



W.P(md)No.16041 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated:12.11.2025

CORAM

THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

**WP(MD)No.16041 of 2019**  
**and**  
**W.M.P(MD)No.12749 of 2019**

K.Velu(Died)  
2.Radha  
3.Mangaleshwari  
4.Nageswaran  
(P2 to P4 are substituted vide  
Court order dated 21.08.2024)

... Petitioners

Vs.

1.The Secretary,  
Government of Tamil Nadu  
Revenue Department,  
Fort St.George,  
Chennai-9.

2.The Principal Secretary & Commissioner,  
Survey & Settlement,  
Chepauk,  
Chennai-5.

3.The Additional Director of Survey,  
Survey and Land Records,  
Chepauk,  
Chennai-5.

4.The Assistant Director of Survey and Land Records,  
Madurai-20.

... Respondents



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**Prayer:** Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records in pursuant of impugned G.O.(2D)No.113 Revenue Department – NiA3(1) dated 07.04.2017 issued by the 1<sup>st</sup> respondent as not valid and void under law and thereby quash the same as illegal and directing the 1<sup>st</sup> respondent to place the petitioner in the Panel List of 2015-2016 of Inspector of Survey to be promoted as Assistant Director of Survey with due consideration of the petitioner being a member of Scheduled Caste Community and consequently, the petitioner should have deemed to have been promoted and paid retirement benefits taking as promoted as Assistant Director of Lands Survey from the panel year 2015-2016.

For Petitioner : Mr.V.Murugan

For R1 to R4 : Mr.J.Ashok  
Additional Government Pleader  
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### **ORDER**

This writ petition is filed for the issuance of a Writ of Certiorarified Mandamus, calling for the records in pursuant of impugned G.O.(2D)No.113 Revenue Department – NiA3(1) dated 07.04.2017 issued by the 1<sup>st</sup> respondent as not valid and void under law and thereby quash the same and directing the 1<sup>st</sup> respondent to place the petitioner in the Panel List of 2015-2016 of Inspector of Survey to be promoted as Assistant Director of



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Survey with due consideration of the petitioner being a member of Scheduled Caste Community and consequently, the petitioner should have deemed to have been promoted and paid retirement benefits taking as promoted as Assistant Director of Lands Survey from the panel year 2015-2016.

2.Heard Mr.V.Murugan, learned counsel appearing for the petitioner and Mr.J.Ashok, learned Additional Government Pleader appearing for the respondents.

3.The learned counsel appearing for the petitioner would submit that the petitioner was appointed as Surveyor and Draftsman on consolidated pay in Ramanathapuram District in the year 1982. Thereafter, he absorbed into regular time scale of pay for the post of Field Surveyor. Thereafter, he was considered for the next promotional post of Firka Surveyor, Sub-Inspector of Survey and Land Records, Deputy Inspector of Survey and Land Records and, Inspector of Survey and Land Records. The learned counsel would further submit that the petitioner joined duty as Inspector of Survey on 09.03.2015. Though there was vacancy in the post of Inspector on 01.01.2015 and 02.02.2015, the respondents had considered the petitioner's request belatedly, which resulted his non consideration for the post of Assistant Director of Survey and Land Records. It is the specific contention



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of the petitioner that he is belonging to Scheduled Caste Community and he is entitled for relaxation as provided to the similarly placed person under G.O.Ms.No.299 and 540 dated 05.10.2016. According to the petitioner, the respondents, by relying upon the irrelevant materials, have rejected the petitioner's request. Hence, prayed to interfere with the same.

4.Per contra, the said contention was stoutly objected by the learned Additional Government Pleader and would contend that though the learned Additional Government Pleader admits the date of promotion, he would seriously dispute about the eligibility of the petitioner to be promoted on 01.01.2015 to the post of Inspector of Survey. It is the specific submission of the learned Additional Government Pleader that the crucial date for consideration of Assistant Director of Survey and Land Records for the panel year 2015-2016 was 22.02.2015, Whereas the petitioner was promoted to the feeder post only on 25.02.2015. Therefore, the petitioner was not considered for the panel of years 2015 – 2016. Though the petitioner was qualified for the panel of years 2016-2017, on the crucial date viz., 22.02.2016, no proposal for the estimate of vacancy for the post of Assistant Director of Survey and Land Records was fixed. In the meanwhile, the petitioner retired on 31.05.2017. Hence, the petitioner's name could not be included even in the panel of years 2016-2017. The learned Additional Government Pleader



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would further submit that giving relaxation to the employee comes within the exclusive domain of the employer and that too on a just and equitable ground. The learned Additional Government pleader would contend that G.O.Ms.No.299 and 540 was passed relaxing certain conditions to certain employee only upon a compelling reason. Therefore, the question of claiming parity with that of the persons who was granted relaxation does not arise. It is the further submission of the learned Additional Government Pleader that since the petitioner has not officiated the post of Assistant Director of Survey and Land Records, the question of seeking financial benefit based on the prayer for notional promotion is in contrary to Rule 22(1)(b)(11) of the Fundamental Rules. Hence, prayed to dismiss the writ petition.

5.I have given my anxious consideration of the submissions made on either side.

6.The dates and events are not in serious dispute. It is an admitted fact that the petitioner was appointed on a consolidated pay as a Field Surveyor during 1982 and after regularization, he was promoted to the following post viz., Firka Surveyor, Sub Inspector of Survey and Land Records, Deputy Inspector of Survey and Land Records and Inspector of Survey and Land



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Records. The next level of promotion from the post of Inspector of Survey and Land Records is the post of Assistant Director of Survey and Land Records,

7.The main contention put-forth by the learned counsel for the petitioner is that there was a vacancy in the post of Assistant Director of Survey and Land Records on 01.01.2015 itself. Had there been a prompt action by the official respondents in promoting the petitioner to the post of Inspector of Survey and Land Records on 01.01.2015 itself, qua the crucial date for the drawal of the panel for the next level of post qua Assistant Director of Survey and Land Records viz., 22.02.2015, the petitioner would have been considered. It is in this background, the learned counsel for the petitioner would submit that in a similar circumstances relaxation had been given to one P.Raju and other few persons on the ground that they belongs to marginalized Schedule Caste Community and that the petitioner who is also belongs to the Schedule Caste Community. The authority ought to have considered the petitioner for the subsequent promotion.

8.According to Section 52 of the Tamil Nadu Government Servants (Conditions of Service) 2016, granting relaxation to the employee would only be on the basis of just and equitable ground exist. It is the Government,



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who has got authority to relax the conditions. The learned Additional Government Pleader would invite the attention of this Court about the contingencies, which were just and equitable accounts to their, had there been no relaxation to individual vide G.O.Ms.No.299 dated 27.06.2006, G.O.Ms.No.540 dated 05.10.2006 the post earmarked for schedule caste and schedule tribe would have got lapsed. Only in such peculiar circumstances, the Government having felt that there were just and equitable reasons, have relaxed the condition. But in the case in hand, there was no such occasion arise.

9.It is well settled principles of law that the consideration for promotion is only the fundamental right and the very promotion cannot be sought as a fundamental right. While looking at the dates, the crucial date for the next level of post viz., Assistant Director of Survey Land and Records was 22.02.2015. Admittedly, the petitioner was not holding the post of Inspector of Survey viz., the feeder category for the next level of post on the crucial date. He was promoted only on 25.02.2015 and he joined later in the month of March 2015. Therefore, as rightly contended by the learned Additional Government Pleader, there was no occasion arisen to consider the petitioner for promotion. Unfortunately, for the next panel year no panel was drawn by the department. It is again settled principles of law that, an



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employee cannot seek to draw panel as a matter of right, as the promotion depends upon the various factors.

10.While looking at the petitioner's prayer, he seeks a parity for relaxation as provided under G.Os., and to consider him in the promotion panel of years 2015-2016 and for a deemed promotion. The question of deemed promotion is unknown to the service jurisprudence. Admittedly, it is not the case of the petitioner that the juniors were promoted overlooking the petitioner. Only upon certain peculiar reason viz.,his promotion was subsequent to the date of crucial date, he was not considered. The learned counsel for the petitioner would also submit that apart from granting notional promotion, he must also be granted financial benefits. In this regard it is appropriate to refer the judgment of the Hon'ble Supreme Court in ***Government of West Bengal & Ors., V. Dr.Amal Satpathi & Ors.,(Diary No.43488 of 2023)***, wherein promotion becomes effective from the date it is granted, rather than from the date a vacancy arises or the post is created. The above procedure is squarely applicable to the present facts of the case. The petitioner would submit that since there were vacancies on 01.01.2015, he deemed to have been promoted to the post of Inspector of Survey, which is contrary to the *Dr.Amal Satpathi(cited supra)* case.



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11. In this regard, it is relevant to extract Para Nos.19, 20 and 21 as hereunder:

*“19. 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. In this regard, we may gainfully refer to a recent decision of this Court in the case of Bihar State Electricity Board and Others v. Dharamdeo Das, wherein it was observed as follows: “18. It is no longer res integra that a promotion is effective from the date it is granted and not from the date when a vacancy occurs on the subject post or when the post itself is created. No doubt, a right to be considered for promotion has been treated by courts not just as a statutory right but as a fundamental right, at the same time, there is no fundamental right to promotion itself. In this context, we may profitably cite a recent decision in Ajay Kumar Shukla v. Arvind Rai<sup>10</sup> where, citing earlier precedents in Director, Lift Irrigation Corporation Ltd. v. Pravat Kiran Mohanty<sup>11</sup> and Ajit Singh v. State of Punjab<sup>12</sup>, a three-Judge Bench observed thus:*

*41. This Court, time and again, has laid emphasis on right to be considered for promotion to be a fundamental right, as was held by K. Ramaswamy, J., in Director, Lift Irrigation Corpn. Ltd. v. Pravat Kiran Mohanty in para 4 of the report which is reproduced below:*

*‘4..... There is no fundamental right to promotion, but*



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*an employee has only right to be considered for promotion, when it arises, in accordance with relevant rules. From this perspective in our view the conclusion of the High Court that the gradation list prepared by the corporation is in violation of the right of respondent-writ petitioner to equality enshrined under Article 14 read with Article 16 of the Constitution, and the respondent-writ petitioner was unjustly denied of the same is obviously unjustified.'*

*42. A Constitution Bench in Ajit Singh v. State of Punjab, laying emphasis on Article 14 and Article 16(1) of the Constitution of India held that if a person who satisfies the eligibility and the criteria for promotion but still is not considered for promotion, then there will be clear violation of his/her's fundamental right. Jagannadha Rao, J. speaking for himself and Anand, C.J., Venkataswami, Pattanaik, Kurdukar, JJ., observed the same as follows in paras 22 and 27: 'Articles 14 and 16(1) : is right to be considered for promotion a fundamental right*

*22. Article 14 and Article 16(1) are closely connected. They deal with individual rights of the person. Article 14 demands that the 'State shall not deny to any person equality before the law or the equal protection of the laws'. Article 16(1) issues a positive command that:*

*'there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State'.*

*It has been held repeatedly by this Court that clause (1) of*



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*Article 16 is a facet of Article 14 and that it takes its roots from Article 14. The said clause particularises the generality in Article 14 and identifies, in a constitutional sense “equality of opportunity” in matters of employment and appointment to any office under the State. The word “employment” being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the stage of initial level of recruitment. Article 16 (1) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be “considered” for promotion. Equal opportunity here means the right to be “considered” for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be “considered” for promotion, which is his personal right. “Promotion” based on equal opportunity and seniority attached to such promotion are facets of fundamental right under Article 16(1).*

\* \* \*

*27. In our opinion, the above view expressed in Ashok Kumar Gupta [Ashok Kumar Gupta v. State of U.P.<sup>13</sup>, and followed in Jagdish Lal [Jagdish Lal v. State of Haryana<sup>14</sup>, and other cases, if it is intended to lay down that the right 13 (1997) 5 SCC 201 14 (1997) 6 SCC 538 12 guaranteed to employees for being “considered” for promotion according to relevant rules of recruitment by promotion (i.e. whether on the basis of seniority or merit) is only a statutory right and not a fundamental right,*



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*we cannot accept the proposition. We have already stated earlier that the right to equal opportunity in the matter of promotion in the sense of a right to be “considered” for promotion is indeed a fundamental right guaranteed under Article 16(1) and this has never been doubted in any other case before Ashok Kumar Gupta [Ashok Kumar Gupta v. State of U.P.], right from 1950.’*

.....  
“20. In *State of Bihar v. Akhouri Sachindra Nath*<sup>15</sup>, it was held that retrospective seniority cannot be given to an employee from a date when he was not even borne in the cadre, nor can seniority be given with retrospective effect as that might adversely affect others. The same view was reiterated in *Keshav Chandra Joshi v. Union of India*<sup>16</sup>, where it was held that when a quota is provided for, then the seniority of the employee would be reckoned from the date when the vacancy arises in the quota and not from any anterior date of promotion or subsequent date of confirmation. The said view was restated in *Uttaranchal Forest Rangers’ Assn. (Direct Recruit) v. State of U.P.*<sup>17</sup>, in the following words:

‘37. We are also of the view that no retrospective promotion or seniority can be granted from a date when an employee has not even been borne in the cadre so as to adversely affect the direct recruits appointed validly in the meantime, as decided by this Court in *Keshav Chandra Joshi v. Union of India* held that when promotion is outside the quota, seniority would be reckoned from the date of the vacancy within the quota rendering the previous service fortuitous. The previous



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*promotion would be regular only from the date of the vacancy within the quota and seniority shall be counted from that date and not from the date of his earlier promotion or subsequent confirmation. In order to do justice to the promotes, it would not be proper to do injustice to the direct recruits.....*

*38. This Court has consistently held that no retrospective promotion can be granted nor can any 15 1991 Supp (1) SCC 334 16 1992 Supp (1) SCC 272 17 (2006) 10 SCC 346 13 seniority be given on retrospective basis from a date when an employee has not even been borne in the cadre particularly when this would adversely affect the direct recruits who have been appointed validity in the meantime.” (emphasis supplied)*

*20. In the instant case, it is evident that while respondent No. 1 was recommended for promotion before his retirement, he could not assume the duties of the Chief Scientific Officer. Rule 54(1)(a) of the West Bengal Service Rules, clearly stipulates that an employee must assume the responsibilities of a higher post to draw the corresponding pay, thus, preventing posthumous or retrospective promotions in the absence of an enabling provision.*

*21. While we recognize respondent No.1’s right to be considered for promotion, which is a fundamental right under Articles 14 and 16(1) of the Constitution of India, he does not hold an absolute right to the promotion itself. The legal precedents discussed above establish that promotion only becomes effective upon the assumption of duties on the promotional post and not on the date of occurrence of the*



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*vacancy or the date of recommendation. Considering that respondent No. 1 superannuated before his promotion was effectuated, he is not entitled to retrospective financial benefits associated to the promotional post of Chief Scientific Officer, as he did not serve in that capacity.”*

12. According to the above also, apart from not eligible for having a promotion from the date of vacancy of the post, it is made it clear that without officiating promotional post, they cannot seek any financial benefit. Therefore, this Court is of the firm view that the petitioner cannot have any relief from this Court.

13. In the result, this Court does not find any infirmity in the order impugned. Hence, this Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Neutral Citation : Yes/No

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Government of Tamil Nadu  
Revenue Department,  
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**C.KUMARAPPAN, J.**

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