

In the High Court of Judicature at Madras

Dated : 27.2.2015

CORAM :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

and

The Honourable Mr.Justice P.R.SHIVAKUMAR

Writ Appeal No.2281 of 2012

P.Vijaya

... Appellant

Vs

1. The Government of Tamilnadu, rep.
by its Secretary to Government,
Tamil Development, Religious
Endowment and Information
Department, Secretariat, Chennai-9.
2. The Director of Stationery & Printing,
No.110, Anna Salai, Chennai-2.
3. The Joint Director of Stationery &
Printing, No.110, Anna Salai, Chennai-2.
4. Mrs.M.S.Geetha
5. S.V.Sankari
6. K.Usha
7. S.Deva Bhavani

...Respondents

APPEAL under Clause 15 of the Letters Patent against the order dated 12.10.2011 in W.P.No.8481 of 2009.

Petition presented under Act 226 of the Constitution of India to issue a writ of Certiorari to call for the records connected with Pro.Dir.No.E1/69685/08-1, dated 2.4.2009 of the second respondent and all further proceedings connected thereto and quash the same.

For Appellant	: Mr.B.R.Ganesan
For Respondents 1 to 3	: Mrs.Srijayanthi, SGP
For Respondent-4	: Mr.V.Sivalingam for M/s.Siva Associates

Judgment was delivered by V.Ramasubramanian, J

The writ appeal arises out of a common order passed in two writ petitions, one of which, was actually transferred from the Tamilnadu Administrative Tribunal, after its abolition.

2. Heard Mr.B.R.Ganesan, learned counsel for the appellant, Mrs.Srijayanthi, learned Special Government Pleader appearing for the respondents 1 to 3 and Mr.V.Sivalingam, learned counsel appearing for the fourth respondent.

3. In order to appreciate the scope of the dispute, it would be necessary to present in a tabular column, the service particulars of the appellant vis-a-vis the respondents 4 to 7, which are as follows :

S.No	Post	Appellant	M.S.Geetha	S.V.Sankari	K.Usha	S.Deva Bhavani
1	Junior Assistant	20.2.1973 (direct recruitment)	-	-	-	-
2	Steno Typist	13.4.1989 (appointment by transfer)	8.12.1986	10.12.1986	24.8.1987	8.12.1986

4. The appellant was originally appointed as a Junior Assistant in the Rural Development Department on 20.2.1973 and got transferred to the Department of Stationery and Printing on 2.1.1979. She was appointed by transfer as Steno-Typist in the Department of Stationery and Printing on 13.4.1989.

5. In contrast to the above service particulars of the appellant, the contesting respondents 4 to 7 were selected by the Tamilnadu Public Service Commission and appointed as Steno-Typists in the Department of Stationery and Printing. They joined the services respectively on 8.12.1986, 10.12.1986, 24.8.1987 and 8.12.1986. In other words, the contesting respondents namely the respondents 4 to 7 joined the post of Steno-Typist in the same Department at least 2-3 years before the appellant joined as a Steno Typist.

6. However, on the date on which, the appellant joined the post of Steno-Typist by the method of recruitment by transfer from one category to another, the scales of pay of the posts of Typist, Junior Assistant and Steno-Typist were just the same. But, in the year 1992,

the Government bifurcated the cadres under G.O.Ms.No.256 P & AR on 1.8.1992. Thereafter, the scales of pay of the post of Steno-Typist was enhanced to Rs.1200-2040. This was done with retrospective effect from 1.6.1988. But, the scales of pay of the post of Junior Assistant remained at Rs.975-1660.

7. Therefore, there was a dilemma as to how the seniority of candidates directly recruited to the post of Steno-Typist and those, who were recruited by method of transfer, is to be fixed.

8. The Government originally passed an order fixing the seniority of the appellant over and above the contesting respondents. Later, it was revised, forcing the appellant to file an application in O.A.No.5723 of 1999 on the file of the Tamilnadu Administrative Tribunal. After the abolition of the Tribunal in the year 2004, the application got transferred to this Court and numbered as W.P.No.46712 of 2006.

9. During the pendency of the said writ petition, the appellant reached the age of superannuation and retired on 30.11.2008. Thereafter, she made a representation, but the same got rejected on 2.4.2009, forcing the appellant to come up with a writ petition in W.P.No.8481 of 2009.

10. Both the writ petitions were taken up together and they were dismissed by a learned Judge by a common order dated 12.10.2011. It is against the order in W.P.No.8481 of 2009 that the appellant has come up the above writ appeal.

11. As rightly pointed out by the learned Judge, the only question that arises for consideration in this case is as to whether the seniority of the appellant vis-a-vis the contesting respondents has to be reckoned with reference to Rule 35(aa) or with reference to Rule 35(b) of the General Rules for the Tamilnadu State and Subordinate Services.

12. Rules 35(aa) and 35(b) read as follows :

"35(aa) : The seniority of a person in a service, class, category or grade shall, where the normal method of recruitment to that service, class, category or grade is by more than one method of recruitment, unless the individual has been reduced to a lower rank as a punishment, be determined with reference to the date on which he is appointed to the services, class, category or grade;

35(b) : The transfer of a person from one

class or category of a service to another class or category carrying the same pay or scale of pay shall not be treated as first appointment to the latter for purpose of seniority and the seniority of a person so transferred shall be determined with reference to the rank in the class or category from which he was transferred, where any difficulty or doubt arises in applying this sub-rule, seniority shall be determined by the appointing authority."

13. There is no dispute across the bar that if the scale of pay of the transferor post and the transferee post were one and the same, Rule 35(b) alone will come into operation for fixation of seniority. There is also no dispute about the fact that on the date on which the appellant got transferred from the post of Junior Assistant to the post of Steno-Typist namely 13.4.1989, the posts of Junior Assistant and Steno-Typist carried the very same scale of pay. But, by a subsequent order after bifurcation, the scale of pay of the post of Steno-Typist got enhanced. It is therefore the case of the contesting respondents that Rule 35(b) will cease to be in operation. This stand has been accepted by the learned Judge.

14. But, with great respect, we are of the view that the moment a person got appointed to a particular category by the method of recruitment by transfer, his seniority in the transferee post has to be reckoned with reference to the circumstances prevailing on the date of transfer. Once a seniority is fixed on the date of transfer namely 13.4.1989 with reference to Rule 35(b), it is not open to the official respondents to alter or tamper with the same, on the basis of the revision of pay scales ordered three years later with retrospective effect.

15. To do so would have the effect of unsettling what is already settled. The Supreme Court has repeatedly held that in matters of seniority, one cannot unsettle what is already settled. The seniority of a person in a category of post, cannot be a floating mass so as to keep swinging from one extreme to the other, depending upon the revision of pay scales. Therefore, we are unable to agree with the view taken by the learned Judge. On the date on which the appellant got appointed by the method of recruitment by transfer, the scales of pay of the transferor and the transferee posts were one and the same and hence, it was Rule 35(b), which should have been applied.

16. In view of the above, the writ appeal is allowed, the order of the learned Judge is set aside and the writ petition in W.P.No.8481 of 2009 filed by the appellant shall stand allowed. No costs.

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar.

To

1. The Secretary to Government Tamilnadu, Tamil Development, Religious Endowment and Information Department, Secretariat, Chennai-9.
2. The Director of Stationery & Printing, No.110, Anna Salai, Chennai-2.
3. The Joint Director of Stationery & Printing, No.110, Anna Salai, Chennai-2.

+1cc to Mr.B.R.Ganesan, Advocate, S.R.No.11221
+1cc to the Government Pleader, S.R.No.11155

W.A.No.2281 of 2012

TEJ(CO)
CA(10/03/2015)

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