



W.A.(MD)No.1565 of 2021

WEB COPIED BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.07.2022

PROUNOUNCED ON : 13.07.2023

CORAM:

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**
and
THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

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1.V.Balakrishnan
2.R.John Rajasekar

... Appellants

Vs.

1.The Secretary to Government,
Panchayat and Rural Development
Department,
Secretariat, Fort. St. George,
Chennai – 9.

2.The Director,
Rural Development and Panchayat,
Panagal Building,
Saithapet, Chennai.

3.The District Collector,
Kanyakumari District,
At Nagercoil.

4.K.Raja Dhas
5.S.Sathu Sunder Singh

... Respondents



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Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.6169 of 2019, dated 17.03.2021.

For Appellants :Mr.S.C.Herold Singh

For R1 to R3 :Mr.S.P.Maharajan

Special Government Pleader

JUDGMENT

(Judgment of the Court was delivered by **S.SRIMATHY, J.**)

This Writ Appeal is filed challenging the order passed in Writ Petition W.P.(MD)No.6169 of 2019, dated 17.03.2021.

2. The prayer in W.P.(MD)No. 6169 of 2019 is for Writ of Certiorarified Mandamus, to quash order dated 30-01-2019 passed in Se.mu.No.E7/ 48790/2018 by 3rd respondent and consequently to direct the 1st respondent to grant promotion to the petitioners to the post of Junior Assistant from the date on which they become eligible and grant all monetary and service benefits consequent to the same in accordance with G.O.(Ms).No.189, dated 10.06.1997, within a



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stipulated time that may be fixed by this court.

3. The writ petition is filed by four writ petitioners, however only two writ petitioners, namely V.Balakrishanan and R. John Rajasekar have filed the present writ appeal. Hence the other two writ petitioners namely K.Raja Dhas and S.Sathu Sunder Singh are shown as respondents 4 and 5 in the present writ appeal.

4. The brief facts as stated in the writ petition affidavit are that the appellants were working as Pump Fitter Assistant on daily wages basis in the respondent Panchayat Union. Thereafter, the appellants were regularized in their service as Office Assistant from 14.11.2006 by virtue of G.O.Ms.No.55, Rural Development and Panchayat, dated 15.06.2006 and consequential proceedings of the District Collector, dated 13.11.2006. The appellants were appointed as Office Assistants on various dates and the next avenue of promotion available is in the post of Junior Assistant. The Junior Assistant posts are generally filled up through direct recruitment. Since the petitioners and the similarly placed persons could not get



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promotional opportunity, several representations were submitted to the Government to grant promotion. Thereafter, the Government issued G.O.Ms.No.963, Rural Development (E7) Department, dated 28.11.1990, wherein the G.O. created provision to fill 10% of vacancies from among the eligible candidates from Panchayat Union. The candidates should possess minimum educational qualification and ought to have served in the feeder category service for a period of not less than 5 years. Thereafter G.O.Ms.No. 189 Rural Development Department dated 10.06.1997 was passed, wherein the G.O. states 10% is earmarked for the post of Office Assistant, Rural Welfare Officer Grade II and Cashiers. In the year 2013 – 2014, based on the available vacancies if 10% quota is applied, three posts would be allotted to Office Assistant category. For the year 2013-2014, no eligible candidates were available to be considered under 10% quota as on crucial date.

5. The contention of the appellants are that the said 3 vacancies are backlog vacancies, but the same was not shown for the next year 2014-2015 thereby the promotion opportunity was



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denied to the appellants. The said vacancies are still kept vacant and if not the appellants, the persons in the seniority panel have become eligible during November 2013 itself and the respondents ought to have considered the them and granted promotion in the year 2014 - 2015. The 90% of the vacancies were filled up by direct recruitment, however, the 10% earmarked for them were not properly considered and the same was not carried forward as backlog vacancies, due to this, the juniors are overtaking the seniors. The appellants submitted that the backlog vacancies ought to be filled up at appropriate time. If the respondents strictly follow and take steps to clear the backlog vacancy properly, then the appellants would have got promotion at the appropriate time.

6. The appellants had submitted representations to the respondents and it was informed that during 2013-2014, as on crucial date on 01.03.2013, the appellants' candidature could not be considered, since the appellants have not completed 7 years of service and hence, their case will be considered during the year 2014-2015. But during the year 2014-2015, the respondents have



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WEB filled up only one vacancy stating that 10% of the total vacancy for the panel year 2014-2015 is only one post. Since the appellants persistently demanded promotion, considering the plight of the appellants, District Collector vide letter, dated 25.05.2015, requested the Government to permit to fill up the said backlog vacancies for the year 2014-2015. The first respondent has directed the District Collector to fill up only one vacancy in the year 2014-2015 and one Selvaraj was recommended to the said post. During 2015-2016, one Rajeswari and Iyyappan were promoted. In the year 2016-2017, the Iyyappan, Kumar and Joseph Raj were promoted. The District Collector vide, communication, dated 02.01.2017, requested to permit the District Administration to fill up the backlog vacancy and the same was accepted by the Director of Rural Development, but nothing moved before the first respondent. But subsequently the Director returned the proposal vide letter, dated 10.05.2017 stating that the backlog vacancy for the year 2013-2014 was submitted belatedly. The contention of the appellants is that if the respondents followed the instructions given in G.O.Ms.No.963 and G.O.Ms.No.189, the respondents ought to



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have accommodated Selvaraj, Rajeswari, Iyappan and Kumar in the backlog three vacancies for 2013-2014 and one vacancy for the year 2014-2015 respectively. Thereby deprived promotion to others in the seniority list. Aggrieved over by the not implementing the G.O.Ms.No.963, dated 28.11.1990 and G.O.Ms.No.189, dated 10.06.1997, the appellants have filed the writ petition.

7. The respondents have filed a counter affidavit in the writ petition as well as in the writ appeal. The contention of the respondents is that the appellants had filed a writ petition in W.P. (MD)No.22157 of 2018, praying to grant promotion and all service benefits in accordance to G.O.Ms.No.189, dated 10.06.1997. This Court, vide order, dated 30.10.2018, had directed the respondents to consider the representation, dated 11.10.2018, in accordance with law and pass orders. The appellants were granted personal hearing by Personal Assistant to Collector on 10.01.2019, to consider the representation. The appellants attended the hearing but has not submitted any record to prove their eligibility or qualification. Thereafter, final orders were passed on the



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representation, dated 11.10.2018 and the same was served to the appellants. In the said order, the appellants were informed that the request to consider three persons for the panel year 2013-2014 cannot be considered, as they are not eligible persons since they had not completed 7 years of qualifying service in the cadre of Record Clerk or Office Assistant or Night Watchman on the crucial date of the panel 2013-2014, i.e., on 15.03.2013. It was also informed in the said order that among the 4 persons (writ petitioners), first writ petitioner namely Rajadhas and the second writ petitioner namely Sathu Sundar Singh (both are shown as respondents 4 and 5 in writ appeal herein) were considered for the panel 2016-2017 and 2018-2019. The appellants herein (are 3rd and 4th writ petitioners in writ petition) will be considered for 10% quota for the coming years based on the seniority and merit. The counter further states that as per G.O.Ms.No.189, RD and PR (E5) Department, dated 10.06.1997, an individual claiming promotion under 10% reservation should possess the following eligible qualifications.

a) Minimum 7 years continuous service.



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- b) Should have been in the first instance recruited through employment exchange.
- c) Suitable for promotion taking into account of previous conduct with reference to disciplinary proceedings.

8. The respondents further stated that seniority would be followed if other things being equal. In G.O.Ms.No.963 in paragraph 5(iii) it is specifically stated that the panel of Junior Assistant post has to be approved by TNPSC and postings will be made only from the panel approved by TNPSC and no temporary panel is permissible. The post of Junior Assistant to which promotion was claimed by the appellants falls under the purview of TNPSC. Number of posts in each category for every year is finalized by TNPSC, panel approved by TNPSC, concurrence given by TNPSC. But the appellants have not challenged any of the orders passed by TNPSC and has not impleaded TNPSC as party. The appellants stated in their representation, dated 11.10.2018 that if the District Administration sent panel preparation regularly, nine persons would have got promotion as Junior Assistant and they have given the



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WEB DETAILS details as stated hereunder:

S. No.	Year	% of vacancies	No of reserved vacancies	Names of RC/OA/NW who could have been appointed
1	2013-2014	10%	3	S.Selvaraj, Rajeswari, Iyyappan
2	2014-2015	10%	1	Kumar
3	2015-2016	10%	1	Joseph Raj
4	2016-2017	10%	3	K. Rajadhas, Sathu Sundar Singh, Balakrishnan
5	2017-2018	10%	0	-
6	2018-2019	10%	1	John Rajasekar
			9	

9. The respondents further stated that the appellants are not qualified as on crucial date, i.e., 15.03.2013, for the panel year 2013-2014. The individuals who are promoted are not parties in this case. The petitioners who are juniors and not eligible as on crucial date. Moreover, without the requisite service qualification, without eligibility for promotion and without challenging the promotional panel 2013-2014, the appellants cannot claim any relief. The promotion claiming by the appellants was not according



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to the rules as it exceeds 10% of estimated vacancy of the particular years, i.e., 2013-2014, 2014-2015, 2015- 2016. The three persons claiming for promotion as on crucial date, i.e., 15.03.2012, have not completed 7 years of service and the service particulars as stated in the table would be relevant.

S. No.	Seniority	Name of OA/RC	Crucial date of panel	Date of completion of seven years service qualification
1	2	3	4	5
1.	20	Selvaraj	15.03.2012	02.08.2013
2.	21	V.Rajeswari	15.03.2012	02.08.2013
3.	22	S.Kumar	15.03.2012	02.08.2013

10. Since all the persons stated in the table have not completed 7 years of service as on the crucial date, but completed after the crucial date, hence, they are not eligible for consideration year 2013-2014 and three posts was not reserved as backlog vacancy as contented by the petitioners. G.O.Ms.No.963, dated 28.11.1990 and G.O.Ms.No.189, dated 10.06.1997, have no provisions for backlog vacancy. Hence, a nil panel proposal was sent by the 3rd respondent. If the petitioner is aggrieved in this respect,



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they should challenge G.O.Ms.No.189, dated 10.06.1997, without challenging the said G.O., the petitioners cannot claim to reserve the posts as backlog vacancy and the claim of the petitioner is beyond the scope of the G.O., hence the respondents prayed to dismiss the writ petition.

11. The learned Single Judge after considering the claim of the writ petitioners and the submission of the respondents has held

“3. According to the respondents, the crucial date for promotion to the post of Junior Assistant for the panel 2013-2014 is on of 15.03.2013 and that none of the petitioners herein had completed 7 years of qualifying service in the present post as on the crucial date. However, it is now stated that subsequently, the first and second petitioners herein were qualified themselves to be considered for the promotion to the post of Junior Assistant and accordingly, the promotion orders have also been issued on 30.06.2020 for the panel year 2016-2017 and on 31.10.2020 for the panel year 2018-2019 respectively. So far as the petitioners 3 and 4 are concerned, the Learned Additional Government Pleader submitted that these two candidates will also be considered at appropriate time in the turn. Since the respondent had not earlier considered the petitioner’s



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request earlier for promotion on the ground that they had not qualified themselves as on crucial date of the panel year 2013-2014, i.e., 15.03.2013 and there is no infirmity in their inaction to promote the petitioners.

1. 4. However, in view of the submissions made by the Learned Additional Government Pleader, that two of the petitioners have already been promoted and that the other two persons who are now under the zone of consideration at the appropriate time, no further orders are required to be passed in the present writ petition."

The Learned Single Judge recording the said submission had closed the writ petition with the said observation.

12. Heard Mr.S.C.Herold Singh, the Learned Counsel appearing for the appellants and Mr.S.P.Maharajan, the Learned Special Government Pleader for the respondents 1 to 3 and perused the relevant materials.

13. After hearing rival submissions this Court has given its anxious consideration. The appellants were serving as Pump Fitter Assistant on daily wages basis in the Panchayat Union,



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subsequently were regularized in the post of Office Assistant. The posts of Record Clerk, Office Assistant, Night Watchman were considered as last grade services. Since there were no promotion avenues, the persons serving in such post requested to grant promotion. Their prayer was considered and the government had granted 10% quota for such posts in G.O.Ms.No.963, dated 28.11.1990 and subsequently issued G.O.Ms.No.189, dated 10.06.1997. When such reservation is granted, the respondents should follow the 10% quota strictly and grant promotion as Junior Assistant. If vacancies are available and if no candidates are there for a particular year, then the said vacancy should be carried forward for the next year. Once a quota is granted to the said category of candidates, then the respondents is not having any power to fill the 10% reserved category by candidates belonging to other categories.

14. The respondents have stated in the counter that for any 100 vacancies, 10% is reserved for promotion from basic servants (which the appellants belonged to), 20% are served for promotion



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from Panchayat Secretaries, 25% reserved for compassionate appointments and 45% for direct recruitment by TNPSC. If that is so, then the respondents ought to fill the vacancies only by such persons belonging to the said category only. The respondents cannot fill the posts reserved for Basic Servants by Panchayat Secretaries or other categories. Likewise, the respondents cannot not fill the post belonging to Panchayat Secretaries by Basic Servants or other categories and so on.

15. The specific contention of the respondents is that once the candidates are not available in the said category, then it cannot be carried forward and the G.O. is not stating that the said vacancies should be carried forward. The relevant portion of the counter is extracted hereunder:

"17.I respectfully submit that, since there were no eligible persons for consideration for the year 2013-14, 'NIL' proposal was sent by District Administration, which is in order. It is submitted that these 3 posts were not reserved as backlog vacancies as contended by petitioners. As per G.O.Ms.No.963, Rd Dept, dated 28.11.1990 and G.O.Ms.No. 189, RD (E7) Dept), dated 10.06.1997, which the petitioners



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On perusing the said G.O.Ms.No.963 and G.O.Ms.No.189, it is seen the G.O.s are not stating that if it is “NIL panel” for that category for the particular year, then the said reserved posts should be treated as backlog vacancies. At the same breath the said G.O.s are not stating that if it is “NIL panel” for that particular year then the said post shall be filled by other category candidates. When the G.O.s are silent about the issue raised by the appellants, then the one which is beneficial to the candidates should be granted. In the present case, if the three posts of 10% granted for the year 2013-2014 is carried forward, then for the next year 2014-2015 (along with one more post for this year), the category would get four seats and S.Selvaraj, Rajeswari, Iyyappan, Kumar would have been accommodated in the year 2014-2015 itself. As rightly pointed out by the appellants then for the subsequent years the appellants



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WEB would get the chance of promotion. The method followed by the respondents is depriving the promotional opportunity of the appellants. If the respondents follow the method to carry forward the backlog vacancies, then the appellants would get promotional opportunities.

16. Moreover, the respondents stand is against the real spirit of G.O.Ms.No.963, dated 28.11.1990 and G.O.Ms.No.189, dated 10.06.1997. If the backlog is not carried forward then it would create utter confusion among the other categories as well. In any recruitment process or transfer by promotion, wherever ratio is allotted, the ratio cannot be filled up by another category. In the present case, the respondents ought to have strictly followed the quota of

- i.10% for promotion from basic servants
- ii.20% for promotion from Panchayat Secretaries
- iii.25% reserved for compassionate appointments
- iv.45% for direct recruitment by TNPSC



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If there is “Nil panel” for a particular year the same shall be carried forward to fill up in the next year from that same category alone. If the category is allotted for particular cadres, then it cannot be filled up by any other cadres and the Government shall necessarily follow to carry forward the backlog vacancy to next year.

17. Infact the District Collector vide, communication, dated 02.01.2017, requested to permit the District Administration to fill up the backlog vacancy and the same was accepted by the Director of Rural Development, but nothing moved before the first respondent. But subsequently the Director returned the proposal vide letter, dated 10.05.2017 stating that the backlog vacancy for the year 2013-2014 was submitted belatedly and the same cannot be considered. This Court is of the considered opinion that the respondents have not followed the G.O.Ms.No.963, dated 28.11.1990 and G.O.Ms.No.189, dated 10.06.1997 strictly.

18. For the reasons stated supra, this Court is passing the following orders:



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i. This Court is directing the respondents to follow G.O.Ms.No.963, dated 28.11.1990 and G.O.Ms.No.189, dated 10.06.1997 strictly and quota of 10% (20%, 25%) shall be granted to the in-service candidates and 45% shall be followed to the direct recruitment.

ii. The backlog vacancies shall be carried forward and filled up from the same categories. The said backlog vacancies shall not be filled up from other categories.

iii. As far as this case is concerned the respondents shall grant promotion to the said four persons namely S.Selvaraj, Rajeswari, Iyyappan, Kumar by taking the 10% quota for the year 2013-2014 and 2014-2015.

iv. For the subsequent years from 2015-2016 the vacancies shall be filled up by granting promotion for the other persons based on the seniority as stated in tabulation in paragraph 8 of this order.



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19. With the above said observation, the writ appeal is allowed. No costs.

[S.S.S.R., J.] [S.S.Y., J.]
13.07.2023

Index: Yes / No

Tmg

To

1.The Secretary to Government,
Panchayat and Rural Development
Department,
Secretariat, Fort. St. George,
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