

(2014) 10 MAD CK 0187

In the Madras High Court

Case No : Writ Appeal No. 391 of 2012 and M.P. No. 1 of 2012

The District Collector

APPELLANT

Vs

S. Sasisivanandam

RESPONDENT

Date of Decision : 28-10-2014

Acts Referred:

Citation : (2014) 10 MAD CK 0187

Hon'ble Judges : P.R. Shivakumar, J;N. Paul Vasantha Kumar, J

Bench : Division Bench

Judgement

N. Paul Vasanthakumar J.

1. This writ appeal is filed against the order made in W.P. No. 16697/2007 dated 12.10.2011, wherein the prayer made by the respondent to quash the order of the first appellant dated 04.10.2002 as well as the order of the second appellant dated 21.04.2013 and for a direction to the appellants herein to include the name of the respondent in the panel of Rural Welfare Officers Grade-I for promotion as Extension Officers drawn for the year 202 in the appropriate place above his immediate junior and for a consequential direction to the respondents to promote the respondent as Extension Officer with effect from 07.04.2003 from the date of promotion of his juniors with all consequential monetary and service benefits, was allowed by the learned Single Judge with a direction to the appellants to include the name of the respondent in the panel of Rural Welfare Officer Grade I fit for promotion to the post of Extension Officer for the year 2002 and also promote the respondent from the date on which the immediate junior, namely one Jayaramachandran was promoted and the appellants were directed to complete the said exercise within a period of eight weeks.

2. It is seen from the order of the learned Single Judge that non-inclusion of the name of the respondent in the panel prepared on 01.03.2002 was on the ground that he has not rendered one year service as Rural Welfare Officer Grade I. The learned Single Judge, taking note of the fact that acquiring service qualification namely service of one year as Rural Welfare Officer Grade I by the respondent

was not at his hands and it is for the department to continue with the person in the post of Rural Welfare Officer Grade-I and the employee has no control over the said post. The learned Single Judge following the judgment of this Court made in W.P. Nos. 47872 and 47885 of 2006 and 7791 of 2007 dated 04.09.2007, has allowed the writ petition with the above directions. The said decision of the learned Single Judge of this Court was relied on by a Division Bench of this Court in which one of us [N. Paul Vasanthakumar, J.] was a party in W.A. No. 1582/2011 dated 18.02.2013. In the said case, the contention of the appellant (Government Servant) was that posting the appellant in a particular post is the responsibility of the department and the same is evident from the Circular issued by Government in Letter No. 36347 S 99-1, P&AR Department, dated 11.01.2000 wherein a direction was issued to all secretaries of various departments to see that persons to be promoted should have required service qualification. The said Letter of the Government reads as follows:

"GOVERNMENT OF TAMIL NADU PERSONNEL & ADMINISTRATIVE REFORMS (S)
DEPARTMENT LETTER No. 36347 S99-1 DATED 11.1.2000

From Thiru. A.P. Muthuswamy, I.A.S. Chief Secretary to Government, Chennai 600 009.

To All Secretaries to Government, Chennai-9. All Heads of Department, The Secretary, Tamil Nadu Public Service Commission, Chennai-3.

Sir,

Sub: Public Service - Procedures to be followed in cases where experience in particular section of a Department is required for promotion - Instruments - Issued.

Ref: From TNPSC.Lr. No. 5931:DPD-A5-96, dated 8.4.99.

I am directed to state that in certain departments of the Government, training or working experience in a particular wing is a requirement for promotion, appointment to higher post as per Special Rules for such posts. However due to some reasons or the other, the officers are not allowed to acquire the training or experience by posting them to such wing as required in the Special Rules. As a result, it ultimately affects the individual's career and also requires relaxation of relevant service rules. It is not the responsibility of the individual to be sent for training or posted in a particular wing in which working experience is required for promotion/appointment to higher post under special rules, etc. but it is the responsibility of the Department concerned to send him for training or to post him to a particular wing for a specified period required for his promotion/appointment to gain experience.

2. In this connection, the following observations of Tamil Nadu Administrative Tribunal in O.A. No. 3068 of 1997.

*It is for the respondents to post the persons in different units to gain

experience as required by the rules to make them eligible for promotion appointment and it is not necessary for the applicant to ask for it. It is the responsibility of the department to send persons to other Corporations in such a manner that everyone has equal chance of acquiring a kind of experience insisted upon by the rules unless for a valid reason is denied an opportunity of acquiring experience. This is a part of job of cadre management in a rational manner. This responsibility cannot be shifted to the shoulders of the applicant. Therefore, there is no force in the contention of the respondents, that the appellant has not asked for such a posting in a Corporation"

3. In view of the circumstances mentioned in para 1 and 2 above, the Departments of Secretariat and the Head of Department are therefore requested to post the officers to the particular training/wing in which working experience is required for promotion/appointment to higher post under special rules at the earliest, strictly on the basis of seniority and if any, official does not join the training or post in the particular wing when given, he may be informed about the adverse effect of avoiding the posting and a declaration as specified in the Annexure to the letter may be obtained from him and added to his Service Register and Personal File.

4. The above instructions should be strictly adhered to with a view to avoiding any complaints in this regard.

Yours faithfully, Sd/- For Chief Secretary To Government

Copy to All Sections in Personnel & Administrative Reforms Departments, Chennai-9.

Np 11/1/2000"

In the above judgment, in para 4, it is held thus:

4. The issue as to whether the person can be denied promotion for not possessing the service qualification, without his default, if he is otherwise qualified, was considered by the Supreme Court in the decision reported in Vijayawada-Guntur-Tenali Urban Development Authority and Others Vs. Movva Ranga Rao and Others, and a Division Bench of this Court in W.A. No. 509 to 511 of 2008. In the above said judgments, it is held that the Government servant cannot be denied promotion for want of service qualification, if he was not given a chance to acquire the service qualification by the department head. As the department is bound to place the Government servant in a particular post, to acquire the service qualification, the officer/employee cannot be blamed for not possessing such service qualification. The Department head failed to adhere to the direction issued in the above Government Letter dated 11.01.2000. Similar issue was considered by one of us (NPVJ) in the decision reported in 2012 (4) MLJ 535 [A. Badhrachalam Vs Principal Secretary / Commissioner Of Revenue Administration, Chempauk, Chennai 600 005 And Another]. In the said judgment, several judgments on this line rendered earlier were followed and held that

service qualification can be acquired only if a posting is given in the particular post by the head of the department and the Government servant cannot be blamed. The denial of promotion on that ground alone, if he is otherwise qualified, is unreasonable and arbitrary.

Applying the said judgment dated 04.09.2007 to the facts of this case, the learned Single Judge has rightly allowed the writ petition in the above terms. There is no merit in this Writ Appeal.

3. Hence, this Writ Appeal is dismissed with a direction to the appellants to implement the order of the learned Single Judge made in W.P. No. 16697/2007 dated 12.10.2011 within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.