



W.P.(MD)No.22550 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.22550 of 2016

and

W.M.P.(MD)Nos.16140 and 16141 of 2016

L.K.Subburamanian

... Petitioner

vs.

- 1.The Secretary to Government,
Department of Rural Department and
Panchayat Raj,
St. George Fort, Chennai-600 009.
- 2.The Director of Rural Development and
Panchayat Raj,
Panagal Building, Saidapet,
Chennai-600 015.
- 3.The District Collector,
Karur District, Karur.
- 4.Hashina Begam

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the



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records relating to the order of the 2nd respondent, dated 11.02.2016, in Na.Ka.No.82510/2009/C2 and to quash the same and to direct the respondents to fix the seniority of petitioner on par with his junior namely Hasina Begam and to promote the petitioner in appropriate post with service and monetary benefits.

For Petitioner	: M/s.AL.Gandhimathi Senior Counsel for Mr.P.Srinivas
For R1 to 3	: Mr.P.Thambidurai Government Advocate
For R4	: No appearance

ORDER

This writ petition is filed for writ of Certiorarified Mandamus, to quash the dated 11.02.2016 order passed by the 2nd respondent and to direct the respondents to fix the seniority of petitioner on par with his junior namely Hasina Begam and to promote the petitioner in appropriate post with service and monetary benefits.

2. The petitioner was appointed as Junior Assistant on 14.03.1983



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in Land Survey Department on consolidated pay, then he was absorbed in the Rural Development Department as Junior Assistant in the year 1990, thereafter, due to administrative reasons, the State Government has regularized the service of the similarly placed persons like the petitioner, vide G.O.Ms.No.12, Social Welfare and Noon Meal Scheme Department dated 20.01.1998, with effect from the date their absorption. Thereafter the eligible persons who were absorbed to the Rural Development Department were given promotion as Assistant from the year 1999. Since the petitioner was denied promotion to the post of Assistant as if he has not completed the departmental test in the post of Junior Assistant within time. Aggrieved over the petitioner had filed an Original Application in O.A No. 4690 of 1999 before the Tamil Nadu Administrative Tribunal, Chennai and the same was converted into W.P.No.39751 of 2006 and the same was disposed recording the Additional Government Pleader's submission that subsequently the petitioner was given promotion and now he is working as Deputy Block Development Officer.



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3. Pending the original application in O.A.No.4690 of 1999, the State Government issued G.O.Ms.No.88, Social Welfare and Noon Meal Scheme Department, dated 01.06.2004 and declared that the petitioner has completed his probation on 23.11.1995. Accordingly, he was given promotion as Assistant on 29.07.2004. But the petitioner's seniority in the cadre of Assistant has not been fixed.

4. The persons holding the post of Assistant have to complete service as Rural Welfare Officer for one year and the petitioner was posted as Rural Welfare Officer on 01.07.2006, but after ten months, the petitioner was sent back to the post of Assistant and was not permitted complete the one year period. On an Appeal filed by the Petitioner and during the pendency of the OA, a clarification, dated 12.03.2008, in Letter No.42/E7, was issued by the Government and it was directed to give notional promotion on par with their juniors as on the 15th of March of the relevant year on which the probation was declared. Accordingly,



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seniority has to be fixed above the petitioner's junior namely one Selvi. The District Collector fixed the petitioner's seniority as No.48A above Selvi who was in number 49. Though the promotion to the post of Deputy Block Development Officer was given, the seniority was not fixed as per the earlier proceedings. Hence the Petitioner filed W.P. (MD)No.7084 of 2015 and this Court directed the respondents to consider the representation and pass orders within 4 months. The third respondent called for clarifications from the first respondent. But the second respondent rejected the said representation by his proceedings, dated 11.02.2016. Aggrieved over the same, the present writ petition is filed.

5. The 3rd respondent has filed a counter affidavit stating that the petitioner was working as Assistant in District Rural Development Agency, Karur and was placed under suspension, vide proceedings, dated 23.11.2004 and the charges were framed under Rule 17(b) of Tamilnadu



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Civil Service (Disciplinary and Appeal) Rules. Thereafter, a punishment of stoppage of increment for one year without cumulative effect was imposed on the petitioner, vide proceedings, dated 15.06.2006. Since there was punishment against the petitioner, the petitioner's seniority was not fixed as claimed by the petitioner. Moreover, the petitioner has not completed the departmental test within a period of five years. Hence, he was not promoted. The petitioner was placed under suspension on 03.11.2004 to 06.12.2004. Thereafter, the petitioner's name was passed over in the panel and the juniors who were eligible were promoted to the higher post. The junior namely Selvi was also promoted. The petitioner was not promoted to the next post on par with his junior namely, Selvi. The contention of the respondents is that the petitioner is not entitled to be considered for promotion because of the punishment and the respondents prayed to dismiss this writ petition. The respondents contended that the petitioner is not eligible on par with his junior Selvi and the petitioner is not entitled to be compared with the 4th respondent.



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Moreover, the petitioner has submitted a representation to fix the seniority against the 4th respondent and the said representation is still pending with the 1st respondent.

6. Heard M/s.AL.Gandhimathi, learned Senior Counsel appearing for the petitioner and Mr.P.Thambidurai, learned Government Advocate appearing for respondents 1 to 3 and perused the records.

7. The contention of the respondents is that the petitioner was granted promotion after declaration of probation, since the probation was declared only on 01.06.2004. It is seen that the petitioner's probation was declared belatedly through proceedings, dated 01.06.2004, but the effect date is from 23.11.1995. Based on this proceedings, the petitioner's seniority ought to have been fixed, revised and kept on par with Hasina Begum i.e. above the said Hasina Begum. After declaration of probation, the respondents have not granted the consequential effect. Therefore, the



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petitioner is entitled to be considered.

8. The respondents submitted that the petitioner undergone the punishment and hence his promotion was not granted. It is seen from the records that the charges were pending from November 2004 and the crucial date is on 01.03.2004, but the promotion was granted in May 2004 itself. But the respondents have declined promotion by citing that one Selvi was granted promotion on 26.02.2005. When the promotion was granted in May 2004, at the point of time the petitioner is entitled to be considered and hence declining promotion during May 2004 is illegal.

9. Moreover the petitioner has undergone the punishment which was imposed in the year 2005-2006 and on appeal modified as stoppage of increment for one year and that was imposed from 01.07.2006 to 30.06.2007, but the 4th respondent was granted promotion as Assistant on 23.08.1996 itself. When the petitioner is entitled to seniority above 4th respondent, then the petitioner's name ought to be considered when the



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4th respondent was granted promotion.

10. For the reasons cited supra, the impugned order is quashed. The respondents are directed to refix the seniority by taking into account the belated declaration of probation and to grant consequential effect to the said order and consider the petitioner's case on par with Hasina Begam. The petitioner has attained superannuation on November 2017. Hence, notional effect shall be granted to the petitioner with consequential service and monetary benefits. The said exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.

11. With the above said observation, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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

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To

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S.SRIMATHY, J

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