



W.P.No.31702 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2023

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THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.31702 of 2015

P.Sucela

... Petitioner

-Vs-

1. The Secretary to Government,
Health and Family Welfare Department,
Secretariat, Chennai-600 009.

2. The Director of Public Health and Preventive Medicine,
359, Anna Salai, Chennai-6.

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorarified Mandamus, to call for the records in the impugned proceedings in R.No.4415/E1/S2/2012-4 dated 09.06.2014 on the file of second respondent and quash the same and consequentially direct the respondents to notionally promote the petitioner as Administrative Officer by including her name in between Serial.No.11 (A. Anathakrishnan) and 12 (T. Vimala Christabel) in the panel year 2008-2009 issued by the second respondent in R.No.60309/E1/2009-S2 dated 13.02.2010 with monetary and service benefits.



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For Petitioner : Mr.N.Krishna Kumar
For Respondents : Mr.M.P.Murugan Raja
Government Advocate

ORDER

This Writ Petition has been filed challenging the impugned proceedings in R.No.4415/E1/S2/2012-4 dated 09.06.2014, thereby rejected the request made by the petitioner for her notional promotion to the post of Administrative Officer.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials available on record.

3. The petitioner was originally appointed as a Junior Assistant through Tamil Nadu Public Service Commission and she was promoted as an Assistant on 29.12.1993. Subsequently, she was promoted to the post of Superintendent on 11.02.1999 in the office of the Deputy Director of Health Services, Nagercoil Health Unit District. She attained the age of superannuation on 30.06.2009. The seniority list for the post of Superintendent was published on 13.09.2001. She was placed in the



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Serial No.211 in the seniority list for the post of Superintendent. The next avenue of promotion available to the petitioner is the post of Administrative Officer. She also reached the zone of consideration for the panel year 2007-2008. The crucial date for the panel preparation was 01.09.2006. The panel was also approved by the communication dated 13.04.2007 and the petitioner's name was included in the promotional list in Serial No.21 for the existing and anticipated vacancies. However, she was not promoted for want of vacancy and as such the next panel for the promotion of Administrative Officer of the year 2008-2009 and its crucial date is 01.09.2007. However, the approval of the said panel was kept in abeyance in view of the interim order granted by this Court in W.P.No.24189 of 2008 filed by four Superintendents. After vacating the interim order, the panel for the year 2008-2009 and 2009-2010 were approved by the Departmental Promotional Committee and the same was released by the proceedings dated 13.02.2010.

4. In the panel year 2008-2009, 23 Superintendents were promoted as Administrative Officers. The petitioner's name ought to have been placed in between Serial Nos.11 and 12. The said vacancy had



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arisen during her service as Superintendent. Therefore, she made a representation and the same was not considered and as such she approached this Court by way of W.P.No.361 of 2012. This Court considered the request made by the petitioner and directed the second respondent to include her name in the panel dated 13.02.2010, for promotion to the post of Administrative Officer and promote the petitioner on notional basis from the date of which her juniors were promoted with increased terminal benefits. However, the second respondent, without considering the same, rejected the request made by the petitioner, on the ground that on the date of approval of panel year 2008-2009, she attained the age of superannuation and as such she cannot be considered for notional promotion.

5. It is also seen from the counter that the retrospective promotion can be considered only when an individual has been overlooked in a panel already drawn due to pendency of disciplinary action against the individual and subsequently charges are dropped, the seniority of the individual would be restored and the individual would be promoted retrospectively. When the seniority of an individual is restored, then that



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individual would be promoted retrospectively and the individual would be placed above his junior. Whereas, the petitioner did not commit fault and did not face any disciplinary proceedings. Only because of the interim order granted by this Court, in the writ petition filed by four Superintendents, the panel year 2008-2009 was not approved for promotion to the post of Administrative Officer. Therefore, the petitioner cannot be held liable for that. Therefore, this Court directed the second respondent to place the petitioner in between Serial Nos.11 and 12 in the seniority list of the panel of the year 2008-2009 to the post of Administrative Officer. Even then, the second respondent rejected the claim of the petitioner without any reasons and violated the order passed by this Court.

6. Hence, the petitioner is entitled for notional promotion to the post of Administrative Officer and she has to be placed in between Serial Nos.11 and 12 in the panel year 2008-2009.

7. In view of the above, the impugned order cannot be sustained



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and is liable to be quashed. Accordingly, the impugned proceedings passed by the second respondent in in R.No.4415/E1/S2/2012-4 dated 09.06.2014 is hereby quashed. The first respondent is directed to promote the petitioner to the post of Administrative Officer notionally, by including her name in between Serial Nos.11 and 12 in the panel year 2008-2009 dated 13.02.2010 with all service benefits, within a period of twelve weeks from the date of receipt of a copy of this order. It is made clear that the petitioner is not entitled for arrears of salary if any, for her notional promotion to the post of Administrative Officer.

8. In the result, this writ petition stands allowed. There shall be no order as to costs.

27.07.2023

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order
mn



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G.K.ILANTHIRAIYAN, J.

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To

1. The Secretary to Government,
Health and Family Welfare Department,
Secretariat, Chennai-600 009.
2. The Director of Public Health and Preventive Medicine,
359, Anna Salai, Chennai-6.

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