



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 24.01.2017

CORAM:

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THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MRS. JUSTICE J. NISHA BANU

W.A. (MD) No. 1581 of 2016
and
C.M.P. (MD) No. 11741 of 2016

1. The Government of Tamil Nadu,
rep. by its Secretary to Government,
Rural Development and Panchayat Raj
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),
Sivagangai District.

.. Appellants/
Respondents

vs.

K. Ilangovan

... Respondent /
Writ Petitioner

Writ Appeal has been filed under Clause 15 of the Letters Patent, against the order dated 13.07.2016, made in W.P. (MD) No. 3230 of 2013 by a learned Single Judge of this Court.

Prayer in WP (MD) No. 3230 of 2013:-

Petition presented to this Court to issue a Writ of Certiorari and Mandamus calling for the records pertaining to G.O. (3D) NO. 43, Rural Development and Panchayat Raj (E3) Department dated 09.12.2011 passed by the first respondent and quash the same in so far as fixing of seniority of the Petitioner by placing him in the bottom most in the seniority list of Assistant as on 09.12.2011 and further direct the respondent to reckon the seniority of the Petitioner in the cadre of Assistant with effect from 1.5.2001, the date of posting him as Assistant with all consequential service benefits such as retrospective promotion and pay benefits within the time limit that may be stipulated by this Honble Court.



For appellants

: Mr.S.Chandrasekar,
Government Advocate

For respondent

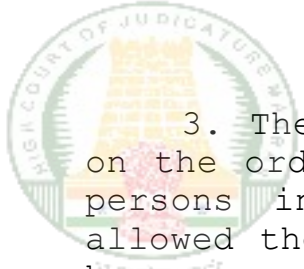
: Mr.G.Thalaimutharasu

JUDGMENT

(Judgment of the Court was delivered by R.SUBBIAH, J.)

This writ appeal has been filed by the State as against the order, dated 13.07.2016, passed by a learned Single Judge of this Court in W.P.(MD).No.14741 of 2014, whereby and whereunder the learned Single Judge, based on the earlier order passed in W.P.Nos.27207 and 27208 of 2012, dated 26.03.2015, quashed the impugned order passed by the appellants fixing the seniority of the respondent herein to a lower level.

2. The case of the respondent before the learned Single Judge is that the respondent herein was appointed as Radio Supervisor in Tamil Nadu Local Administration Radio and Television Maintenance Organization in the Rural Development Department. After introduction of Tamil Nadu Panchayats Act, 1994, the Government issued G.O.Ms.No.229, Rural Development (E4) Department, dated 30.08.2000 dissolving the Radio and Television Maintenance Organization and fixing the responsibility of future maintenance of Television and Radio belonging to the Village Panchayat on the respective village Panchayat Presidents. After deliberations, the Government decided to post the persons, who were working as Technical Assistant (Television) as Deputy Block Development Officer and the Radio Supervisor as Assistant in the Rural Development Department. Accordingly, the respondent was posted as Assistant in the Rural Development Unit on 01.05.2001. Since the service of the respondent and similarly placed persons were not regularised as Assistant with effect from 30.08.2000, the date on which the Government took a policy decision to dissolve the post of Radio Supervisor, they approached this Court in a batch of writ petitions. This Court, vide order dated 17.03.2011, directed the appellants to consider all the aspects and pass orders before the end of July, 2011. But, the first appellant herein passed a Government Order in G.O.(3D).No.43, Rural Development and Panchayat Raj (E3) Department, dated 09.12.2011, absorbing the respondent and other similarly placed persons as Assistants and fixing their seniority at the bottom most in the cadre of Assistant as on 09.12.2011. In view of fixation of seniority at the bottom level, the petitioner lost his 10 years of service and promotional opportunities. Hence, the petitioner has filed the writ petition challenging the said G.O. insofar as fixing his seniority is concerned and for a consequential direction to the respondent to reckon the seniority in the cadre of Assistant with effect from 01.05.2001 with all consequential benefits.



3. The learned Single Judge, after hearing both sides, based on the order passed by this Court in respect of similarly placed persons in W.P.Nos.27207 and 27208 of 2012, dated 26.03.2015 allowed the writ petition. Aggrieved by the same, the appellants have come up with this writ appeal.

4. The learned Government Advocate appearing for the appellants submitted that challenging the legality of the common order dated 26.03.2015 made in W.P.Nos.27207 and 27208 of 2012, the writ appeals have been filed by the Government and the same are still pending. He would further submit that since the respondent was absorbed as Assistant as per G.O.(3D).No.43, Rural Development Department, dated 09.12.2011, he could not claim the benefit under Rule 35(b) of the Tamil Nadu State and Subordinate Rules. Thus, he prayed for interference.

5. The learned counsel appearing for the respondent submitted that a writ appeal filed by the appellants in respect of similarly placed person was dismissed by a Division Bench of this Court in W.A.(MD)No.1429 of 2016 on 23.11.2016, refusing to interfere with the order of the learned Single Judge.

6. In the judgment passed by the Division Bench of this Court in W.A.(MD)No.1429 of 2016, one of us (Justice J.NISHA BANU) was a party and the Division Bench has held in paragraph Nos.9 and 10 as follows:

"9. As rightly contended by the learned Counsel for the respondent/writ petitioner, the dissolving of the organization in which the petitioner was working, was not his act, but the act is on the part of the concerned Authorities and therefore, while accommodating them in terms of G.O.(3D) No.43, dated 09.12.2011, passed by the first respondent, their past services should also been taken into service and admittedly the appointment of the petitioner was to a permanent post. The Division Bench of the Principal Bench has taken into consideration the said aspect while disposing of W.A.No.736 of 2016 and it is relevant to extract the judgment dated 23.06.2016 made in the Writ Appeal which is as follows:

"JUDGMENT

(Judgment of the Court was made by HULUVADI G.RAMESH, J.)

Heard the learned Special Government Pleader for the appellants and so also the learned Counsel representing the respondent.

2. It appears that the respondent had filed a writ petition questioning the fixation of seniority and for a further direction to reckon his seniority in the cadre of Assistant from the



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date of his initial appointment and for retrospective promotion and other benefits which flows from such absorption. Although the learned Single Judge has granted the relief of absorption in the post of Assistant with effect from the date on which the respondent joined the post and to release the benefits accrued on such absorption to him, with regard to the relief of promotion etc., the learned Single Judge has only directed the appellants to consider the case of the respondent based on the service rules or guidelines applicable and on fulfillment of the norms laid down by the Government in this regard. Such being the case, there is no question of contending that an adverse order is being passed against the Government. Rather the Officers, who are responsible, have to take note of the direction of the learned Single Judge in proper perspective for considering the case of the respondent for promotion as to whether he satisfied the criteria or condition required thereof and to do the needful in accordance with law. Such being the case, the appeal being redundant and without merit is dismissed. It is for the appellants to do the needful in accordance with law within a period of two months from the date of receipt of a copy of this order. Consequently, C.M.P.No.9500 of 2016 is also dismissed. No costs."

10. In the light of the above cited judgment, this Court is of the view that the seniority of the respondent/writ petitioner has to be reckoned as Assistant from 01.05.2001 and he should be accorded due placement in the seniority list and insofar as the claim for promotion is concerned, it is open to the Official respondents to consider his claim subject to the satisfaction of the criteria for the conditions required thereof."

7. Thus, it is clear that the issue involved in this writ appeal is no more *res integra*, in view of the order passed by the Division Bench of this Court and the same is applicable to the case of the respondent also. Following the same, this writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(P&A)

/True Copy/



To

1. The Secretary to Government,
Rural Development and Panchayat Raj
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Saidapet, Chennai - 600 015.

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

+One cc to Mr.G.Thalaimutharasu, Advocate, SR.No.4082

gcg

RL/5C/5P/MR/SAR4/26.4.2017

Writ Appeal (MD) No.1581 of 2016

24.01.2017