



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) Nos. 6374 and 7644 of 2017

and

W.M.P. (MD) .Nos. 5020 of 2017 and 7985 of 2017

in W.P. (MD) No. 6374 of 2017

&

W.M.P (MD) .Nos. 5959 and 8906 of 2017

and 2013 of 2018

in W.P. (MD) No. 7644 of 2017

K.Balamurugan ... Petitioner in W.P. (MD) .No. 6374 of 2017

1. A.Marimuthu Pandiyan,
Assistant,
Thiruchuli Panchayat Union Office,
Rediapatti Post,
Virudhunagar
Virudhunagar District.

2. G.Rajagurunath Prabhu,
Rural Welfare Officer Grade-I,
Rajapalayam Panchayat Union,
Rajapalayam,
Virudhunagar District.

3. P.Ramar,
Assistant,
Block Development Office,
Watrap,
Virudhunagar District.

... Petitioners
in W.P. (MD) .No. 7644 of 2017

Vs.

1. The State of Tamil Nadu,
rep. by its Secretary,
Rural Development & Panchayat Raj Department
Secretariat,
Chennai.



2. The Principal Secretary/
Personal & Administrative Reforms (B) Department
Secretariat, Chennai-9.

3. The Director,
Directorate of Rural Development & Panchayat Raj,
Panagal Maligai,
Saidapet,
Chennai-15.

4. The District Collector,
Virudhunagar District,
Virudhunagar.

5. P.Sarkunam,
Rural Welfare Officer Grade-I,
Panchayat Union,
Vembakkottai,
Virudhunagar District.

6. S.Selvi,
Rural Welfare Officer Grade-I,
Panchayat Union,
Vembakkottai,
Virudhunagar District.

7. L.Ponraj,
Rural Welfare Officer Grade-I,
Panchayat Union,
Virudhunagar District.

8. G.Padmavathy,
Rural Welfare Officer Grade-I,
Panchayat Union,
Vembakkottai,
Virudhunagar District.

... Respondents in both W.Ps

Prayer in both W.Ps: Writ Petitions are filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus or to draw the *inter se* seniority list of Assistants directly recruited through TNPSC and the promotive Assistants by placing the Promotive Assistants below the directly recruited Assistants in the light of the fact that the Promotive Assistants did not complete the one year Junior Assistant training as contemplated under Rule 30(c) of the Tamil Nadu Ministerial Service Rules and other training required under the Service Rules.



In both W.Ps:

For Petitioner in W.P. (MD).6374/17 : Mr.C.Venkatesh Kumar for
M/s.Ajmal Associates
For Petitioners in W.P. (MD).7644/17: Mr.Md.Imran for
M/s.Ajmal Associates
For Respondents in both W.Ps : Mrs.S.Srimathy
Special Government Pleader
for RR-1 to 4
Ms.M.Padmavathy
for R-5 to R-8

C O M M O N O R D E R

Heard the learned counsel appearing on either side.

2.The petitioners were appointed as Assistants/Rural Welfare Officer Grade-I in December 2012. Even before the petitioners joined the service, the private respondents had been promoted as Assistants on 06.06.2012.

3.The contention of the writ petitioners is that their promotion was *per se* illegal, because they had not completed requisite training as Junior Assistant for a period of one year as contemplated under Rule 30(c) of the Tamil Nadu Ministerial Service Rules and other training required under the Service Rules. Since the private respondents did not fulfil the condition precedent, their very promotion was illegal. In these circumstances, the petitioners contend that the Promotee Assistants should be placed below the directly recruited Assistants. This Court, while entertaining the writ petition, granted an interim order on 24.04.2017 forbearing the third respondent from operating the tentative seniority list. Aggrieved by the grant of interim order, petitions for vacating the interim order has been filed both by the official respondents as well as the Promotee Assistants.

4.It is seen from the counter affidavit filed by the Promotee Assistants that they were appointed as Junior Assistants in July 2003, in the temporary posts of Junior Assistants. They were appointed in regular capacity in May/June 2009 as Junior Assistants. Their services were also duly regularized. The official respondents have filed a detailed typed set of papers enclosing a copy of G.O.(Ms).No.22, Rural Development & Panchayat Raj (E4) Department, dated 18.03.2010. Their stand is that the private respondents were granted promotion to the post of Assistants only in view of dropping of certain required qualifications, which no longer needed to be fulfilled.

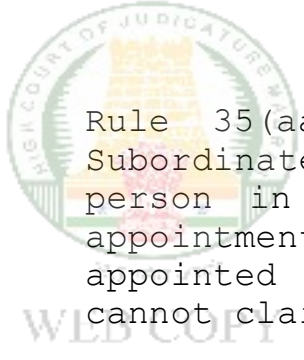
<https://hcservices.ecourts.gov.in/hcservices/>

5.This court is of the view that this writ petition is



liable to be dismissed for more reasons than one. Admittedly, the private respondents were appointed as Assistants by way of promotion, even before the writ petitioners entered the service. The writ petitioners have not questioned the promotion granted in favour of the private respondents. The prayer in the writ petition is for issuance of writ of mandamus for drawing the *inter se* seniority list of Assistants by placing the Promotive Assistants below the directly recruited Assistants. The seniority list is drawn by taking into account the length of service put in by a candidate in a given post, in the light of the Service Rules. When the Promotee Assistants were appointed prior to the direct recruits and the said order of appointment of the writ petitioners is not challenged, it is not known as to how the seniority list can be redrawn. More than anything else, the Government took a policy decision to do away with certain service qualifications and that is why, the private respondents were able to obtain promotion. The petitioners have not challenged the issuance of G.O.(Ms).No.22, dated 18.03.2010 also. This Court, therefore, holds that in the absence of a formal challenge to G.O.(Ms).No.22, dated 18.03.2010 and to the orders appointing the private respondents as Assistants, this writ petition is intrinsically not maintainable. To place a person who joined the service earlier, below the person who joined the service later, there must be a statutory provision. But, no such statutory provision has been invoked in this case. The contention of the writ petitioners is that the very promotion of the private respondents is illegal and that therefore, they should be placed below them. As already submitted, in G.O.(Ms).No.22, dated 18.03.2010, the Government has consciously done away with the condition to undergo training as a Junior Assistant for a period of one year. The entire case of the writ petitioners is founded on this premise. The official respondents as well as private respondents have clearly pointed out that this condition has been removed. Hence, the very foundation of the writ petitioners' case goes. The contention of the writ petitioners is answered by G.O(Ms).No.22, dated 18.03.2010.

6. In the typed set of papers, copy of the G.O(Ms).No.22, dated 18.03.2010 was not enclosed. If the said G.O had been enclosed in the typed set of papers, this Court would not have granted an interim order of injunction in the first instance. This Court will have to also take note of G.O.(Ms).No.35, Personnel and Administrative Reforms (B) Department, dated 15.04.2015. It is no doubt true that the parties to the writ petition were appointed prior to issuance of the said G.O. But then, when a representation was given on 04.07.2016 and the same was rejected by the fourth respondent, vide proceedings dated 30.11.2016, the fourth respondent had stated in his rejection order that the seniority had been fixed only in accordance with the Special Rules framed vide G.O.(Ms).No.35, dated 15.04.2015 and Rule 35 (aa) of Tamil Nadu State and Subordinate Service Rules.



Rule 35(aa) of the General Rules for Tamil Nadu State and Subordinate Service Rules is to the effect that the seniority of a person in the service will be with reference to the date of appointment. In the present case, the writ petitioners were appointed later than the private respondents. Therefore, they cannot claim any seniority above the private respondents.

7. In the result, the writ petitions are not maintainable and the same are dismissed. No costs. Consequently, the miscellaneous petitions filed in W.M.P(MD).Nos.5020 and 5959 of 2017 are dismissed. The vacate stay petitions filed in W.M.P. (MD).Nos.7985 and 8906 of 2017 and 2013 of 2018, by both the official and private respondents respectively are allowed.

Sd/-

Assistant Registrar(Crl side)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,
State of Tamil Nadu,
Rural Development & Panchayat Raj Department
Secretariat,
Chennai.
 2. The Principal Secretary/
Personal & Administrative Reforms (B) Department
Secretariat, Chennai-9.
 3. The Director,
Directorate of Rural Development & Panchayat Raj,
Panagal Maligai,
Saidapet,
Chennai-15.
 4. The District Collector,
Virudhunagar District,
Virudhunagar.
- + 2 ccs TO M/S.Ajmal Associates , Advocate in SR Nos. 58163,58164
+ 1 cc TO The Special Government Pleader in SR Nos. 58918,58920

vs

AE/SV MMS/SAR4/07.06.2018/5P/8C