

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.03.2016

DATE OF DECISION : 09.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.10050, 10051 of 2012, 13741, 13742 of 2011

M.Suresh ..Petitioner in W.P.Nos.10050 of 2012
& 13741 of 2011

R.Arivazhagan ..Petitioner in W.P.Nos.10051 of 2012
& 13742 of 2011

-vs-

The T.N. Dr.MGR Medical University
rep.by its Vice Chancellor
Mount Road, Guindy
Chennai 600 032 ..Respondent No.1 in all the
writ petitions

The Registrar
The T.N. Dr.MGR Medical University
Mount Road, Guindy
Chennai 600 032 ..Respondent No.2 in all the
writ petitions

Mrs.P.S.Kumar ..Respondent No.3 in W.P.No.10050
of 2012

Mrs.S.Vaidehi ..Respondent No.3 in W.P.No.10051
of 2012

M.Somasundaram

M.Ananthi

S.Devendran

P.Manimozhi

D.Raja

(R3 to R7 impleaded as per
order dt. 8.3.12 in M.P.
No.1 of 2012 in W.P.No.
13741 of 2011)

..Respondent Nos.3 to 7 in
W.P.No.13741 of 2011

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..Respondent Nos.3 to 7 in
W.P.No.13742 of 2011

W.P.No.13741 of 2011 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings dated 8.6.2011 in R.C.No.E1(4) 11820/2009 of the first respondent and the order dated 26.10.2010 in R.C.No.E1(4) 22313/2010 of the second respondent herein and quash the same and direct the respondents to refix the seniority of the petitioner in the post of Assistant Section Officer in accordance with the date of his appointment as Steno-Typist Grade III with all attendant benefits.(Prayer amended as per order dt. 29.11.2012 in MP.No.2 of 2011)

W.P.No.13742 of 2011 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings dated 8.6.2011 in R.C.No.E1(4)11820/2009 of the first respondent and the order dated 4.6.2010 in R.C.No.E1(4)11820/2009 of the second respondent herein and quash the same and direct the respondents to refix the seniority of the petitioner in the post of Assistant Section Officer in accordance with the date of his appointment as Steno Typist Grade III with all attendant benefits.(Prayer amended as per order dt. 29.11.2012 in MP.No.2 of 2011)

<https://hcservices.ecourts.gov.in/hcservices/>

For Respondents:: Mr.S.Gomathinayagam
Additional Advocate General for
Mr.G.HariHara Arun Soma Sankar
for R1 & R2 in all writ petitions

Mr.N.G.R.Prasad for
M/s Row & Reddy for
R3 in W.P.Nos.10050, 10051 of
2012 and for R3 to R7 in W.P.
Nos.13741 & 13742 of 2011

ORDER

Two writ petitioners, namely, Mr.M.Suresh and Mr.R.Arivazhagan have filed four writ petitions. In W.P.Nos.10050 and 10051 of 2012, both the petitioners have sought for issuance of a writ of certiorarified mandamus, to call for the records relating to order No.02/2012 dated 20.1.2012 in reference No.E1(4)/02206/2012 of the first respondent herein, to quash the same with a consequential direction to the respondents herein to refix their seniority in the post of Assistant Section Officer in accordance with the date of first appointment as Steno-Typist Grade III with all attendant benefits. Similarly in W.P.Nos.13741 and 13742 of 2011, both the petitioners have sought for issuance of a writ of certiorarified mandamus, to call for the records relating to the proceedings dated 8.6.2011 in R.C.No.E1(4) 11820/2009 of the first respondent and the orders dated 26.10.2010 and 4.6.2010 in R.C.No.E1(4)22313/2010 and in R.C.No.E1(4)11820/2009 respectively of the second respondent herein, to quash the same with a further direction to the respondents to refix their seniority in the post of Assistant Section Officer in accordance with the date of their appointment as Steno-Typist Grade III with all attendant benefits.

2. Mr.AR.L.Sundaresan, learned senior counsel appearing for the petitioners submitted that Mr.M.Suresh was appointed as Steno-Typist Grade III on 8.9.97 and Mr.R.Arivazhagan was appointed as Steno-Typist Grade III on 30.8.93 in the respondent University. Originally both in the Government service and University service, the posts of Typist, Steno-Typist and Junior Assistant were in one cadre in the scale of pay of Rs.975-1660 and they were treated as feeder category for promotion to the post of Assistant. Therefore the Government of Tamil Nadu issued G.O.Ms.No.245, P & AR Department dated 2.3.85 providing for a ratio of 4:1 for promotion to the post of Assistant, namely, four vacancies to be filled from Junior Assistant and one vacancy from Typist and Steno-Typist. Later on, the Government issued G.O.Ms.No.256, P & AR Department dated 1.8.92 by which the post of Typist and the post of Steno-Typist were bifurcated

into separate categories, as a result the post of Steno-Typist was brought in the category 17 and Typist including Machinists in the Treasuries and Accounts Departments were brought in category 17(a) of the Special Rules for Tamil Nadu Ministerial Service and the scale of pay of Steno-Typist was also revised from Rs.975-1660 to Rs.1200-2040 with effect from the date of the said Government Order. Within a few months, the Government issued another G.O.Ms.No.284, P & AR Department dated 19.8.92 designating the post of Steno-Typist as Steno-Typist Grades I, II, III and the Selection Grade Steno-Typist Grade III was fixed in the scale of pay of Rs.1400-2600. When the matter stood as above, when one of the petitioners-Mr.R.Arivazhagan was working in the respondent University as Steno-Typist Grade III from 30.8.93, G.O.Ms.No.417, P & AR Department dated 1.12.93 was issued for preparation of combined seniority list of Junior Assistants and Typists for promotion to the post of Assistant. However, no provision was made for promotion of Steno-Typist as Assistant, since Steno-Typist was bifurcated by G.O.Ms.No.256 dated 1.8.92 as mentioned supra. Subsequently, on 31.1.97, the 71st meeting of the Governing Council of the University was held and a resolution was passed for amending the service statutes to the effect that the scale of pay for various categories of posts in the University shall be the same as applicable for equal category of posts in the Government of Tamil Nadu from time to time as and when the new scales of pay are introduced by the Government of Tamil Nadu. The Finance Committee of the University also considered the proposal for revision of pay of Steno-Typist as ordered in G.O.Nos.256 & 284 referred to above in its agenda on 5.2.97. Thereafter in the 72nd meeting of the Governing Council of the respondent University held on 14.3.97, the recommendation of the Finance Committee was accepted for revision of scale of pay of Steno-Typist and accordingly implemented the same for Steno typist Grade III. Thereupon, the Vice Chancellor of the University also in his proceeding dated 29.8.98 has given effect to the revision of scale of pay. After some time, G.O.Ms.No.34, P & AR Department dated 21.2.2001 was issued making it clear that it is open for the Steno-Typist Grade III to go on transfer of service from the post of Steno-Typist Grade III to the post of Assistant in the ratio of 20:1 i.e., Junior Assistants and Steno-Typists Grade III. In the light of G.O.Ms.No.34 dated 21.2.2001, the Registrar of the University had issued a memorandum dated 7.7.2006 informing the petitioners that it is open to them to go on transfer of service from the post of Steno-Typist Grade III to the post of Assistant and accordingly called for option as to whether they are willing to go on promotion as Steno-Typist Grade II or on transfer of service as Assistant. Accepting the communication issued by the respondent University, both the petitioners exercised their option and informed their willingness to work as Assistants on transfer of service and pursuant to the exercise of option made by them, the Vice Chancellor by proceedings dated

29.12.2006 appointed Mr.R.Arivazhagan as Assistant from the post of Steno-Typist Grade III with a direction to fix his seniority in the post of Assistant in between Mr.C.B.Natarajan and Mr.R.Marimuthu, Assistants. Similarly, by another proceedings dated 13.9.2008, the Vice Chancellor appointed Mr.M.Suresh as Assistant by conversion of service from Steno-Typist Grade III with a direction to fix his seniority in the post of Assistant in between Mrs.G.Madhavi, and Mr.M.Somasundaram, Assistants and accordingly the petitioners also joined the post of Assistant on and from the said dates.

3. Continuing his arguments, the learned senior counsel submitted that within two months, the Vice Chancellor cancelled the order dated 29.12.2006 issued to Mr.R.Arivazhagan from transfer of service as Steno-Typist Grade III with effect from 29.12.2006. Later on the Government also issued G.O.Ms.No.121, P & AR Department dated 18.5.2007, referring to the earlier Government Orders in G.O.Ms.Nos.256, 284, 417 and 34 as mentioned above, directing that Steno-Typist Grade II and Grade I also be provided option for promotion as Superintendent, making it clear that if any one gives option, the said option once exercised is clearly irrevocable. Following the same, one another G.O.Ms.No.47, P & AR Department dated 12.3.2008 was issued providing for 5% reservation in the post of Superintendent for Steno typist Grade II and Grade I and the seniority shall be provided under Rule 35(aa) of the General Rules for the Tamil Nadu State and Subordinate Service Rules. While the petitioners were working as Assistants in the respondent University, finding that their seniority have not been fixed in accordance with the rules, they made objections stating that their seniority in the post of Assistant should be re-fixed from the date of their joining the Steno-Typist post as per Rule 35(aa) of the General Rules for the Tamil Nadu State and Subordinate Service Rules along with the relevant Government Orders made thereunder, wherein the Government have ordered that the seniority in the post of Steno typist Grade III on transfer as Assistant should be fixed with reference to the abovesaid Rules and accordingly requested the first respondent to refix their seniority in the post of Assistant. Since no order was passed by the respondent University for a long period, the second respondent finally by orders dated 26.10.2010 and 4.6.2010 rejected their request stating that there is no provision in the service statues of the University for transfer of service from the post of Steno-Typist to the post of Assistant and the orders issued by the Government in G.O.Ms.No.34, P & AR Department dated 21.2.2001 is not applicable for the University, but only for the ministerial service of the Government of Tamil Nadu. When the petitioners were about to challenge the above rejection orders, a memorandum dated 8.6.2011 was issued by the respondent University stating that their appeals were placed before the 203rd meeting of the

Governing Council held on 24.5.2011, in which it was resolved that show cause notices be served on the petitioners as to why not they be reverted to the post of Steno-Typist Grade III from the post of Assistant (now Assistant Section Officer), since the conversion given to them has no legal sanctity. Besides, no approval or ratification from the Governing Council of the University was obtained. In the said memorandum, it was also indicated that the G.O.Ms.No.34, P & AR Department dated 21.2.2001 is applicable only for appointments made through TNPSC to the ministerial service and not to the University and the same was also clarified by the Government vide letter dated 22.8.2003 stating that there is no provision in the statutes of the University for transfer of service from Steno-Typist Grade III to Assistant Section Officer. On this basis it was also indicated that they will have to be reverted back to the Selection Grade Steno-Typist Grade III from Assistant Section Officer and accordingly, they were called upon to submit their explanation within seven days.

4. The learned senior counsel, assailing the memorandum dated 8.6.2011 as well as the rejection orders dated 26.10.2010 & 4.6.2010 respectively, which are impugned in W.P.Nos.13741 & 13742 of 2011, submitted that the approach adopted by the respondent University to revert the petitioners after rendering nearly three/five years of service as Assistant Section Officer is arbitrary, illegal and unsustainable in law, for the reason that when the petitioners were working from the date of their appointment as Steno-Typist Grade III, it is the University which called for option from them for transfer of service from the post of Steno-Typist Grade III to the post of Assistant Section Officer referring to the Government Order in G.O.Ms.No.34, P & AR Department dated 21.2.2001 stating that if any option is given, the same shall be irrevocable. Moreover, when the said Government Order also made it clear that 5% of vacancies in the post of Assistant is reserved for appointment by transfer, the petitioners acted on the said promise and gave their option for transfer of service to the post of Assistant. Therefore, it is not open to the respondent University now to go back on their promise citing administrative reasons. Although the statutes of the University failed to provide for transfer of service till now, the General Rules and the Government Order in G.O.Ms.No.34 dated 21.2.2001 referred to above have been followed by the University and several other persons converted earlier on transfer of service basis are working as Assistant Section Officers/Section Officers/Superintendents/Assistant Registrars/Deputy Registrars. While so, picking out the petitioners alone with a view to revert them as Steno-Typist Grade III is absolutely arbitrary and unjust. When Rule 35(aa) of the General Rules for Tamil Nadu State and Subordinate Service Rules clearly states that the seniority of a person in a service shall be determined with reference to the date on which

he is appointed to the service or from the date on which he joins duty, the respondents after obtaining option by citing G.O.Ms.No.34 dated 21.2.2001 is bound to act on Rule 35(aa) by counting their service from the date of initial appointment for further promotion. Again referring to clause 27 of the service statutes of the University, the learned senior counsel submitted that when the statutes of the University are silent insofar as the fixation of seniority in the event of transfer of service, the corresponding rules of the Government will apply unless otherwise it is decided by the Governing Council. While so, as a matter of fact, when G.O.Ms.No.47, P & AR Department dated 12.3.2008 specifically provides the application of Rule 35(aa) for determining the seniority in the post of Superintendent when the appointment is made from Steno-Typist Grades I and II, the said Government Order has been accepted by the Governing Council of the University in their resolution dated 18.9.2014 in the case of Mr.R.Pattuselvam and orders were issued by the University on 22.12.2014. Therefore, the petitioners who are also similarly placed are entitled to get their seniority in the post of Assistant Section Officer (formerly known as Assistant) with reference to their joining the service as Steno-Typist from 8.9.97 and 30.8.93 respectively. Therefore, no prejudice would be caused to any of the private respondents in case of granting such seniority to the petitioners. In the meanwhile, since the seniority list of Assistant Section Officers for the year 2012 was served on the petitioners by placing them in Serial Nos.31 and 14 respectively by the order dated 20.1.2012 passed by the Vice Chancellor of the University, they have challenged the said order in the subsequent W.P.Nos.10050 & 10051 of 2012 on the ground that they have been placed far below their juniors (contesting private respondents) taking into account the date of transfer of service as Assistant Section Officer and not from the date of appointment in the feeder category. So far as the bar for further promotion sought to be imposed on Mr.M.Suresh is concerned in the order dated 20.1.2012, the learned senior counsel submitted that the same is arbitrary, illegal and contrary to the G.O.Ms.No.242, Higher Education (B1) Department dated 18.12.2012, for the reason that the said Government Order is applicable to all public sector undertakings and statutory bodies. While so, the petitioner, Mr.M.Suresh, having completed his 10th Standard and thereafter underwent the three years diploma course in Commercial practice conducted by the State Board of Technical Education and Training, Department of Technical Education, Government of Tamil Nadu and thereafter again joined the two year B.Com. course in Madurai Kamaraj University in regular stream and completed the same, it goes without saying that the petitioner has completed the 10+3+2 years of education. Moreover, 10+3+2 has been evaluated by the expert committee and found to be equal to 10+2+3 and on the basis of such evaluation of qualification, the State Government also issued G.O.Ms.No.242, Higher Education (B1) Department

dated 18.12.2012. Besides, the very same G.O.Ms.No.242 dated 18.12.2012 also has been followed in the case of R.Pattuselvam for his promotion from the post of Steno-Typist Grade I to the post of Superintendent. Therefore, in the case of Mr.M.Suresh, who is fully qualified, since he has completed 10+3+2 years of education, the respondent University is bound by the said G.O.Ms.No.242. In support of his submissions, he has also placed reliance on an order passed by me in W.P.(MD) No.8384 of 2015 dated 5.10.2015 (M.Balusamy v. The Director, Rural Development and Panchayat Raj Department and others), wherein I have held that since G.O.Ms.No.242, Higher Education (B1) Department dated 18.12.2012 specifically states that the diploma certificate obtained from Open University is equivalent to regular stream and the same is eligible for employment and promotion, he pleaded that the same has to be applied to the case of Mr.M.Suresh also.

5. Mr.N.G.R.Prasad, learned counsel appearing for the contesting private respondents, asking the petitioners to submit their explanation as to why they should not be reverted back to the parent cadre, has submitted that when the Government had issued G.O.Ms.No.284, P & AR Department dated 19.8.92, the post of Steno-Typist was re-designated as Steno-Typist Grades I, II & III as ordered in G.O.Ms.No.256. Subsequently, another G.O.Ms.No.883, Finance Department dated 19.11.92 was issued extending the benefit of G.O.Ms.Nos.256 & 284 to the public sector undertakings subject to the undertaking that the revision of scale of pay and the redesignation shall take effect from the date of approval by the boards. The above Government Orders were placed before the Finance Committee meeting held on 13.2.97. After considering the proposal, the Finance Committee revised the pay scale for them and also recommended to the Governing Council for grant of the pay scale of Rs.1200-2040 from the date of approval by the Council. The same was also approved by the Governing Council on 14.3.97, as a result the amendment was also carried out in the Statute 16(1) of the service statutes of the University, which provided that the scale of pay admissible to various posts in the University shall be the same as applicable to the equivalent posts in the Government of Tamil Nadu from time to time. Thereafter the Steno-Typist got segregated from the category of Assistant and provided for a separate line of promotion with effect from 3.7.97. While so, the petitioners, having accepted the separate line of promotion and revision of pay, cannot now take advantage for transferring their service to the administrative side, because there is no provision in the service statutes of the University for transfer of service from Steno-Typist Grade III to the post of Assistant Section Officer. In the meanwhile, the petitioners, based on the representation dated 13.9.2006, were transferred from the post of Steno-Typist Grade III to the post of Assistant Section Officer vide G.O.Ms.No.34 dated 21.2.2001. Later on it was found that the

said G.O.Ms.No.34 dated 21.2.2001 was not applicable to the respondent University and it was applicable only to those candidates who have been recruited through TNPSC for ministerial service and the same also has been clarified in the Government letter dated 22.8.2003. It is at this juncture, the private respondents made representations to the respondent University objecting for transfer of the petitioners from the post of Steno-Typist Grade III to Assistant Section Officer. After some time, considering the fact that G.O.Ms.No.34 cannot be made applicable to the petitioners, who have not been recruited through TNPSC, the respondent University, finding that there is no provision for transfer of service from Steno-Typist Grade III to the post of Assistant Section Officer, issued the impugned show cause notices calling for explanation as to why they should not be transferred back to the post of Steno-Typist Grade III from the post of Assistant Section Officer. When the respondent University is perfectly justified in issuing the impugned show cause notices on the ground that the conversion to Assistant Section Officer has no legal basis and that the same also was not approved or ratified by the Governing Council, the petitioners should submit their explanation. Therefore, the writ petitions filed by the petitioners should be dismissed directing them to submit their explanation. He also submitted that the petitioners have misplaced the vital aspect that the option given by them for transfer from the post of Steno-Typist Grade III to the post of Assistant Section Officer as per G.O.Ms.No.34 dated 21.2.2001 was subject to the approval by the Governing Council of the University. Having chosen to take the line of promotion in the Steno-Typist cadre, cannot now jump to the administrative cadre after getting promotion in the parent cadre. Moreover, there is no provision in the service statues of the University for transfer from the Steno-Typist cadre to the administrative cadre. In any event, the Governing Council of the respondent University being the highest body, unless their transfer from the post of Steno-Typist Grade III to Assistant Section Officer is approved on the basis of the relevant rules, they cannot claim any seniority. Therefore it is better for them to go back to the parent cadre. Concluding his arguments, reiterating the submissions, he pleaded that when the initial transfer from Steno-Typist Grade III to administrative cadre has not been ratified by the Governing Council of the respondent University, any number of years put in by the petitioners in the transferred cadre will not confer them any right. Hence he pleaded that the writ petitions should be dismissed as devoid of any merit.

6. Mr.S.Gomathinayagam, learned Additional Advocate General appearing for the respondents 1 & 2, forcibly contended that the writ petitions filed by the petitioners are not maintainable, for the simple reason that when the writ petitioners requested

the University to refix their seniority in the post of Assistant (now designated as Assistant Section Officer), as per Rule 35 (aa) of the General Rules for Tamil Nadu State and Subordinate Service Rules, an agenda was placed before the 203rd meeting of the Governing Council held on 24.5.2011 and finally it was rejected by the Governing Council. Since the Governing Council of the University is the highest authority, as per clause 27 of the service statutes of the University, the decision of the Governing Council on all questions and interpretations of these statutes shall be final. Therefore when the Governing Council, after rejecting the request of the petitioners to reckon the services rendered by them from the date of their appointment, has decided to issue show cause notices, the question of considering Rule 35(aa) of the General Rules for Tamil Nadu State and Subordinate Service Rules does not arise. Since only these two petitioners were converted from the post of Steno-Typist Grade III to the post of Assistant (now designated as Assistant Section Officer), as against the show cause notices, the petitioners cannot come to this Court, therefore they should be directed to submit their explanation, because the University has not passed any final orders in the above issue with a pre-determined mind to revert them from the post of Assistant Section Officer to Selection Grade Steno-Typist Grade III. Adding further the learned Additional Advocate General submitted that initially when Mr.R.Arivazhagan was appointed as Steno-Typist Grade III on 30.8.93 and Mr.M.Suresh was appointed as Steno-Typist Grade III on 8.9.97, there was no provision in the service statutes of the University for transfer of service from the post of Steno-Typist Grade III to the post of Assistant (now designated as Assistant Section Officer). Only on 7.7.2006, on a mistaken impression of the G.O.Ms.No.34, P & AR Department dated 21.2.2001, which is not applicable to the University and it is applicable only for appointment made through the Tamil Nadu Public Service Commission for ministerial service, the respondent University has wrongly sought for option from the writ petitioners as to whether they opt for promotion to the post of Steno-Typist Grade II or to work as Assistant on transfer of service. Although G.O.Ms.No.34, P & AR Department dated 21.2.2001 was issued for transfer of service from Steno-Typist Grade III to Assistant in the Government service, the said Government Order is not applicable for implementation in this University, because all the staff were recruited by the University only by the candidates sponsored by the employment exchange/direct recruitment and not by the Tamil Nadu Public Service Commission to consider them as ministerial service. When it was found that the G.O.Ms.No.34 dated 21.2.2001 is not applicable to the respondent University, this position was also clarified in the Government letter dated 22.8.2003. Therefore, representations were made objecting for the transfer of the petitioners' service from the post of Steno-Typist Grade III to the post of Assistant Section Officer and also not to fix their

seniority based on the initial date of joining the University service.

7. Emphatically emphasising further that the petitioners are not entitled to ask for reckoning their service by applying Rule 35(aa), the learned Additional Advocate General submitted that there is no provision in the service statutes of the University providing for transfer of service from Steno-Typist Grade III to the post of Assistant. Moreover, so far no amendment has been made in the service statutes with regard to the above said transfer of service. Therefore, when the transfer of service itself is not valid and the transfers are against the provisions of the service statutes of the University, the representations dated 4.6.2010 and 26.8.2010 made by the petitioners seeking re-fixation of their seniority in the post of Assistant with reference to the date of joining the post of Steno-Typist as per Rule 35(aa) of the General Rules for Tamil Nadu State and Subordinate Service Rules, is far from acceptance. Hence the representations were rejected vide memorandum dated 26.10.2010 and 18.11.2010, giving a specific reason that there is no provision in the service statutes of the University for transfer of service from the post of Steno-Typist to the post of Assistant and this apart, when it has been made clear that the G.O.Ms.No.34, P & AR Department dated 21.2.2001 is not applicable for this University, but for the ministerial service of the Government of Tamil Nadu only, the request of the petitioners regarding revision of seniority in the cadre of Assistant (now Assistant Section Officer) is wholly misconceived. Moreover, when the subsequent memorandum dated 1.12.2010 was issued to them refusing to accept their request, they have not challenged the said proceedings issued by the University, hence there is no illegality in the impugned show cause notices and the question of prefixing their seniority in the holding post of Assistant Section Officer does not arise at all. Adding further, the learned Additional Advocate General submitted that when an appeal was made by the petitioners to the Governing Council on 5.5.2011 by invoking the provisions of Section 12(5) of the Tamil Nadu Dr.M.G.R.Medical University Act, 1987 to consider their grievance for revision of seniority in the cadre of Assistant Section Officer, again an agenda was placed before the Governing Council in its 203rd meeting held on 24.5.2001. When the entire facts including the rule provision under Rule 35(aa) of the General Rules for Tamil Nadu State and Subordinate Service Rules were placed for the decision of the Governing Council, the Governing Council, after perusing the entire facts, rejected the request of the petitioners and decided to issue the show cause notices to them, hence the question of considering Rule 35(aa) does not arise. Moreover, when the petitioners were given conversion not based on G.O.Ms.No.34 dated 21.2.2001, three other persons, namely, Mrs.S.S.Sudha, Mrs.M.Sumathi and Mrs.A.B.Shaheen Begum also made

representations to confer them as Assistant Section Officers from the post of Steno-Typist Grade III and their request was also placed before the 201st meeting of the Governing Council held on 25.1.2011 and the Governing Council in its resolution No.29 resolved not to approve the request for transfer of service from Personal Assistant to Assistant Section Officers, since there is no provision in the service statutes of the University and the same was also intimated to them in the memorandum dated 25.2.2011. While passing the rejection order against Mrs.S.S.Sudha, Mrs.M.Sumathi and Mrs.A.B.Shaheen Begum, the apparent mistake in converting Mr.R.Arivazhagan and Mr.M.Suresh as Assistant Section Officers were taken note of and accordingly the Governing Council decided to correct the conversion given to the petitioners so that their case will not be quoted as precedent in future. Therefore the arguments advanced by the learned senior counsel for the petitioners that having received their willingness to go on transfer to the post of Assistant Section Officer from the post of Steno-Typist Grade III on the basis of G.O.Ms.No.34, P & AR Department dated 21.2.2001 and on receipt of the petitioners' representations, it is not open to them to reject their request to apply Rule 35(aa) of the Tamil Nadu State and Subordinate Service Rules, are wholly misconceived, for the reason that there is no provision in the service statutes of the University for transfer of service from Steno-Typist to the post of Assistant.

8. Again at the risk of repetition, the learned Additional Advocate General for the respondents 1 & 2 submitted that G.O.Ms.No.34 dated 21.2.2001 is totally inapplicable to the University, it has been further clarified by the Government letter No.73950/B/2002-1 dated 22.8.2003, therefore the case of the petitioners, having been wrongly considered for conversion to the post of Assistant Section Officer, has been rightly rectified by the Governing Council in its 203rd meeting held on 24.5.2011, making it clear that the question of considering Rule 35(aa) of the General Rules for Tamil Nadu State and Subordinate Service Rules does not arise, for the reason that when a Government servant is transferred on his own request, such transferred employee will have to forgo his seniority till the date of his transfer and will be placed at the bottom below the junior most employee in the category or cadre or department. This is for the reason that a Government servant getting transferred to another unit or department for his personal considerations, cannot be permitted to disturb the seniority of the employees in that department to which he was transferred, by claiming that his service in the department from which he was transferred should be taken into account. Taking support from the judgment of the Apex Court in the case of K.P.Sudhakaran and another v. State of Kerala and others, (2006) 5 SCC 386, he has further submitted that in service jurisprudence, the general rule is that if a government servant holding a particular post

is transferred to the same post in the same cadre, the transfer will not wipe out his length of service in the post till the date of transfer and the period of service in the post before his transfer has to be taken into account in computing the seniority in the transferred post. But where a government servant is so transferred on his own request, the transferred employee will have to forgo his seniority till the date of transfer. It is relevant to extract paragraph-11 of the said judgment as follows:-

"11. In service jurisprudence, the general rule is that if a government servant holding a particular post is transferred to the same post in the same cadre, the transfer will not wipe out his length of service in the post till the date of transfer and the period of service in the post before his transfer has to be taken into consideration in computing the seniority in the transferred post. But where a government servant is so transferred on his own request, the transferred employee will have to forgo his seniority till the date of transfer, and will be placed at the bottom below the junior most employee in the category in the new cadre or department. This is because a government servant getting transferred to another unit or department for his personal considerations, cannot be permitted to disturb the seniority of the employees in the department to which he is transferred, by claiming that his service in the department from which he has been transferred, should be taken into account. This is also because a person appointed to a particular post in a cadre, should know the strength of the cadre and prospects of promotion on the basis of the seniority list prepared for the cadre and any addition from outside would disturb such prospects. The matter is, however, governed by the relevant service rules."

9. Applying the above observations, if the case of the petitioners is carefully seen, Mr.R.Arivazhagan and Mr.M.Suresh were appointed as Steno-Typist on 30.8.93 and 8.9.97 respectively. Initially the post of Steno-Typist was one of the categories along with the Junior Assistant and Typist for promotion to the post of Assistant. Therefore, the Steno-Typist was included in the promotion panel for Assistant along with the Junior Assistant. Moreover, even before the appointment of both the petitioners as Steno-Typist in the respondent University, Government of Tamil Nadu issued G.O.Ms.No.256, P & AR Department

dated 1.8.92 bifurcating the post of Typist/Steno-Typist under the Tamil Nadu Ministerial service. Secondly the scale of pay of Steno-Typist was revised from Rs.975-1660 to Rs.1200-2040 with effect from 1.8.92 and thereafter G.O.Ms.No.284, P & AR Department dated 19.8.92 was issued for redesignating the post of Steno-Typist as Steno-Typist Grades I, II and III as ordered in G.O.Ms.No.256 dated 1.8.92. Again by another G.O.Ms.No.883, Finance Department dated 19.11.92, the benefit was extended to the public sector undertakings subject to the condition that the revision of scale of pay and redesignation shall take effect from the date of approval by the boards. Therefore an agenda was placed in the Finance Committee meeting held on 13.2.97 and the Finance committee, after considering the proposal, had recommended for the revision of scale of pay for Steno-Typist as granted in G.O.Ms.No.256 dated 1.8.92. While doing so, it also made it clear that the grant of scale of pay of Rs.1200-2040 for Steno-Typist shall take effect from the date of approval by the Governing Council. However, the said recommendation was approved by the Governing Council in its 72nd meeting on 14.3.97 and an amendment was also carried out in Statute 16(1) of the service statutes, which provided that the scale of pay admissible to various categories of posts of the University shall be the same as applicable to the equivalent posts in the Government of Tamil Nadu from time to time. Based on the above amendment, the revised scale of pay to the Steno-Typist was given effect to from 3.7.97. While so, by proceeding dated 1.10.97, the pay of Steno-Typist which included the petitioners was fixed and consequently the post of Steno-Typist was split up from the category of Assistant and provided for a separate line of promotion for Steno-Typist with effect from 3.7.97. It is at this juncture the Government issued G.O.Ms.No.34, P & AR Department dated 21.2.2001.

10. In the light of the pleadings and the submissions made by the respective learned counsel for the parties, the question posed before the Court is whether the G.O.Ms.No.34, P & AR Department dated 21.2.2001 is applicable to the University or not. No doubt, when the said G.O.Ms.No.34, P & AR Department dated 21.2.2001 was issued giving the transfer of service from Steno-Typist Grade III to the post of Assistant (now designated as Assistant Section Officer), the Government of Tamil Nadu also by letter dated 22.8.2003 has further clarified that the seniority of the incumbents who were appointed on transfer of service as Assistants may be fixed by following Rule 35(aa) of the General Rules for Tamil Nadu State and Subordinate Service Rules. In view of the above, the respondent University also sought for option from the writ petitioners and other Steno-Typists calling upon them to exercise their option as to whether they would opt for promotion as Steno-Typist Grade II or to work as Assistant on transfer of service in terms of G.O.Ms.No.34 dated 21.2.2001, making it clear that once the option was

exercised, the same would be irrevocable. Accordingly the petitioners had exercised their option. Accepting their option, the respondent University appointed Mr.R.Arivazhagan as Assistant on 29.12.2006 by treating the same as promotion. Again the respondent University by following the same G.O.Ms.No.34 dated 21.2.2001 appointed Mr.M.Suresh Steno-Typist Grade III on 13.9.2008 as Assistant by conversion of service. Subsequently, both of them made representations to the University for reckoning their seniority in the post of Assistant from the date of entry into service from the cadre of Steno-typist Grade III, on the ground that the posts of Steno-typist and Assistant were in the same cadre. But their request for revision of seniority in the post of Assistant was rejected by the University by stating that G.O.Ms.No.34 dated 21.2.2001 is not applicable to the University, since it is applicable only to ministerial service servants of the Government of Tamil Nadu recruited through TNPSC. The rejection was made by the highest authority, namely, the Governing Council. It is therefore relevant to find out the effect of the show cause notices issued by the Governing Council, for which it is pertinent to extract the following provisions, namely, Sections 12(4), 12(5), 12(6), 12(7) and 12(9) of the Tamil Nadu Dr.M.G.R.Medical University Act, 1987 as follows:-

“12(4). The Vice-Chancellor shall have power to take action on any matter concerning the affairs of the University and may take such action as he may deem necessary but shall, as soon as may be, thereafter report the action taken to the officer or authority or body who or which would have ordinarily dealt with the matter:

Provided that no such order shall be passed unless the person, likely to be affected, has been given a reasonable opportunity of being heard.

12(5). When action taken by the Vice-Chancellor under sub-section (4) affects any person in the service of the University, such person shall be entitled to prefer an appeal to the Governing Council within thirty days from the date on which he has notice of such action. The Vice-Chancellor shall give effect to the order passed by the Governing Council on such appeal.

12(6). The Vice-Chancellor shall have powers to give effect to the decisions of the Governing Council.

12(7). The Vice-Chancellor shall have power to exercise control over the affairs of the University and shall be responsible for the

due maintenance of discipline in the University.

12(9). The Vice-Chancellor shall exercise such other powers and perform such other functions as may be prescribed by the statutes."

11. A closer look at Section 12(4) of the Tamil Nadu Dr.M.G.R. Medical University Act shows that the Vice-Chancellor of the University shall have power to take action on any matter concerning the affairs of the University. Again Section 12(5) spells out that when action taken by the Vice-Chancellor under sub-section (4) affects any person in the service of the University, such person shall be entitled to prefer appeal to the Governing Council and the Vice Chancellor shall give effect to the order passed by the Governing Council on such appeal. Now let us see the order passed by the Vice Chancellor in favour of Mr.R.Arivazhagan dated 29.12.2006, in which the Vice Chancellor of the University has stated that Mr.R.Arivazhagan along with others, who are working as Junior Assistants/Typists/Steno-Typist Grade III of this University, are included in the panel for the post of Assistant for the year 2006 and the said panel was valid for a period of one year from the date of issue of the order. Another proceeding dated 29.12.2006 issued by the Vice Chancellor also shows that Mr.R.Arivazhagan and 12 others were regularly promoted as Assistants in the existed and newly created vacancies in the time scale of pay of Rs.4000-6000 with effect from the date of their joining and they would take their seniority in the post of Assistant below Mrs.N.Ananthi, Assistant. By another proceeding dated 14.2.2007, the Vice Chancellor of the University has stated that as per the G.O.Ms.No.34, P & AR Department dated 21.2.2001 and on the willingness of Mr.R.Arivazhagan, he is appointed as Assistant by transfer of service from Steno-Typist Grade III. The proceeding further states that he shall take his seniority in the post of Assistant in between Mr.C.B.Natarajan and Mr.R.Marimuthu, Assistants. By yet another proceeding dated 13.9.2008 passed by the Vice Chancellor of the University, it is seen that on the basis of G.O.Ms.No.34 dated 21.2.2001 and in pursuance of the willingness of Mr.M.Suresh, he has been appointed as Assistant by conversion of service from Steno-Typist Grade III. The said proceeding further stated that he shall take his seniority in the post of Assistant in between Mrs.G.Madhavi and Mr.M.Somasundaram, Assistants.

12. When the matter stood as above, the seniority list of Assistants of the University was published on 27.4.2010 showing Mr.R.Arivazhagan in Serial No.26 and Mr.M.Suresh in Serial No.44. It is at this juncture, the Registrar of the University issued the memorandum dated 4.6.2010 and 26.10.2010 rejecting the request of the petitioners for refixing their seniority in

the post of Assistant from the date of their joining the University as Steno-Typist as not feasible of compliance, citing the reasons that the order issued by the Government in G.O.Ms.No.34, P & AR Department dated 21.2.2001 is not applicable for the University, but for the ministerial staff of the Government of Tamil Nadu only; that there is no provision in the service statutes of the University for transfer of service from the post of Steno-Typist to the post of Assistant and that though they are not eligible for transfer of service for the post of Assistant, due to administrative reasons, they were converted as Assistants and placed in the seniority list under Mr.C.B.Natarajan and Mrs.G.Madhavi respectively. Even after repeated rejection of the requests of Mr.R.Arivazhagan by orders dated 18.11.2010 and 1.12.2010, he preferred appeal to the Governing Council of the University by invoking Section 12(5) of the Act to consider his grievance and to refix his seniority accordingly in the cadre of Assistant Section Officer. Therefore an agenda was placed before the 203rd meeting of the Governing Council held on 24.5.2011 to decide on the appeal given by Mr.R.Arivazhagan, Assistant Section Officer. The Governing Council, analysing the entire facts leading to Rule 35(aa) of the General Rules for Tamil Nadu State and Subordinate Service Rules, have come to the conclusion that the conversion from the post of Steno-Typist Grade III to the post of Assistant Section Officer given to Mr.R.Arivazhagan and Mr.M.Suresh on transfer of service has no legal standing, for the reason that the said G.O.Ms.No.34, P & AR Department dated 21.2.2001 is not applicable to the University, as this has been clarified by the Government in its letter dated 22.8.2003. Again the said proceedings have stated that there is no provision in the University statutes of the University for transfer of service from the post of Steno-Typist Grade III to the post of Assistant Section Officer. The said proceeding also made it clear that the conversion given to them has not been approved or ratified by the Governing Council of the University. On this basis they were given show cause notices as to why they should not be reverted back as Selection Grade Steno-Typist Grade III, since the conversion given to them has no legal standing and has not been approved or ratified by the Governing Council. When it is the consistent stand of the respondent University that the G.O.Ms.No.34 dated 21.2.2001 is not applicable to the University; that there is no provision in the service statutes of the University for transfer of service from Steno-Typist Grade III to Assistant Section Officer and that the conversion given to them has not been approved or ratified by the Governing Council, the petitioners cannot ask for refixation of their seniority in the post of Assistant Section Officer as per Rule 35(aa) of the General Rules for Tamil Nadu State and Subordinate Service Rules.

13. As rightly argued by the learned Additional Advocate General for the respondents 1 & 2, since the petitioners had voluntarily accepted and given option to be transferred as Assistants on the basis of G.O.Ms.No.34 dated 21.2.2001, which has been held to be not applicable in view of the non-provision in the service statutes of the University, the claim of reckoning the previous service in the post of Steno-Typist Grade III for determining the seniority in the higher post of Assistant cannot be accepted. Further, while considering a similar and almost an identical issue in the case of Tamil Nadu Rural Development Engineers Association v. Secretary to Government, Rural Development Department and others, (2013) 15 SCC 380, the Apex Court ruled that the benefit of previous service on lower post for determining the seniority of higher post cannot be granted, since the incumbents have willingly exercised their option to be absorbed in the higher post. Accordingly, in paragraphs 43 & 44, the Apex Court held as follows:-

"43. Since the process of direct recruitment to the post of Assistant Engineer in the RD Department was initiated by TNPSC vide Notification dated 26.9.1997, the rules under Notification IV in respect of Assistant Engineer were declared to be deemed to have come into force on 26.9.1997. This was necessary to regularise the action taken to recruit Assistant Engineers for the RD Department, directly through TNPSC on the basis of the executive order. It is, however necessary to clarify that such retrospective operation of the rules did not confer any benefit whatsoever on the direct recruits in the matter of seniority. The seniority of the respondents has been reckoned with reference to the date of appointment on the post. This is a well recognised general principle of computing seniority and no exception can be taken to it. In fact, the service of the appellants has been counted from 1997 i.e. from the time when they started serving as Overseers in the RD Department on deputation from the Highways Department under GOMs.No.263 dated 27.12.1996.

44. The appellants having voluntarily opted to be absorbed in the RD Department, without any protection of their previous service, cannot now be permitted to make a grievance that they have not been treated on a par with the direct recruits. We have noticed above that the direct recruits joined

on the post of AE. The appellants, even though some of them possessed the degree qualification, were absorbed on the post of Overseer. They were working on the post of Overseer in the Highways Department, the parent department, even though they were degree-holders. As noticed earlier, they were stagnating in the Highways Department without any prospect of career advancement. They, therefore, willingly gave the option to be absorbed in the RD Department as Overseers, even though they possessed the degree qualification. Having given the option to be absorbed in RD Department on the post of Overseer, their claim for absorption as AE is without any legal or factual justification."

14. The above observations clearly would show that when the petitioners' absorption as Assistants is without any legal justification, in view of the fact that there is no provision in the service statutes of the University for transfer of service from Steno-Typist Grade III to Assistant Section Officer; that the conversion given to them has not been approved or ratified by the Governing Council of the University and that the G.O.Ms.No.34, P & AR Department dated 21.2.2001 is not applicable to the University, their request for refixation of seniority on the basis of Rule 35(aa), is absolutely unfair. However, while turning to the last question whether they should be reverted back to the post of Steno-Typist Grade III, it has to be made clear that the petitioners cannot be reverted back to the post of Steno-Typist Grade III. At the risk of repetition, it may be mentioned that Mr.R.Arivazhagan and Mr.M.Suresh were serving as Steno-Typist Grade III from 30.8.93 and 8.9.97 respectively and only the University, on the basis of G.O.Ms.No.34 dated 21.2.2001, sought for option from them on 7.7.2006 as to whether they would opt for promotion as Steno-Typist Grade II or to work as Assistant on transfer of service, by making it clear that once an option is exercised, the same would be irrevocable. Accordingly, the petitioners have exercised their option and on that basis Mr.R.Arivazhagan was appointed as Assistant on 29.12.2006 by treating the same as promotion and Mr.M.Suresh was appointed as Assistant on 13.9.2008. In this context, it is also useful to refer to the proceedings dated 14.2.2007 issued by the Vice Chancellor of the University in respect of Mr.R.Arivazhagan, as follows:-

"Proc.No.EI(2)/44314-8/2006 Dated: 14.02.2007

Sub:Establishment-The Tamil Nadu Dr.M.G.R.Medical University, Chennai - Thiru R.Arivazhagan, S.G.Steno-typist - Appointment as Assistant - Revised Orders - Issued.

Ref:1.G.O.Ms.No.34, Personnel and Administrative Reforms (B) Department, dated 21.2.2001.

2.Letter dated 13.9.2006 from Thiru R.Arivazhagan, S.G.Steno-Typist, Gr.III.

3. This Uty.Proc.No.EI(2)/44314/2006 dated 29.12.2006.

4. This Uty.Order No.22/2006 dated 29.12.2006 and

RC No.EI(2)/44314/2006

5.Letter dated 29.12.2006 from Thiru R.Arivazhagan, S.G.Steno-typist Gr.III.

ORDER:

The orders issued to Thiru R.Arivazhagan, then Selection Grade Steno-typist Gr.III in the reference 3rd cited is so far as it relates to him is hereby cancelled.

2) As per the G.O. 1st cited and in continuance of the willingness of Thiru R.Arivazhagan in the ref.2nd cited, he is appointed as Assistant by transfer of service from Steno-typist Gr.III.

3) The said individual has joined in the transferred post of Assistant on the afternoon of 29.12.2006. The individual shall take his seniority in the post of Assistant in between Thiru C.B.Natarajan, Assistant and Thiru R.Marimuthu, Assistant.

Sd/-
Vice Chancellor"

15. In the light of the above, since the Vice Chancellor of the University, in his order dated 14.2.2007, had accepted the willingness of the petitioners to be appointed as Assistants on transfer of service from Steno-typist Grade III, they cannot be reverted back to the same post after such a long time, however, they are entitled to count their seniority only from the date of joining as Assistant Section Officers and not from the date of appointment in the feeder category. Needless to mention that for the purpose of pension, they are entitled to reckon the service

in the post of Steno-Typist Grade III. Accordingly, the impugned reversion notices dated 08.06.2011 are hereby set aside. Hence, W.P.Nos.13741 and 13742 of 2011 are allowed in part. The prayer in W.P.Nos.10050 and 10051 of 2012 seeking to refix the seniority of the petitioners in the post of Assistant Section Officer from the date of first appointment as Steno-Typist Grade-III is refused with the observation mentioned. Accordingly, W.P.Nos.10050 and 10051 of 2012 are disposed of. Consequently, the connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ss
To

1. The Vice Chancellor
The Tamil Nadu Dr.M.G.R.Medical University
Mount Road, Guindy,
Chennai 600 032
2. The Registrar
The Tamil Nadu Dr.M.G.R. Medical University
Mount Road, Guindy
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+4ccs to Mr.Harihara Arun, Advocate, S.R.No.31152, 31153, 31154, 31155
+4ccs to Mr.A.L. Ganthimathi, Advocate, S.R.No.31081, 31082
+3ccs to M/s. Row & Reddy, Advocate SR.31034,

SKS (CO)
EU(22/06/2016)

W.P.Nos.10050 of 2012 etc.

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