

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE: 20.11.2019
CORAM
THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
W.P.No.9416 of 2013

S.Jayanthi

.. PETITIONER

Vs

- 1.The Government of Tamil Nadu
rep. By Secretary to Government,
Rural Development & Panchayat Raj Department,
Fort St. George, Chennai-600 009.
 - 2.The Commissioner of Rural Development &
Panchayat Raj,
Panagal Buildings, Saidapet,
Chennai-600 015.
 - 3.The Secretary,
Tamil Nadu Public Service Commission,
Chennai-600 002.
 4. The District Collector,
Kancheepuram District,
Kancheepuram.
- ... RESPONDENTS

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records of the 1st respondent relating to Para 5(b) of G.O.3(D).No.43 Rural Deveopment & Panchayat (E3) Department dated 09.12.2011 and quash the same in so far as petitioner is concerned and issue a consequential direction to the respondents to count the services rendered by the petitioner in the post of Radio Supervisor for a period from 06.03.1996 to 02.03.2012 along with the services in the post of Assistant for the purpose of seniority and promotion and to grant promotions to the post of Deputy Block Development Officer with consequential benefits.

For Petitioner : Mr.R.Saseetharan

For Respondents : Mr.J.Pothiraj, Spl.G.P., for R1, R2 and R4.

Mr.M.Devendran for TNPSC for R3.

O R D E R

The writ petition was appointed as Radio Supervisor on 06.03.1996 in the office of Divisional Development Office,
<https://hcservices.ecourts.gov.in/hcservices/>

Hosur, Dharmapuri District under Tamil Nadu Local Administrative Radio and Television Maintenance Organisation. After a policy decision to disband the said Organisation on the ground that Radio and Television maintenance work is entrusted with the concerned Panchayat itself, the petitioner worked in the ministerial side. Thereafter, by order dated 25.07.2008, the District Collector, Kancheepuram, has posted the petitioner as Radio Supervisor to the office of P.A., to the District Collector, Kancheepuram. According to the petitioner, he was assigned the maintenance of wireless sets works in the office of P.A., to the District Collector, Kancheepuram District.

2. It is the averment of the petitioner that in view of work order issued by the concerned District Collectors, he had been discharging his function as Radio Supervisor since 2008 without any regular absorption. The Government has not passed any orders absorbing the Radio Supervisors permanently in any one of the service. After lapse of 10 years, the Government of Tamil Nadu passed G.O.(3D).No.43 dated 09.12.2011 in which the Government provides for absorption of Radio Supervisors as Assistants in the Rural Development and Panchayat Raj Department. The petitioner was absorbed as Assistant in Kancheepuram District, by the order of the District Collector, Kancheepuram dated 28.12.2011 in Rural Development Department. In the said Government order, it is stated that the petitioner's seniority is fixed at the bottom of the seniority list of Assistants in the Department of Rural Development and Panchayat Raj Department. It is averred that the petitioner was on Medical Leave for a period from 20.12.2011 to 02.03.2012. After expiry of three months, the petitioner joined as Assistant in Kancheepuram district. The petitioner preferred a representation on 03.03.2012 objecting to the seniority and placement of Radio Supervisors at the bottom of the seniority of Assistant in the concerned unit.

3. The learned counsel for the petitioner submits that it is well settled principle that when the person is transferred from one post to another post which is equivalent, not on request, the service rendered in the earlier equivalent post has to be taken into account for the purpose of seniority. The post of Radio Supervisor and Assistant has been carrying same scale of pay for all these years and both the posts are equivalent. The Government cannot wipe out the service rendered in the equivalent post. In support of his contention, the learned counsel for the petitioner placed reliance on the judgment of a Division Bench of this Court in W.A.Nos.988, 2619 and 2641 of 2018 and W.A.Nos.559, 562, 563, 612, 649 and 669 of 2019 dated 02.04.2019. It is observed in the said writ petition that when some of the Radio Supervisors similarly placed to the petitioners, challenged their placement at the bottom of the seniority list as on 09.12.2011 in earlier writ petitions, this court held the same to be invalid and directed their

names should be placed in the seniority list as on the date on which they had joined in the post of Assistants on 01.05.2001, which has attained finality. It is further pointed out by the Division Bench that they have no reason to differ from the consistent view taken by this Court in the matter. The Hon'ble Supreme Court of India in the case of State of Uttar Pradesh Vs. Arvind Kumar Srivastava [(2015) 1 SCC 347] has reiterated that when a particular set of employees have been given a relief by the Court, all other identically situated employees should be treated alike by extending that benefit and not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. The Division Bench, in paragraph 9 of the said order, held as follows:-

"9. We also find that despite repeated orders passed by this Court granting relief to the similarly placed persons, the Respondent have not issued orders fixing their seniority in the post of Assistants as directed in those orders. Hence, we are constrained to direct the Secretary to Government, Rural Development Department, Government of Tamil Nadu to file a report of compliance by 30.06.2019 before the Registrar (Judicial) of this Court, showing the fixation of seniority of the Petitioners and other similarly placed persons, who were earlier working as Radio Supervisors in the post of Assistants in the Rural Development Department without fail."

This court is of the considered view that the issue involved in the present writ petition is squarely covered by the above said judgment passed in W.A.559 of 2018 etc batch dated 02.04.2019 [The Government of Tamil Nadu, Rep. by its Secretary to Governemnt, Rural Development Department, Secretariat, Fort St.George, Chennai and two others Vs. R.Murugesan and others]. Following the aforesaid judgment, this court has no hesitation to quash the impugned order in so far as the petitioner is concerned. Accordingly, the impugned order relating to Para 5(b) of G.O.(3D).No.43 Rural Development and Panchayat (E3) Department dated 09.12.2011 is quashed. The respondents are directed to fix the seniority of the petitioner from the date she joined as Assistant in the District Collectorate on officiation after abolition of parent cadre. The aforesaid exercise of refixation of seniority shall be carried out within a period of eight weeks from the date of receipt of a copy of this order.

4. The Writ Petition is allowed on the above terms.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Secretary to Government,
Rural Development & Panchayat Raj Department,
Fort St. George, Chennai-600 009.

2.The Commissioner of Rural Development &
Panchayat Raj,
Panagal Buildings, Saidapet,
Chennai-600 015.

3.The Secretary,
Tamil Nadu Public Service Commission,
Chennai-600 002.

4. The District Collector,
Kancheepuram District, Kancheepuram.

+1 cc to Government Pleader Sr.No.97065

+1cc to Mr.R.Saseetharan , Advocate SR.No. 96668

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A.SK(17/02/2020)



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