



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.02.2021

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

AND

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

W.A(MD)NO.175 OF 2014

and

M.P(MD)No.1 of 2014

1.The Director of Rural Development,
Panagal Building,
Saidapet,
Chennai.

2.The District Collector,
Thoothukudi District,
Thoothukudi.

:Appellants/Respondents1&2

.vs.

1.A.Murugaiah,
Extension Officer,
Srivaikundam Panchayat Union,
(Now BDO, Pudur Panchayat Union),
Thoothukudi District.

:Ist Respondent/Petitioner

2.S.Alangaram,
Block Development Officer,
Kayathar Panchayat Union,
(now retired),
Thoothukudi District.

: 2nd Respondent/Third
Respondent

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent Act praying this Court to set aside the order passed by this Court in W.P(MD)No.2814 of 2006, dated 27.07.2009.

Prayer in WP(MD). 2814/ 2006 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of certiorarified Mandamus to call for the records on the file of 2nd respondent in connection with the impugned order passed by him vide proceedings No. V14/51424/2005 dated 24/10/2005 and quash the same and consequently direct the 1st respondent to fix the correct seniority by placing the petitioners name above than the 3rd respondent.

For Appellants

:Mr.P.Mahendran

Addl.Govt.Pleader

For Respondent-1

:Mr.G.Thalaimutharasu

For Respondent-2

:No appearance

**JUDGMENT**

[Judgment of the Court was made by **PUSHPA SATHYANARAYANA, J.**]

The Writ Appeal is preferred by the Department challenging the order passed on 27.7.2009, allowing the Writ Petition filed by the first respondent.

2.The Writ Petitioner was appointed on 20.09.1989 as Junior Assistant in the Collectorate of Pudukkottai District. He had applied for mutual transfer to Thoothukudi District. As his request was acceded to and he was transferred to Thoothukudi District on 12.7.1980 in the place of one A.Mahalingam, who had also submitted an application for mutual transfer. Therefore the said transfer was treated to be a mutual transfer.

3.In the transfer order, it was communicated that so far as the seniority is concerned, it should be fixed based on Rule 20(b) of the Tamil Nadu Ministerial Service Rules. Therefore, according to the Petitioner, he should have been fixed in the position of one A.Mahalingam, who was mutually transferred in his place. However, the department had fixed the Petitioner only below the second respondent.

4.Rule 20(b) of the Tamil Nadu Ministerial Service Rules states that the senior among the Assistants/Junior Assistants mutually transferred be given the same rank in the departmental unit to which he is transferred, which was held by the person in whose place he comes to that departmental unit and the junior of them takes his rank in the administrative unit of the department to which he is transferred with reference to the date of his first appointment in the service.

5.Considering the fact that the transfer of the Writ Petitioner as well as one A.Mahalingam was mutual, the Writ Petitioner's seniority should have been fixed in the place of the said A.Mahalingam, who had the seniority S.No.263 as per the proceedings, dated 17.3.1992 issued by the second appellant. The said proceedings, dated 17.3.1992 was not considered by the authorities and the Writ Petitioner was placed below the second respondent/Alangaram. Hence the learned Single Judge had allowed the Writ Petition quashing the order, dated 24.10.2005 based on Rule 20 (b) of the Tamil Nadu Ministerial Service Rules. Though the learned Additional Government Pleader appearing for the appellants argued that the second respondent Alangaram joined the service on 26.10.1987, admittedly, his transfer was a regular one and not a mutual transfer. When it is a mutual transfer, Rule 20-(b) will come into effect. The learned Additional Government Pleader also submitted that the transfer of the Writ Petitioner as well as A.Mahalingam was mutual. Hence the Writ Petitioner can be placed in the position of the mutual transferee A.Mahalingam.



6.It is now stated that both the respondents 1 and 2 got retired from service. However, for the purpose of their terminal benefits, the seniority has to be fixed as per the proceedings of the first respondent in No.V12/93068/91-2, dated 17.3.1992 and re-fix the seniority of the Writ Petitioner for the purpose of terminal benefits.

7.With the above directions, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar (Records)

// 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.

+1 CC to M/s.G.THALAIMUTHARASU, Advocate (SR-4137[F] dated 10/02/2021)

+1 CC to M/s.SPL GP (SR-4236[F] dated 10/02/2021)

W.A(MD) NO.175 OF 2014
and
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SV2 (CO)
KB(17.02.2021) 3P 3C