

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.20981 of 2013

and

MP.No.1 of 2013

Tmt.Badernissa Rahman

.. Petitioner

.Vs.

- 1.State of Tamilnadu represented by
The Principal Secretary to Government,
Finance (SS) Department,
Fort Saint George, Chennai 600 009.
 - 2.The Director of Small Savings,
Chennai 600 002.
 - 3.T.Bhoopathy,
Personal Assistant to Collector,
Office of the Collector of Tiruppur,
Tiruppur District.
- .. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to re-fix the seniority of the petitioner herein and place her seniority above the 3rd respondent, since the 3rd respondent is selected through Employment Exchange and the petitioner was appointed through TAMILNADU PUBLIC SERVICE COMMISSION, in view of the G.O.Ms.No.548 & AR Personal Department, issued by the 1st respondent, dated 19.06.1987 and also in view of the order passed in W.P.No.18083 of 2006 dated 15.02.2008 on the file of this Hon'ble High Court, Madras upon re-fixing the Seniority of the petitioner, above the seniority of the 3rd respondent, also order to re-fix the other service benefits in accordance with law.

For Petitioner : Mr.V.Sivalingam
for M/s.Siva Associates

For Respondents: Mr.A.Zakkir Hussain
Government Advocate

O R D E R

The instant writ petition is one for a Mandamus, directing the respondents to re-fix the seniority of the petitioner by placing her above the 3rd respondent.

2.The petitioner joined as Junior Assistant in Tamil Nadu Government Service, recruited through the Tamil Nadu by the Tamil Nadu Public Service Commission on 07.02.1985. She was sent for training and ultimately her probation was declared successful on 23.09.1989. The respondent on the other hand was sponsored by the Employment Exchange in year 1983, the petitioner has been kept below respondent no.3 in the seniority list 11.02.1983.

3.The short contention of the petitioner is that the act of placing respondent no.3 senior to the petitioner is directly violative of G.O.Ms.No.548 Personnel and Administrative Reforms (Personnel) Department dated 19.06.1987. Para 10 of the said Government order reads as under:

"10. Seniority:- The seniority of a candidate appointed through Special Absorption, in 1984, shall be fixed with reference to the date of first temporary appointment in the departmental unit in which he had been absorbed irrespective of whether he had been subsequently discharged for want of vacancies or appointed again through the Employment Exchange in the departmental unit, and not with reference to the date of first appointment in any other departmental unit where he had acted previously before his absorption in the particular departmental unit. He shall be ranked below the candidates selected by the Tamil Nadu Public Service Commission on the results of the competitive Examination held in November 1983 irrespective of the date of appointment of these candidates. If more than one candidate is appointed on the same day, their seniority shall be fixed with reference to the age as laid down in Sub-rule (a) of rule 35 of the General Rules. The rule of reservation (General Rule 22) shall not apply to these candidates.

Provided that if any person is appointed to the post of Junior Assistants/Typists/Steno-Typists in accordance with the Special Rules the seniority of such person shall be placed

above the candidates appointed through Special Absorption in 1984.

Provided also that if any of the persons appointed to the posts of Junior Assistant/Typist/Steno-Typist in accordance with the Special Absorption Rules, 1987 and whose services were regularised in one department on 25-6-84 and reallocated to a new department for want of vacancy through the Tamil Nadu Public Service Commission shall take his seniority in the new department from the date of his temporary appointment in the department from which he was reallocated".

4.The petitioner approached tribunal by filing O.A.No.3304 of 1993. The matter was transferred to this Court and the OA has been re-numbered as W.P.No.18083 of 2006. This Court by an order dated 15.02.2008, has passed the following order which reads as under:

"Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records relating to the first respondent herein in G.O.Ms.No.1363, Finance (SS Department, dated 21.12.1990 and quash the same insofar as the date of declaration of probation viz., 23.9.1989 is concerned and substitute 23.2.1987 in its place. (ii) quash the consequential Proceedings No.SS.1/8109/89 dated 24.1.1991 issued by the respondent and (iii) count the period of uninterrupted regular service rendered by the applicant in the post of Assistant since 23.6.1986 for the purpose of seniority and other attendant benefits.

6.As rightly pointed out by the learned counsel for the petitioner, it is not for the fault of the petitioner but on the wrong information furnished by the respondent. As such, the impugned order is set aside and the respondents are directed to declare the completion of probation of the petitioner with effect from *23.2.1987 and the petitioner is entitled for the consequential benefits."

5.A Division Bench of this Court by an order dated 03.04.2006, a batch of writ petitions in W.P.No.21654 of 2004 etc., while dealing with cases which are identical to the facts of the petitioner has observed as under:

"9. Following the aforesaid observation

of the learned single Judge and the Division Bench, the two original applications in O.A.Nos.3317/92 and 5691/93 have been allowed by the Tribunal by judgment dated 20.10.2003, which has been challenged by the Government.

10. The main contention raised by the counsel for the State Government in W.P.Nos.3822 and 3823 of 2006 is to the effect that the candidates selected through Tamil Nadu Public Service Commission must be ranked above those appointed under Special Rul which would also include any appointment on compassionate ground, as evident from Rule 10 of G.O.Ms.No.548 dated 19.6.1987.

11. After going through the provisions contained in the said G.O., and particularly keeping in view the interpretation given by the learned Single Judge which has been specifically approved by the Division Bench, which has become final, we are unabl accept the contention raised by the learned counsel appearing for the State Government. As rightly observed by the learned Single Judge, G.O.Ms.No.548 does not deal with the question of seniority of those appointed on compassionate ground. It only ref ers to question of seniority between General Rules 10(a)(i) appointees and regular appointees who had been selected through Tamil Nadu Public Service Commission in the examination held in November, 1983. As per such Rules under Article 309 of the Consti tution of India, seniority of the appointees under General Rules 10(a)(i) who had been subsequently regularised, had been depressed and kept below the last candidate selected on the basis of November, 1983 examination. Since the validity of such rule ha s not been challenged, as per such rules, it is apparent that General Rules 10(a)(i) candidates have to be ranked below the candidates who have been selected as per the examination held in November, 1983. In such rule, however, nowhere it is indicated that the seniority of the TNPSC candidate has to be advanced to the year of examination that is to say 1983. It is also nowhere indicated that such persons shall be deemed to have been appointed in 1983.

12. It is, therefore, obvious that the

seniority of a person appointed on the basis of November, 1983 examination, has to be fixed on the basis of the date of substantive appointment and not on the basis of the date of the examination. As a matter of fact, this aspect has been very elaborately clarified by Justice Sathiadav, in the decision dated 8.4.1988, which has been specifically approved by the Division Bench. Hence, we are not inclined to take any different view of the matter. In view of the direction clearly indicated in paragraph 9 of the judgment of the learned Single Judge, which has been specifically approved by the Division Bench, it is apparent that the question of seniority of the person appointed through TNPSC or person appointed on compassionate ground, has to be fixed on the basis of the date of appointment.

13. So far as General Rules 10(a)(i) candidates are concerned, obviously such candidates have to be ranked below the TNPSC candidates irrespective of the date of appointment of such TNPSC candidates and the Special Absorption Rules candidates. In other words, 10(a)(i) appointees have to be ranked below the last TNPSC candidate selected on the basis of the examination held in November, 1983. Since the validity of such rule has not at all been challenged, the General Rules 10(a)(i) candidates are deemed to be below all candidates selected on the basis of November, 1983 examination held by the TNPSC.

14. For the aforesaid reason, the Writ Petition Nos.3822 and 3823 of 2006 filed by the Government, are dismissed. Writ Petition No.21654 of 2004 is partly allowed, and it is directed that the candidates selected by the TNPSC on the basis of the examination held in November, 1983, shall rank above General Rules 10(a)(i) candidates; but, so far as compassionate appointees are concerned, the inter se rank of the compassionate appointees and TNPSC candidates shall depend according to the date of their initial appointment, as has been held in paragraph 9 of the judgment in W.P.No.7730/87 and W.A.No.787/88. No costs. Consequently, connected WPMs are closed".

6.This issue stands squarely covered by the above said judgment. The learned counsel for the Government would state that the State has issued G.O.Ms.No.996 P & AR (placements) Department dated 22.09.1984. Respondent No.3 is a Burma repatriate, therefore he is entitled to the benefits under the said G.O.Ms.No.996 P & AR (placements) Department dated 22.09.1984, in as much as, the G.O permits regularisation of Burma repatriate with effect from the date of his initial appointment. The arguments of the learned counsel for the respondents cannot be accepted. Para 8 of the counter reads as under:

"8.With regard to the averments made in Grounds (d) and (e) of the affidavit, it is submitted that the third respondent, Thiru.T.Boopathy, who was appointed through Employment Exchange was absorbed to Government Service as per G.O.996 P & A R (Placements) Department dated 22.09.1984 is a Burma repatriate. In G.O.Ms.No.2024 Revenue Department dated 15.05.1974, Government have relaxed certain rules prescribed for the recruitment of repatriate and they should not be deprived like seniority, increments etc., accruing out of making such relaxations effective from the date of their appointment to such posts. Moreover in Government Lr.No.3096, Public (Rehabilitation of Repatriates) Department dated:- 11.08.1989, it has been clarified that the repatriates from Burma and Srilanka shall be regularized from their date of temporary appointment in that department without arrears of pay and allowances. The Hon'ble Court of Madras in para 5 and para 6 of its Judgement dated 06.04.2009 in Writ Petitions Nos.37888, 37896 and 32253 of 2006, has held that Government have issued orders in G.O.Ms.No.2024, Revenue Department dated 15.05.1974, for appointing Burma Repatriates and Repatriate from Sri Lanka with a view to rehabilitate them and in such cases the Government have also promised to grant necessary relaxation in respect of recruitment Rules and those Repatriates who were appointed, would be given the benefit of retrospective regularization from the date of appointment without arrears of pay and allowances. This Hon'ble Court in its Judgement dated 06.04.2009 in the above case has ordered that in the light of the above orders, the Writ Petitions stand allowed and

has directed to regularize the appointments of the three petitioners from the dates of their initial appointments, but as indicated in the Government Letter/Government Orders, they will not be paid any monetary benefits for such retrospective regularization, but their services will be counted for all other purposed, including pay fixation and other benefits available to them, in accordance with law. Based on the above orders Thiru.T.Boopathy, has now requested to regularize his services in the post of Junior Assistant on 11.02.1983 F.N. viz the date of appointment itself and also to regulate the date of completion of probation accordingly. The matter has been referred to Government for clarification. On receipt of orders from the Government, seniority will be fixed."

7. Para 8 of the counter only gives benefit of regularization from the date of appointment. It however does not deal with the issue on seniority between such of those persons who have been appointed through employment exchange and those persons who have been appointed through TNPSC. The issue of seniority is specifically dealt with G.O.Ms.No.548 Personnel and Administrative Reforms (Personnel) Department dated 19.06.1987. Seniority is not the subject matter of G.O.Ms.996 P & AR (Placements) Department dated 22.09.1984. The contention of the learned counsel for the respondents is not accepted.

This Court is bound by the judgment dated 03.04.2006, by the Division Bench of this Court in W.P.No.21654 of 2004 etc. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Insp cell)

//True Copy//

Sub Assistant Registrar

KP
To

1. The Principal Secretary to Government,
Finance (SS) Department,
Fort Saint George, Chennai 600 009.

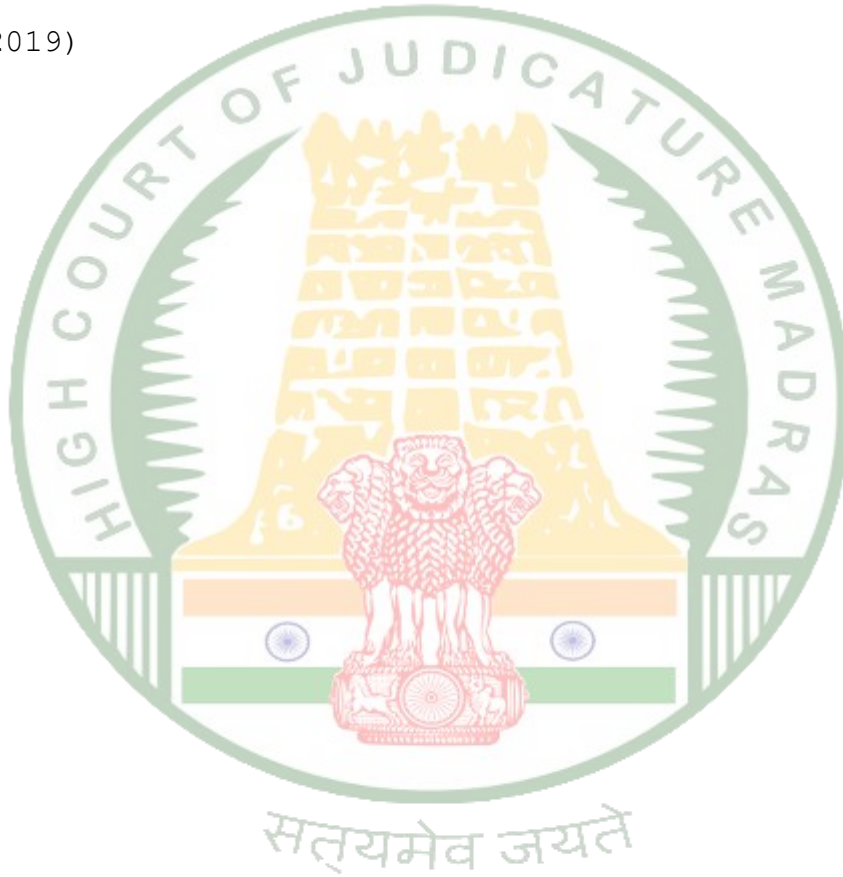
2.The Director of Small Savings,
Chennai 600 002.

3.T.Bhoopathy,
Personal Assistant to Collector,
Office of the Collector of Tiruppur,
Tiruppur District.

+1cc to M/s.Siva Associate, SR.85740
+1cc to the Government Pleader SR.86088

W.P.No.20981 of 2013

NMI (CO)
CB(29/11/2019)



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