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W.P.No.395 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.395 of 2023
and
W.M.P.No.358 of 2023

A.N.Tamilselvi

.. Petitioner

Vs.

1.The Government of Tamil Nadu,
Represented by its Secretary,
Municipal Administration and Water Supply Dept.,
Fort St. George,
Chennai – 600 009.

2.The Commissioner of Town Panchayats,
75, Santhome High Road,
7th & 8th Floor, Raja Annamalaipuram,
Chennai – 600 028.

3.The District Collector,
Kancheepuram District.

4.The Assistant Director,
Town Panchayats,
Kancheepuram Region,
Kancheepuram,
Kancheepuram District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus, calling for the



W.P.No.395 of 2023

impugned order passed by the 2nd respondent in his proceeding Na.Ka.No.10875/2022/A1 dated 18.07.2022 and quash the same in so far as placing the petitioner on par with Tmt.G.Umasundari and insisting service qualification and consequently direct the respondents to promote the petitioner as Executive Officer Grade II / Head Clerk / Assistant, Executive Officer Grade – I and Selection Grade Executive Officer without insisting service qualification with effect from the date on which her juniors viz., K.Maheswaran etc., got promotion as Executive Officer Grade II / Head Clerk / Assistant, Executive Officer Grade-I and Selection Grade Executive Officer with all monetary and other attendant benefits including revision of pension and pay arrears.

For petitioner : Mr.K.Raja

For Respondents : Mr.C.Selvaraj
Additional Government Pleader

ORDER

This writ petition has been filed challenging the proceedings of the 2nd respondent dated 18.07.2022 and for a consequential direction to the respondents to promote the petitioner as Executive Officer Grade-II, Executive Officer Grade-I and Selection Grade Executive Officer on par with the date on which her juniors got the promotion with all monetary and attendant benefits.



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2.The case of the petitioner is that her father was working as a Executive Officer in Perungalathur Town Panchayat. He died in harness and hence, the petitioner applied for appointment on compassionate grounds. The petitioner was appointed as Junior Assistant on 03.08.1995. The petitioner also retired from service on 31.07.2019. Till then, the services of the petitioner was not even regularized.

3.The petitioner filed W.P.No.16758 of 2019 before this Court for a direction to the respondents to regularize the service of the petitioner as Junior Assistant with effect from 03.08.1995 and for granting further promotions on par with her juniors with all monetary and attendant benefits. This writ petition was disposed of by an order dated 23.09.2019.

4.Pursuant to the above order, G.O.Ms.No.138 dated 25.03.2021 was issued whereby the services of the petitioner was regularized with effect from 03.08.1995. Thereafter, G.O.Ms.No.34 dated 01.07.2022 was issued and the probation was declared with effect from 13.08.1997. The petitioner was also given promotion as Executive Officer Grade-II in the



panel year 2010-2011 on par with her juniors with effect from 30.01.2014.

5.The grievance of the petitioner is that she must have been given the promotion as Executive Officer Grade-I and Selection Grade Executive Officer on par with the juniors. When the representation was made by the petitioner in this regard, the same was rejected by the 2nd respondent through impugned proceedings dated 18.07.2022. The same has been made a subject matter of challenge in the present writ petition.

6.The 2nd respondent has filed a counter. It has been stated in the counter that the promotion to the various posts that has been sought for by the petitioner is based on the completion of prescribed years of service in the respective feeder post. The names of the juniors that has been mentioned by the petitioner were granted such promotion since they fulfilled such qualification. Since, the petitioner did not fulfill the qualification and she had attained superannuation on 31.07.2019, she is not entitled for further promotion. Accordingly, the respondents have sought for the dismissal of the writ petition.

7.Heard the learned counsel for the petitioner and the learned



Additional Government Pleader for the respondents.

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8.The short issue that arises for consideration in the present case is as to whether the petitioner will be entitled for further promotion to the post of Executive Officer Grade-II on par with her juniors and consequently to the post of Executive Officer Grade-I and Selection Grade Executive Officer.

9.There is no serious dispute on facts. The petitioner had joined the services as Junior Assistant on 03.08.1995 and right through her tenure, her services were not regularized. By then, she superannuated on 31.07.2019. The services of the petitioner was regularized only after her retirement pursuant to the order passed by this Court in W.P.No.16758 of 2019 dated 23.09.2019, by issuance of G.O.Ms.No.138 dated 25.03.2021. The probation was also declared with effect from 13.08.1997 vide G.O.Ms.No.34 dated 01.07.2022.

10.The further promotions that were sought for by the petitioner has been denied mainly on the ground that the petitioner did not complete the prescribed years in the respective feeder post and therefore,



she will not be entitled for any further promotion.

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11.It must be kept in mind that the petitioner would have been considered for promotion if the services of the petitioner had been regularized while she was in service. Unfortunately, for nearly 24 years the petitioner was in service and it was never regularized. The regularization itself had taken place only after the retirement of the petitioner. Therefore, for the fault on the part of the respondents, the petitioner cannot be denied the benefit of promotion on par with her juniors and other attendant benefits.

12.The requirement of putting in prescribed years of experience in the respective feeder post is an impossibility in so far as the petitioner is concerned, since the petitioner has already retired from service. Law will never insist a person to perform an impossibility and thereby deny the right to which he is otherwise entitled to. The respondents are now expecting the petitioner to complete the prescribed years of experience in the respective feeder post. What is expected by the respondents is an impossibility and the same should not be put against the petitioner. This Court is redolent of the Latin maxim "*Impossibilium nulla obligatio est*".



If the petitioner was in service and she had not put in sufficient / prescribed years of experience, then it can be stated as a ground against the petitioner while seeking for further promotion. However, the regularisation of the petitioner had taken place only after her retirement and therefore, the petitioner must atleast get those promotions which her juniors were able to get during their service period. Hence, the ground on which the 2nd respondent has denied further promotions to the petitioner is unsustainable and is liable to be interfered by this Court.

13.The promotion that is granted to the petitioner will be on par with her immediate junior. Such promotion can only be notional promotion and this Court is not inclined to burden the respondents with the monetary liability. In view of the same, the petitioner will only be entitled for the attendant benefits by virtue of those promotions and at the best it will result in revising her pension.

14.The upshot of the above discussion is that the impugned proceedings of the 2nd respondent dated 18.07.2022 is hereby quashed. There shall be a direction to the respondents 1 & 2 to pass necessary orders granting promotion to the petitioner to the post of Executive



W.P.No.395 of 2023

Officer Grade – II, Executive Officer Grade – I and Selection Grade Executive Officer on par with her junior. The promotion shall be given notional effect and it shall only carry the attendant benefits in terms of revision of pension. Necessary orders shall be passed in this regard within a period of eight (8) weeks from the date of receipt of a copy of this order. The arrears of pension payable to the petitioner in the light of the revision of pension shall be paid to the petitioner within a period of eight (8) weeks thereafter.

15.In the result, this Writ Petition stands allowed with the above directions. Consequently, the connected Miscellaneous Petition is closed.
No costs.

09.09.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No



W.P.No.395 of 2023

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N.ANAND VENKATESH, J.

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