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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2022

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.7015 of 2012

K.S.Sekar

...Petitioner

Vs.

1. The State of Tamil Nadu,
Rep by its Special Secretary,
Finance (SS) Department,
Secretariat,
Chennai - 600 009.
2. The Principal Secretary,
Finance Department,
Secretariat,
Chennai - 600 009.
3. The Principal Secretary,
Personnel and Administrative Department,
Secretariat,
Chennai - 600 009.
4. The Commissioner,
Tamil Nadu Small Savings and Raffle Department,
735, Anna Salai,
Chennai - 600 002.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue of a Writ of Certiorarified Mandamus to call for the records on the file of the 1st respondent in his Proceedings Letter No.52811/Finance (SS)/2010, dated 28.11.2011 and quash the same and direct the respondents to give a notional promotion to the petitioner for the post of Grade-I Typist in Tamil Nadu Raffle Department with effect from 24.06.2002 and Senior Typist, in Tamil Nadu Secretariat Service with effect from 24.06.2004 with all monetary and service benefits.

For Petitioner : Mr.M.Vijayakumar

For Respondents : Mr.R.L.Karthika
Government Advocate



ORDER

This Writ Petition is filed challenging the order of the 1st respondent by the Proceedings Letter No.52811/Finance(SS)/2010, dated 28.11.2011 and to quash the same and to further direct the respondents to give notional promotion to the petitioner to the post of Grade-I Typist in Tamil Nadu Raffle Department with effect from 24.06.2002 and Senior Typist, in Tamil Nadu Secretariat Service with effect from 24.06.2004 with all monetary and service benefits.

2. Brief facts:

i) The petitioner was originally appointed as Typist in the Directorate of Raffles on 16.03.1984 under Rule 10 (a)(i) of General Rule for the Tamil Nadu State and Subordinate Services. As per G.O.Ms.No. 996 P & A R, dated 22.09.1984, his services were regularized in the category of Typist with effect from 25.06.1984 and probation was declared on 24.06.1986. Further the petitioner was accorded Selection Grade in the post of Typist with effect from 26.06.1994.

ii) It may be relevant to state that representations were made for creation of "Senior Typist" post in Tamil Nadu Ministerial Service/ Tamil Nadu Judicial Ministerial Service, as done in the Secretariat, for increasing the avenue of promotion to typists who have been stagnating over twenty years of service. On examination of the said request it was considered as appropriate to open a new line of promotion for those typists who had put in 18 years of service and above in the typist line, called "Typist Grade-I" and G.O.Ms.No.45 dated 15.02.1994 was issued. Accordingly, it was directed to create a new category of post viz., "Typist Grade-I" in the Tamil Nadu Ministerial Service/ Tamil Nadu Judicial Ministerial Service. The Heads of Department were requested to send separate proposals to the Government in the Administrative Department concerned for upgradation of required number of typist posts as "Typist Grade-I" based on the number of persons who have rendered more than 18 years of service as typists.

iii) It was further directed that the newly created posts of "Typist Grade-I" shall be filled by the holders of the post of Typist who have put in a total 18 years of regular service as typist and opted to remain in the Typist post. The above exercise shall be done after obtaining necessary sanction orders creating the posts of 'Typist Grade-I' by each Head of Department. The above Government Order further provided an option to the typist to either remain in the "Typist line" or to opt for promotion as Assistant. It was also indicated that necessary amendments to the special rules for the Tamil Nadu



Ministerial Services/ Tamil Nadu Judicial Ministerial Service will be issued separately.

iv) After completion of 18 years in service, the petitioner submitted a petition to the Director of Raffle for being appointed as Grade-I Typist in terms of G.O.Ms.No.45 P & A R (Per-B) Department, dated 15.02.1994. In the meanwhile vide G.O.Ms.No.20 Home (Courts-II) department, dated 08.01.2003, ban orders were issued in respect of sale of paper and online lotteries in the State of Tamil Nadu. Consequently, vide G.O.Ms.No.436 Fin (Raffle) Department, dated 05.11.2003 orders were issued for redeployment of staff of Raffle Department to needy departments. It further provided for disbanding of the posts of Accounts Officer, Typist, Office Assistant, Sweeper in the Raffles Department. Further, all staffs other than Accounts Officer were to report to Finance Department for further posting.

3. Though as stated above, the petitioner had completed 18 years of service in the post of typist as on 24.06.2002 and a representation was also submitted for appointing the petitioner as Grade-I typist from 25.06.2002 in terms of G.O.Ms.No.45. However, as the Raffles Department was dis-banded the petitioner was required to report to the Finance Department in terms of the Government orders referred above. The petitioner was absorbed as Typist in the Finance Department with effect from 07.11.2003 and probation was declared in the post of Typist in Secretariat on 10.05.2006. The petitioner had passed Foundational Training Test. Despite the repeated requests and reminders the petitioner was finally informed vide impugned order dated 28.11.2011 that the request for appointment as "Selection Grade Typist" is not feasible of compliance inasmuch as creation of post of Typist Grade-I is a one time affair in terms of G.O.Ms.No.45 and no post of "Typist Grade-I" has been created in the Directorate of Raffles/ Directorate of small Savings Department nor can it be created now inasmuch as the Raffles Department itself has been disbanded.

4. Aggrieved by the same the petitioner has challenged the impugned order on the premise that the 1st respondent had erred in treating G.O.Ms.No.45 P & AR (Per-B) Department, dated 15.02.1994 as a one time affair, inasmuch as it is contrary to the stand taken by the Government vide communication dated 28.04.1994, wherein, it has been clarified as follows:

"2. I am directed to clarify the following on the above points:-

1) Point (1) above:-

Upgradation as Typist, Grade-1 is not a one time affair, but the posts upgraded will be available for being filled up by juniors as and when



vacancies in the upgraded posts arise consequent on retirement, etc., "

5. It appears that the impugned order to the extent it proceeds that G.O.Ms.No.45 is a one time affair is contrary to the clarification issued by the Government as early as on 28.04.1994. Even otherwise, on a reading of G.O.Ms.No.45 P & AR (Per-B) Department, dated 15.02.1994, it appears that it was not a one time affair but it was meant to be filled up by Juniors as and when vacancies arise in the upgradation post consequent to the retirement. It thus appears that the above reasoning in the impugned order is erroneous. However, this Court finds that the writ petition may nevertheless have to fail for the reasons discussed below.

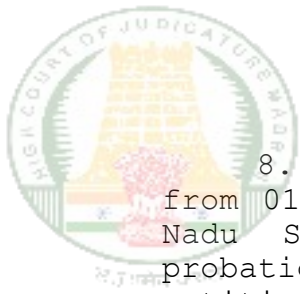
6. It is then submitted by the learned counsel for the petitioner that had the post been created in terms of G.O.Ms.No.45 P & AR (Per-B) Department, dated 15.02.1994 and the petitioner promoted to Typist Grade-I, even while being absorbed by the Finance Department, the petitioner would not have been absorbed as Typist, instead, he would have been absorbed as 'Senior Typist' with effect from 07.11.2003 and he need not have waited until 18.11.2009 when he got promoted as 'Senior Typist'. He further submitted that the petitioner cannot be put to disadvantage or suffer denial of an avenue of promotion by non-creation of post due to inaction on the part of the respondents.

7. To the contrary, it was submitted by the learned counsel for the respondents that the Raffles Department having been disbanded vide G.O.Ms.No.436, dated 05.11.2003 and in the absence of post of "Typist Grade-I" having been created in the said department, it may not be permissible to extend the benefit of G.O.Ms.No.45 to the petitioner. Secondly, it was submitted that the Special Rules for Tamil Nadu Secretariat Services were amended with retrospective effect vide G.O.Ms.No.220/ P&AR (U) Department, dated 04.12.2008 wherein qualifications was prescribed for the category of "Senior Typist" which reads as under:

"I. Minimum General Educational Qualifications prescribed in Schedule I to the General Rules in Part II of the Tamil Nadu Part II of the Tamil Nadu State and Subordinate Services or its Equivalent qualification.

II. A pass in the Departmental Tests Part I and II
(Or)

III. Foundational Training for a period of two months and a pass in the Examinations at the end of the training conducted by the Personnel and Administrative Reforms (Training) Department."



8. The above Rule having been given retrospective effect from 01.06.1988, the petitioner who was absorbed into the Tamil Nadu Secretariat Service on 07.11.2003 had completed his probation only on 10.05.2006 in Typist category. Thus, the petitioner satisfied the qualification for promotion to the post of Senior Typist in terms of the above Rule only on 15.04.2009. Moreover, the post of 'Senior Typist' under the Tamil Nadu Secretariat Service can be filled up only by promotion and only from the post of Typist in Secretariat Service. Thus, the petitioner's request for appointment to the post of Senior Typist could not have been considered prior to 15.04.2009.

9. Heard the learned counsel on both sides and perused the entire materials available on record.

10. This Court is of the view that the writ petition praying for quashing the 1st respondent's proceedings dated 28.11.2011 and to further direct the respondents to give a notional promotion to the petitioner to the post of 'Grade-I Typist' cannot be sustained for the following reasons:

a) No right to creation of post:

Promotion to the post of Typist Grade-I cannot be sustained in the absence of post having been created. Admittedly, the post of Grade-I Typist had not been created in the Raffles Department. Despite, the fact that the Directorate of the Raffles Department made certain efforts for creation of post, the said post was never created. In the absence of the post having been created, it may not be possible to extend the benefit of G.O.Ms.No.45, which itself provides for appointment only after obtaining necessary sanction order creating posts of "Typist Grade-I".

It is well settled that there is no right to the creation of post and thus in the absence of the post of "Typist Grade-I" having been created and also the fact that the Raffles Department has been disbanded, there is no merit in the case of the petitioner. In this regard it may be relevant to refer the following decisions wherein, it has been held that there is no right to creation of post:

a. N.Ramanatha Pillai v. State of Kerala reported in (1973) 2 L.L.N. 362:

"14. The first question which falls for determination is whether the Government has a right to abolish a post in the service. The power to create or abolish a post is not related to the doctrine of pleasure. It is a matter of governmental policy. Every sovereign Government has this power in the interest and



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necessity of internal administration. The creation or abolition of post is dictated by policy-decision, exigencies of circumstances and administrative necessity. The creation the continuance and the abolition of post are all decided by the Government in the interest of administration and general public.

33. ... The abolition of post is not a personal penalty against the Government servant. The abolition of post is an executive policy-decision. Whether after abolition of the post the Government servant who was holding the post would be offered any employment under the State would therefore be a matter of policy-decision of the Government because the abolition of post does not confer on the person holding the abolished post any right to hold the post."

b) The above judgment of the Hon'ble Supreme Court was followed by the Bombay High Court in the case of Khan Afzalkhan Miyakhan v. Malegaon Municipal Corporation reported in (2004) SCC OnLine Bom 76, wherein it was held as under:

"19. The observation of the Supreme Court would apply with equal, if not greater force, in the present case. The creation of posts is an executive act. No person has a right to the creation of a post. If the need for the post has ceased to exist, no person has a right in the continuance of that post either. The creation, continuance and abolition of posts are policy-decisions. These observations of the Supreme Court pertain to the power of "every sovereign Government". The Supreme Court did not hold that Arts. 310 and 311 are the source of such power. The power is inherent. The mode of exercise of such power in respect of certain employees is circumscribed inter alia by the procedure laid down in these articles provided the termination is of the nature contemplated therein. The consequence of the termination of the petitioner's services qua the said post is not even covered by Art. 311.

20. Whether the decision was correct or not, is not for the Court to decide. The concerned authorities are the best Judges about the requirement of a post. Courts do not normally question the wisdom of policy makers. We are unable to say that the decision was ex facie, absurd or irrational. The power to create and abolish the post must necessarily be a matter of policy. ..."



ii) S.Regghupathy vs. State of Tamil Nadu reported in 2019
SCC OnLine Mad 13578:

"4. The creation of post and disbandment of post are purely an administrative discretion of the Government and the petitioners cannot have a right to demand either for creation of a post nor there can be a grievance against disbandment of post. "

(emphasis Supplied)

b. Promotion to be governed by the Service Rules of the concerned department:

Secondly, the learned counsel for the respondents submitted that the petitioner having been absorbed in the Finance Department, any further promotion ought to be governed by the Service rules of the Tamil Nadu Secretariat Services. I am in agreement with the submission that the petitioner having been absorbed in the Finance Department the petitioner would thereafter be governed by the Tamil Nadu Secretariat Service Rules which prescribes the necessary qualifications to the post of Senior Typist. Admittedly, the petitioner is eligible in terms of above qualifications only on 16.04.2009 and the petitioner was considered for inclusion in the panel in the year 2009-10 to the post of Senior Typist and as a matter of fact the petitioner was also promoted as 'Senior Typist' on 18.11.2009 in terms of Seniority. Thus the prayer to direct the respondents to give notional promotion to the petitioner to the post of Grade-I Typist in Tamil Nadu Raffle Department with effect from 24.06.2002 and Senior Typist, in Tamil Nadu Secretariat Service with effect from 24.06.2004 with all monetary and service benefits is unsustainable and liable to be rejected.

11. In view of the same, this Court is of the view that this writ petition does not have any merit and thus dismissed.

12. Accordingly, this writ petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Psa

To:

1. The Special Secretary,
Finance (SS) Department, Secretariat,
Chennai - 600 009.



2. The Principal Secretary,
Finance Department, Secretariat,
Chennai - 600 009.

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3. The Principal Secretary,
Personnel and Administrative Department,
Secretariat, Chennai - 600 009.

4. The Commissioner,
Tamil Nadu Small Savings and Raffle Department,
735, Anna Salai, Chennai - 600 002.

+1cc to Mr.M.Vijayakumar, Advocate, S.R.No.28937

+1cc to the Government Pleader, S.R.No.30435

W.P.No.7015 of 2012

JPL(CO)
CT/22/06/2022