

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2017

C O R A M

THE HONOURABLE Mr. JUSTICE RAJIV SHAKDHER
AND
THE HONOURABLE Mr. JUSTICE N.SATHISH KUMAR

Writ Petition Nos.23218 and 23219 of 2015
and
MP.Nos.1 and 1 of 2015

1.J.Vairamuthu
2.G.Malarvizhi
3.V.G.Amudha
4.R.Krishnamoorthi,M.

Petitioners in WP.No.23218/2015

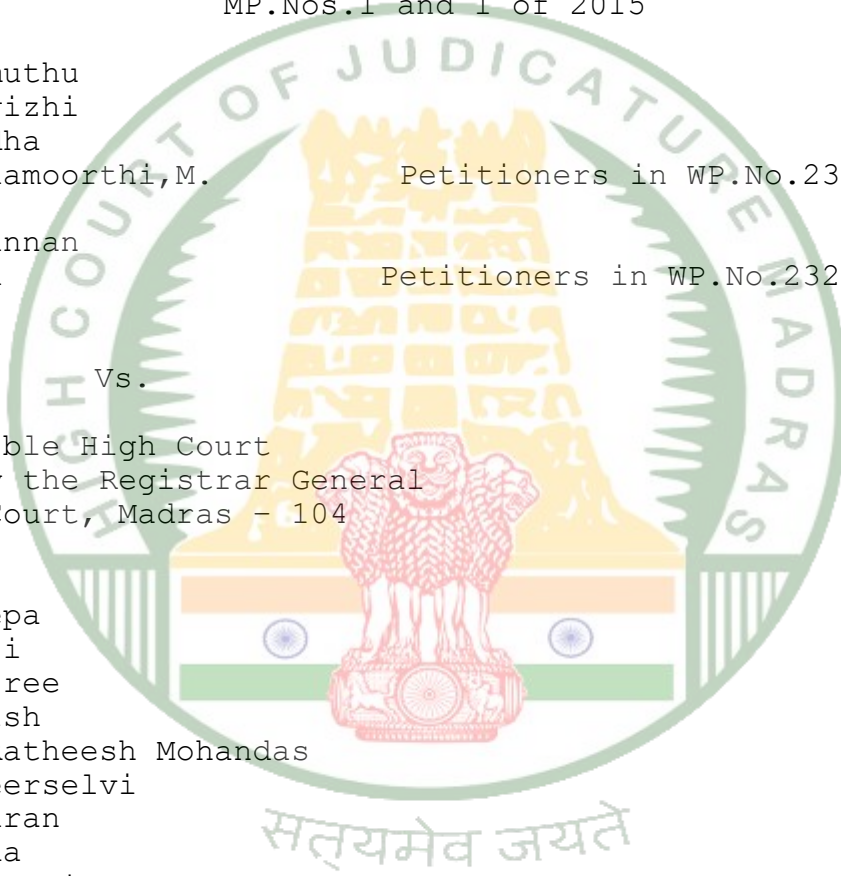
1.K.Rajakannan
2.S.Kannan

Petitioners in WP.No.23219 /2015

Vs.

1 The Hon'ble High Court
rep.by the Registrar General
High Court, Madras - 104

2. V.S.Deepa
3. N.Balaji
4. K.Jayasree
5. T.Sathish
6. PillaiRatheesh Mohandas
7. M.Patheerselvi
8. P.Baskaran
9.G.Preetha
10.A.Rajeswari
11.Abdur RahmanHakkani
12.S.Sathianarayanan
13.S.Saradha
14.V.Arthi
15.P.Guruprasath
16.R.Narender
17.O.G.C.Yogeswari
18.K.Kaladevi
19.G.V.Vijayalakshmi
20.S.Murugan
21.P.Rajeswari
22.A.Maheswari



WEB COPY

23.A.Dhanalakshmi
24.T.Rajaprabha
25.Sudali Alias Sumathy.S
26.K.Amudhalakshmi
27.P.Suganthi
28.Maria SelviAkila.S
29.U.Bhuvaneswari

Respondents in both WPs

* * *

Petitions filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified mandamus calling for the records pertaining to the Official memorandum made in ROC.24/14-Con.B2.ESTT.1 dated 15.12.2014 passed by the 1st respondent, quash the same and consequently direct the 1st respondent to re-fix the petitioners' seniority in the post of P.As to the Hon'ble Judges by taking note of the date of clearance of skill test, place the petitioners in their respective places in the seniority list, pay all other consequential attendant and monetary benefits.

* * *

For petitioners.. Mr.N.Manokaran
For Respondents.. Mr.Mr. Haja Mohideen Ghisti
for Mr.Baskar for R1

Mr.V.Karthick, Senior Counsel
for Mr.Krishna Prasad For R2, R4
R5,R7,R8,R10,R12,R13,R17 to R19,
R21,R23,R26,R28 and R29

C O M M O N O R D E R

(Order of the Court was made by RAJIV SHAKDHER J.)

1. These are the petitions preferred under Article 226 of the Constitution of India.

2. The petitioners herein are presently employed as Personal Assistants to the Judges of this Court (in short "P.As.").

3. The relief that the petitioners seek in the captioned petitions is for quashing of the Official Memorandum bearing No. ROC.24/14-CON.B2.ESTT.1 dated 15.12.2014, passed by the 1st respondent.

3.1. The consequential reliefs claimed by the petitioners are to re-fix seniority in the post of P.As and to pay all other monetary benefits.

4. The claim for re-fixation of seniority is tied in with

the date, when, each of them cleared the skill test.

4.1 Thus, in sum, the argument of the petitioners before us is that seniority should have been fixed by the 1st respondent, not based on the date of initial appointment but, on the date, when, the petitioners and the private respondents, who are similarly placed, cleared the skill test.

5. What is not disputed before us, is that, the petitioners and the private respondents entered service of this Court together.

5.1. It is also not disputed before us that at the stage, when, the applications were called for appointment, the applicants were, generally, required to possess only the following qualifications. For the sake of convenience, the relevant portions of the advertisements are extracted hereunder:

".....Published in The Hindu, January 20, 2009.

Roc.No.176/2000-Con.Estt.I

Applications are invited by the Registrar General, High Court, Madras, for filling up of vacancies existing in the following Categories in the Madras High Court Service and for filling up the vacancies likely to arise in future, by direct recruitment/transfer:

Sl .N o	Name of the Category	No.of Vacancies	Scale of pay
1	P.A to the Hon`ble Judges	04	Rs.8000-275- 13,500plus Special Allowance of Rs.200/- p.m.
2	INTERPRETERS (Tamil and Telugu)	02	Rs.6000-200- 11,100plus Special Allowance of Rs.100/- p.m.
3	INTERPRETER (URDU)	01	-do-

The application should possess the following qualifications as on date of this notification:

P.As TO THE HON`BLE JUDGES:

Bachelor Degree in B.A., B.Sc., or B.Com., or any other Bachelor Degree of the Madras University or equivalent thereto of a recognized University in

the Indian Union. Must have passed the Government Technical Examination in English Shorthand and English Typewriting by the Higher/senior Grade.

Candidates from other than Tamil Nadu State should pass the Departmental test for working knowledge in Tamil within a period of two years from the date of their selection /appointment. ..

.. . . .

.. . . . Upper Age limit as on 01.01.2009 is 30 years but for candidates belong to Backward Classes, Scheduled Castes and Scheduled Tribes, the upper age limit is 35 years.

A written Examination in English will be conducted for the category of P.A. to the Hon`ble Judges besides there shall be a Shorthand and Typewriting Test in English by Higher/Senior Grade standard and Viva Voce.

.. . . . Selection will be made to the category of P.A. to the Hon`ble Judges on the basis of the results in the Written Examination, Shorthand & Typewriting Test and Viva Voce and on the basis of Translation Test and Viva Voce for the Categories of interpreters."

5.2. It is also not disputed before us that the petitioners as well as the private respondents fulfilled the qualifications prescribed in the advertisement issued by this Court, on 20.1.2009, and it was only thereafter, that appointment orders were issued in their favour.

5.3. Pertinently, all petitioners before us were issued appointment orders on 29.06.2009.

6. Since, a great amount of emphasis has been placed by the petitioners on the wording of the appointment order, we intend to extract one of the appointment orders in order to adjudicate upon the captioned writ petitions.

" Thiru. VAIRAMUTHU, J. is temporarily appointed to the post of P.A. TO THE HON`BLE JUDGES, by direct recruitment, in the Madras High Court Service. He is informed that his appointment is temporary and there will be a further procedure for regular appointment and his appointment is subject to clearing that procedure. In the event of his failure in the said test, his service will be terminated. He is also required to give a signed undertaking to the above effect.

The post of P.A TO THE HON`BLE JUDGES carries the time scale of pay of Rs.8000-275-13500/-.

He is hereby directed to report to the undersigned in the forenoon on or before 10.07.2009, failing which the order of appointment shall stand cancelled without any further intimation.

He is also required to produce the testimonials, in Original, in proof of his Educational Qualification, Technical Qualification, Computer Qualification (if any), Date of Birth, Community Certificate along relieving order, if employed in Govt/Public Sector Undertaking, while reporting for duty, without fail... .."

(emphasis is ours)

7. As would be evident, upon a perusal of the appointment order, the incumbents were temporarily appointed to the post of P.As.

7.1. We may indicate herein that though, the sample appointment order extracted above, indicates that the appointees were inducted into service via direct recruitment route, some of them were inducted into service via transfer mode as well.

8. The more important point, is that, while, their appointment was temporary; for them, to attain regularisation, they were required to take a test.

9. A reading of the aforementioned extract of the appointment order indicates, that if, the test was not cleared, the appointee's service could be terminated.

10. Admittedly, tests were held, albeit, on various dates.

11. In the counter affidavit filed on behalf of the 1st respondent, the following information is extracted; qua which there is no dispute.

".. .."

Sl No	SKILL TEST CONDUCTED ON	REGULARISED
1	Conducted Skill Test on 09.01.2010 for 37 staff members	No one fulfilled the parameters of the Hon`ble Committee. Therefore given another chance.
2	Conducted Skill Tests (morning) and followed by the Training (afternoon) fr.03.05.2010 to 21.5.2010 for 37 staff members.	Services of 11 P.As to the Hon`ble Judges was regularised wef.22.09.2010 based on the performance.
3	Conducted Skill Tests (morning) and followed by the Training (afternoon) fr.02.05.2011 to 20.5.2011	Services of 12 P.As to the Hon`ble Judges were regularised wef.22.06.2011 based on the performance.
4	Skill Test conducted on 22.04.2012	Services of 10 P.As to the Hon`ble Judges, services was regularised wef.12.06.2012
5	Skill Test conducted on 20.12.2012 for remaining 2 P.As to the Hon`ble Judges	1 P.A. to the Hon`ble Judges, services regularised w.e.f.25.12.2012
6	Sill Test conducted on 14.06.2013 for reamining 1 P.A to the Hon`ble Judges	1 P.A. to the Hon`ble Judges, services regularised w.e.f.18.06.2013.
Out of 40 P.As to the Hon`ble Judges 3 P.As viz., S.Santhanam, J.Jeyachandran and D.Ranjithkumar resigned prior to the conduct of further procedure of skill test		
37 P.As to the Hon`ble Judges passed the Skill test conducted as above and 2 Pas viz., S.Suja and S.Sathyaprabha resigned after participating in the further procedure of skill test.		

.. . . ."

12. A bare perusal of the aforementioned table would show that in the first instance, a skill test was held for 37 P.As on 09.01.2010, in which, clearly, none of them met the parameters fixed for clearing the test.

13. Faced with this situation, the 1st respondent conducted another round of skill test, which was followed by training on various dates, as adverted into, in the table above.

14. The information given in the aforesaid table would also show that the P.As, who sat for the test, did not clear the same at one go.

15. It is, this, which has become cause of dispute between the petitioners and the private respondents before us.

16. The petitioners, thus, claim, as indicated by us herein above, that inter se seniority, that is, between them and the private respondents should be fixed based on the date when skill tests were cleared by the P.As.

17. The argument is that, since a reference to a test was made in the initial order of appointment, issued on 29.06.2009, this criteria was not only a pre-requisite for regularisation but was also an essential requirement for fixation of seniority. This stand on behalf of the petitioners has been articulated by Mr.Manoharan, Advocate.

17.1. In support of his submission, the learned Advocate has relied upon two (2) judgements of the Supreme Court rendered in : V.Ayyana v. Government of Andhra Pradesh and Others [(2010) 10 SCC 498] and CH.Narayana Rao v. Union of India and Others [(2010) 10 SC 247].

18. Mr.Haja Mohideen Ghisti, who appears for the 1st respondent, i.e., Registrar General of this Court, says that seniority can only be fixed based on the date of initial appointment.

18.1. In support of this submission, the learned counsel relies upon Rule 5(b) of Madras High Court Service Rules (In short "Rules").

"... .. (b) Seniority:- The seniority of a member of the Service, Division, Category or Sub - category or post shall, unless he has been reduced to a lower rank as a punishment, be determine by the date of his first appointment to the service, division, category, or sub category or post. Where any difficulty or doubt, arises in applying this rule, seniority shall be determined by the appointing authority. If any portion of the service of such person does not count towards probation under rule 15, his seniority shall be determined by the date of commencement of the service which counts towards probation... .. "

18.2 Mr.Ghisti also informs us that, pursuant to the order passed by this Court, on 19.4.2017, during the pendency of the captioned writ petitions, the matter was re-considered by the concerned Promotion Committee.

18.3. It is the learned counsel's submission that the Committee, after re-considering the matter, came to the conclusion that no grounds obtained warranting re-opening of the issue at hand.

19. The minutes of the Committee, as approved by the Hon`ble The Chief Justice, has been shown to us.

19.1. The said minutes of the meeting have also been shown by us to the counsel for the petitioners.

20. In these circumstances, as indicated right at the outset, the only issue, which, we are called upon to decide is, as to whether or not the seniority of the petitioners and the private respondents needs to be re-fixed bearing in mind the date, when, each one of them cleared the skill test.

21. We have perused the record and considered the matter at some length.

22. We are of the view that the following emerges from the record:

- (i) The advertisement dated 20.01.2009, clearly, stipulated the qualification that the applicants are required to possess in order to be eligible to apply for the post of P.As.
- (ii) Admittedly, the petitioners and the private respondents fulfilled the qualifications and, as a matter of fact, cleared not only the written test but also the prescribed skill test, such as, shorthand and typewriting. In addition, the applicants were also required to take Viva Voce test.
- (iii) Furthermore, the petitioners and the private respondents also met the age criteria.
- (iv) The petitioners and the private respondents were subjected to skill tests, which they qualified over a period of time. The details with regard to the same have been set out in the table above.
- (v) lastly, the initial advertisement for appointment did not advert to the fact that the applicants would have to take a further skill test.

23. The question, therefore, which arises for our consideration, is : as to whether the date of initial appointment, from which, ordinarily, seniority is counted, would shift depending on when the appointees cleared the test, as adverted to in their respective appointment letters.

23.1. In order to consider this issue, one would have to bear in mind the fact that though the appointment letter alluded to the fact that if, the appointees failed to qualify the test set out by the first respondent, their services would be terminated, there was no mention about the test in the initial advertisement issued by the first respondent. In other words, the test, which was adverted to in the appointment letter, was not set out as an eligibility criteria in the appointment letter issued by the first respondent.

23.2. In our opinion, given these facts, the answer has to be in the negative for the reason all that the first respondent intended to do by incorporating the aspect pertaining to clearance of test by the appointees was to ensure that they attained a certain standard in stenography.

23.3. The purpose and object appears to have been that the appointees should have expertise in stenography as part of their duties as P.As., required them to take down notes and judgements in shorthand.

23.4. The reason that we have reached this conclusion, is that, the appointment letter cannot run counter to Rule 5(b) of the Madras High Court Service Rules, which, clearly, stipulates (except for the circumstances excluded therein), that seniority of employee is to be determined with reference to the date of the first appointment to service and therefore, any other interpretation will lead to odd results.

23.5. The skill test, to our minds, was configured only to enhance the expertise of the appointees with regard to stenography.

23.6. As is evident from the narration of facts set out above, that the petitioners as well as the private respondents were given training for honing their skills in Stenography.

23.7. Therefore, in our opinion, the argument advanced on behalf of the petitioners that seniority should be fixed from the date when the person concerned qualified the skill test, is untenable.

23.8. It must be borne in mind that the ordinary rule for fixation of seniority, is that, it relates back to the date of initial appointment. The only exception being when, the appointee does not possess the requisite qualification which is stipulated at the time of initial appointment.

23.9. Clearly, in the instant cases, as discussed above, the petitioners as well as the private respondents fulfilled the qualification criteria, as prescribed in the advertisement and, therefore, were, accordingly, inducted in service.

24. The induction into service both for the petitioners and the private respondents was against substantive post, and thus, in our view, their seniority would relate to the date, when, the petitioners and the private respondents were first inducted into service.

25. We may also advert to another aspect of the matter, which concerns the job profile of the appointees.

25.1. For this purpose, we had directed, via order dated 05.10.2017, the counsel for the 1st respondent to place on record the job profile of the P.As. attached to the Judges of this Court.

25.2. Mr.Gisthi, in pursuance of this direction, placed on record a letter dated 26.10.2017, addressed by the Sub Assistant Registrars, P.A. Section, to the Sub Assistant Registrar, Establishment Section of this Court.

25.3. A perusal of this letter shows that P.As not only take down, in Shorthand, orders, judgments and minutes of Committee meetings, but are also required to attend to personal matters, concerning the Judge, with whom they are attached.

25.4. Therefore, emphasis on the skill test alone by the counsel for the petitioner, as being an essential qualification, in our view, is misplaced. There are, clearly, various facets to the job of a P.A., which, petitioners have failed to appreciate in clamouring for re-fixation of seniority.

26. In so far as the essential qualifications are concerned, it cannot be the case even of the petitioners that the inductees did not have such qualifications, when, they were first appointed to the post of P.As.

27. The judgements, on which reliance is placed by the counsel for the petitioners, according to us, are distinguishable on facts.

27.1. In the matter of V.Ayyanna vs. Government of Andhra Pradesh and others, the appellant did not have requisite essential qualification for appointment to the post of Sanitary

Inspector Training. In the instant case, the petitioners, as indicated above, possessed the requisite essential qualifications as prescribed at the given point in time, when, they were first inducted as P.As.

27.2. Likewise, in the other decision, i.e., Narayan Rao vs. Union of India and others, initial appointment was made without adherence to the Rules. In this case, no such situation has arisen.

28. Thus, for the foregoing reasons, we find no merit in the petitions. The petitions are, accordingly, dismissed. There shall, however, be no order as to costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ga/gg

To

The Registrar General
High Court, Madras - 104

+2 ccs to Mr.N.Manokaran Advocate sr 77925

+2 cc to M/s.Krishna Prasad Advocate sr 77834 & 77835

+1 cc to M/s.Haja Mohideen Gisthi Advocate sr77803

Writ Petition Nos.23218
and
23219 of 2015

gp(co)
aa21/12/2017

WEB COPY