

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2017

CORAM

THE HONOURABLE MR.JUSTICE.T.RAJA

W.P.No.43299 of 2016
and W.M.P.No.37137 of 2016

M.Parivelan

... Petitioner

vs.

1.The Government of Tamil Nadu
Rep. by its Secretary to Government
Rural Development Department
Fort.St.George
Chennai 600 009.

2.The Commissioner of Rural Development
and Panchayat Raj
Panagal Building, Saidapet
Chennai-600 015.

3.The District Collector (PD Section)
Salem District
Salem.

.... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus to call for records pertaining to G.O. (3D)No.43, Rural Development and Panchayat Raj Department dated 09.12.2011 of the first respondent and consequential letter dated 15.07.2016 bearing Na.Ka.No.65903/2015 F2 of the second respondent and order bearing Na.Ka.No.15857/2015/Ni4, dated 16.08.2016 of the third respondent and quash the same in so far relates to not absorbing the petitioner as Assistant from the date of redeployment in Rural Development Department viz., 16.10.2001 and further direct the respondents to absorb the petitioner as Assistant from the date of redeployment in Rural Development Department viz., 16.10.2001 with all consequential benefits such as retrospective promotion, pay benefits etc.

For Petitioner : Mr.V.Suthakar

For Respondents: Mr.P.Senthilvel
Govt. Advocate

ORDER

This writ petition has been filed by the petitioner for issuance of a writ of Certiorari Mandamus to call for records pertaining to G.O.(3D)No.43, Rural Development and Panchayat Raj Department dated 09.12.2011 issued by the first respondent and consequential letter dated 15.07.2016 bearing Na.Ka.No.65903/2015 F2 issued by the second respondent and order bearing Na.Ka.No.15857/2015/Ni4, dated 16.08.2016 issued by the third respondent and quash all the three proceedings insofar relates to not absorbing the petitioner as Assistant from the date of redeployment in Rural Development Department viz., 16.10.2001 and further direct the respondents to absorb the petitioner as an Assistant from the date of redeployment in Rural Development Department viz., 16.10.2001 with all consequential benefits such as retrospective promotion, pay benefits etc.

2. Learned counsel for the petitioner would submit that the petitioner is working as an Assistant at Veerapandi Panchayat Union. He was appointed as Radio Supervisor on 04.03.1996 in the Rural Development Department at Sankagiri Division, Salem District. After introduction of Tamil Nadu Panchayat Act, 1994, the maintenance of television and radio belonging to the Village Panchayat became responsibility of the respective Village Panchayat Presidents. After some time, the Government disbanded Tamil Nadu Local Administration Radio and Television Maintenance Organisation, consequent to the devolution of powers to the Panchayats under Three Tire Panchayat Raj System. However, the Government principally agreed to create supernumerary posts to accommodate Radio Supervisors and similarly situated employees on account of the disbandment of Tamil Nadu Local Administration Radio and Television Maintenance Organisation. Accordingly, the Government issued orders in G.O.Nos.228 and 229 Rural Development (E4) Department dated 30.08.2000. It is further submitted that since the petitioner and the similarly situated employees were selected by the Tamil Nadu Public Service Commission for appointment to the post of Radio Supervisors, the Commissioner, Rural Development and Panchayat Raj Department, vide letter dated 23.04.2001, requested the District Collectors to accommodate the Radio Supervisors like the petitioner in any suitable post. Subsequently, the petitioner was accommodated in the Collectorate at Salem on 16.10.2001.

3. In this background, the grievance of the petitioner is that his service has not been regularised. The first respondent while passing the impugned G.O.(3D)No.43, Rural Development and Panchayat Raj (E3) Department dated 09.12.2011, has wrongly denied the benefits of regularisation of the petitioner from the

date of his appointment as Assistant in the office of the Collectorate at Salem, as the date of regularisation was given only from the date of issuance of G.O.(3D).No.43, Rural Development and Panchayat Raj (E-3) Department Viz., 09.12.2011. Therefore, the petitioner has come to this Court by way of the present writ petition challenging all the impugned orders passed by the respondents 1 to 3.

4.Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents.

5.The petitioner has drawn attention of this Court vide order dated 26.03.2015 passed by this Court in W.P.Nos.27207 and 27208 of 2012 filed by the two similarly placed persons viz., S.Sivagami and M.Lakshmi and has taken a similar and identical stand that the petitioner should be regularised from the date of redeployment in the post of Assistant.

6.According to the learned Government Advocate, since the petitioner was redeployed, the first respondent has issued the Government Order regularising his service only from the date of issuance of the order viz., 09.12.2011 and he has also filed a counter affidavit justifying the impugned order. But this Court can not accept the above contention, as it is contra to Rule 35 (b) of the Tamil Nadu State and Subordinate Services Rules Part II.

7.A perusal of the order dated 26.03.2015 passed by this Court reveals that this Court after considering the grievance of the petitioners therein, has come to the conclusion that the petitioners were not at fault for the sorry state of affairs. The respondents would be justified in treating the petitioners as juniors in case they themselves have opted for transfer of service. The petitioners were accommodated in the District Collectorate by the second respondent pursuant to the decision taken by the Government. Hence, the petitioners were justified in their contention that they were entitled to seniority in the post of Assistants, taking into account their functioning in the said post in the District Collectorate from the date of redeployment. While doing so, the learned Single Judge also referred General Rule 35(b) of the Tamil Nadu State and Subordinate Services Rules Part II, which reads as follows:

"the transfer of a person one class or category of a service to another class or category carrying the same pay or scale of pay shall not be treated as 1st appointment to the latter for purpose of seniority and the seniority of a person so transferred all be determined with reference to the rank in the class or category from which he was transferred."

8. In the light of the above, the petitioner in the present case was also admittedly deputed by the Directorate of Rural Development as Radio Supervisor in the Tamil Nadu Local Administration Radio and Television Maintenance Organisation on 04.03.1996 and due to disbandment of the Tamil Nadu Local Administration Radio and Television Maintenance Organisation, the petitioner and the similarly situated employees were redeployed and accommodated in the respective District Collectorates, pursuant to the decision taken by the Government.

9. It may be mentioned that the issue is squarely covered by an order dated 26.03.2015 passed in W.P.Nos.27207 and 27208 of 2012, therefore, this Court, applying the Rule 35(b) and also keeping in mind the order passed by this Court in the afore mentioned two writ petition Nos.27207 and 27208 of 2012 dated 26.03.2015, directs the respondents to fix seniority of the petitioner as Assistant taking into account the date of commencement of his officiation as Assistant in the District Collectorate at Salem and he should be given due placement in the seniority list taking into account the date of commencement of his functioning as Assistant in the same place. The said exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

10. Accordingly, the Writ Petition is allowed on above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Kj

To

1.The Secretary to Government of Tamil Nadu,
Rural Development Department,
Fort.St.George,
Chennai 600 009.

2.The Commissioner of Rural Development,
and Panchayat Raj,
Panagal Building, Saidapet,
Chennai-600 015.

3.The District Collector (PD Section),
Salem District,
Salem.

+1cc to the Government Pleader Sr.19794
+1cc to Mr.V.Suthakar, Advocate Sr.20139

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srg 20/04/2017



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