



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.11.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)Nos.23774 of 2019 and 23641 of 2017

W.P(MD)No.23774 of 2019

C.Balakrishnan

... Petitioner

vs.

1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Higher Education Department,
Fort St. George,
Chennai-600 009.

2.The Director of Collegiate Education,
Office of the Director of Collegiate Education,
Nungambakkam,
Chennai-600 006.

3.The Regional Joint Director of Collegiate Education,
Bridge Station Road,
Sellur,
Madurai-625 002.

4.The Principal,
Government Women's Arts College,
Sivagangai.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the second respondent herein to consider and pass orders on the petitioner's representations dated 10.06.2019 and 04.11.2019 in the light of the recommendation of the fourth respondent in ந.க.எண்.121/ஆ/2019 dated 18.06.2019 and ந.க.எண்.901/ஆ/2019 dated 04.11.2019 and to promote the petitioner to the post of Superintendent by refixing his seniority along with all other attendant benefits within the stipulated time that may be fixed by this Court.

For Petitioner : Mr.AL.Kannan

For Respondents : Mr.S.Dhayalan,
Government Advocate



W.P(MD)No.23641 of 2017

C.Balakrishnan

... Petitioner

vs.

- 1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Higher Education Department,
Fort St. George,
Chennai-600 009.
- 2.The Director of Collegiate Education,
Office of the Director of Collegiate Education,
Nungambakkam,
Chennai-600 006.
- 3.The Regional Joint Director of Collegiate Education,
Bridge Station Road,
Sellur,
Madurai-625 002.
- 4.The Principal,
Government Women's Arts College,
Sivagangai.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents herein to revise and to refix the petitioner's seniority in the post of Junior Assistant with effect from 20.02.2006 and consequently promote him to the post of Assistant with effect from 08.10.2009 and to the post of Superintendent with effect from 04.03.2016 the dates on which his immediate junior one V.Thavamani was promoted as Assistant and Superintendent and to consequently direct the Respondents to pay all consequential attendant benefits.

For Petitioner : Mr.D.Sivaraman

For Respondents : Mr.S.Dhayalan,
Government Advocate

COMMON ORDER

Since the issues involved in both the Writ Petitions are one and the same and therefore, both the Writ Petitions are heard together and disposed of by way of this common order.

2.Heard the learned counsel appearing for the petitioners and the learned Government Advocate appearing for the respondents and perused the materials available on record.



3. The petitioner was appointed as Sweeper on 29.12.1997. While working as Sweeper, he completed SSLC in the year 1998. In the year 2006, the respondents promoted the petitioner to the post of Driver with effect from 20.02.2006. From that date onwards, he is working as Driver in the respondents Department. The post of Driver and Junior Assistant are in the same cadre and minimum educational qualification for both the posts also equal i.e., S.S.L.C. The Government, by G.O.Ms.No.43, Personnel and Administrative Reforms (Personnel B) Department, dated 15.02.1994, permitted the Government Servants in other services, those who do not have promotional opportunities, to be transferred to the post of Junior Assistant, subject to eligibility conditions. The post of Driver has no further promotional opportunities. On the representation of the petitioner, he was transferred to the post of Junior Assistant on 04.03.2014 and appointed him as Junior Assistant, by way of transfer. When the seniority list in the post of Junior Assistant was prepared, the petitioner was shown in Serial No.170, by considering his seniority only from 05.03.2014, the date on which, he was transferred as Junior Assistant. The petitioner gave representation to the second respondent to refix the seniority and the same was rejected. Subsequently, the second respondent by the proceedings, dated 28.03.2016, granted selection grade to the petitioner in the post of Junior Assistant, taking into consideration the petitioner's service as Driver from 20.02.2006. The petitioner was promoted as Assistant on 14.12.2016. His immediate junior one V.Thavamani, who was appointed as Junior Assistant on 02.02.2007, was promoted as Assistant on 08.10.2009 and further promoted to the post of Superintendent with effect from 04.03.2016. The petitioner gave representation to the second respondent through the fourth respondent. The second respondent did not pass orders on the representation of the petitioner. The petitioner filed a writ petition in W.P(MD)No.23641 of 2017, for a direction to the respondents to revise and refix the seniority in the post of Junior Assistant with effect from 20.02.2006 and for consequential promotion to the post of Assistant with effect from 08.10.2009 and to the post of Superintendent with effect from 04.03.2016, the date on which his immediate junior V.Thavamani was promoted as Assistant and Superintendent and to pay all the consequential attendant benefits. In the said writ petition, till date, the respondents have not filed any counter.

4. While so, the second respondent promoted 26 Assistants to the post of Superintendent, by the proceedings dated 26.08.2019. The petitioner gave representation to the second respondent through the fourth respondent to refix his seniority. The fourth respondent recommended to the second respondent. The second respondent has not passed any order. Hence, the petitioner has come out with the present writ petitions.

<https://hcservices.courts.gov.in/hcservices> 5. Objection of the learned counsel appearing for the



petitioner that the second respondent taking into consideration the service of the petitioner as Driver from 20.02.2006, which is equivalent to the post of Junior Assistant, granted selection grade to the petitioner on completion of 10 years of service rendered in both posts of Driver and Junior Assistant. Once the second respondent has taken the services of petitioner as Driver for granting selection grade in the post of Junior Assistant, his seniority in the post of Junior Assistant must be fixed taking into account the date of promotion of Driver as 20.02.2006. The said contention has considerable force. In view of the fact that the second respondent has granted selection grade to the petitioner in the year 2016 itself taking into consideration the service of the petitioner as Driver from 02.02.2006, the second respondent is directed to consider the claim of the petitioner for refixing the seniority taking into consideration the selection grade given to the petitioner, by proceedings dated 28.03.2016 and pass orders within a period of eight weeks from the date of receipt of a copy of this order.

6. In view of the above observations and directions, the writ petition in W.P.(MD)No.23774 of 2019 is allowed. No costs.

7. In view of allowing W.P.(MD)No.23774 of 2019, no further order is necessary in W.P.(MD)No.23641 of 2017. Hence, W.P.(MD) No.23641 of 2017 is dismissed. No costs.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Secretary to Government,
Higher Education Department,
Fort St. George,
Chennai-600 009.

2.The Director of Collegiate Education,
Office of the Director of Collegiate Education,
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Chennai-600 006.

3.The Regional Joint Director of Collegiate Education,
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4.The Principal,
Government Women's Arts College,
Sivagangai.

+1 CC to M/s.AL. KANNAN, Advocate (SR-100182[F] dated 21/11/2019)

+1 CC to M/s.SPL GP (SR-100347[F] dated 21/11/2019)

W.P (MD) Nos.23774 of 2019
and 23641 of 2017
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JMN(27.12.2019) 5P : 7C