



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.07.2018

DELIVERED ON : 03.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

and

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P(MD)Nos.13296 of 2013 and 935 of 2015

and

M.P(MD)Nos.2, 3 of 2015

and

W.M.P(MD)Nos.1843 and 1844 of 2017

W.P(MD)No.13296 of 2013:

M.Selvam

... Petitioner

Vs.

1. The Principal District Judge,
Dindigul District.
2. G.Rajeshwari,
Bench Clerk Grade III,
Principal District Munsif Court,
Dindigul District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the first respondent in A.No.98//2013/A1/PDJ-DGL/ dated 06.05.2013 and quash the same and consequently direct the first respondent to fix the petitioner's seniority above the second respondent.

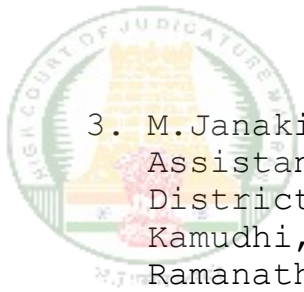
W.P(MD)No.935 of 2015:

Samuthirakani

... Petitioner

Vs.

1. The Principal District Judge,
Ramanathapuram District,
Ramanathapuram.
2. N.Yuvadeeswari,
Assistant,
District Munsif Court,
Mudhukulethur,
Ramanathapuram District.



3. M.Janaki,
Assistant,
District Munsif cum Judicial Magistrate Court,
Kamudhi,
Ramanathapuram District.

4. B.Saravanan,
Assistant,
Judicial Magistrate Court,
Mudhukulathur,
Ramanathapuram District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned seniority list published by the 1st respondent in D.No.359, dated 20.01.2015 insofar as Serial Nos.4 to 6 is concerned and the consequential promotion orders issued by the 1st respondent in A1.16/2015 and A1.15/2015, dated 22.01.2015, quash the same insofar as the respondents 2 to 4 is concerned and consequently direct the 1st respondent to promote the petitioner to the post of Head Clerk or Grade II Bench Clerk.

For Petitioner

in W.P(MD)No.13296/2013 : Mr.C.Vakeeswaran

For Petitioner

in W.P(MD)no.935 of 2015: Mr.R.Singaravelan
Senior Counsel for
Mr.R.V.Rajkumar

For R-1

in W.P(MD)No.13296/2013 : Mr.Pala Ramasamy

For R-2

in W.P(MD)No.13296/2013 : No Appearance

For R-1

in W.P(MD)No.935 of 2015: Mr.T.S.Mohammed Mohideen

For R-2 to R-4

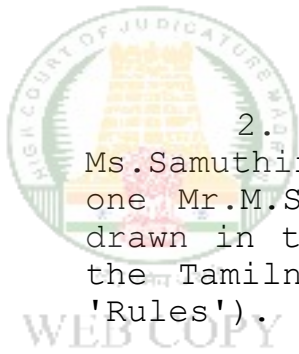
in W.P(MD)No.935 of 2015: Mr.M.Ajmal Khan
Senior Counsel for
M/s.Ajmal Associates

For Petitioner in WMP(MD)Nos.1843 & 1844/2017 in
W.P(MD)No.935 of 2015 : Mr.S.Visvalingam

COMMON ORDER

DR.ANITA SUMANTHJ.

Both writ petitions have been filed seeking the issuance of Writs of Certiorarified Mandamus calling for the records of order passed by the first respondent in both writ petitions, the Principal District Judge, Dindigul District (in short 'PDJ') and quashing the same.



2. The petitioner in W.P(MD)No.935 of 2015 is one Ms.Samuthirakani and the petitioner in W.P(MD)No.13296 of 2013 is one Mr.M.Selvam. The issue relates to fixation of seniority list drawn in the post of Assistant, falling in Class IV, Category 4 of the Tamilnadu Judicial Ministerial Service Rules 1953 (in short 'Rules').

3. Heard Mr.Vakeeswaran, learned counsel appearing for the petitioner in W.P(MD)No.13296 of 2013, Mr.R.Singaravelan, learned Senior Counsel for Mr.R.V.Rajkumar, learned counsel appearing for the petitioner in W.P(MD)No.935 of 2015, Mr.Pala Ramasamy, learned counsel appearing for R-1 in W.P(MD)No.13296 of 2013, Mr.Mohammed Mohideen, learned standing counsel appearing for R-1 in W.P(MD) No.935 of 2015 and Mr.M.Ajmal Khan, learned Senior Counsel for M/s.Ajmal Associates for R-2 to R-4 in W.P(MD)No.935 of 2015.

4. The question for resolution that arises in both writ petitions is the same except for the specifics of dates that differ.

5. Ms.Samuthirakani, petitioner in W.P(MD)No.935 of 2015 joined the Tamilnadu Judicial Ministerial Service as an Examiner on 24.02.1995. After promotion and at the time of filing of this writ petition, she was working in the category of Assistant in the District Munsif Court, Paramakudi. According to Ms.Samuthirakani, she is liable for promotion to the post of Junior Assistant/Typist/Assistant Nazir /Junior Superintendent Copyist / Steno Typist in Category 5 in Class IV. While this is so, the seniority list for Assistants on 01.07.2013 published by the PDJ on 20.01.2015 reflected her name at serial no.11 whereas respondents 2 to 4 were placed in serial nos.5, 6 and 4, consequently entitling them to earlier promotions.

6. The seniority list published on 20.01.2015 is challenged by Ms.Samuthirakani on the ground that placement of her juniors in serial nos.4 to 6 and the consequential promotions to them are arbitrary, illegal and motivated. She stresses the position that in the seniority list of Assistants as on 01.07.2013 for the year 2013-2014, she had been placed at serial no.16 and respondents 2 to 4 had been placed in serial nos.19, 20 and 26 respectively, whereas the seniority list for 2014-2015 had changed the position and rendered it topsy turvy placing respondents 2 to 4 above her in seniority.

7. Mr.M.Selvam, petitioner in W.P(MD)No.13296 of 2013, was appointed as Office Assistant on 12.08.1991 in the District Court, Dindigul and his services were regularised by an order dated 16.08.1991. After promotion to the post of Process Server in the District Munsif Court, Palani, he was promoted as a Senior Bailiff on 05.03.1996 in the same Court. The seniority list dated 01.07.2004 reveals his rank as 24. The second respondent, who had joined as a Copyist in the Dindigul Court on 17.02.1997 was ranked as 28. The second respondent was promoted as Typist on 25.01.2006.



8. On 03.07.2007, the posts of Copyist and Typists were merged vide G.O.Ms.No.1006. The order of the Principal District Judge dated 15.02.2011 placed the petitioner higher in rank when compared to the second respondent. On 30.11.2007, the second respondent was promoted to the post of Assistant and the petitioner was promoted as Assistant on 30.09.2012.

9. The case of M.Selvam is that, he ought to have been placed at higher seniority when compared to the second respondent seeing as the date of his appointment and regularisation was 16.08.1991 as against the second respondents' who was appointed only subsequently, on 17.02.1997. Several representations were made to the PDJ in this regard that were rejected by the PDJ by order dated 06.05.2013 holding that the second respondent was senior by five years seeing as she was promoted as Assistant in 2007 as against 2012 when the petitioner was promoted as Assistant.

10. Further the petitioners argue that no opportunity was granted to them prior to the change in seniority. Thus, according to them, the re-fixation of seniority as well their consequential promotion in total haste is a colourable exercise of power by the PDJ for extraneous and motivated reasons.

11. The sole issue that arises for decision in the matter relates to the fixation of inter se seniority in the category of Assistant, which is a feeder category for various posts.

12. The post of Junior Assistant and Typist are feeder categories for the post of Assistants and vacancies therein are filled in the ratio of 2:1. Thereafter, Assistants would be the feeder category for the posts of Head Clerk, which in turn feed the category of Grade II Bench Clerk. The private respondents in W.P(MD) No.935 of 2015 were initially working as Copyists. Upon implementation of the Fifth Pay Commission, pay scales for the Copyist in Class V as well as posts in Category 5 and 6 in Class IV stood merged and G.O.Ms.No.1006 dated 03.07.2007 was issued by the State to give effect to such merger.

13. The aforesaid Government Order was challenged in W.P(MD) No.5969 of 2008 by one Mr.K.A.Baskaran and the Division Bench hearing the matter, vide order dated 17.07.2008, held that in the light of parity in the scales of pay between the category of Junior Assistant (Category 5, Class IV) and Copyists, (Class V posts), the posts having merged, the Rules of promotion to the post of Junior Assistant/Assistant/Nazirs and others in Category 5 Class IV became redundant.

14. On the question of determination of seniority itself, the Bench invokes the provisions of Rule 36 of the Tamilnadu Judicial Ministerial Service Rules, 1953 (in short 'Rules') that defines seniority. The Provisions of Sub Rule (a) of Rule 36 deals with seniority of direct recruits based on rank obtained by persons in



the list drawn by Public Service Commission or the appointing authority and are not applicable to the present case. Sub rule (b) of Rule 36 relates to seniority between persons transferred from one class or category of service to another class or category carrying same scale of pay, and is quoted hereunder:-

'Seniority'

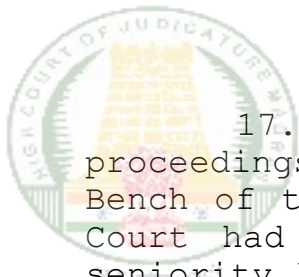
36.(a).....

(b) The transfer of a person from one class or category of a service to another class or category carrying the same pay or scale of pay shall not be treated as first appointment to the latter for purpose of seniority, and the seniority of a person so transferred shall be determined with reference to the rank in the class or category from which he was transferred. Where any difficulty or doubt arises in applying this sub-rule, seniority shall be determined by the appointing authority.'

15. The Bench declined to interfere with G.O.Ms.No.1006, Home (Courts) Department dated 03.07.2007. As far as the provisional seniority list was concerned, the same was directed to be re-drawn in the light of the observation of the Bench at Paragraph 14 of the order, reading thus:-

"14. So far as seniority between Copyists and Typists are concerned, we have already held that prior to 1st June, 1988, post of Typists (Rs.975-1660) having higher scale of pay than Copyists (Rs.825-1200), the Typists shall rank senior to Copyists enmass. Therefore, the letter dated 11th Jan., 2008, issued by the Registrar General, High Court may hold good in respect of the Copyists and Typists, who were appointed prior to 1st June 1988, but such Principle cannot be followed for Copyists and Typists appointed / promoted after 1st June, 1988. Since 1st June, 1988, if any Copyist has been appointed by promotion as Typist, for all purposes as they are to be treated to have been transferred to the post of Typists, scale of pay being same, in such cases, rule 36(b) shall apply for determination of seniority..... appointment will be the criteria for determination of seniority between the Copyists and Typists, if appointed since 1st June, 1988 and the guideline issued by the Registrar General of this Court dated 11th Jan., 2008, for determination of seniority of Copyists and Typists, if appointed / transferred / promoted on or after 1st June, 1988 and provisional seniority list, if so prepared on the basis of letter dated 11th Jan., 2008, is to be recalled."

16. In conclusion, the Bench directed the respondents in that writ petition including the Registrar General of the High Court to communicate to the PDJs / appointing authorities to determine and finalise the combined seniority list in the category of Copyists and Typists in accordance with law. We are in respectful agreement with the observations and conclusions of the Division Bench in their order dated 17.07.2008.



17. Coming to the question now as issue before us, in earlier proceedings dated 24.03.2017 in W.P(MD)No.935 of 2015, a Division Bench of this Court noted that while the Registrar General of this Court had been entrusted with the determination of the combined seniority list for the category of Copyists seeking equivalence with the post of Junior Assistants vide order of this Court dated 17.07.2008, the category of Examiners/Readers/Assistant Superintendent of Copyists had been left out of such determination. Such omission was on account of there having been no specific list in regard to the post of Examiner/Reader, Category 6 Class IV post before the Bench that considered and passed orders in W.P.(MD) NO.5969 of 2008.

18. To this end, the Registrar General was directed to place a report with a specific response to the issue raised in the present writ petitions as the issue was a recurrent one. We will revert to this presently.

19. As it is apparent from a perusal of Rule 36(b) of the Rules, the seniority of a person is liable to be determined with reference to the rank in the Class or category from which the person was transferred. Applying the aforesaid basis to and comparing the career progression of Ms.Samuthirakani and Mr.M.Selvam, as well as the private respondents arrayed in the writ petition, we find as follows:

20. Ms.Samuthirakani was appointed as Examiner in Tamilnadu Judicial Ministerial Service (Class IV, Category 6) on 24.02.1995, promoted as Junior Assistant (Class VI, Category 5) on 14.07.1998 and further promoted to the post of Assistant on 04.07.2012.

21. In comparison, respondents 2 to 4 had joined the Tamilnadu Judicial Ministerial Service as Copyists on 13.05.1996, 17.03.1997 and 01.03.1996 respectively. Thus, upon the merger of the posts of Copyists with that of Typists, their appointment as Typists would be reckoned from the date of their appointment.

22. Mr.M.Selvam was appointed as Office Assistant on 12.08.1991. His services were regularised by an order dated 16.08.1991. He was promoted as a Senior Bailiff on 05.03.1996. He was promoted to the post of Assistant on 30.09.2012. Respondent 2, on the other hand was appointed as a Copyist on 17.02.1997, promoted to the post of Typist and further promoted as Assistant on 30.11.2007.

23. Upon the merger of the post of Copyist and Typist and also taking into account the relevant factors of dates of appointment as well as the date of departmental tests as written by all four candidates the obvious inference would be that the respondents 2 to 4 were liable be placed higher in seniority to Ms.Samuthirakani. As regards Mr.Selvam, on a comparison of the date of appointment, it is apparent that second respondent is senior by five years. The fixation of seniority is in order and we decline to interfere with the same.



24. Separately on the administrative side, and in continuation of the narrative at paragraph 18 above, remarks from the PDJ were called for in the preparation of the report as directed by this Court by order dated 24.03.2017. The matter appears to have been placed before the Committee thereafter. Though not binding on this Bench judicially, we draw support from the decision of the Committee whose conclusion on the issue of fixation of seniority is, we find, identical to the view taken by us.

25. In the light of the discussion above, both writ petitions are dismissed without any order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-I)

To

The Principal District Judge,
Dindigul District.

+3CCs to Mr.S.VISVALINGAM, Advocate, SR.No. 76881
+1CC to M/s.Ajmal Associates, Advocate, SR.No. 76814
+1CC to Mr.T.S.Mohamed Mohideen, Advocate, SR.No. 77223
+1CC to Mr.C.Vakeeswaran, Advocate, SR.No. 76950
+1CC to Mr.Pala Ramasamy, Advocate, SR.No. 77371
+1CC to Mr.R.V.Rajkumar, Advocate, SR.No. 77489

W.P(MD)Nos.13296 of 2013 and 935 of 2015
03.08.2018

PM
ES/SKN/SAR 1/27.08.2018/7P/10C