

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2018

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.14324 of 2011 &
M.P.No.1 of 2011

C.Jothimani

.. Petitioner

Vs.

- 1.The Government of Tamil Nadu rep.
By the Principal Secretary to the Government
Rural Development and Panchayat
Raj Department, Fort St. George,
Chennai-600 009.
 - 2.The Director of Rural Development and
Panchayat Raj, Panagal Buildings,
Saidapet, Chennai-600 015.
 - 3.The Collector,
Sivagangai, Sivagangai District.
- ... Respondents

Petition filed under Article 226 of The Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the first respondent in Lr.No.17458/E7/2009-09 dated 16.08.2010 and the consequential impugned order of the third respondent in P3/67542/2008 dated 27.08.2010 and quash the said orders and direct the respondents to regularize the services of the petitioner in the post of Junior Assistant with effect from the date of his first appointment, namely, 05.02.1977 and fix his seniority in the categories of Junior Assistant and Assistant on that basis and grant all consequential benefits including promotion to the petitioner.

For Petitioner .. Mr.P.Rajendran

For Respondents.. Mr.D.Venkatachalam

ORDER

The petitioner has approached this Court, seeking the following relief:-

"Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the first respondent in Lr.No.17458/E7/2009-9 dated 16.08.2010 and the consequential impugned order of the third respondent in P3/67542/2008 dated 27.08.2010 and quash the said orders and direct the respondents to regularize the services of the petitioner in the post of Junior Assistant with effect from the date of his first appointment, namely, 05.02.1977 and fix his seniority in the categories of Junior Assistant and Assistant on that basis and grant all consequential benefits including promotion to the petitioner. "

2. The petitioner was appointed as Record Clerk in Singampunari Panchayat Union, Ramnad District on regular basis on 10.05.1973. Subsequently, his probation period was declared on 10.05.1975. On 21.05.1975, the petitioner was temporarily promoted as Junior Assistant. On 25.02.1976, he was reverted as Record Clerk for want of vacancy.

3. On 18.08.1976, G.O.Ms.No.1700 RD Department was issued directing that the existing Tamil Nadu Panchayat Union Establishment (Appointment and Punishment) Rules, 1965, will be applicable till the Tamil Nadu Ministerial Services Rules were amended. On 05.02.1977, the petitioner was promoted as Junior Assistant on regular basis under the Tamil Nadu Panchayat Union Establishment (Appointment and Punishment) Rules, 1965. Subsequently, on 09.03.1977, G.O.Ms.No.422 RD Department, was issued amending the Tamil Nadu Ministerial Service Rules, by providing that the post of Junior Assistant to be filled up by direct recruitment through Tamil Nadu Public Service Commission. On 22.05.1988, the Government issued further orders in G.O.Ms.No.282 RD Department, directing that (i) Junior Assistants with 5 years of service in the post of Record Clerk shall be regularised with effect from date of appointment in the post of Junior Assistant (ii) Junior Assistants with less than 5 years of service in the post of Record Clerk shall be regularized with effect from the date of completion of 5 years of service and certain directions were also issued in the said G.O. in respect of direct recruitment which have no bearing on the issue of the present writ petition.

4. In pursuance of the above Government Order in G.O.Ms.No.282, dated 22.05.1988, an order was passed dated 26.08.1989, regularising the services of the petitioner with effect from 10.05.1978, i.e. completion of five years from the date of appointment as Record Clerk, viz., 10.05.1973 and not from the date when he was promoted as Junior Assistant on 05.02.1977.

5.The petitioner aggrieved by postponing of his date of regular appointment as Junior Assistant from 05.02.1977 to 10.05.1978, submitted a representation to the authorities concerned stating that the second respondent has to consider for regularization in the post of Junior Assistant with effect from the date of promotion as Junior Assistant on 05.02.1977 and the petitioner relied upon the similar orders passed by the Tamil Nadu Administrative Tribunal in O.A.No.1199 of 1989, dated 28.02.1992 and O.A.No.3504 of 1990 etc., However, the request of the petitioner was rejected on 16.12.1994 stating that the benefit shall be made applicable to those applicants in the said original applications.

6.Thereafter, the petitioner approached the Tamil Nadu Administrative Tribunal in O.A.No.4736 of 1995 and after abolition of the Tribunal, the same was re-numbered before this Court in W.P.No.16659 of 2006 and this Court, by order dated 27.02.2008, dismissed the writ petition on the ground of delay. As against the order dated 27.02.2008, the petitioner preferred the writ appeal in W.A.No.235 of 2009 and the Hon'ble Division Bench of this Court vide order dated 03.07.2009, set aside the order passed by the learned Single Judge and directed the respondents to consider the claim of the petitioner with reference to applicability of certain Government Orders. Thereafter, on 16.08.2010, the first respondent passed the impugned order rejecting the claim of the petitioner on the ground that he was not entitled to the relief in respect of G.O.Ms.No.282 dated 22.05.1988. The rejection order dated 22.05.1988 along with consequential order dated 27.08.2010, are put to challenge in the present writ petition.

7.Mr.P.Rajendran, the learned counsel for the petitioner would submit that the G.O. Ms.No.282, which was issued on 22.05.1988, cannot be applied to the case of the petitioner, since he was already promoted on regular basis from 05.02.1977 itself, before issuance of G.O.Ms.No.422 dated 09.03.1977, amending the Tamil Nadu Ministerial Service Rules, as per the existing rules and at the time the petitioner was promoted, as he was fully eligible, such promotion cannot be altered relying upon the subsequent amendment.

8.Upon notice, Mr.D.Venkatachalam, the learned Additional Government Pleader entered appearance on behalf of the respondents and filed a detailed counter affidavit.

9.The learned Additional Government Pleader would rely upon paragraph-4 of the counter affidavit which is extracted below:

"4. With regard to the averments made in paragraphs-5 of the affidavit, it is respectfully submitted that in the absence of any Government Order in respect of the Rules governing the posts namely, Head Clerk, Junior Assistant, Typist and Cashier, it has to be filled up through Employment Exchange and by promoting the Panchayat Union Record Clerk, on temporary basis from 01.04.1974 to 09.03.1977 and accordingly, the petitioner has been promoted as Junior Assistant on temporary basis on 05.02.1977, as he had served as Record Clerk in Singampunari Panchayat Union, since the rules for Tamil Nadu Ministerial Services are not applicable to those posts namely, Head Clerk, Junior Assistant, Typist and Cashier. As they have made as Government Servants from 1.4.1974, the Government have passed G.O. (Ms.) No.282, Rural Development Department dated 22.5.1989 for the purpose of regularizing the services of the appointments made on temporary basis. Accordingly, those, who have completed 5 years of their service as Record Clerk and promoted as Junior Assistant on temporary basis have been regularized on the dates of their appointment as Junior Assistant. Those who have been promoted as Junior Assistant before completing their 5 years of service including the petitioner and 89 others, their services have been regularized from the date of their completion of 5 years of service as Record Clerk. Being aggrieved by the same, the petitioner has made a representation to the District Collector, Sivagangai, on 6.4.1994 which was negatived vide his proceedings dated 16.12.1994. Against which the petitioner has filed a Original Application in O.A.No.4736 of 1994 before the Tamil nadu State Administrative Tribunal which was transferred and renumbered as W.P.No.16659 of 2009 and which was also dismissed on the ground of laches, as he has made the said representation after a lapse of 21 years, that too, after three stages of promotion which would result in

unsettling the settled things. Being aggrieved by the same he has preferred a W.A.No.235/2009 which was disposed on 3.7.2007 with the direction to consider the representation made by the petitioner on the basis whether the G.O.(Ms.) No.422, Rural Development and Local Administration Department, dated 9.3.1977 is applicable to the petitioner or not. In strict compliance of the same, the first respondent herein pursued the records pertaining to the same and passed orders vide its Letter No.17458/E7/2009-9 dated 16.08.2010 reject the petitioner's claim of regularization of his service on the ground that G.O.(Ms) No.422, Rural Development and Local Administration Department dated 9.3.1977 was not applicable to the petitioner as he was not appointed and served as Junior Assistant on or before 1.4.1974 and the petitioner had served as Record Clerk on 1.4.1974. According to G.O.(Ms).No.422, Rural Development and Local Administration Department dated 09.03.1977, the Government provincialized certain posts in Ministerial Services namely Head Clerk, Junior Assistant, Typist and Cashier and brought them into Government Services within the purview of Tamil nadu Ministerial Service Rules and amended Tamil nadu Ministerial Service Rules issued in G.O.(Ms) No.927 Personnel and Administrative Reforms Department dated 9.9.1980, with retrospective effect from 1.4.1974."

10.He would therefore submit that only on completion of five years of service, the employee became eligible for appointment as regular Junior Assistant and in the instant case, admittedly the petitioner was appointed only on 10.05.1973 as Record Clerk and therefore his service as Junior Assistant came to be regularized on 10.05.1978 and such action on the part of the authorities concerned cannot be faulted by this Court.

11.At this, the learned counsel for the petitioner would submit that the petitioner having been promoted admittedly prior to issuance of G.O.Ms.No.422, dated 09.03.1977, cannot be subjected to subsequent G.O.Ms.No.282 dated 22.05.1988 and the

learned counsel for the petitioner would draw the attention of this Court to the service book maintained by the Department in respect of the petitioner. From the service book, it is seen that the petitioner was promoted on a regular basis on 05.02.1977 before the amendment of Tamil Nadu Ministerial Service Rules. That being the case, this Court does not see any justification for changing the date of regular promotion of the petitioner as Junior Assisant from 05.02.1977 to 10.05.1978.

12.As rightly contended by the learned counsel for the petitioner that G.O.Ms.No.282, dated 22.05.1988, can be applied only in cases where the employees were not promoted prior to G.O.Ms.No.422 dated 09.03.1977 and not the employees like the petitioner who was promoted earlier G.O.Ms.No.422, dated 09.03.1977. Once the petitioner was promoted on regular basis on 05.02.1977, this Court does not see on what basis such regularization can be changed by applying subsequent G.O.

13.For the above said reasons, this Court does not find any justification for rejecting the claim of the petitioner. In the said circumstances, the impugned rejection orders viz., the impugned order of the first respondent in Lr.No.17458/E7/2009-9 dated 16.08.2010 and the consequential impugned order of the third respondent in P3/67542/2008 dated 27.08.2010, are hereby set aside and the respondents are directed to regularise the service of the petitioner as Junior Assistant with effect from 05.02.1977 and grant him all attendant benefits. The direction shall be complied with by the respondents within a period of eight weeks from the date of receipt of a copy of this order.

14.With the above obsevation, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Cs VIII)

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Sub Assistant Registrar

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To

1.The Principal Secretary to the Government
The Government of Tamil Nadu
Rural Development and Panchayat
Raj Department, Fort St. George,
Chennai-600 009.

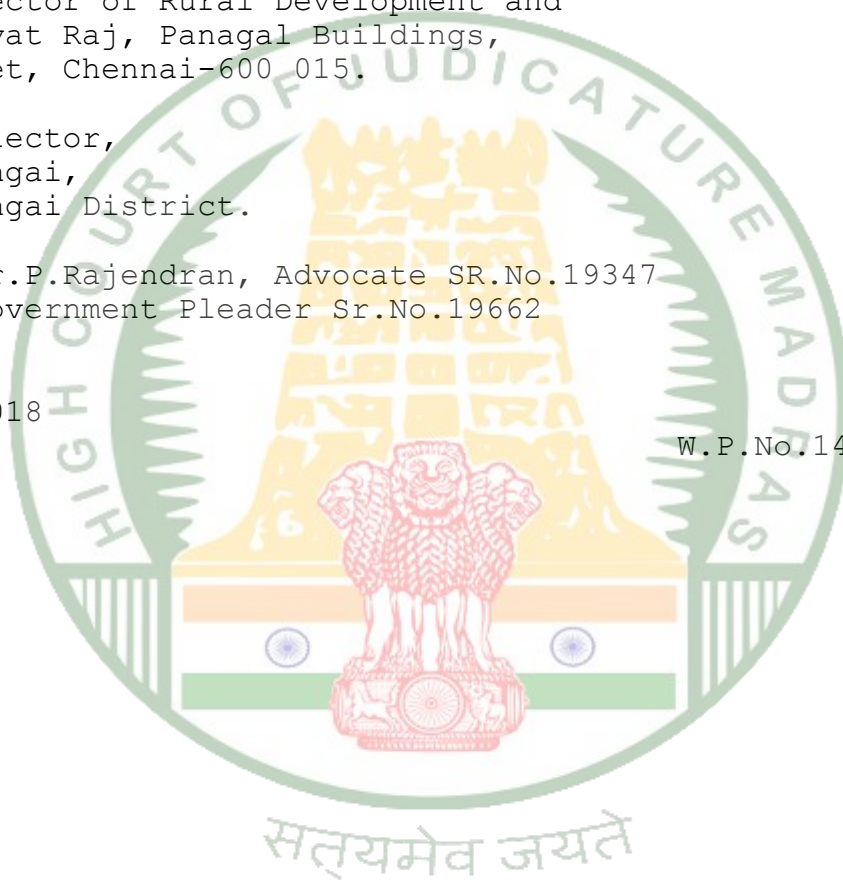
2.The Director of Rural Development and
Panchayat Raj, Panagal Buildings,
Saidapet, Chennai-600 015.

3.The Collector,
Sivagangai,
Sivagangai District.

+1cc to Mr.P.Rajendran, Advocate SR.No.19347
+1cc to Government Pleader Sr.No.19662

NMI (CO)
sm:13.4.2018

W.P.No.14324 of 2011



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