

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 13.07.2018	Delivered on 06.09.2018
---------------------------	----------------------------

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.1755 of 2015 & W.P.(MD) No.735 of 2015
and

M.P.No.1 of 2015, C.M.P.No.6905 of 2015 & M.P.(MD) No.2 of 2015

W.A.No.1755 of 2015

1.N.Manigandan
2.C.Asokan
3.V.Madeswaran

...Appellants

Versus

1.The State of Tamil Nadu
rep. by the Principal Secretary,
Department of School Education
Fort St. George, Chennai - 600 009.

2.The Director of Public Libraries
Directorate of Public Libraries,
737/1, Anna Salai, LLA Building,
Chennai - 600 002.

3.K.Rajendran

.. Respondents

W.P.(MD) No.735 of 2015

A.P.Sivakumar

.. Petitioner

Versus

WEB COPY

1.The Government of Tamilnadu,
Rep. by the Secretary,
Department of School Education,
St.George Fort, Chennai.

2.The Director of Public Library,
Directorate of Public Library,
No.737/1, Anna Salai,
Chennai - 2.

.. Respondents

PRAYER in W.A.No.1755 of 2015: Appeal filed against the order passed by this Court dated 19.11.2015 passed in W.P.No.1419 of 2015.

Prayer in W.P.No.1419 of 2015:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus calling for the records of the 1st Respondent in connection with the impugned order passed him G.O.(D) No.9 School Education (Public Libraries) Department dated 12.01.2015 and the consequential order of the 2nd Respondent issued in Na.Ka.No.14283/A1/2010 dated 12.01.2015 and quash the same and further direct the respondents to continue the petitioners in the post of District Library Officer.

PRAYER in W.P.(MD) No.735 of 2015: The writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order of Reversion in G.O.Ms.No.9, School Education (PO.No.1) Department, dated 12.01.2015 on the file of the Respondent No.1 and the Consequential Order in Na.Ka.No.14283/A1/2018/A1/2010-2 dated 13.01.2015 on the file of the Respondent No.2 and quash the same as illegal and consequently direct the respondents to retain the petitioner in the post of District Library Officer.

For Appellants : Mr.V.T.Gopalan, Senior Counsel
for M/s.S.Sathiyaseelan and
P.C.Harikumar & Associates
in W.A.No.1755 of 2015

For Petitioner : Mr.T.Lajapathi - No appearance
in W.P.(MD)No.735 of 2015

For Respondents : Mrs.Narmatha Sampath,
Additional Advocate General
Assisted by Mr.K.Karthikeyar,
Government Advocate for R1 and R2
in both Writ Appeal and in Writ
Petition
Mr.M.Purushothaman for R3
in W.A.No.1755 of 2015

J U D G M E N T

R.SUBRAMANIAN, J.

1. The challenge in this intra-Court appeal is to the order of the learned Single Judge made in W.P.No.1419 of 2015 dated 19.11.2015, in and by which, the learned Single Judge dismissed the Writ Petition filed by the appellants seeking issuance of a Writ of Certiorarified Mandamus calling for the records of the 1st respondent in connection with impugned order passed in G.O (D).No.9, School Education (Public Libraries) Department dated 12.01.2015 and the consequential order of the 2nd respondent dated 12.01.2015 bearing Na.Ka.No.14283/A1/2010 and direct the respondents to continue the petitioners in the post of District Library Officers.

2. The challenge in the Writ Petition is also to the same Government Order viz., G.O(D).No.9, School Education (Public Libraries) Department dated 12.01.2015 and the consequential order of the Director of Public Libraries dated 13.01.2015. The petitioner in the Writ Petition also sought for the issuance of a mandamus directing the respondents to continue him as a District Library Officers. The Writ Petition which was filed before the Madurai Bench stands transferred to the Principal Bench by the order of the Hon'ble The Chief Justice dated 29.11.2016, with a direction for listing the Writ Petition along with the above Writ Appeal viz., W.A.No.1755 of 2015.

3. The claim of the appellants who were the petitioners in the Writ Petition in W.P.No.1419 of 2015 and that of the petitioner in W.P.(MD)No.735 of 2015 are identical. The parties will be referred to by their rank in the Writ Petition for the sake of convenience.

4. By the orders impugned in the Writ Petitions, the petitioners were reverted from the post of District Library Officers. By the consequential order dated 13.01.2015, the 2nd respondent appointed the 3rd petitioner in W.P.No.1419 of 2015 as Librarian Grade - I. While so, the 2nd petitioner in W.P.No.1419 of 2015 as well as the petitioner in W.P.(MD)No.735 of 2015 were appointed as Librarian Grade - II. It is these orders that were questioned by the petitioners in the Writ Petition.

5. The claim of the petitioners in the Writ Petition was that they were appointed as Librarian Grade - III in the District Library Service on various dates and they were promoted as Librarian Grade - I. The following tabular column would show the date of appointment and promotion of the petitioners in W.P.No.1419 of 2015 and W.P.(MD)No.735 of 2015.

Name of the Appellant/ Petitioner	Date of Appointment as Librarian Grade III	Date of Promotion to Grade II/ Grade I	Date of appointment as District Library Officer
N.Manikandan (1 st appellant) W.A.No. 1755 of 2015	26.08.1987	23.03.1996	17.04.2002
A.P.Sivakumar (petitioner) W.P.(MD) No.735 of 2015	02.11.1988	23.03.1996	17.04.2002
V.Matheswaran (3 rd appellant) W.A.No.1755 of 2015	26.11.1980	19.04.1999	09.01.2003
C.Ashokan (2 nd appellant) W.A.No.1755 of 2015	19.01.1991	05.03.2001 (Grade - II) 12.09.2001 (Grade - I)	15.06.2005

6. The posts of District Library Officers were sanctioned by G.O.No.1218, Education, dated 16.07.1974. The Government issued G.O.Ms.No.2544 dated 20.11.1976, in and by which, the General and Special Rules applicable to Class - II employees in the Education Department were made applicable to the District Library Officers subject to modification. The said Government order also provided that the District Library Officers will constitute a separate category in class - II services. The mode of appointment of the District Library Officers as per G.O.Ms.2544, Education dated 20.11.1976 was as follows :-

3. Appointment : Appointment to the posts shall be made as follows:-

(i) by recruitment by transfer from among the holders of the post of Deputy Librarian of Connemara Public Library and Librarians in other Government Offices; as may be specified by the Government at the time of recruitment; or

(ii) by transfer from the holders of the post of Librarians in the said service (or)

(iii) by direct recruitment -

(a) from the District Central Librarians of Local Library Authorities; or

(b) if no suitable person is available under item (a) from the open market.

7. By G.O.Ms.1234, Education dated 27.06.1981, the Government framed Adhoc Rules for appointment to temporary posts of District Library Officers [State level entry post] in the Education Department. The said Government Order was issued making certain amendments to the notification dated 20.11.1976. As per the said Government order, the appointment to the post of District Library Officers was amended as follows:-

3. Appointments:- Appointments to the post shall be made as follows:-

(i) by recruitment by transfer from the post of Deputy Librarian of Connemara Public Library; or

(ii) by direct recruitment from among Librarians Grade I in the Local Library Authorities; if no qualified and suitable person is available by the method in item (i) above; or

(iii) by recruitment by transfer from any other services, if no qualified and suitable person is available by the methods in items (i) and (ii) above; or

(iv) by direct recruitment from the open market, if no qualified and suitable person is available by the methods in items (i), (ii) and (iii) above.

8. The petitioners claim that they have been appointed as per the Amended Rule i.e., by direct recruitment from among librarians Grade - I in the Local Library Authorities, as no suitable candidate was available for recruitment by transfer from the post of Deputy Librarian of Connemara Public Library. During the year 1989, the Government issued G.O.Ms.1735 dated 11.12.1989 with a view to integrate the different library Authorities. By the said Government Order dated 11.02.1989, the Directorate of Public Libraries and Local Library Authorities were treated as one unit while the Connemara Public Library was kept as a separate unit. On adoption of the one unit system, a integrated State Seniority list was directed to be prepared fixing the crucial date as 01.04.1982 viz., the date with effect from which the post in the Local Library Authorities were provincialized.

9. On 29.05.1990, an integrated seniority list was prepared pursuant to the introduction of one unit system. Several persons who were working as Librarian Grade - I were reverted as Librarian Grade - III. This Seniority list came to be challenged before the Tamil Nadu Administrative Tribunal. The Tamil Nadu Administrative Tribunal on a consideration of the facts and circumstances of the case passed several directions which read as follows:-

1. Protection should be afforded to all promotions made till the date of actual issue of the amendment to the rules. The services should be regularized, increment and pay protection should be given;

2. For the purpose of seniority, panels may be drawn up for each year with reference to the actual number of vacancies that had arisen during the year based on combined single unit seniority in the respective categories as on 11.12.89 and qualifications with reference to the crucial date for preparation of the panel in each year. In respect of appointments made in each year, the crucial date for considering the eligibility for inclusion in the panel for that year should be a date prior to the year.

3. While such panel's way is the basis for seniority, promotions already made will stand;

4. If this will cause hardship in that seniors would be denied the promotion for want of vacancies, the only course would be to create certain number of supernumerary posts in lieu of an equal number of posts in the lower category so that eligible persons whose claims have been overlooked due to improper implementation of the orders earlier may be suitably protected.

Action may be taken accordingly after issue of the rules for implementations of the single unit system as directed in G.O.Ms.No.1735 dated 11.12.89.

10. This order of the Tribunal was challenged by the State before the Hon'ble Supreme Court in SLP. Civil Nos.7818-50 of 1992 batch cases. The Hon'ble Supreme Court disposed of the Special Leave Petition recording the submission of the counsel for the State. The order of the Hon'ble Supreme Court reads as follows:-

The submission of learned counsel for the Petitioner is that in order to implement the Tribunal's Order, the Petitioner, State Government may be required to create 327 supernumerary posts for accommodating the persons benefited by the Tribunals' order.

It has been fairly admitted that the persons have been working on these posts from different dates between 1983 and 1987 so that even the latest appointee has been in that position for about seven years by now. In such a situation, we do not deem it fit to go into the merits of the points raised in the S.L.P leaving in open to raise the points in an appropriate case. The S.L.P is dismissed.

11. After the disposal of the Special Leave Petition by the Hon'ble Supreme Court some of the Librarians who were working as Grade - III Librarians including the 1st petitioner in W.P.No.1419 of 2015 and the petitioner in W.P.(MD).No.735 of 2015 approached the Tamil Nadu Administrative Tribunal in O.A.No.621 of 1995 seeking promotion as Grade - I Librarians. Following the order of the Tribunal passed in O.A.No.1370 of 1991 batch, the Tamil Nadu Administrative Tribunal disposed of the application directing the Government to consider the claim for promotion in line with the earlier order passed by the Tamil Nadu Administrative Tribunal which was confirmed by the Hon'ble Supreme Court. Even before the Original Applications in O.A.Nos.620 and 621 of 1995 were filed before the Tribunal, the Government had on 09.11.1994 by its letter bearing No.1080 directed that no promotion should be given to any staff of the Public Libraries Department based on the District Level seniority and speedy action should be taken for approval of the Adhoc Rules for implementing the State Level Seniority without any ailments.

12. However, by a subsequent Government Order in G.O.Ms.No.161, dated 07.03.1996, the Government accepted the proposal of the Director of Public Libraries to permit him to effect promotions based on District Seniority so as to enable him to fill up the vacancies particularly in the skeleton posts like Inspector of Libraries etc., The Government also cancelled the letter dated 09.11.1994 prohibiting promotions in the public library Department.

13. Consequent upon the lifting of the prohibition, the petitioners were promoted as Librarian Grade - I on the date specified in the tabular column supra. The 1st petitioner in W.P.No.1419 of 2015 and the petitioner in W.P.(MD).No.735 of 2015 were appointed as District Library Officers [Temporarily] on 17.04.2002. Upon such appointment by direct recruitment, their services stood transferred to the Education Department from the said date. Similarly, the 3rd petitioner in W.P.No.1419 of 2015 was appointed as District Library Officer on 09.01.2003, while the 2nd petitioner in W.P.No.1419 of 2015 was appointed as

District Library Officer on 15.06.2005. Thereafter, the Government issued Adhoc Rules for the Tamil Nadu Public Libraries Subordinate Services under G.O.Ms.No.60, dated 27.04.2006. The petitioners would also claim that the Government amended the Tamil Nadu Public Libraries Act, 1948 by Act 5 of 2001 by introducing Section 9(A), 9(B) and 9(C), in and by which, the persons who were employed in the local Library Authorities were made as Government Servants from 01.04.1982.

14. The said Amending Act also contained a non-abstanti Class by way of section 7 which reads as follows:-

7. Notwithstanding anything contained in any law for the time being in force, all things done or actions taken by any officer or authority, on or after the 1st day of April 1982 and before the date of the publication of this Act in the Tamil Nadu Government Gazette, which are in conformity with the provisions of the principal Act as amended by this Act, shall, for all purposes, be deemed to be, and to have always been, validly done or taken in accordance with law as if the principal Act, as amended by this Act, had been in force at all material times when such things or actions were done or taken.

15. After framing the Adhoc Rules on 27.04.2006, the Director of Public Libraries prepared a seniority list for Librarians Grade - III on 29.08.2006. A revised seniority list was also prepared on 02.05.2007. The revised seniority list was subject matter of challenge before this Court in W.P.No.24947 of 2007 etc., batch, this Court had set aside the revised seniority list while restoring the seniority list dated 29.08.2006. This Court also directed the respondents therein to give notional promotions to the petitioners therein subject to their eligibility. There was a further direction that all Adhoc promotions effected between 1996 - 2006 shall be revoked based on the seniority list dated 29.08.2006. The respondents were directed to complete the entire exercise within a period of six months from the date of the order of the Court taking the State level seniority list dated 29.08.2006 as final and conclusive for all purpose. There was also a direction that the persons who were promoted during the year 1996 to 2006 based on the District level seniority shall be reverted to their respective posts.

16. The said order made in W.P.No.24947 of 2007 etc., batch was challenged before the Division Bench of this Court in W.A.No.1173 of 2010. A Consensus emerged at the time of the hearing of the W.A.No.1173 of 2010, wherein, the State represented by the Additional Advocate General expressed its willingness to scrap the seniority list dated 29.08.2006 and publish a fresh draft seniority list within the time to be fixed by this Court and publish a draft seniority list. It was also undertaken by the learned Additional Advocate General that the State would invite objections and after considering the same a final seniority list would be published. This suggestion of the learned Additional Advocate General made before the Division Bench was accepted by the learned counsel for the private respondents appearing in that case. Taking note of the said consensus the Division Bench passed the following directions:-

7. Thus taking note of the submission made and recording the consensus arrived at between the parties these appeals are disposed of with the following direction:-

i) The appellant shall prepare a draft state wide seniority list of Librarian Gr.1/ Inspector of Librarian within a period of two weeks from the date of receipt of a copy of this order.

ii) The appellant shall publish the draft State wide seniority list by bringing to the notice of all the Librarians/ Inspector of Libraries and all other persons who may be aggrieved through the District Library Officers.

iii) The Librarians/ Inspector or Libraries and other persons aggrieved shall submit their objections, if any to the draft seniority list withing a period of two weeks from the date of publication of the draft seniority list.

iv) On receipt of these objections, the appellants shall consider the same and publish the final seniority list within a period of four weeks from the date of receipt of the objections from aggrieved persons.

17. Subsequently, a clarification was also issued by the Division Bench. The petitioner would contend that in view of the order passed in W.A.No.1173 of 2010 etc., batch, the direction issued by the learned Single Judge, Hon'ble Mrs. Justice

R.Banumathi [as she then was] in her order dated 08.04.2009 made in W.P.No.24947 of 2007 would also stand scrapped. Pursuant to the directions issued by the Division Bench, the Director of Public Libraries issued a revised seniority list on 10.02.2011. The names of the petitioners also found place in the revised final seniority list dated 10.02.2011. It is the case of the petitioners that this seniority list dated 10.02.2011 does not pertain to the post of District Library Officers as the same fell under a totally different service.

18. After the publication of the seniority list on 11.02.2011, the Director of Public Libraries recommended for reversion of the petitioners in these Writ Petitions to the State Government. However, before the State Government could take a decision on the requested reversion, on 01.10.2011, the Director of Public Libraries made a recommendation to the Government to enable retention of the petitioners and others as District Library Officers.

19. While things stood thus, the Government appointed about 16 persons who were working as Librarian Grade - I as District Library Officers on 07.05.2012. Anticipating reversion, the petitioners had approached this Court and obtained stay orders in W.P.Nos.22633, 22643 and 22647 of 2011. The proceedings that were challenged in those Writ Petitions were the recommendation of the District Library Officer dated 01.10.2011, in and by which, the District Library Officer recommended reversion of the petitioners and others. This Court had also granted interim stay of reversion. While so, since the District Library Officer by his letter dated 01.10.2011 recommended retention of the petitioners and others who were working as District Library Officers in the same post, the Writ Petitions were withdrawn on 08.12.2011.

20. Thereafter on 12.01.2015, the present Government order in G.O.(D).No.9 dated 12.01.2015 came to be passed reverting the petitioners and the consequential order was also passed by reducing their rank and posting them as Librarians Grade - I and Grade -II in various places. It is this order that was challenged by the petitioners in the Writ Petitions.

21. The fundamental claim of the petitioners is that on being appointed as District Library Officers they have moved from one service to the other service viz., they have moved from the District Library Service to the Tamil Nadu Education Service. Therefore, the changes in the seniority list or the re-fixation of the seniority based on Integrated State Level

Seniority in the original service cannot affect them. Referring to the orders of appointments issued to them, the petitioners would contend that they were appointed as District Library Officers and not promoted as such. Therefore, the introduction of one unit system and fixation of inter se State seniority amongst the Librarians cannot affect their appointment as District Library Officers.

22. They would also contend that the order of the learned Single Judge, Hon'ble Mrs. Justice R.Banumathi [as she then was] made in W.P.No.24947 of 2007 etc., batch nullifying the promotions made between 1996 and 2006 cannot apply to them, inasmuch as they had gone to a different service even before the Inter se State Level Seniority was fixed. An alternative submission is also made by the petitioners to the effect that the orders passed by the Division Bench in W.A.No.1173 of 2010 etc., batch would amount to effacing the orders of the learned Single Judge made in W.P.No.24947 of 2007 etc., batch.

23. The Writ Petition was resisted by the respondents contending that the appointment of the petitioners as District Library Officers itself was temporary and therefore, they cannot claim any right under those appointments. It was also claimed that in view of the fixation of Inter se State Level Seniority, the petitioners who were much juniors to others could not have been even considered for the appointment as District Library Officers. It is the further contention of the Government that the very promotion of the petitioners to the post of Librarian Grade - I itself was illegal and in view of the orders passed by this Court in W.P.Nos.24947 of 2007 etc., batch, the promotion of the petitioners as Librarian Grade - I itself became invalid.

24. It was also contended that the Division Bench had not set aside the orders of the learned Single Judge made in W.P.Nos.24947 of 2007 etc., batch. It is claimed by the State that in fact the judgment of the learned Single Judge was confirmed by the Division Bench in W.A.Nos.1173 of 2010 etc., batch. It was also claimed that the appointment of the petitioners as District Library Officers is only temporary and stopgap arrangement, therefore, the appointment of the petitioners as District Library Officers being purely temporary, the petitioners cannot claim a vested right to continue in the said post. The State would also claim that the petitioners cannot re-agitate their claim since they have chosen to withdraw the earlier Writ Petitions in W.P.Nos.22633, 22643 and 22647 of 2011, in which they had challenged the recommendations of the Director of Public Libraries dated 11.02.2011.

25. It was the further contention of the Government that the petitioners would not be entitled to the protection under the non-abstanti class found in the amending Act 5 of 2001. Inasmuch as the said non-abstanti class protects only those actions which are in conformity with the provisions of the principal Act as amended by the amending Act. Therefore, according to the respondents the reversion of the petitioners is perfectly justified and does not call for any interference.

26. The learned Single Judge who heard the Writ Petition in W.P.No.1419 of 2015 dismissed the Writ Petition on the following findings viz.,

1. The petitioners have not challenged the said seniority list dated 10.02.2011.

2. The petitioners have chosen to withdraw their challenge to the recommendations of the Director of Public Libraries dated 11.02.2011.

3. The petitioners were promoted after the publication of the amendment Act 5 of 2001 and before the Adhoc Rules was published in G.O.N.60 dated 27.04.2006.

4. The observations of the learned Single Judge, Hon'ble Mrs. Justice R.Banumathi [as she then was] made in W.P.Nos.24947 of 2007 etc., to the effect that some of the petitioners were favoured with double promotions and triple promotions to enable them to jump the queue was not in any way diluted by the Division Bench in W.A.No.1173 of 2010 etc., batch.

5. The petitioners also have not challenged the rejection of their objections to the revised seniority list.

On the above findings, the learned Single Judge concluded that the reversion of the petitioners by the impugned Government order was perfectly justified and dismissed the Writ Petition. Aggrieved, the petitioners are before us by way of this intra-Court appeal.

27. We have heard Mr.V.T.Gopalan, learned Senior Counsel appearing for Mr.S.Sathiyaseelan and Mr.P.C.Harikumar for the appellants in W.A.No.1755 of 2017, Mrs.Narmatha Sampath, Additional Advocate General Assisted by Mr.K.Karthikeyan, learned Government Advocate for Respondents 1 and 2 in both the Writ Appeal as well as Writ Petition. Mr.M.Purusothaman for the 3rd respondent in W.A.No.1755 of 2015.

28. Mr.V.T.Gopalan, learned Senior Counsel appearing for the appellants would vehemently contend that the learned Single Judge proceeded on the wrong premise that the appellants were promoted as District Library Officers, overlooking the fact that they were appointed as District Library Officers under the totally different service Rules and on such appointment they had migrated from the services of the District Library Authorities to the services of the Education Department.

29. Mr.V.T.Gopalan, learned Senior Counsel would also submit that the withdrawal of the Writ Petitions filed by the appellants in W.P.Nos.22633 of 2011 etc., cannot be said to be a bar for prosecution of the present Writ Petitions inasmuch as the challenge in those Writ Petitions was only to the recommendation of the Director of Public Libraries dated 11.02.2011 which was subsequently superseded by another recommendation dated 01.10.2011. Since both the proceedings dated 10.02.2011 and 01.10.2011 were only recommendatory in nature and the subsequent recommendation having superseded the earlier recommendation, the petitioners cannot be faulted for withdrawing the earlier Writ Petitions filed by them challenging the recommendation dated 10.02.2011. Though the State Government thought fit to prohibit promotions in 1994, subsequently, at the request of the Director, the prohibition was withdrawn by the Government in 1996. If the Government had delayed the framing of Adhoc Rules for one reason or the other, the petitioners cannot be penalized.

30. Arguing further Mr.V.T.Gopalan, learned Senior Counsel appearing for the appellants would submit that the appellants have been serving in the post of District Library Officer for more than seven years now, they cannot be reverted to a post which they ceased to occupy after their appointment as District Library Officers. Pointing out that the posts of District Library Officers were created on 16.07.1974 and by G.O.Ms.No.2544 dated 20.11.1976 the General and Special Rules applicable to the Class - II employees of the Education Department were made applicable to the District Library Officers, as well as the amendment enabling the recruitment of grade - I librarians with 5 years of service in the District Library Services as District Library Officers by G.O.Ms.No.1234, Education, dated 27.06.1981, the learned Senior Counsel would contend that on appointment as District Library Officers, the petitioners have migrated to a different service and therefore their promotions while they were working as librarians cannot be called in question. While acknowledging the fact that at least two of the petitioners have been promoted from librarian grade - III to grade - I directly, Mr.V.T.Gopalan, learned Senior Counsel would submit that those promotions were made when the

Single Unit System was not introduced and the Government had permitted such promotions.

31. He would also submit that the appointment of the petitioners as District Library Officers was never questioned at any point of time. Mr.V.T.Gopalan, learned Senior Counsel would further submit that the learned Single Judge was not right in holding that the failure of the petitioners to challenge the seniority list dated 10.02.2011 would militate against them. This finding again according to Mr.V.T.Gopalan is the result of the learned Single Judge's wrong assumption regarding the nature of their appointment to the post of District Library Officers.

32. Contending contra Mrs.Narmatha Sampath, learned Additional Advocate General would contend that the promotions granted to the petitioners were out of turn and illegal. The petitioners were not qualified to be appointed as District Library Officers at the time when they came to be appointed as such. Heavily relying upon the orders of the learned Single Judge Hon'ble Mrs. Justice R.Banumathi [as she then was], made in W.P.Nos.24947 of 2007 etc., batch, she would contend that the promotions made between 1996 and 2006 were nullified by this Court. She would also contend that the learned Single Judge was right in holding that the order in W.A.Nos.1173 of 2010 etc., did not in any way whittle down the effect of the orders passed in W.P.No.24947 of 2007 etc., batch. The learned Additional Advocate General would also point out that the persons who are far senior to the petitioners were still languishing as librarians grade - I or II, while the petitioners who were favoured with double promotions are now serving as District level officers.

33. Mr.M.Purusothaman, learned counsel appearing for the 3rd respondent in W.A.No.1755 of 2015 would substantially adopt the arguments of the learned Additional Advocate General.

34. We have given our anxious consideration to the submissions made by the learned counsel on either side. The appellants were originally working as librarians under the District Library Authority. It is not in dispute that the District wise seniority was followed for promotion as Librarians Grade - II and Grade - I prior to the provisionalization of the service and introduction of one unit system under G.O.Ms.No.1735 dated 11.12.1989. Upon introduction of the single unit system, some of the Grade - I librarians were reverted as Grade - III librarians. The said orders of reversion came to be questioned before the Tamil Nadu Administrative Tribunal in O.A.Nos.1370 of 1991 etc., batch. The Tribunal had

observed that the Administrative decision which involves change in service Rules should be followed up by necessary changes by way of amendment in the Rules without any inordinate delay. While dealing with the changes the Tribunal further observed as follows :-

In this case, the order for constitution of a single unit has been issued only in 1989. It is not clear, how a direction was issued for drawing up a combined seniority list in 1984. No such decision appears to have been communicated while provincialising the services with effect from 01.04.1982. Even if such a direction had been issued, pending finalization of a decision on pending amendment to the rules, a long delay during which period promotions have been done with reference to the District-wide seniority should not ordinarily be disturbed. In this case, no such decision regarding a single unit or direction, that appointments should be temporary and would be subject to seniority to be fixed, appears to have been issued. In this circumstances, we would follow the same approach as in the case of combined seniority can taken effect only from the date on which the decision to form a single unit was taken and not retrospectively. We would therefore direct that the implementation of the single unit should be with reference to the date of issue of orders 11.12.89. Even if the amendments are given retrospective effect. We would consider, in the circumstances, taking into account the delays and the consequences of the delays that action should be taken on the following lines:

1. Protection should be afforded to all promotions made till the date of actual issue of the amendment to the rules. The services should be regularized, increment and pay protection should be given; [emphasis supplied].

2. For the purpose of seniority, panels may be drawn up for each year with reference to the actual number of vacancies that had arisen during the year based on combined single unit seniority in the respective categories as on 11.12.89 and qualifications with reference to the crucial date for

preparation of the panel in each year. In respect of appointments made in each year, the crucial date for considering the eligibility for inclusion in the panel for that year should be a date prior to the year.

3. While such panel's way is the basis for seniority, promotions already made will stand; [emphasis supplied].

4. If this will cause hardship in that seniors would be denied the promotion for want of vacancies, the only course would be to create certain number of supernumerary posts in lieu of an equal number of posts in the lower category so that eligible persons whose claims have been overlooked due to improper implementation of the orders earlier may be suitably protected.

Action may be taken accordingly after issue of the rules for implementations of the single unit system as directed in G.O.Ms.No.1735 dated 11.12.89.

35. This order of the Tribunal was challenged by the State Government before the Hon'ble Supreme Court in SLP.Civil No.7818 - 50 of 1992 etc., batch. The said Special Leave Petitions were dismissed by the Hon'ble Supreme Court on 06.06.1994. Thereafter, the Government issued a letter dated 09.11.1994 prohibiting promotions on the basis of District level seniority. But, subsequently, by G.O.Ms.161 dated 07.03.1996, the Government had withdrawn the said letter dated 09.11.1994 and had permitted the Director of Public Libraries to effect promotions in the Department of Public Libraries based on District seniority, so as to enable him to fill up the vacancies particularly to the skeleton post like Inspector of Libraries etc., till such time Adhoc Rules are issued by the Government. It appears that based on this clarification, the appellants were promoted as Librarians Grade - I in 1996, 1999 and 2001.

36. While things stood thus, the Government had sanctioned the posts of District Library Officers under G.O.Ms.1218, Education, dated 16.07.1974. By G.O.Ms.No.2544 dated 20.11.1976, the Government had provided that the General and Special Rules applicable to the Class - II employees in the Education Department would be applicable to the District Library Officers subject to modifications. It is also stated that these posts will constitute a separate category in Class II of Tamil Nadu Educational Service. The mode of appointment for the post of District Librarian was

(i) by recruitment by transfer from among the holders of the post of Deputy Librarian of Connemara Public Library and Librarians in other Government Offices; as may be specified by the Government at the time of recruitment; or

(ii) by transfer from the holders of the post of Librarians in the said service (or)

(iii) by direct recruitment -

(a) from the District Central Librarians of Local Library Authorities; or

(b) if no suitable person is available under item (a) from the open market.

37. Subsequently, by G.O.Ms.No.1234, Education dated 27.06.1981, the Government amended the Rules relating to qualification and the Rule 3 relating to the mode of appointment was substituted as follows:-

3. Appointments:- Appointments to the post shall be made as follows:-

(i) by recruitment by transfer from the post of Deputy Librarian of Connemara Public Library; or

(ii) by direct recruitment from among Librarians Grade I in the Local Library Authorities; if no qualified and suitable person is available by the method in item (i) above; or

(iii) by recruitment by transfer from any other services, if no qualified and suitable person is available by the methods in items (i) and (ii) above; or

(iv) by direct recruitment from the open market, if no qualified and suitable person is available by the methods in items (i), (ii) and (iii) above.

38. This amendment paves way for grade - I librarians working in the Local Library Authorities to apply for direct recruitment as District library Officers under the Education service. It is only based on the above amendment issued in the year 1981, the appellants were appointed as District Library Officers in 2002, 2003 and 2005.

39. The first and foremost contention of Mr.V.T.Gopalan, learned Senior Counsel appearing for the appellants is that on their appointment as District Library Officers under the Tamil Nadu Education Department, the appellants had ceased to be the members of the service viz., the Local Library Authorities. Once

the appellants had moved to a completely different service, they cannot be reverted to the lowest post in the parent service.

40. The learned counsel would also further submit that the order of the Tamil Nadu Administrative Tribunal, made in O.A.Nos.1370 of 1991 etc., batch dated 11.05.1992, had clearly observed that protection should be afforded to all promotions made till the date of actual issue of amendment to the Rules, the service should be regularized and increment and pay protection should be given. Pointing out that the challenge to this order of the Tribunal was also rejected by the Hon'ble Supreme Court, Mr.V.T.Gopalan, learned Senior Counsel appearing for the appellants would submit that the learned Single Judge was not right in upholding the order of reversion of these appellants.

41. Learned Senior Counsel appearing for the appellants would also submit that the learned Single Judge was not right in relying upon the judgment of the Hon'ble Mrs.Justice R.Banumathi [as she then was] in W.P.Nos.24947 of 2007 etc., batch dated 08.04.2009. He would further submit that the Hon'ble Single Judge had proceeded on the footing that the appellants were promoted to the post of District Librarian overlooking the fact that they had entered a totally different service and their appointment as District Librarian was by direct recruitment under the relevant recruitment Rules framed under G.O.Ms.2544 dated 20.11.1976 as amended by G.O.Ms.No.1234 dated 27.06.1981. Mr.V.T.Gopalan, learned Senior Counsel, would also submit that the promotions of the appellants having been not challenged at any point of time they cannot be reverted to the lowest post in the cadre.

42. Arguing further he would submit that in view of the judgment of the Division Bench in W.A.Nos.1173 of 2010 etc., batch dated 20.09.2010, the judgment of the learned Single Judge, Hon'ble Mrs. Justice R.Banumathi, [as she then was] would stand effaced and the directions issued by the Division Bench alone would prevail. Therefore, according to Mr.V.T.Gopalan, learned Senior Counsel appearing for the appellants, the learned Single Judge was not right in invalidating the promotions given to the appellants as they would fall within the period between 1996 and 2006 covered by the judgment of the Hon'ble Mrs.Justice R.Banumathi, [as she then was] in the Writ Petitions cited supra.

43. In fact, we find that the plea taken by the Government before Hon'ble Mrs.Justice R.Banumathi [as she then was] was totally given up before the learned Single Judge when the Writ Petition against which the present Writ Appeal has been filed

were argued. From the pleading as well as the earlier judgments, we find that the essential question that is to be answered in these Writ Appeals is as to, whether the promotions of the appellants from the post of Librarian grade - III to Librarian Grade - II or Librarian Grade - I could be nullified after they had moved to a totally different service by virtue of the appointment as District Library Officers under the Education Department.

44. A perusal of the appointment orders issued to the appellants would show that they have been directly recruited and appointed as District Library Officers. The appointment orders issued in G.O.(2D) No.23 dated 17.04.2002, in and by which, the 1st appellant in W.A.No.1755 of 2015 and the petitioner in W.P.(MD)No.735 of 2015 were appointed as District Library Officers, reads as follows:-

fPH;f;fz;l E}yf Ma;thsh; kw;Wk; Kjy;
epiy E}yfh;fis khtl;l E}yf mYtyh;
gzpaplj;jpy; mth;fs; gzpg;bghWg;ngw;Fk; ehs;
Kjy; khtl;l E}yf mYtyh;fshf Kw;wpYk;
jw;fhypfkhf epakpj;J muR MizapLfpwJ/

45. The 3rd appellant in W.A.No.1755 of 2015 was appointed as District Library Officer by G.O.(2D).No.5 dated 09.01.2003 and the same reads as follows:-

fPH;f;fz;l E}yf Ma;thsh; kw;Wk; Kjy;
epiy E}yfh;fis khtl;l E}yf mYtyh;
gzpaplj;jpy; mth;fs; gzpg;bghWg;ngw;Fk; ehs;
Kjy; khtl;l E}yf mYtyh;fshf Kw;wpYk;
jw;fhypfkhf epakpj;J muR MizapLfpwJ/

46. The 2nd appellant in W.A.No.1755 of 2015 was appointed as District Library Officer by G.O.(2D).No.24 dated 09.06.2005 and the same reads as follows:-

fPH;f;fz;l E}yf Ma;thsh; kw;Wk; Kjy;
epiy E}yfh;fis khtl;l E}yf mYtyh;
gzpaplj;jpy; mth;fs; gzpg;bghWg;ngw;Fk; ehs;
Kjy; khtl;l E}yf mYtyh;fshf Kw;wpYk;
jw;fhypfkhf epakpj;J muR MizapLfpwJ/

47. A reading of the aforesaid Government Orders will make it clear that all these four persons viz., appellants in W.A.No.1755 of 2015 as well as the petitioner in W.P.No.735 of 2015 were appointed by direct recruitment as District Library Officers by virtue of the amended Rules set out in G.O.Ms.1234, dated 27.06.1981. Mr.V.T.Gopalan would also submit that all these appellants have been serving as District Library Officers for more than 10 years now and therefore, they should not be reverted. Mr.V.T.Gopalan would buttress his submissions by

relying upon the following observations of the Hon'ble Supreme Court in Rudra Kumar Sain and others Vs. Union of India and others reported in (2000) 8 SCC 25

20. In service jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such an appointment cannot be held to be "stopgap or fortuitous or purely ad hoc". In this view of the matter, the reasoning and basis on which the appointment of the promotees in the Delhi Higher Judicial Service in the case in hand was held by the High Court to be "fortuitous/ ad hoc/ stopgap" are wholly erroneous and, therefore, exclusion of those appointees to have their continuous length of service for seniority is erroneous.

48. Mr.V.T.Gopalan, would also draw our attention to the judgment of the Hon'ble Supreme Court in Kunhayammed and others Vs. State of Kerala and another reported in (2000) 6 SCC 359, wherein, the Hon'ble Supreme Court had explained the doctrine of merger as follows:-

42. "To merge" means to sink or disappear in something else; to become absorbed or extinguished; to be combined or be swallowed up. Merger in law is defined as the absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not increased; an absorption or swallowing up so as to involve a loss of identity and individuality. (See Corpus Juris Secundum, Vol.LVII, pp.1067-68)

49. Relying upon the above observations of the Hon'ble Supreme Court, Mr.V.T.Gopalan would contend that the judgment of Hon'ble Mrs.Justice R.Banumathi [as she then was] rendered in W.P.Nos.24947 of 2007 etc., batch would stand effaced by the judgment of the Division Bench which recorded an alternative proposal made by the Advocate General.

50. Mr.V.T.Gopalan, would also draw our attention to the judgment of the Hon'ble Supreme Court in Narender Chadha and others Vs. Union of India and others reported in 1986 (2) SCC 157, wherein the Hon'ble Supreme Court again reiterated the law that a person who has worked in a post for a fairly long time

should not be reverted. Contending that the impugned reversion orders are in violation of all canons of service jurisprudence, the learned Senior Counsel appearing for the appellants would vehemently argue that a reversion of a direct recruit cannot be made to a post lower than the post that he was initially holding. According to him, the appellants being the direct recruits in the post of District Library Officers in the Education Department, they cannot be reverted to a post lower than the District Library Officer.

51. As already adverted to Mrs.Narmatha Sampath, learned Additional Advocate General appearing for the State would submit that the promotions of the appellants to the post of Librarian Grade - I were in contravention of the single unit system that was introduced in the year 1981 and therefore they cannot claim a vested right in the promoted post. Further as per the judgment of the Hon'ble Mrs.Justice R.Banumathi, [as she then was] all these promotions between 1996 and 2006 should be re-visited, if those promotions are re-visited and the single unit system is implemented the appellants would not get the benefit of promotions.

52. May be, if the appellants had not moved on to the post of District Library Officers and had remained as Grade - I Librarian in their parent Department viz., the Local Library Authorities, it can be said that the promotion of the appellants can be re-visited because of the judgment of the Hon'ble Mrs.Justice R.Banumathi [as she then was] made in the Writ Petitions. But the appellants having moved to a totally different service viz., the Education service by virtue of their appointment as District Library officers by direct recruitment as per G.O.Ms.No.1234 dated 27.06.1981, the judgment of Hon'ble Mrs.Justice R.Bhanumathi [as she then was] may not have any bearing on the services of the appellants. It should also be pointed out that the 1st appellant in W.A.No.1755 of 2015 had in fact challenged the judgment of Hon'ble Mrs.Justice R.Banumathi [as she then was] in W.P.Nos.24947 etc., batch in W.A.No.521 of 2009. The petitioner in W.P.(MD).No.735 of 2015 had also challenged the said judgment in W.A.No.911 of 2009. The other two appellants were not parties to the Writ Petition before the Hon'ble Mrs.Justice R.Banumathi [as she then was] and hence it is their contention that the said judgment is not binding on them.

53. In fact, a perusal of the judgment of the Division Bench in W.A.Nos.1173 to 1178 of 2010 etc., batch would show that the learned Additional Advocate General who had appeared for the State/ appellants in W.A.Nos.1173 to 1178 of 2010 had submitted that it is willing to redo the entire exercise so as to avoid any disputes or complaints and the said suggestion was accepted

by all the learned counsels who were appearing for the parties. Recording the said suggestion the Division Bench passed the following order.

6. The learned Additional Advocate General very fairly submitted that in order to give a quietus to the whole issue, the appellant State is willing to redo the entire exercise, so as to avoid any disputes or complaints. Further, the appellants are willing to scrap the earlier seniority list including the list dated 29.08.2007 and would publish a fresh draft seniority list within a time framed to be filed by this Court, invite objections to the same and thereafter publish the final seniority list. This suggestion made by the learned Additional Advocate General is acceptable to all the learned counsels, who are appearing for the private respondents as well as the private appellants in these bunch of appeals. All the learned counsels submit that there is no other aggrieved person to be heard in the matter and all of those who had grievance to the seniority list are before this Court.

54. This order of the Division Bench would have the effect of superseding the judgment of the Hon'ble Mrs. Justice R. Banumathi [as she then was]. It is after the disposal of the Writ Appeal, the Government chose to prepare a final seniority list and based on the final seniority list, the appellants were reverted.

55. We have already found that the appellants were not promoted to the post of District Library Officers from the post of Librarian Grade - I, but were directly recruited to the said post. Therefore, while fixing the seniority for the post of librarian Grade - I, in the year 2012, the names of the appellants should not have been included since, they had ceased to be the employees of the Local Library Authorities and they had already joined the new service as District Library Officers under the Education Department. This conclusion reached by us is based on the fact that the appellants were appointed as District Library Officers by direct recruitment under G.O. Ms. 1234 dated 27.06.1981 and they were not promoted to the post of District Library Officers as contended by the learned Additional Advocate General appearing for the State.

56. Once it is found that the appellants appointment as District Library Officers was pursuant to direct recruitment, the appellants cannot be reverted in the rank of Librarian grade

- II and grade - III since they had ceased to be the members of service of Local Library Authorities on their appointment as District Library Officers. The learned Single Judge had only pointed out that as per the judgment of Hon'ble Mrs. Justice R. Banumathi [as she then was] all promotions made between 1996 and 2006 were to be reviewed and if they are reviewed and brought under the single unit system, the appellants would not have qualified for promotion as Librarian grade - I. Therefore, they will not have qualified for appointment as District Library Officers by direct recruitment. We are unable to agree with this conclusion of the learned Single Judge for the following reasons,

(i) The initial promotion of the appellants as Librarian grade - I was never in question and

(ii) The Writ Petitions in W.P.Nos.24947 of 2007 etc., came to be filed after the appellants had been appointed as District Library Officers. By the time the Writ Petitions were disposed of by the Hon'ble Mrs. Justice R. Banumathi [as she then was] the appellants were not members of the same service viz., Local Library Authority. Further we have already found that the judgment of the Hon'ble Mrs. Justice R. Banumathi [as she then was] merged with that of the judgment of the Division Bench made in W.A.No.1173 of 2010 etc., batch.

57. We are therefore of the considered opinion that the appellants cannot be penalized and reverted as per the orders of reversion dated 12.01.2015 impugned in the Writ Petitions. As early as on 11.05.1992, the Tamil Nadu Administrative Tribunal has held that protection should be afforded to all promotions made till date of actual issue of amendment to the Rules and this judgment has been confirmed by the Hon'ble Supreme Court also. It will not be out of place to point out that the 1st appellant in W.A.No.1755 of 2015 and the petitioner in W.P.(MD) No.735 of 2015 were promoted pursuant to the orders of the Tamil Nadu Administrative Tribunal dated 06.02.1995. We must also point out that the Government which imposed the ban on appointment or promotions in the Directorate of Public Libraries on 09.11.1994 chose to withdraw the same on 07.03.1996. We are therefore of the considered opinion that the orders of reversion impugned in the Writ Petitions cannot be sustained and they will have to be set aside and they are accordingly set aside.

58. Another contention that deserves to be mentioned is the contention of the learned Additional Advocate General that the appellants had challenged the recommendations of the Director of Public Libraries dated 10.02.2011 in earlier Writ Petitions viz., W.P.Nos.22633, 22643, 22647 of 2011 and they had chosen to withdraw the same on 14.12.2011. Therefore, according to the learned Additional Advocate General the appellants cannot now be

allowed to challenge the orders of reversion.

59. No doubt, the Director of Public Libraries in his proceedings dated 10.02.2011 had recommended for reverting the appellants from the post of District Library Officers. However, by another recommendation dated 01.10.2011, the Director had withdrawn his earlier recommendation and recommended that the appellants should be allowed to serve as District Library Officers de hors their seniority. In view of this 2nd recommendation dated 01.10.2011, the earlier Writ Petitions challenging the recommendations dated 11.02.2011 were withdrawn. Even otherwise, we do not see any legal prohibition that would prevent the appellants from challenging the actual orders of reversion. We are therefore of the considered view that the learned Single Judge was not right in holding that the reversion of the appellants is justified.

60. The Writ Appeals are therefore allowed with costs. The order of the learned Single Judge is set aside and the orders of reversion impugned in the Writ Petition will also stand quashed. W.P.No.1419 of 2015 stands allowed. The W.P.(MD)No.735 of 2015 will stand allowed setting aside the order of reversion impugned in the Writ Petition. The costs are quantified at Rs.25,000/- each payable to the three appellants and the petitioner in the Writ Petition. The connected Miscellaneous Petition are closed.

61. Before parting with these cases, we must record our displeasure as to the manner in which the entire issue was handled by the State Government and the Authorities. A policy decision to provisionalize the service of the Local Library Authorities and to bring them into one single unit was taken by the Government as early as on 11.12.1989 and the Adhoc Rules were framed only in the year 2006 i.e., nearly after the lapse of nearly 17 years, this exhibits the callous indifference shown by the officials of the State Government.

62. As early as in 1995, the State Administrative Tribunal had observed that the framing of the Rules should not be unduly delayed. The Tribunal has specifically observed that Administrative decisions which involve change in service Rules should be followed up by necessary changes by way of amendment without any unduly delay. Despite the said fact, the Government has taken 17 years for framing Rules, as a result of which the appellants had been running from pillar to post right from 2007 to till date.

63. We are pained at the attitude exhibited by the State Machinery in not even framing the Adhoc Rules for 17 years. In

our considered opinion, this failure on the part of the State Machinery to do its duty has led to this long drawn litigation resulting in waste of Court hours on trivial issue of promotions and seniority.

64. We must also point out that if only the orders of the Tamil Nadu Administrative Tribunal made in O.A.Nos.1370 of 1991 etc., batch had been implemented immediately, the subsequent litigations would have been avoided. It is rather unfortunate that the State which took a stand in favour of the appellants before Hon'ble Mrs. Justice R.Banumathi [as she then was] took a diametrically opposite stand before the Hon'ble Mr. Justice M.Sathyanarayanan when the appellants challenged their orders of reversion.

65. It is one of the main contentions of the learned Additional Advocate General on behalf of the State is that the appointments of the appellants as District Library Officers was only temporary and not permanent and these appointments were made depending upon the exigencies at the relevant point of time and the same will not confer any right on the appellants what so ever. To our surprise even after the framing of the Adhoc Rules and after the publication of the seniority list, the State Government had appointed District Library Officers on 07.05.2012 under G.O.Ms.No.110 and even the said Government order reads that the 16 persons appointed under the said Government Order have been appointed purely on a temporary basis. The learned Additional Advocate General is at a loss to explain as to what prompted the State to make these temporary appointments. We are therefore unable to see any justification for the actions of the State which had resulted in the litigation relating to promotion spanning over a decade.

66. We hope and pray that the State would wake up from its deep sleep which can be compared to the mythical "Kumbakarna" at least in future and follow the directions issued by the Courts and the Tribunals without any delay so that such litigations would be avoided in future atleast.

WEB COPY

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

dsa

To

1.The Principal Secretary,
Department of School Education
Fort St. George, Chennai - 600 009.

2.The Director of Public Libraries
Directorate of Public Libraries,
737/1, Anna Salai, LLA Building,
Chennai - 600 002.

3.The Secretary,
Department of School Education,
St.George Fort, Chennai.

+2cc's to M/S.P.C.Harikumar Associates, Advocate Sr.61498
+1cc to M/S.P.C.Harikumar Associates, Advocate Sr.61499
[1/10/2018]

W.A.No.1755 of 2015 &
W.P. (MD) No.735 of 2015

mg[col]
srg 24/09/2018

सत्यमेव जयते

WEB COPY