



WEB COPY

W.P.No.2053



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2023

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.No.20535 of 2010

M.P.Nos.1 & 2 of 2010

S.Arunachalam

...Petitioner

VS.

1.The Secretary to Government,
Rural Development and Panchayatraj Department,
Secretariat, Chennai – 600 009.

2.The Director of Rural Development,
Panagal Building,
Saidapet, Chennai – 600 015.

3.The District Collector,
Thiruvarur District,
Thiruvarur – 614 001.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned letter issued by the 2nd respondent in Na.Ka.No.44662/2004/C1 dated 12.08.2004 and to quash the condition laid down in the said letter and the consequential order passed by the 3rd respondent in Letter Na.Ka.No.1588/2009/A4 (Development) dated 03.12.2009 and quash the same and consequently to direct the respondents to consider the name of the petitioner for promotion as Assistant Director on par with the Junior Tmt.B.Kanagam retrospectively.



(Prayer amended as per order dated 06.11.2023 in W.M.P.Nos.12379 & 12380 of 2022 in W.P.No.20535 of 2010)

WEB COPY

For Petitioner : Mr.T.Ranganathan
for Mr.Parthiban

For Respondents : Mr.S.Ravichandran for R1 to R3
Additional Government Pleader

ORDER

The petitioner had challenged a condition imposed in the order impugned in this Writ Petition wherein even though he was directed to be placed under the seniority list as per his claim, a condition had been imposed that the future promotion should be granted based upon the qualifications that he had obtained for such promotion.

2.Heard Mr.T.Ranganathan, learned counsel appearing for the petitioner and Mr.S.Ravichandran, learned Additional Government Pleader appearing for the respondents.

3.Learned counsel appearing for the petitioner would submit that the petitioner was originally appointed as 10(a)(i) Typist in the year 1981 at the District Panchayat Development Office, Thiruvarur through Employment Exchange. In 1984, the Government by G.O.Ms.No.996, P&AR(Placements) Department dated 22.09.1984 had issued orders regularizing the services of such



Typist on 22.09.1984 with effect from 25.06.1984. There were certain issues as regards fixation of seniority in view of various proceedings.

WEB COPY

4.He would further submit that the petitioner's junior one B.Kanagam who was also similarly placed as that of the petitioner and who was placed in a combined seniority list below the petitioner and who has also been originally promoted as Assistant in the year 1995 much later than the petitioner, was promoted to a higher post earlier than the petitioner.

5.He would heavily rely upon the proceedings of the Chief Secretary pursuant to an order passed by the Administrative Tribunal in O.A.No.3068 of 1997 dated 09.06.1998, wherein the Chief Secretary has reiterated that an employee for not being send for training cannot be put to fault, as it is the responsibility of the Department concerned to send him for training. Relying upon the said proceedings, he would submit that the petitioner's seniority was restored pursuant to the order dated 12.08.2004 by the third respondent on 14.10.2005. In the interregnum, the petitioner's junior B.Kanagam was promoted as Deputy Block Development Officer. The petitioner ought to have also been promoted as a Deputy Block Development Officer. But, however, he was only promoted as an Extension Officer even though he was placed in the seniority above the said B.Kanagam, in the post of Extension Officer, even



though B.Kanagam was already promoted as Deputy Block Development Officer on 05.07.2005.

WEB COPY

6.He would further submit that the petitioner ought to have been placed as a Deputy Block Development Officer above the said B.Kanagam. It is the fault on the part of the third respondent to implement the order of the second respondent very much belatedly, that is almost after 14 months in spite of the petitioner having approached the third respondent to pass appropriate order. Therefore, he would submit that the petitioner should also be notionally promoted on the dates when his junior B.Kanagam had been promoted and he should be granted all monetary benefits and also his pension be refixed based upon such notional promotion and arrears of pension should also be paid together with interest.

7.Countering his arguments, Mr.S.Ravichandran, learned Additional Government Pleader appearing for the respondents would submit that the petitioner's grievance was rectified and he had been placed in the seniority list above his immediate junior B.Kanagam. As per the order impugned in the Writ Petition, the petitioner's future promotion should be granted based on his qualifications to a higher post from the feeder category.



WEB COPY

8.He would further submit that there are certain norms as to the period in which a Government servant serves in the feeder category; since the petitioner had not acquired the service qualifications to be promoted to a higher category was not promoted. As and when he completed his period of service in the feeder category for attaining the qualifications for promotion in the higher category, the petitioner had been promoted and therefore, the Department cannot be faulted with. He would submit that there is no merit in the Writ Petition and the Writ Petition deserves to be dismissed.

9.I have considered the rival submission made by the learned counsel appearing on either side and perused the materials available on record.

10.The case of the petitioner is that his seniority had been wrongly fixed which had been accepted by the second respondent and an order had been passed as early as on 12.08.2004 to refix the seniority of the petitioner over and above his immediate junior B.Kanagam. In view of earlier erroneous fixation of seniority, the petitioner had not been granted promotion at the relevant time, his juniors were all promoted. Even though, the second respondent had passed an order as early as on 12.08.2004, the third respondent had refixed the seniority of the petitioner only on 14.10.2005. It is to be noted that in the month of July

2015 his junior B.Kanagam had been promoted.



WEB COPY

11.It is not the fault on the petitioner in his seniority being fixed. He had been making repeated requests to refix his seniority which finally came to be addressed by the second respondent only on 12.08.2004. Even though his seniority was directed to be refixed, a rider was issued that he would be entitled for future promotions on him achieving the qualifications in the feeder category for promotion to the next category.

12.Heavy reliance had been placed upon by the learned counsel appearing for the petitioner to the Communication of the Chief Secretary which had been issued as early as in the year 2000 in compliance with the orders passed by the Tamil Nadu Administrative Tribunal. For better appreciation, the aforesaid communication is extracted hereunder:

“I am directed to state that in certain department of the Government, training or working experience in a particular wing is a requirement for promotion / appointment to higher post as per Special Rules for such posts. However due to some reason or the other, the officers are not allowed to acquire the training experience by posting them to such wings as required in the special rules. As a result, it ultimately affects the individual's career and also requires relaxation of relevant service rules. It is not the responsibility of the individual to be sent for training or posted in a particular wing in which working experience is required for promotion /



WEB COPY

W.P.No.2053



appointment to higher post under special rules etc., but it is the responsibility of the department concerned to send him for training or to post him to a particular wing for a specified period required for his promotion / appointment to gain experience.

In view of the circumstances mentioned in para 1 above, the departments of Secretariat and the Heads of Department are therefore requested to post the officers to the particular training / wing in which working experience is required for promotion / appointment to higher post under special rules at the earliest, strictly on the basis of seniority, and if any official does not joint the training or post in the particular wing when given, he may be informed about the adverse effect of avoiding the posting and a declaration as specified in the Annexure to this letter may be obtained from him and added to his Service Register and Personal File.

The above instructions should be strictly adhered to with a view to avoiding any complaints in this regard”.

13.A reading of the aforesaid Communication would make it clear that it is the responsibility of the Department to send the officer for training. If the Department fails in sending the officers for training, the same cannot be put against the petitioner to consider his name for promotion. The said principle would squarely apply to the facts of the case. The petitioner was supposed to be placed above his immediate junior B.Kanagam. This fact was admitted by the



WEB COPY

second respondent and a relief had been granted to the petitioner to be placed above the said B.Kanagam on 12.08.2004. The said order passed by the second respondent on 12.08.2004 but was implemented by the third respondent only on 14.10.2005 that too after B.Kanagam was promoted as Deputy Block Development Officer. The petitioner was placed in a panel which had already been given effect much earlier than the date of his placement. This would show the lethargic way in which the Government officers function. In very many cases, I have seen that they have failed to implement the orders of this Court. I am not surprised in their attitude in not complying with the orders of this Court, as they failed to even implement the orders of their own superiors within time.

14.The entire fault is upon the respondents in not fixing the seniority of the petitioner properly. Had the petitioner's seniority been fixed properly at the first instance, this lis would not have arisen at all and definitely the petitioner would have benefited as he would have been promoted to the post of Assistant Director and retired as Assistant Director like his junior B.Kanagam.

15.In such view of the matter, I have no hesitation in holding that the petitioner would be entitled for future promotions atleast notionally as his junior B.Kanagam was given promotion. Such notional promotion shall be arrived at



WEB COPY

based upon the date of promotion of his junior B.Kanagam and his salary be reworked and also his pension be reworked to the petitioner. However, such recalculation shall be only notionally made and the petitioner would be entitled for payment of higher pension from the date of this order. However, taking into consideration the sufferings that the petitioner had undergone on the date of his superannuation as he had only retired as Deputy Block Development Officer whereas his junior B.Kanagam was retired as Assistant Director, I am inclined to Award the petitioner a cost of Rs.2,00,000/- payable by the first respondent for such lapses on the part of the Department which has driven the petitioner to this Court. Further in spite of a relief given by the second respondent, the third respondent had failed to implement the orders of the second respondent even while implementing the order, the third respondent had implemented it without any useful purpose.

16.With the aforesaid directions, the Writ Petition is allowed with the costs as indicated above . Consequently, the connected miscellaneous petitions are closed.

06.11.2023

Index: Yes/No
Speaking order: Yes/No
pam



WEB COPY

W.P.No.2053



K.KUMARESH BABU, J.

pam

To

- 1.The Secretary to Government,
Rural Development and Panchayatraj Department,
Secretariat, Chennai – 600 009.
- 2.The Director of Rural Development,
Panagal Building,
Saidapet, Chennai – 600 015.
- 3.The District Collector,
Thiruvarur District,
Thiruvarur – 614 001.

W.P.No.20535 of 2010

06.11.2023