

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2018

CORAM:

THE HON'BLE MR.JUSTICE M.VENUGOPAL
AND
THE HON'BLE Mrs.JUSTICE S.RAMATHILAGAM

W.P.No.17162 of 2010 and
M.P.No.1 of 2010

K.Renuka Devi ... Petitioner
vs.

- 1.State of Tamilnadu
by Secretary to Government,
Personnel and Administrative
Reforms (B) Department,
Secretariat, Chennai
2. The Principal District Judge,
Dharmapuri ... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the Respondents to promote the Petitioner, now working in the post of Steno-Typist Grade III in the Judicial Department of Dharmapuri District to the post of Assistant, as requested in her representation dated 21.04.2010.

For Petitioner : Mr.M.Arun for
Mr.T.K.S.Gandhi

For Respondents : Mr.J.Pothiraj for R1
Special Government Pleader
Mr.V.Vijayshankar for R2

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O R D E R
(Order of the Court was made by M.VENUGOPAL,J.)

The Petitioner has filed the present Writ Petition praying for passing of an Order by this Court in directing the 2nd Respondent to promote her now working in the post of Steno-Typist Grade III in the Judicial Department at Dharmapuri District to the post of Assistant, as per the request made in her representation dated 21.04.2010.

2. Heard both sides.

3. The Petitioner, in her Writ Affidavit had averred that she is now working as Steno-Typist Grade III in the Sub Court, Dharmapuri, having been transferred on 02.03.1999 from Coimbatore District. She joined as Steno-Typist in Judicial Department on 01.06.1990 through Tamilnadu Public Service Commission and she had rendered a service of 20 years. She is fully qualified to be appointed as 'Assistant'. She had passed Translation Test Parts I and II.

4. The version of the Petitioner is that many posts of Assistants are vacant. The promotional avenues for Steno-Typists are limited. Since she is fully qualified for the post of 'Assistant' having passed the required examination and also Part I and II of Translation Test, she is more qualified to be considered for promotion as 'Assistant'. Since her case was not considered by the Department, she has addressed her representation dated 21.04.2010 to the 2nd Respondent / Principal District Judge, Dharmapuri for promoting her to the post of Assistant on 'Transfer'.

5. At this juncture, the Learned Counsel for the Petitioner proceeds to point out that the post of Junior Assistant originally fall under the Category 14 of the Tamilnadu Ministerial Service Rules. The posts of Typist and Steno Typist fall under Category 17 in common in the same Service. As a matter of fact, the post of 'Assistant', which was considered to be a promotional post for Feeder Categories of Junior Assistant / Typist / Steno-Typist fall under Category 12 of Tamilnadu Ministerial Service Rules.

6. It is the plea of the Petitioner that since there was more than one Feeder Category for promotion to the post of Assistant, Special Rules for Tamilnadu Ministerial Service Rules was framed fixing a ratio of 4:1, viz., for every four Junior Assistants promoted, / one Typist / Steno Typist should be promoted, under Third Proviso to Rule 5 of Special Rules of Tamilnadu Ministerial Service Rules. Furthermore, the Learned Counsel for the Petitioner brings it to the notice of this Court that the fixation of afore stated ratio between Junior Assistant / Typist / Steno Typist was challenged in the batch of Application before Tamilnadu Administrative Tribunal on the ground that it was not fixed on any scientific basis, but, was taken on the basis of cadre strength of Feeder Categories. Indeed, the Administrative Tribunal on 27.11.1992 in O.A.No.1429 of 1989 etc., batch case, had set aside the afore stated proviso, as being violative of Articles 14 and 16 of the Constitution of India. Eventually, even before the said order of the Tribunal, the Government issued G.O.Ms.No.256 Personnel

and Administrative Reforms (Per.B) Department dated 01.08.1992 splitting the common categories of Typist / Steno-Typist and converting post of Steno-Typist, as Category 17 and Typists as Category 17(a). Following the said order, the Government issued G.O.Ms.No.284 Personnel and Administrative Reforms (Per.B) Department dated 19.08.1992 on the basis of Recommendation of Official Committee designating the post of Steno-Typist in all departments other than the Secretariat as Steno-Typist Grade III and converting the existing post of Upper Division Steno-Typist, as Steno-Typist Grades I & II.

7. The Learned Counsel for the Petitioner comes out with a plea that after the orders of the Tamilnadu Administrative Tribunal, the post of Junior Assistant / Typist was considered as a Common Category known as Junior Assistant cum Typist and they were made eligible for promotion to the post of 'Assistant', in view of G.O.Ms.No.470 of Personnel & Administrative Reforms (Per.B) Department dated 01.12.1993. The 1st Respondent / Government of Tamilnadu had clarified that Stenographer shall not be eligible for promotion as 'Assistant'. The said clarification was challenged in O.A.No.3483 of 1995 before the Tamilnadu Administrative Tribunal seeking a direction to the 1st Respondent to consider the representation of the Association and the Tribunal passed an order. The Government issued a reply dated 28.08.1995 stating that Steno-Typist stands excluded for promotion as 'Assistant' and thus their further promotion to the post of Superintendent and above was declined. Once again the said order dated 28.08.1995 was challenged before the Tribunal and the case was transferred to this Court and numbered as W.P.No.6550 of 2006 and this Court, ultimately passed an order stating that the Stenographers have a justification of seeking promotional avenue in their career, therefore, the Government issued a Government Order in G.O.Ms.No.47 Personnel and Administrative Reforms (PER.B) Department dated 12.03.2008 complying with the direction made in W.P.No.6550 of 2006.

8. The forceful submission made on behalf of the Petitioner is that under Rule 35(a) of the Tamilnadu State and Subordinate Service Rules, Steno-Typists are eligible to be promoted to the post of Assistants based on 4:1 Ratio. However, a ban was imposed by the State Government on 01.08.1982 for promotions as Steno-Typists and that later, the said ban was revoked and G.O.Ms.No.34 (P&AR) Department dated 21.02.2001 was passed, thereby determining the ratio of promotion of Steno-Typist with that of the Junior Assistants / Typists at the ratio of 19:1. Hence some of the Steno-Typist of other Departments, who are appointed prior to 01.08.1992 like that of the Petitioner, submitted representations to consider them for promotion to the post of Assistant and they were informed as per G.O.Ms.No.34

[P&AR] Department dated 21.02.2001, they would be given promotion in the ratio of 19:1.

9. The Learned Counsel for the Petitioner points out that the aforesaid employees represented that they were appointed prior to the year 1992 and therefore, the ban which was imposed only after 01.08.1992 would not bind them. Apart from that, the G.O.No.34 would not bind them and they also claimed that they are eligible to be promoted in the ratio of 4:1, with the Junior Assistants & Typists, which was not taken into consideration. The said order was assailed by the Steno-Typist of the other Departments by filing a batch of Writ Petitions, namely, W.P.Nos.12224 and 19084 of 2006 and this Court on 11.02.2009 while allowing the Writ Petitions had observed the following:

"The Respondents are directed to reckon the Seniority of the Petitioners [except one Petitioner, he having been appointed after the year 1992) from the date of their initial appointment.

As per clarification / modifications made in Lr.No.60014/B/2007-3 dated 25.03.2006, the Senior of the said Petitioners in the post of Assistants shall be in the ratio of 4:1 (4 Junior Assistants and 1-Typist / Steno-Typist) as per the combined seniority list maintained by TNPSC according to Rule 35(a) of the General Rules for TNSSS."

accordingly, the said Petitioners in those Writ Petitions alone were given promotion and they are working as 'Assistants'. In fact, the Petitioner is in the same position of those Petitioners.

10. The Learned Counsel for the Petitioners contends that the Petitioner submitted a representation dated 21.04.2010, but to her dismay, the 2nd Respondent / Principal District Judge, Dharmapuri returned her representation with an endorsement that 'her case will be considered at appropriate time, based on her seniority in the combined seniority list in the cadre of Steno-Typist Grade-III, as per the conditions adumbrated in G.O.Ms.No.34 [P&AR] Department, dated 21.02.2001 as well as Letter in R.O.C.No.3068/2004/C1 dated 06.4.2006 of the High Court, Madras and also the Government Letter No.106657/Courts V/1/2005-2, dated 13.02.2006 vide Endt. in R.O.C.No.2169/2010 dated 25.05.2010.

11. Lastly, it is the submission of the Learned Counsel for the Petitioner that the Petitioner was appointed before the year 1992 and the 2nd Respondent's action in returning the Petitioner's representation by informing that her case will be considered on appropriate time etc., is an improper and unjustified one. Since the Petitioner's case was not considered by the 2nd Respondent in

a proper perspective, the Petitioner left with no option has filed the instant Writ Petition before this Court.

12. Per contra, it is the submission of the Learned Counsel for the 2nd Respondent / Principal District Judge, Dharmapuri that the Application of the Petitioner dated 21.04.2010 seeking promotion to the post of Assistant by Transfer was returned by the 2nd Respondent on 25.05.2010 itself with instructions that the request of the Petitioner for transfer of 'Assistant' will be considered at appropriate time, based on the seniority in the combined seniority list in the cadre of Steno-Typist Grade - III in G.O.Ms.No.34, (P&AR) Department dated 21.02.2001 and Letter in R.O.C.No.3068/2004/C1 dated 06.04.2006 of the High Court, Madras and Government Letter No.106657/Courts-V/1/2005-2 dated 13.02.2006.

13. The Learned Counsel for the 2nd Respondent put forth an argument that in so far as Steno-Typist Grade III are concerned, the Government had issued a significant direction in G.O.Ms.No.34 (P&AR) Department, dated 21.02.2001 that the Steno-Typists Grade III were considered at only at 5% of the estimated vacancies in the post of 'Assistants' in a panel year.

14. The Learned Counsel for the 2nd Respondent refers to the clarification issued in Government Letter No.106657/Courts-V/1/2005-2 dated 13.02.2006, which runs as under:

"Clarification II: (Clarification sought for)

The Steno-Typists Grade-III have been made eligible for appointment as Assistant by transfer to the extent of 5% of the estimated vacancies in a panel year i.e., to say after promoting 19 Junior Assistants as Assistants, 20th Vacancy will be filled up from the post of Steno-Typist Grade-III. In the Tamil Nadu Judicial Ministerial Service separate seniority is being maintained by the Principal District Judges in each direct. In view of this, it is stated that 20 vacancies in the post of Assistant hardly arises in a District in a year. In such a situation whether the vacancies in the post of Assistant could be carried over to the successive year, or an alternative remedy may be specified.

Reply of the Government:

As per the orders issued in G.O.Ms.No.34, Personnel and Administrative Reforms (B) Department, dated 21.02.2001, only 5% of the estimated vacancies in the category of Assistant in a panel year shall be considered for the category of Steno-Typists Grade-III, for appointment to the post of Assistant by the method of 'by transfer'. Estimate of vacancies for a post shall be examined in accordance to General Rules 4(a).

'Rotation' prescribed for the post of 'Assistant' should be a continuous one just like in the case of 'Communal Rotation'.

Furthermore, the procedure enshrined in the aforesaid Government Order dated 21.02.2001 and the clarifications issued by the Government in Letter No.106657/Courts-V/1/2005-2, dated 13.02.2006, which was communicated by this Court in R.O.C.No.3068/2004/C1 dated 06.04.2006 are followed strictly while considering Steno-Typists Grade III for transfer as 'Assistant'.

15. The prime stand of the 2nd Respondent is that in view of the specific directions issued in G.O.Ms.No.34, P&AR Department, dated 21.02.2001 and clarifications issued in Government Letter No.106657/Courts-V/1/2005-2, dated 13.02.2006, the request of the Petitioner to promote her as Assistant on the basis of 4:1 was returned. In this connection, the Learned Counsel for the 2nd Respondent informs this Court that G.O.Ms.No.121, P&AR Department dated 18.05.2007 pertains to 'Promotion of Steno-Typists Grade-II' but, the fact of the matter is that the Petitioner is working as Steno-Typist Grade III and as such, the said Government order is not applicable to her.

16. Besides the above, it is represented on behalf of the 2nd Respondent that eventhough the present Writ Petitioner had stated that the Petitioners, viz., P.Vijayarani and B.Sailaja were initially appointed on 21.12.1990 and 29.04.1992 respectively, while she was appointed on 01.06.1990, prior to the appointment of the aforesaid persons and they were posted as 'Assistants' by transfer. The aforesaid two persons were posted as 'Assistant' by transfer only based on G.O.Ms.No.34 P&AR Department dated 21.02.2001, therefore, it is contended on behalf of the 2nd Respondent that the contra plea taken by the Petitioner in this regard is an incorrect one.

17. The Learned Counsel for the 2nd Respondent draws the attention of this Court that the combined Judicial District of Dharmapuri and Krishnagiri viz., Principal District Judge, Dharmapuri at Krishnagiri was bifurcated and District Court, Dharmapuri is a newly constituted one and is functioning with effect from 17.02.2008 and Steno-Typist Grade III working in Dharmapuri District are being considered for transfer as Assistant taken into account the vacancies in the post of Assistants which arose from 17.02.2008, by applying the ratio prescribed in G.O.Ms.No.34 P&AR Department dated 21.02.2001 and the clarification issued by the Government in Letter No.106657/Courts-V/1/2005-2 dated 13.02.2006, which was communicated by this Court in R.O.C.No.3068/2004/C1 dated

06.04.2006.

18. The pith and substance of the plea taken on behalf of the 2nd Respondent is that although the Petitioner was appointed in the year 1990 in Coimbatore District, she joined the Dharmapuri District Unit in the year 1999 and there are two Steno-Typists Grade III working before her and one of the same is fully qualified for transfer as 'Assistant' like the Petitioner, in terms of the combined seniority list maintained in Dharmapuri District. Further, the Learned Counsel for the 2nd Respondent contends that the Petitioner's claim by overriding the procedures laid down in G.O.Ms.No.34, P&AR Department dated 21.02.2001 and the clarification issued by the Government in Letter No.106657/Courts-V/1/2005-2 dated 13.02.2006, which was communicated by this Court in R.O.C.No.3068/2004/C1 dated 06.04.2006 is perse illegal and incorrect one.

19. It is brought to the notice of this Court by the Learned Counsel for the 2nd Respondent that the Writ Petitioner after joining in Dharmapuri District, she was promoted as Steno-Typist Grade I with effect from 06.02.2015 and she is working in the post till date.

20. It is not in dispute that the Petitioner had not resubmitted her application / representation dated 21.04.2010 before the 2nd Respondent. At this stage, this Court on a perusal of the Endorsement in R.O.C.No.2169/2010 dated 25.05.2010 made by the 2nd Respondent unerringly points out that the Application submitted by the individual was returned with instructions that her request for transfer will be considered at appropriate time based on her seniority in the combined seniority list in the cadres of Steno-Typist Grade III as per the conditions laid down in G.O.Ms.No.34(P&AR) Department, dated 21.02.2001, Letter in R.O.C.No.3068/2004/C1 dated 06.04.2006 of High Court, Madras and Government Letter No.106657/Courts V/1/2005-2 dated 13.02.2006. As a matter of fact, the representation of the Petitioner together with enclosures were returned to the Petitioner and she had not resubmitted her representation by giving any reply / remarks in regard to the reasons assigned by the 2nd Respondent for the return of her representation 21.04.2010. However, she has approached this Court by filing the present Writ Petition.

21. On a careful consideration of the respective contentions and in view of the candid fact that the Petitioner was joined in the year 1990 in Coimbatore District and later joined in Dharmapuri District in the year 1990 and when two Steno-Typists Grade III working before her and one of the same is fully qualified to transfer of 'Assistant' as per Combined seniority list maintained in Coimbatore District, then, this Court comes to an inescapable and irresistible conclusion that the Petitioner is

not entitled to seek relief as sought for by her in the present Writ Petition. Consequently, the Writ Petition sans merits.

In fine, the Writ Petition is dismissed leaving the parties to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

ssd Sub Assistant Registrar

To

1. The Secretary to Government,
Personnel and Administrative
Reforms (B) Department,
Secretariat, Chennai

2. The Principal District Judge,
Dharmapuri

+1cc to Mr.T.K.S.Gandhi Advocate, S.R.No. 54212

+1cc to the Government Pleader, S.R.No. 55056

W.P.No.17162 of 2010 and
M.P.No.1 of 2010

RJ (CO)
GN (05/09/2018)

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