



W.P.No.15892 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	31.01.2023
Pronounced on	20.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.15892 of 2016
and
W.M.P.No.13782 of 2016

V.Kannapurakannan

...Petitioner

Vs.

1.The State of Tamil Nadu
Rep. by its Secretary to Government,
Tamil Development and
Information (T.D.2.1) Department,
Secretariat, Chennai - 600 009.

2.The Chief Secretary to the
Government of Tamil Nadu,
Secretariat, Chennai - 600 009.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, to call for the records connected in Govt.Letter No.20628/TD2-1/2014-2, Tamil Development and Information (TD.2-1) Department, dated 12.08.2015 and in Government letter No.14468/TD.2-1/2015-1, Tamil Development and Information (TD-2-1) Department, dated 02.02.2016 passed by the 1st respondent and quash the



W.P.No.15892 of 2016

same and consequently direct the respondents to promote the petitioner as Director of Tamil Development with effect from 24.06.2008 with all the monetary and pensionary benefits.

For Petitioner	: Mr.A.R.Suresh for Mr.K.Sannjay
For Respondents	: Mr.K.H.Ravikumar, Government Advocate

ORDER

Heard Mr.A.R.Suresh, learned counsel for the petitioner and Mr.K.H.Ravikumar,, learned Government Advocate for the respondents.

2. The post of Director of Tamil Development is a single post and the post is also the Head of the Department. A vacancy for the said post arose on 17.06.2008 and the petitioner herein, who was the Joint Director of Tamil Development, was made in-charge to the post of Director of Tamil Development on 17.06.2008. Since the petitioner was the senior most in the seniority and was suitable to be appointed as a Director of Tamil Development, he had made representations on 24.06.2008 and 09.07.2008, seeking for promotion to the said post. Pending consideration of his request for promotion, he had retired from service on 31.03.2009. Thereafter, the



W.P.No.15892 of 2016

petitioner's junior was promoted to the said post on 12.10.2009. The petitioner had made further representations, seeking for notional promotion to the post of Director of Tamil Development, which came to be rejected by the Government in its letter dated 12.08.2015, stating that the promotion to the petitioner's junior was granted only after the petitioner's retirement and therefore, his claim for notional promotion cannot be substantiated. The same reason was reiterated in the first respondent's letter dated 02.02.2016, in response to the petitioner's appeal petition dated 28.08.2015. Both these letters dated 12.08.2015 and 02.02.2016 are put under challenge in the present writ petition.

3. The learned counsel for the petitioner submitted that since the petitioner holds all the eligibility criteria, apart from being the senior most, to be promoted to the post of Director of Tamil Development, the delay on the part of the respondents should not be put against the petitioner and in view of the fact that his junior was thereafter promoted, he is entitled for notional promotion to the post of Director of Tamil Development, together with all the benefits.



WEB COPY

4. Per contra, the learned Government Advocate appearing for the respondents placed reliance on the averments in the counter affidavit and submitted that though the petitioner possessed all the qualifications required for promotion, he could not be promoted to the post, in view of his retirement from service on 31.03.2009. He also submitted that the petitioner cannot claim promotion on the basis that his junior has been promoted, since such a promotion was granted only after the petitioner's retirement and not during his service. Insofar as the delay for considering the petitioner's candidature for promotion is concerned, he submitted that since the Parliamentary Elections for the year 2009 had commenced and the Election Code of Conduct Rules had come into effect, they could not pass the promotional orders in time.

5. I have given careful consideration to the submission made by the respective counsels.

6. Some of the undisputed facts involved in the case are that the vacancy to the post of Director of Tamil Development arose on 17.06.2008 and that it is a single post of Head of the Department. It is not in dispute that the petitioner was the senior most in the feeder category and also held all



W.P.No.15892 of 2016

other suitable criteria to be promoted to the said post. It is also not a disputed fact that the petitioner's candidature was pursued by the Government and before final orders came to be passed, he had retired from service on 31.03.2009.

7. The Rule relating to appointment for the post of Director of Tamil Development was amended through G.O.(Ms).No.71, Tamil Development-Culture Department, dated 18.04.1990. As per Rule 2, appointment to the class of Director of Tamil Development shall be made by promotion from the category of Deputy Director in the Department of Tamil Development or by recruitment by transfer from any other State service. Rule 3 prescribes the qualification for such appointment, which is a Master's Degree in Tamil or he must be a Scholar of repute in Tamil.

8. G.O.Ms.No.368, Personnel and Administrative Reforms Department dated 18.10.1993, gives detailed instructions with regard to the preparation of panel for appointment by promotion in public services. Insofar as filling up the post of Heads of the Department is concerned, the Government Order prescribes the following:



"(vii) Filling up of post of Heads of Department:-

(1) To fill up a single vacancy in respect of Head of Department, the claims of the first 5 qualified candidates in the seniority list should be considered and a panel of atleast two names should be got approved in order to meet any contingency. According to the orders issued in the Government Order fifth read above, to be eligible for promotion as Head of Department, an Officer should have not less than one year's service left before retirement. Those who do not have such a minimum period of left over service but are otherwise found to be fully qualified, and are fit for promotion as Head of Department and deserve recognition on the crucial date of preparation of Panel, should be compensated by appointing them as Officers on Special duty with a specific assignment and with the same scale of pay as that of the Head of Department.

(2) Proposals to fill up the posts of Heads of Department (non-IAS) will have to be initiated by the Secretaries to Government themselves 3 months in advance of the prospective date of retirement of the existing incumbent, as all the relevant particulars would be available in the Secretariat. If the initiative to send proposals is left with the Heads of Department themselves there are found to be delays caused by



subjective considerations. Such promotion proposals will have to be suitably monitored by the Secretaries to Government themselves so that orders are issued before the retirement of the existing incumbent and the cases of those who have a minimum service of one year from the date of retirement of the previous incumbent are not omitted because of administrative delay."

9. The post of Director of Tamil Development, being the Head of the Department, requires to be filled up by adopting the aforesaid procedure prescribed in G.O.Ms.No.368, from among the candidates who possess the qualification prescribed in G.O.(Ms).No.71. As per the said Rule, the process of filling up the post of Head of the Department should be initiated by the Secretaries to Government themselves 3 months in advance of the prospective date of retirement of the existing incumbent. The Secretaries are also mandated to suitably monitor that orders are issued before retirement of the existing incumbent. Such a procedure has not only been deviated, but also violated.



10. When the vacancy for the post of Director was to arise on 17.06.2008, the Secretary to the Government ought to have initiated the procedure for filling up the said post atleast by 17.03.2008 onwards and should have made the appointment before the retirement of the existing incumbent. On the other hand, the first respondent had taken initiative much after the retirement of the existing incumbent and after a considerable delay from the petitioner's representations made in this regard on 24.06.2008 and 09.07.2008. Such a deviation in the mandated procedure prescribed under G.O.Ms.No.368, has resulted in depriving the petitioner to the highest rank in the department, which would amount to infringement of his fundamental rights under Articles 14 and 16 of the Constitution of India.

11. The Hon'ble Supreme Court, in the case of ***Major General H.M.Singh, VSM Vs. Union and India and another*** reported in (2014) 3 SCC 670, had dealt with a similar situation, where the non-filling up of the vacancy in time by the Government was held to be violative of the fundamental rights of the appellant therein, under Articles 14 and 16. The relevant portion of the judgement reads as follows:-



WEB COPY



W.P.No.15892 of 2016

"28.The question that arises for consideration is, whether the non-consideration of the claim of the appellant would violate the fundamental rights vested in him under Articles 14 and 16 of the Constitution of India. The answer to the aforesaid query would be in the affirmative, subject to the condition that the respondents were desirous of filling the vacancy of Lieutenant-General, when it became available on 01.01.2007. The factual position depicted in the counter-affidavit reveals that the respondents indeed were desirous of filling up the said vacancy. In the above view of the matter, if the appellant was the senior most serving Major-General eligible for consideration (which he undoubtedly was),he most definitely had the fundamental right of being considered against the above vacany, and also the fundamental right of being promoted if he was adjudged suitable. Failing which, he would be deprived of his fundamental right of equality before the law, and equal protection of the laws, extended by Article 14 of the Constitution of India. We are of the view that it was in order to extend the benefit of the fundamental right enshrined under Article 14 of the Constitution of India, that he was allowed extension in service on two occasions, firstly by



the Presidential Order dated 29.02.2008 and thereafter, by a further Presidential Order dated 30.05.2008. The above orders clearly depict that the aforesaid extension in service was granted to the appellant for a period of three months (and for a further period of one month), or till the approval of the ACC, whichever is earlier. By the aforesaid orders, the respondents desired to treat the appellant justly, so as to enable him to acquire the honour of promotion to the rank of Lieutenant-General (in case the recommendation made in his favour by the Selection Board was approved by the Appointments Committee of the Cabinet, stands affirmed). The action of the authorities in depriving the appellant due consideration for promotion to the rank of the Lieutenant-General would have resulted in violation of his fundamental right under Article 14 of the Constitution of India. Such an action at the hands of the respondents would unquestionably have been arbitrary."

12. The right of the petitioner to be appointed to the post of Director was also dealt with in the same decision in **Major General H.M.Singh, VSM**



(*supra*), in the following manner:-

WEB COPY

"34.....We are therefore of the view, that the appellant deserves promotion to the rank of Lieutenant-General from the date due to him. Ordered accordingly. On account of his promotion to the post of Lieutenant-General, the appellant would also be entitled to continuation in service till the age of retirement on superannuation stipulated for Lieutenant-General i.e. till his having attained the age of 60 years. As such, the appellant shall be deemed to have been in service against the rank of Lieutenant-General till 28.02.2009. Needless to mention, that the appellant would be entitled to all monetary benefits which would have been due to him, on account of his promotion to the rank of Lieutenant-General till his retirement on superannuation, as also, to revised retiral benefits which would have accrued to him on account of such promotion. The above monetary benefits shall be released to the appellant within three months from the date a certified copy of this order becomes available to the respondents."



WEB COPY

13. The facts involved in the aforesaid decision before the Hon'ble Supreme Court is that the vacancy to the rank of Lieutenant-General arose on 01.01.2007 when the appellant therein was serving as a Major General and was also admittedly the senior most eligible candidate for the vacancy. He was not considered for promotion in time and had retired from service. It was contended therein that had the Government promoted him to the rank of Lieutenant-General, his retirement age would have been extended from 59 to 60 years. It is in this background, the Hon'ble Supreme Court had held that the appellant therein deserves to be promoted to the highest rank of Lieutenant-General and directed the Government to issue orders of promotion, together with monetary benefits.

14. The issue involved in the case of **Major General H.M.Singh, VSM** (*supra*) is almost similar to the case in hand. Thus, by applying the ratio laid down therein, it requires to be necessarily held that the first respondent had not only been callous and lethargic, but have also disregarded the procedure for filling up the post of Head of the Department.

15. There is yet another aspect that requires to be addressed, which is



found in the same paragraph 2(vii)(2) of G.O.Ms.No.368, dated 18.10.1993,

as extracted earlier. As per 2(vii)(1), a reference has been made to G.O.Ms.No.440, Personnel and Administrative Reforms Department, dated 26.10.1990, which orders that an Officer should have not less than 1 year of service left before retirement to be eligible for promotion as Head of the Department. Apparently, the petitioner was short of 1 year when the vacancy arose on 17.06.2008, since he was due to retire from service on 31.03.2009. However, for such candidates who lack 1 year of service before retirement, the procedure stipulated is that such an Officer should be compensated by appointing them as 'Officers on Special Duty' with a specific assignment and with the same scale of pay as that of the Head of the Department. This mandatory stipulation has been violated, since the petitioner was made in-charge to the post of Director and was also not given the same scale of pay to that post. The next violation was the failure on the part of the Secretary to Government to initiate steps for filling up the post atleast 3 months prior to the vacancy which was to arise. The third infirmity is the failure on the part of the Secretary to Government to suitably monitor the promotion proposals, so as to avoid the disqualification of candidates for the minimum service period of 1 year.

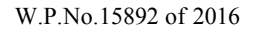


W.P.No.15892 of 2016

WEB COPY

16. In view of this rule position, though the petitioner may not be entitled for promotion to the post of Director, since he lacked 1 year of service in between the date of vacancy and his retirement, he atleast ought to have been compensated with the same scale of pay as that of the Head of the Department, by designating him as an Officer on Special Duty, with a specific assignment. Thus, the impugned letters, rejecting the petitioner's request for notional promotion on the ground that his junior was promoted after his retirement, cannot be sustained.

17. For all the foregoing reasons, the impugned letters dated 12.08.2015 and 02.02.2016 are quashed. Consequently, there shall be a direction to the first respondent herein to forthwith pass orders, designating the petitioner's post as "Officer on Special Duty", with effect from 17.06.2008, and notionally fix his pay scale equal to that of a Director of Tamil Development and disburse all the arrears of pay, within a period of six weeks from the date of receipt of a copy of this order. While passing such orders, the first respondent shall also revise the pensionary benefits equal to



18. The writ petition stands partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Index: Yes/No
Neutral Citation: Yes/No
Speaking order/Non-speaking order
hvk

- 1.The Secretary to Government,
Tamil Development and
Information (T.D.2.1) Department,
Secretariat, Chennai - 600 009.
- 2.The Chief Secretary to the
Government of Tamil Nadu,
Secretariat, Chennai - 600 009.



WEB COPY



W.P.No.15892 of 2016

M.S.RAMESH,J.

hvk

PRE-DELIVERY ORDER MADE IN

W.P.No.15892 of 2016

20.02.2023