



W.P.No.31214 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.03.2025

Coram:

THE HONOURABLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.31214 of 2023

K.Manoharan

...Petitioner

Vs.

1. The Government of Tamilnadu
rep. By its Secretary, Rural Development Department,
Fort St.George, Chennai – 600 009

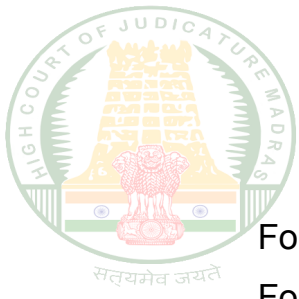
2. The Director of Rural Development
Chepauk, Chennai – 5

3. The District Collector,
Ariyalur, Ariyalur District

4. The Block Development Officer,
Jeyankondam, Ariyalur,
Ariyalur District

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Mandamus directing the respondents to give notional promotion to the petitioner as Assistant from 23.02.2012 and further notional promotion as Deputy Block Development Officer from 14.11.2014, the date on which the said promotions were given to his juniors with notional promotion benefits with arrears and revision of pension from 01.06.2015 with arrears etc., and pass such further orders.



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For Petitioner

: Mr.V.Krishnamurthy

For Respondents

: Mr.R.U.Dinesh Rajkumar for R1 to R3

Additional Government Pleader

Mr.M.Rajendiran for R4

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ORDER

The petitioner has filed this Writ Petition seeking for an issuance of a Writ of Mandamus directing the respondents to give notional promotion to the petitioner as Assistant from 23.02.2012 and further notional promotion as Deputy Block Development Officer from 14.11.2014, the date on which the said promotions were given to his juniors with notional promotion benefits with arrears and revision of pension from 01.06.2015 with arrears etc.,

2. The brief facts of the case, as averred by the petitioner, are as follows:-

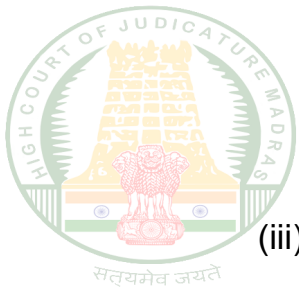
(i) The petitioner studied upto to X standard (Old SSLC) and registered his name in the Employment Exchange Office at Ariyalur. The petitioner was sponsored by the Employment Exchange office for the post of Office Assistant on 26.02.1987 and after serving the said post by an order dated 22.05.2009, the petitioner was promoted as Junior Assistant by the 3rd respondent and joined duty at Jayankondam Panchayat Union on 24.05.2009. The petitioner's service was regularised from 24.05.2009 by an order dated 06.09.2010 and the petitioner's probation was declared on 25.07.2011 by order dated 29.07.2013, by the 3rd



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respondent. In the seniority list dated 26.03.2012, the petitioner's name was shown in Sl.No.7 and one N.Palanivel and other persons, namely, K.Thamarai Selvi, R.Hemachandran, K.Azhaganandan, T.Rajendran, K. Panner Selvam and M.Jaya were shown as Juniors to the petitioner. The 3rd respondent vide proceedings dated 23.07.2012 granted promotion to the juniors of the petitioner and denied promotion to the petitioner on the ground that he had not completed Bavani Sagar Training.

(ii) The petitioner having crossed 53 years of age, is exempted to undergo the said Bavani Sagar Training, as per Government Order No.184, Personal and Administrative Reforms Department dated 15.10.1998 for declaration of his probation and his probation was declared from 27.05.2011. Consequential promotions were not given and therefrom the petitioner is getting pension in the cadre of Assistant. Further, if the promotion is denied to the employee inspite of promotion given to his juniors, notional promotion can be claimed, which is evident from the Judgment of **Hon'ble Supreme Court in Manoj Manu Vs. Union of India reported in 2013 (12) SCC 171**, wherein it was held that when denial of appointment is found to be arbitrary and discriminatory, the same shall be interfered and directed to issue appointment orders.



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(iii) Further, in **Sanjay Dhar Vs. J&K Public Service Commission,**

reported in (2000) 8 SCC 182 when a candidate who had been successful in the subsequent selection, but had been wrongfully denied appointment in the previous recruitment a direction was issued to have his seniority fixed notionally with effect from the date of earlier selection. The **Hon'ble Division Bench of this Court in the matter of N.D.Nambissan Vs. The Central Administrative Tribunal madras and another reported in 2001 MLJ 671 (DB)** directed to give notional promotion to those who were not promoted earlier due to defective seniority list. Though the representation has been submitted by the petitioner to the 3rd respondent on 24.08.2015, seeking notional promotion in the cadre of Assistant and Deputy Block development Officer to which the petitioner's juniors were given promotion and since no action was taken the petitioner has come up with the present petition.

3. The learned counsel for the petitioner would submit that the only reason for not granting promotion as Assistant from 23.07.2012 and as Deputy Block Development Officer from 14.11.2014 is that his probation was not declared due to the fact that the petitioner had not undergone Bavani Sagar Training as stated earlier. The petitioner completed 53 years of age and hence need not undergo the said Training for declaration of his probation, thereby pleaded to grant



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notional promotion to the petitioner as Assistant from 23.02.2012 and as Deputy Block Development Officer from the year 2014, to which the petitioner's juniors have been promoted. The learned counsel for the petitioner relied on the following Judgments, in support of his contention:

(i) The Judgment of the Hon'ble Supreme Court reported in 2000(6) Supreme 614 [Sanjay Dhar vs. Jammu & Kashmir Public Service Commission & Another].

(ii) The Judgment of the Hon'ble Supreme Court reported in Civil Appeal No.6707 of 2013 (Arising out of Special Leave Petition (Civil) No.26967 of 2011) [Manoj Manu & Another Vs. Union of India & Others]

(iii) The Judgment of the Hon'ble Division Bench of this Court reported in 2001 (3) MLJ 671 in W.P.No.1531 of 2000 [N.D.Nambisan Vs. The Central Administrative Tribunal, Madras Bench, Madras]

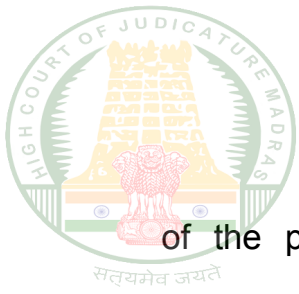
4. Per contra, the learned Additional Government Pleader appearing for the respondents 1 to 3 would submit that since the petitioner has crossed 53 years of age, he is exempted from undergoing Bhavani Sagar Training and hence the probation of the petitioner for the post of junior assistant was ended on 27.05.2011 vide proceedings of the 3rd respondent in



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Na.Ka.No.3048/2013/oo.va.5 dated 29.07.2013. Further, based on the 2014-2015 selection list for assistants, the petitioner herein was promoted as Assistant by virtue of the proceedings of the 3rd respondent in Proceedings dated 14.10.2014 and the petitioner joined as Assistant in the office of Assistant Director of Village Panchayat, Ariyalur District from 20.10.2014. Thereafter, since the petitioner attained superannuation, he was allowed to retire from service on 31.05.2015. Thereafter, all the retirement benefits and pensionary benefits have been accorded to the petitioner. The petitioner being retired in the year 2015, seeking for notional promotion in the year 2023 based on the promotion given to his juniors, which is after 9 years is highly belated claim of notional promotion, hence the same is liable to be rejected, thereby pleaded to dismiss the petition.

5. The learned counsel for the 4th respondent submits that the petitioner has filed the present Writ Petition after his retirement on the basis of promotion granted to his juniors on 14.11.2014 and the petitioner has not filed the Writ Petition during his service period and as such, the instant Writ Petition is highly barred by laches, as the notional promotion as Assistant being claimed with effect from 23.02.2012 and further, notional promotion as Deputy Block Development Officer, with effect from 14.11.2014 and the petition has been filed in the year 2023. There is no averment in the Writ Petition that the petitioner was not aware



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of the promotion of his alleged juniors. The learned counsel for the 4th respondent, in support of his contention has relied on the following Judgments and pleaded to dismiss the petition.

(i) The Judgment of the **Hon'ble Apex Court in the case of Ghulam Rasool Lone Vs.State of Jammu and Kashmir and another reported in (2009) 15 Supreme Court Cases 321.**

(ii) The Judgment of the Hon'ble Apex Court in Civil Appeal No.7340-7341 State of U.P. And Others Vs. Roshan Singh and others)

(iii) The Order of this Court in W.P.No.1098 of 2020 dated 14.06.2022 (S.Vinayagam Vs. The Secretary to Government and others)

(iv) The Hon'ble Division Bench of this Court in the case of S.Vaidhyathan Vs. Government of Tamilnadu reported in 2018 SCC Online.

6. Heard the learned counsel on either side and perused the documents placed on record.

7. It is to be noted that the petitioner has filed the present Writ Petition after his retirement claiming notional promotion on the basis of promotion granted to



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his alleged juniors on 14.11.2014 and no writ petition was filed by the petitioner during his service period. Also, the notional promotion as Assistant being claimed with effect from 23.02.2012 and further, notional promotion as Deputy Block Development Officer, with effect from 14.11.2014 and the petition has been filed in the year 2023.

8. Also, when the petitioner came to know that he has been given promotion with effect from 20.10.2014, in case, the petitioner had a grievance regarding the promotion with the retrospective date, he should have approached this Court in the year 2014 itself or within two or three years thereafter, but the petitioner has approached this Court with an inordinate delay of about 9 years that too without any explanation.

9. It is relevant to note that the **Hon'ble Supreme Court of India in S.L.P.Diary No.43488 of 2023** held that it is a well settled principle that promotion becomes effective from the date it is granted, rather than from the date a vacancy arises or the post is created. While the Courts have recognized the right to be considered for promotion as not only a statutory right, but also a fundamental right, there is no fundamental right to the promotion itself, as per Judgment of the Hon'ble Supreme Court referred supra.



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10. It is no doubt true that an employee has got the right to be considered for promotion whenever it arises, in accordance with the Rules. If an employee satisfies the eligibility criteria for promotion, but is not considered for promotion, then it is considered as a violation of fundamental right for promotion, here, the petitioner is not at all qualified for promotion, in view of the fact that the petitioner has not completed Bavani Sagar training. Since the Government has given exemption under G.O.No.184 Personal and Administrative Reforms Department dated 15.10.1998 to the employees who have completed 53 years of age, they can be considered for promotion, though they have not completed the Bavani sagar training. Further, only on that consideration and when the petitioner crossed 53 years of age, he has been exempted. Thereafter, the petitioner was considered for promotion and not earlier than the date of confirmation of probation or on the date where the petitioner's junior have been promoted. The juniors to the petitioner have been promoted only as per the norms by completing the Bavani Sagar training. The petitioner, who has not completed the training cannot compare himself with the other candidates, who have completed the same.



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In view of the above, the Writ Petition is dismissed. No costs.

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Index : Yes / No
Internet : Yes / No
Speaking Order / Non Speaking Order
ssd

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V.BHAVANI SUBBAROYAN, J.

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