

(2011) 01 MAD CK 0298

In the Madras High Court

Case No : WP. (MD) No. 3695 of 2005, W.P.M.P. (MD) No. 3902 of 2005 and M.P. (MD) No. 1 of 2007

S. Velmail, Extension Officer (Administration)

APPELLANT

Vs

The District Collector, Tuticorin District and Others

RESPONDENT

Date of Decision : 27-01-2011

Acts Referred:

Tamil Nadu State and Subordinate Services Rules, 1955 — Rule 36

Citation : (2011) 7 MLJ 684

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : A. Thirumurthy, for the Appellant; D. Sasikumar, Government Advocate for R1, for the Respondent

Final Decision : Allowed

Judgement

M. Venugopal, J.—The Petitioner has projected this Writ Petition seeking the relief of Writ of Certiorarified Mandamus to call for the records of the first Respondent in connection with the impugned order in letter No. Va/14/97308/03 dated 29.12.2004 and to quash the same and also to issue directions to the First Respondent/District Collector, Thoothukudi, to fix the correct seniority by placing the Petitioner's name above the names of R2 to R28.

2. For the disposal of the present Writ Petition, the necessary facts of the case are stated here under:

The Petitioner was initially appointed as Junior Assistant on 05.02.1986 on compassionate ground. He was promoted to the post of Assistant and later, promoted as Extension Officer. He was working as Junior Assistant in the year 1990, the Government had sanctioned for the creation of temporary posts for attending to all the works connected with the ensuing ordinary elections to Panchayat and Panchayat Union Councils as per G.O. Ms. No. 738 RD (C1) Department dated 11.09.1990. Based on the said Government order, the First

Respondent/District Collector, Thoothukudi, issued a temporary Sub Panel for the post of Assistant and RWO Grade I for the year 1990 as per proceedings in V12/95358/90 dated 31.10.1990. The said Sub Panel was a transitory one and it did not give any preference. The Sub Panel was issued with a view to fill up the Assistant Post created as Election Assistant Post and 26 persons were included instead of 15 Election Assistants.

3. The grievance of the Petitioner is that against the individuals in the temporary Sub-Panels, who were juniors to him, were included in the Temporary Sub-Panel. But, his name was not included on the ground that he has not completed the probation as on date. However, the temporary 15 promotees in the Sub Panel were reverted to their original posts as per proceedings of the first Respondent dated 5.3.1991 within a period of two months from the date of reversion. Again, four persons among fifteen were given preference and they were re-promoted in the existing vacancies, without following the seniority and without adhering to the substantive panel for the year 1991.

4. The learned Counsel for the Petitioner urges before this Court that the Petitioner was not at fault for the probation which was declared at a belated time and the non-inclusion of the Petitioner's name in the 1991 panel was affected his right to get promotion. However, the seniority list for the post of Junior Assistant RWO Grade-II, Cashier, and Typist was issued as per Proceeding dated 03.08.1992 of the First Respondent/ District Collector, Tuticorin, including all the individuals originally accommodated in the Tuticorin District and persons transferred from other districts at the time of bifurcation. In this seniority list, Petitioner's name had been kept below the individual Respondents, who are juniors to him and his rank was 289B. Therefore, the Petitioner was perforced to file appeals to the first Respondent with a request to fix correct seniority and place him above the individual Respondents in all the above said panel and list of seniority. As per correctional order, dated 20.01.2000, issued by the first Respondent, the Petitioner completed his period of probation with effect from 15.05.1991. The plea of the learned Counsel for the Petitioner is that the Petitioner's name would have been included in the promotional order dated 16.5.1991 if the correctional order was issued earlier. But, the same was not resorted to by the concerned.

5. The learned Counsel for the Petitioner brings it to the notice of this Court that the Petitioner's regularization order was modified viz. 05.02.1986 (being the date of his appointment) instead of 31.7.1989 as per the order of the First Respondent/District Collector, Tuticorin, dated 12.12.1997. The Petitioner made a representation dated 14.10.1999 to the first Respondent to alter his rank in the original seniority in respect of the Junior Assistant post, which was recommended by the Block Development Officer, Srivaikundam, even as early as 08.11.1999. The rank in seniority of the Petitioner was modified in respect of the seniority list for the year 1992 -1999. As per the corrected or modified seniority list, the Petitioner's name was shown in serial No. 202(a) instead of 289(b) in the year

1992 seniority and the serial No. 107(a) instead of 173 in the year 1999 seniority's .An amendment in regard to four persons including the Petitioner was made to the panel for the year 1991 as per amendment order 20.12.2000 by the First Respondent/District Collector, Tuticorin, as per his proceedings in V1/44612/2000.

6. That apart, the crucial date for a temporary seniority list for the year 2003, in the cadre of Extension Officer was 1.1.2003, which was issued based on the previous panel 2001 and 2002. In this seniority list, the Petitioner's name was shown below the individual Respondents, who are far juniors to him. For e.g., one P. Padma appointed as Junior Assistant after the Petitioner in the District that is on 26.12.1986 was placed in serial No. 67 above the Petitioner. When she was substantively promoted as Assistant on 11.09.1991, the Petitioner was a eligible person in all respects to be promoted as Junior Assistant. But, the Petitioner's name was included by amendment of the panel for Assistant on 23.7.1991. Paradoxically, the Petitioner's juniors were placed above the Petitioner in the seniority list dated 20.12.2003. Once again, the Petitioner filed an appeal on 05.02.2004 with a request to the First Respondent/District Collector, Tuticorin, to fix the correct seniority by fixing his name above P. Padma, who is junior to him. But, the Petitioner was issued with impugned order, dated 29.12.2005, passed by the first Respondent rejecting the Representation/Appeal of the Petitioner on the ground that he had completed the probation period only after the said P. Padma.

7. The learned Counsel for the Petitioner vehemently contends that the First Respondent/District Collector, Tuticorin, had failed to appreciate the simple fact that after the issuance of temporary Sub-panel, regular panel that is on 23.07.1991 was approved and the earlier temporary Sub Panels were superceded automatically and they did not sustain thereafter and also that the first Respondent had given preference to individuals, who were included in the temporary Sub Panel and promoted them without any basis and accordingly, the impugned order dated 29.12.2004 of the first Respondent is not sustainable in the eye of law.

8. The learned Counsel for the Petitioner projects an argument that the First Respondent/District Collector, Tuticorin, should have seen that insofar as the date of appointment of Junior Assistant in the first Respondent District the individual Respondents were juniors to the Petitioner and they were promoted as Assistants after 15.5.1991 and on that day, the Petitioner was fully eligible to be promoted as Assistant. But the same was not done. In this regard, the relevant rule in Tamil Nadu State and Subordinate Service Rules namely, the Rule 36(b)(ii) under the caption Promotion according to seniority was not adhered to which it has resulted in miscarriage of justice, which is to be rectified by this Court sitting in writ jurisdiction. Lastly, it is the contention of the learned Counsel for the Petitioner that in the service jurisprudence, giving preference to the individual Respondents, who were juniors to the Petitioner in all the panel is not a valid and legally sustainable one in the eye of law.

9. Per contra, it is the submission of Mr. Sasi kumar, Learned Government Advocate appearing for the First Respondent/District Collector, Tuticorin, that the Petitioner, even though being senior to the eligible juniors who were included in the temporary Sub Panel, was not included because of the simple fact that he had not completed probation in the Junior Assistant cadre at that point of time. Later, the promoted individuals were reverted to Junior Assistant posts because of postponement of Panchayat Election during March 1991 and that the reverted persons were included in the temporary Sub Panel already released, based on the panel, the reverted persons were promoted and posted in the vacancies which arise later.

10. The Learned Government Advocate submits that the panel for the year 1991 was issued on 23.7.1991 and when eligible Junior Assistant's name were included, the Petitioner's name was not included in the panel, because the probation of the Petitioner was not declared in the cadre of Junior Assistant. In the seniority list published for the post of Junior Assistant/Rural Welfare Officer Grade-II/Cashier on 3.8.1991, the Petitioner's name was placed in serial No. 289B in regard to the date of regularisation of services in the cadre of Junior Assistants and in regard to the date of joining in Thoothukudi District in respect of the Respondents who were on District transfer. On the basis of the Petitioner's request, a revised order of completion of probation on 15.5.1991 was issued. Because of the Petitioner's representation for seeking of seniority in the cadre of Junior Assistant, the Petitioner's name was placed in serial No. 202(a) instead of serial No. 289B by the first Respondent and hence, his name was included in the panel for the post of Junior Assistant in respect of the year 1991 as per the proceedings in ref. No. V14/44612/2000 dated 20.12.2000 of the first Respondent. Accordingly, the seniority list was revised and further, promotions were ordered.

11. The principal contention advanced on behalf of the first Respondent is that the Petitioner became eligible for being considered as Junior Assistant only on 15.05.1991 and based on the temporary panel for Junior Assistant post for the year 1990 released due to Election Assistant post one P. Padma had promoted as Assistant initially and later, reverted to Junior Assistant when the Election Assistant post was withdrawn by the Government. The said P. Padma, who was included in the temporary Sub Panel for the year 1990 for the post of Assistant, subsequently, was promoted when the vacancies arose during 1991.

12. The stand of the first Respondent is one P. Padma was included in the panel for the year 1990 and that the Petitioner could not claim right for inclusion in the panel for 1990 since he became eligible in the year 1991 and the Petitioner could not compare with P. Padma and further, on the crucial date i.e. on 15.3.1991, the Petitioner was not eligible to be promoted as Junior Assistant and he became eligible to be promoted as Junior Assistant only on 15.5.1991, and at the time of drawal of panel i.e. on 23.7.1997, the eligibility of the Petitioner was taken into account.

13. At this juncture, this Court makes useful reference to Rule 36(b)(ii) of Tamil Nadu State and Subordinate Services Rules under the caption "Promotion according to Seniority", which enjoins as follows:

All other promotions shall, be made in accordance with seniority unless

- (1) the promotion of a Member has been withheld as a penalty, or
- (2) a Member is given special promotion for conspicuous merit and ability.

14. A reading of the aforesaid Rule 36(b)(ii) of Tamil Nadu State and Subordinate Services Rules inherently points out that all other promotions other than mentioned in 36(a), 36(b)(i) of the said Rules shall be made in accordance with seniority subject to the conditions laid down in Rule 36(b)(ii) and this shows that promotion must be made strictly according to seniority.

15. A perusal of the proceedings of the District Collector in reference No. V12/934124/98, dated 05.05.1999, shows that at age No. 40, at serial No. 107 one S. Pechi and at serial No. 108 S.A. Jeyakumar's names are found. Admittedly, the Petitioner's seniority was revised as per proceedings of the District Collector, Tuticorin, in Va/14/44615/2000 dated 20.12.2000 at 107(a). It is found in page No. 33 of the typed set of papers. A correctional order passed by the First Respondent/District Collector, Tuticorin, in proceedings in V/14/98643/96-1 dated 20.01.2000 also categorically mentions in serial No. 2 wherein, the Petitioner's name was shown in the year 1992 in the seniority list, his name found a place in the corrected seniority at 202(a). Likewise, for the Junior Assistant seniority list for the year 1999 in serial No. 202 and the Petitioner's name was mentioned and found a place according to which, namely, the corrected list his seniority is 107(a).

16. If the Petitioner's name for the year 1999 in the Junior Assistant seniority list is 107(a) then, certainly his name should find a place between serial No. 107 S. Petchi and serial No. 108 S.A. Jeya Kumar as serial No. 107(a). But, surprisingly, in the proceedings of the first Respondent in V12/93414/1998 dated 5.5.1999 there is no serial No. as 107(a) and the Petitioner's name has not been found. Conspicuously, his name is absent in the proceedings of the First Respondent/District Collector, Tuticorin, dated 5.5.1999. To put it precisely, when the First Respondent /District Collector has issued the proceedings in Va/14/44615/2000 dated 20.12.2000 the corrected seniority list of Junior Assistant for the year 1999, the Petitioner's name is shown as in serial No. 107(a) as a corrected one. Consequently, an appropriate amendment proceedings would have been issued to the proceedings of the District Collector, Tuticorin, dated 5.5.1999, issued earlier or revised seniority correct list for Junior Assistant in respect of the year 1999 ought to have been drawn up by the first Respondent showing the name of the Petitioner in serial No. 107(a) in between the name of one S. Petchi(serial No. 107) and S.A. Jeya Kumar(serial No. 108). However, that has not been done so.

17. Be that as it may, on a careful consideration of respective contentions and in view of the detailed, quantitative and qualitative discussions mentioned supra and taking note of the facts and circumstances of the present case, this Court comes to an inevitable conclusion that when admittedly, the Petitioner's seniority list in respect of the year 1999 pertaining to Junior Assistant Post has since been corrected by the First Respondent/District Collector, Tuticorin, as per his proceedings dated 20.1.2000 and also shown as 107(a) (corrected position) then, the Petitioner is rightly to be placed above the individual Respondent Nos. 2 to 28 shown in the Writ Petition, as opined by this Court. As such, his seniority is to be fixed correctly by the First Respondent/ District Collector and in this regard, the impugned order of the First Respondent/District Collector dated 29.12.2005 rejecting the Petitioner's request/prayer to fix the seniority by placing his name after the individual Respondent Nos. 2 to 28 is not a correct and legally valid one in law and therefore, this Court is constrained to interfere in writ jurisdiction and accordingly, sets aside the said order by allowing the present Writ Petition to prevent the aberration of justice.

18. In the result, this Writ Petition is allowed leaving the parties to bear their own costs. The First Respondent/ District Collector, Tuticorin, is directed to fix the Petitioner's correct seniority by placing him above the individual Respondent Nos. 2 to 28 and to draw a fresh list of Junior Assistant post seniority in respect of the year 1999 and to provide him with all necessary monetary benefits and all other service and attendant benefits thereto within a period of eight weeks from the date of receipt of copy of this order. No costs. Consequently, connected M. Ps are closed.