



W.P.No.28574 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.08.2024

PRONOUNCED ON : 24.10.2024

CORAM

THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.No.28574 of 2015

and

M.P.No.1 of 2015

N.Deeparaj

... Petitioner

Vs.

1. Government of Tamil Nadu,
Represented by its Principal Secretary and Commissioner,
Land Reforms Department,
Chepauk,
Chennai – 600 005.

2. The Director,
Land Reforms Department,
Chepauk,
Chennai – 600 005.

3. T. Ashok Kumar,
Assistant,
O/o. The Director of Land Reforms,
Chepauk,
Chennai – 600 005.

4. K. Rajeswari,
Assistant,
O/o. The Director of Land Reforms,
Chepauk,
Chennai – 600 005.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Declaration, declaring the action of the respondents in not drawing the panel for promotion to the post of Assistant for the year 2013-2014 and not including the name of the petitioner in the said panel is illegal, arbitrary and consequently direct the respondents to treat the petitioner to have been included in the panel for promotion to the post of Assistant for the year 2013-2014 and treat the petitioner to have promoted in the said panel in the vacancy available then and draw the seniority list of Assistant on that basis.

For Petitioner	: Mr.Balan Haridas
For R-1 & R-2	: Mr.Abishek Murthy
	Government Advocate
For R-3 & R-4	: No appearance

ORDER

The short question that arises for consideration is whether drawing of panel in terms of G.O.(Ms)No.368, Personnel and Administrative Reforms Department, dated 18.10.1993, is mandatory and failure to draw a panel in terms thereof would render the subsequent proceedings of promotion to be vitiated.

2. It is submitted by the learned counsel for the petitioner that the



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petitioner is a B.B.A graduate and appointed to the post of Junior Assistant in the Land Reforms Department on 11.06.2007 on compassionate grounds. The service of the petitioner was regularized with effect from 11.06.2007 vide G.O.(2D).No.215, Revenue (Ser.9(1)) Department, dated 15.04.2010. The next avenue of promotion from that of the Junior Assistant is to the post of Assistant. The qualifications required for promotion to the post of Assistant are as under:

- a) Completion of probation in the post of Junior Assistant,
- b) Pass in Revenue Department Test Part I, II and III,
- c) Undergone training in Bhavani Sagar for two months.

It is submitted that the petitioner possessed the above qualifications including the training at Bhavani Sagar as early as December 2012.

3. It is further submitted that the panel for promotion to the post of Assistant is prepared every year. The crucial date for preparation of the panel is March every year. It is submitted that vacancies were existing to the post of Assistant for the year 2013-2014, when the petitioner became eligible for consideration for promotion. However, the respondents/authorities did not draw the panel as mandated by G.O.(Ms)No.368, Personnel and Administrative Reforms Department, dated 18.10.1993 for the year 2013-2014. The petitioner



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thus represented to the respondents to draw the panel for promotion to the post of Assistant and to include his name in the panel, commencing with a representation on 26.03.2013 followed by 15.10.2013 and 10.12.2013. It is only after the petitioner submitted his representation, the second respondent issued an order declaring the probation of the petitioner on 03.01.2014 with effect from 03.07.2009. It is submitted that probation was declared belatedly on 03.01.2014, though the service of the petitioner was regularized with effect from 11.06.2007. Since panel was not drawn for promotion to the post of Assistant for the year 2013-2014, the petitioner once again submitted a representation to the respondents/authorities on 24.03.2014. The petitioner was included in the panel for promotion to the post of Assistant for the year 2014-2015 on 13.02.2015 and was also promoted to the post of Assistant.

4. The learned counsel for the petitioner would submit that the third and fourth respondents, viz., T.Ashok Kumar and K.Rajeswari, were directly recruited to the post of Assistant on 14.12.2012 and 27.03.2013 respectively. Their probation would be completed only in December 2014 and March 2015 and could be declared in December 2015 and March 2016 respectively in terms of Rule 32 of the Tamil Nadu Ministerial Service Rules.



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5. It is submitted by the learned counsel for the petitioner that the panel for promotion to the post of Assistant was not prepared for the year 2013-2014, only with a view to ensure that the third and fourth respondents supersede the petitioner, which it is submitted was evident from the fact that the panel was drawn only after the probation of the fourth and fifth respondents was declared. It was submitted that the probation of the third and fourth respondents were declared even before the period stipulated under Rule 32 of the Tamil Nadu Ministerial Service Rules.

6. A counter affidavit has been filed by the first and second respondents. The learned Government Advocate appearing for the first and second respondents would reiterate the contentions set out in the counter and would submit as follows:

a) The petitioner was appointed to the post of Junior Assistant on 11.06.2007 on compassionate grounds.

b) His service was regularized and the petitioner acquired the qualifications for being eligible to be considered for promotion to the post of Assistant from that of Junior Assistant on the following dates set out in the



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Table below:

Sl.No.	Qualification	Month of sitting of examination, Date of regularization, Probation, etc.,	Date of result published in the TNPSC Gazette	Remarks
1.	Revenue Test Part I 1 st paper	May 2009	01.09.2009	
2.	Revenue Test Part I 2 nd paper	December 2008	16.03.2009	
3.	Revenue Test Part II	December 2012	07.03.2013	
4.	Revenue Test Part III	December 2007	16.03.2008	
5.	Date of regularizations of service	11.06.2007 FN		
6.	Date of declaration of probation in the cadre of Junior Assistant	03.07.2009 AN		By order A1/9698/2013, dated 06.01.2014
7.	Date of completion of Bhavani Sagar Training	09.07.2011 to 06.09.2011	21.10.2011 (Result Date)	

c) That the petitioner was irregular and slothful at work apart from being, inconsistent in attendance and slothful at work. Hence, the very regularization in the post of Junior Assistant had to be obtained from the Government. The Government issued G.O.(2D)No.215, Revenue (Ser-9(1)) Department dated



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15.04.2010, declaring regularization. It is clear from the above Table that though the petitioner joined the Office as early as on 11.06.2007 FN, he completed his last qualification (Revenue Test Part II) only in December 2012 (Publication of result on 07.03.2013). The order declaring the probation was passed only on 03.01.2014 due to administrative reasons. Subsequently, the petitioner was added in the panel for promotion to the post of Assistant for the year 2014-2015 (crucial date 15th March 2014) and promoted to the post of Assistant on 13.02.2015 AN. It is further submitted that the crucial date for drawing the panel for the post of Assistant is 15.03.2014. Due to administrative reasons, the panel was not drawn on the said date. However, the panel for promotion to the post of Assistant was drawn in the year 2014-2015 and he was promoted as Assistant on 13.02.2015.

d) That the contentions of the petitioner with reference to the 3rd and 4th respondents, was submitted as misleading and wholly incorrect, inasmuch as the third and fourth respondents were recruited directly to the post of Assistant by Tamil Nadu Public Service Commission and they had joined as Assistant on 14.12.2012 and 27.03.2013 respectively. In other words, even while the petitioner was under probation, the third and fourth respondents had joined the office as Assistants, declaration of probation is a condition precedent for



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consideration of a Junior Assistant for promotion to the post of Assistant. Thus, the contention that non-drawing of the panel was motivated is completely baseless and unjustified.

e) That the petitioner after being promoted as Assistant, is presently undergoing his training as Revenue Inspector at Perumbakkam Firka in Maduranthankam Taluk, Chengalpattu District for two years from 2023 to 2025. The petitioner, having accepted the proceedings of the Director of Land Reforms dated 13.02.2015, by which, he was promoted as Assistant in the year 2015 and having been further promoted to the post of Revenue Inspector, cannot question the appointment/promotion to the post of Assistant in the year 2015.

7. Against this background, question that arises for consideration is whether drawing of a panel for promotion annually is mandatory.

8. Before I proceed to deal with the question as to whether failure to draw the panel for the year 2013-2014 would vitiate the proceedings, it may be relevant to refer to G.O.(Ms)No.368, Personnel and Administrative Reforms Department, dated 18.10.1993, which provides for drawing of panel. The



relevant portion is extracted hereunder:

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"2. The following instructions are accordingly issued:

1. Preparation of Estimate of Vacancies:

(i) provision in General Rules:- According to Rule 4 (Approved candidates) in part II of the General rules for the Tamilnadu State and subordinate services, the list of approved candidate for appointment by promotion and by recruitment by transfer to all categories of posts in the Tamilnadu State and Subordinate Services shall be prepared annually against the estimated number of vacancies expected to arise during the course of a year.

.....

(ix) Validity period of Panel-

According to the provision contained in rules 4 of the General rules, all lists (panels) prepared for a year shall be published in the Tamilnadu Government Gazette in respect of appointment to State Services and in the Notice Board in the office of the appointing authority in respect of appointment to subordinate services. The list should also be communicated by Registered post to all persons concerned whose names are found in the list as well as to persons senior to the junior most person included in the list whose names have not been included in the list. The list so published shall be valid for a period of one year from the date of approval by the competent authority. It shall lapse at the expiry of one year. If the estimate of vacancy for any particular year is nil, a "NIL" list should also be published in the aforesaid manner.



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3. The above instructions shall be followed scrupulously by all the panel-drawing authorities while preparing /sending proposals for approval of the estimate and panels.

4. The receipt of this order shall be acknowledged."

(emphasis supplied)

9. A reading of the above Government Order would show that the panel must be drawn annually and even where the estimate of vacancy for a particular year is nil, a 'nil' list should be published. This would indicate the mandatory nature of drawing of panel. Once it is found that drawing of a panel is mandatory and must be prepared annually and promotions are to be made on the basis of the panel so prepared, question arises as to whether the non-drawal of the panel for the year 2013-2014 affects or impairs the right of the petitioner/candidate, to be considered for promotion or merely affects his chances of promotion. If drawing of panel affects the right of an employee to be considered for promotion, failure to draw a panel would result in violation of the employees/candidates, right to be considered for promotion which is recognized as a fundamental right. It is trite law that while there is no fundamental right to promotion, but an employee has a right to be considered for promotion, when it arises, in accordance with the relevant rules.¹ Right to be considered for promotion is a fundamental right. Such a right brings within its

¹*Lift Irrigation Corpn. Ltd. v. Pravat Kiran Mohanty, (1991) 2 SCC 295*



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purview an effective, purposeful and meaningful consideration.¹ Here it may be

relevant to bear in mind that the spirit behind elevating the right for being considered for promotion to a fundamental right is enshrined in the principle of “equality of opportunity”, in relation to matters of employment and appointment to a position under the State. Once employed, the employees are entitled for being considered for promotion to the next higher post subject to their satisfying the eligibility criteria, as per the applicable rules. Failure to consider an employee for promotion even after satisfying the eligibility criteria would violate her fundamental right. However, a clear distinction has been drawn between the stage of considering an employee for being promoted to taking the next step of recognizing the said right as a vested right for promotion. That is where the line has to be drawn. Stated differently, a right to be considered for promotion being a facet of the right to equal opportunity in employment and appointment, would have to be treated as a fundamental right guaranteed under Articles 14 and 16(1) of the Constitution of India but such a right cannot translate into a vested right of the employee for being necessarily promoted to the promotional post, unless the rules expressly provide for such a situation.² Rules which confers a right of actual promotion or a right to be

¹ *Union of India v. Sangram Keshari Nayak*, (2007) 6 SCC 704

² *Bihar SEB v. Dharamdeo Das*, 2024 SCC OnLine SC 1768



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considered for promotion is a rule prescribing conditions of service.¹ Though a rule which merely affects the chances of promotion does not amount to change in the conditions of service.

10. It is thus beyond the pale of any doubt that a right to be considered for promotion has been treated by courts not just as a statutory right but as a fundamental right, at the same time, there is no fundamental right to promotion itself.²

11. It may now be relevant to note that a Constitution Bench in *Ajit Singh (II) v. State of Punjab*, (1999) 7 SCC 209, laying emphasis on Article 14 and Article 16(1) of the Constitution of India held that if a person who satisfies the eligibility and the criteria for promotion but still is not considered for promotion, then there will be clear violation of his/her's fundamental right.³⁴

12. Keeping in view the above legal principles relating to promotion and applying it to G.O.(Ms)No.368 dated 18.10.1993, it appears to mandate

¹ *Mohd. Shujat Ali v. Union of India* (1975) 3 SCC 76

² *Bihar SEB v. Dharamdeo Das*, 2024 SCC OnLine SC 1768

³ *Ajay Kumar Shukla v. Arvind Rai*, (2022) 12 SCC 579

⁴ *Ramchandra Shankar Deodhar v. State of Maharashtra* [(1974) 1 SCC 317]



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drawing of panel every year which would constitute basis for consideration of promotion of eligible candidates. Failure to draw a panel does impair or results in infraction of the petitioner's fundamental right. This Court is clear that the State has a right to stop a recruitment process at any time before the appointment takes place. That is to say that there is no vested right to get the process of promotion completed. However, it is important to note that Courts have also made it clear that while such a right is to be conferred to a State, but once the process of promotion commences or contemplated and if such process is either not commenced or is dropped midway and the same is questioned, the State has an obligation to justify its action on the touch stone of Article 14 of the Constitution¹.

13. In the present case, the panel not having been drawn for the year 2013-2014, an obligation, which on a reading of G.O.(Ms).No.368, appears to be mandatory, impairs the petitioner's right to be considered for promotion. All that which has been indicated in the counter for non-drawal of panel for the year 2013-2014 is “administrative reasons”. Merely stating that due to administrative reasons, the panel was not drawn for the year 2013-2014, does not appear to satisfy the test of fairness or reasonableness when examined on

¹*P.Ganeshwar Rao Vs. State of A.P., 1988 Supp SCC 740*



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the touch stone of Article 14 of the Constitution. I am afraid that the explanation for non-drawal of panel as set out in the counter does not satisfy the scrutiny under Article 14 of the Constitution.

14. In the circumstances, this Court is inclined to direct the respondents to draw the panel for the year 2013-2014 and if the petitioner is eligible and falls within the zone of consideration on the relevant date, notional promotion would be granted to the petitioner. However, this may not in any manner have any adverse impact on others, who have already been promoted.

15. The Writ Petitions are disposed of with the above observations. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

24.10.2024

Index : Yes / No
Internet : Yes/ No
Lm



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To:

1.The Principal Secretary and Commissioner,
Government of Tamil Nadu,
Land Reforms Department,
Chepauk,
Chennai – 600 005.

2.The Director,
Land Reforms Department,
Chepauk,
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MOHAMMED SHAFFIQ, J.

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