



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.15508 of 2010

P.Prabhakaran

.. Petitioner

Versus

The Director of Public Libraries,
Chennai - 600 002.

.. Respondent

Prayer : Writ 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 impugned order of the respondent in Na.Ka.No.12879/A3/2006, dated 03.09.2009 and quash the same and to direct the respondent to re-fix the petitioner's seniority in the category of Grade-III Librarian by counting the service of the petitioner in the post of Book Binder in accordance with rule 35(b) of the Tamil Nadu State and Subordinate Services General Rules and grant the petitioner all consequential benefits.

For Petitioner : P.Rajendran

For Respondent : Mr.M.Alagu Goutham,
Government Advocate

ORDER

The petitioner joined service under the respondent in the post of Book Binder with effect from 30.07.1985. Thereafter, with effect from 23.12.1997, he was appointed as Librarian Grade-III by way of transfer. Thereafter, by the proceedings, dated 07.06.2006, the seniority list in respect of the said post was published. However, while publishing the said seniority list, the services of the petitioner in the post of Book Binder was not taken into account. According to the petitioner, as per rule 35 (b), if a person is appointed by way of transfer to the post which carries the same scale of pay as that of the post in which he was already working, then for the purpose of seniority, the services in the erstwhile post should also be counted.



2. This was omitted by the respondent and therefore, the petitioner made a representation to the Secretary to the Government, School Education Department, Chennai, the Director of Public Libraries, Chennai and the District Library Officer, Dharmapuri, to rectify the error in the seniority list. There was no positive response and therefore, the petitioner filed W.P.No.7184 of 2007 in which a direction was granted to consider the petition of the petitioner. By an order, dated 22.05.2007, the petitioner's objections were rejected.

3. Aggrieved by the same, the petitioner approached the Secretary to the Government, School Education Department, Chennai - 600 009 by way of a Revision Petition, dated 27.06.2009. However, again there was no positive response and therefore, the petitioner filed W.P.No.10611 of 2009 and by an order dated 17.06.2009, the said Review Petition dated 27.06.2007 along with further reminder dated 16.05.2008, was directed to be considered and disposed of by the Secretary to the Government, School Education Department, Chennai. Thereafter, the impugned order is passed by the respondent herein on 03.09.2009, once again rejecting his Review Petition on the ground that the post of Book Binder was not a feeder category for grant of promotion to the higher posts to which the petitioner is claiming.

4. Heard P.Rajendran, learned Counsel for the petitioner and Mr.M.Alagu Goutham, learned Government Advocate. Mr.P.Rajendran, learned Counsel for the petitioner would submit that when this Court had directed the Secretary to the Government, School Education Department to dispose of the Revision Petition, in violation of the order, the respondent herein had disposed of. Further, the respondent without even attempting to understand the prayer of the petitioner, which was to consider as per Rule 35(b) of the Tamil Nadu State and Subordinate Services General Rules, the services of the petitioner in the post of Book Binder which carried equivalent pay to Grade III Librarian, by mentioning the reason as if the post of Book Binder is not a feeder post for the higher post for which the petitioner claimed promotion, rejected the Revision Petition and as such, the said order has to be quashed and the respondent should be directed to re-fix the seniority of the petitioner.

5. Per contra, Mr.M.Alagu Goutham, learned Government Advocate appearing on behalf of the respondent would submit that admittedly, in this case, the seniority was fixed in the year 2006. Therefore, if the petitioner claimed seniority over the persons who are placed above himself, he ought to have challenged the seniority list and his belated representations and reminders will not give any cause of action and therefore,



prayed that no relief can be granted in the present Writ Petition.

6. I have considered the rival submissions made on behalf of both sides and perused the material records of the case. In this case, the question is re-fixing of seniority. Admittedly, the seniority list was issued on 07.06.2006. Immediately thereof, the petitioner made representation aggrieved by the wrongful fixation of seniority. The same was rejected by an order, dated 22.05.2007. The petitioner preferred a Revision Petition and the same was ultimately rejected by the impugned order, dated 03.03.2009. While it may be seen that the petitioner has approached for revision of seniority making a specific claim under Rule 35(b) of the Tamil Nadu State and Subordinate Services General Rules, it may also be seen that the revisional authority, namely the respondent herein, did not even consider the issue raised, but, however, rejected the Revision Petition by citing erroneous reasons. But, however, I am afraid still I can grant the consequential relief prayed for in the present Writ Petition to re-fix the seniority because even though the petitioner is entitled to prefer a revision in respect of the erroneous fixation of the seniority, once the same is rejected the petitioner cannot maintain the Writ Petition by just challenging the revision order alone. Seniority being the inter se right, the petitioner ought to have challenged the seniority list by duly impleading all the persons above whom he is claiming seniority. Otherwise, behind the back of those persons, who are likely to be affected by propelling the petitioner from a lower point in the seniority list to a higher point, no relief can be granted to the petitioner. Therefore, I am unable to accede to the prayer made in the Writ Petition for directing the respondents to re-fix the seniority of the petitioner at this point of time.

7. Therefore, the Writ Petition fails and is dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

grs



To

The Director of Public Libraries,
Chennai - 600 002.

+1cc to Mr.P.Rajendran, Advocate, S.R.No.30316

+1cc to the Government Pleader, S.R.No.31048

W.P.No.15508 of 2010

SSN(CO)
SU(26/05/2022)