BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.01.2020
DELIVERED ON : 09.02.2021

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.1865 of 2011
and
M.P.(MD).No.1 of 2011

M.Subbulakshmi ... Petitioner

Vs.

1.State of Tamil Nadu,
represented by Its Secretary to the Government,
Department of Commercial Taxes and Religious
Endowment, Fort Saint George,
Chennai - 600 009.

2.The Special Principal Secretary,
Commissioner of Commercial Taxes,
Elilagam,
Chepauk,
Chennai - 600 005.

3.The Joint Commissioner, (CT),
Tirunelveli.

4.The Deputy Commissioner (CT),
Tirunelveli. ... Respondents

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 pertaining to the impugned order passed by the 2nd respondent in his proceedings in Ref.No.39085/09/P2, dated 02.07.2010 and quash the same and to direct the respondents to safeguard the seniority for conversion as Assistant Commercial Tax Officer with monetary benefits.

For petitioner : Mr.A.S.Mujibur Rahman
For respondents : Mr.D.Muruganandam,
Addl. Government Pleader

ORDER

This writ petition has been filed by the petitioner challenging the impugned order rejecting her request to include her name in 2008 ACTO promotion list and to direct the respondents to safeguard her seniority for conversion as Assistant and for promotion as Assistant Commercial Tax Officer.

2.The learned counsel appearing for the petitioner submitted that the petitioner joined as Typist in the Office of the Commercial Taxes Department on 23.06.1983 and her service was regularised with effect from 25.06.1984. On 10.05.1989, she was converted as Steno-typist on her request. While so, the Government issued G.O.Ms.No.256/92, dated 01.08.1992, equating the scale of pay for the post of Steno-Typist with Assistant and fixing separate line of promotion for Steno-typist. Subsequently, as per G.O.Ms.No.93/94, dated 08.04.1994, such scale of pay of Assistant was notionally fixed with effect from 01.06.1998 and monetary benefits was directed to be given with effect from 01.04.1992. In the meantime, the Government issued G.O.Ms.No.417/1993 dated 01.12.1993, by which the Steno Typists were not permitted to get promotional chances. However, after about six years, the Government issued G.O.Ms.No.34/2001, dated 21.02.2001, permitting 5% of Steno-Typists on the existing vacancy of the panel year to convert (transfer) as Assistant for the year 2001-02 on the option of the individual. As such, the petitioner had given an option to convert as Assistant from the post of Steno-Typist Grade III. The petitioner got conversion as Assistant with effect from 10.03.2004 by considering her the date of joining as Steno-Typist.

3. The learned counsel appearing for the petitioner would further submit that in the meantime, the Government issued a clarification, dated 22.08.2003, clarifying that prior to 01.08.1992 (date of issue of ban order) the combined seniority list may be maintained and appointment of the eligible Steno-typist Grade-III as Assistant by transfer and seniority of such person may be fixed as per Rule 35(a) of the Tamil Nadu State and Subordinate Service Rules. The grievance of the petitioner is that without considering the above clarification, the respondents erroneously fixed the seniority of the petitioner in the post of Assistant, which consequently reflected in the panel for promotion to the post of Assistant Commercial Tax Officer. If the combined seniority considered as per the clarification dated 22.08.2003, the petitioner's name would be after one Gandhimathi Nathan (joined as Junior Assistant on 18.06.1983) and before one Padmini Raja Thangam (joined as Typist on 01.07.1983) as the petitioner appointed as Typist on 23.06.1983. When it was brought to the notice, the 3rd respondent, by his proceedings dated 29.07.2009, refixed the rank of the petitioner in the post of Assistant, only considering the date of joining of the petitioner as Steno-typist. The third respondent has failed to take into account the date of joining of the petitioner as Typist for inclusion in Assistant list for the year 1995. However, based on the said revised list, the petitioner was promoted as Assistant Commercial Tax Officer with effect from 21.12.2009.

4. The learned counsel for the petitioner would further submit that as the seniority has not been refixed as per the combined seniority list, the petitioner has again sent a representation to the second respondent. The second respondent has rejected the said representation of the petitioner, by the impugned order dated 02.07.2010, merely stating that seniority has been fixed from the date of conversion as Steno-Typist, as she on her own willingness joined in the said post and therefore, it is not feasible to consider her request. Aggrieved by the said order, the petitioner has filed this Writ Petition.

5. The learned counsel for the petitioner would further submit that the seniority of the petitioner in the post of Assistant ought to have been fixed based on the combined seniority list prepared at the time of joining as Typist as per the clarification letter dated 22.08.2003. But, the respondents erroneously refixed the seniority of the petitioner in the post of Assistant only based on her date of joining in the post of Steno-typist. In view of erroneous fixation, more than 275 members those who were actually juniors to the petitioner have become seniors. Further no objection has been sought for by the respondents before fixation of seniority and therefore, the impugned order is liable to be set aside. He would next submit that when the similar issue raised in the writ petition in W.P.(MD).No.7417 and 7418 of 2005 (J.G.Sridharan Vs. Secretary to Government, Personnel and Administrative Reforms Department, Chennai and others), by order dated 22.11.2006, this Court directed the respondents herein to give promotion to the petitioner therein considering the seniority in the cadre of typist. The dictum laid down in the said case is squarely applicable to the case of the petitioner and thus, he prayed to allow this writ petition.

6. The learned Additional Government Pleader appearing for the respondents submitted that the petitioner was temporarily appointed as Typist under Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules and that in the Government letter, it is clarified that "combined seniority list of the TNPSC may be maintained and appointment of eligible Steno-typist Grade III as Assistant by Transfer and seniority of such persons may be fixed as per Rule 35(a) of General Rules of the Tamil Nadu State and Subordinate Service Rules, in regard to fixing of seniority for Steno-typist Grade III appointed by TNPSC by direct recruitment prior to 01.08.1992". As the petitioner was not appointed through TNPSC and on her option, she converted as Steno-typist and her pay had been fixed at higher scale which was equivalent to that of post of Assistant, the claim of the petitioner cannot be considered. Thus, he prayed to dismiss this writ petition.

7. Heard the learned counsel appearing for both sides and perused the records carefully.

8. Admittedly, it is not in dispute that till 31.07.1992,

the posts of Junior Assistant, Typist and Steno-typist were categorized as single category carrying single pay scale and from 01.08.1992, the post of Steno-typist separated from the other category and it was classified as Steno-typist Grade III, Steno-typist Grade II and Steno-typist Grade-I and the scale of pay for the post of Steno-typist Grade-III was fixed equal to Assistant scale. It is also not in dispute that the petitioner was appointed as Typist under Rule 10(a)(i) on 23.06.1983 and based on her option and qualification, she was converted as Steno-typist Grade III on 10.05.1989, that is prior to classification and enhancement of scale. While so, one Mr.Gandhimathinathan (joined as Junior Assistant on 18.06.1983), who was immediate senior to the petitioner and one Ms.Padmini Rajathangam (joined as Typist on 01.07.1983), who was immediate junior to the petitioner, were included in the list of Assistant for the year 1995. In view of the G.Os. issued by the respondents streamlining the promotional avenues of Steno-typist and subsequent allocation of only 5% of estimated vacancies of Assistant for conversion, the petitioner could get conversion as Assistant only on 10.03.2004. According to the petitioner, in the meantime, more than 275 juniors to the petitioner have become seniors.

9. The main contention of the petitioner is that her seniority in the cadre of Assistant ought to have been included on par with her juniors in the post of Typist, for which the petitioner relied upon the clarificatory letter issued by the first respondent in letter No.73950/B/2002-1, Personnel and Administrative Reforms (B) Department, dated 22.08.2003, wherein it is stated that "prior to 01.08.1992, the combined seniority list of the TNPSC may be maintained and appointment of eligibl Steno-Typist Grade III as Assistant by transfer and seniority of such persons may be fixed as per Rule 35(a) of General Rules for the T.N.S. & S". According to the respondents, it is related to the candidates appointed only through TNPSC and therefore, it is not applicable to the case of the petitioner who appointed under Rule 10(a)(i). As stated earlier, till 31.07.1992, the posts of Junior Assistant, Typist and Steno-typist were categorized as single category carrying single pay scale. There could not be two different seniority list for the employees selected under Rule 10(a)(i) and the direct recruitment by TNPSC. Therefore, the said submission of the respondents cannot be accepted.

10. By the impugned order dated 02.07.2010, the second respondent has rejected the claim of the petitioner mainly stating that the petitioner on her own willingness converted as Steno-typist and therefore, her seniority is fixed from the date of conversion. The above contention of the second respondent cannot be countenanced, in view of the fact that at the time of giving willingness for conversion from the post of Typist to the post of Steno-typist by the petitioner, the pay scale for the posts of Typist, Junior Assistant and Steno-typist were one and the same and only subsequently, the post of Steno-typist equated with the pay of

Assistant. Merely because, the option has been given by the petitioner, she cannot be made to suffer for the subsequent changes. Further, it is clarified that the seniority of the employees appointed prior to 01.08.1992, the combined seniority list has to be maintained. When that be so, the respondents ought to have been fixed the seniority of the petitioner on par with his immediate junior in the category of Typist, Junior Assistant and Steno-typist. More over, before fixing seniority no objection has been sought for from the petitioner.

11. In similar circumstances, a learned single Judge of this Court in the writ petition in WP.(MD).Nos.7417 and 7418 of 2005, referred to supra, has held as follows:

> "6. The point in issue is whether the respondents are justified in preparing the promotion panel only from the category of Steno-typists, when the Junior Assistants, Typists and Steno-typists are in the same cadre having the same scale of pay.
>
> 7. It is not the case of the first respondent that any ratio was fixed for promotion. Even the ratio fixed through G.O.Ms.No.244 datd 8.03.1984 was quashed by the Tamil Nadu Administrative Tribunal in T.A.No.1449 of 1989 by order dated 27.12.1992 by specifically holding that the said ratio will affect the ratio already fixed by the Tamil Nadu Public Service Commission while filling up the vacancies. Thereafter, the Government issued G.O.Ms.No.504 (D) Municipal Administration and Water Supply Department, dated 11.09.1995 and by issuing another letter dated 20.10.1997 stating that 4:1 ratio will be followed for the vacancies that arose till 27.11.1992 and for the vacancies that arise after 23.11.1992, inter se seniority between the Junior Assistant and Typists will be followed. The said letter was also quashed as it was contrary to the order of the Tribunal above referred in W.P.No.28300 of 2005 dated 04.04.2006 Hence, the petitioner's claim for revision of seniority is bound to be considered by the respondents.
>
> 8. The revision of salary to the Steno-Typists from Rs.975-1660 to Rs.2000-2040 is with effect from 1.8.1992 and thereafter only a list of promotion to Steno-Typists was introduced viz., Steno-Typist Grade I with scale of pay of Rs.1600-2660, Steno Typist Grade II with pay of Rs.1400-2600 and Steno Typist Grade III with scale of pay of Rs.1200-2340. It is further clarified that Steno-typists Grade III are not to be considered for appointment to the post of Assistant along with Typists and Junior Assistants in view of the instruction that the Steno-Typist Grade III post has been excluded for promotion

as Assistant in the Tamil Nadu Ministerial Service from 1.8.1992. Typists and Junior Assistants are eligible for promotion as Assistant. Hence, the contention of the petitioner that Typists and Steno Typists were treated alike prior to 01.08.1992 is to be accepted and the preparation of seniority list without considering the claim of Typists along with Steno-typists prior to the said date cannot be treated as valid.

9. The seniority list was prepared by the second respondent on 26.12.1995 treating the Steno-typist as separate category from 1.11.1983 and the objection raised by the petitioner in that regard is well founded. As stated supra, the scale of pay of the Typists/Steno-Typists were same and they are in the combined category in seniority till 1992. Hence, the action of the respondents in preparing the seniority list insofar as Steno-typist alone and rejecting the claim of the petitioner who is a Typist on that basis of illegal. In fact, the seniority is revised in certain department as pointed out by the petitioner.

10. The respondents are directed to give promotion to the petitioner similar to respondents 3 and 4 considering the seniority in the cadre of typist. If the petitioner is otherwise qualified, she is to be given further promotion in the respective posts with all monetary benefits. Orders to that effect shall be passed by the first respondent within a period of three months from the date of receipt of copy of this order.

The writ petitions are allowed with the above directions. No costs."

12. The above decision is squarely applicable to the facts and circumstances of the case. In the counter affidavit, the third respondent has stated that the said decision is not applicable in view of difference in the year of joining in the post of Typist and Steno-typist by the petitioner therein and herein. But, the fact remains that both the petitioners in the decision relied above and in this case were appointed in the post of Typists and converted as Steno-typists prior to 01.08.1992. Therefore, the said submission of the respondents cannot be countenanced. In view of the above, this Court is inclined to allow this writ petition.

13. In the result, this Writ Petition is allowed and the impugned order dated 02.07.2010 is set aside and the respondents are directed to revise the seniority of the petitioner on par with her immediate junior Ms.Padmini Rajathangam, promote her and grant all the service and monetary benefits within a period of three weeks from the date of receipt of a copy of this order. No costs.

Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1.The Secretary,
Department of Commercial Taxes and Religious Endowment, Fort Saint George,
Chennai – 600 009.

2.The Special Principal Secretary,
Commissioner of Commercial Taxes,
Elilagam,
Chepauk,
Chennai – 600 005.

3.The Joint Commissioner, (CT),
Tirunelveli.

4.The Deputy Commissioner (CT),
Tirunelveli..

+1 CC to M/s.A.SMUJIBUR RAHMAN, Advocate (SR-3919[F] dated 09/02/2021)

W.P(MD)No.1865 of 2011
09.02.2021

MA(CO)
KB(04.03.2021) 7P 6C