

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.02.2015
Delivered on : 15.06.2015

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE P.R.SHIVAKUMAR

W.P.NO. 5573 of 2013

V.Sadasivam

... Petitioner

Vs.

1. The State of Tamil Nadu, rep. by its
Secretary P & AR Department,
Fort Saint George, Secretariat,
Chennai - 600 009.
2. The Joint Secretary to Government (Rules)
Registrar (i/c), Erstwhile,
Tamil Nadu Administrative Tribunal,
Personnel and Administrative Reforms (SAT)
Department, Secretariat, Chennai 600 009.
3. The Registrar General,
High Court, Chennai - 600 104. Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, seeking the issue of a writ of Certiorarified Mandamus calling for the records of the third respondent in its order No.Roc.No.117/2006 CON.Estt-I, dated 17.12.2007 and Roc.No.33/2011-CON.Estt.I, dated 25.05.2012, quash the same and consequently direct the Respondents to accord and assign appropriate seniority from the date of his original appointment in this Honourable Court on 15.12.1988 and other service benefits including promotion in the High Court Service and to extend all other consequential benefits.

For Petitioner .. Mr.Karthik Mukundan

For Respondents .. Mr. R.Ravichandran AGP for R1&R2.
Mr.V.Ayyathurai for R3.

O R D E R

V.Ramasubramanian,J)

The petitioner has come up with the above writ petition, challenging an order of the Registrar General, High Court, Chennai,

refusing to restore his original seniority upon the repatriation to his parent department.

2. We have heard Mr.Karthik, learned counsel for the petitioner, Mr.R.Ravichandran, learned Additional Government Pleader, appearing for the Respondents 1 and 2 and Mr.V.Ayyadurai, learned counsel appearing for the High Court.

3. The petitioner was originally appointed as Copyist in the High Court of Madras by the proceedings dated 15.12.1988. His services were regularised in the said post by the proceedings dated 16.9.1991 with effect from the original date of appointment namely 15.12.1988.

4. But even before his services could be regularised and even before his probation could be declared in the High Court, he was sent to the Tamil Nadu Administrative Tribunal on services lent basis, by the proceedings dated 27.12.1989, with effect from 2.1.1990. It is relevant to point out here that the Tamil Nadu Administrative Tribunal was constituted in December 1988.

5. On the date on which the petitioner was sent to the Tamil Nadu Administrative Tribunal, on services lent basis, the Government had not created any cadre strength for the employees of the Administrative Tribunal. It appears that a set of Special Rules were issued only in the year 1992 and they were known as the Tamil Nadu Administrative Tribunal Service Rules, 1992.

6. Thereafter, by the proceedings in TAT O.P.No.136 of 1994, dated 19.4.1994, the petitioner was regularly appointed in the category of Typist in category-12 in Division II by the method of Recruitment by Transfer in the Tamil Nadu Administrative Tribunal Service, with effect from the date of his joining the Tribunal namely 2.1.1990. By the very same proceedings, the petitioner was also placed on probation for a period of one year on duty within a continuous period of two years under Rule 9 of the Tamil Nadu Administrative Tribunal Service Rules, 1992.

7. Thereafter, the petitioner was also promoted to the post of Assistant on temporary basis, in exercise of the power conferred under Rule 6 read with Rules 14 and 15 of the Tamil Nadu Administrative Tribunal Service Rules, 1992.

8. The petitioner was also declared, by the proceedings in TAT O.P.No. 336 of 1996 dated 3.5.1996, to have satisfactorily completed the period of probation on 1.1.1991 in Typist category. By a subsequent order passed in O.P.No.810 of 1998 dated 5.11.1998, his services in the post of Assistant were regularised with effect from 22.04.1994.

9. However, the Government of Tamilnadu decided to abolish the Tamil Nadu Administrative Tribunal and sent a proposal to the

Government of India for the issue of necessary notification. Since the issue of notification by the Government of India was taking time, the Government of Tamil Nadu went ahead and created only temporary posts to enable the existing incumbents to continue in their respective posts from time to time.

10. This Court, in order to protect the impasse, issued a direction on 25.4.2005 in a batch of writ petitions, to the Central Government to issue a notification abolishing the Tamil Nadu Administrative Tribunal.

11. Accordingly, the Government of India, Ministry of Personal, Public Grievances and Pensions, Department of Personal and Training issued a notification published in the Gazette of India dated 17.2.2006, abolishing the Tamil Nadu Administrative Tribunal with immediate effect. The said notification was also republished in the Tamil Nadu Government Gazette on 28.6.2006 pursuant to G.O.Ms.No.60 P&AR Department dated 12.6.2006.

12. In the wake of the abolition, the Government of Tamil Nadu issued an order in G.O.Ms.No.181 P&AR Department, dated 4.10.2006, directing the transfer of 20 staff members of the Tamil Nadu Administrative Tribunal to the High Court along with the sanctioned posts indicated in the Annexure-I to the order. 56 other staff members were transferred to various other departments indicated in Annexure-II to the Government Order. One person went on voluntary retirement. Therefore, all the 77 staff members left in the Tamil Nadu Administrative Tribunal were transferred to the various departments including the High Court.

13. In accordance with the said order, the petitioner herein who was working as Selection Grade Assistant in the Tamil Nadu Administrative Tribunal, got transferred to this Court as Assistant Section Officer. By the proceedings of the Registrar General dated 15.11.2006, the petitioner was granted permission to join duty on 15.11.2006.

14. Thereafter, the petitioner as well as three other persons similarly placed, joined together and gave a representation seeking restoration of seniority. But the said representation was rejected by this Court by an order dated 17.12.2007.

15. Upon coming to know of an order passed by the Government in G.O.Ms.No.35, Commercial Tax and Registration Department dated 28.3.2008, granting the benefit of restoration of seniority to two persons who earlier worked in the Tamil Nadu Taxation Special Tribunal, the petitioner gave a review petition, on 23.12.2009. The review petition was rejected by the Registrar General by an order dated 25.5.2012. Aggrieved by the said order, the petitioner is before this Court.

16. The case of the petitioner is that he having been originally appointed to the High Court service way back in December 1988 and he having been sent to the Tamil Nadu Administrative Tribunal on services lent basis in the year 1989, cannot be made to forfeit his seniority upon the abolition of the Tamil Nadu Administrative Tribunal leading to his repatriation to the parent department. But the claim of the petitioner is opposed by the third respondent (High Court) on the ground: (1) that his repatriation to the High Court service under G.O.Ms.No.181 P & AR Department, dated 4.10.2006 was subject to the condition that he would be placed as the junior most in the category to which he is posted and (2) that the petitioner who was out of his regular line for about 16 years and 10 months before getting back to the High Court, cannot claim restoration of his seniority. The third respondent also places heavy reliance upon an unreported decision of the Division Bench of this Court dated 4.9.2014 passed in W.P.No.12397 of 2012, 11551 of 2011, 13310 of 2011 and 13311 of 2011, wherein this Court rejected similar claims.

17. We have carefully considered the rival submissions.

18. Before considering the claim of the petitioner from the legal perspective, it is necessary to take a look at certain factual details of which there are no disputes. These factual details are as follows:-

(i) The petitioner was appointed by the proceedings dated 14.12.1988 as Copyist in the High Court services on temporary basis.

(ii) The petitioner was appointed as Typist in the Tamil Nadu Administrative Tribunal only on "services lent basis", with effect from 2.1.1990, as seen from the Official Memorandum dated 27.12.1989.

(iii) The regular appointment of the petitioner as Typist in category 12 in Division II by the method of Recruitment by Transfer in the Tamil Nadu Administrative Tribunal service, was ordered only on 19.4.1996. The relevant entry in the Service Register of the petitioner is extracted for better appreciation, which is as follows:-

"In exercise of the powers conferred by Rule 6(2) of the T.N. Admn. Tribunal Service Rules 1990, Thiru.V.Sadasivam, Copyist belonging to Madras High Court service who has been transferred to this Tribunal is regularly appointed in the category of Typist in category 12 in Division II by the method of recruitment by Transfer in the T.N. Admn. Tribunal service in the time scale of pay of Rs.975-25-1150-30-1660 + spl. pay for technical qualifications from the date of joining in this Tribunal i.e. 2.1.90. F/N.

Under Rule 9 of the T.N. Admn. Tribunal Service Rules 1992 the above typist is placed on probation for a period of one year on duty within a continuous period of two years vide TAT.O.P.No.136/94 dt. 19.4.94. "

(iv) By a letter bearing No.74498/SAT/94-2, dated 2.12.1994, the

Secretary to Government P&AR Department informed the Registrar of the Tamil Nadu Administrative Tribunal that the services of persons drawn from the Tamil Nadu Judicial Ministerial Services cannot be absorbed permanently in the Tamil Nadu Administrative Tribunal. The said letter of the Government dated 2.12.1994 reads as follows:-

"I am directed to invite attention to the reference cited and to state that the persons drawn from the Tamil Nadu Ministerial Service/Tamil Nadu Judicial Ministerial Service cannot be absorbed permanently in the Tamil Nadu Administrative Tribunal since the posts sanctioned in the Tamil Nadu Administrative Tribunal at present, are only temporary posts."

(v) No order was ever passed, after the recruitment by transfer of the petitioner from the High Court to the Tamil Nadu Administrative Tribunal, either severing the lien of the petitioner in the High Court service or creating a lien in the Tamil Nadu Administrative Tribunal service. This is perhaps due to the fact, as revealed by the Government Letter dated 2.12.1994, that all the posts sanctioned in the Tamil Nadu Administrative Tribunal were only temporary posts, on which no lien can be created for any one.

19. Keeping the above factual matrix in mind, let us now have a look at G.O.Ms.No.181, P & A.R. Department, dated 4.10.2006, by which 20 persons were redeployed from the Tribunal to the High Court and 56 persons were redeployed from the Tribunal to the other departments of the Government. Paragraphs 1, 2, 3, 4 and 6 of the Government Order read as follows:-

"The Government of India have issued Gazette Notification abolishing the Tamil Nadu Administrative Tribunal on 17.2.2006. There is no provision in the Administrative Tribunals Act, 1985 (CA 13/1985) or in the Rules framed thereunder to transfer or redeploy the staff of Tamil Nadu Administrative Tribunal to the Government Departments. However, with a view to provide alternative employment to the staff of the Tamil Nadu Administrative Tribunal on abolition, the Government have decided to transfer the staff of the Tamil Nadu Administrative Tribunal to other Departments of Government following the opinion of the Advocate General of Tamil Nadu.

2. At present, 77 staff members in Tamil Nadu Administrative Tribunal are to be transferred to Departments of Government. In addition to the above, one post in the category of Accounts Officer and another post in the category of Senior Accountant have to be reverted back to parent department viz., Office of the Commissioner of Treasuries and Accounts.

3. The Registrar (Administration), High Court has stated that the staff of the Tamil Nadu Administrative Tribunal may be redeployed in the same post in High Court Service since the scale of pay are identical both in Tribunal and High Court except the two posts of Stenographer, Grade II and Assistant Registrar in Tribunal. The Heads of Departments have furnished the vacancy position in respect of Junior Assistant, Steno-typist, Typist, Storekeeper, Record Clerk, Office Assistant, Watchman, Sweeper, Driver etc.,

4. Accordingly, the Government have further decided to transfer 19 staff members of Tamil Nadu Administrative Tribunal who are drawing salary in the scale of pay of Rs.6500-200-11000 and 5500-175-9000, one post of Assistant Registrar in the scale of pay of Rs.10000-325-15200 and one post of Motor Cycle Messenger in the scale of pay of Rs.4000-100-6000 to the High Court Service only with sanctioned posts and to transfer 55 staff members who are drawing in the scale of pay of Rs.3200-85-4700 and below to the available vacancies in Heads of Departments. The Government have also decided to revert the two staff members in the cadre of Accounts Officer and Senior Accountant to their parent department viz., Office of the Commissioner of Treasuries and Accounts.

.....
"6. The undertakings from 76 staff members unconditionally accepting the appointment to an equivalent post / carrying the same scale of pay in any Government Heads of Department / High Court of Madras were obtained and examined by the Government.

20. Paragraph 7 of G.O.Ms.No.181 dated 4.10.2006, which contains the directive of the Government, reads as follows:-

"7. The Government accordingly direct that 20 staff members of the Tamil Nadu Administrative Tribunal be transferred to the High Court of Madras along with sanctioned posts as indicated in the Annexure I to this order and 56 staff members of Tamil Nadu Administrative Tribunal be transferred to the Heads of Departments as indicated in the Annexure II to this order. The Government also direct the above staff members be transferred subject to the following conditions:-

- (i) the pay of staff members of the Tamil Nadu Administrative Tribunal shall be protected;
- (ii) the leave earned in Tamil Nadu Administrative

Tribunal shall be transferred to Department to which they are appointed;

(iii) the seniority of the staff re-deployed in the other Department will be placed immediately below the junior most position in the respective category maintaining their seniority in the Tribunal;

(iv) Relevant service rules in High Court Service, Tamil Nadu Ministerial Service, Tamil Nadu General Subordinate Service shall be relaxed in respect of the method of their appointment if required."

21. Pursuant to the aforesaid Government Order, the Registrar General issued an order dated 15.11.2006 permitting 20 employees appointed to the High Court by transfer, to join duty with effect from 15.11.2006. The name of the petitioner was at serial number 7 in the said proceedings and he was appointed as the Assistant Section Officer.

22. Thereafter, the petitioner and three others who were also appointed in the High Court as Assistant Section Officers jointly made a representation dated 12.3.2007, praying for restoration of seniority in the parent department namely the High Court. But the said representation was rejected by the Registrar General by an order dated 17.12.2007.

23. However, it appears that the Government issued an order in G.O.Ms.No.35, Commercial Taxes and Registration Department, dated 28.3.2008 in respect of two persons who faced an identical situation when the Tamil Nadu Taxation Special Tribunal was abolished with effect from 13.7.2005. By the Government Order, the Government relaxed Rule 9 of the General Rules for Tamil Nadu State and Subordinate Services relating to lien in service, in favour of those two employees and reverted them to their parent department with seniority. Therefore, the petitioner gave a representation citing the said Government Order. However, the Registrar General rejected this representation also by an order dated 25.05.2012, forcing the petitioner to come up with the above writ petition.

24. At the outset, it should be pointed out that in respect of two officers covered by G.O.Ms.No.35 dated 28.3.2008, the Government was caught into a catch-22 situation. One officer was originally employed in the Highways Department from where he was appointed to the Tamil Nadu Land Reforms Special Appellate Tribunal. From the Tamil Nadu Land Reforms Special Appellate Tribunal, he was transferred and appointed to the Tamil Nadu Taxation Special Tribunal. From the Taxation Special Tribunal he was to be reverted back, upon its abolition. But he could not be reverted to the Tamil Nadu Land Reforms Special Appellate Tribunal since it had already been abolished. Therefore, he had to be appointed to the department in which he was originally appointed namely the Highways Department. Similarly the other employee who was originally employed in the

Treasuries and Accounts Department got transferred and appointed in the Tamil Nadu Administrative Tribunal from where he was transferred and appointed in the Tamil Nadu Taxation Special Tribunal. Upon the abolition of the Tamil Nadu Taxation Special Tribunal he could not be reverted to the Tamil Nadu Administrative Tribunal, as the same had earlier been abolished. This is why the Government Order G.O.Ms.No.35 had to be passed, relaxing Rule 9. Hence, the petitioner cannot compare himself with the persons covered by G.O.Ms.No.35.

25. However, it is argued by Mr.Karthik, learned counsel for the petitioner-

(i) that para 7(iii) of the Government Order G.O.Ms.No.181 cannot be held against the writ petitioner as it related to the maintenance of seniority in the Tribunal and not in the parent department;

(ii) that in any case posts sanctioned to the Tribunal even according to the Government were only temporary in nature and hence the question of severance of lien in the parent department did not arise;

(iii) that on an identical occasion a learned Judge ordered restoration of seniority in the parent department in a batch of writ petitions W.P.Nos. 4519, 9080 and 13025 of 2008 in respect of persons reverted to the Motor Vehicles Maintenance Department; and

(iv) that the dismissal of the writ petitions of similarly placed staff of the Tamil Nadu Administrative Tribunal by a Division Bench of this Court by an order dated 4.9.2014 will not apply to the case of the petitioner, as the petitioners in those cases were appointed in other services and not in the High Court services.

26. We have carefully considered the above submissions.

27. The first contention that para 7(iii) of G.O.Ms.No.181 would not cover the issue of maintenance of seniority in the parent department, is to be stated only to be rejected. G.O.Ms.No.181 was an order passed after the abolition of the Tribunal. Therefore, the question of para 7(iii) of the Government Order applying only to seniority in the Tribunal did not arise. Para 7(iii) makes it clear that the seniority of the staff deployed in the other department will be placed immediately below the junior most position. It cannot be read as relating to the placement of a person in the seniority list of the staff of the Tribunal which already stood abolished.

28. The second contention of the petitioner is that even according to the Government, all the posts sanctioned in the Tamil Nadu Administrative Tribunal were only temporary in nature. This is why when the Registrar of the Tribunal sent a communication dated 15.9.1994, the Government issued a reply dated 2.12.1994 stating that those drawn from Tamil Nadu Ministerial Service or Tamil Nadu Judicial Ministerial Service cannot be absorbed permanently in the

Administrative Tribunal, since the posts sanctioned in the Tribunal were only temporary posts. Therefore, it is contended that the petitioner never acquired any lien over any post in the Tamil Nadu Administrative Tribunal, so as to have his lien in the parent department namely the High Court severed.

29. This second contention of the petitioner, at first blush, appears to be very convincing. But on a deeper scrutiny, it can be seen that this contention cannot be accepted. It is true that when the Registrar of the Administrative Tribunal sent a letter dated 15.9.1994 requesting the Government to absorb all employees of the Tribunal permanently, the Government rejected the request on the ground that the posts are only temporary. But the Government had already issued Special Rules for Tamil Nadu Administrative Tribunal Services in the year 1992 and created a cadre strength for the Tribunal. The post to which the petitioner was appointed in the Tribunal fell in category 12 of Division II and he was treated to have been recorded by the method of transfer. He was also placed on probation for a period of two years under Rule 9 of those Special Rules. Later he was promoted to the post of Assistant in terms of Rule 6 read with Rules 14 and 15 of the Special Rules. In the year 1998 his services in the post of Assistant were also regularised. Therefore, the Government could not have treated the petitioner and others as the holders of temporary post with no right whatsoever. If this argument had been advanced by the respondent to deprive the petitioner of the opportunity of redeployment to the High Court, the petitioner would not have accepted. Therefore, the second contention cannot be accepted.

30. Almost all majority of the posts in Government are only temporary in nature. They continue to be so from the time of appointment to the time of retirement for many persons. Therefore, the contention that the petitioner did not acquire any lien over the post in the Administrative Tribunal cannot be accepted.

31. Rule 9 of the General Rules for Tamil Nadu State and Subordinate Services deals with the rights of the members absent from duty. The Rule reads as follows:-

"Rule:9. Members absent from duty:- The absence of a member of a service from duty in such service, whether on leave or on foreign service or on deputation or for any other reason and whether his lien in a post borne on the cadre of such service is suspended or not, shall not, if he is, otherwise fit, render him ineligible in his turn.

(a) for re-appointment to a substantive or officiating vacancy in the class, category, grade or post

in which he may be a probationer or an approved probationer;

(b) for promotion from a lower to higher category in such service;

(c) for appointment to any substantive or officiating vacancy in another service for which he may be an approved candidate, as the case may be, in the same manner as if he had not been absent. He shall be entitled to all the privileges in respect of appointment, seniority, promotion and appointment as full member which he would have enjoyed but for his absence subject to his completing satisfactorily the period of probation on his return;

(d) for appointment to any substantive or officiating vacancy in another service, if according to the rules governing appointment to such other service-

(i) he is entitled to such appointment; and

(ii) the normal method of recruitment to such other service is by transfer from the service of which he is a member of any class or category thereof.

Provided that a member of a service who is appointed to another service outside his regular line and is continuing in that service beyond five years shall not be considered for promotion or for appointment by recruitment by transfer to a higher post in his regular line even though he is otherwise qualified under the rules for such promotion or appointment, unless he returns to the former service and puts in a fresh service for a period of not less than one year in the former service."

32. As per the above Rule, the absence of a member from duty in such service, whether on leave or on foreign service or on deputation or for any other reason and whether his lien in a post borne on the cadre of such service suspended or not, shall not render him ineligible for promotion appointment etc. The proviso to Rule 9 qualifies the Rule by stating that the benefit of the Rule will not apply to the case of a person who is appointed to any service outside his regular line and continues in that service beyond five years, unless he returns to the former service and puts in a fresh service for a period of not less than one year in the former service.

33. But, unfortunately for the petitioner, the said Rule applies only to a person who is "a member of a service" irrespective of whether his lien is suspended or not. The expression "member of a service" is defined under Rule 2(10) of the General Rules as follows:-

"Member of a service" means a person who has been appointed to that service and who has not retired or resigned, been removed or dismissed, been substantively transferred or reduced to another service or been discharged otherwise than for want of a vacancy. He may be a probationer, an approved probationer or a full member of that service."

34. From the definition it will be clear that to be a member of a service, a person should have been appointed to that service. In above he should not (1) have retired or resigned (2) have been removed or dismissed (3) have been substantively transferred or reduced to another service (4) have been discharged otherwise than for want of vacancy.

35. Though the petitioner fulfils the first limb of the definition in Rule 2(10), he does not fulfil the requirement in the second limb. He was substantively transferred to another service namely Tamil Nadu Administrative Tribunal Service. He was also outside his regular line and hence the petitioner cannot even claim any right in terms of Rule 9.

36. Rule 9(13) of the Fundamental Rules defines a lien to mean "the title of a Government Servant to hold substantively, either immediately or on the termination of a period or periods of absence, a permanent post including a tenure post, to which he has been appointed substantively." Therefore, it is contended by Mr. Karthik, learned counsel for the petitioner that so long as he was not appointed to a permanent post in the Tamil Nadu Administrative Tribunal Service, he could not have acquired a title or lien to the post in the Administrative Tribunal. Hence he contends that his lien in the parent department could not be severed.

37. The learned counsel for the petitioner also draws support from Rule 12-A of the Fundamental Rules which states that unless otherwise provided in the Fundamental Rules, a Government Servant on substantive appointment to any permanent post acquires a lien on that post and ceases to hold any lien previously acquired on any other post. Under Rule 13 of the Fundamental Rules, a Government Servant holding substantively a permanent post retains a lien on that post even while on foreign service or holding temporary post or officiating in another post, unless such lien was suspended under Rule 4 or transferred under Rule 14-B.

38. But, unfortunately, we do not even know whether the post to which the petitioner was appointed in the High Court was a permanent post and as to whether the petitioner acquired a lien on that post. Most of the posts, as we have indicated earlier, are only temporary posts in Government Service. Therefore, unless the petitioner establishes that the post of typist to which he was appointed in the High Court was a permanent post, he cannot claim

that he acquired a lien on that post and that the lien was not severed upon his appointment to a temporary post in the Tamil Nadu Administrative Tribunal Service. Therefore, the second contention also cannot be accepted.

39. The reliance placed by the petitioner in a judgment of the Division Bench of the Punjab High Court in *Rattan Lal Gulati v. Union of India* [ILR Vol.X page 1435], may not be of any assistance to the petitioner, in view of the fact that the said decision arose out of the reversion of a person who was originally appointed in Government Service before India attained Independence and who was later sought to be reverted. The Punjab High Court took note of the provisions of the Central Civil Services (Temporary Services) Rules, 1949. But there are no similar Rules for the employees of the State of Tamil Nadu or of the High Court. Therefore, the said decision cannot go to the rescue of the petitioner and hence the second contention is rejected.

40. The third contention of the petitioner is that under identical circumstances, a learned Judge of this Court passed orders in favour of a few employees of the Motor Vehicles Maintenance Department. Therefore, the petitioner claims that the benefit of the said decision may also be extended to him.

41. But, as seen from the decision of K.Chandru, J, in W.P.Nos. 4519, 9080 and 13025 of 2008, dated 29.3.2012, the writ petitioners in two writ petitions were sent on foreign service basis from the Department of Motor Vehicles Maintenance to the Office of the Director of Environment. After two years of sending them on foreign service basis, the writ petitioners therein wanted to get back to the parent department. But the said request was turned down. Later, they expressed willingness to continue in the Department of Environment and the Department of Environment sought concurrence of the Motor Vehicles Maintenance Department. But they pointed out that the consent of the Tamil Nadu Public Service Commission was necessary in such cases. In the meantime, promotions were granted to the petitioners in the Department of Environment. All over, they sought to be reverted to their parent department forcing them to come to Court. The learned Judge dismissed the writ petitions on the ground that their repatriation to the parent department was valid in view of the fact that their transfer to the newly formed department was at their request and that the consent of the Service Commission was not obtained. Therefore, the ratio laid down in the said decision will not apply to the case on hand. The case dealt with by the learned Judge did not arise out of abolition of any department rendering the employees liable for termination of their services. But, in the case on hand, there was an abolition of the institution to which the petitioner was transferred and absorbed and also promoted. Hence, the said decision is no avail to the petitioner.

42. The decision of the Supreme Court in *State of Rajasthan v.*

S.N.Tiwari, dated 16.3.2009, is also of no avail to the petitioner. In the said case, the Supreme Court pointed out that the expression "lien" connotes the right of a Civil Servant to hold the post substantively to which he is appointed. In the case before the Supreme Court, it was found on facts that the temporary appointment of the candidate was made only under a scheme for a period of six months or till the process of selection by the Public Service Commission was over. But, in the case on hand, it was a regular absorption into the Tamil Nadu Administrative Tribunal Service.

43. Say for instance, the Tamil Nadu Administrative Tribunal had not been abolished, the petitioner would not have been in a position to seek repatriation to the High Court. This is for the reason that the petitioner had already obtained promotion in the Tamil Nadu Administrative Tribunal.

44. As seen from the chart given in para 7 of the counter affidavit, the petitioner joined the High Court Service on 15.12.1988 and his immediate junior one P.Anusuya joined on 19.12.1988. Since the petitioner went to the Tribunal, he was promoted on 22.04.1994 as Assistant, while Anusuya was promoted only on 28.04.1997. All the 76 staff members who were transferred from various departments to the Administrative Tribunal have been treated on the same footing and the plea made by four individuals for the grant of seniority upon reversion to the High Court Service, already stood rejected by a judgment dated 4.9.2014 passed in W.P.No.12397 of 2012 batch of cases. Therefore, it is not possible for us to take a different view than the one taken by another Division Bench in W.P.No.12397 of 2012.

45. The last contention that the decision of the Division Bench dated 4.9.2014 will not apply to the case of the petitioner, as the petitioners in those cases were appointed in other services and not in the High Court services, cannot also be sustained. The Government Order G.O.Ms.No.181 was common to all persons who had to be rehabilitated upon the abolition of the Tribunal. The principle that they will take the bottom most seniority, was applied uniformly to all persons. What was decided by this court was on a matter of policy and principle and hence it cannot differ from department to department. Therefore, the ratio of the decision of the Division Bench cannot be distinguished merely on the basis of what the parent department was. Hence, the fourth contention is also rejected.

46. In view of the foregoing, we find no merits in the writ petition. Hence it is dismissed. However, there will be no order as to costs.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

gr.

To

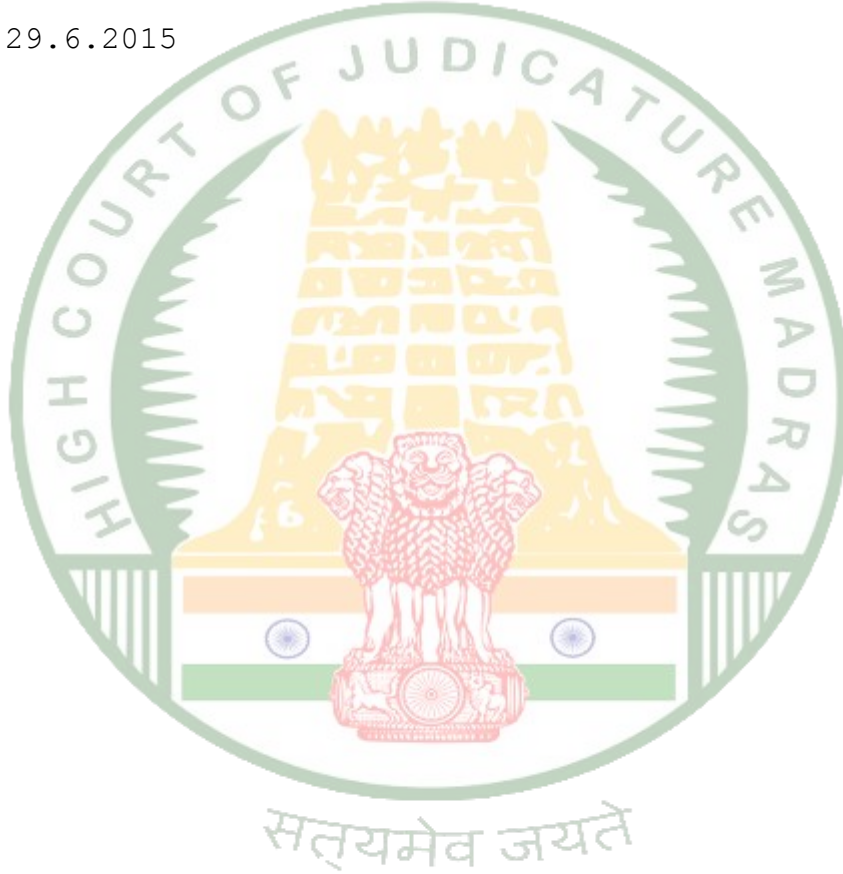
1. The Secretary P & AR Department, State of Tamil Nadu,
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2. The Joint Secretary to Government (Rules)
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Personnel and Administrative Reforms (SAT)
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3. The Registrar General, High Court, Chennai 600104.

1 cc to Mr.Karthik & Mukundan , Advocate Sr.No.29150

1 cc to Government Pleader.Sr.No.29114

W.P.NO.5573 OF 2013

rj (co) pmk.29.6.2015



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