

W.A.524 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 29.03.2022

DELIVERED ON: 28.04.2023

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HON'BLE TMT.JUSTICE K.GOVINDARAJAN

THILAKAVADI

W.A.No.524 of 2020

1.A.Kanagamuthu

2.C.Kesavan

3.S.Sharmila

.. Appellants

Vs.

1.The State of Tamil Nadu,

Rep. By its Principal Secretary to Government,

Municipal Administration and

Water Supply Department,

Fort St.George, Chennai-600 009.

2.The Director of Town Panchayats,

Kuralagam, Chennai-600 009.

3.The District Collector,

Pudukottai District,

Pudukottai.

.. Respondents



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Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 19.02.2019 made in W.P.No.3594 of 2019.

For Appellants : Mr.K.Raja
for Mr.N.Kolandaivelu

For Respondents : Mr.Haja Nazirudeen,
Additional Advocate General
assisted by
Mrs.Meera Arumugam,
Additional Government Pleader
for R1 to R3

JUDGMENT

D.KRISHNAKUMAR, J.

The challenge in this appeal is to the order of the learned Single Judge dated 19.02.2019 passed in W.P.No.3594 of 2019, in and by which the writ petition filed by the appellants praying to grant promotion from the date of approval of the panel by the District Committee on 22.12.2008 together with consequential benefits, came to be dismissed.

2. Brief facts necessary for the disposal of this writ appeal are as follows:



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2.1. The appellants/writ petitioners were appointed as Record Clerk, Sanitary Supervisor in Town Panchayat Service, Pudikottai on 21.03.1994, 15.04.1996 and 05.06.1996 respectively and basic servants working in Town Panchayat Service in various categories of posts were given promotion to the post of Junior Assistant, Bill Collector, Typist on acquiring the requisite qualification.

2.2. The post of Junior Assistant, Bill Collector, Revenue Inspector, Typist and Steno Typists in Town Panchayat Services have been provincialized as per G.O.Ms.Nos.64 and 800, Rural Development Department dated 05.02.1985 & 16.12.1988 respectively. After provincialization of the posts of Junior Assistant / Bill Collector etc., there was no promotional opportunity to the basic servants working in Town Panchayat Service, as there cannot be any promotion from non-provincialized post to provincialized post.

2.3. The State Government had issued G.O.Ms.No.86, Rural Development Department dated 23.11.1990 by which 10% posts are



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reserved for promotion to the post of Junior Assistant / Bill Collector by transfer of service. The Government also issued orders in G.O.Ms.No.159, MAWS Department dated 19.08.1998, wherein 20% of vacancies to the post of Junior Assistant / Bill Collectors are reserved for promotion from non-provincialized post in Town Panchayat Services. Subsequently, as per Government Letter dated 22.03.1993, the post of Sanitary Supervisor also included under the purview of basic servants eligible to be considered for promotion as per G.O.Ms.No.150, MAWS Department dated 19.08.1998.

2.4. According to the appellants/writ petitioners, as far as Pudukottai District is concerned, after the issuance of G.O.Ms.No.150, MAWS Department dated 19.08.1998, seniority list was prepared on 01.01.2005 and published from among non-provincialized staff in Town Panchayat as per the proceedings of the District Collector dated 28.11.2005. After calling for objections from among the staff, final seniority list was published by the District Collector on 19.12.2006. On the basis of G.O.Ms.150 dated 19.08.1998, the Pudukottai District



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Selection Committee has prepared the panel for promotion to the post of Junior Assistants / Bill Collectors by including the writ petitioners/appellants and the same was approved by the District Level Committee on 22.12.2008.

2.5. Thereafter, the Government had issued orders in G.O.Ms.No.61 dated 28.02.2011, granting promotion for the appellants / writ petitioners to the post of Junior Assistant / Bill Collectors based on the panel prepared as per G.O.Ms.No.150 dated 19.08.2008 as well as the panel approved by the Selection Committee dated 22.12.2008. Consequently, individual orders have been issued by the third respondents giving promotion to the writ petitioners/appellants to the post of Junior Assistants / Bill Collectors dated 08.06.2011 and they have also joined on the same day on the respective Town Panchayats.

2.6. According to the petitioners/appellants, they are entitled for promotion from the relevant panel year or atleast from the date of approval of panel in the year 2008 and whereas the seniority of the



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petitioners have been given only from the date of appointment to the post of Junior Assistant / Bill Collectors, which is *ex facie* arbitrary and illegal.

2.7. The appellants/writ petitions have relied upon G.O.Ms.No.14, MAWS Department dated 23.01.2015, in respect of Tirunelveli District, by which 14 eligible persons were included in the panel on 29.10.2007 and promotion was ordered to be given with effect from 01.11.2011 on notional basis without backwages and whereas the appellants/writ petitioners have not been given the benefit of promotion with retrospective effect from the date of approval of panel atleast on notional basis, though they are entitled for promotion from the date of approval of panel by the District Committee on 22.12.2008 with consequential benefits. Therefore, the appellants/writ petitioners have filed the writ petition.

2.8. The learned Judge, taking into consideration the rival submissions, has observed that promotion can never be claimed as a



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matter of right and accordingly dismissed the writ petition. Challenging the same, the writ petitioners have filed this writ appeal.

3. Mr.K.Raja, learned counsel for the appellants contended that the District Selection Committee, Pudukottai District gave the approval on 22.12.2008 itself for the panel prepared for promotion of the appellants to the post of Junior Assistants/Bill Collectors and for giving effect to the approval, the respondents took nearly 3 years and the delay is entirely on the part of the respondents in giving promotion to the appellants, despite the District Selection Committee gave its approval on 22.12.2008 and the learned Single Judge had failed to consider the same and therefore, prayed for interference. The learned counsel for the appellants, in support of his contentions, had placed reliance on the following decisions:

(i) The Engineer-in- chief, W.R.O., v. C.L.Pasupathy [CDJ 2013 MHC 1499]

(ii) Dr.G.Geetha v. Government of Tamil Nadu [CDJ 2022 MHC 2650]



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4. Mr.Haja Nazirudeen, learned Additional Advocate General for the respondents has drawn the attention of this Court to the counter affidavit of the respondents and would submit that the promotion from non-provincial post to provincial post in Town Panchayat Service was subject to the concurrence of TNPSC and the TNPSC had granted its conditional concurrence to grant promotion to the appellants by fixing the seniority from the date of appointment in the promotion post and as per Regulation 16(b) of TNPSC, the promotion of appellants to the provincial posts of Bill Collector / Junior Assistant was given with a condition to fix their seniority from the date of appointing them in ministerial posts and therefore, the question of giving promotion on retrospective effect does not arise and prayed for dismissal of this writ appeal. The learned Additional Advocate General has relied upon the following decisions:

- (i) K.Madhavan and another v. Union of India and Others [(1987) 4 SCC 566] and***
- (ii) Diwakar Jha v. State of Jharkhand and Others [2018 SCC Online Jhar 2376]***



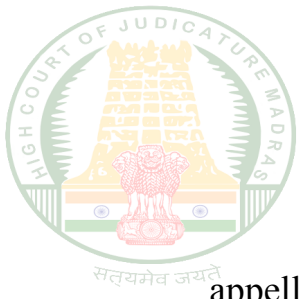
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5. This Court has considered the rival submissions and also perused the materials on record.

6. The fact remains that the appellants/writ petitioners were promoted to the post of Junior Assistant / Bill Collectors on 08.06.2011, from non-provincial post of Record Clerk and Sanitary Workers and they have also joined in the said post on the same day in the respective Town Panchayats. The grievance of the appellants is that they are entitled for promotion with retrospective effect from the date of approval of panel by the District Committee on 22.12.2008 and whereas promotion is ordered to be given effect from 08.06.2011, from the date on which they were promoted to the provincial post and the delay is on the part of the respondents in giving effect to promotion.

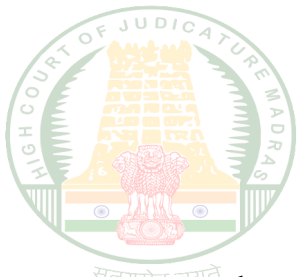
7. It is the stand of the respondents that the question of promotion with retrospective effect does not arise since there was a general ban for new recruitment from the year 2001 to 2006 and the promotion of the



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appellants was not open, but restricted only to 20% reservation. The 20% vacancies could not be ascertained every year, as the number of Town Panchayats within the revenue district was only 8 and the vacancies arose in 2001 was just 2, in the year 2001 to 2004, it was nil, in 2005, 2007 & 2008 it was just 1 or 2. Further the promotion was to be decided based on combined seniority of candidates in the feeder posts at the time of finalizing promotion under 20% reservation and the appellants became eligible for promotion as per the combined seniority list proposed after the year 2009. It is the further stand of the respondents that promotion is subject to the concurrence of TNPSC and the same was granted with a condition to fix the seniority from the date of appointment by promotion and above all, the appellant once accepted their promotion as Bill Collector / Junior Assistant, with prospective effect and joined the post on 08.06.2011 itself, cannot turn around and agitate after a lapse of more than 8 years. In the light of the abovesaid categorical stand taken by the respondents in the counter affidavit, this Court is of the view that the claim of the appellants/writ petitioner to give effect to retrospective promotion is totally unsustainable, that too



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when they were promoted from a non-provincial post with 20% reservation as per G.O.Ms.No.150, MAWS Department dated 19.08.1998.

8. It is a trite law that promotion cannot be claimed as a fundamental right. The Hon'ble Supreme Court in the decision in *Union of India and Others v. Manpreet Singh Poonam and Ors. [(2022) 6 SCC 105]* has observed as under:

“14. The High Court also fell in error in taking note of the delay in considering the case of the respondents to the promotional post of JAG-1. No officer has a vested right to a promotional post, which is restricted to that of consideration according to law. The law on this aspect is settled by this Court in the case of *Ajay Kumar Shukla and Ors. v. Arvind Rak and Ors.*:

37. 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 the case of *Director, Lift Irrigation Corporation Ltd., v. Pravat Kiran Mohanty [(1991) 2 SCC 295]* in paragraph 4 of the report which is reproduced below:

4.... There is no fundamental right to promotion, but an employee has only right to be considered for promotion, when it arises, in accordance with relevant rules....”

(emphasis supplied)

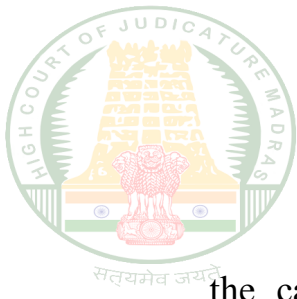


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9. The learned Judge has also rightly observed in the order that equal opportunity in promotion is a Constitutional mandate and the authorities competent, while undertaking the process of promotion has to consider the names of all eligible candidates. It was also observed in the order that promotion can never be claimed as a fundamental right and however, consideration of promotion is a right of an employee under the Rules.

10. Admittedly, in the case on hand, there is no merit to consider the claim of the appellants/writ petitioners for the reason that they have been promoted with effect from 01.11.2011, as per the promotion panel approved by the District Selection Committee on 22.12.2008 and they have joined in the promotion post without making any objection and after continuing in the said post for nearly 12 years, the present claim of the appellants/writ petitioners seeking notional promotion from the date of approval of the promotion panel by the District Selection Committee, in the consider view of this Court, is wholly unsustainable. The decisions relied on by the learned counsel for the appellants have no application to



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the case on hand, as the same pertains to preparation of panel for promotion every year.

11. In the light of the reasons assigned above, this Court is unable to find any reason to interfere with the impugned order passed by the learned Single Judge and finds no merit in this writ appeal. Accordingly, the Writ Appeal stands dismissed. No costs.

[D.K.K., J.] [K.G.T., J.]
28.04.2023

Index:yes/no
Internet:yes / no
Jvm

To

- 1.The Principal Secretary to Government,
The State of Tamil Nadu,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai-600 009.
- 2.The Director of Town Panchayats,
Kuralagam, Chennai-600 009.



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**D.KRISHNAKUMAR, J.,
&
K.GOVINDARAJAN THILAKAVADI, J.**

Jvm

3.The District Collector,
Pudukottai District, Pudukottai.

**Judgment in
W.A.No.524 of 2020**

28.04.2023