

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.06.2018

Coram

THE HON'BLE MR.JUSTICE M.VENUGOPAL  
&  
THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

W.P.No.32244 of 2012

1.S.Elangovan  
2.D.Velusamy  
3.R.Bhuvaneswari  
4.M.Meenakshi

... Petitioners

Vs.

1.The State of Tamil Nadu  
Rep. By Secretary to Government  
Home (Courts) Department  
Secretariat, Chennai - 9.

2.The Principal District Judge  
District Court Complex  
Coimbatore.

3.M.Selvaraj

4.T.Sundarajan

5.V.Chinnasamy

6.N.Rajeswari

7.C.Santhi

8.A.Sulochana

9.S.Suseela

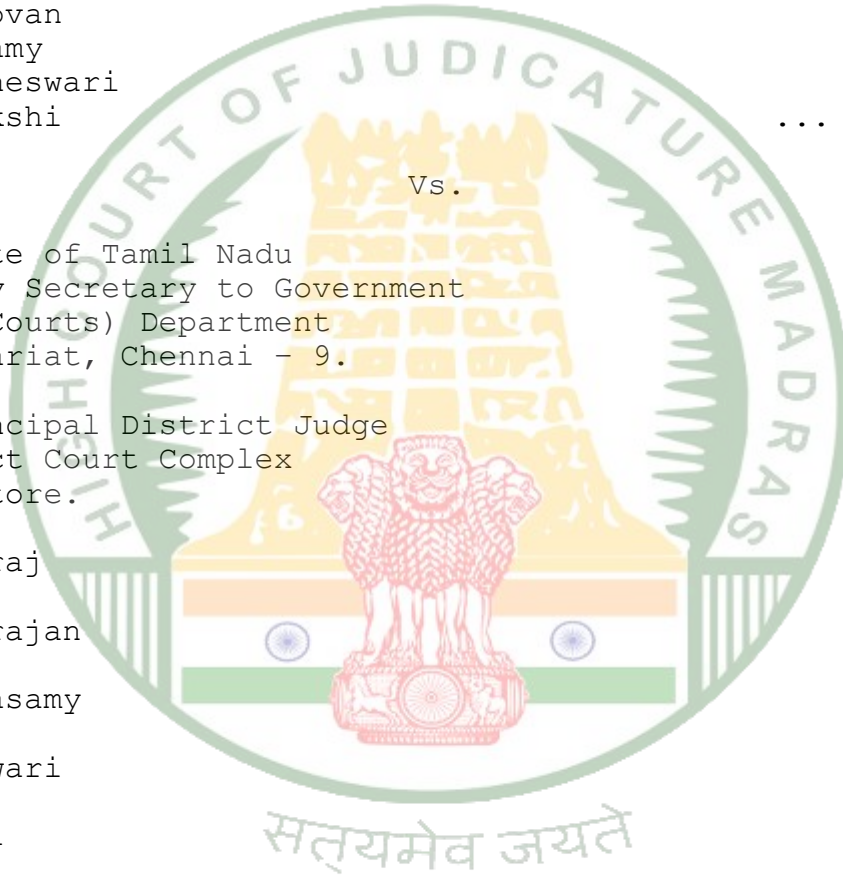
10.R.Chinnasamy

11.M.Parimalam

12.K.Ganapriya

13.N.Edwin

.. Respondents



WEB COPY

PRAYER:

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents 1 and 2 to pay the back wages, continuity of service, attendant benefits and all other consequential benefits to the petitioners from 01.07.2009 to 11.02.2011 at par with the respondents 3 to 13 within a stipulated time.

For Petitioner : Ms.R.Sakuntala for  
Mr.T.P.Prabakaran

For Respondents : Mr.K.Rajendraprasad,  
Additional Govt. Pleader for R1  
Mr.Vijayashankar for R2  
Mr.R.Sathishkumar  
for Mr.B.Nedunchezian for R3,R4  
R6 to R9 and R10 to R13  
No Appearance for R5

O R D E R

(Order of the Court was made by M.VENUGOPAL, J.)

The Petitioners have preferred the instant Writ Petition praying for passing of an order by this Court in directing the Respondents 1 and 2 to pay the back wages, continuity of service, attendant benefits and all other consequential benefits for the period from 01.07.2009 to 11.02.2011 on par with the Respondents 3 to 13, within a stipulated time to be determined by this Court.

2. Heard the Learned Counsel for the Petitioners, the Learned Additional Government Pleader for the First Respondent, the Learned Counsel for the Second Respondent and the Learned Counsel for Respondent Nos.3, 4, 6 to 9 and 10 to 13.

3. In respect of the Fifth Respondent notice through Court was served as early as on 29.01.2013, but no appearance is filed on his behalf. Today, when the matter is taken up for hearing, there is no representation on the side of the Fifth Respondent either in person or through the Learned Counsel.

4. According to the Petitioners, the Judicial Temporary Employees Association, Tirupur (bearing Registration No.76/2009), represented by its Secretary, filed a Writ Petition in W.P.No.9710 of 2009, praying for regularisation of their services in the Tamil Nadu Judicial Ministerial Service with all attendant benefits. As a matter of fact, the members of the said Judicial Temporary Employees Welfare Association, Tirupur

were sponsored through the District Employment Office at various Districts and that the Petitioners herein were sponsored through the District Employment Office, Coimbatore and they were appointed as Temporary Junior Assistants in various Courts on 01.06.2007.

5. The stand of the Petitioners is that the First Respondent issued G.O.Ms.No.61, Personnel and Administrative Reforms (P) Department, dated 21.05.2009, called for applications for recruitment of Typists and Steno-Typists, Grade III, through the Tamil Nadu Public Service Commission and the Service Commission selected certain candidates by conducting Special Competitive Examination at Group-IV level for the 'Temporary Typists' and 'Steno-Typists' and issued selection orders through the selection process. Also that, some of the selected individuals had approached the Second Respondent/the Principal District Judge, Coimbatore, praying for appointment in various Courts at Coimbatore District.

6. It is represented that on behalf of the Petitioners, the Petitioners and Respondents 3 to 13 were already employed as 'Temporary Junior Assistants' under Section 10(a)(i) of the Tamil Nadu State and Subordinate Services Rules and they were deployed in various Courts of Coimbatore District. Because of the reason that the persons, who were selected through the Tamil Nadu Public Service Commission had approached the Second Respondent/Principal District Judge, Coimbatore for posting, the Second Respondent/Principal District Judge, Coimbatore had no other option except to accommodate all of them even risking ousting of some of the Temporary Junior Assistants already appointed. Being dissatisfied with the same, the Judicial Employees Association (in which the petitioners were also members) filed W.P.No.9710 of 2009 seeking regularisation of their services.

7. It comes to be known that the Honourable Division Bench of this Court in W.P.No.9710 of 2009 on 10.06.2009, at paragraph No.21 had observed the following:

"The candidates who have been selected by the TNPSC and allotted to different Districts for being appointed in the Judicial Ministerial Service shall be appointed against the vacancies available as per their merit in accordance with law.

If after permitting such persons to join, vacancies would be still available, the temporarily appointed persons under Rule 10(i)(a) can be retained obviously keeping in view their respective Inter-se-seniority in the concerned District".

8. The Learned Counsel for the Petitioners brings it to the

notice of this Court that the Second Respondent/Principal District Judge, Coimbatore, through proceedings dated 01.07.2009, ousted the Petitioners and also the Respondents 3 to 13 from the service with immediate effect mentioning that the said order was issued in accordance with the orders passed by the Honourable Division Bench of this Court. Further, in the same order, the Second Respondent/Principal District Judge, Coimbatore had appointed the Respondents 3 to 13 in the posts of 'Examiner' and 'Reader' in various Courts of Coimbatore District. That apart, the Second Respondent/Principal District Judge, Coimbatore had forwarded the names of the Petitioners to the District Collector, Coimbatore for adjusting them in any available vacancy in its Departments citing the directions of this Court. Further, the said order passed by the Second Respondent/Principal District Judge, Coimbatore was assailed in W.P.No.15362 of 2009, whereby and whereunder, a relief was sought for in quashing the appointment orders issued to the Respondents 3 to 13 and for a direction to the Respondents 1 and 2 to appoint them in suitable vacancies in the Courts of Coimbatore District.

9. The Learned Counsel for the Petitioners points out that in W.P.No.15362 of 2009, the present Writ Petitioners took a stand that the Second Respondent/Principal District Judge, Coimbatore had violated the orders passed by this Court dated 10.06.2009 in W.P.No.9710 of 2009, which specifically states that the temporary employees shall be appointed under Rule 10(a) (i) of the Tamil Nadu Judicial Ministerial Services Rules keeping in view of their respective Inter-se-seniority in the concerned District. Indeed, the petitioners took a stand in the said Writ Petition that Inter-se-seniority was not followed for providing appointment to the posts of Examiner and Reader in various Courts of Coimbatore District. In the said Writ Petition, the petitioners had also averred that if Inter-se-seniority was followed, then they would have been offered the appointment ahead of Respondents 3 to 13.

10. The Learned Counsel for the Petitioners relevantly points out that this Court in W.P.No.15362 of 2009 on 13.11.2009 had observed the following:

"The second respondent having not followed the guideline of seniority, either on the basis of the date of registration of the candidates with the employment exchange or on the basis of the age, which can be followed in the normal course, if all appointments have been made on the same date and joining by persons on the same date, we hold that re-appointment of respondent Nos.3 to 13 exclusion of the petitioners, is arbitrary and violative of Article 14 of the Constitution of

India and against the order dated 10.06.2009 in W.P.Nos.9710 and 10189 of 2009 passed by this Court".

This Court, set aside the appointment order issued to Respondents 3 to 13 and remitted the case to the Second Respondent/Principal District Judge, Coimbatore, with a direction to reconsider the petitioners' case and the Respondents 3 to 13 and other similarly situated individuals in terms of the High Court order dated 10.06.2009 in W.P.Nos.9710 of 2009 and 10189 of 2009.

11. Continuing further, the Learned Counsel for the Petitioners proceeds to point out that subsequent to the order passed by this Court in W.P.No.15362 of 2009, the Second Respondent/Principal District Judge, Coimbatore issued a Office Memorandum dated 08.12.2009 and strangely for the reasons best known to him directed the Respondents 3 to 13 in the present Writ Petition to submit their written objections, if any, to the Court on or before 17.12.2009.

12. The Learned Counsel for the Petitioners contends that the Office Memorandum of the Second Respondent/Principal District Judge, Coimbatore itself amounts to violation of the orders passed by this Court on 13.11.2009 in W.P.No.15362 of 2009. Apart from that one M.Selvaraj, R.Chinnasamy, C.Shanthi and R.Parimalam, who were among the Respondents 3 to 13 in the afore stated Writ Petition, filed Review Application in R.A.No.3 of 2010 seeking to review the order dated 13.11.2009 in W.P.No.15362 of 2009. The said Review Application was closed on 28.02.2011 with the following observations made at paragraphs 2 and 3, which runs as under:

"The review application, as such, is not maintainable, in view of the specific nature of the order passed by the Division Bench considering the plea of the parties and the earlier order passed by this Court in W.P.Nos.9710 and 10189 of 2009 dated 10.06.2009 by P.K.Misra, J and R.Subbiah J.

However, keeping in mind the direction issued in paragraph 17 of the order under review, the Principal District Judge was directed to finalise and issue proceedings in terms of the order in review."

13. The Learned Counsel for the Petitioners refers to the proceedings of the Second Respondent/Principal District Judge, Coimbatore, dated 14.02.2011, whereby the review applicants as well as the Respondents 3 to 6 in W.P.No.15362 of 2009 were all accommodated in the existing vacancies, as per the order of this Court dated 13.11.2009. In this connection, the Learned Counsel for the Petitioners projects an argument that even though the

appointments of Respondents 3 to 13 were not in accordance with the Inter-se-seniority, among the persons appointed under Rule 10(a)(i) of the Tamil Nadu Judicial Ministerial Services Rules, which was set aside by this Court on 13.11.2009 continued to hold the post of Examiner and Copyist without break and even though the present Petitioners are entitled to be appointed in the posts of Examiner and Copyist on 01.07.2009 itself in continuation to their earlier appointment without any break, were ousted from the post of Junior Assistant and they were appointed only on 11.02.2011. The Respondents 3 to 13 whose appointment order were held unsustainable by this Court enjoyed the benefit of continuation of service from 01.07.2009 with all consequential benefits and other attendant benefits. However, the present Petitioners were subjected to break in service from 01.07.2009 to 11.02.2011, even though they were legally entitled to be appointed in continuation of their earlier service. Therefore, it is submitted that the Petitioners are entitled to all consequential and attendant benefits as was allowed to Respondents 3 to 13 due to their uninterrupted service from 01.07.2009. In reality, the Petitioners are entitled for back wages, continuity of service, attendant benefits and all other consequential benefits for the above period from 01.07.2009 to 11.02.2011 on par with the Respondents 3 to 13. Hence, the Petitioners have filed the present Writ Petition.

14. In response, the Learned Counsel for the Second Respondent submits that for filling up the 19 vacancies in the posts of Junior Assistants on temporary basis, the District Employment Office, Coimbatore was requested to sponsor suitable candidates and accordingly the District Employment Office, Coimbatore had sponsored the candidates from whom interview was conducted and that the following candidates were appointed as Junior Assistants in various Courts of Coimbatore District, on temporary basis as per Rule 16(i)(a) of Tamil Nadu Judicial Ministerial Services Rules and the list is as under:

| Sl.No | Name of the Candidates |
|-------|------------------------|
| 1     | Tmt.N.Sakunthalai      |
| 2     | Thiru M.Selvaraj       |
| 3     | Thiru T.Sundararajan   |
| 4     | Thiru V.Chinnasamy     |
| 5     | Ms.N.Rajeswari         |
| 6     | Ms.C.Santhi            |
| 7     | Tmt.A.Sulochana        |
| 8     | Ms.S.Suseela           |

| Sl.No | Name of the Candidates |
|-------|------------------------|
| 9     | Thiru R.Chinnasamy     |
| 10    | Thiru R.Dharmaraj      |
| 11    | Ms.M.Parimalam         |
| 12    | Thiru A.Muthukumar     |
| 13    | Ms.K.Ganapriya         |
| 14    | Thiru D.Velusamy       |
| 15    | Tmt.H.Meenakshi        |
| 16    | Thiru D.Velusamy       |
| 17    | Ms.R.Bhuvaneswari      |
| 18    | Ms.A.Mariammal         |
| 19    | Thiru S.Elangovan      |

15. It is projected on the side of the Second Respondent that among the aforesaid 19 persons appointed as Junior Assistants on temporary basis, one Junior Assistant viz., R.Dharmaraj (Sl.No.10) was already ousted from service as early as on 04.06.2007 for his absence from duty. The remaining 18 Junior Assistants were served in this unit. In these circumstances, the Secretary, Tamil Nadu Public Service Commission, through a letter dated 07.05.2009, allotted 31 candidates, selected provisionally for appointment for direct recruitment to the posts included in Group IV Services and to give appointment to the aforesaid 31 candidates, the second respondent issued orders in its proceedings dated 22.05.2009, ousting the 18 temporary Junior Assistants previously appointed under Rule 16(a) (i) of Tamil Nadu Judicial Ministerial Services Rules, with effect from 31.05.2009 AN.

16. The Learned Counsel for the Second Respondent draws the attention of this Court to the fact that against the ousting order dated 22.05.2009, the temporary employees filed W.P.No.9710 of 2009 before this Court and this Court was pleased to issue status quo order in the Writ Petition. Hence, the order of the Second Respondent dated 22.05.2009 was kept in abeyance in respect of 15 temporary Junior Assistants concerned, who are shown as members of the Writ Petitioners' Association. But the remaining three temporary Junior Assistants were not shown as members of the Association and though the Second Respondent had decided that they were not eligible to get any relief under the Writ Petition and the order of ousting passed against them stands good. Resultantly, the ousting order was passed against them was given effect to immediately.

17. The Learned Counsel for the Second Respondent contends that this Court while disposing of W.P.No.9710 of 2009 and W.P.No.10189 of 2009 issued the following directions:

"1) The candidates who have been selected by the TNPSC and allotted to different districts for being appointed in the Judicial Ministerial Service shall be appointed against the vacancies available as per their merit list in accordance with law.

2) If, after permitting such persons to join, vacancies would be still available, the temporary appointed persons under Rules 16(i)(a) can be retained obviously keeping in view their respective inter se seniority in the concerned district.

3) After completing such exercise, if such temporarily appointed ministerial employees are found to be surplus, efforts should be made by the concerned Principal District Judge to accommodate such persons in various other posts such as Reader, Examiner and Copyist as contemplated in the judgment dated 07.03.2006 in W.P.Nos.16321, 17630 and 18409 of 2001.

4) Even after making adjustment as indicated above, if some temporary employees are found to be surplus, their names may be forwarded to other offices such as Revenue, Excise, etc., in the same district so that question of adjusting them in any available vacancy can be considered by the appropriate Head of the Department in the concerned District. That is obviously a matter which has to be considered by such Head of the Department."

18. Further, it is the stand of the Second Respondent that as per the directions of this Court all the 31 Tamil Nadu Public Service Commission candidates were given posting orders and that out of the 15 ousted temporary employees (who are the Writ Petitioners) senior most 11 persons were appointed as "Examiners" in the existing vacancies and the remaining four persons (viz., the Petitioners in the present Writ Petition) were referred to the District Collector for adjusting them in any available vacancies in their Departments.

19. The Learned Counsel for the Second Respondent points out that based on the representation made by the remaining three temporary Junior Assistants (who were ousted from service for the reason that they were not members of the Writ Petitioner's Association), this Court, in Roc.No.2672-A/2009/C3 dated 12.08.2009, had directed to extend the benefit of relief ordered

in W.P.No.9710 of 2009 and take necessary action in the light of the directions issued in their Writ Petitions. Therefore, the names of three temporary Junior Assistants viz., 1) N.Sakunthalai, 2) Tmt.A.Mariammal and 3) Thiru A.Muthukumar, who were ousted from service, were referred to the District Collector for adjusting them in any one of the available vacancies in their Departments along with the petitioners herein.

20. The Learned Counsel for the Second Respondent submits that the copy of the order dated 13.11.2009 in W.P.No.15362 of 2009 was produced before the Second Respondent and they have filed an application jointly to provide them with a suitable posts in this unit. On 03.12.2009, the Second Respondent had called for remarks from the Respondents 3 to 13 in the aforesaid Writ Petition and also with the Petitioners and the Respondents have filed their written objections and all of them had stated that they had no objection to provide such employment to the Petitioners without prejudice to their employment and seniority. In fact, the Respondents 3, 5, 7 and 11 in the Writ Petition had filed a Review Application No.3 of 2010 and M.P.No.2 of 2010 before this Court to review the order dated 13.11.2009 in W.P.No.15362 of 2009, by directing the Principal District Judge to follow the rule of reservation while giving posting to persons. As per the directions issued by this Court in Review Application No.3 of 2010 and M.P.No.2 of 2010 dated 02.02.2011, all the temporary Junior Assistants (later appointed as Readers/Examiners, Writ Petitioners and similarly situated other three persons-in all numbering 18) by re-fixing the seniority, as per the directions issued in W.P.No.15362 of 2009 dated 13.11.2009 vide this Court's proceedings dated 24.02.2011, had joined duty in their respective posts with effect from 01.03.2011 F.N.

21. The Learned Counsel for the Second Respondent takes a plea that the reason for not accommodating the Writ Petitioners at the time of appointment of Respondents 3 to 13 were only because of non availability of vacancies in the equated posts in the Second Respondent's unit. Further that, the Petitioners services and that of Respondents 3 to 13 were regularised and they had completed their probation period successfully and now they got promoted to higher posts also. As such, it is strenuously contended on behalf of the Second Respondent that the petitioner's plea is unacceptable one, since they were not considered for appointment only on the basis of non availability of vacancies in the Second Respondent's unit. Furthermore, the petitioners were considered and they are enjoying the uninterrupted service with that of the Respondents 3 to 13 from 01.03.2011 F.N. Besides these, the Respondents 3 to 13 were ousted from service on 28.02.2011 A.N. and they were appointed afresh on 01.03.2011 along with the petitioners. Moreover, the

regularisation of services of the petitioners as well as that of Respondents 3 to 13 were taken into account only from 01.03.2011 F.N. As such, the contention of the Second Respondent is that the petitioners are not entitled to seek any relief in the Writ Petition.

22. As far as this present case is concerned, it is not in dispute that the Petitioners were considered and they were enjoying the uninterrupted service with that of the Respondents 3 to 13 with effect from 01.03.2011 F.N. At this juncture, it cannot be lost sight of that the Respondents 3 to 13 were ousted from service on 28.02.2011 A.N. and more importantly, they were appointed afresh on 01.03.2011 along with the Petitioners. In fact the Petitioners' regularisation of services and that of the Respondents 3 to 13 were taken into consideration only with effect from 01.03.2011. When that be the fact situation, the relief sought for by the petitioners in the present Writ Petition praying for passing of an order by this Court in directing the Respondents 1 and 2 to pay the back wages, continuity of service, attendant benefits and all consequential benefits to them from 01.07.2009 to 11.02.2011 on par with the Respondents 3 to 13, in the considered opinion of this Court, is not acceded to (ofcourse, based on the attendant prevailing facts and circumstances of the present case). Viewed in that perspective, the Writ Petition fails.

In fine, the present Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vsm

To

1.The Secretary to Government  
Home (Courts) Department  
Secretariat, Chennai - 9.

2.The Principal District Judge  
District Court Complex, Coimbatore.

+1cc to Mr.B.Nedunchezian, Advocate, S.R.No.41876

+1cc to the Government Pleader, S.R.No.41733

+1cc to Mr.T.P.Prabakaran, Advocate, S.R.No.42043(10/10/2018)

W.P.No.32244 of 2012

GMR(CO)

CS/02/07/18