IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 19.09.2023

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR. JUSTICE K.KUMARESH BABU

W.A.No.1334 of 2019

D.Jeyaram ... Appellant

Vs.

1.The Chief Secretary to Government,
Public (Special A) Department,
Secretariat, Chennai – 9.

2.The Secretary to Government,
Public (Special A) Department,
Secretariat, Chennai – 9. ... Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent Act, praying to set aside the order dated 04.02.2019 made in W.P.No.344 of 2018 and direct the respondents herein to promote the appellant notionally as District Revenue Officer for the year 2015 with effect from 01.06.016 and revised the appellant's retirement benefits in the cadre of District Revenue Officer with all consequential service and monetary benefits.

For Appellant : Mr.Ravi Shanmugam

Senior Counsel
for M/s.Sudha Ravi

For Respondents : Mr.S.Silambanan
Additional Advocate General
Assisted by
Mr.R.Kumaravel
Additional Government Pleader &
Mr.M.Babu Barveez
Government Advocate

JUDGMENT

[Judgment of the Court was delivered by R.SURESH KUMAR, J.]

This writ appeal has been directed against the order passed by the Writ Court dated 04.02.2019 made in W.P.No.344 of 2018.

2. The appellant was posted as a Special Revenue Inspector in 1986 from where he earned various promotions and ultimately he reached the position as Deputy Collector on 07.08.2010. His next promotion avenue is D.R.O. i.e., District Revenue Officer.

3. At that time a panel of Deputy Collectors consisting of 41 persons

fit for promotion to the post of District Revenue Officer was prepared for the year 2015. Though the panel was prepared for the year 2015 consisting of 41 persons where the petitioner's name found place at Serial No.17, when promotions were effected by order in G.O.Rt.No.776 Public (Special-A) Department dated 29.02.2016, only 10 persons have been given promotion.

4. Insofar as the other persons including the petitioner/appellant whose name found place in the 41 numbers panel of the year 2015, they were not considered for giving promotion in the said G.O. dated 29.02.2016.

5. Subsequently the petitioner/appellant retired only on 30.06.2016 and thereafter some of the incumbents in the said panel who had not been given promotion like the appellant also had retired.

6. Thereafter the second time promotion was given out of the same panel before it got expired on 23.02.2017, where 23 people were given promotions.

7. In between these two promotions, the petitioner retired on 30.06.2016 like that 7 other people also retired sometime in 2016 as well as January 2017.

8. In this context, the appellant had approached the Writ Court by filing the said writ petition i.e., W.P.No.344 of 2018 seeking for a writ of mandamus directing the respondents therein to promote the petitioner/ appellant notionally as District Revenue Officer for the year 2015 with effect from 01.06.2016 and revise his retiral benefits in the cadre of District Revenue Officer with all consequential service and all monetary benefits.

9. The said writ petition having been heard was dismissed by the order impugned of the Writ Court dated 04.02.2019.

10. Assailing the said order, Mr.Ravi Shanmugam, learned Senior Counsel appearing for the appellant would contend that, insofar as the panel that was prepared for the year 2015 is concerned, that panel consisting of 41

persons including the appellant whose name finds place at Serial No.17.

11. Without the clear vacancies that is caused the panel consisting of 41 persons would not have been prepared.

12. When that being so, when promotions were given in February 2016 the respondents restricted only 10 persons and not beyond 10 without any plausible reason.

13. If there are vacancies and the panel also has been prepared fit for promotion for the said year and on the consideration of giving such promotion, the appellant was eligible person to get promotion because he has already been included in the panel, therefore without any reason since the name of the persons in the panel including the appellant beyond Serial No.10 have been omitted to be considered, the respondent must have given reasons as to why they restricted with only 10 not beyond 10 in the panel to be given promotion by issuance of G.O.Rt.No.776 dated 29.02.2016.

14. When this was questioned, no proper reason since has been given by the respondents even before the Writ Court, the writ petition ought to have been allowed, however the learned Judge without considering the aforestated factual as well as legal position since has rejected the writ petition through the impugned order, it become necessitated for the appellant to assail the same by filing the present writ appeal, the learned Senior Counsel therefore seeks indulgence of this Court to interfere with the said judgment which is impugned herein.

15. On the other hand, Mr.S.Silambanan, learned Additional Advocate General appearing for the respondents during the earlier hearing before us had submitted that, even though a panel consisting of 41 persons was prepared fit for promotion to the post of District Revenue Officer, on need basis only 10 persons were given promotion in February 2016, thereafter before the said panel get lapsed in February 2017 remaining people were given promotion and in the meanwhile, persons like the appellant since have retired they could not be considered. Therefore, the

learned Additional Advocate General would contend that, promotion is not a matter of right, therefore as a matter of right the appellant cannot seek indulgence from this Court to issue a mandamus to the respondents to include his name in the list of promotees for the post of District Revenue Officer.

16. The learned Additional Advocate General would also contend that, though the appellant retired from service on 30.06.2016, he filed this writ petition only in 2018 as an afterthought to seek for promotion notionally for which he is not entitled to as he retired on 30.06.2016 well before his retirement, his name could not be considered by restricting the 10 vacancies to be filled up at that time, which decision was taken administratively and hence without challenging the said decision taken by the Government to restrict the promotions with 10 in numbers though the panel was prepared consisting of 41 persons, the appellant cannot file a writ petition after his superannuation and after the promotion panel was exhausted, without challenging the same by way of mandamus seeking direction to the respondents to consider his name notionally for the

promotion to the post of DRO, therefore for all these reasons, the mandamus sought for by the petitioner cannot be countenanced, hence it was rightly considered in proper perspective by the learned Judge who heard the writ petition and rejected the writ petition of course, therefore it does not warrant any interference from this Court, he contended.

17. We have considered the said rival submissions made by the learned counsel appearing for the parties.

18. In fact, when we heard this writ appeal on 10.08.2023, we have given some directions to the respondents to respond certain queries raised by us. The said order reads thus:

> *"For promotion from the post of Deputy Collector to District Revenue Officer, panel for the year 2015 was prepared and published in G.O.Ms.No.226, Public Department dated 29.02.2016 consisting of 41 names including the appellant, who stood as Sl.No.17.*
>
> *2. On the very same day, by issuing G.O.Rt.No.776 Public Department dated 29.02.2016, first ten people out of*

the 41 numbers in the panel have been given promotion as District Revenue Officers. For the remaining persons, promotion was not given immediately. Only on 23.02.2017, just a few days prior to the expiry of the panel for one year, 23 out of the remaining people in the 41 numbers panel have been given promotion.

3. In the meanwhile, some of them retired from service on attaining superannuation including the appellant, who retired from service on 30.06.2016.

4. In this context, since it is the case of the appellant that, as there has been vacancies based on which only the panel for the year 2015 was prepared, where 41 persons' names including the appellant's name found place, in all those vacancies that caused even prior to the superannuation of the appellant, the eligible persons including the appellant, on the basis of the seniority in the panel could have been picked up and promotion ought to have been given.

5. However, it is the stand of the respondents as stated by the learned Government Pleader that, even though based on the vacancies or expected vacancies the panel was prepared in the year 2015, after the vacancy is caused, the same shall be approved and that approved vacancies shall be identified, *based on which only the promotion can be given.*

6. If that being so, whether the 10 vacancies where under G.O.No.776 the first 10 people were given promotion on 29.02.2016 was from the already approved vacancies list and if so, such approved vacancy list shall be produced before this Court. Thereafter, whether such approved vacancy list given within the meaning of Section 7 of the Tamil Nadu Government Servants (Conditions of Service) Act 2016 has been published also to be ascertained and reported before this Court.

7. For the aforesaid purpose, the learned Government Pleader seeks a week's time. Post the matter on 18.08.2023. "

19. In response to the same, the respondents filed written instructions given by the Section Officer of the Public Department, Secretariat dated 22.08.2023. Having gone through the said written instructions given by the Section Officer of the Department concerned, we further raised the questions and given the following directions to the respondents by our order dated 23.08.2023.

"3. In the said instructions, our query has not been answered. When the panel was prepared among the Deputy

Collectors for the promotion to the post of District Revenue Officers for the year 2015, 41 people including the appellant were included. On the very same date i.e. on 29.02.2016, Government issued G.O.Rt.No.776 giving such promotion only to 10 people. Insofar as the remaining 31, no such promotion had been given, why it was restricted with 10 why not beyond 10 has not been explained so far. When that was so, last hearing it was argued on behalf of the respondents that, even though the panel consisting of 41 persons was issued on 29.02.2016, at that time there was approved vacancy of 10 only, therefore only 10 people have been given promotion on the said date. In this regard, we raised a pointed query as to the order of approval of such vacancies and that has not been produced and nothing has been whispered about the said query in the written instructions referred to above. Like that, the reason for belated promotion that was given by issuance of G.O.Rt.No.663 Public (Special-A) Department, dated 23.02.2017 is, according to the respondents, because of Election Code of Conduct of the year 2016 and for administrative reasons.

4. In this context, the Election Code of Conduct was over by May 2016 as the general Election to the Assembly was over by then, thereafter there was no Election Code of Conduct *from 1st June 2016 onwards. In this context, it is further to be noted that, administrative reason is one of the other reason cited by the respondents, what kind of administrative reasons which prevented the Department from operating the panel depending upon the vacancy caused in the post of DRO has not been explained so far. In between the G.O.Rt.No.776 and G.O.Rt.No.663, almost there has been a period of one year, therefore for such a delayed or belated action in operating the panel for giving promotion to the post of DRO absolutely no reason has been given by the respondents earlier and even in the present written instructions.*

5. Moreover, when this kind of important questions are raised, normally that would be answered by a responsible officer of the Department. Here both the Chief Secretary to Government of Tamil Nadu as well as the Secretary to Government, Public (Special-A) Department are parties in this appeal. If not the Chief Secretary to Government atleast the Secretary to Government of the Department concerned could have chosen to give answer to the query raised by this Court by way of giving any written instructions, but the 2nd respondent also has not chosen to give it and only the Section Officer has given this written instructions. An employee of a State Government at the Section Officer level cannot be expected to be the right person to speak on behalf of the

Department when queries were raised by this Court in a lis.

6. Therefore, when these kind of questions are posed to the State Departments, normally the expectation would be that, it would be properly responded either by the Head of the Department or by the Secretary to the Government. Here in the case in hand, the Secretary to Government of the Public Department already being a party, he should have filed the written instructions. Had it been filed by him, certainly these kind of issues would have been answered by him.

7. Since the Chief Secretary to Government also is a party in this appeal, we feel that, a direction can be given to the Chief Secretary to issue Circular to the Secretaries to Government as well as the Heads of the Departments to respond to the queries raised by the Court on behalf of their Department whenever queries directly posed to the Department concerned.

8. Therefore, we feel that, in order to give complete answer to the query raised by this Court as discussed herein above, the Secretary to Government, Public (Special-A) Department, being the proper authority, to respond to the Court's query, therefore we are inclined to give the following directions:

(i) That the Secretary to Government, Public (Special-A)

Department, 2nd respondent herein shall file a detailed statement/affidavit before this Court with substantive documents as to the reason for not acting upon the panel for nearly about one year and also the reason for not chosen candidates beyond Sl.No.10 even though the panel consisting of 41 Deputy Collectors for the year 2015, such statement/ affidavit shall be filed by the 2nd respondent on or before the next hearing date.

(ii) The Chief Secretary, Government of Tamil Nadu shall issue necessary Circular to all the Secretaries to Government as well as the Heads of the Departments to respond by themselves to the queries raised by the Court on specific issues concerning the Department, apart from the regular counter affidavit, defence statements filed by the respondents or the parties to the lis.

9. For the aforestated compliance, post the matter on 30.08.2023."

20. Since that query has been raised, once again a response has come from the Secretary to Government, after having gone through those averments, during the last hearing i.e., 11.09.2023 we passed the following

order:

"Pursuant to our last order, the Secretary to Government, Public and Rehabilitation Department has filed a counter affidavit, where he has stated the following:

"5. It is further submitted that the name of Thiru D.Jeyaram was included as Sl.No.17 in the panel of District Revenue Officers for the year 2015 published in the G.O.Ms.No.226, Public (Special A) Department, dated 29.02.2016. The officers in the Sl.Nos.1 to 10 were promoted to District Revenue Officer posts after obtaining orders from the then Chief Minister and orders were issued in G.O.Rt.No.776, Public (Special A) Dept., dated 29.02.2016. Due to election code of conduct in force for the Tamil Nadu State Assembly Election, 2016 upto May 2016 and on administrative reasons like Formation of Government and First Assembly Session, the panel could not be operated further. Meanwhile in June 2016, the respondent superannuated on 30.06.2016.

6. It is also submitted that the following seven Deputy Collectors, who have included in the District Revenue Officer panel for the year 2015, also retired from service on superannuation in the months of April, June and July 2016 and could not be promoted to the level of District Revenue Officer due to the administrative reasons as stated:-

(i) D.Jeyaram (Sl.No.17) - 30.06.2016
(ii) S.Malarvizhi (Sl.No.25) - 30.06.2016
(iii) T.Elangovan (Sl.No.26) - 31.07.2016
(iv) V.Seethapathi (Sl.No.27) - 30.06.2016
(v) A.Sundararaj (Sl.No.28) - 30.04.2016
(vi) S.Saraswathi (Sl.No.30) - 30.06.2016
(vii) N.Ganesasekaran (Sl.No.32) - 31.07.2016

The remaining 23 Deputy Collectors in the District Revenue Officer panel for the year 2015 were promoted to the posts of District Revenue Officer vide G.O.Rt.No.663, Public (Special A) Department, dated 23.02.2017 after obtaining orders from the then Chief Minister.

7. It is submitted that the Section 7 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 relates to approved candidates. The appointment to the posts of District Revenue Officer shall be made by promotion from a panel f officers in Deputy Collectors approved by the State Government. No member shall be considered for inclusion in the panel of officers fit for promotion as District Revenue Officer unless he is an approved probationer in Deputy Collector as on the first day of April of the year for which the panel is prepared.

8. It is submitted that in respect of the Hon'ble High Court order dated 10.08.2023 on approved vacancies list, the estimate of vacancies for the District Revenue Officers panel for the year 2015 arrived as 41 and it was published vide G.O(2D)No.23, Public (Special A) Department, dated 01.09.2015. The estimate of vacancies consist of retirement vacancies (25), likely promotions (8-promotion to IAS), leave reserve vacancies (9) and contingencies (6) and number of posts disbanded (7). The panel period of District Revenue Officers Panel for the year 2015 was one ear starting from the crucial date of 01.04.2015 to 31.03.2016. However, the panel of District Revenue Officers for the year 2014 published on 09.12.2014 and it was exhausted on 27.11.2015 during the panel year of 2015 vide G.O.Rt.No.4262, Public (Special A) Department, dated 27.11.2015. The existing vacancies in the District Revenue Officer were filled up as on February 2016."

2. Relying upon these averments, submissions have been made by Mr.S.Silambanan, learned Additional Advocate General appearing for the respondents.

3. Though we raised a pointed query during the last hearing that, when G.O.Rt.No.776, Public (Special A) Department, dated 29.02.2016 was issued giving promotion only to ten people out of 43 in the panel, why the remaining people have not been given such promotion, the answer now has been given at Paragraph No.8 where they stated that, the estimated vacancies was 43, accordingly G.O.(2D)No.23, Public (Special A) Department, dated 01.09.2015 was issued where 41 persons names have been included, in the 41 persons panel, the appellant stood as 17 in serial number.

4. In Paragraph No.8 of the today's counter affidavit by the Secretary to Government, it has further been stated that, as per the estimate of vacancies it is consisting of retirement vacancies 25, likely promotions 8, leave reserve vacancies 9, contingencies 6 and number of posts disbanded 7.

5. Assuming that, other things are uncertain like promotions etc., insofar as retirement vacancies estimated as 25 is concerned, it is certain because, that kind of retirement vacancies would be taken up for the purpose of preparing the panel while taking note of the exact retirement date of those

incumbents.

6. Therefore, if 25 vacancies are caused by the retirement of 25 incumbents, certainly as on 29.02.2016 when G.O.Rt.No.776 was issued definitely atleast this 25 vacancies caused by the retirees would have been made available for promotion, when that being so, why they have stopped with 10, why they have not gone upto 25. If they have gone upto 25 or even 20, definitely the appellant's name would have been included as he stood as 17th number in the panel and he retired only on 30.06.2016.

7. When that being the position, we *prima facie* feel that, the omission of the remaining eligible candidates to be included in the promotion list that was issued in G.O.Rt.No.776 dated 29.02.2016 is an exercise which has been done arbitrarily or in colourable manner, therefore, in order to verify this position and report before this Court, since the learned Additional Advocate General seeks a shorter accommodation till 15.09.2023. Post the matter on 15.09.2023."

21. Pursuant to these orders, especially the last order dated 11.09.2023, when the case is taken up for hearing today, Mr.S.Silambanan, learned Additional Advocate General appearing for the respondents on oral

instructions from the respondent Department would contend before this Court that, though a panel was prepared consisting of 41 persons including the appellant during February 2016, the Government decided to fill up only 10 posts on need basis.

22. Even though this statement has been given by the learned Additional Advocate General on instructions from the respondent Department, absolutely there has been no documents have been filed as to on what basis the Government has taken a decision to restrict the promotions only with 10 candidates despite the fact that the panel has been prepared consisting of 41 persons.

23. In fact, during our last order dated 11.09.2023, pursuant to the written statement made before this Court by the Secretary to Government, we have pointed out that, insofar as the vacancies that were calculated to be filled up, for which the panel was originally prepared for the year 2015, the vacancies arose on various reasons.

24. One of such reason is the retirement vacancies which was quantified as 25. If the retirement vacancies itself is 25, those vacancies certainly would have arisen, considering this factor, in fact, we have indicated that, if 25 vacancies were caused by the retirement of 25 incumbents, certainly as on 29.02.2016 when G.O.Rt.No.776 was issued definitely atleast this 25 vacancies caused by the retirees would have been made available for promotion, when that being so, why they have stopped with 10 and why they have not gone upto 25. If they have gone upto 25 or even 20, definitely the appellant's name would have been included as he stood as 17^{th} number in the panel and he retired only on 30.06.2016.

25. When this question was specifically asked in our order dated 11.09.2023, there has been no written response to that effect given by the respondents except the submissions made by the learned Additional Advocate General of course on oral instructions that, the Government has taken a decision to restrict it with 10 on need basis.

26. When there are 41 vacancies for which panel was prepared out of which 25 vacancies caused because of the retirement, certainly these 25 vacancies would have been made available at the time of consideration of the promotion, which was given in February 2016. When there are 25 vacancies atleast available which caused because of the retirement, why it was restricted only with 10 has not so far been substantiated by the respondents by giving any plausible reason before this Court.

27. It is a settled proposition of law that, insofar as the the employees are concerned, the promotion is not a matter of right but at the same time when consideration has been shown for giving promotion to employees and the employees become eligible to be promoted for which panel is prepared and a vacancy is also estimated which are substantial vacancy and it has also been caused because of the retirement, that has already been taken place, when that being so, when candidates are considered for promotion from the panel already been prepared, if at all the employer wants to restrict it to give promotion only to a limited people not to all those for whom the vacancy even though available and the panel has also been prepared, specific reason must be stated.

28. If without any reason such a decision is taken or claimed to have been taken, certainly that can be drawn only as an arbitrary decision without any reason.

29. It is for the employer to take any decision within the four corners of law i.e., the Service Rule and beyond the scope of the Service Rule, if any decision is taken for administrative contingencies or exigencies, even that could be spelt out with specific term, such decision making process is in question.

30. However, in the present case even such an attempt has not been made by the respondents to give the reason as to why such a decision has been taken administratively to restrict the number of promotees only with 10.

31. In the last order dated 11.09.2023, we have specifically indicated that, when that being the position, we *prima facie* feel that, the omission of the remaining eligible candidates to be included in the promotion list that

was issued in G.O.Rt.No.776 dated 29.02.2016 is an exercise which has been done arbitrarily or in colourable manner, therefore, in order to verify this position and report before this Court, the learned Additional Advocate General since seeks for time, that has been given.

32. This position so far has not been clarified, hence our *prima facie* view that has been recorded by our order dated 11.09.2023 now has been fortified by not supplying the reason for taking such decision in 2016 to restrict the promotions with 10 candidates.

33. Therefore we can safely conclude the issue by ascertaining that, insofar as such decision said to have been taken by the Government to restrict the promotions to the post of District Revenue Officer for the year 2015 despite the panel having been prepared and released consisting of 41 persons including the appellant and despite the fact that, there has been atleast 25 clear vacancies arose because of the retirement that has already been recorded, the non-inclusion of the other eligible persons in the promotion list including the appellant is unjustifiable.

34. However, it is a fact to be noted that, except this appellant no other persons beyond Serial No.10 seems to have approached this Court by filing any *lis* before this Court either questioning the decision restricting the promotions with 10 or seeking for a direction to consider their names to be included in the promotion list to get the promotion in the year 2016 itself as District Revenue Officer.

35. It is also a settled proposition of law that, when this kind of legal right sought to be implemented by any aggrieved person for which if he approaches the Court the judgment to be rendered to give such relief to those who approached the Court would be considered only as a judgment *in personam not in rem* insofar as the issue raised in the particular case is concerned.

36. Taking the totality of the aforestated discussions and the factual matrix of this case, we are inclined to dispose of this writ appeal with the following orders:

(i) That the impugned order is set aside. As a sequel, there shall be a direction to the respondents to promote the appellant as a District Revenue Officer of course notionally from 29.02.2016 the date on which the other persons have been promoted by issuance of G.O.Rt.No.776.

(ii) However, the appellant is not entitled for any salary difference for the period till his superannuation in the promoted post, but his service in the promoted post shall be calculated for the purpose of retirement and pensionary benefits. The needful shall be undertaken by the respondents and necessary orders to that effect as indicated above shall be passed within a period of eight weeks from the date of receipt of a copy of this judgment.

37. It is made clear that, as we discussed herein above, this order would not be treated as a precedent for others who also found place in the panel of 41 names of the year 2015 seeking the similar benefit that has been extended now to the appellant.

38. With the aforesaid directions and observation, this Writ Appeal is disposed of. However, there shall be no order as to costs.

[R.S.K. J] [K.B. J.]

19.09.2023

Index : Yes

Speaking Order : Yes

Neutral Citation : Yes

Sgl

To

1.The Chief Secretary to Government,
Public (Special A) Department,
Secretariat, Chennai – 9.

2.The Secretary to Government,
Public (Special A) Department,
Secretariat, Chennai – 9.

R.SURESH KUMAR, J.
AND
K.KUMARESH BABU, J.

Sgl

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