

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 09.10.2017

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH

AND

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

W.A.No.963 of 2017 &
C.M.P.No.13251 of 2017

1. The Commissioner of Rural Development
and Panchayat Raj,
Panagal Building,
4 and 5th Floor Jeenis Road,
Saidapet, Chennai-15.
 2. The District Collector,
Dharmapuri District, Dharmapuri. ... Appellants/Respondents
- versus
- S.Venkataramanan ... Respondent /Petitioner

Prayer: This Writ Appeal is filed under Clause 15 of the Letters Patent, against the order dated 21.07.2016 made in W.P.No.27916 of 2008 passed by the learned single Judge.

W.P.No.27916 of 2008:

Writ Petition filed under Article 226 of the constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the 1st respondent bearing Roc.No.94195/07/C2 dated 21.7.2008 confirming the order bearing Roc.No.48629/2006/K2 dated 30.6.2007 of the 2nd respondent herein and quash the same in so far it relates to the petitioner and further direct the respondents to reckon the seniority of the petitioner in the cadre of Assistant based on his feeder category of seniority list of Junior Assistant and consequently include the name of the petitioner in the panel of Assistant in the year 1995 with all consequential benefits such as retrospective promotion etc.

For Appellants : Mr.P.S.Sivashanmugasundaram,
Spl.G.P.
For Respondent : Mr.V.Raghavachari for
Mr.M.Narayanasamy

JUDGMENT
(Judgment of the Court was delivered
by Huluvadi G.Ramesh, J.)

This Writ Appeal has been directed against the order of the learned single Judge, dated 21.07.2016 made in W.P.No.27916 of 2008, in and by which, the claim of the respondent herein to reckon his seniority in the cadre of Assistant based on his feeder category of seniority list of Junior Assistant and to include his name in the panel of Assistant in the year 1995 with all consequential benefits, such as retrospective promotion etc., has been considered and granted the reliefs.

2. The respondent herein was appointed as Typist in Rural Development Department, Erode District on 6.5.1990 and transferred to Coimbatore District on his request on 6.8.1991. He was placed in the feeder category seniority list below the Typists who were the probationers. Thereafter, he was transferred from Coimbatore District to Dharmapuri District on mutual transfer in place of one Agastheeswaran and joined as Rural Welfare Officer, Grade II on 4.6.1997 and later promoted to the post of Assistant on 25.9.1998 on completion of service qualification in the post of Junior Assistant. While so, according to the respondent, while fixing the seniority of the respondent in the cadre of Junior Assistant, the department placed him at Sl.No.350A, just above his Junior one A.Madalaimuthu (Sl.No.351), however, subsequently, his junior was placed at Sl.No.12A in the seniority list of Assistants for the year 2007 and the respondent was placed at Sl.No.31A. This, according to the department, the respondent had not acquired service qualification for promotion to the post of Assistant only in the year 1996, whereas, his junior A.Madalaimuthu acquired service qualification much before the respondent, i.e. in the year 1995 itself. Aggrieved by this anomaly in seniority, the respondent preferred an appeal before the first appellant, who in turn, by proceedings dated 30.06.2007, rejected the same. Challenging the rejection of his claim to fix his seniority as Assistant in between one N.Ramajeyam and G.Krishnan and promotion on par with them from the year 1995, the respondent herein approached this Court.

3. The learned Judge, having considered the facts of the case and rival submissions, was of the view that the respondent cannot be denied promotion for want of service qualification since he was not given a change to acquire the same by the department and it is incumbent upon the department to place the respondent in a required post in order to enable him to acquire service qualification. This order of the learned single Judge has been put under challenge in this writ appeal.

4. Mr.V.Raghavachari, learned counsel appearing for the respondent would submit that there is absolutely no infirmity in the order of the learned Judge since the respondent was not given opportunity to serve as Junior Assistant in order to acquire service qualification to get qualified for promotion. Therefore, the respondent cannot be blamed for not possessing such service qualification. He would also submit that the respondent worked as Typist in Erode District between 14.5.1990 and 7.8.1991 and this service can be taken as the service rendered by him in the cadre of Junior Assistant since the post of Typist and Junior Assistant are interchangeable as per G.O.Ms.No.865 R.D. Department, dated 22.10.1990. Therefore, insisting to serve in the cadre of Junior Assistant for one year to acquire service qualification for being considered to the promotion by the department, cannot be justified.

5. On the other hand, Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader, appearing for the appellants would submit that the learned Judge has not dealt with the issue involved in the writ petition in tact and not considered the fact that the respondent had not served as Junior Assistant for one year, which is essential requirement for being considered for promotion. He pointed out that the respondent worked in Erode and Coimbatore District nearly 7 years without opting for transfer in the cadre of Junior Assistant and he remained as such till 1997. Only in the year 1997, the respondent was transferred from Coimbatore to Dharmapuri on mutual transfer in the place of one Agastheeswaran and on his transfer, the department had immediately given posting as Junior Assistant to enable him to acquire service qualification and later he was promoted as Assistant within one and half year. He would also submit that the services rendered by the petitioner in the post of Typist in Coimbatore District cannot be taken into account as service qualification since he did not work as Junior Assistant which prompted the department not to include his name in the Assistant seniority list for the year 1995 and in such circumstances, since his junior A.Madalaimuthu who had already acquired service qualification much prior to the respondent, he was placed above the respondent. Therefore, the learned Special Government Pleader would submit that the claim of the petitioner to fix his seniority in the post of Assistant for the year 1995 above his junior, cannot be sustained. With these submissions, the learned Special Government Pleader sought for setting aside the order of the learned single Judge by allowing the present writ appeal.

6. Heard the learned Special Government Pleader appearing for the appellants and the learned counsel appearing for the respondent and perused the materials available on record.

7. Originally, the respondent was appointed as Typist in Rural Development Department in Erode District on 6.5.1990 and later on his request, he was transferred to Coimbatore District on 6.8.1991 and if any government servant opts transfer from one District to another District, he will be placed as junior most to the juniors and as such, he was placed in the feeder category seniority list below the Typists who were the probationers. It is the specific case of the department that the respondent, due to his family circumstances, remained in Coimbatore District without opting for transfer and failed to get inter change of posting in the feeder category since he desired to come to Dharmapuri District on District transfer and his District transfer application was also under process before the Head of Department and in such circumstances, he had not even made a request to the District Administration of Coimbatore to provide interchange of posting and therefore, the department cannot be blamed that it could not provide opportunity to the respondent by posting him in the cadre of Junior Assistant to enable him to acquire service qualification.

8. Although the reasons given by the department are convincing that it is on his own request of the respondent to remain in Coimbatore District without opting for transfer and failed to get interchange of posting till he was transferred to Dharmapuri District on mutual transfer, his claim to reckon his seniority by taking into consideration of his services rendered in Coimbatore District cannot be sustained, it is pertinent to note that since the respondent had not requested the District Administration of Coimbatore to provide interchange of posting to him to acquire service qualification, we feel some considerable force in the contention of the learned counsel for the respondent that it is the department/District Collector's discretion to provide him interchange of posting so that he can acquire the service qualification to get qualified for being considered for promotion. Therefore, the department has to find out whether the respondent had exercised his option for remaining in Coimbatore District in the feeder category without opting for interchange of posting on transfer. It is the specific case of the respondent that the department had not provided him any opportunity to serve as Junior Assistant and that there is nothing to show that the respondent has opted not to work as Junior Assistant at Coimbatore and therefore, the department has to be blamed. In such circumstances, we direct the respondent to make a representation to the appellants for reconsideration of his claim, within a period of one month from the date of receipt of a copy of this order and on such representation being made, the appellants are directed to consider the same and dispose of the same on re-examining the issue by taking into consideration as to whether the respondent had exercised his option to remain in the feeder category without opting for interchange of posting on transfer and

whether the department has given opportunity to the respondent to work as Junior Assistant at Coimbatore. The appellants shall pass orders within a period of two months from the date of receipt of the representation being made by the respondent.

9. With the above direction, this Writ Appeal is disposed of on the above terms. No costs. Consequently, connected CMP is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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1. The Commissioner of Rural Development
and Panchayat Raj,
Panagal Building,
4 and 5th Floor Jeenis Road,
Saidapet, Chennai-15.

2. The District Collector,
Dharmapuri District, Dharmapuri.

+1 Cc to govt. Pleader sr 72617.

+1 CC to Mr.M. Narayanasamy, Advocate sr 72367(27/11/2017)

W.A.NO.963 OF 2017

RR(CO)
SP(22/11/2017)

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