



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2023

CORAM

THE HON'BLE Mr. JUSTICE **C. V. KARTHIKEYAN**

W.P.No.1563 of 2017

and

W.M.P.No.1490 of 2017

M. Mohamed Abdul Khadar

.. Petitioner

Vs.

1.The State of Tamil Nadu

Rep. by the Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
Fort St. George,
Chennai – 9.

2.The Director

Commissionerate of Rural Development and Panchayat Raj,
Panagal Building,
Chennai – 15.

3.The District Collector

Erode District,
Erode.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the entire records relating to G.O.(D).No.360, Rural Development and Panchayat Raj (E-1) Department dated 16.08.2016 on the file of the 1st respondent herein



and quash the same and consequently direct the 1st respondent herein to promote the petitioner herein notionally as Assistant Director w.e.f 06.03.2003 on par with his juniors and fix his last drawn pay in the post of Assistant Director and sanction difference in salary, arrears of pension and all other consequential monetary benefits in accordance with law.

For Petitioner .. Mr. V. R. Rajasekaran

For Respondents .. Mr. V. Nanmaran, AGP

ORDER

The Writ Petition has been filed in the nature of Certiorarified Mandamus seeking records relating to G.O.(D) No.360, Rural Development and Panchayat Raj (E-1) Department dated 16.08.2016 on the file of the 1st respondent and quash the same and direct the 1st respondent to promote the petitioner notionally as Assistant Director with effect from 06.03.2003 on par with his juniors and fix his last drawn pay in the post of Assistant Director and to sanction difference in salary, arrears of pension and other consequential monetary benefits.



2. The petitioner had joined as Agricultural Assistant (Village Level Worker) in Agriculture Department. He was then absorbed as Gramasevak Grade-II in the Rural Development Department. Thereafter, consequent to orders in W.P.Nos.19960 to 19962 of 1998 batch dated 19.04.2005, the 3rd respondent had issued orders on 28.01.2013 revising seniority of the petitioner in the post of Junior Assistant / R.W.O. Grade-II, Assistant / R.W.O. Grade-I, Extension Officer, Deputy B.D.O in the Erode Panchayat Development Unit and also issued orders for notional fixation of pay for the above said posts. Thereafter, he was deemed to have been promoted as BDO by order dated 17.02.2014 with effect from 08.04.1998.

3. However, his request to be considered for notional promotion for the post of Assistant Director was not considered. He then filed W.P.No.28610 of 2015 seeking such a direction. A report was sought by the High Court with respect to revision of seniority in the post of BDO. Thereafter, orders were passed by the 2nd respondent on 09.11.2015 re-fixing the seniority of the petitioner in the post of BDO as claimed in the writ petition. However, the petitioner claims that he should have promoted notionally as Assistant Director.



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4. In the counter with respect to this aspect, it had been stated that the petitioner was not eligible for promotion in the panel for the year 2001 – 2002, but that he was eligible for promotion in the panel for the year 2002 – 2003. A Government Order in this regard had been passed in G.O.(4D) No.1, Rural Development (E1) Department, dated 13.01.2005. The petitioner had retired on attaining the age of superannuation on 31.12.2004. In the meanwhile, a punishment of Censure was imposed on the petitioner, which was in effect from 06.02.2004 till 05.02.2005.

5. It is very strongly contended on behalf of the respondents that for the panel in the year 2001 – 2002, the petitioner was not eligible. With respect to the panel for the year 2002 – 2003, it is stated that the Government Order was issued only in the year 2005, by which time the petitioner had already retired. Even prior to his retirement between 06.02.2004 till 05.02.2005, the order of Censure was in force. It is therefore contended that, on the date when Government order was passed namely, on 13.01.2005, the punishment of Censure was still in force and on the date when the panel was opened up nearly 2002 – 2003, the Government Order



had not been passed. It is therefore contended that the petitioner was not eligible for notional promotion as Assistant Director.

6. However, it should also be considered that promotion is for the panel 2002 – 2003. On that date, when the petitioner was eligible for consideration of promotion as Assistant Director, there was no punishment of Censure or any other nature of punishment, which had been imposed on the petitioner or was subsisting on him. The Government passed an order in the year 2005, but they should examine the Service Register of the petitioner as on 2002 – 2003. If on that date, he was eligible for promotion then, he should be granted notional promotion as Assistant Director. The issue of Censure had never played on the minds of the respondents, since the petitioner had attained the age of superannuation on 31.12.2004, even during the pendency of the punishment of Censure, but still he was permitted to retire and subsequently he was also granted promotion as BDO from the year 1998.

7. The learned counsel for the petitioner also placed reliance on the communication issued by the respondent herein, wherein, they had stated



that if the petitioner is otherwise eligible, he would be considered for the promotion of Assistant Director. In the years 2002 – 2003, there was no punishment at all imposed on the petitioner. At that time when the promotion opportunity was opened up, the petitioner was eligible for promotion. The Government order was issued subsequently on 13.01.2005. It should take into consideration the date on which the petitioner was eligible and should have granted notional promotion. The objection there was a punishment of Censure between 06.02.2004 and 05.02.2005 cannot be taken into consideration, since the petitioner was permitted to retire on 31.12.2004. The respondents themselves have not taken that particular punishment for consideration and permitted the petitioner to retire and also they had granted promotion as BDO with effect from 1998.

8. Hence, I find no reason to withhold the promotion of the petitioner from the panel in the year 2002 – 2003. It should be granted on notional basis. The petitioner should be considered to have been notionally promoted as Assistant Director. Necessary proceedings may therefore be issued within a period of 16 weeks from the date of receipt of a copy of this order.



9. With the above observations, this Writ Petition is allowed. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

24.07.2023

Index:Yes/No
Internet:Yes/No
Neutral Citation:Yes/No
Speaking order: Yes/No
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To

- 1.The the Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
Fort St. George,
Chennai – 9.
- 2.The Director
Commissionerate of Rural Development and Panchayat Raj,
Panagal Building,
Chennai – 15.
- 3.The District Collector
Erode District,
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C.V.KARTHIKEYAN,J.

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