



W.P. No. 9272 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2024

CORAM

THE HON'BLE MR. JUSTICE D.BHARATHA CHAKARAVARTHY

W.P. No. 9272 of 2022

and

W.M.P. Nos. 9029 and 9030 of 2022

and

W.M.P. No. 20394 of 2023

K.Porselvi

... Petitioner

-VS-

1. The District Collector
Thiruvallur District
Collectorate, Tiruvallur.

2. The Director of Rural Development
Panagal Building, Saidapet
Chennai – 15.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for records relating to the order of the first respondent made in Na.Ka. No. 026/2021/pa.a.1 dated 08.04.2022, to quash the same.

For Petitioner : Mr. L.Chandrakumar

For Respondents : Mr. Stalin Abimanyu (RR1 & 2)



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ORDER

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The writ petition is filed challenging the impugned order dated 08.04.2022, in and by which the petitioner was demoted from the post of Block Development Officer to the post of Deputy Block Development Officer.

2. The brief facts relevant for deciding the issue on hand are that the petitioner joined service as a Junior Assistant with effect from 04.06.1993. Her probation was declared and she was confirmed in the said post in the year 1995. With effect from 31.03.1998, the petitioner was promoted as an Assistant. While working as an Assistant, firstly, to travel abroad, the petitioner obtained 11 months leave on loss of pay. Secondly, the petitioner had met with an accident and therefore, was again sanctioned leave on loss of pay. The petitioner also had applied for maternity leave and thereafter, also did not join the promoted post leading to a charge memorandum being issued, and ultimately the charges were dropped. On 03.09.2015, after departmental proceedings were dropped, the petitioner in accordance with her seniority was considered and promoted as Zonal Deputy Block Development Officer with effect from 29.02.2016.



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WEB COP 3. Thereafter, she was further promoted as Block Development Officer with effect from 07.06.2019. Now when the petitioner was working as a Block Development Officer, the respondents undertook the exercise of fixing seniority in the post of Zonal Deputy Block Development Officer. By a seniority list dated 11.10.2021, the seniority in the post of Zonal Deputy Block Development Officer was published and after finalization of the same, by the impugned order, it is stated that the petitioner's seniority is in Sl. No. 233.

4. Thus, it can be seen that even before the fixation of the seniority, the petitioner was promoted as Block Development Officer. Only the officials, who have been promoted as Zonal Deputy Block Development Officer in the years 2006 to 2009 alone come within the zone of consideration and were entitled to promotion as Block Development Officer. The Zonal Deputy Block Development Officers upto the seniority number of 142 only are eligible and are within the zone of consideration. However, after leaving out about 82 persons above, the petitioner who was in seniority number 233 was wrongly granted the promotion and hence, the mistake is sought to be rectified by the impugned order.



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5. Heard Mr. L.Chandrakumar, learned counsel for the petitioner and Mr. Stalin Abimanyu, learned Additional Government Pleader appearing on behalf of the respondents.

6. Mr L. Chandrakumar, learned counsel for the petitioner would submit that now the exercise of recasting the seniority with effect from 2008 to 2021 has been done belatedly. The seniority of the petitioner in the post of Assistant even though was at Sl. No. 49, has wrongly been recasted now by an erroneous application of FR 36(c). FR 36(c) would be applicable in respect of the first promotion from the post of Assistant. If any candidate proceeds on leave for four years or more in a particular post, then the next promotion shall not be made within one year.

7. In the case of the petitioner, the petitioner rejoined duty in the year 2012 and has since been working continuously. Therefore, the embargo for the next promotion of the petitioner as per FR 36(c) would stand lifted in the year 2013 itself. Only thereafter in the year 2016, the petitioner was promoted as Zonal Deputy Block Development Officer. In that view of the matter, the respondents are erroneously applying FR 36(c) in the case of the petitioner. It



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can be seen that even in the seniority list published on 11.10.2021 when the petitioner's name is placed in Sl. No. 233, all the candidates above her and below her in Serial Nos. 216, 217, 218 etc., were juniors to her in the lower post of assistant. The petitioner who has seniority no. 49 in the post of Assistant was brought down amongst them. It is nothing but the erroneous application of FR 36(c) and as such, the impugned order is liable to be quashed and therefore, the petitioner's promotion has to be restored.

8. *Per contra*, Mr Stalin Abimanyu, learned Additional Government Pleader appearing for the respondents relying upon the tabular column furnished in paragraph 5 of the counter-affidavit and other averments in the counter-affidavit would submit that the reversion of the petitioner has got nothing to do with the application of FR 36(c) or her seniority in the post of Assistant. The impugned order categorically states that her seniority number is 233 as far as the Zonal Deputy Block Development Officer is concerned. None of her juniors in the cadre of Zonal Deputy Block Development Officer has been promoted further as Block Development Officer. Her promotion to the post of Zonal Deputy Block Development Officer with effect from 29.02.2016 is not altered or in any manner meddled with by the impugned order. Therefore, the petitioner can claim in the post of Zonal Deputy Block Development



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Officer only from the said date of promotion i.e., 29.02.2016. A perusal of the seniority list dated 11.10.2021 it would be clear from the last column preceding the remarks column that her seniority number is fixed by taking into account the date of joining as Deputy Block Development Officer. Therefore, when the petitioner has been placed at the right place taking into account the date of joining as Deputy Block Development Officer, the impugned order cannot be found fault with.

9. I have heard the submissions made on either side and perused the materials placed on record.

10. Firstly, the post from which the petitioner is reverted, is the post of Block Development Officer. Therefore, for promotion to the said post, it is the seniority in the post of Zonal Deputy Block Development Officer that would be relevant. For various reasons, the petitioner's promotion to the post of Zonal Deputy Block Development Officer was delayed. But that is also not questioned by the petitioner and her date of promotion as Zonal Deputy Block Development Officer is not in dispute at all. The petitioner has also accepted her date of promotion as 29.02.2016. In that view of the matter, to claim promotion to the post of Block Development Officer, it is the seniority in the



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post of Zonal Deputy Block Development Officer alone that would be relevant.

The petitioner's seniority number in the post of assistant would not be relevant.

11. The mistake that was committed by the respondents is that they first granted the promotion to the post of Block Development Officer and thereafter, proceeded to fix seniority in the post of Deputy Block Development Officer. Ideally and as per the rules, the seniority should be fixed first and thereafter, the promotion should be given. The procedure adopted by the respondents in casually granting promotion without even looking at the seniority position and thereafter, belatedly en-block refixing the seniority for the years 2008 and 2021 does not reflect the correct procedure and is deprecated by this Court.

12. Be that as it may, relief can be granted to the petitioner, if only she is entitled for promotion. A perusal of the seniority list, it can be seen that the petitioner was never within the zone of consideration for the post of Block Development Officer. The respondents at that point of time in the absence of seniority had gone by the seniority number in the post of assistant and accordingly, an erroneous promotion has been given to the petitioner. Therefore, when by the impugned order an error is corrected this court cannot interfere with it. It is also contended that an opportunity should have been given



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to the petitioner. However, the opportunity would be an empty formality, as the learned counsel for the petitioner is unable to point out that any of the juniors of the petitioner has been promoted as Block Development Officers and the petitioner has been overlooked. Therefore, no useful purpose will be served once again remitting the matter to the respondents. Therefore, this court is unable to countenance the case of the petitioner and no relief can be granted to the petitioner.

13. Accordingly, the writ petition is dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

16.04.2024

Index: Yes/No

Speaking order /non-speaking order

Neutral Citation : Yes/No

Note : Issue order copy by 06.05.2024.

Maya

To

1. The District Collector
Thiruvallur District
Collectorate, Tiruvallur.
2. The Director of Rural Development
Panagal Building, Saidapet
Chennai – 15.



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D.BHARATHA CHAKARAVARTHY, J.

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