

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2016

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.5260 of 2007

(O.A.No.6497 of 2002)

A.Thayumananvan

..Petitioner

/vs/

1.The Secretary to the Tamil Nadu Govt.
Revenue Department,
Fort St. George,
Chennai 600 009.

2.The Special Commissioner and
Director of Survey and Settlement,
Chepauk, Chennai 600 005.

3.T.Lakshminarasimhan
Superintendent,
Office of Special Commissioner
and Director of Survey and Settlement,
Chepauk, Chennai 600 005.

4.R.Mohanam,
Superintendent,
Office of Special Commissioner
and Director of Survey and Settlement,
Chepauk, Chennai 600 005.

..Respondents

Prayer: This Writ petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorari by way of transfer of O.A.No.6497 of 2002 from the file of the Tamil Nadu Administrative Tribunal, Chennai, to call for the records in proceedings in Na.Ka.No.A-1, 5035/2002, dated 05.08.2002 passed by the second respondent and direct the second respondent to send a report regarding seniority to the first respondent as called for by the first respondent on 28.08.2002.

For Petitioner :Mr.K.P.Gopalakrishnan

For Respondents :Mr.K.Rajendra Prasad, GA,

1 & 2

O R D E R

The prayer in the writ petition is for a Writ of Certiorari to call for the records in proceedings in Na.Ka.No.A-1,5035/2002, dated 05.08.2002 passed by the second respondent and direct the second respondent to send a report regarding seniority to the first respondent as called for by the first respondent on 28.08.2002.

2. The petitioner and the third respondent were working in the second respondent's Department as Assistants. The third respondent was promoted as Superintendent from 16.07.1996 by the proceedings of the Commissioner and Director of Survey and Settlement(A1), dated 30.08.1996. Subsequently, due to want of vacancy, he was reverted as Assistant (Selection Grade). In the panel prepared by the Department for promotion to the post of Superintendent, dated 09.01.2002, the petitioner's name was included and the petitioner was promoted, on the same day, as Superintendent.

3. Subsequently, by an order dated 26.06.2002, the second respondent reverted the third respondent from the Revenue Department which is the foreign service, for which the third respondent has gone on 05.05.1999 as Deputy Tashildar.

4. After reversion from the other department to the original department, the third respondent on 18.07.2002, was promoted as Superintendent, however, placed him above the petitioner.

5. The grievance of the petitioner is that since the third respondent, after having relinquished his right of promotion in his parental department i.e. Department of Survey and Settlement, has gone to foreign service by appointment/by transfer as Deputy Tashildar at Namakkal Revenue Unit on 05.05.1999, even when he was getting reverted from the foreign service in the year 2002, he should not have been given promotion as Superintendent that too placing above the petitioner. Thereafter, since the third respondent was promoted as such, after getting reverted back to the original department, the second respondent has passed further order dated 05.08.2002, which is impugned herein, reverting the petitioner from the post of Superintendent to the post of Assistant. The said order passed by the second respondent reverting the petitioner from the post of Superintendent to the post of Assistant, is because of the promotion given to the third respondent on his reverting back to his original department from foreign service on 26.06.2002. Therefore, challenging the same, the petitioner has come out with the present writ petition.

6. Heard both sides.

7. The learned counsel appearing for the petitioner would contend that though the third respondent was originally promoted as Superintendent in the year 1996, he was reverted to the post of Assistant for want of vacancy and when he was working as Assistant, he had opted for other service and therefore, on his request, he was sent to the other service i.e. Revenue Department as Deputy Tahsildar on 05.05.1999 and was appointed as Deputy Tahsildar at Namakkal District and he joined there on 05.05.1999. From 1999 the third respondent had been working as Deputy Tahsildar in Namakkal District and after working there as Deputy Tahsildar for three years, he again had requested to come back to the original Department, which was readily accepted by the Revenue Department and ultimately, by order dated 26.06.2002, the third respondent was permitted to revert back to the original department. In the meanwhile, the petitioner, as per the seniority, had been promoted as Superintendent on 09.01.2002 and at the time, the third respondent having been reverted to the original department, the petitioner is already working as Superintendent and therefore, if at all, the third respondent has to be considered to be put in the original post either as Assistant or the earlier promotional post, which he is held for some time, he should be placed only below the petitioner. However, the respondents have promoted the third respondent on 18.07.2002 and by virtue of that promotion given to the third respondent, the petitioner was reverted to the Assistant post by order dated 05.08.2002, which is palpably wrong and hence, the learned counsel appearing for the petitioner wants to quash the same and give the relief sought for herein.

8. Per contra, the learned Government Advocate appearing for the respondents 1 and 2, by relying upon the averments made in the reply affidavit by the Official respondents, submitted that the third respondent was promoted and acted as Superintendent on two spells in the year 1996-1997. His service as Superintendent was also regularized with effect from 16.07.1996 by the proceedings of the second respondent dated 30.08.1996 and subsequently for want of vacancy he was reverred to Assistant. Thereafter, in the year 1999, the third respondent had requested to go for foreign service ie. other departmental service. Accordingly, in the year 1999, he was promoted to go and join as Deputy Tahsildar in Namakkal District, where he joined as Deputy Tahsildar on 05.05.1999. Since then, he had been working there and on 25.06.2001, the third respondent had requested the respondents to revert him to the original department for which the third respondent had expressed his willingness to permanently relinquish high right for the post of Deputy Tahsildar under the Tamil Nadu Revenue Subordinate Service as required by General Rule 47 of the Tamil Nadu State and

Subordinate Service Rules. As of that request was considered by the proceedings dated 10.06.2002. The third respondent was relieved from the Revenue Unit and was permitted to come and join at the parental department. The third respondent thereafter reported duty on 03.07.2002. He had been permitted to join duty as Assistant on 10.07.2002 on the same day since he had given petition to post him as Superintendent as he was originally posted as Superintendent and his service was regularised as such in the year 1996, considering the said request of the third respondent he was posted as Superintendent on 18.07.2002 and therefore, subsequently, for want of vacancy, this petitioner was reverted to Assistant by order dated 05.08.2002. Therefore, the learned Government Advocate submits that there is absolutely no unlawfulness or illegality as the said order passed by the official respondents and therefore, he submits with the writ petition has no merits and is liable to be dismissed.

9. This Court has considered the rival submissions made by the learned respective counsel and perused the records made available before this Court.

10. Though the third respondent was posted as Superintendent in the year 1996, subsequently, he was reverted as Assistant for want of vacancy. When he was working as Assistant for his better prospects, on his own request he was permitted to go back to other service in the Revenue Unit at Namakkal where the third respondent joined as Deputy Tahsildar on 05.05.1999. Thereafter he was permitted to come back to the original department after relinquishing his right over the post of Deputy Tahsildar only on 26.06.2002 and he joined as Assistant at the original department on 10.07.2002.

11. In this regard, Rule 47 of the Tamil Nadu State and Subordinate Service Rules can be usefully referred to, which reads thus:

"47. Relinquishment of rights by members: (1) Any person may in writing, relinquish any right or privilege to which he may be entitled under these rules or the Special Rules if, in the opinion of the appointing authority, such relinquishment is not opposed to public interest; and nothing contained in these rules or the Special Rules shall be deemed to require the recognition of any right or privilege to the extent to which it has been so relinquished.

(2) Relinquishment of a right or privilege for a temporary period shall be accepted if it is made for a period of not less than three years subject to the condition that after the expiry of the said period, the claim of the right or privilege relinquished will be with reference to

the state of affairs that exist on the date of expiry of period of relinquishment and without restoration of original seniority. If relinquishment of right or privilege is made permanently and is accepted subsequent claim of the relinquished rights or privileges shall not be entertained."

12. The learned counsel appearing for the petitioner would contend that the proviso to Rule 9 of the Tamil Nadu State and Subordinate Service Rules envisaged that if a person goes for other service and within five years period, he comes back to the original service, then he can be taken back provided, he should put in a fresh service for minimum period of one year.

13. The learned counsel relies the said proviso to of Rule 9 as it stood:-

9. Members absent from duty -

(Provided that a member of a service who has been appointed to another service outside his regular line shall not be permitted to hold membership in the second service beyond five years, if he is to be considered for promotion or for appointment by recruitment by transfer to a higher post in his regular line eventhough he is otherwise qualified under the rules for such promotion or appointment, unless he puts in a fresh service for a minimum period of one year in his post in the former service on reversion from the second service)

14. According to Rule 47(2) of Tamil Nadu State and Subordinate Service Rules, the relinquishment of right and privilege for temporary period shall be accepted on some conditions, which includes that such acceptance shall be without restoration of original seniority. Here, in the case in hand, the third respondent's request for relinquishment of right and privilege at the other service namely, Deputy Tahsildar post has been accepted by the respondents and he has been permitted to revert back to the original department by order dated 26.06.2002. When he was permitted to go to the original department, such promotion should be without restoring the original seniority of the third respondent either as Assistant or as Superintendent. Therefore, the promotion or posting given to the third respondent from 18.07.2002 itself, considering his request that since he had worked as Superintendent in the year 1996, he should be restored the original seniority immediately, on joining the original department, after relinquishment of his right, on the part of

the official respondents, in the opinion of this Court, is not inconsonance with Rule 47 of the Tamil Nadu State and Subordinate Service Rules.

15. More over, the said proviso to Rule 9 also envisages that on returning to the original department, he should put in a fresh service for minimum period of one year in his post/in the former service on reversion from the second service, which means that on getting reverted to the original service or former service from the other service or second service, then the person shall put in atleast one year period then only, he should be considered for further promotion. Here, in the case in hand, the third respondent though joined service after reverting back to the original department on 10.07.2002, immediately, within a week i.e. On 18.07.2002, he was given promotion, which is also in the opinion of this Court, is not inconsonance with the said proviso to Rule 9 of the said Rule. In this regard, the issue raised by the petitioner in the writ petition can be considered in favour of the petitioner, as the petitioner was promoted as Superintendent on 09.01.2002. Therefore, if at all the third respondent comes back to the original department on 26.06.2002, his restoration of service in the post of Superintendent should be only after one year period of service under proviso to Rule 9 of the Tamil Nadu State and Subordinate Service Rules and without restoring the original seniority under Rule 47(2) of the Tamil Nadu State and Subordinate Service Rules. If these procedures were adopted, the third respondent should not have been placed above the petitioner. Resultantly, the reversion now vested on the petitioner by way of impugned order dated 05.08.2002, should have been avoided. Therefore, this Court has no hesitation to hold that the impugned order is unsustainable and therefore, it is liable to be quashed. Accordingly, it is quashed.

16. During the hearing, it was also brought to the notice of this Court by the learned Government Advocate appearing for the official respondents that during the pendency of the writ petition, the petitioner superannuated and got retired on 30.08.2011. While he was in service his posting/promotion as Superintendent, which was originally given on 09.01.2002 was regularised from that date itself i.e. prior to the date of promotion given to the third respondent, which according to the official respondents is only on 18.07.2002. Therefore, the grievance of the petitioner to put the petitioner in the original seniority i.e. reckoning from 09.01.2002, where the petitioner was originally promoted, since accomplished, there can be no further grievance on the part of the petitioner in this regard. However, in view of the said regularization, having been given to the petitioner in the post of Superintendent from 09.01.2002 onwards, all other benefits shall

be calculated and given to the petitioner if it is not so far calculated and given to him.

17. With these observations and directions, the writ petition is allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ari

To

1.The Secretary to the Tamil Nadu Govt.
Revenue Department,
Fort St. George,
Chennai 600 009.

2.The Special Commissioner and
Director of Survey and Settlement,
Chepauk, Chennai 600 005.

+lcc to Mr.K.P. Gopalakrishnan, Advocate, S.R.No.67045
+lcc to the Government Pleader, S.R.No.67106

ca(CO)
md(18/01/2017)

सत्यमेव जयते W.P.No.5260 of 2007

WEB COPY