



W.A.(MD)Nos.670 and 671 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 06.10.2023

CORAM

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**
AND
THE HONOURABLE **MR.JUSTICE V.LAKSHMINARAYANAN**

W.A.(MD)Nos.670 and 671 of 2022

R. Thirupathi,
Assistant (Accountant),
Madurai East Panchayat Union,
Chokkikulam,
Madurai – 2.
(Now working as Assistant / Rural Welfare Officer Grade I)
Madurai West Panchayat Union,
Chokkikulam,
Madurai – 625 002.

... Appellant /Petitioner
in W.A.(MD) No.670 of 2022

P. Kumaravel,
Assistant,
Thirumangalam Panchayat Union Office,
Thirumangalam,
Madurai.

... Appellant /Petitioner
in W.A.(MD) No.671 of 2022

Vs

1. The State of Tamil Nadu,
Represented by its Secretary to the Government,
Rural Development & Panchayat Raj Department,
Secretariat,
Chennai - 2.

2. The Director,
Rural Development & Panchayat Raj Department,



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Panagal Maligai,
Saidapet,
Chennai - 15.

3. The District Collector,
Madurai District,
Madurai.

..Respondents 1 to 3 in both the
Writ Appeals

4. The Block Development Officer,
Madurai East Panchayat Union,
China Chokkikulam,
Madurai.

... 4th Respondent in W.A.(MD)
No.670 of 2022

4. The Block Development Officer (Village Panchayat),
O/o. The Block Development Office,
Thirumangalam Panchayat Union Office,
Thirumangalam,
Madurai.

.. 4th Respondent in W.A.(MD)
No.671 of 2022

COMMON PRAYER:- Writ Appeals filed under Clause 15 of Letters
Patent Act, to set aside the common order dated 04.01.2022 made in W.P.
(MD)Nos.3810 and 3813 of 2018 on the file of this Court.

For Appellant in both
the Writ Appeals

: Mr.J.Barathan

For Respondents

: Mr.Veera Kathiravan
Additional Advocate General
Assisted by Mr.N.Satheeskumar
Additional Government Pleader



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COMMON JUDGMENT

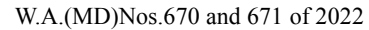
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(Judgment of the Court was delivered by **S.M.SUBRAMANIAM, J.**)

The present intra-Court appeals have been instituted challenging the common order dated 04.01.2022 passed in W.P.(MD)Nos. 3810 and 3813 of 2018.

2. The appellants were initially appointed as Panchayat Clerks on 01.08.1980. A charge memo was issued against them with reference to certain allegations on 09.02.2005. The appellants filed W.P.(MD) No.966 of 2005 challenging the charge memo and this Hon'ble Court allowed the Writ Petition quashing the charge memorandum dated 09.02.2005. The third respondent published the Seniority List of Village Assistants on 05.06.2006, wherein the name of the appellants were placed in Serial Nos.31 and 32.

3. Learned counsel for the appellants mainly contended that the appellants were eligible for appointment by way of transfer of service to the post of Junior Assistant in the panel of the year 2005 – 2006. Since the charge memorandum issued against the appellants were quashed by this Court and there was no impediment to consider the names of the



4. Learned Additional Advocate General appearing for the petitioner raised an objection by stating that the post of Village Assistant is not a post under Local Authority under Panchayat Service Rules. The post of Village Assistant is falling under the Tamil Nadu Ministerial Service Rules. The post is within the purview of Tamil Nadu Public Service Commission. The concurrence of the Tamil Nadu Public Service Commission is not required for the purpose of appointing a Village Assistant as Junior Assistant under the Tamil Nadu Ministerial Service Rules. Therefore, it is not a new post to be made by way of transfer of service and the contention of the petitioner that the seniority alone is to be followed is not valid. The Government passed an order in G.O.Ms.No.240 Rural Development Department, dated 07.09.2000, wherein conditions were



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stipulated for the selection of Panchayat Assistant for appointment to the post of Junior Assistant by way of transfer of service. As per para 5(c) and (d) the previous conduct and antecedent are to be taken into consideration for the purpose of inclusion of their names in the approved panel for appointment to the post of Junior Assistant by way of transfer of service. Thus, it is not a promotional post, but a selection post. Therefore, merit cum seniority is to be followed. Assessment of conduct is a paramount importance since it is an appointment to be made with the concurrence of the Tamil Nadu Public Service Commission into the Tamil Nadu Ministerial Service.

5. We have considered the rival submissions made on behalf of the parties to the lis on hand.

6. It is not in dispute that appellants were appointed as Village Assistants under the Panchayat Service Rules. Appointment to the post of Junior Assistant is to be made with the concurrence the Tamil Nadu Public Service Commission and in compliance of the guidelines issued by the Government in G.O.Ms.No.240 dated 07.09.2000. The names of the appellants were included in the list of seniority of Village Assistants



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but their names were not considered in the pannel for the years 2005 – 2006 and 2006 – 2007 on account of the merit assessment made by the competent authority. The merit assessment regarding the previous conduct and antecedents were taken into consideration by the competent authorities and accordingly, the case of the appellants were deferred. However, the appellants were subsequently considered and included in the panel of the year 2007 – 2008. Consequently, the appellants were appointed as Junior Assistant on 04.08.2011.

7. Interestingly, the appellants have not approached this Court within a reasonable time. Though the appellants were promoted in the year 2011, the Writ Petitions are filed in the year 2018 after a lapse of about six years from the date of promotion. There was an enormous delay in approaching the High Court and the learned Single Judge considered this ground for the purpose of rejecting the claim of the appellants to grant retrospective promotion to the post of Junior Assitant.

8. Appointment cannot be claimed as an absolute right. Appointment by Transfer of Service are to be made strictly in accordance with the terms and conditions stipulated in the Service Rules. Post of



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Junior Assistant is falling under the purview of the Tamil Nadu Public Service Commission and concurrence of the Commission is mandatory.

In the present case, the merit assessment was made. Previous conduct and antecedent of the appellants were considered and accordingly their case was deferred initially in the panel of the years 2005-2006 and 2006-2007 and thereafter, the names of the appellants were considered and included in the panel of the year 2007 – 2008 and consequently, promotion order was passed in the year 2011. That being the factum, we do not find any reason to interfere with the findings made by the learned Single Judge, which is in consonance with the Government Orders and principles to be adopted for the purpose of appointing the Panchayat Service personnel to the Ministerial Service, by way of transfer of service.

9. In view of the same, the common order dated 04.01.2022 passed by the learned Single Judge in W.P.(MD)Nos.3810 and 3813 of 2018 stands confirmed and the Writ Appeals are dismissed. No costs.

[S.M.S.J.] & [V.L.N.J.,]
06.10.2023

NCC :Yes/No
Index :Yes/No
Internet :Yes/No
SJ



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S.M.SUBRAMANIAM, J.
AND
V. LAKSHMINARAYANAN, J.

SJ

To

1. The Secretary to the Government,
Rural Development & Panchayat Raj Department,
State of Tamil Nadu,
Secretariat,
Chennai - 2.
2. The Director,
Rural Development & Panchayat Raj Department,
Panagal Maligai,
Saidapet,
Chennai - 15.
3. The District Collector,
Madurai District,
Madurai.
4. The Block Development Officer,
Madurai East Panchayat Union,
China Chokkikulam,
Madurai.
5. The Block Development Officer (Village Panchayat),
O/o. The Block Development Office,
Thirumangalam Panchayat Union Office,
Thirumangalam,
Madurai.

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