



W.A.(MD).Nos.974 of 2022 and 548 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 05.12.2023

CORAM

**THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN**

W.A.(MD).Nos.974 of 2022 and 548 of 2023
and
C.M.P.(MD).Nos.7889 of 2022, 5488 and 5489 of 2023

W.A.(MD).No.974 of 2022

- 1.P.Gomathi
- 2.H.Gobikrishnan
- 3.B.Ayyappan
- 4.K.M.Nagarajan
- 5.V.Ayyadurai
- 6.K.Sankar
- 7.M.Muthuraman
- 8.D.Gokulnath
- 9.V.Balakumar
- 10.G.P.Satya Bama



W.A.(MD).Nos.974 of 2022 and 548 of 2023

11.M.Muthuramalingam

12.K.R.Venkata Krishnan

13.S.Velavan

14.C.Chandran

15.A.Marimuthu

16.V.Udayakumar

17.R.Venkateswaran

18.A.Alagappa

19.E.Thangammal

20.K.Kasinathan

21.V.L.Revathi

22.K.Ramar

23.V.Ravikumar

24.N.Ramamoorthy

25.Thiyagarajan

26.G.Deivendran

27.T.Vijayan

28.R.G.Renuka Devi



W.A.(MD).Nos.974 of 2022 and 548 of 2023

29.L.S.Seethalakshimi

30.B.Tamilmathi

31.M.M.Uma Maheswari

32.K.Revathi

33.M.Saravana Bala

34.M.Paramasivan

35.Sathyendran

36.N.Kaladevi

37.C.Devi

38.P.Meenambal

39.V.Gokila

40.G.Hemavathi

.. Appellants/Respondents No.4 to 43

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Revenue Department,
Secretariat,
Chennai – 600 009.

2.The Additional Chief Secretary and
Commissioner of Revenue Administration,
Ezhilagam,
Chepauk,
Chennai – 600 005.



W.A.(MD).Nos.974 of 2022 and 548 of 2023

3.The District Collector,
Ramanathapuram District,
Ramanathapuram.

.. Respondents/Respondents 1 to 3

4.M.P.Malathy

5.T.Selvi

6.P.Geetha

7.M.Poongudi

8.R.Chamundeeswari

9.K.R.Manjula

10.R.Lakshmi @ Saratha

11.P.Sivashanmugam

12.B.Andal

13.M.G.Gomathi

.. Respondents/Writ Petitioners

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order dated 12.08.2022 passed by the learned Judge in W.P. (MD).No.23155 of 2015 and allow the Writ Appeal.

For Appellants : Mr.Ajmal Khan
Senior Counsel
assisted by Mr.H.Mohamed Imran
for M/s.Ajmal Associates



WEB COPY



W.A.(MD).Nos.974 of 2022 and 548 of 2023

For R-1 to R-3 : Mr.T.Amjad Khan
Government Advocate

For R-4 : Mr.C.Gangaiamaran

W.A.(MD).No.548 of 2023

1.A.N.Gokulnath

2.V.Jeyachitra

3.S.Nambu Gayathri

4.R.N.Saminathan

.. Appellants/Third Party

Vs.

1.M.P.Malathy

2.T.Selvi

3.P.Geetha

4.M.Poongudi

5.R.Chamundeeswari

6.K.R.Manjula

7.R.Lakshmi @ Saratha

8.P.Sivashanmugam



W.A.(MD).Nos.974 of 2022 and 548 of 2023

9.B.Andal

10.M.G.Gomathi

.. Respondents/Petitioners

11.The State represented by
The Secretary to Government,
Revenue Department,
Secretariat,
Chennai – 600 009.

12.The Additional Chief Secretary and
Commissioner of Revenue Administration,
Ezhilagam,
Chepauk,
Chennai – 600 005.

13.The District Collector,
Ramanathapuram District,
Ramanathapuram.

.. Respondents/Respondents 1 to 3

14.P.Gomathi

15.H.Gopalakrishnan

16.B.Ayyappan

17.K.M.Nagarajan

18.V.Ayyadurai

19.K.Sankar

20.M.Muthuraman

21.D.Gokulnath



W.A.(MD).Nos.974 of 2022 and 548 of 2023

22.V.Balakumar

23.G.P.Satya Bama

24.M.Muthuramalingam

25.K.R.Venkata Krishnan

26.S.Velavan

27.C.Chandran

28.A.Marimuthu

29.V.Udayakumar

30.R.Venkateswaran

31.A.Alagappa

32.E.Thangammal

33.K.Kasinathan

34.V.L.Revathi

35.K.Ramar

36.V.Ravikumar

37.N.Ramamoorthy

38.Thiyagarajan

39.G.Deivendran



W.A.(MD).Nos.974 of 2022 and 548 of 2023

40.T.Vijayan

41.R.G.Renuka Devi

42.L.S.Seethalakshimi

43.B.Tamilmathi

44.M.M.Uma Maheswari

45.K.Revathi

46.M.Saravana Bala

47.M.Paramasivam

48.Sathyendran

49.N.Kaladevi

50.C.Devi

51.P.Meenambal

52.V.Gokila

52.G.Hemavathi

.. Respondents/Respondents 4 to 43

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order made by this Court in W.P.(MD).No.23155 of 2015 dated 12.08.2022.



W.A.(MD).Nos.974 of 2022 and 548 of 2023

For Appellants : Mr.KPS.Palanivelrajan
Senior Counsel
for Mr.M.Karthikeyavenkitachalapathy

For R-1 to R-10 : Mr.M.Muthugeethayan

For R-11 to R-13 : Mr.T.Amjad Khan
Government Advocate

COMMON JUDGMENT

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

The intra-Court appeals have been instituted against the order dated 12.08.2022 passed in W.P.(MD).No.23155 of 2015.

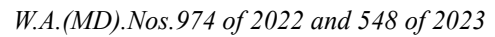
2. In nutshell, the dispute arose between the direct recruits and promotees. The writ appellants were directly recruited to the post of Assistants and joined in December 2012. The respondents/writ petitioners were initially recruited to the post of Typist/Junior Assistant and joined in the year 2009. Admittedly, on the date on which the writ appellants were appointed to the post of Assistant, the respondents/writ petitioners were holding the post of Typist/Junior Assistant.



W.A.(MD).Nos.974 of 2022 and 548 of 2023

3. The probation of the respondents/writ petitioners were declared in 2011 retrospectively with effect from the date of the respective initial appointment of the respondents/writ petitioners to the post of Typist/Junior Assistant. No doubt, there is a delay in sending the respondents to undergo the survey and firka training, which is a requisite qualification under Rule 30(c) of the Tamil Nadu Ministerial Service Rules.

4. However, the fact remains that the panel for promotion to the post of Assistant in the year 2012 was not prepared. The Department published 'Nil' panel. Since the panel was not prepared, the respondents instituted a Writ proceedings in W.P.(MD).No.11613 of 2013. This Court passed an order on 21.01.2014, directing the Government to consider the representations submitted by the respondents/writ petitioners on merits and pass orders. Accordingly, the cases of the respondents were considered by the Government and G.O(2D)No.512, Revenue Department, dated 22.09.2015, was passed. The Government in its order made a finding that 'Nil' panel was prepared in the year 2012 for promotion to the post of Assistants from the feeder category of Typist/Junior Assistant. It was



5. Mr. Ajmal Khan, learned Senior Counsel appearing on behalf of the appellants mainly contended that the appellants were directly appointed to the post of Assistant when the writ petitioners were holding the lower post of Typist/Junior Assistant. Therefore, the appellants cannot be compared with the writ petitioners in the matter of further promotion to the post of Deputy Tahsildar in the matter of fixation of seniority. Admittedly, the respondents/writ petitioners were promoted to the post of Assistant in the year 2013 and therefore, they became juniors to the writ appellants in the cadre of Assistants. The ground raised before the Writ Court that there was an administrative delay in sending the writ petitioners to undergo the training and firka training, is absolutely misplaced and unconnected with the



W.A.(MD).Nos.974 of 2022 and 548 of 2023

fixation of seniority and grant of promotion. Admittedly, 'Nil' panel was prepared by the Department for promotion to the post of Assistant from amongst the persons working in the cadre of Typist/Junior Assistant. Thus, the learned Single Judge has committed an error in considering the delay in sending the writ petitioners to undergo the requisite survey and firka training.

6. The learned counsel appearing on behalf of the respondents/writ petitioners objected the said contention by stating that the delay in sending the writ petitioners to undergo the survey and firka training is not the fault of the writ petitioners and therefore, the 'Nil' panel prepared in the year 2012 itself is improper. The learned counsel further contended that as per Rule 13(A) of the Tamil Nadu Ministerial Service Rules, the crucial date fixed for preparation of combined seniority list is 15th March of every year. However, the case of the writ appellants were considered by including their names in the seniority list of the year 2012.



W.A.(MD).Nos.974 of 2022 and 548 of 2023

7. The fact remains that the writ appellants were directly recruited to the post of Assistant and joined in December 2012. Therefore, preparation of panel for promotion or fixation of seniority prior to their appointment would not arise at all. The seniority as per the Rules is to be prepared based on the date of appointment/regularisation of service. That being so, the list of seniority is to be prepared amongst the Assistants taking into consideration the date of appointment of the writ appellants and the date of appointment of the writ petitioners in the post of Assistant.

8. With respect to the reliance placed on by the learned counsel for the respondents/writ petitioners regarding the proceedings of the District Collector, Ramanathapuram dated 19.06.2015, it is only a seniority list and not a panel for promotion to the post of Deputy Tahsildar from the post of Assistant. Therefore, the arguments advanced in this regard by the learned counsel for the respondents/writ petitioners deserve no merit consideration. More so, no employee is entitled to get seniority prior to his date of appointment and in the present case, no such seniority has been given to the writ appellants in the cadre of Assistant. Their date of respective



W.A.(MD).Nos.974 of 2022 and 548 of 2023

appointment/regularisation is taken into consideration for fixing seniority in the cadre of Assistant.

9. The governing principles for promotion are settled. Promotion *per se* is not an absolute right of an employee. Consideration for promotion is a fundamental right of an employee. Promotions are to be granted strictly in accordance with the Rules in force. No employee can claim promotion as a matter of right and only when the panel is prepared, the names of all the eligible employees are to be considered in the order of seniority and by ascertaining their eligibility with reference to the Rules in force. Even a direction to seek preparation of a panel against the Government is not entertainable. Filling up of the post is a decision to be taken administratively by the Government and preparation of the panel is an administrative prerogative and it cannot be construed as a right of an employee. Only when the panel is prepared, the right to consider accrues and therefore, preparation of 'Nil' panel would not provide any right to an employee.



W.A.(MD).Nos.974 of 2022 and 548 of 2023

10. A right accrues, if any senior has been denied promotion or seniority list has been violated. That being so, in the present case, the respondents/writ petitioners have not established that any of their juniors in the cadre of Typist/Junior Assistant were promoted to the post of Assistant in the year 2012. The respondents/writ petitioners cannot be compared with the writ appellants, since the writ appellants were directly recruited to the post of Assistant, joined in December 2012 and on the date of their appointment to the post of Assistant, admittedly, the respondents/writ petitioners were serving in the post of Typist/Junior Assistant. Only after the promotion of the writ petitioners to the post of Assistant in the year 2013, their names are to be inserted in the list of seniority in the cadre of Assistant and not prior to their promotion.

11. The learned Single Judge considered the administrative delay occurred in sending the writ petitioners to undergo the requisite survey and firka training. The said training has no implication or relevance in the present case, since the administrative delay in sending the writ petitioners for training had not caused any prejudice to the interest of the writ



W.A.(MD).Nos.974 of 2022 and 548 of 2023

petitioners, who are Junior Assistants/Typists when the appellants were appointed to the post of Assistant in December 2012, for securing promotion to the post of Assistant, in view of the fact that the authorities have prepared 'Nil' panel for promotion to the post of Assistant in the year 2012.

12. Therefore, the learned Single Judge has proceeded in an erroneous perspective, which is unconnected with the promotional opportunities of the direct recruits and promotees. In the present case, the rights of the writ petitioners to secure promotion to the post of Assistant or to the post of Deputy Tahsildar are not infringed and their right to seniority has been taken into consideration based on their respective date of promotion to the post of Assistant in the year 2013. We do not find any infirmity in respect of the fixation of seniority of the respondents/writ petitioners. The writ appellants, who were recruited as Assistants directly in the year 2012, undoubtedly, would march over the respondents/writ petitioners, who were admittedly holding the post of Typist/Junior Assistant in December 2012.



W.A.(MD).Nos.974 of 2022 and 548 of 2023

WEB COPY

13. In view of the facts and circumstances, the order impugned dated 12.08.2022 passed in W.P.(MD).No.23155 of 2015 is set aside and the Writ Appeals are allowed. The official respondents are directed to settle the seniority based on the principles laid down in the present judgment and accordingly grant promotion to the post of Deputy Tahsildar and if any alterations are made pursuant to the impugned order of the learned Single Judge, then it is directed to reversed back. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(S.M.S.,J.) (V.L.N.,J.)
05.12.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm



W.A.(MD).Nos.974 of 2022 and 548 of 2023

To

WEB COPY

- 1.The Secretary to Government,
The State of Tamil Nadu,
Revenue Department,
Secretariat,
Chennai – 600 009.
- 2.The Additional Chief Secretary and
Commissioner of Revenue Administration,
Ezhilagam,
Chepauk,
Chennai – 600 005.
- 3.The District Collector,
Ramanathapuram District,
Ramanathapuram.



WEB COPY



W.A.(MD).Nos.974 of 2022 and 548 of 2023

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

Lm

W.A.(MD).Nos.974 of 2022
and 548 of 2023

05.12.2023