

(2010) 01 MAD CK 0042

In the Madras High Court

Case No : Writ Petition No. 12274 of 2005

S. Devarajan

APPELLANT

Vs

The Director of Rural Development and The District Collector,
(Panchayat Development Section)

RESPONDENT

Date of Decision : 12-01-2010

Acts Referred:

Citation : (2010) 01 MAD CK 0042

Hon'ble Judges : M.M. Sundresh, J

Bench : Single Bench

Advocate : V. Suthakar, for the Appellant; K. Balakrishnan, Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

M.M. Sundresh, J.—The petitioner was appointed as Jr. Assistant at Harur Panchayat Union on compassionate ground by the proceedings

dated 18.04.1985. He joined office as Junior Assistant on 22.04.1985. Thereafter, by the Government Order in G.O.Ms. No. 377 Rural

Development Department (E-5) dated 09.05.1990, the petitioner's appointment was ratified and petitioner's services were regularised in the

cadre of Junior Assistant w.e.f. 22.04.1985 with retrospective effect by the proceedings of the second respondent i.e. District Collector of

Dharmapuri District dated 09.12.1986 and thereafter, his probation was declared in the cadre of Junior Assistant w.e.f. 14.11.1990, as per G.O.

(I.D.) No. 250 Rural Development(E-7) Department dated 14.05.2003. The said Government Order was passed since the petitioner has passed

the prescribed Departmental Test beyond five years from the date of joining duty as Junior Assistant.

2. The petitioner was promoted as Assistant on 14.10.2003. Thereafter, on 12.02.2004 the second respondent published the seniority list by placing the petitioner in the year of 2003 list. Being aggrieved against the same the petitioner made an appeal to the second respondent seeking to place him in 1991 list of Assistants based upon the seniority of the petitioner in the feeder category of Junior Assistant. The second respondent by the order dated 28.10.2004 has allowed the appeal filed by the petitioner in part by fixing the seniority of the petitioner in 1995 list of Assistants by holding that the petitioner has not acquired the service qualification of completion of one year service in each category of Rural Welfare Officer Grade-II and Junior Assistant. Challenging the said order an appeal was filed by the petitioner before the first respondent on 30.11.2004 and since no orders have been passed by the first respondent, the petitioner filed the present writ petition seeking to set aside the order of the second respondent dated 28.10.2004 and for a further direction to place the petitioner in the year 1991 list of Assistants.

3. Mr. V. Suthakar, the learned Counsel for the petitioner submitted that the issue raised in the writ petition has been covered by the judgment rendered by this Court in W.P. Nos. 47872 and 47885 of 2006 and 7791 of 2007. The said judgments have been subsequently followed by the order passed in W.P. No. 12362 of 2007 dated 24.10.2007, wherein this Court was pleased to hold that notwithstanding the rule which prescribes that a Junior Assistant will have to work as Rural Welfare Officer Grade-II before being considered for promotion as Assistant. The said rule cannot be insisted for no fault of the concerned Junior Assistant who was not posted as Rural Welfare Officer Grade-II. This Court was pleased to observe that the said condition is only a condition pertaining to the experience and there is no other condition such as passing of the required test. Before, being considered for the promotional post, since the Junior Assistant does not have any control over the posting as Rural Welfare Officer Grade-II, the said condition cannot be insisted for depriving his original seniority fixed in the list of Junior Assistant. Hence, the learned Counsel for the petitioner states that the writ petition is to be allowed.

4. The learned Additional Government Pleader submits that the petitioner has to comply with the condition mentioned in G.O.Ms. No. 585

R.D.&L.A. Department dated 12.04.1984 and G.O.Ms. No. 349 P&A.R. Department dated 12.04.1984. The petitioner was rightly considered

in the year 1995 panel. According to the learned Additional Government Pleader, the petitioner has acquired the said qualification only in the year

1994, and therefore, he was rightly considered in the year 1995 panel. Hence, the learned Additional Government Pleader sought for the dismissal

of the writ petition.

5. As rightly contended by the learned Counsel for the petitioner the petitioner does not have any say over the postings. The petitioner's services

have been regularised and the delay in completing the test was also condoned with retrospective effect. The only reason for non-consideration of

the petitioner's earlier seniority was that the petitioner did not fulfill the conditions such as the working in the category of Rural Welfare Officer

Grade-II. The services in the category of Rural Welfare Officer Grade-II as well as Junior Assistant category are interchangeable categories. The

posting are with the respondents, over which the petitioner does not have any say. It is not the case of the respondents that the petitioner has been

deputed as Rural Welfare Officer, Grade-II, and he refused to work. Due to the administrative reasons the petitioner was not posted as Rural

Welfare Officer, Grade-II. That is the reason why the first respondent has issued suitable directions to the District Collector of Dharmapuri District

to see it that a Junior Assistant is made to work as Rural Welfare Officer, Grade-II and Rural Welfare Officer, Grade-II is also made to work as

Junior Assistant, so as to enable them to be considered for the post of Assistant which is a promotional post.

6. The said aspect has been also considered at length by this Court, in all the earlier occasions. Mr. V. Suthakar, the learned Counsel for the

petitioner also submitted that the orders passed by this Court in all the earlier cases have become final and no appeals have been filed against the

same. The fact that the petitioner was regularised with retrospective effect also cannot be made against the petitioner.

7. However, the petitioner cannot acquire the promotion as a matter of right. If at all, the petitioner can be placed in the year 1991 list for the post

of Assistant. The said placing in the 1991 list will be notional and the petitioner cannot be made entitled to get the monetary benefits. Therefore,

while allowing the writ petition, it is made clear that the petitioner will have to be included in the 1991 promotional panel of Assistant he cannot be

given any monetary benefits. Admittedly, the petitioner cannot get the said benefit without doing any work in such capacity.

8. Under those circumstances, the order impugned in the writ petition is set aside and the petitioner is placed in the year 1991 panel of Assistant by

taking into consideration of the seniority of the petitioner in the feeder category of the Junior Assistant. However, it is made clear that the petitioner

is not entitled to monetary benefits. The second respondent is directed to comply with the said exercise of placing the petitioner based upon the

above directions and fix the seniority of the petitioner, within a period of three months from the date of receipt of a copy of this order.

With these observations this writ petition is allowed. No costs.