

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :21.09.2017

CORAM

THE HON'BLE MR.JUSTICE RAJIV SHAKDHER
AND
THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.13973 of 2011
and M.P.No.1 of 2011

K.Rajamanickam ... Petitioner

Vs.

1.The Registrar General,
High Court, Madras - 104

2.Secretary to the Government,
Government of Tamil Nadu,
Personnel & Admn. Reforms Department,
Fort St. George, Chennai - 600 009. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India seeking Writ of Mandamus, to direct the respondents to take into account the period of services rendered by the petitioner in Tamil Nadu Administrative Tribunal between 18.10.1995 and 17.10.2005 also for the purpose of conferring Selection Grade and to consequently grant Selection Grade in the post of P.A. to Hon'ble Judges and to extend all benefits arising thereto forthwith.

For Petitioner : Mr.L.Chandrakumar
For Respondents : Mr.B.Vijay for R1
Mr.P.S.Shivashanmugasundaram
Special Govt. Pleader for R2

ORDER

(Order of the Court was delivered by Rajiv Shakdher, J.)

1.This is a writ petition, in which the relief sought is: for issuance of Mandamus to the respondents, to take into account the period of services rendered by the petitioner in the Tamil Nadu Administrative Tribunal between 18.10.1995 and 17.10.2005, for the purpose of conferring on him the benefit of Selection Grade. Consequential relief has also been sought,

which is, to grant Selection Grade to the petitioner while he held the post of Personal Assistant (in short "P.A.") to the Judges of this Court. In addition, direction is also sought that all related benefits be extended to the petitioner.

2. In order to adjudicate upon the writ petition, the following, broad, facts are required to be noticed:

2.1. The petitioner was temporarily appointed as Steno Typist, on 01.11.1982, in the District Munsif's Court, at Namakkal. His service in the category of Steno Typist was regularized on 25.06.1984. A declaration with regard to satisfactory completion of probation by the petitioner was made on 07.07.1986.

2.2. The petitioner, was appointed via transfer as P.A. to the Judges of this Court, on 17.09.1990. The petitioner, served in the post of P.A. till 07.06.1993.

2.3. It appears that the petitioner was recruited via transfer as a Steno Typist - Grade III with the Tamil Nadu Administrative Tribunal (in short "Tribunal"), on 01.12.1993.

2.4. To be noted, in the interregnum i.e., between 07.06.1993 and 01.12.1993, the petitioner had worked in the District and Labour Court in Salem, in the post of Steno Typist.

2.5. In the Tribunal, the petitioner was temporarily promoted to the post of Court Master, on 27.04.1994. Thereafter, the petitioner was, once again, temporarily promoted as Private Secretary, albeit, in the Tribunal on 18.10.1995.

2.6. The record shows that consequent to the abolition of the Tribunal, the petitioner was transferred as P.A. to the Judges of this Court, on 15.11.2006. We are told that the petitioner retired as P.A. to the Judges of this Court, on 30.04.2016. As would be evident from the relief sought in the writ petition, the petitioner requires the respondents to take into account the period which he spent in the Tribunal between 18.10.1995 and 17.10.2005, in the post of a Private Secretary.

3. The respondent No.1, i.e., the Registrar General of this Court takes a stand that the petitioner was in the first instance temporarily promoted to the post of Court Master on 27.04.1994, at which point of time he was not fully qualified. The lack of qualification, according to the respondent No.1, emanates from the fact that in terms of Rule 8 read with schedule II, of Tamil Nadu Administrative Tribunal Service Rules, 1992 (in short "1992 Rules"), the petitioner was required to have a qualifying service of five (5) years in the feeder post (which was a Stenographer post), whereas, at the relevant

point in time, he had completed only two (2) years.

4.It is further stated, that likewise, when the petitioner was temporarily promoted to the post of Private Secretary while he was deployed in the Tribunal he did not possess the necessary qualifying service as required under Rule 8 read with schedule II of Rule, 1992. According to the counsel, the petitioner was required to put in a minimum period of two (2) years of service in the feeder category, which could be, either of the two i.e., P.A. or Court Master.

5.Mr.Vijay, who appears for respondent No.1, says that the petitioner would have fulfilled the qualifying service criteria in the post of Court Master on 01.12.1998 and, similarly, in the post of Private Secretary on 01.12.2000. Mr.Vijay, further, says that a proposal for regularizing the petitioner's service in the post of Private Secretary, while he was in the Tribunal, was sent to the Government of Tamil Nadu i.e, respondent No.2, which was rejected vide communication dated 17.06.1996.

5.1.Similarly, insofar as the regularization of the petitioner's service in the post of Court Master was concerned, the Government of Tamil Nadu, i.e, respondent No.2 rejected the same vide communication dated 27.01.1997.

5.2.It is thus, submitted, given these circumstances, the petitioner's plea in the writ petition that the service rendered by him in the Tribunal between 18.10.1995 and 17.10.2005 should be regularized in order to confer the benefit of Selection Grade on him, cannot be accepted.

6.Mr.L.Chandrakumar, learned counsel, who appears for the petitioner, says that the issue raised in the instant writ petition with regard to regularization of period of service spent by the petitioner as Private Secretary, while, working in the Tribunal is no longer res integra in view of the decision rendered by a Division Bench of this Court, on 05.10.2010, in W.P.(MD) No.3993 of 2008 titled: G.Balakrishnan vs. The Registrar General, High Court Madras. Learned counsel submitted that the Division Bench in similar circumstances has granted relief to the concerned writ petitioner.

6.1.Given, these circumstances, we had asked Mr.Vijay, as to why relief had not been extended by respondent No.1 to the petitioner herein. Mr.Vijay, informs us that since the proposal sent for regularization was rejected by the Government, the petitioner's case was distinguishable from that, in which, the Division Bench had rendered a decision. We had also queried Mr.Vijay, as to whether the aforementioned decision of the Division Bench, had been challenged by preferring an appeal with

the Supreme Court. Mr.Vijay, confirms that the decision of the Division Bench, referred to above, was not carried in appeal to the Supreme Court.

7. According to us, the distinction which is sought to be drawn by respondent No.1 in respect of the petitioner's case and that of G.Balakrishnan's matter is of no consequence as the Government vide their communications dated 17.06.1996 and 27.01.1997, had declined the request for regularization of service in view of the position obtaining under the 1992 Rules. It is not disputed before us, by respondent No.1, that the petitioner had served as Private Secretary in the Tribunal, between 18.10.1995 and 17.10.2005.

7.1. The fact that the Government Order, by which, Selection Grade is conferred on an employee is dependent only on the period of service put in by the concerned employee being satisfactory is not disputed before us by the respondents. The only impediment which is put against the petitioner in being conferred with the benefit of Selection Grade is that he did not have, at the relevant point in time, the necessary qualifying service to his credit in the feeder post, when he was promoted, albeit temporarily, to the next higher post.

7.2. This gap, was sought to be fulfilled by respondent No.1 by sending a proposal to the Government to relax the rigour of this provision. That the Government had the necessary power to relax the rigour of the provision is not disputed before us.

8. The petitioner claims, though, that the Government's communication dated 17.06.1996 and 27.01.1997, was never brought to his knowledge, and that, these were in fact, internal communications exchanged between two authorities i.e., respondent Nos.1 and 2.

9. Given these circumstances, the petitioner says, he cannot be denied relief as he had no opportunity to assail the said communications issued by the Government. In other words, the submission is that relief cannot be denied to the petitioner only on account of this circumstance.

10. Having regard to the foregoing circumstances, the parity in treatment sought for by the petitioner with G.Balakrishnan's case, in our opinion, cannot be denied to him. The petitioner was given no opportunity to canvass his case before the Government/ respondent No.2 or to assail the rejection of proposal made to it by respondent No.1. The petitioner had no knowledge of the proposal sent by respondent No.1 to respondent No.2. The similarity in circumstance between the petitioner's case and that which obtained in G.Balakrishnan's matter is demonstrable from the following observations made by the Division Bench in paragraph Nos.11 and 14 of its judgement:

"...11. It is the admitted fact that the pay structure is the same for both the posts of Private Secretary in Tamil Nadu Administrative Tribunal and P.A. to the Hon'ble Judges, High Court, Madras and there is also not much difference in the nature of work between these posts. Even as per the first respondent, it is only because of non regularization in the post of Private Secretary in the Tribunal, the functions of the petitioner as Private Secretary should be only considered as temporary. It is further relevant to point out that there is no illegality in the appointment of the petitioner as Private Secretary while he was holding the post of Court Master and when he was transferred as P.A. to the Hon'ble Judges, High Court, Madras, there was no break in his service. It is also relevant to point out that while the petitioner was appointed by transfer as P.A. to the Hon'ble Judges, High Court, Madras, it was not as if the petitioner had suppressed anything about his service rendered by him either as Court Master or as Private Secretary in the Tamil Nadu Administrative Tribunal. It was only knowing the above said facts, the first respondent has appointed him to the High Court and therefore, in our considered view, it is not open to the first respondent now to deny the claim of the petitioner for award of Selection Grade only due to the reason that he was holding the post of Private Secretary in the Tribunal on temporary basis and subject to his regularization in the said post.

....

14. On reference to G.O.Ms.No.68 Personnel and Administrative Reforms (Per.M) Department dated 23.01.1986, especially guidelines (i) and (vi), we are of the considered view that simply because the services of the petitioner as Private Secretary in the Tamil Nadu Administrative Tribunal was not regularized, which was due to the administrative reasons, for which no motive can be attributed to the petitioner and his services rendered as Private Secretary in the said Tribunal cannot be ignored for the purpose of giving advancement to the Selection Grade. There is no element of selection involved in sanctioning such Grade, especially when the scale of pay for both the posts are one and the same and the nature of work is similar. Therefore, in our considered opinion, it cannot be said that the petitioner is not found fit to move to the post of Selection Grade P.A. to the Hon'ble Judges, High Court, Madras by also taking into account the services rendered by him in the Tamil Nadu Administrative Tribunal from 18.10.1995 to 13.01.2000. In such view of the matter, the impugned order is liable to be set aside."

(emphasis is ours)

7.1. Therefore, for the aforesaid reasons, given the peculiar circumstances of the case the relief sought for in the writ petition requires to be granted to the petitioner. It is ordered, accordingly. Consequently, the period between 18.10.1995 and 17.10.2005 will stand regularized. The petitioner will be given all consequential reliefs including the benefit of Selection Grade while he held the post of P.A. to the Judges of this Court. Resultantly, pending application shall stand closed. There shall be, however, no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

pam/vsm

To

1. The Registrar General,
High Court, Madras - 104
2. Secretary to the Government,
Government of Tamil Nadu,
Personnel & Admn. Reforms Department,
Fort St. George, Chennai - 600 009.

+1cc to Mr.L.CHANDRASEKARAN Advocate, S.R.No. 69582

+1cc to the Government Pleader, S.R.No. 70092

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TR(22/11/2017)