IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.01.2019

Coram

The Hon'ble Mr.Justice M.M.Sundresh
and
The Hon'ble Mr.Justice Krishnan Ramasamy

Writ Appeal No.2244 of 2011

S.Palanidoss ... Appellants

Vs.

1.The State of Tamil Nadu,
Rep. By Government, Finance (T & A)
Chennai - 600 009.

2.The Commissioner of Treasuries and Accounts,
Chennai - 600 015.

3.The Treasury Officer,
District Treasury,
Tirunelveli ... Respondents

Writ Appeal filed under Section 150 of Letters Patent to set aside the order dated 27.07.2010 in W.P.No.37433 /2006 (O.A.No.9420/98) by this Honourable Court.

Prayer in W.P.NO.37433/2006 (O.A.No.9420/1998)
Writ Petition came to be numbered by transfer of O.A.No.9420 of 1998 on the file of the Tamil Nadu Administrative Tribunal praying to call for the records of the 2nd respondent herein in Pro.Rc.No.9345/96/C2 dated 11.3.1997 and that of the 1st respondent in Lr.No.74000/T. & A.I/97-7 dated 27.7.1998 quash the said orders dated 11.03.1997 and 27.07.1997 of the 2nd and 1st respondents respectively, and issue consequential directions to the respondents herein to include the name of the petitioner on top of the panel for promotion as Accountant for 1996 in Tirunelveli District Treasury Unit, promote the applicant as Accountant with retrospective effect from 04.04.1986, with consequential benefits, and consequently include his name in the panel for promotion as Superintendent, Grade II, with reference to his Seniority in the post of Accountant as on 04.04.1986, with consequential service and monetary benefits.

For Appellant : Mr.M.Ravi

For Respondents : M/s.A.Srijayanthi,
Special Government Pleader

Judgement

(Order of the Court was delivered by M.M.Sundresh, J,)

This Writ Appeal is directed against the order passed by the learned Single Judge in W.P.No.37433 of 2006, dated 27.07.2010.

2. We have heard the learned counsel for the parties.

3. The appellant joined in the service as Junior Assistant with the respondent, Treasuries and Accounts Department in the Kanchipuram District Treasury Unit on 24.08.1977. On his request, he was transferred to Tirunelveli District Treasury Unit. Thereafter, he joined District Treasury Unit, Ramanad. He was promoted as Accountant in the District Treasury Unit, Ramanad, in which force, he joined on 03.04.1986. Further, he relinquished his right for further promotion under Rule 47 of the General Rules for the Tamil Nadu State and Subordinate Services for three years, i.e. from 1986 to 1989.

4. Later, on his request, the appellant was once again transferred to Education Department with concurrence of the Tamilnadu Public Service Commission (TNPSC). This time, he was given the posting only as Junior Assistant. He worked there for 10 years. In the meanwhile, he was awarded Selection Grade in the post of Junior Assistant with effect from 13.08.1988. On his further request, he was re-transferred to Treasuries and Accounts Department, Tirunelveli District Treasury Unit. This time, he was given posting as Junior Assistant in District Treasury Unit, in which, he joined on on 28.10.1993, though he is a Selection Grade employee. Thereafter, he was awarded Special Grade from 14.08.1998 and promoted as Accountant with effect from 18.12.1998. He made a representation seeking to include his name in the panel for the year 1996 to the post of Superintendent by reckoning his seniority from 01.09.1986. This was rejected. Hence, the appellant filed the present Writ Petition, which was dismissed on the ground that, it is the appellant, who fairly given up his seniority on his volition and joined in the Education Department. Thereafter, onceagain, he given up his right and rejoined there. Therefore, his appointment was literally considered as fresh appointment. Challenging the same, the present Writ Appeal is filed.

5. The facts narrated above are not in dispute. Therefore, at the time of transfer from the post of Accountant at the District Treasury Unit, Ramanad to the Education Department in the year 1989, he was admittedly working as Accountant. The fact that he was working as Junior Assistant thereafter in the Education Department has got no relevancy insofar as his reappointment as Junior Assistant as against Accountant is concerned. No doubt, the appellant sought for re-transfer to the parent department. This, however, will not make the respondents to post the appellant as Junior Assistant.

6. Rule 47 of the General Rules for the Tamilnadu State and Subordinate Services Rules coupled with Rule 9 cannot be given a narrow interpretation. Rule 47 speaks about "only three years restriction'. Rule 9 also speaks about "any other reasons". When the appellant was working as Accountant, admittedly, he cannot be demoted to a different post. However, we find force in the submission of the learned Special Government Pleader that the appellant is entitled to count his service in the respondent Unit from 01.09.1986, having voluntarily gone to the Education Department from time to time and in view of the Rule 47 of the aforesaid Rules, which prohibits his seniority to be reckoned for three years. The joining of the post by the appellant as Junior Assistant will not take away his right, atleast, to be appointed as Accountant. However, the said right being limited, he cannot seek consideration, by taking into account the service rendered in the cadre of Accountant from 01.09.1986. He was, in fact, working as Junior Assistant at that relevant point of time. It is only, thereafter, he was reposted, though as Junior Assistant instead of Accountant.

7. We are also of the view that there is no Rule, which provides for demoting a person from the parent post he was holding earlier only based on subsequent transfer to another post, which is inferior to it. That would amount to a punishment given to an employee, especially, when the transfer was made with the concurrence of TNPSC. Therefore, it is punitive to do so.

8. In such view of the matter, we direct the respondents to consider the service of the appellant as Accountant from the date of his re-transfer as Junior Assistant from the Education Department with effect from 28.10.1993. That is to say, from 28.10.1993, his service as Accountant will be reckoned.

9. With the above observation, the Writ Appeal stands disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The State of Tamil Nadu,
Rep. By Government, Finance (T & A)
Chennai - 600 009.

2.The Commissioner of Treasuries and Accounts,
Chennai - 600 015.

3.The Treasury Officer,
District Treasury,
Tirunelveli.

+1 cc to M/s.M.Ravi, Advocate Sr.No.6415
+1 cc to The Government Pleader, Sr.No.6523

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SS(CO)
CSL/08.03.2019