

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on: 19/11/2018

Orders pronounced on: 27 /06 /2019

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Appeal No.2519 of 2018

1. The Government of Tamil Nadu
rep. By its Secretary to Government
Rural Development Department
Fort St. George
Chennai 600 009.
2. The Commissioner of Rural Development
and Panchayat Raj
Panagal Building
Saidapet
Chennai 600 015.
3. The District Collector
PD Section
Nagapattinam District.Appellants / Respondents

Vs

L. Kannan
Assistant
Development Section
Collectorate
Nagapattinam.

सत्यमेव जयते ...Respondent / Petitioner

Prayer:- Appeal filed under Clause 15 of Letters Patent against the order passed in W.P.No.7942 of 2013 dated 11/1/2018.

Prayer in W.P.No.7942 of 2013: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus to call for the records pertaining to G.O.(3D) No.43, Rural Development and Panchayat Raj (E3) Department dated 09.12.2011 passed by the first respondent and quash the same in so far as fixing of seniority of the petitioner by placing him in the bottom most in the seniority list of Assistant as on 09.12.2011 and further direct the respondents to reckon the seniority of the petitioner in the

cadre of Assistant with effect from 01.05.2001, the date of posting him as Assistant with all consequential service benefits such as retrospective promotion and pay benefits within the time limit that may be stipulated by this Hon'ble Court.

For appellants ... Mr.STS.Murthy

AAG - V

Assisted by Mr.P.S.Sivashanmuga Sundaram
Special Government Pleader

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J U D G M E N T

(Judgment of the Court was made by Subramonium Prasad, J)

Instant writ appeal is directed against the order, dated 11/1/2018, passed by the Court in W.P.No.7942 of 2013.

2. The facts in brief are as follows:-

The respondent herein was selected by the Tamil Nadu Public Service Commission, as Radio Supervisor and was placed under the Tamil Nadu Local Administration Radio and Television Maintenance Organisation, in the Rural Development Department. Their services were utilised by Village Panchayat. The Government, decided to abolish the post of Radio and Television Supervisors. On abolition of the post, respondent was directed to work in the Collectorate, Rural Development unit, as Assistant, with effect from 1/5/2001. Accordingly, the respondent joined the service, but his services in the Collectorate was not regularised. With regard to the fitment of Seniority, in the cadre of assistant, in the Collectorate, government took a decision and came out with G.O.Ms.No.(3D) No.43, Rural Development and Panchayat Raj, dated 9/12/2011 that seniority shall be determined in the cadre of Assistant from the date of Government Order i.e., on 09.12.2011. Aggrieved by the same, the respondent has filed W.P.No.7942 of 2013, contending that their seniority must be reckoned from 01.05.2001.

3. Vide order, dated 11/1/2018, a learned Single Judge of this Court has found that the case of the respondent is squarely covered by a common order of this Court, in W.P.Nos.27207 and 27208 of 2012, wherein one of the colleagues of the respondent, who was also similarly placed had challenged the Government Order G.O.(3D) No.43, Rural Development and Panchayat Raj (E3) Department, dated 9/12/2011. This Court in WP.Nos.27207 & 27208 of 2012, directed the government to fix the seniority of the respondent herein, in the cadre of Assistant, in the District Collectorate i.e., from the initial appointment.

4. Order in W.P.No.25257 of 2012 was unsuccessfully challenged in W.A.No.736 of 2016. In the instant case before us, a learned Single Judge, followed the said judgment and allowed the writ petition, directing the appellants herein to fix the seniority of the respondent from the date they have joined as Assistant in the District Collectorate on officiation after abolition of the post of Radio Supervisor.

5. Being aggrieved instant Writ Appeal is filed.

6. Heard Mr.STS.Murthy, learned Additional Advocate General for the appellants.

7. As stated by the learned Single Judge, facts in the instant case, is identical to the facts, in W.P.Nos.27207 and 27208 of 2012, allowed by a learned Single Judge of this Court, by order, dated 26/3/2015. The learned Single Judge had categorically held that the petitioners therein were not responsible, for the abolition to the post and that it was the Government which had to be blamed for not regularising their services, as Assistant, in the District Collectorate. Learned Single Judge had relied on Rule 35 (b) of the Tamil Nadu State and Subordinate Service Rules - Part II, General, which reads as under:-

"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 1st appointment to 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."

8. The learned Single Judge has observed as under:-

"11. The petitioners were appointed as Radio Supervisors in Tamil Nadu Local Administration Radio and Television Maintenance Organisation. They are now accommodated as Assistants by transfer of service. The petitioners are therefore entitled to the benefits of Rule 35 (b) extracted above. I am therefore of the view that the respondents were not correct in denying the petitioners, benefits of their earlier service and fixing them below others presently working in the transferee Department."

9. As observed by the learned Single Judge, the said judgment in W.P.No.27207 and W.P.27208 of 2012 was taken on an appeal, before the Division Bench, in W.A.No.736 of 2016. Vide

order, dated 23/6/2016, the Hon'ble Division Bench has observed and dismissed as under:-

"2. It appears that the respondent had filed the writ petition questioning the fixation of seniority and for a further direction to reckon his seniority in the cadre of Assistant from the date of his initial appointment and for retrospective promotion and other benefits which flows from such absorption. Although the learned Single Judge has granted the relief of absorption in the post of Assistant with effect from the date on which the respondent joined the post and to release the benefits accrued on such absorption to him, with regard to the relief of promotion etc., the learned Single Judge has only directed the appellants to consider the case of the respondent based on the service rules or guidelines applicable and on fulfillment of the norms laid down by the Government in this regard. Such being the case, there is no question of contending that an adverse order is being passed against the Government. Rather the officers, who are responsible have to take note of the direction of the learned Single Judge in proper perspective for considering the case of the respondent for promotion as to whether he satisfies the criteria or condition required thereof and to do the needful in accordance with law. Such being the case, the appeal being redundant and without merit is dismissed. It is for the appellants to do the needful in accordance with law within a period of two months from the date of receipt of a copy of this order."

10. Learned Additional Advocate General would rely on the judgment, dated 15/11/2017, passed by the Division Bench of this Court, in W.A.No.1165 of 2017 and others, stating that the Division Bench had directed the Government, to frame a policy decision, regarding regularisation and fixing the writ petitioner, therein from the date of original appointment or from the date of absorption. Perusal of the judgment would show that the Division Bench had in fact, upheld the finding of the learned Single Judge, directing regularisation of services of the petitioners therein, from initial appointment, as Assistant.

11. The entire judgment would read as under:-

"Heard the learned counsel appearing for the parties for some time.

2. The writ appeals have been filed challenging the orders passed by the learned Single Judge allowing the writ petitions and thereby setting aside the impugned orders in so far as class (b) and (e) are concerned and directing the appellants to refix the seniority of the writ petitioners from the date of their officiation as Assistant in the District Collectorate.

3. It appears that the writ petitioners, who had been selected by Tamil Nadu Public Service Commission as Radio Supervisors and had been working as such in the Tamil Nadu Local Administration and retrenched from service when the organisation was disbanded by the orders of the Government in G.O.Ms.No.229 Rural Development Department dated 30/8/2000, but, later, deployed by way of absorption vide G.O.(3D) No.43 Rural Development and Panchayat Raj Department by fixing their seniority after the existing list of Assistants, had moved the writ petitions seeking for their seniority and obtained orders in their favour.

4. The learned Additional Advocate General appearing for the appellants would submit that only on humanitarian grounds, the writ petitioners had been absorbed and if their seniority had to be fixed from the date of their officiation, it would unsettle the settled seniority among the existing Assistants and it would lead to much complications.

5. On going through the orders passed by the learned Single Judge, we find that the learned Single Judge has properly appreciated the fact that the writ petitioners had undergone certain selection process at the hands of Tamil Nadu Public Service Commission and some credence needs to be given to their past service as the present state of affairs had not arisen because of any fault on the part of the writ petitioners. Hence, we do not find any reason to interfere with the order passed by the learned Single Judge.

6. However, we find that the question of regularisation and fixation of seniority of the writ petitioners, from the date of their original appointment or from the date of absorption is a moot question to be considered by the Government and a policy decision has to be taken which shall be done within a period of three months from the

date of receipt of a copy of this judgment. The writ appeals are disposed of accordingly. No costs. The connected Miscellaneous Petitions are closed."

12. Even at the cost of repetition, Rule 35 (b) and Rule 35 (d) (i) are quoted.

"Rule 35 (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 1st appointment to 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."

Rule 35 (d) (i):- If he is absorbed in a post similar to that which he was formerly holding in the service of the merged territory of Pudukottai, his seniority shall be determined by the date from which he was holding the former post continuously."

13. A perusal of the above mentioned rules would show the principle that is applicable is that when a person is appointed to a post and transferred to the another post carrying the same pay scale, the subsequent appointment shall not be treated as first appointment. The seniority of the petitioner shall be determined from the date which he is holding the former post continuously.

14. At this juncture, it is worthwhile to refer few cases on the aspect of similarly placed persons.

"21. In Prem Chand Somchand Shah v. Union of India reported in (1991) 2 SCC 48, the Hon'ble Supreme Court, at paragraph 8, held thus,

"8. As regards the right to equality guaranteed under Article 14, the position is well settled that the said right ensures equality amongst equals and its aim is to protect persons similarly placed against discriminatory treatment. It means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Conversely discrimination may result if persons dissimilarly situate are treated equally. Even amongst

persons similarly situate differential treatment would be permissible between one class and the other. In that event it is necessary that the differential treatment should be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and that differentia must have a rational relation to the object sought to be achieved by the statute in question."

22. In State of Karnataka v. N. Parameshwarappa reported in 2003 (12) SCC 192, in paragraph 8, the Hon'ble Apex Court held thus:

"8. we do not find any reasonable justification to confine the relief to only such of the teachers who approached the court and having regard to the fact that relief related to the revision of scales of pay, every one of that class of teachers who approached would be entitled to the benefit, notwithstanding that they have not approached the court."

23. In Hari Ram v. State of Haryana reported in 2010 (2) CTC 336 (SC), the Supreme Court held that if the Courts are not correcting the wrong action of the Government it may leave citizen with the belief that citizen is right in contacting right persons in the Government as if judicial proceedings are not efficacious. Thus similarly placed persons are bound to be treated equally without discrimination is a fundamental right guaranteed under Article 14 of the Constitution of India.

24. In State of U.P. v. Dayanand Chakrawarty reported in 2013 (8) Scale 74 : (2013) 7 SCC 595, the Hon'ble Supreme Court held that there cannot be any discrimination in treating equally placed persons on same footing, for all purposes."

15. Taking into account the facts and circumstances of the case and more particularly, the judgments of this Court and the rules governing the position, Writ Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

mvs/pkn.

To

1. The Secretary to Government,
The Government of Tamil Nadu
Rural Development Department
Fort St. George
Chennai 600 009.
2. The Commissioner of Rural Development
and Panchayat Raj
Panagal Building
Saidapet
Chennai 600 015.
3. The District Collector
PD Section
Nagapattinam District.

+1 cc to Mr.A.S.Palanisamy, Advocate, S.R.No.53084

W.A.No.2519 of 2018

NMI (CO)
SSM(25/07/2019).



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