



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P. (MD) No.8557 of 2017
and
W.M.P (MD) No.6506 of 2017

Kumaresan

: Petitioner

.vs.

1. The Government of Tamil Nadu,
represented by its Secretary, Home (Courts) Department,
Fort St.George,
Chennai - 600 009.
2. The Registrar General,
High Court of Madras,
Chennai.
3. The Principal District Judge,
Kanyakumari District,
Nagercoil.
4. Hepsi Bai,
Grade-II Bench Clerk,
Principal Sub-Court,
Nagercoil,
Kanyakumari District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying this Court for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the third respondent in ROC.No.40/2017-A, dated 11.04.2017 and to quash the same and to direct the third respondent to refix the Petitioner's seniority on par with the persons appointed along with the Petitioner and to pay the pension and other monetary benefits.

For Petitioner : M/s.M.R.Sreenivasan
For Respondent-1 : Mr.M.Murugan
Govt.Advocate

For Respondents : No appearance



O R D E R

[Order of the Court was made by **M.M.SUNDRESH, J.**]

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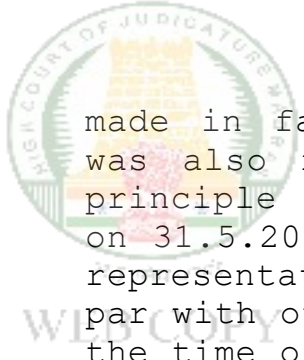
This Writ Petition has been filed seeking issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the third respondent in ROC.No.40/2017-A, dated 11.04.2017 and to quash the same and to direct the third respondent to refix the Petitioner's seniority on par with the persons appointed along with the Petitioner and to pay the pension and other monetary benefits.

2.The petitioner was appointed as Copyist-Typist on 20.11.1996 along with others. As per the Roaster Register, the Petitioner's name has been shown in S.No.13 being belong to open category. According to the Petitioner, the said seniority is wrongly fixed, both on law and on facts. It is submitted that the Petitioner should have been shown in the backward community.

3.Thereafter, promotions have been made on 6.6.2008 from the post of Copyist/Typist and that of Assistant/Grade-III Bench Clerk. From the aforesaid post, further promotion has been made in favour of others on 2.5.2012. Since the Petitioner was placed at the bottom, he was not promoted. He gave representations to promote him as well. Ultimately, he was promoted on 1.11.2013 as Judicial Magistrate Court Head Clerk. Thereafter, other persons appointed along with the Petitioner at the initial post of Copyist-Typist, further promoted to Grade-II Bench Clerk. Though the Petitioner made representations on 6.3.2012 and 1.2.2013, he did not challenge the said promotions. The Petitioner attained the age of superannuation on 31.5.2013. The Petitioner made one more representation on 24.3.2017 after nearly three years from the date of his superannuation seeking pay fixation on par with others who are promoted as Grade-II Bench Clerk in Sub-Court. The said request was rejected by the order impugned herein. Hence the Present Writ Petition is filed for the relief stated supra.

4.The learned counsel for the Petitioner would submit that all the 12 persons have been appointed on the same date and hence, there cannot be any discrimination between them. In support of his contention, the learned counsel for the Petitioner placed reliance on a judgement of this Court made in **W.P.No.5969 of 2008, dated 17.7.2008 (K.A.Baskaran .vs. State of Tamil Nadu, represented by its Secretary to Government, Home(Courts)Department, Chennai-9 and others)**.

5.The request made by the Petitioner was forwarded to the third respondent in the year 2010 itself. We do not find any merit in the Writ Petition. The Petitioner allowed himself to be bye-passed on two occasions. Even prior to that, his position was placed at the bottom. Though he has given representations for the first time in the year 2010, he did not challenge the promotions



made in favour of others. Added to that, last of the promotion was also not challenged. Therefore the Petition is hit by the principle of acquiescence. He attained the age of superannuation on 31.5.2013. After attaining the age of superannuation, he gave representation in the year 2017 seeking fixation of pay scale on par with others. Rightly, the request was rejected. Admittedly, at the time of superannuation, he was working as Judicial Magistrate Court Head Clerk alone. Therefore, he cannot ask for re-fixation based on the ground that he is deemed to have worked as Grade-II Bench Clerk in Sub-Court. Such contention can never be countenanced in the service prudence. Mere giving representation can never be taken as a ground for giving a right. The representation forwarded was according to the Petitioner was in the year 2010. Thereafter, two promotions have been taken place in favour of other persons. Those persons are also not added as a party to the Writ Petition except Respondent No.4. This Court even otherwise felt that what the Petitioner did not get directly, he seeks indirectly through this Writ Petition, which is not permissible in law. Therefore we do not find any merit in the Writ Petition.

6. Accordingly, the Writ Petition stands dismissed. Consequently, connected Miscellaneous Petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar

To

1. The Government of Tamil Nadu,
represented by its Secretary, Home(Courts)Department,
Fort St.George, Chennai - 600 009.
2. The Registrar General,
High Court of Madras, Chennai.
3. The Principal District Judge,
Kanyakumari District, Nagercoil.

+1 cc to Mr.M.R.Sreenivasan , Advocate in SR.No. 79714

+1 cc to Mr.T.S.Mohamed Mohideen , Advocate in SR.No. 80318

+1 cc to The Special Government Pleader in SR.No.79856

vsn

AE/MR KKR/SAR1/26.09.2017/3P/7C

**ORDER MADE IN
W.P. (MD) No.8557 of 2017**

**and
W.M.P (MD) No.6506 of 2017
19.09.2017**