



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2021

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

WP NO.24189 OF 2008

AND

MP NOS.1 OF 2008 AND 1, 2 & 3 OF 2009

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1. R.Sadagopan
Superintendent, Govt. Primary Health Centre,
Nadukkaveri, Thanjavur District.
2. P.Murugesan
Superintendent
O/o The Dy. Director of Health Services
Tirupur, Coimbatore District.
3. K.Mothiraman
Superintendent
Govt. Primary Health Centre
Thatchur, Thiruvannamalai District.
4. P.Gunasekaran
Superintendent
O/o Dy.Director of Health Services
Theni - 625 531.

... Petitioners

Vs.

1. The Government of Tamil Nadu
Rep.by The Secretary to Government
Health and Family Welfare Department
Chennai - 9.
2. The Director of Public Health
& Preventive Medicine
359, Anna Salai,
Chennai -6.

3. S.H.Rasheed Ahmed

... Respondents

(R3 impleaded as per the order of this Court dated 07.09.2009 in M.P.No.2 of 2008 in W.P.No.24189 of 2008)



PRAYER:

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the 2nd respondent passed in R.No.7153/E4/2007/S1-1 dated 04.09.2008 and R.No.7153/E4/2007/S1-3 dated 04.09.2008 and quash the same and direct the respondents to retain the petitioners in their earlier places in the seniority list of Junior Assistant, Assistant and Superintendent.

For petitioners : Mr.N.R.Jasmine Padma
For respondents : Mr.C.Selvaraj
Government Advocate for RR1-2

O R D E R

This Writ Petition has been preferred to call for the records relating to the proceedings of the 2nd respondent passed in R.No.7153/E4/2007/S1-1 dated 04.09.2008 and R.No.7153/E4/2007/S1-3 dated 04.09.2008 and quash the same and direct the respondents 1 and 2 to retain the petitioners in their earlier places in the seniority list of Junior Assistant, Assistant and Superintendent.

2.The petitioners were appointed as Junior Assistant on Compassionate Grounds with effect from 27.01.1984, 01.03.1984, 12.03.1984 and 22.06.1984 respectively. Their services were regularized on 28.12.1993, 27.12.1993, 03.01.1994 and 31.12.1993 respectively and initially a seniority list was prepared for the post of Junior Assistant and the petitioners were assigned with the seniority of 73, 74, 75 & 78 respectively. Thereafter the petitioners were promoted to the post of Assistant, subsequently promoted to the post of Superintendent vide R.No.120013/E4/S1/2001 dated 16.09.2001.

3.During the course of their service, the petitioners were appointed, confirmed and promoted on the basis of the assigned seniority with respect to their initial appointments.

4.While so, the Government has passed an order in G.O.Ms.No.951, Personnel and Administrative Reforms Department, dated 14.09.1984, which provided that the inter se seniority of the compassionate ground appointees and direct recruits through TNPSC should be fixed by considering their respective date of appointment. The said Government Order also indicated that it would not apply to persons who have already been appointed and



it would come into force from the date of its publication in the Government Gazette, in other words prospectively.

5. It appears that this High Court in a similar situation considered the above said G.O.Ms.No.951 and held that the candidates appointed on compassionate ground shall be accorded seniority at par with TNPSC recruited candidates and that their seniority shall not be interfered. Subsequently, the Government issued guidelines for fixing the seniority in the order of TNPSC candidates followed by those appointed on compassionate basis and then, those who were absorbed as per Special Rules framed in G.O.Ms.No.548 Personnel and Administrative Reforms (Per.J) Department dated 19.06.1986. It is important to note that the special rules apply to those who were appointed on compassionate basis after 25.06.1984. Therefore, Rule 10 issued in Personnel and Administrative Reforms (Per.J) Department dated 19.06.1986 will not apply to them.

6. In view of the above stated Government Order, the 2nd respondent issued proceedings dated 07.01.2007 in R.No.134346/E4/2001/S2 in and by which revised the petitioner's seniority who joined duty prior to 25.06.1984.

7. The learned counsel for the petitioners would contend that the reversion order issued by the 2nd respondent without any notice is liable to be set aside to meet the ends of justice. Subsequently, she would submit that the Government Order has been wrongly implemented. As per the Government Order, seniority of all the candidates appointed prior to 25.06.1984 under Special Rules and on Compassionate Grounds etc., will be with reference to their date of appointment. But the 2nd respondent has wrongly clarified it that those people appointed after 25.06.1984 were also erroneously fixed above the employment exchange candidates, the candidates who joined in the service with effect from 25.06.1984 were under Special absorption rules. Therefore, the appointment which were made prior to 25.06.1984 cannot be interfered, whereas, the 2nd respondent has revised the seniority and reverted the petitioners, after they have been promoted to the post of Superintendent. Thus, the wrong implementation of G.O.Ms.No.996 dated 22.09.1984 would unsettle the settled seniority list, which is illegal. Thirdly, she would rely on the Judgment of the Division Bench of this Court in W.A (MD).155 of 2016 in the case of State of Tamil Nadu Vs. Rahamathullah and Others, wherein, the Hon'ble Division Bench has set aside the revision of seniority, pursuant to G.O.Ms.No.548, dated 19.06.1986, which can be followed in the case of the petitioners herein.

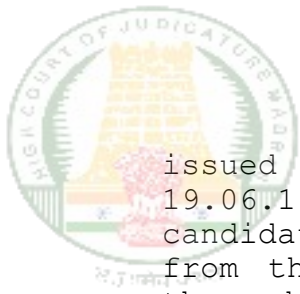


8. Per contra, Mr. Selvaraj, Government Advocate appearing on behalf of the 1st and 2nd respondents would contend that the petitioners seniority was prepared based on the Government Order G.O.Ms.No.548 dated 19.06.1986 as upheld by the Hon'ble Supreme Court and thus there is no illegality. Therefore, the revision of seniority made by the 2nd respondent is in the order.

9. I have considered the submissions made by the learned counsel for the parties.

10. It is well settled legal principle that the settled seniority cannot be un-settled, after a period of eight or more years. In the instant case, petitioners were appointed during January 1984 and their services were regularized with effect from their date of regular initial appointment. After confirmation, the seniority list was published on 17.10.1997 and revised seniority list in respect of the 4th petitioner herein on 02.07.1999. Thereafter, promotion orders to the post of Assistant were issued on 15.11.1999. Again the petitioners were promoted and regularized in the post of Superintendent vide R.No.120014/E4/2001/S1 dated 13.09.2001. Pursuant to the regularization order, the seniority list to the category of Superintendent was published by the 2nd respondent in proceedings R.No.120013/E4/S1/2001 dated 16.09.2001. Thus, the petitioners were selected, confirmed and promoted to the posts of Assistant as well as Superintendent.

11. It appears that a dispute arose with regard to the fixation of seniority between the TNPSC recruited candidates and those appointed through employment exchange which lead to many litigations. It is also relevant to note that there was an issue in respect of fixation of inter-se seniority between directly recruited candidates through TNPSC and those appointed on compassionate grounds. The compassionate ground appointments are also treated as regular appointments. In so far as the inter-se seniority between direct recruits and compassionate ground appointees is concerned, the issue was resolved in G.O.Ms.No.951 dated 14.09.1984. In view of G.O.Ms.No.951, the compassionate ground appointees and TNPSC candidates become one class. Now that, the issue of seniority between those candidates appointed through employment exchange and TNPSC recruited candidates only remained. It appears that the TNPSC candidates, though selected pursuant to the selection held in the year 1983, they could join the posts little later. In the meanwhile, the candidates selected through employment exchange joined the posts. In view of the date of joining they sought seniority over and above the TNPSC recruited candidates. To resolve the issue, Government



issued rules in G.O.Ms.No.548 P & AR Department dated 19.06.1986. Rule 10 of the rules regularised the appointment of candidates appointed through employment exchange with effect from their date of appointment, w.e.f., 25.06.1984 and placed them below TNPSC candidates. Pursuant to the same a clarification was issued in Government letter dated 15.09.2006, wherein the compassionate ground appointees were placed below TNPSC candidates and then the candidates appointed through employment exchanges. Again it was further clarified on 07.01.2007 which led to the present litigations.

12.From the above events, it is seen that a person who was appointed in the year 1984 and his services were regularized in the year 1986 and confirmed in the year 1993 and also promoted to the post of Superintendent in 2001 is sought to be reverted by retrospective revision of seniority in the post of Junior Assistant, that too, after a period of 23 years, such revision of settled seniority amounts to un-settling the settled seniority, which is against law.

13.Secondly, it is seen that G.O.Ms.951 has described the procedure in fixing the inter-se seniority between the candidates appointed on Compassionate Grounds and the candidates selected through TNPSC and that the Government Order was issued in those special circumstances. The Hon'ble Supreme Court also has categorically observed that the exact reason for the special provision is made is not far to seek. Hence, the inter-se seniority fixed between those compassionate ground appointees and TNPSC candidates had reached finality. However, issuing clarifications to the same issue again and again and refusing the rights of the petitioners under the pretext of seniority, after giving two more promotions is absolutely illegal and contrary to law.

14.In an identical case, in respect of the people who were appointed on the basis of the Compassionate Grounds their seniority was fixed in the light of the G.O.No.951 dated 14.09.1984, and the Hon'ble Division Bench of this Court in W.A. (MD).No.155 of 2016 (supra) it has been observed as under:-

"8.In allowing W.P.(MD).No.3291 of 2013, learned Single Judge has taken note of the position that first respondent was appointed as Junior Assistant on 01.09.1983 and his seniority earlier had been fixed. A combined seniority list was prepared on the basis of G.O.(Ms.)No.417,



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Personnel & Administrative (Per-B) Reforms Department dated 01.12.1993. Such a combined seniority list for Junior Assistants and Typists dated 02.02.1994, placed the first respondent at Sl.No.110 and respondents 2 to 6 were ranked below him. As per further seniority list published on 28.01.2000, first respondent again was placed at Sl.No.110 and again respondents 2 to 6 were ranked below him. Learned Single Judge also noted that it was very much after and that too on the basis of a subsequent Government Order in G.O.(D).No.81, Micro, Small and Medium Enterprises (EII-1) Department, dated 15.06.2012, that first respondent was placed at Sl.No.152 and respondents 2 to 6 were placed above him. Learned Single Judge took the view that appellants, without any basis, unsettled settled seniority, long after the appointment of first respondent. Learned Single Judge informed that the Government order which regulates Rule 38 of General Rules for Tamil Nadu State and Subordinate Service Rules was in the nature of a guideline and there was no intelligible criteria followed by Government in the matter of fixing seniority. We find no reason to interfere with the order of learned Single Judge and further would inform our own reasons for affirming the same. What G.O.(Ms).No.951, Personnel and Administrative Reforms (Placement - B), Department, dated 14.09.1984, seeks to achieve is to remove the anomaly in placing those appointed under compassionate grounds below those recruited through TNPSC by informing that those appointed under compassionate grounds can be inserted in between those appointed through TNPSC by maintaining inter se seniority. When such is the purpose we see no rationale in holding the rule applicable to those appointed subsequently but denying the same to those appointed before 14.09.1984. Seniority opens up avenues of promotion and once settled, the same easily is not to be undone. Seeking to place persons appointed on compassionate grounds on the last rung of the ladder amounts to informing that Government will be compassionate, but a little less so. Learned Single Judge has not found it necessary to quash the G.O.(D).No.81, Micro, Small and Medium Enterprises (EII-1) Department, dated 15.06.2012 and following the order of this Court in W.P.(MD).No.26923 of 2012 has clarified



that those who had joined after 25.06.1984 could not claim seniority over those who had joined earlier. We affirm such view."

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15. It is categorically declared that those who joined service after 25.06.1984 could not claim seniority over those who have joined earlier. In the present case also, those who have joined after 25.06.1984 cannot claim seniority over the petitioners who have joined prior to 25.06.1984 that too after a period of 23 years and after being promoted to the posts of Assistant and to the post of Superintendent, and specifically, when the petitioners are enjoying the promotion in the post of Superintendent for a period of nearly 6 years. It will amount to un-settling the settled seniority and therefore the impugned retentions are not sustainable in law. Hence, the impugned order revising the seniority of the petitioners without notice is violative of principles of natural justice and is bad in law. The settled seniority between TNPSC candidates and compassionate ground appointees by virtue of a Government Order cannot be revised through a Government Letter in the guise of getting clarification. The Government Letter will not prevail over a Government Order. Further, the settled seniority for over two decades cannot be unsettled by way of Government Letter by a Subordinate Officer. Hence, unsettling the settled seniority itself is bad, that too, by an authority who is incompetent to do. The entire exercise appears to have been done to favour one particular class on extraneous consideration. To sum up, those who were appointed on compassionate basis prior to 25.06.1984 shall be treated on par with TNPSC selected candidates and the interse seniority fixed as per G.O.Ms.No.951, dated 14.09.1984 shall remain.

16. For the above reasons, I have no hesitation to set aside the orders of reversion passed by the 2nd respondent in R.No.7153/E4/2007/S1-1 dated 04.09.2008 and R.No.7153/E4/2007/S1-3 dated 04.09.2008 and both the orders are hereby set aside.

17. Accordingly, the Writ Petition stands allowed. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Jer/tk

Sub Assistant Registrar



To

1. The Secretary to Government
Government of Tamil Nadu
Health and Family Welfare Department
Chennai - 9.

2. The Director of Public Health
& Preventive Medicine
359, Anna Salai,
Chennai -6.

+1cc to Mr.L.Chandrakumar, Advocate, S.R.No.35287
+1cc to the Government Pleader, S.R.No.35555

WP NO.24189 OF 2008

JPL(CO)
PM/10/06/2022