

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2019

CORAM :

THE HON'BLE MR.AMRESHWAR PRATAP SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.Nos.9831 to 9835 of 2015

- P.Ravichandran .. Petitioner in
W.P.No.9831/2015
- P.Sivayogam .. Petitioner in
W.P.No.9832/2015
- A.Syed Mohamed .. Petitioner in
W.P.No.9833/2015
- V.K.Karthikeyan .. Petitioner in
W.P.No.9834/2015
- N.Munuswamy .. Petitioner in
W.P.No.9835/2015
- 1.The Registrar General,
High Court,
Chennai - 600 104.
- 2.The Principal District Judge,
Kancheepuram at Chengalpattu,
Kancheepuram District.
- 3.V.Narasimhan
- 4.The Government of Tamil Nadu,
rep. by the Secretary to Government,
Home (Courts V) Department,
Secretariat, Chennai-9. .. Respondents

(Respondent No.4 impleaded as per the
order dated 13.3.2019 made in
WMP Nos.2283, 2284, 2287, 2290 and
2293 of 2019) in WP Nos.9831 to 9835/15)

Common Prayer in all WPs: Petitions filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus calling for the records pertaining tot he order passed by the second respondent in his Order A.No.4174/2009 D.No.1242/A/2015 dated 27.02.2015 and quash the same, insofar as the petitioners are concerned and direct the respondents 1 and 2 to restore the original seniority of the petitioners and the third respondent in the cadre of Assistant and confer all the consequential benefits.

For Petitioners : Mr.C.Selvaraj
Senior Counsel
for M/s.C.S.Associates

For Respondents : Mr.Santhanaraman
for respondent Nos.1 and 2

Mr.S.Kamalesh Kannan
Government Advocate
for respondent No.4

COMMON ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

Heard the learned Senior Counsel for the petitioners and the learned counsel for respondent Nos.1 and 2. The said respondents have filed counter-affidavits, which are on record.

2. The petitioners have prayed for quashing of the order dated 27.02.2015 and also to re-fix the seniority as prayed for as against respondent No.3 on the ground that the Rule pertaining to seniority having not been amended, the order impugned suffers from an infirmity.

3. Learned counsel for respondent Nos.1 and 2 contends that considering the impact of the Rule pertaining to seniority and also submissions raised with regard to fixation of inter se seniority between Typist and Copyist, a Division Bench of this Court in the case of R.A.Baskaran v. State of Tamil Nadu, rep. by its Secretary to Government and others, decided on 17.07.2008, has held as follows:

"13. Rule 36 deals with seniority. While 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, 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, as 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 of 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.

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. The date of first 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, to that extent, we hold as illegal. The Principal District Judge/Appointing Authorities cannot act on the basis of letter 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.

15. So far as notification of merger dated 3rd July, 2007 is concerned, no specific pleading or submission has been made to show as to how it is illegal or ultra vires. On the other hand, we find the notification dated 3rd July, 2007, is legal and proper as it is always open to the competent authority to merge two cadres or posts having same qualification and scale of pay for the purpose of taking common nature of work.

16. In view of the discussions as made above, while we are not inclined to interfere with the order of merger, direct the respondents, including the Registrar General of this Court to communicate to all the Principal District Judges/Appointing Authorities to determine and finalise the seniority list of combined cadre of Copyists and Typists in accordance with law and as discussed above. The writ petition stands disposed of with the aforesaid observations and directions. Consequently, connected miscellaneous petition is closed. But there shall be no order as to costs."

Relying on the same, the learned counsel for respondent Nos.1 and 2 submits that this issue having been settled, there is no occasion for any further relief being extended to the petitioners.

4. We have considered the submissions raised and we find that the very same submissions have been interpreted and directions have been issued to fix seniority in accordance with the directions given therein. We find no reason to differ from the said directions so as to interfere with the order dated 27.02.2015, which is in conformity with the order of the High Court rendered earlier.

5. Accordingly, no interference is called for and the writ petitions are consigned to records. No costs. Consequently, M.P.Nos.1 to 1 of 2015 are closed.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

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To:

- 1.The Registrar General,
High Court,
Chennai - 600 104.
- 2.The Principal District Judge,
Kancheepuram at Chengalpattu,
Kancheepuram District.
- 3.The Secretary to Government,
Government of Tamil Nadu,
Home (Courts V) Department,
Secretariat, Chennai-9.

+5cc to M/s.C.S.Associates, Advocate SR.No.94343

W.P.Nos.9831 to 9835 of 2015

RJI (CO)
GMY (04/12/2019)

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