BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P(MD)No.10527 of 2010
and
M.P.(MD)No. 1 of 2010

P.Baskaran ... Petitioner

Vs.

1. The Government of Tamil Nadu,
   represented by its Special Secretary to
   Government,
   Finance(T&A II) Department,
   Secretariat, Chennai-600 009.

2. The Principal Secretary and
   Commissioner of Treasuries and Accounts,
   Chennai-600 005.

3. M.K.Mohammed Ibrahim,
   Assistant Treasury Officer,
   Tirunelveli. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records relating to the orders in (1) G.O.(2D) No.144, Finance (T&A.II) Department, dated 29.12.2009 and (2) Pro.Pdl.No.182/98/N1, dated 26.10.1998 of the second respondent (to the limited extent of inclusion of the petitioner in Sl.No.97 therein) and quash the same and issue consequential directions to the respondents to revise the seniority of the petitioner in the post of Sub-Treasury Officer/Superintendent in the panel for 1998-99 approved in Pro.Pdl.No.182/98/N1, dated 26.10.1998 by placing him below Sr.No.64 and above Sr.No.65 herein and to grant consequential service and monetary benefits.

For Petitioner ... Mr.C.Deepak
for Mr.M.Ravi

For Respondents ... Mr.D.Muruganantham
Additional Government Pleader
for R.1 and R.2

* * * * *

ORDER

This writ petition has been filed seeking a writ of Certiorarified Mandamus to call for the records relating to the orders in (1) G.O.(2D) No.144, Finance (T&A.II) Department, dated 29.12.2009 and (2) Pro.Pdl.No.182/98/N1, dated 26.10.1998 of the second respondent (to the limited extent of inclusion of the petitioner in Sl.No.97 therein) and quash the same and issue consequential directions to the respondents to revise the seniority of the petitioner in the post of Sub-Treasury Officer/Superintendent in the panel for 1998-99 approved in Pro.Pdl.No.182/98/N1, dated 26.10.1998 by placing him below Sr.No.64 and above Sr.No.65 herein and to grant consequential service and monetary benefits.

2. The case of the petitioner is that he was initially appointed as Assistant (re-designated as Accountant) in the Treasuries and Accounts Department, having been recruited directly by the Tamil Nadu Public Service Commission, through Group V Examinations in the year 1977. Accordingly, he joined duty on 20.07.1977. His services were regularized with effect from 20.07.1977 and his probation was declared to the said post on 21.08.1979. Subsequently, his name was included in the panel for the year 1998-1999, approved on 26.10.1998, by the second respondent. He was promoted as Sub-Treasury Officer and further promoted as Assistant Treasury Officer, based on the inclusion of his name in the panel for the year 2006-2007.

3. The grievance of the petitioner is with reference to his seniority cum placement in the panel for promotion as Superintendent/Sub-Treasury Officer for the year 1998-99, approved by the second respondent, dated 26.10.1998. In this regard, the District Treasury Officer, Tirunelveli issued the revision seniority list of Assistants for the year 1977, consequent on the joining duty of directly recruited Assistants in that year vide order dated 11.07.1977. In the said list, the petitioner's name was placed at Serial No.1 and the third respondent was placed at Serial No.2. However, while approving the panel for the year 1998-99 for promotion as Superintendent/Sub-Treasury Officer, the second respondent placed the petitioner's junior, namely the third respondent at Serial No.65 and placed the petitioner's name at Serial No.97.

4. Admittedly, in the original seniority list, the petitioner's name was found at Serial No.1, whereas the third respondent's name was found at Serial No.2. However in the subsequent panel for the promotion as Superintendent/Sub-Treasury Officer for the year 1998-99, the second respondent placed the petitioner's junior, namely the third respondent at Serial No.65

and placed the petitioner's name at Serial No.97. Hence, the present Writ Petition is filed seeking the above said prayer.

5. The learned Counsel appearing for the petitioner would submit that admittedly, the petitioner is senior to the third respondent and his original seniority list for the post of Accountant, the petitioner is placed at Serial No.1, whereas the third respondent is placed at Serial No.2. However, subsequently in the year 1998-99, the petitioner was placed at Serial No.97, whereas the junior of the petitioner viz., the third respondent is placed at Serial No.65, which is arbitrary in the eye of law. Hence, the learned Counsel appearing for the petitioner would pray that this Court may issue a proper direction to the authorities to revise the seniority list in between the petitioner and the third respondent and grant consequential benefits to the petitioner. Accordingly, he prays for allowing the writ petition.

6. Per contra, the learned Additional Government Pleader appearing for the respondents would submit that in the original seniority list, the petitioner's name was found at Serial No.1, whereas the third respondent's name was found at Serial No.2. However in the subsequent panel for the promotion as Superintendent/Sub-Treasury Officer for the year 1998-99, the second respondent placed the petitioner's junior, namely the third respondent at Serial No.65 and placed the petitioner's name at Serial No.97, based on the Rule 9 of the Tamil Nadu Treasuries and Accounts Subordinate Service Rule.

7. The learned Additional Government Pleader appearing for the respondents would submit that in view of the above said rule provision, the date of regularization is the main criteria for fixing the seniority in the panel of Sub-Treasury Officer/Superintendent. In the present case, the date of regularization of the third respondent is earlier than the petitioner and hence, his name was found place earlier than the petitioner.

8. The learned Additional Government Pleader appearing for the respondents would submit that in G.O.Ms.No.63, Finance (T&A) Department, dated 24.01.1975, orders have been issued to the effect that direct recruitment of Assistant (now re-designated as Accountant) is made one out of every three substantive vacancies and the appointment and seniority shall be in the following order:

(i) Direct Recruitment;
(ii) Promotion; and
(iii) Promotion.

Therefore, the respondents 1 and 2 have acted in accordance with the rule provisions contemplated in the Tamil Nadu Treasuries and

Accounts Subordinate Service Rule and hence, the orders passed by the respondents 1 and 2, dated 29.12.2009 and 26.10.1998 respectively are well sustainable and hence, the learned Additional Government Pleader appearing for the respondents prays for dismissal of the writ petition.

9. Heard the learned Counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents and perused the materials placed on record.

10. The facts of the present case are not in dispute. Admittedly, the petitioner was directly recruited as Assistant in the year 1977 and the third respondent was recruited through promotion in the post of Assistant (re-designated as Accountant) in the year 1977. It is also admitted that initially, the petitioner was placed at Serial No.1 and the third respondent was placed at Serial No.2. However, the petitioner as well as the third respondent were included in the panel of Sub-Treasury Officer/Superintendent for the year 1998-99 in different places and the name of the petitioner was found place at Serial No.97, whereas the name of the third respondent was found place at Serial No.65. Now, the present impugned order is passed on the ground that the petitioner's services were regularised only on 20.07.1977, whereas the third respondent's services were regularized on 19.05.1977, which was prior to the petitioner.

11. For better appreciation, it is relevant to extract hereunder Rule 9 of the Tamil Nadu Treasuries and Accounts Subordinate Service Rule:

> " *For the purpose of appointment to the post in category 4 (Sub Treasury Officer/Superintendent), the inter-se-seniority shall be fixed with reference to the date of commencement of probation, in the case of directly recruited Assistants and the date of regular appointment as Assistant in the case of promotees from the category of Junior Assistants. Where the date of regularization of a senior person in the category of Assistant in the Treasuries and Accounts Department is later than of his junior, the seniority of the senior shall be reckoned notionally with reference to the date of regularization of the junior. (Assistant is now re-designated as Accountant).*

12. A perusal of the above Rule, it makes it clear that the regularization of a senior person in the category of Assistant in the Treasuries and Accounts Department (Assistant is now re-designated as Accountant) is later than of his junior, the seniority of the senior shall be reckoned notionally with reference to the date of regularization of the junior.

13. In the present case, the third respondent is the junior of the petitioner. The services of the third respondent were regularized on 19.05.1977, whereas the services of the petitioner were regularised on 20.07.1977. Admittedly, the seniority was fixed in the year 1998 and subsequently, the petitioner was promoted to various posts and the last promotion as Sub-Treasury Officer was in the year 2006. The petitioner failed to challenge any promotion in the appropriate time and field the present writ petition, after a lapse of 12 years. There is no proper explanation given by the petitioner for such a huge delay in filing the present writ petition seeking re-fixation of the seniority.

14. For the reasons aforesaid, this Writ Petition *sans* merit and, accordingly, the same is dismissed. Consequently, connected Miscellaneous Petition is also dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Special Secretary to Government,
Government of Tamil Nadu,
Finance(T&A II) Department,
Secretariat, Chennai-600 009.

2.The Principal Secretary and Commissioner of Treasuries
and Accounts, Chennai-600 005.

+1cc to The Special Government Pleader in SR.No.113

W.P(MD)No.10527 of 2010
04.01.2021

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