



W.A. No. 2383 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2024

CORAM

THE HON'BLE MR. JUSTICE S.M. SUBRAMANIAM

AND

THE HON'BLE MR. JUSTICE C. KUMARAPPAN

W.A. No. 2383 of 2021

&

C.M.P. No.15197 of 2021

1. The Secretary to Government,
Revenue Department,
Fort St. George, Chennai – 600009.
2. The Special Commissioner,
Director of Survey and Settlement,
Chepauk, Chennai – 600 005.

3. The Joint Director,



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Central Survey Office,
Survey House, Chepauk,
Chennai – 600 005.

..Appellants

Vs.

V. Krishnan Kutty

..Respondent

Prayer: Writ Appeal as against the order dated 24.11.2020 passed in
W.P. No. 34750 of 2005.

For Appellants :: Mr.D. Gopal
Govt. Advocate

For Respondent :: Mr.M. Shanmugavel for
M/s. Arunachalam Associates

J U D G M E N T

(Delivered by **S.M. SUBRAMANIAM,J.**)

The writ appeal is directed against the order dated 24.11.2020 passed in
W.P.No. 34750 of 2005.



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WEB COPY 2. The undisputed factual matrix is as hereunder:

The respondent in the present writ appeal is the writ petitioner and he was initially appointed to the post of Junior Computer Draughtsman on 20.08.1965 in the Department of Survey and Land Records under Government of Tamil Nadu. After serving in various categories of posts, he was promoted to the post of Technical Officer on 20.03.2000 and joined the said post on 10.04.2000. The next avenue of promotion is to the post of Assistant Director (Drawings/Maps). While holding the post of Technical Officer, the respondent/writ petitioner was posted as full additional in-charge of the post of Assistant Director (Drawings) and Assistant Director (Maps) due to the vacancies that had arisen on retirement of the incumbents of the said posts and he was holding the two posts with effect from 01.07.2000. The crucial date for consideration and preparation of panel of Technical Officers fit for promotion to the post of Assistant Director was fixed as 22.02.2000 and the panel for the year 2001-2002 was prepared.



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The approved panel was published. Since the crucial date to be considered for promotion fell on 22.02.2000, the case of the respondent was not considered for inclusion in the panel prepared for the year 2001-2002 in view of the fact that he was promoted as Technical Officer, which is the feeder category on 20.03.2000 and joined the said post on 10.04.2000. However, the respondent was considered for promotion in the subsequent panel prepared and accordingly, promoted on 29.03.2004.

3. According to the appellants, the crucial date for possessing all the qualifications requisite for inclusion in the panel for promotion to the post of Assistant Director for the year 2001-2002 was 22.02.2000 and the respondent/writ petitioner was working in the post of Technical Officer, which is the feeder category, only from 10.04.2000 and he was only placed in full additional charge of Assistant Director (Maps/Drawings) from 01.07.2000. Therefore, the learned counsel for appellants would submit that inasmuch as the respondent/writ petitioner was



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working as Technical Officer only from 10.04.2000 i.e., after the crucial date, he is not entitled to be considered for promotion to the post of Assistant Director. It is their further contention that the respondent/writ petitioner cannot claim the rights of the post of Assistant Director just because he was holding additional charge of the post unless he possessed the requisite qualifications for promotion to the said post.

4. On the other hand, learned counsel for the respondent would submit that there was enormous delay in considering the respondent for promotion to the post of Assistant Director. The administrative delay should not affect the right of promotion of the respondent. He would further contend that though recommendations were sent as early as on 25.09.2000 and again on 20.08.2001, the same were kept in abeyance for a long time which resulted in denial of benefit of promotion to the respondent from the date of holding as in-charge Assistant Director.

5. Heard the submissions of the learned counsel on either side.

6. With reference to the issue on hand, it would be appropriate to enumerate the legal principles governing promotion in Government Service



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which are as hereunder:

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- (i) *Promotion, per se, can never be claimed as an absolute right by an employee;*
- (ii) *Consideration for promotion is a fundamental right of an employee;*
- (iii) *Mere inclusion of name in the panel for promotion would not confer any right on an employee to seek promotion to the said post;*
- (iv) *The competent authority has to take an administrative decision to fill up the promotion post. On such decision, the panel of eligible employees who are waiting for promotion has to be prepared.*
- (v) *The names of all eligible employees who are all aspiring to secure promotion have to be considered strictly in accordance with the promotion rules in force.*
- (vi) *Mere preparation of panel or release of panel would not confer any right on an employee to seek direction from the Court for grant of promotion.*



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(vii) *If any junior to an employee is promoted in violation of the Rules, the employee concerned would acquire the right to seek promotion from the date on which his junior was promoted.*

7. In the present case, the crucial date for consideration for promotion to the post of Assistant Director pertaining to the year 2001-2002 was 22.02.2000 and the respondent was promoted to the feeder category of Technical Officer on 20.03.2000 and he had joined the said post only on 10.04.2000, i.e., after the crucial date. Therefore, the respondent was not considered for promotion to the post of Assistant Director for the year 2001-2002 and rightly so. Though a submission is made on behalf of the respondent that the proposal to promote the respondent to the post of Assistant Director was submitted in the year 2001 and the said proposal was kept in abeyance, which had deprived the respondent from getting his due promotion, it has to be stated that an administrative delay in considering the proposal would not confer any right on an employee to seek promotion by filing writ petition. Furthermore, filling up of a post is the prerogative of an employer and mere submission of proposal would not confer any right on an



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employee to seek promotion. Besides, the contention of the respondent that he was holding full additional charge of the post of Assistant Director (Drawings) and Assistant Director (Maps) right from 01.07.2000 and therefore, his name ought to have been included in the panel prepared for the year 2001-2002 for promotion to the said post cannot be countenanced for the reason that holding full additional charge of the said post would not entitle the respondent to seek regular promotion or seniority. Further, it is the admitted case of the respondent that none of his juniors were promoted to the post of Assistant Director prior to him. That being so, the Writ Court has been carried away by the recommendation made and administrative delay and granted the relief sought by the respondent/writ petitioner. We are not inclined to subscribe to the view of the Writ Court for grant of promotion, the principles regarding which are well-settled.

8. In the result, the order dated 24.11.2020 passed in W.P. No. 34750 of 2005 is set aside. The writ appeal stands allowed. No costs. Connected C.M.P. is closed.

(S.M.S.J.) (C.K.J.)

nv

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