IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2020

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THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.NO.15553 OF 2014

R.Tamil Selvi .. Petitioner

..Vs..

The Commissioner of Commercial Taxes,
Chepauk, Chennai 600005. .. Respondent

PRAYER:

Writ Petition is filed under Article 226 of the Constitution of India seeking for a Writ of Certiorarified Mandamus to call for the records in pursuant to the impugned order issued by the respondent in Ref:Y1/34902/2013 dated 10.02.2014 and quash the same and consequently direct the respondent to restore the inter-se seniority of the petitioner and grant promotion on par with her immediate juniors with all service benefits.

For petitioner : Mr.R.Venkataraman
Senior counsel

For respondent : Mr.M.Hariharan (T)
Additional Government Pleader

ORDER

This Writ Petition has been filed challenging the impugned order issued by the respondent in Ref:Y1/34902/2013 dated 10.02.2014 and quash the same and consequently direct the respondent to restore the inter-se seniority of the petitioner and grant promotion on par with her immediate juniors with all service benefits.

2. The case of the petitioner is that the writ petitioner was initially appointed as Steno-Typist,in the Office of the Director, Commercial Taxes Staff Training Institute, Chennai through Employment Exchange on 28.04.1982 and her services were regularised by the Department as per G.O.Ms.No.996 with effect from 25.06.1984. It is further stated that the petitioner's seniority in the inter-se seniority list of Junior

Assistant/Typist/Steno-Typist fixed in Sl.No.29 as on 01.03.1986 in proceeding dated 05.09.1986.

3. According to the petitioner on 10.09.2009, the respondent department has revised the inter-se seniority of junior Assistant/Steno Typist from the year 1984 to 1994 and as per the seniority, the petitioner was eligible to be included in the inter-se seniority list of Junior Assistant- Typist/Steno Typist from the year 1988. It is further stated that the petitioner's immediate junior one S.Padmavathy was included in the inter- se seniority list of junior Assistant-Typist/Steno Typist for the year 1988 and she was placed at Serial Number 53.

4. The grievance of the petitioner is that though her immediate junior was included in the inter-se seniority list of Junior Assistant-Typist/Steno Typist for the year 1988, her name was not included in the said list. In this regard, she made a representation to the first respondent on 18.11.2013 requesting to place her in the appropriate place on par with her juniors and to give promotion on par with her juniors with all monetary benefits. The said representation was rejected by the respondent vide impugned order dated 10.02.2014 by stating that as the petitioner got transferred to Madurai Commercial Taxes Division by one way transfer foregoing her seniority during the year 1990 itself, her name could not be considered for inter-se-seniority revision done during the year 2006. Challenging the same, the present Writ Petition has been filed.

5. The learned senior counsel appearing for the petitioner submitted that the petitioner was transferred to Madurai Commercial Taxes Division by one way transfer only in the year 1990 and hence the seniority of the petitioner as of 1988 remained undisturbed. There is no rules to relinquish the right of seniority in the transferred place at Madurai Region. In the absence of any undertaking by the writ petitioner, the impugned order is liable to be quashed. Further, the learned Senior counsel appearing for the petitioner has also brought to the notice of this Court, an order passed by this Court on 22.11.2018 in W.P.(MD) No.2656 of 2013, wherein this Court has set aside the impugned order and allowed the Writ Petition.

6. The learned Additional Government Pleader strongly objected to the said contention stating that some of the points have not been raised by the Respondent in the aforesaid Writ Petition. According to the respondent, they relied upon Rule 20 (a)(iii) of the Special Rules for Tamil Nadu Ministerial Service for transferring from one unit to other unit, therefore when the petitioner opted for transfer, the Department on concurrence from the Tamil Nadu Public Service Commission has transferred

him to Madurai Commercial Taxes Division by fixing her appropriate seniority in the said region. It is further submitted that the petitioner has not raised the issue of revision of seniority for the past 23 years. He made a representation only in the year 2013. Therefore, the said representation made by the petitioner seeking for the refixation of the seniority is barred by latches. Therefore, the said relief cannot be granted.

7. Heard the learned counsel for the parties. Perused the materials on record.

8. It is seen that the petitioner was appointed as steno typist in the office of the Director, Commercial Taxes Staff Training Institute, Chennai on 28.04.1982. Thereafter, she made a request for transferring her to the Madurai Commercial Division. The respondent after following the procedure under Rule 20 (a)(iii) of the Special Rules for Tamil Nadu Ministerial Service obtained concurrence from the Tamil Nadu Public Service Commission, passed the transfer order and she joined her in the transfer place in the year 1990. No material has been placed before this Court to the effect that the respondent has drawn seniority list from the year 1990-2009 by the Respondent. According to the respondent that there were series of litigations pending before the Courts and therefore, the respondents has not finalised the inter-se seniority list for the Assistants and Administrative Officers in the Department and based on the available materials, inter-se seniority was drawn in the year 2009. In the seniority list, the writ petitioner's name was not found. According to the learned senior counsel for the writ petitioner, the petitioner's junior Ms.S.Padmavathy who was in Sl.No.53 was found in the aforesaid seniority list and after came to know about the same, she made representation to the first respondent to revise the inter-se seniority drawn by the respondent. Thus, there is no delay in approaching the authority to revise the seniority list. But the respondent has rejected on the ground that the petitioner has forgo his seniority at the time of transferring her to Madurai Commercial Division. This Court has given ample opportunity to the respondent to produce the relevant rules for relinquishing right in the seniority, at the time of transfer from one unit to other unit, by placing the writ petitioner in the bottom of the seniority list in the transferred region. But, the respondent has not produced any materials or any declaration or undertaking by the writ petitioner to forgo her right in the seniority at Madurai Region. Thus, the contention of the respondent is liable to be rejected. Further, this Court by an order dated 22.11.2018 has come to the conclusion that based on Rule 20 (a)(iii) of the Special Rules for Tamil Nadu Ministerial Service, the respondent cannot deny the seniority on one way transfer.

The relevant portion of the Rules is extracted below;

> 20.Transfers of probationers and approved probationers:
> (a) : Notwithstanding anything contained in rules 12 to 16 and 19, a probationaer or an approved probationer may, in special cases and on grounds of administrative necessity, be transferred with the mutual consent of the appointing authorities and the authorities nominated by the head of the department for the purpose of allotment of candidates where there is more than one appointing authority, in the departmental unit concerned.
>
> ...
> ...
>
> (iii) permanently from an office in one department unit to an office in another departmental unit:
>
> Provided that a transfer under clause (iii) shall be made only with the consent of the Commission except in the case of Gujarathi knowing Assistants of the Commercial Taxes Department.
>
> Provided further that the consent of the Commission may be deemed to have been accorded in the cases of transfer of Probationers and Approved Probationers from one unit to another unit, necessitated consequent on the formation of new district.”

9. In so far as the next contention of the Respondent that the petitioner has made representation belatedly and therefore the said request is liable to be rejected on the ground of latches. This Court is of the view that as the respondent has not placed the seniority list drawn by the Respondent for the year 1990 till the year 2009. Therefore, this Court has to accept the contention of the writ petitioner and to quash the impugned order.

10. Accordingly, the impugned order dated 10.02.2014 is quashed and the matter is remitted back to the respondent to consider afresh and pass appropriate orders on merits and in accordance with law, after providing an opportunity to the petitioner. The Writ Petitioner is permitted to submit any additional particulars to the respondent, if any, within a period of two weeks from the date of receipt of a copy of this order. The respondent shall complete the said exercise and pass orders within a period of twelve (12) weeks thereafter.

11. In the result, this Writ Petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

The Commissioner of Commercial Taxes,
Chepuak, Chennai 600005.

+1cc to Mr.J.Pooventherarajan, Advocate, S.R.No.17796
+1cc to the Special Government Pleader, S.R.No.17387

W.P.No.15553 of 2014

LN(CO)
CS/17/07/2020