



W.P.(MD)No.1645 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.09.2024**

CORAM:

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

W.P.(MD)No.1645 of 2017
and
W.M.P.(MD)Nos.1333 & 1334 of 2019

S.Anbu

... Petitioner

/Vs./

1.The State of Tamil Nadu,
Rep. by the Principal Secretary,
Rural Development & Panchayat Raj Department,
Fort St.George, Secretariat,
Chennai – 600 002.

2.The Director,
Rural Development and Panchayats,
Panagal Maligai, Saidapet,
Chennai – 600 015.

3.The District Collector,
Collectorate,
Nagercoil,
Kanyakumari District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to
issue a Writ of Certiorarified Mandamus, to call for the records



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pertaining to the impugned order in Letter No.14489/Pa.A4/2015-3, dated 07.09.2016 on the file of the Respondent No.1 and the consequential order in D4/28340/2015, dated 30.09.2016 on the file of the Respondent No.3 and quash the same as illegal and consequently to direct the Respondents to pass orders on the petitioner's claim to re-fix the seniority of the petitioner in the cadre of Junior Assistant by providing necessary relaxation on par with others, if any, and accordingly award promotion to the post of Block Development Officer by advancing the promotion in the post of Assistant and Deputy Block Development Officer with all consequential benefits within the time stipulated by this Court.

For Petitioner : Mr.G.Karthik
for Mr.S.Louis
For Respondents : Ms.D.Farjana Ghoushia
Special Government Pleader

ORDER

This writ petition has been filed challenging the impugned order dated 07.09.2016 passed by the first respondent and the consequential order dated 30.09.2016 passed by the third respondent.



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2. Under the impugned orders, the petitioner's request to refix his seniority in the cadre of Junior Assistant by providing necessary relaxation on par with others and accordingly award promotion to him to the post of Block Development Officer by advancing promotion in the posts of Assistant and Deputy Block Development Officer, has been rejected.

3. The impugned order dated 07.09.2016 has been passed by the first respondent in the appeal filed by the petitioner aggrieved by the order dated 03.11.2005 passed by the third respondent. The third respondent had earlier rejected the petitioner's request under the aforesaid order, which was challenged by the petitioner before the first respondent, who had rejected the petitioner's appeal on the ground that the appeal has been filed beyond the period of limitation.

4. The petitioner has challenged the impugned order dated 07.09.2016 passed by the first respondent on the ground that by total non-application of mind to the fact that the appeal was filed well within the period of limitation ie., on 31.01.2006 itself, the first respondent, by



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erroneously relying upon the subsequent representation of the petitioner dated 10.08.2006 has rejected the appeal on the ground of limitation. According to the petitioner, if the first respondent had taken note of the fact that the appeal was filed on 31.01.2006, the appeal filed by the petitioner would be well within the period of limitation.

5. A categorical assertion has been made in the affidavit filed in support of this writ petition that the petitioner had filed the appeal before the first respondent on 31.01.2006 itself and the grounds of appeal dated 31.01.2006 has also been filed as document along with this writ petition. Admittedly, for preferring an appeal, 60 days time is given to the petitioner, if aggrieved by the order of the third respondent.

6. A counter affidavit has been filed by the respondents reiterating the contents of the impugned order passed by the first respondent by stating that the appeal filed by the petitioner is barred by limitation. They would once again submit that since the appeal was filed only on 09.02.2006, which is beyond the period of 60 days, the appeal is barred by limitation.



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7. However, as seen from the counter affidavit filed by the respondents before this Court, there is no reference to the contention of the petitioner, which is supported by grounds of appeal, that he had filed the appeal on 31.01.2006 itself. When a categorical assertion has been made by the petitioner, which is supported by evidence in the form of grounds of appeal that the appeal was filed by the petitioner on 31.01.2006 itself, the respondents, in the counter affidavit, ought to have either denied the receipt of appeal filed by the petitioner on 31.01.2006 or should have commented upon the grounds of appeal dated 31.01.2006 enclosed along with this writ petition, which the petitioner claims was filed on 31.01.2006 itself.

8. When the respondents are unable to state as to whether the contention of the petitioner that the appeal was filed on 31.01.2006 itself is correct or not, this Court has to give the benefit of doubt to the petitioner by presuming that the appeal was filed by the petitioner well within the period of limitation ie., on 31.01.2006 itself, which is within 60 days from the date of the order passed by the third respondent dated 03.11.2005.



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9. Since the appeal was not heard on merits by the first respondent and was dismissed only on the ground of limitation and since this Court has come to the conclusion that the appeal filed by the petitioner before the first respondent is well within the prescribed period of limitation, the impugned order dated 07.09.2016 and the consequential order dated 30.09.2016 passed by the first respondent and the third respondent respectively have to be quashed and the matter has to be remanded back to the first respondent for fresh consideration on merits and in accordance with law, within a time frame to be fixed by this Court.

10. For the foregoing reasons, the impugned orders dated 07.09.2016 passed by the first respondent and the consequential order dated 30.09.2016 passed by the third respondent are hereby quashed and the matter is remanded back to the first respondent for fresh consideration on merits and in accordance with law. The first respondent is directed to pass final orders, after affording a fair hearing to the petitioner, within a period of four months from the date of receipt of a copy of this order. The petitioner is also directed to submit all relevant



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documents before the first respondent to substantiate his contentions.

This writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
NCC : Yes / No
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TO:-

- 1.The Principal Secretary,
Rural Development & Panchayat Raj Department,
Fort St.George, Secretariat,
Chennai – 600 002.
- 2.The Director,
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ABDUL QUDDHOSE, J.

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Order made in
W.P.(MD)No.1645 of 2017

Dated:
25.09.2024