IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal Nos.1797 and 1800 of 2021

1.The Principal Secretary to the Government of Tamil Nadu,
Revenue and Disaster Management
Department, Fort St. George,
Chennai 600 009.

2.The Principal Commissioner/
The Commissioner of Revenue Administration/
Disaster Management Department,
Chepauk, Chennai 600 005.

3.The Joint Commissioner, (Revenue Administration),
Commissionerate of Revenue
Administration and Disaster Management,
Chepauk, Chennai 600 005.

... Appellants in both Writ Appeals

vs.

P.K.Rama ... Respondent in W.A.No.1797 of 2021

S.Hemalatha ... Respondent in W.A.No.1800 of 2021

Writ Appeals filed under Clause 15 of the Letters Patent against the common order dated 25.08.2020 passed by this Court in W.P.Nos.945 and 950 of 2019.

Prayer in W.P.Nos.945 and 950 of 2019: These Writ Petitions are filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the proceedings of the 3rd Respondent in his letter NA.KA.NO AA.NA 1 (A)/43327/2014 dated 3-11-2018 signed on 16-11-2018 in so far as the petitioner are concerned and quash the same and consequently direct the respondents to consider their case in light of the order passed by the Tamil Nadu Administrative Tribunal, Chennai-600104 in OA.NO 6910/1999 dated 10-11-2003, the order passed by this Court in WP.No. 21231/2004 dated 23-7-2004 in the G.O.(Ms)No.567, Finance (Service 6(1) Department dated 4-9-2006 and consequently grant them the attendant benefits like the one granted to beneficiaries of G.O.(2D) No 56 (Revenue Service 5 Dept.) dated 11-2-2009.

For Appellants in both W.As. : Mr.U.M.Ravichandran, Special Government Pleader

For Respondent in both W.As. : Mr.N.Balamuralikrishnan

COMMON JUDGMENT

(Judgment of the Court delivered by S.VAIDYANATHAN,J.)

Present Appeals are filed challenging the common order dated 25.08.2020 passed by this Court in W.P.Nos.945 and 950 of 2019.

2. As the issue involved in both cases is one and the same, Writ Appeals are taken up for disposal by a common judgment.

3. Respondents herein are the Writ Petitioners. They were selected and appointed as Typists in the Revenue Department and posted to Coimbatore Collectorate, after participating in the selection conducted by the Tamil Nadu Public Service Commission (TNPSC) for Group-IV posts, in 1994. They joined the posts after selection and appointment on 11.10.1994 and 19.12.1994, respectively. Writ Petitioners claim to have cleared the departmental examinations for promotion to the post of Assistant, in the year 1997 itself. For personal reasons, Writ Petitioners applied for one way transfer for their accommodation in any one of the vacancies available at the Commissionerate of Revenue Administration (CRA). On consideration of their request for one way transfer, Writ Petitioners were transferred on loan basis at CRA and joined services on 06.07.1998 and 05.11.1997, respectively. Thereafter, Writ Petitioners came to be permanently absorbed in CRA after obtaining necessary concurrence from the TNPSC on 26.04.2001.

4. However, Writ Petitioners were deprived of their past services rendered in CRA from the date of their joining till the

date of concurrence. Moreover, according to the Writ Petitioners, they became eligible for promotion to the post of Assistant in the year 2002 itself. Since there was a considerable delay in deputing them to undergo training as Junior Assistant, as part of the service requirement, their names were belatedly included in the panel on 31.03.2006 and they were promoted as Assistants with effect from 31.03.2006. According to the Writ Petitioners, the said delay had a recurring effect on their subsequent promotion to the post of Superintendent, which was granted to them on 06.02.2013 and 07.11.2013, respectively.

5. Before the learned Single Judge, Writ Petitioners pointed out that, a similarly placed person viz. one R.Krishnan approached the then Tamil Nadu Administrative Tribunal in O.A.No.6910 of 1999, etc. challenging the fixation of seniority and other benefits denied on the basis of the date of concurrence given by the TNPSC. The Tamil Nadu Administrative Tribunal, ultimately allowed the Original Applications vide order dated 10.11.2003, by directing to fix the seniority of the Applicants with reference to the date of joining the CRA and to accord promotion on such fixation of seniority to the higher post of Assistant.

6. Challenging the order passed by the Tribunal, W.P.Nos.21231 to 21233 of 2004 were filed and a Division Bench of this Court, by a detailed order dated 23.07.2004, dismissed the said Writ Petitions, affirming the decision of the Administrative Tribunal.

7. As the request of the Writ Petitioners seeking relaxation was rejected by impugned order dated 03.11.2018, they filed W.P.Nos.945 and 950 of 2019 before this Court. By an order dated 25.08.2020, the learned Single Judge allowed the said Writ Petitions, thereby quashed the impugned order dated 03.11.2018 and directed the Respondents therein to fix the seniority of the Writ Petitioners, by taking into account the date of their joining in the CRA on 06.07.1998 and 05.11.1997, respectively. Learned Single Judge further held that, on such refixation, Writ Petitioners are entitled to consequential promotion to the post of Assistant and Superintendent at the appropriate time with all attendant benefits, except payment of differential salary. Challenging the said order of the learned Single Judge, Respondents therein have come up with the present Appeals.

8. Learned Special Government Pleader appearing for the Appellants contended that, the learned Single Judge ought not to have granted relief to the Writ Petitioners, as they are not entitled to draw comparison with the other employees who had been granted the benefit of relaxation. He pointed out that,

Writ Petitioners were given training and after necessary concurrence from TNPSC, they were absorbed in CRA on 26.04.2001. Hence, according to the learned Special Government Pleader, the relief that could be granted to the Writ Petitioners is only from 26.04.2001 and it had already been extended to them and the question of seeking benefits retrospectively more so, from the date of joining in service by means of transfer, would not arise.

9. Learned Special Government Pleader drew the attention of this Court to the order dated 27.08.2009 passed in W.P.No.35600 of 2006 and the order dated 12.08.2010 passed in W.P.No.1144 of 2007, whereby, this Court declined to grant relief to the employees who approached the Court. Hence, according to the learned Special Government Pleader, the same yardstick need to be applied to the Respondents/Writ Petitioners.

10. In reply, learned counsel appearing for the Respondent/Writ Petitioner in both cases pointed out that, the order dated 10.11.2003 passed by the Tribunal in O.A.No.6910 of 1999, granting relief to the employee therein was affirmed by a Division Bench of this Court in W.P.Nos.21231 to 21233 of 2004, by a detailed order dated 23.07.2004. The Division Bench, referring to Rule 20(a)(iii) of the Tamil Nadu Ministerial Service Rules, held that, obtaining consent from TNPSC is the fault of the Department and the Applicants in the Original Application cannot be blamed. He also pointed out that, the Writ Petitioners were similarly placed as that of one Krishnan, who has been granted relief by the Tribunal.

11. It is further stated by the learned counsel appearing for the Respondent/Writ Petitioner that, neither in the order dated 27.08.2009 passed in W.P.No.35600 of 2006 nor in the order dated 12.08.2010 passed in W.P.No.1144 of 2007, the learned Single Judge has considered Rule 35(b) of the Tamil Nadu State and Subordinate Service Rules and Rule 20(a)(iii) of the Tamil Nadu Ministerial Service Rules. Hence, according to the learned counsel appearing for the Respondent in both cases, the order of the learned Single Judge in granting relief to the Respondent/Writ Petitioner in both Writ Petitions, on par with one similarly placed candidate viz. Krishnan, is perfectly valid and does not require any interference.

12. Heard the learned counsel on either side and perused the material documents available on record.

13. For better appreciation, Rules relevant to the case on hand, are extracted hereunder:

Rule 20(a)(iii) of the Tamil Nadu Ministerial Service Rules:

20(a). Notwithstanding anything contained in Rules 12 to 16 and 19, a probationer or an approved probationer may, in special cases and on grounds of administrative necessity, be transferred with the mutual consent of the appointing authorities and the authorities nominated by the head of the department for the purpose of allotment of candidates where there is more than one appointing authority, in the departmental unit concerned -

(i) from one office in a departmental unit to another office in the same departmental unit;

(ii) temporarily from an office in one departmental unit to an office in another departmental unit, if both the offices belong to a department in which full members are ordinarily subject to transfers from one departmental unit to another; and

(iii) permanently from an office in one departmental unit to an office in another departmental unit;

Provided that a transfer under clause (iii) shall be made only with the consent of the Commission except in the case of Gujarathi knowing Assistants of the Commercial Taxes Department.

Provided further that the consent of the Commission may be deemed to have been accorded in the cases of transfer of Probationers and Approved Probationers from one Unit to another Unit, necessitated consequent on the formation of new District.

Rule 35(b) of the Tamil Nadu State and Subordinate Service Rules:

35(b) The transfer of a person from one class or category of a service to another class or category carrying the same pay or scale of pay shall not be treated as

> first appointment to the latter for purpose of seniority and the seniority of a person so transferred shall be determined with reference to the rank in the class or category from which he was transferred; Where any difficulty or doubt arises in applying this sub-rule, seniority shall be determined by the appointing Authority.

14. It is not in dispute that, Writ Petitioners were initially selected and appointed as Typists in the Revenue Department at Coimbatore Collectorate, and on consideration of their request for one way transfer, they were transferred on loan basis at CRA and joined services on 06.07.1998 and 05.11.1997, respectively. After obtaining necessary concurrence from TNPSC, Writ Petitioners came to be permanently absorbed in CRA on 26.04.2001. The concurrence so obtained from the TNPSC is a procedural one and for that purpose, benefits accrued to the employees cannot be deprived retrospectively.

15. The Apex Court, in a catena of decisions has held that, all the services ever since the date of joining of the employees will have to be taken into account. In the present case, Writ Petitioners have restricted the relief from the date of their transfer, i.e. from 06.07.1998 and 05.11.1997, respectively.

16. The order dated 27.08.2009 passed in W.P.No.35600 of 2006 and the order dated 12.08.2010 passed in W.P.No.1144 of 2007, may not be applicable to the facts of this case, as, firstly, the Division Bench, by an order dated 23.07.2004 passed in W.P.Nos.21231 to 21233 of 2004, has confirmed the order dated 10.11.2003 passed by the Tribunal in O.A.No.6910 of 1999 and secondly, similar issue is before this Division Bench. Moreover, learned Single Judges of this Court have not considered Rule 20(a)(iii) of the Tamil Nadu Ministerial Service Rules and Rule 35(b) of the Tamil Nadu State and Subordinate Service Rules.

17. Hence, we are of the view that, the order of the learned Single Judge does not call for any interference by this Court, as the relief sought for by the Writ Petitioners have rightly been granted and the same has to be implemented. Since the time granted by the learned Single Judge has already expired, the same is extended by another four months from the date of receipt of a copy of this judgment, in order to grant the benefits due to the Respondent/Writ Petitioner in both cases, within the time frame.

Writ Appeals are dismissed with the above direction. No costs. Consequently, connected C.M.P.No.11257 of 2021 and C.M.P.Nos. 11262 and 11263 of 2021 are closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1.The Principal Secretary to the Government of Tamil Nadu,
Revenue and Disaster Management Department,
Fort St. George, Chennai 600 009.

2.The Principal Commissioner/ The Commissioner of Revenue
Administration/Disaster Management Department,
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3.The Joint Commissioner (Revenue Administration),
Commissionerate of Revenue
Administration and Disaster Management,
Chepauk, Chennai 600 005.

+2ccs to Mr.N.Balamuralikrishnan, Advocate SR. No.9605
+1cc to Government Pleader SR. No.9888

W.A.Nos.1797 & 1800 of 2021

VSNII (CO)
PR (21/03/2022)