

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.3659 of 2011

WPMP Nos.1 & 2 of 2011 & WMP.No.207 of 2017

Mrs.Thalitha Amudha Nishitha

.. Petitioner

Vs.

1.The Chennai Post Trust,
rep. by its Chairman,
Administrative Office,
Rajaji Salai, Chennai-600 001.

2.The Chennai Post Trust,
rep. by its Secretary,
Administrative Office,
Rajaji Salai,
Chennai-600 001.

3.Mr.P.Jayasankaran

4.Ms.V.Vidya

5.Mr.C.Sundaravadivelu,

6.Ms.A.Varaladevi

7.Mr.P.Elangovan

8.Mr.M.Arondas

9.Mr.R.Amarendran

10.Ms.K.S.Premakumari

11.Ms.J.Vijayalakshmi

12.Mr.K.Manoharan

13.Ms.R.Roshanara

14.Mr.S.Ramesh

15.Mr.V.C.A.Sukumar

.. Respondents

Prayer:

Petition filed under Article 226 of The Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records in connection with the proceedings culminating in the preparation of the inter-se-seniority list as prepared in the impugned gradation list by the first and second respondents as on 01.01.2010 with respect to respondents 3 to 15 and the impugned communications bearing No.SCT1/3035/09/GA dated 08.10.2009 and 04.03.2010 of the second respondent and quash

the same and consequentially direct the respondents 1 and 2 to restore the seniority of the petitioner according to the date of entry into the service of the first respondent and consequentially to restore the said seniority with retrospective effect with all attended benefits.

For Petitioner .. Mr.K.Raja

For Respondents .. Mr.J.Sathya Narayana Prasad for RR1
&2

For RR3 to 15 .. No Appearance

ORDER

This writ petition has been filed seeking for issuance of a Certiorarified Mandamus, to call for the records in connection with the proceedings culminating in the preparation of the inter-se-seniority list as prepared in the impugned gradation list by the first and second respondents as on 01.01.2010 with respect to respondents 3 to 15 and the impugned communications bearing No.SCT1/3035/09/GA dated 08.10.2009 and 04.03.2010 of the second respondent and quash the same and consequentially direct the respondents 1 and 2 to restore the seniority of the petitioner according to the date of entry into the service of the first respondent and consequentially to restore the said seniority with retrospective effect with all attendant benefits.

2. The petitioner was appointed on compassionate grounds on 19.12.1996 as a Clerk in the first respondent/ Port Trust. According to the petitioner, the respondents 3 to 15 were recruited in the post of Clerk under direct recruitment quota and joined the services of the Port Trust on various dates in the year 1997, after joining of the petitioner on 19.12.1996. According to the petitioner, she was placed as junior to all 13 private respondents, who had joined in the service after her date of appointment in the services of the Post Trust. In the said circumstances, it appears that the petitioner made several representations for re-fixation of her seniority over and above the seniority of the respondents 3 to 15 herein. In response to the representation submitted by the petitioner, the second respondent issued a communication on 08.10.2009, rejecting the request for re-fixation of seniority as claimed by the petitioner. According to the rejection order, the direct recruitees who were arrayed as the private respondents herein were selected as early as on 22.07.1996, and their inter-se-seniority has been fixed on the basis of the rankings assigned by the Union Public Service Commission. However, those candidates namely, the direct recruitees, could not join the posts immediately in view of pendency of a writ petition before this Court.

3. Thereafter, a seniority list has been published on 01.01.2010, in which, the petitioner found her name below the private respondents. Therefore, an appeal was submitted by the petitioner on 08.01.2010. In response to the same, by a communication dated 04.03.2010, the second respondent once again rejected the appeal, reiterating the same reasons that were mentioned in the earlier rejection order dated 08.10.2009. According to the petitioner, that the memorandum, which was relied on by the Port Trust cannot be made applicable to the petitioner's claim since she was a 'compassionate appointee' and her appointment stood on different footing. The rejection orders passed by the respondents 1 & 2 are the subject matter of challenge in the present writ petition.

4. The learned counsel for the petitioner would submit that admittedly, the petitioner joined the services of the first respondent/Post trust as a Clerk on 19.12.1996 ahead of all other private respondents namely the respondents 3 to 15 herein. Those respondents have joined the post of Clerk only in the year 1997-98 and therefore, the seniority as drawn by the Port Trust was incorrect and liable to be re-fixed in terms of the request of the petitioner. The learned counsel in this regard laid emphasis on the scheme for compassionate appointment applicable to the first respondent establishment. He would draw the attention of this Court to paragraph no.15, which deals with the seniority, which reads as under:

(a) The inter-se-seniority of persons appointed on compassionate grounds may be fixed with reference to their date of appointment. Their interpolation with the direct recruits/promotees may also be made with reference to their dates of appointment without disturbing the inter-se-seniority of direct recruits/promotees.

(b) Date of joining by a person appointed on compassionate grounds shall be treated as the date of his/her regular appointment.

5. According to the learned counsel that as per the above instructions, the inter-se-seniority has been fixed with reference to the date of appointment which also holds that the date of appointment is to be construed as the date of regular appointment. Therefore, he would submit that the petitioner being an appointee on compassionate ground on 19.12.1996, she should have been shown as senior to the respondents 3 to 15 herein.

6. The learned counsel for the petitioner relied on a decision of the Division Bench of this Court in W.A.Nos.302, 425, & 855 of 2014. In paragraph no.14 of the above referred judgment, it has been held as follows:

'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.'

7. Per contra, the learned counsel for the first respondent/Port Trust would submit that all the private respondents were selected and placed in the approved select list as on 22.07.1996 much before the petitioner was appointed in December 1996. Out of several selected candidates, many of them were given appointment immediately and they have also joined the posts. However, some of the direct recruits could not be appointed immediately in view of the fact that one of the unsuccessful candidate in the meanwhile approached this Court in WP.No.11153 of 1996 and because of the pendency of the litigation, the appointment letters could not be issued to some candidates. However, after the interim order was vacated in February-March 1997, immediately appointment letters were issued and those candidates, who could not be accommodated earlier came to be accommodated. Their seniority has been fixed on the basis of the ranking given by the Union Public Service Commission since all the candidates formed a homogeneous group of 1996 select list. Therefore, he would submit that the petitioner having obtained the order on compassionate ground cannot seek higher seniority than the private respondents herein.

8. This Court, considered the rival submissions of the counsel for the petitioner as well as the counsel for the Port Trust. At the outset, this Court is unable to appreciate as to how the petitioner could successfully claim seniority over and above the respondents 3 to 15 herein when admittedly, the said respondents were part of the approved select list as on 22.07.1996 as against the petitioner, who was appointed through back door employment on compassionate ground and joined service only on 19.12.1996. Moreover, many of the colleagues of the private respondents herein were given appointment orders immediately and joined the posts earlier to the petitioner between 22.07.1996 and 19.12.1996, the inter-se-seniority granted by the Union Public Service Commission to all the direct recruits including the private respondents herein cannot be unsettled only because of the fact that in between there was a litigation pending at the instance of one unsuccessful candidate. In any event, when the interim order was vacated in

February-March-1997, the candidates who were originally could not be accommodated were given appointment letters and they joined the post which does not mean that they will take their seniority on the date of their appointment. Needless to mention that it was not the fault of the private respondents 3 to 15 herein for not joining the post immediately, as there was a litigation pending against the recruitment before this Court for some time. Therefore, under no circumstances, the petitioner can steel a march over the private respondents in the matter of seniority.

9. In this regard, reliance has been placed by the learned counsel for the petitioner in paragraph no.15 of the scheme for Compassionate Appointment, this Court is unable to appreciate the submission for the simple reason that the scheme is only in relation to compassionate appointment and the inter-seniority, which was provided under paragraph no.15 is only among the compassionate appointees and not between the compassionate appointees and regular appointees of the Union Public Service Commission candidates. This Court is of the considered view that the petitioner has misread the provisions which cannot be pressed into service to the claim of seniority between compassionate appointees vis-a-vis all regular direct recruits through Union Public Service Commission.

10. Even otherwise, this Court is of the considered view that the petitioner having earned her employment on compassionate ground without being subjected to any selection, cannot seek higher fixation of seniority over the direct recruits, who were recruited by the Union Public Service Commission after rigorous selection. It would be unfair and unreasonable for the petitioner to claim seniority over the duly selected candidates and their seniority has been fixed on the basis of the ranking obtained by them in the selection. Therefore, in all fours, the claim of the petitioner cannot be either countenanced in law or on facts.

11. For the above said reasons, this Court finds that the writ petition is devoid of merits and substance and therefore, the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman,
The Chennai Post Trust,
Administrative Office,
Rajaji Salai,
Chennai-600 001.

2. The Secretary
The Chennai Post Trust,
Administrative Office,
Rajaji Salai,
Chennai-600 001.

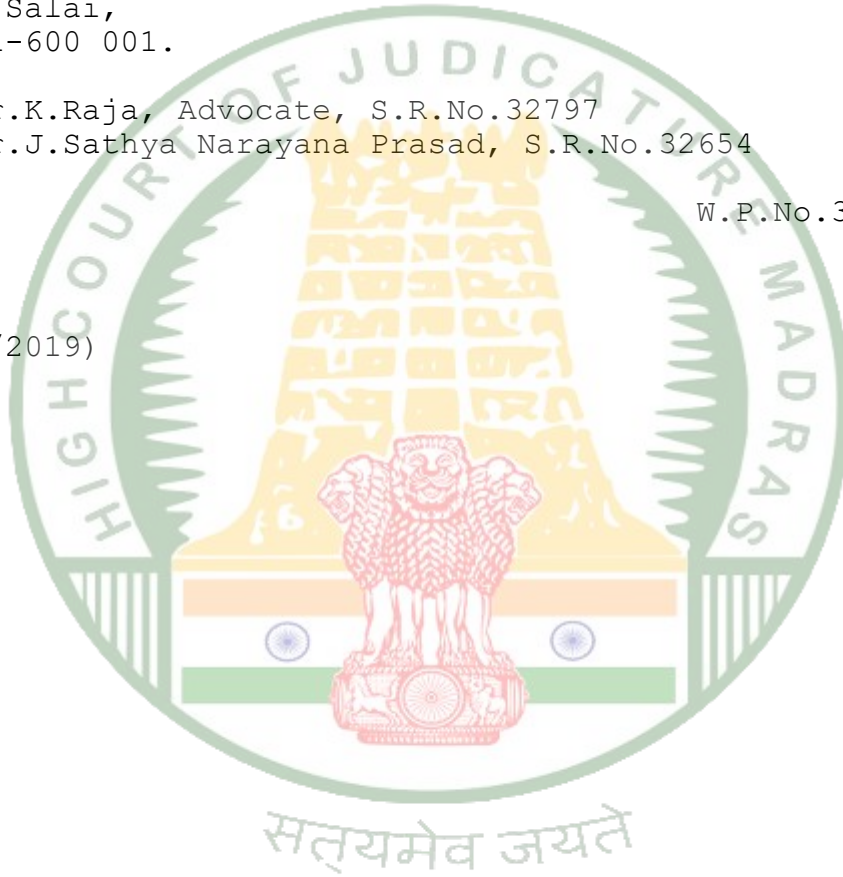
+1cc to Mr.K.Raja, Advocate, S.R.No.32797

+1cc to Mr.J.Sathya Narayana Prasad, S.R.No.32654

W.P.No.3659 of 2011

NSD (CO)

RRS (17/06/2019)



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