

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2017

CORAM

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO

and

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No. 24151 OF 2015
and
W.M.P.Nos.1 and 2 OF 2015

R.Baskaran ... Petitioner

-vs-

1.High Court of Judicature at Madras,
Rep. By the Registrar (Admin),
High Court,
Chennai - 600 104.

2.The Principal District Judge,
Salem.

3.The Chief Judicial Magistrate,
Salem.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India to call for the records on the file of the respondents 1 and 2 in connection with the orders passed by them in their proceedings R.O.C.No.438/2010/C1 dated 04.09.2013 of the first respondent and R.O.C.No.9855/A/2000 dated 10.12.2009 of the 2nd respondent respectively and quash the same and direct the respondents to count entire service of the petitioner from the date of his initial appointment in the post of stenographer on 12.12.1986 or in Salem District on 06.04.1988 and consequently promote the petitioner to the Sheristadar of District Court with effect from the date of promotion given to his immediate junior from the post of Junior Assistant/Typist with all monetary and service benefits by issuing a writ of certiorarified mandamus.

For Petitioner : Mr.R.Singaravelan, Sr. Counsel
for Ms.M.Srividhya

For Respondents : Mr.C.T.Mohan

O R D E R

(Order of the Court was made by NOOTY.RAMAMOHANA RAO, J.)

This Writ Petition is instituted by a person who has been recruited through the Tamil Nadu Public Service Commission for Group-IV Post and came to be appointed as a Steno-Typist Grade-III on 12th December, 1986. Though he appears to have worked in a temporary capacity earlier thereto as a Steno-Typist, but, for the present, we can ignore that from being taken into consideration.

2.The writ petitioner was initially appointed in one of the Courts under the District Unit of Coimbatore. At his request, he came to be transferred to Salem District, subject to the condition of foregoing the credit for his previous length of service and accordingly, he joined Salem District Unit on 14th March, 1988. While he was working as a Steno-Typist Grade-III, a post included in the Tamil Nadu Judicial Ministerial Services, a combined seniority list of the personnel working in the District Unit as of 30th June 1989 has been drawn. The Tamil Nadu Judicial Ministerial Service Rules have been brought into force with effect from 1st February, 1955, and they were made in terms of the Proviso to Article 309 of the Constitution by the Governor of the State.

3.Various posts organized in Muffssal Courts have been included in Class IV of the said service. Category V thereof comprises of posts, such as, (i) Junior Assistants, (ii) Assistant Nazirs, (iii) Junior Superintendent of copyist (iv) Typist and (v) Steno Typist. As a result, all these different posts, which occupied one and the same status have been organized to fall into a common cadre. For regulating further promotions upwards, common seniority list is required to be prepared and published and accordingly, combined seniority list as on 30th June, 1989, has been prepared and published. In that the name of the writ petitioner figures at Sl. No.5. while the name of Shri.C.Kumar figures at Sl.No.13. Against the name of the Shri.C.Kumar his date of appointment as Junior Assistant has been recorded as 30th September 1988, which was more than six months later to the date of joining of the writ petitioner, at request in the District Unit at Salem. Thus, for all practical

purposes of reckoning, the writ petitioner is liable to be treated and construed as senior to the said Shri.C.Kumar. Similarly the combined seniority list drawn as of 1st July 1992, which was drawn and circulated on 23th June 1993, the name of the writ petitioner figures at Sl.No.155, while the name of Shri.C.Kumar figures at Sl.No.166, and Shri.N.Srinivasan figures at Sl.No.174. Thus, even as of 23th June 1993, the writ petitioner's case was that he was senior to both Shri. C.Kumar and Shri. N.Srinivasan. However, without taking up his case for promotion, the aforesaid two Juniors have been picked up and were accordingly granted promotion. That gave rise to the present Writ Petition.

4.It is appropriate to notice that Steno-Typists have been organized into Grade-III, Grade-II and Grade-I. There is no dispute on the count that there is no post of Steno-Typist Grade-I sanctioned and available in the District Court Unit at Salem. Thus, virtually a Steno-Typist Grade-III, who gets recruited as such, would stagnate for long years as Steno-Typist Grade-III and at best he would be able to earn one promotion as a Steno-Typist Grade-II and perhaps would have retired from service as such. This discontentment is due to lack of opportunities for service progression and also stagnation for long years, is making the Steno-Typists to feel that they have been meted out improper treatment. While in the case of other Ministerial Service employees, such as Typists or Junior Assistants or even those who have been recruited to inferior status posts such as Senior Bailiff they all get promotions to higher posts in Judicial Ministerial Services such as Head Clerk or Sheristadar, whereas when it comes to the Steno-Typist, he almost would retire from service as such, as a Steno-Typist.

5.Before we can find any acceptable solution to this problem, we need to notice certain other important developments. The State Government passed orders through their G.O.Ms.No.417 P & AR (Per-B) Department dated 01.12.1993 imposing a ban on consideration of cases of Steno-Typist Grade-III for next higher promotional post of Assistants on par with Typists/Junior Assistants in the Unit. As a consequence thereof, all vacancies that have arisen in the cadre of Assistants have all been filled up by considering the cases of Typists or Junior Assistants, as the case may be depending upon their inter se seniority. But, the cases of Steno-Typist, Grade-III were not similarly considered for such promotion.

6.The experience has revealed that the remedial measures taken with regard to Steno-Typists is proving to be ineffective, if not counter productive. Consequently, several organizations espousing the cause of Steno-Typist, Grade-III, have requested the State Government to reconsider lifting of the ban imposed on consideration of cases of Steno-Typist, Grade III for promotion

to the other Ministerial posts in line. A favorable decision to that effect has been in fact taken at the 55th Conference of Tamil Nadu Government Officers' Union held on 05.08.2000. Formal orders came to be issued by the State Government through their G.O.Ms.No.34 Personnel and Administrative Reforms (B) Department dated 21.02.2001, announcing removal of bar for consideration of Steno-Typist, Grade III for promotion to the next higher Ministerial Service posts, with effect from 5.8.2000. It was also decided, since the ban has held the field for nearly eight years and it stood lifted only on 5.8.2000, the service put in by the Steno-Typist, Grade III, during those 8 years of ban period is directed to be reckoned as qualifying length of service for the purpose of promotion to the post of Assistant. Lest, the qualifying length of service, one might insist upon to be acquired, once again commencing from 5.8.2000.

7.The State Government has also taken a Policy decision and announced the same through their G.O.Ms.No.122 Personnel and Administrative Reforms (B) Department dated 2.9.2005, reducing the minimum qualifying length of service of Steno Typist, Grade III for appointment as Assistant from 8 years to 5 years. However, we consider it appropriate to quote the content of the Government Order herein below, which reads as under:

PERSONNEL AND ADMINISTRATIVE REFORMS (B) DEPARTMENT
G.O.Ms.No.122 Dated: 02.09.2005
Read:-

1.G.O.Ms.No.34, Personnel and Administrative
Reforms Department, Dated 21.02.2001.

In the Government order read above, orders were issued lifting the ban order for appointment to the post of Assistant from the category of Steno-Typist Grade-III with effect from 05.08.2000 alone with certain other conditions.

2.Certain service Associations have represented to the Government that consequent on the segregation of Steno-Typists as separate category, the promotion opportunities of the Steno-Typists are very bleak and requested the Government to consider the following requests.

(i) The 8 years service qualification may be reduced to 5 years.

(ii) 5% of the total vacancies to be allowed to Steno-Typists Grade-III for promotion as Assistants may be worked out in each unit of appointment instead of calculating the overall vacancies.

(iii) Steno-Typists Grades I and II may also be considered for promotion as Assistants since some of the Steno-Typists Grade-III were promoted as Grade I and II during the period from 01-08-1992 to 04-08-2000.

(iv) The ban lifted on the Steno-Typist Grade-III for promotion as Assistant with effect from 05.08.2000 may be given retrospective effect from 01.08.1992 and they may be considered for promotion on par with the juniors in the category of Junior Assistant and Steno-Typist who were promoted as Assistant during 1993-2000 as per the combined seniority which was in vogue prior to 01.08.1992.

3. The requests of the Service Associations have been examined by the Government in detail and the Government have decided only to reduce the service qualification of the Steno-Typist Grade-III for appointment as Assistant from eight years to five years. Accordingly, the Government now direct that the period of qualifying service in the category of Steno-Typist Grade-III be reduced from eight years to five years for appointment made by transfer to the post of Assistant from the date of this order.

4. Necessary amendment to the Special rules for Tamil Nadu Ministerial Service will be issued separately.

(BY ORDER OF THE GOVERNOR)

THANGAM SANKARANARAYANAN
SECRETARY TO GOVERNMENT

8. From this Policy decision of the State Government, it is crystal clear that though from the staff side, four specific requests have been made, viz. (i) reduction of the qualifying length of service for promotion from 8 years to 5 years (ii) 5% of the total vacancies in the cadre of Assistant be allowed for promotion exclusively to Steno Typist, Grade III (iii) Steno Typist, Grade-I & Grade-II may also be considered for

promotion as Assistants as some originally recruited Steno Typist, Grade III have in the meantime earned promotion as Steno-Typist Grade II and Grade-I as well, in between 01.08.1992, and 04.08.2000, during which period there was a ban for consideration of the case of Steno-Typist, for promotion altogether. (iv) The ban be lifted with retrospective effect from 01.08.1992. As against these requests/demands of the Steno-Typist, the State Government has considered it appropriate to concede only one request i.e. to reduce the minimum length of qualifying service for the purpose of promotion from eight years to five years. Hence, it goes without saying that the other two requests namely providing 5% quota for promotion exclusively to the post of Assistant from Steno Typist, Grade-III has been declined and the request for considering those Steno-Typist, Grade-II and Grade I who are promoted as such during the ban period also was not acceded to by the State Government.

9. In this context, it would also be appropriate to note that the State Government has again announced yet another Policy decision through their G.O.Ms.No.47 Personnel and Administrative Reforms (B) Department dated 12.03.2008. The important decision taken by the State Government in that regard was to render eligible Steno Typist, Grade-II and Grade-I who have put in minimum of five years of service in the respective categories and on their exercising option and who are imparted and undergone training as an Assistant as on 14.3.2008, shall be considered for inclusion in the panel to be drawn for the post of Superintendent/equivalent post for the year 2008-09 as on the crucial date viz. 15th March 2008. The other decision taken was that out of every twenty vacancies in a panel year in the post of Superintendents, against one vacancy, Steno Typist, Grade-II and Grade-I be considered for promotion. In other words, the ratio of 1:19, between Steno-Typists and others has been prescribed in the matter of promotion, which reflects 5% of the posts of Superintendent being earmarked to the category of Steno-Typist for promotion.

10. In the instant case, the grievance of the petitioner appears to be that his case was not considered for promotion at all to the category of Assistant/Head Clerk/Superintendent as the case may be, whereas, the cases of Shri C.Kumar and Shri Srinivasan, who are recruited as Junior Assistants subsequent to the recruitment of the writ petitioner as Steno Typist as Grade-III, were considered for such promotion.

11. Heard Mr.R.Singaravelan, learned Senior Counsel appearing for and on behalf of the learned counsel for the writ petitioner Ms.M.Srividhya and Mr.C.T.Mohan, learned Standing Counsel for the respondents.

12.The questions which require to be answered by us is whether the case of the writ petitioner could have been considered for promotion any time immediately after the State Government has passed orders lifting the ban imposed earlier for such consideration with effect from 05.08.2000. At least, whether the case of the petitioner was considered for promotion after the State Government passed orders reducing the length of qualifying service for consideration for promotion as Steno-Typist Grade-III, from 8 to 5 years, through their G.O.Ms.No.122 P & AR Department dated 02.09.2005 or whether the case of the writ petitioner was considered for promotion at least after the Policy decision to open up the posts of Superintendent/equivalent post from the panel year 2008-09 onwards to Steno-Typist.

13.The answer to those questions would squarely depend upon the number of vacancies that have become available in the next higher cadres of Ministerial Service. There is no gain one word saying that before the ban was lifted on 5.08.2000, the Steno-Typist, Grade III could not have been considered for promotion with effect from 01.08.1992 to the other Ministerial Posts, because of the Ban. But, their cases for promotion were confined only to the vacancies of Steno-Typist, Grade II and Grade-I, as the case may be. It is also further not in dispute that not many posts of Steno-Typist, Grade II and Grade-I were sanctioned. In fact, there is not even one post of Steno-Typist, Grade-I available in Salem District Unit. It is hence clear that promotions earned by Shri C.Kumar or Shri N.Srinivasan, though were figuring far way down in the combined seniority list than the writ petitioner figures in the period between 1.8.1992 and 05.08.2000, can not be faulted. In the post period of lifting of Ban, the vacancies in the higher categories have been directed to be filled up by following a particular ratio and that ratio was fixed as 1:19 in between Steno-Typist, Grade II and Steno-Typist, Grade-I and other Ministerial categories, in the matter of promotion to the post of Superintendent/Equivalent categories. Therefore, even if a vacancy has become available in categories such as Superintendent or other equivalent categories, the Steno-Typist, Grade-II or Grade-I as the case may be, will have to wait for his turn in every 20 such vacancies. Perhaps for one whole cycle of 20 vacancies or posts, to be filled up, it would take much longer time and consequently, the claims of Steno-Typist, Grade-II / Grade-I as the case may be must necessarily wait for the 20th vacancy to arise for consideration, in the cadre of Superintendent or equivalent cadres becomes available. They can only stake their claim for promotion when 20th vacancy in the cycle of 20 becomes available to them. Till then, they have to wait.

14.Thiru R.Singaravelan, learned Senior counsel has relied upon several Judgments in support of his plea that consideration of the case of an employee for promotion is a guaranteed fundamental right and any such denial would be violative of Constitutional guarantee held out under Articles 14 &16 of our Constitution.

15.Since there can be no quarrel over the proposition propounded by the learned Counsel, we consider it may not be wholly necessary to advert on those Judgments cited at the Bar and refer to them in detail or at length. Suffice to notice that consideration of the case of an employee who is otherwise eligible for promotion is a fundamental right guaranteed both under Articles 14 and 16 of our Constitution and no employee can be denied any such consideration. In contrast thereto, right to be promoted is not considered as a fundamental right. In the instant case though the petitioner has got a right to be considered for promotion, but, nonetheless, it is not against every vacancy that becomes available that his case can be taken up for such consideration. It is only against his turn of vacancies, where a quota has been prescribed such as 1 : 19, the case of a Steno-Typist comes up for consideration. In a cycle of 20 vacancies only when one post of Superintendent/equivalent post has been reserved or set apart for Steno-Typist, and hence one has to wait for the solitary vacancy to mature for his turn, for his case be considered for such promotion. Not taking up for consideration the cases of Steno-Typists against the remaining 19 vacancies does not amount to breach of fundamental Rights.

16.In the instant case, there is no material on record available for us to come to a firm conclusion that inspite of a vacancy becoming available any time after 05.08.2000, with effect from which date the ban earlier imposed on 01.08.1992, has been lifted, for consideration of the case of Steno-Typist, Grade-III for promotion to the post of Assistant the case of the writ petitioner was ignored and hence, we cannot issue the Writ as prayed for. Further, once the two individuals whose names have been taken up for comparison namely Shri C.Kumar and Shri N.Srinivasan who were recruited as Junior Assistants, no doubt on a later date than the date of recruitment of the writ petitioner as Steno Typist, Grade III, got promoted as Assistant and also further got promoted, there is no way that the writ petitioner can seek restoration of his original seniority in the promoted cadres as per the combined cadres of Steno-Typist Grade III/Typist/Junior Assistant. Any inter se seniority can be prepared only for one cadre and a combined seniority list can be prepared for all common cadre posts. When once the post of Assistant is a superior cadre post to that of Steno-Typist Grade III / Typist / Junior Assistant,

the date of promotion of the individual concerned as an Assistant is what is relevant for the purpose of fixation of his individual seniority in that category of Assistant, but no one can subsequently fall back upon the combined seniority position in the feeder category and ask for restoration of his original seniority in the promoted category of Assistant.

17. For the aforementioned reasons, we have not found any merit in this Writ Petition and it is accordingly dismissed. However, there will be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

rpa/si

To

1. High Court of Judicature at Madras,
Rep. By the Registrar (Admin),
High Court,
Chennai - 600 104.
2. The Principal District Judge,
Salem.
3. The Chief Judicial Magistrate,
Salem.

Copy to:

1. The Registrar General,
High Court, Madras.
2. The Section Officer,
Legal Cell, High Court, Madras.

+1cc to M/s. Srividhya, Advocate sr.45248

W.P.No.24151 OF 2015

ss (17/7/2017)