



W.P.No.10368 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE N. MALA

W.P.No.10368 of 2016
and WMP.No.9149 of 2016

M.Sathiya

... Petitioner

Vs.

1. The Secretary to Government
Rural Development and Panchayat Raj
Department, Secretariat,
Fort. St.George, Chennai 600 009.
2. The Director of Rural Development
and Panchayat Raj,
Saidapet, Chennai 600 015.
3. The District Collector (PD) Section,
Tiruvannamalai District,
Tiruvannamalai.

... Respondents

PRAYER : Writ Petition filed under Article 226 of Constitution of India, to issue Writ of Certiorarified Mandamus to call for the records pertaining to the order bearing No.9001/2015/PA4 dated 22.09.2015 and No.9001/2015/PA4 dated 22.09.2015 of the third respondent herein and quash the same in so far it relates to the petitioner and include the name of the petitioner in the panel of Deputy Block Development Officer for the year 2013-



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14 in the appropriate place based on her feeder category seniority viz., Assistant with all consequential benefits such as retrospective promotion, notional fixation of pay and arrears of salary etc.,

For Petitioner : M/s.T.Hemalatha

For Respondents : Mr.R.Kumaravel
Additional Government Pleader

ORDER

This writ petition has been filed for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the order bearing No.9001/2015/PA4 dated 22.09.2015 and No.9001/2015/PA4 dated 22.09.2015 of the third respondent herein and quash the same in so far it relates to the petitioner and include the name of the petitioner in the panel of Deputy Block Development Officer for the year 2013-14 in the appropriate place based on her feeder category seniority viz., Assistant with all consequential benefits such as retrospective promotion, notional fixation of pay and arrears of salary etc.,

2. The petitioner was initially appointed as Junior Assistant with effect from 21.10.1999 on compassionate grounds as her father, V.Murugesan, died in harness while he was working as Rural Welfare Officer (Grade-II) at



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Polur Block. The petitioner states that she passed all the departmental examinations prescribed for the post of Junior Assistant and she also possessed the requisite educational qualifications even at the time of appointment to the post of Junior Assistant. Since the post of Junior Assistant came under the purview of Tamil Nadu Public Service Commission, the concurrence of Tamil Nadu Public Service Commission for appointing the petitioner as Junior Assistant was to be obtained. The Government after a lapse of 11 years regularised the services of the petitioner as Junior Assistant with effect from 21.10.1999 (i.e.,) from the date of her initial appointment after getting concurrence of TNPSC vide G.O.(2D) No.30 Rural Development (E3) Department dated 04.05.2010. Subsequently after a lapse of 5 years from the date of regularisation and on the petitioner's successful completion of probation in the cadre of Junior Assistant, her probation was declared with effect from 28.12.2014 vide G.O(ID).No.189 Rural Development (E7) Department dated 23.05.2014. As per the date of her initial appointment in the cadre of Junior Assistant her name ought to have been included for the post of Assistant for the year 2005-2006 and since the issue relating to regularisation was pending with the Government her name was not included in the panel for the year 2005-2006. Only after the regularisation of her services in the year 2010 and after



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declaration of probation in the year 2014, the name of the petitioner was retrospectively included in the panel for Assistant post for the year 2005-2006 in Sl.No.1 (a) vide proceedings bearing No.9621/20149PA3 dated 18.08.2014 of the District Collector, Tiruvannamalai, the 3rd respondent herein. Subsequently, the petitioner was promoted to the cadre of Assistant vide proceedings No.12372/2014/PA4-1 dated 22.08.2014 of the third respondent and she joined duty as Assistant on 25.08.2014. The petitioner was assigned 188 (a) as her seniority number over and above T.Ruban Manogaran who was assigned seniority number of 188(a) (1) in the cadre of Assistant as per the orders issued in the proceedings No.45/2015/PA4 dated 13.04.2015 of the third respondent herein. As per seniority her name ought to have been included in the panel for Deputy Block Development Officers for the year 2013-2014 above her junior Ruban Manogaran whose name was included in the said panel in Sl.No.21. The third respondent, as per the orders issued in Memo.No.9001/2015/PA4 dated 22.09.2015 overlooked the seniority of the petitioner and did not include her name in the panel for Deputy Block Development Officers for the years 2013-2014 and 2014-2015 on the ground that she did not acquire the requisite service qualification for promotion to the post of Deputy Block Development Officer while persons much junior to her



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were promoted as Deputy Block Development Officer. Aggrieved by the order dated 22.09.2015 in and by which her name was overlooked for promotion to the post of Deputy Block Development Officer the petitioner gave representation to the third respondent on 05.10.2015 requesting him to consider her case for promotion to the post of Deputy Block Development Officer without insisting for service qualification as contemplated in G.O.Ms.No.9 Rural Development Department dated 25.09.2010. As the third respondent did not pass any orders on the said representation, the petitioner was constrained to file the writ petition for the aforesaid relief.

3. The third respondent filed a detailed counter stating that as the petitioner did not acquire the prescribed service qualification of one year service in Assistant/Accountant post and one year service in Rural Welfare Officer Grade I post as per G.O.Ms.No.85 Rural Development and Panchayat Raj Department dated 12.04.1984 on the crucial dates i.e., 01.03.2013 & 01.03.2014 for the panel years 2013-14 and 2014-15 respectively, the petitioner's name was deferred in the above panels for promotion to Deputy Block Development Officer. As the petitioner acquired the requisite service qualification only on 05.11.2016 she was eligible for inclusion of her name in



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panel for the year 2017-2018 for promotion to Deputy Block Development Officer in normal course. It was stated that the petitioner while working as Junior Assistant was charged for certain delinquency under TNCS (D&A) Rules vide Memo No.3346/2013/PA3 dated 05.03.2013 of Personal Assistant to Collector, Tiruvannamalai. In pursuance of the Disciplinary Proceedings the petitioner was awarded the punishment of Censure vide Proceedings R.C.No.3346/2013/PA3, dated 11.11.2013 of the P.A. to Collector Tiruvannamalai. As the currency of punishment ended on 10.11.2014 the petitioner was not eligible for inclusion of her name in the Deputy Block Development Officer panel for the years 2013-2014-2015. However, the petitioner qualified to be included in Deputy Block Development Officer Panel for the year 2015-2016. Therefore, the respondents submitted that the petitioner also contributed for her non-inclusion in the panel for the years 2013-2014 & 2014 – 2015 and that the respondents were not solely responsible. However, the petitioner submitted representation to relax the above service rule in her case, as it occurred only due to administrative delay of the Government in regularising her services. The petitioner's representation was forwarded with due modification as proposal to Government vide office Letter No.4271/2016/PA4 dated 10.11.2016. The proposal was under active



consideration of the Government and once the Government accepted the proposal and granted relaxation the petitioner would be included in the panel for Deputy Block Development Officer Promotion for the year 2015-16 with retrospective effect. Thereafter, the petitioner's name would be placed in right position both in seniority and panel. The respondents therefore prayed that the writ petition did not deserve merit.

4. The learned counsel for the petitioner relying on the judgment of this Court in W.P.(MD).No.24677 of 2018 dated 25.02.2022 submitted that it was the responsibility of the department to give an opportunity to the petitioner to acquire service qualification. He further submitted that the Government Servant cannot be denied promotion for want of service qualification, if he or she was not given a chance to acquire the service qualification by the department head.

5. The respondents counsel submitted that the petitioner was imposed with punishment of “Censure” during the relevant years 2013-2014 and 2014-2015 respectively and so the petitioner was ineligible for inclusion of her name in the panel for the years 2013-2014 & 2014-2015. Therefore the contention



that she was denied promotion only due to the administrative delay in regularising her services was untenable. The counsel submitted that the petitioner did not acquire service qualification not only due to the delay in regularisation of her service and declaration of probation but also due to the disciplinary proceedings initiated against her and the consequent punishment of “Censure” imposed on her. According to the counsel punishment of Censure was a bar for promotion.

6 . Heard both sides and perused the materials available on record.

7. It is seen that as a result of the administrative delay of 11 years in regularising the services of the petitioner, the petitioner for no fault of her's was made to suffer. As rightly contended by the learned counsel for the petitioner for the fault of the respondents, the petitioner cannot be made to suffer. It is the bounden duty of the employer to give opportunity to the employee to acquire service qualification. From the facts of the case, it is clear that it was the respondents who slept over the regularisation papers of the petitioner for 11 years and thereafter issued the orders regularising the services of the petitioner in the cadre of Junior Assistant. Even the delay in declaration of probation was



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due to the delay in regularising her services in time. The failure of the petitioner to acquire service qualification is wholly attributable to the inordinate administrative delay of 11 years in regularising the services of the petitioner by the respondent and so I agree with the petitioner's counsel that for the fault of the respondents the petitioner should not be penalised. The Hon'ble Supreme Court in the case of ***Vijaywada Guntur Tenali Urban Development Authority and others Vs Movva Ranga Rao and others*** reported in 1996 (8) SCC 671 held that the Government servant could not be denied promotion for want of service qualification, if he was not given a chance to acquire the service qualification by the department head. Therefore, I am of the view that the reason given by the respondents in the impugned order that the petitioner did not acquire service qualification for consideration for promotion to the post of Deputy Block Development Officer cannot be sustained.

8. The learned Additional Government Pleader submitted that the petitioner was imposed with punishment of “Censure” during the relevant periods i.e., 2013-2014 and 2014-2015 and that also contributed to the delay in promotion, apart from the administrative delay in regularising her services in the post of Junior Assistant. The said contention of the respondents counsel



cannot be sustained. As rightly contended by the learned counsel for the petitioner the said reason is not reflected in the impugned order and so the respondents cannot be permitted to improvise their case in the counter to the writ petition. The impugned order does not refer to the punishment of “Censure” and therefore the respondents cannot be permitted to travel beyond the impugned order and add additional grounds. At this juncture, it is relevant to the extract para 8 of the judgment of the The Hon'ble Supreme Court of India in the case of *Mohinder Singh Gill Vs Chief Election Commissioner*. The Hon'ble Supreme Court while considering a similar issue held as follows:

8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhaji.

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanation subsequently given by the officer making the order of what he meant or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the



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language used in the order itself.

9. Even otherwise the punishment of Censure is not a bar for promotion. Useful reference can be made to the judgment in the case of ***The Deputy IG of Police Thanjavur Vs V. Rani*** in this regard.

10. In view of the above discussions, I am of the considered view that the impugned order in 9001/2015/PA4 dated 22.09.2015 passed by the 3rd respondent is liable to be quashed and the same is quashed.

11. In the result, this writ petition is allowed with a direction to the respondents to include the name of the petitioner in the panel of Deputy Block Development Officer for the year 2013-14 in the appropriate place based on her feeder category seniority viz., Assistant with all consequential benefits such as retrospective promotion, notional fixation of pay and arrears of salary etc., No costs. Consequently, connected miscellaneous petition is also closed.

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Index : Yes /No
Speaking Order : Yes/No



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N. MALA, J.

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To

1. The Secretary to Government
Rural Development and Panchayat Raj
Department, Secretariat,
Fort. St.George, Chennai 600 009.
2. The Director of Rural Development
and Panchayat Raj,
Saidapet, Chennai 600 015.
3. The District Collector (PD) Section,
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