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W.A No. 625 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08-04-2025

CORAM

THE HONOURABLE MR JUSTICE R. SURESH KUMAR
AND
THE HONOURABLE MR JUSTICE SATHI KUMAR SUKUMARA KURUP

WA No. 625 of 2023 and
CMP NO. 6132 OF 2023

1. The Secretary to Government
Municipal Administration and Water
Supply Department, Fort St. George,
Chennai.
2. The Director of Town Panchayats
Kuralagam, Chennai.

... Appellants

Vs

K. Kalasamy
S/o. Kaliappan, No. 234A,
Rasikumaripalayam Street, Mohanoor,
Namakkal District.

... Respondent

PRAYER

Writ Appeal under Clause 15 of Letters Patent to set aside the Order dated 25.07.2022 and made in WP.No. 12774 of 2015

For Appellant(s): Mr.R.Neelakantan, Additional
Advocate General, assisted by
Mr.C. Selvaraj, Additional Govt.
Pleader

For Respondent(s): V.Vijayashankar For Sole
Respondent



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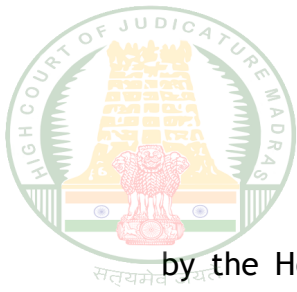
JUDGMENT

(Judgment of the Court was delivered by R.Suresh Kumar J.)

This intra Court appeal has been filed against the order dated 25.07.2022 made in W.P.No.12774 of 2015.

2. The respondent was appointed on compassionate ground as Junior Assistant on 10.08.1992 at the appellant Department. His appointment was not approved or regularized immediately since the post of Junior Assistant comes under the purview of the Tamil Nadu Public Service Commission (TNPSC), concurrence from TNPSC should be obtained. Therefore, after getting the said concurrence from the Service Commission, the Government issued G.O.3D.No.2, Municipal Administration and Water Supply Department dated 25.01.2008, wherein the services of the respondent was retrospectively regularized from the date of initial appointment ie., 10.08.1992.

3. Thereafter, the issue regarding seniority of Executive Officer, Grade-II had engaged in a litigation in O.A.No.2526 of 1990 before the then Tamil Nadu Administrative Tribunal, where, an order had been passed by the Tribunal on 25.04.1994, wherein the Tribunal had held that the seniority of Executive Officer, Grade-II will have to be fixed by taking into account the date of entry into ministerial service. The said order was appealed by the State to the Hon'ble Supreme Court in S.L.P.No.17335 of 1994, where also the SLP since was dismissed



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by the Hon'ble Apex Court by order dated 14.03.1997, the law which has been declared by the Tamil Nadu Administrative Tribunal with regard to the seniority of Executive Officer, Grade-II to be fixed from the date of entry into ministerial service has been confirmed.

4. Therefore, based on such a direction the seniority list has to be drawn throughout the State by taking the State as a Unit. This exercise should have been immediately undertaken by the Government. However, they have completed this exercise by having Statewide seniority list only from the year 2012. In the meanwhile, the panel was prepared for the promotion to the post of Executive Officer Grade II for the panel year 2006-07, in which, even though at that time the respondent/writ petitioner was eligible otherwise, his name has not been included for two reasons viz.,

- (i) the services of the writ petitioner was not regularized and
- (ii) State was not the Unit at that time.

5. Therefore, taking it at the regional / district level unit since the writ petitioner was not senior to be included in the panel, he was not included. In the meanwhile, by order dated 21.08.2013 the probation of the writ petitioner was declared as if that he has completed the probation on 09.08.1994.



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6. With these factors, the respondent / writ petitioner had requested for promotion to the post of Executive Officer Grade-II by including his name in the panel fit for promotion for the year 2006-07, which was rejected by the appellant Department by communication dated 09.02.2015, whereby they have given these two reasons why his name has not been included in the 2006-07 panel. The order dated 09.02.2015 was under challenge in the writ petition, which in fact was allowed by the writ Court through the impugned order.

7. Assailing the impugned order, Mr.R.Neelakandan, learned Additional Advocate General would submit that, first of all at the time of preparation of the panel in the year 2006-07, the respondent/writ petitioner was not at all a regularized employee and his probation also since has not been declared, the question of including his name in the promotion panel for the year 2006-07 did not arise.

8. Secondly, the learned Additional Advocate General would submit that State being the Unit for preparing the panel among the feeder category for promotion to the post of Executive Officer Grade II is concerned, that system has come only in the year 2010. Therefore, at that time, State was not the Unit and hence even on seniority basis since the writ petitioner was not senior to be included in the panel, he was not included in the panel.



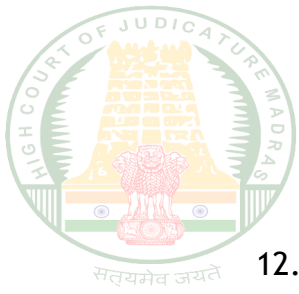
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9. These two reasons is still subsisting and therefore the order impugned before the writ Court, rejecting the plea made by the writ petitioner to be included in the panel for promotion to the post of Executive Officer Grade II for the panel year 2006-07 was rightly passed. However, the learned Writ Court has not considered all these aspects in proper perspective and allowed the writ petition, which requires interference at the hands of this Division Bench, he contended.

10. We have also heard Mr.V.Vijayashankar, learned counsel for the respondent / writ petitioner.

11. The two grounds that are projected on behalf of the appellant Department has been projected before the Writ Court also, which has been rejected by the learned Judge. Though initially the writ petitioner was appointed as Junior Assistant on 10.08.1992, the regularization came in only in the year 2008 ie., by way of G.O.3D.No.2, Municipal Administration and Water Supply Department dated 25.01.2008. However, the Government very consciously issued the said Government Order dated 25.01.2008 giving such regularization of the services of the writ petitioner retrospectively with effect from 10.08.1992, the date of his initial appointment.



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12. Once regularization has been given to the employee, that date shall be taken into account for all the purposes including fixation of seniority. It is further to be noted that, by order dated 21.08.2013, the probation of the petitioner was declared with effect from 09.08.1994 ie., almost after two years of initial service. Therefore, to that extent there has been no impediment. Insofar as the regional panel or State panel issue is concerned, the judgment of the Tamil Nadu Administrative Tribunal was rendered in the year 1994, which was confirmed by the Hon'ble Supreme Court by order dated 14.03.1997. Therefore, from the date of the judgment of the Tribunal, the employer ought to have prepared the seniority list only by taking State as Unit. However, for several years the orders have not been implemented, but belatedly it has been implemented.

13. In the meanwhile, the panel for promotion to the post of Executive Officer Grade II since had been prepared for the panel year 2006-07, initially the name of the writ petitioner was not included. However, the moment the services of the respondent/writ petitioner has been regularized retrospectively with effect from 10.08.1992, and thereafter the Statewide seniority also has been taken into account for preparation of the panel for the year 2006-07, in which the writ petitioner since had been otherwise eligible on his regularization has come before 2006-07 as it has been belatedly only given, the plea of the writ petitioner to include his name in the panel for 2006-07 ought to have been accepted by the appellant herein. However, they have rejected the plea made by the petitioner through the order dated 09.02.2015.



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14. When the said order was questioned before the learned Writ Court, the learned Judge having considered the factual matrix pertaining to the service conditions of the writ petitioner, as his service has been regularized with effect from 10.08.1992, thereby State being the Unit in 2006-07, came to the conclusion that the writ petitioner / respondent being senior, he would be eligible to be included in the panel and since he has not been included in the panel because of the delayed approval and delayed issuance of the Government Order, such a mistake committed by the appellant Department can be rectified by the Government for which when a request has been made, the same ought to have been allowed. Thereby, the learned Writ Court set aside the communication of the appellant Department dated 09.02.2015 and allowed the writ petition through the impugned order.

15. After having gone through the order as well as the connected records, we do feel that there is absolutely no plausible reason for rejecting the request of the writ petitioner / respondent for including his name in the panel for promotion to the post of Executive Officer Grade II for the panel year 2006-07. Therefore, the learned Writ Court has rightly set aside the order dated 09.02.2015 and we do not propose to interfere with the same. However, it is made clear that by implementing the order passed by the Writ Court, which is impugned herein, the writ petitioner/respondent shall be considered and be included in the panel of 2006-07 for promotion to the post of Executive Officer Grade II by placing him just



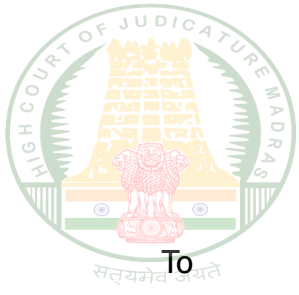
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above the junior of the writ petitioner/respondent in the Unit, to which he belongs. The exercise as indicated above shall be undertaken by the appellant Department within two months from the date of receipt of a copy of this order.

16. With the above observations, the writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.K.,J.) (S.S.K.,J.)
08-04-2025

Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No
KST



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