from

Government service on attaining the age of superannuation on 30.09.2007.

When the proposal was sent by the second respondent for approving the panel for the post of Administrative Officer for the panel year 2006-2007, none of the candidates including the petitioner herein have completed the probation period in the feeder category post i.e., in the post of Junior Administrative Officer as on the said crucial date 01.09.2006, which was the main criteria for considering the candidates for the post of Administrative Officer. Hence, the regular panel could not be drawn, however by considering the large number of vacancies and dearth of Administrative Officers in Medical Department, a temporary list was drawn in respect of 20 Junior Administrative Officer as Administrative Officers for the year 2006-2007 by relaxing the relevant rules in favour of them and orders were issued in G.O.(D).No.1557, Health and Family Welfare Department, dated 27.12.2007.

4. The learned Additional Government Pleader further submitted that at the verge of retirement of the petitioner, his name was recommended for promotion to the post of Administrative Officer in the panel proposal for the year 2006-2007 sent by the second respondent herein in



W.P.No.1715 of 2012

WEB COPY

Ref.No.6680/E2/3/2007, dated 31.05.2007. Further for preparing panel for that year, the service particulars were called for from the qualified candidates vide Ref.No.6680/E2/3/07 dated 31.01.2007 in which the petitioner's name was included in serial No.13. One of the condition prescribed for promotion to the post of Administrative Officer is that the Junior Administrative Officers have to complete one year probation period within a continuous period of two years in that post. As none of the candidates including the petitioner have completed one year of service in the post of Junior Administrative Officer, as on crucial date i.e., on 01.09.2006 for which regular panel could not be drawn, the Government have relaxed relevant rules in favour of them and temporarily promoted 20 Junior Administrative Officers as Administrative Officers for the year 2006-2007 under rule 39(a) (i) of General Rules for Tamil Nadu State and Subordinate Services in G.O.(D).No.1557, Health and Family Welfare Department, dated 27.12.2007. While approving the said temporary list, the petitioner herein had already retired from Government service on 30.09.2007 A.N. Even though the petitioner's name was in Sl.No.13 his name was not considered for temporary promotion to the post of Administrative Officer due to the reason that he was not in service as he retired from Government Service on 30.09.2007. The learned Additional Government Pleader further submitted



W.P.No.1715 of 2012

that the petitioner has filed W.P.No.8067 of 2008 before this Court with a prayer to promote him notionally for the post of Administrative Officer against the vacancies existing prior to his retirement. This Court had directed the petitioner to submit a fresh representation to the respondents and on receipt of the same the respondents were directed to consider it and pass orders. Based on the directions of this Court the petitioner had submitted a representation dated 23.03.2011. The Government had examined the representation of the petitioner carefully and his request was rejected in Government letter No.56353/AA1/2008-7, Health and Family Welfare Department, dated 08.08.2011 for the reason that he was already retired from Government service on 30.09.2007 prior to the issue of temporary promotion to the eligible Junior Administrative Officer as Administrative Officer vide G.O.(D).No.1557, Health and Family Welfare Department, dated 27.12.2007.

5. Heard both sides and perused the materials available on record.

6. In the present case, the panel for the year 2006-2007 for temporary promotion for the post of Administrative Officer in the Medical Department was called for by the second respondent vide proceedings dated 31.01.2007



W.P.No.1715 of 2012

WEB COPY

including the petitioner for which the crucial date was 01.09.2006 and the proposal was sent to the Government for approval for the panel for the post of Administrative Officer for the year 2006-2007 vide Ref.No.6680/E2/3/2007 dated 31.01.2007. As per the rules none of the candidates including the petitioner have completed the probation period in the feeder category that is in the post of Junior Administrative Officer as on the crucial date 01.09.2006 which was a main criteria for considering the candidates for the post of Administrative Officer.

7. The main contention of the learned counsel for the petitioner is that the crucial date for preparing the panel was 01.09.2006, whereas the panel was prepared only on 31.01.2007 and sent to the Government. Hence there was a delay of four months in forwarding the panel for the temporary promotion to the post of Administrative Officer. There were large number of vacancies in the Medical Department and temporary list was drawn in respect of 20 Junior Administrative Officers as Administrative Officers for the year 2006-2007 by relaxing the relevant rules in favour of them and orders were issued in G.O.(D)No.1557, Health and Family Welfare Department, dated 27.12.2007. When the panel was approved the petitioner had retired from Government



WEB COPY

service on attaining the age of superannuation on 30.09.2007, hence his name was not considered for inclusion in the temporary list for the post of Administrative Officer. Since none of the candidates have completed one year of probation in the feeder category post of Junior Administrative Officer, the Government has relaxed the relevant rules in favour of them and temporarily promoted 20 Junior Administrative Officers as Administrative Officers for the year 2006-2007 under rule 39(a)(i) of General Rules for Tamil Nadu State and Subordinate Services in G.O.(D)No.1557, Health and Family Welfare Department, dated 27.12.2007. Even though the petitioner was in Sl.No.13 of the list, his name was not considered because on that date, he was not in service and retired on attaining the age of superannuation on 30.09.2007. In many cases this Court has considered the notional promotion for the persons who have been superannuated from service so as to enable them to get some monetary benefits like pensionary benefits. In the present case, the petitioner was in Sl.No.13 of the temporary list of Administrative Officers containing 20 names for the post of promotion to the post of Administrative Officers and he was not considered only on the ground that he was not in service when the panel was approved on 27.12.2007. The second respondent vide proceeding dated 31.01.2007 called for particulars for preparing the panel for the post of Administrative Officers



W.P.No.1715 of 2012

for the year 2006-2007, then the proposal was forwarded to the Government on 31.05.2007, on which date, the petitioner was very much in service, since he fulfilled the other eligibility conditions his name was included in the panel and his serial number was 13. However, the proposal was approved on 27.12.2007 and in the meantime, the petitioner had attained the age of superannuation on 30.09.2007. Hence it is not fair and proper on the part of the respondent to deny the benefit of notional promotion to the post of Administrative Officer to the petitioner in the Medical Department by the respondent only on the ground that the petitioner has attained the age of superannuation and was not in service on the date of approval of the panel i.e., on 27.12.2007. The petitioner was initially appointed as Junior Assistant on 01.12.1970 and retired as Junior Administrative Officer on 30.09.2007 after serving for 37 years in the Government service and depriving him the notional promotion cannot be sustained by this Court. Hence, this Court is of the considered view that the order passed by the second respondent dated 07.10.2011 communicating the impugned order of the first respondent dated 08.08.2011 is liable to be quashed.

8. In the result, this writ petition stands allowed and the respondents are directed to promote the petitioner notionally from the date when similarly



W.P.No.1715 of 2012

placed persons were promoted, i.e., on 27.12.2007 to the post of Administrative Officer by including his name in the panel drawn for the promotion to the post of Administrative Officer for the year 2006-2007 with all consequential benefits (all attendant benefits, monetary benefits and pensionary benefits) within a period of eight weeks from the date of receipt of a copy of this order.

No costs.

30.06.2023

dpq

Index : Yes /No

Speaking Order : Yes/No

To

1. The Secretary to Government
The State of Tamil Nadu
Health & Family Welfare Department
Secretariat, Chennai 600 009.
2. The Director of Medical and Rural
Health Services,
Chennai 600 006.



WEB COPY



W.P.No.1715 of 2012

J. SATHYA NARAYANA PRASAD, J.

dpq

W.P.No.1715 of 2012

30.06.2023