

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.3.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P. Nos.27207 and 27208 of 2012

S.Sivagami ... petitioner in W.P.No.27207 of 2012

M.Lakshmi ... petitioner in W.P.No.27208 of 2012

versus

1.The State of Tamil Nadu,
rep. By its Secretary,
Rural Development and Panchayat (E3) Department,
Fort St.George,
Chennai 600 009.

2.The Commissioner,
Rural Development and Panchayat Raj,
Panagal Building, Saidapet,
Chennai 15.

3.The District Collector,
Cuddalore District.

4.The Secretary,
Tamil Nadu Public Service Commission,
Commercial Tax Annexure Building,
No.1, Greams Road, Chennai 6.

... respondents

PRAYER: Writ petitions filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records relating to the order in G.O.(3D) No.43 Rural Development and Panchayat Raj Department dated 09.12.2011 and quash the same in so far as clause (b) and (e) is concerned and consequently direct the respondents to fix the seniority of the petitioner as Assistant as per the date of her initial appointment (17.11.1997) and 14.03.1996 as Radio Supervisor and grant all attendant benefits and due promotions in accordance with the letter No.40725/PA4/98 dated 14.8.2000 of the 1st respondent and letter No.5466/CD-B2/2000 dated 6.7.2001 of the 4th respondent Tamil Nadu Public Service Commission and to Rule 35(b) of the Tamil Nadu State and Subordinate Services Rules Part-II General Rules.

For petitioners : Mrs.AL.Gandhimathi
For respondents : Mr.M.S.Ramesh, Additional Government Pleader
for respondents 1 to 3
Mr.N.S.Nandakumar, for R-4

O R D E R

The petitioners are aggrieved by the direction contained in the government order in G.O.(3D).No.43 Rural Development and Panchayat Raj (E3) Department dated 9 December 2011 to the effect that their seniority would be determined in the cadre of Assistant only from the date of their appointment.

The facts :-

2. The petitioners were selected by Tamil Nadu Public Service Commission as Radio Supervisor and placed at the disposal of Rural Development Department. The petitioners were assigned the work of maintaining Radio and Television sets utilized by the Village Panchayat. The Government have issued an order in G.O.No.228, Rural Development (E4) Department dated 30 August 2000 whereby and whereunder, Radio and Television sets were handed over to the respective Panchayats to maintain it by using the Panchayat funds. The Government have issued another order in G.O.No.229 Rural Development (E4) Department dated 30 August 2000 disbanding Tamil Nadu Local Administration Radio and Television Maintenance Organization. The Government, with a view to accommodate the petitioners, and similarly situated employees, issued orders in G.O.Nos.228 and 229 Rural Development (E4) Department, dated 30 August 2000. The second respondent by letter dated 23 April 2001, called upon the respective District Collectors to allot suitable work to the radio supervisors. The petitioners and others were accommodated in the office of the District Collectors. The petitioners have been paid salary and other benefits applicable to the post of Assistant.

3. The Government have issued an order in G.O.(3D) No.43 Rural Development and Panchayat Raj (E3) Department dated 9 December 2011, directing absorption of 16 Technical Assistants (television), 45 Radio Supervisors and 1 Mechanic in rural development Department with pay protection with effect from the date of the said order. The government order provided that seniority shall be fixed in the post of Assistant by placing their names next to the person who is working as Assistant in the present seniority list of Assistants. The petitioners were further directed to pass departmental tests within a period of two years. The condition as contained in the government order dated 9 December 2011 to the effect that the petitioners would be placed below the person who is presently working as Assistant made them to file the Writ Petitions.

4. The District Collector, Cuddalore District, in his counter affidavit justified the impugned order. According to the District Collector, Government have created supernumerary posts in the cadre of Block Development Officer to accommodate 16 Technical Assistants (Television), 45 Radio Supervisors and 1 Mechanic who were in service at the time of disbandment of Tamil Nadu Local Administration Radio and Television Maintenance Organization. Since they were appointed as Assistant for the first time, they were placed below seniors.

Submissions :-

5. The learned counsel for the petitioners by placing reliance on the government order in G.O.No.229 Rural Development (E4) Department dated 30 August 2000, contended that while issuing the impugned order, the Government have not considered the spirit of the earlier orders. According to the learned counsel, the petitioners were appointed by Tamil Nadu Public Service Commission. The Government appointed the Radio Supervisors and other employees, consequent to disbandment of Tamil Nadu Local Administration Radio and Television Maintenance Organization, in different Departments. The petitioners have been working as Assistants right from the year 2007. The respondents were therefore not correct in regularizing their services prospectively and placing them below those working as Assistants.

6. The learned Additional Government Pleader contended that the petitioners were appointed as fresh candidates. According to the learned Additional Government Pleader, the petitioners were accommodated in another Department by taking a humanitarian approach. Since appointments were made only during 2011, the petitioners have no right to claim that they should be placed above other employees already working in the concerned Department.

Discussion :-

7. The petitioners were selected by the Tamil Nadu Public Service Commission for appointment to the post of Radio Supervisors. The selection was made on behalf of Tamil Nadu Local Administration Radio and Television Maintenance Organization. The said organization functioned in Division Head Quarters to maintain the television sets and radio sets utilized by the village Panchayats. The Government disbanded Tamil Nadu Local Administration Radio and Television Maintenance Organization, consequent to the devolution of powers to the Panchayats under the three tier Panchayat Raj System. The Government principally agreed to create supernumerary posts to accommodate radio supervisors and similarly situated employees on account of the disbandment of Tamil Nadu Local Administration Radio and Television Maintenance Organization. Accordingly, Government issued orders in G.O.Nos.228 and 229 Rural Development (E4) Department dated 30 August 2000.

8. The Commissioner, Rural Development and Panchayat Raj Department, vide letter dated 23 April 2001, requested the District Collectors to accommodate the radio supervisors like the petitioners. The petitioners were accommodated in the Collectorate at Cuddalore. The petitioners have been working as Assistants till the issuance of the government order in G.O.(3D).No.43 Rural Development and Panchayat Raj (E3) Department dated 9 December 2011. The Government took several years to regularize the services of petitioners and similarly placed employees. The Government while issuing the impugned order dated 9 December 2011, failed to consider the spirit of the earlier order in G.O.Nos.228 and 229 Rural Development (E4) Department dated 30 August 2000. The petitioners were all appointed by undergoing a regular selection process. Because of the action taken by the Government disbanding Tamil Nadu Local Administration Radio and Television Maintenance Organization, petitioners have become jobless. The Government accommodated the petitioners and other employees in the respective District Collectorate. Such being the position, the Government was not justified in changing the stand later and the related contention that the petitioners were appointed afresh and their seniority would be fixed below the employees working as Assistant in the respective Departments.

9. The petitioners were not at fault for this sorry state of affairs. The respondents would be justified in treating the petitioners as juniors in case they have opted for transfer of service. The petitioners were accommodated in the District Collectorate by the second respondent pursuant to the decision taken by the Government. The petitioners are therefore justified in their contention that they are entitled to seniority in the post of Assistants, taking into account their functioning in the said post in the District Collectorate.

10. The Tamil Nadu State and Subordinate Services Rules part II, General Rule 35(b) provides for retaining seniority on account of transfer from one class or category of service to another class or category. Rule 35(b) reads thus :-

"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 1st appointment to the latter for purpose of seniority and the seniority of a person so transferred all be determined with reference to the rank in the class or category from which he was transferred".

11. The petitioners were appointed as Radio Supervisors in Tamil Nadu Local Administration Radio and Television Maintenance Organization. They are now accommodated as Assistants by transfer of service. The petitioners are therefore entitled to the benefits of Rule 35(b) extracted above. I am therefore of the view that the respondents were not correct in denying the petitioners, benefits of their earlier service and fixing them below others presently working in the transferee Department.

12. In the result, the impugned order in G.O.(3D).No.43 Rural Development and Panchayat Raj (E3) Department dated 9 December 2011 is set aside insofar as class(b) and (e) are concerned. The respondents are directed to fix seniority of the petitioners as Assistants taking into account the date of commencement of their officiation as Assistant in the District Collectorate at Cuddalore. They should be given due placement in the seniority list taking into account the date of commencement of their functioning as assistant in the concerned Collectorate. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

13. The Writ Petition is allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary,
Rural Development and Panchayat (E3) Department,
Fort St.George,
Chennai 600 009.

2.The Commissioner,
Rural Development and Panchayat Raj,
Panagal Building, Saidapet,
Chennai 15.

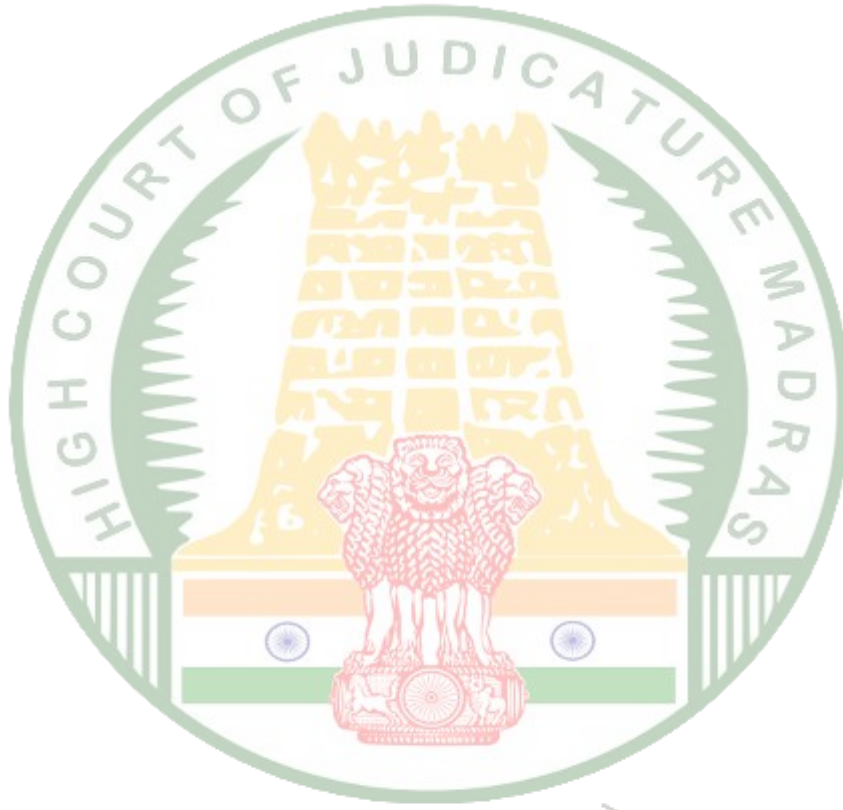
3.The District Collector,
Cuddalore District.

4.The Secretary,
Tamil Nadu Public Service Commission,
Commercial Tax Annexure Building,
No.1, Greams Road, Chennai 6.

+ 2 ccs to Mrs.AL.Gandhimathi, Advocate SR.17213 & 17214
+ 1 cc Government Pleader Sr.17161

MSM(CO)
EU 10.04.2015

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