IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 04.01.2022

CORAM

THE HON'BLE MR. JUSTICE V.PARTHIBAN

W.P.Nos.16848 & 16854 of 2020
&
W.M.P.Nos.20897 & 20906 of 2020

A.Latha ...Petitioner in W.P.No.16848/2020
R.Muralidharan ...Petitioner in W.P.No.16854/2020

Vs.

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

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

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

...Respondents in both WPs

COMMON PRAYER: Writ Petition filed under Article 226 of Constitution of India, for issuance of writ of Certiorarified Mandamus to calling for the proceedings of the 3rd respondent in his letter Na.Ka.No.AA.NA.1(1)/43327/2014 dated 03.11.2018 signed on 16.11.2018 insofar as the petitioners 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, in O.A.No.6910/1999 dated 10.11.2003, the order passed by this Hon'ble Court in W.P.No.21231/2004 dated 23.07.2004 and W.P.No.945 and 950 of 2019 dated 25.08.2020 and consequently grant them the attendant benefits like the one granted to beneficiaries of G.O.(2D) No.56 (Revenue (Service 5)Dept.) dated 11.02.2009.

For Petitioner : Mr.N.Balamuralikrishnan
for Mr.V. Rajinikanth

For Respondents : Mr.L.S.M.Hasan Fizal
Additional Government Pleader
...in both WPs

COMMON ORDER

These Writ petitions have been filed challenging the proceedings of the 3rd respondent in his letter Na.Ka.No.AA.NA.1(1)/43327/2014 dated 03.11.2018 signed on 16.11.2018.

2.Notice was ordered and on behalf of the respondents Mr.L.S.M.Hasan Fizal, learned Additional Government Pleader has entered appearance and a detailed counter affidavit has also been filed. On behalf of the respondents, the claim as raised in these Writ Petitions was sought to be resisted on the basis of the averments as contained in the counter affidavit.

3.However, the learned Additional Government Pleader would submit that same impugned order covering the present writ petitioners came up for consideration before this Court in W.P.Nos.945 and 950 of 2019. This Court after following the earlier legal proceedings on the same subject matter, allowed the Writ Petitions by setting aside the impugned orders therein. The learned counsel would straight away draw the attention of this Court to the order passed by this Court dated 25.08.2020 in the aforementioned writ petition.

4.This Court in the circumstances questioned the learned Special Government Pleader how these Writ Petitioners can be treated differently when the same impugned order came to set aside by this Court in respect of two similar persons, the learned Additional Government Pleader however would not have any quarrel with the fact that the impugned order which was set aside by the Court in the above Writ Petition contained the name of these petitioners as well.

5. The learned counsel for the petitioner would submit in the counter affidavit filed in the matter the very same objections have been raised, and the objections had been discountenanced and the writ petitions came to be ultimately allowed by this Court. Therefore the ruling of this Court in the above mentioned two writ petitions would have to be squarely applied to these cases as well.

6.This Court is in complete agreement with the submissions of the learned counsel for the petitioner after going through the order passed by the Court in the aforementioned two Writ Petitions. As contended by the learned counsel for the petitioner, all the objections raised herein had been considered and this Court passed a detailed order overruling the objection by setting aside the same impugned order in respect of two employees namely P.K.Rama and S.Hemalatha. In the same impugned order the names of the present two writ petitioners also find a place. Therefore, the order passed by this Court would have to be necessarily followed.

7.It is useful to refer to the detailed order passed by this Court from paragraph Nos.3 to 20 in order to hold how these writ petitioners are exactly and identically placed. Therefore, the issue as raised in the writ petitions is no more res integra and the petitioners herein have made out a case for grant of relief. Paragraph Nos. 3 to 20 of the above said order are extracted hereunder;

> "3.The petitioners 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. According to them, they have cleared the departmental examinations for promotion to the post of Assistant, in the year 1997 itself. The petitioners for their personal reasons, had applied for one way transfer for their accommodation in any one of the vacancies available at the Commissionerate of Revenue Administration (CRA).
>
> 4. 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. Thereafter, both the petitioners came to be permanently absorbed in CRA after obtaining necessary concurrence from the TNPSC on 26.04.2001. Since the concurrence obtained from the TNPSC was in 2001, the petitioners were deprived of their past services rendered in CRA from the date of their joining, till the date of the concurrence. Moreover, according to the 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 promoted as Assistants with effect from 31.03.2006. The above delay had a recurring effect on the subsequent promotion of the petitioners to the post of Superintendents, which was granted to the petitioners on 06.02.2013 and 07.11.2013, respectively.

5. According to the petitioners, a similarly placed person one R.Krishnan approached the then Tamil Nadu Administrative Tribunal in OA.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. In consideration of the various submissions and objections on behalf of the Government, the learned Administrative Tribunal, ultimately allowed the Original Applications vide its order dated 10.11.2003. The learned Tribunal in the order directed the said applicants' seniority to be fixed with reference to the date of joining the CRA and promotion shall also be accorded on such fixation of seniority to the higher post of Assistant, etc.

6. As against that, writ petitions were filed on behalf of the CRA in W.P.No.21231 to 21233 of 2004. The Division bench of this Court vide its order dated 23.07.2004 dismissed the writ petitions by a detailed order affirming the decision of the learned Administrative Tribunal.

7. Further, the case of the petitioners is that similarly placed persons, working in the same department were granted necessary relaxation under Rule 30(C) of the Tamil Nadu Ministerial Service Rules, as per G.O.(Ms) No.567, Finance [Service 6(1)] Department dated 04.09.2006 and G.O.(2D) No.56, Revenue [Service 5] Department dated 11.02.2009, dispensing with the training requirement as a pre condition for promotion as Assistant. Unfortunately, in the case of petitioners, no such relaxation was forthcoming from the competent authority.

8. In this regard, when representations were made by the petitioners seeking for the same benefit in 2013, after a lapse of five years, by impugned order dated 03.11.2018, the request of the petitioners was rejected only on the ground that no junior of the

petitioners were promoted. Therefore, the petitioners are before this Court.

9. Mr.V.Vijayshankar, learned counsel appearing for the petitioners would submit that the issue is directly covered by the aforementioned decisions of the learned Tamil Nadu Administrative Tribunal, Chennai and as affirmed by the Division Bench of this Court in WP Nos.21231 to 21233 of 2004. The orders of the learned Tribunal dated 10.11.2003 and the Division Bench of this Court dated 23.07.2004 have completely dealt with the issues on hand and the petitioners herein are entitled to be extended the same benefit. According to the learned counsel, if only the petitioners had been fixed in the seniority from the date of their joining in CRA, i.e., from 06.07.1998 and 05.11.1997, respectively, they could have automatically got their promotion as Assistants and Superintendents, much earlier to the dates when they were actually promoted.

10. The fact that no junior was promoted, cannot be the reason for denying the appropriate fixation of seniority and the consequential promotions as per the entitlement of the petitioners. Therefore, the learned counsel would submit that in terms of the order of the Administrative Tribunal, as affirmed by this Court, writ petitioners may be extended the same benefit, for securing the ends of justice.

11. Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader, has entered appearance for the respondents and a detailed counter affidavit has been filed resisting the claim of the petitioners in WP No.945 of 2019. He would submit that the averments set forth in the counter affidavit filed in WP No.945 of 2019 would hold good for the other writ petition as well. 12. Apart from reiterating what is already stated in the impugned orders, in the counter affidavit, it is further stated that in respect of relaxation granted to similarly placed persons under Rule 30(C), those individuals were not responsible for non completion of Junior Assistant training. But as far as the petitioners herein are concerned, they were given training from 04.07.2001 to 03.07.2002, after absorbing the petitioners in CRA, on 26.04.2001. Therefore, the learned Special Government Pleader would submit that the petitioners are not entitled to draw

comparison with the other employees who had been granted the benefit of relaxation. However, with regard to the decisions of the Tamil Nadu Administrative Tribunal and the decisions of the Division Bench of this Court, the learned Special Government Pleader would not dispute the position.

13. However, the learned Special Government Pleader would submit that since the petitioners were not parties to the above decision of the learned Tribunal, the question of extending the benefit to these petitioners did not arise. Therefore, the learned Special Government Pleader would submit that there are no merits in the writ petitions and the same may be dismissed.

14. Considered the submissions of Mr.V.Vijayashankar, learned counsel appearing for the petitioners and Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader appearing for the respondents and perused the pleadings and the materials placed on record.

15. The fact of the matter is that the petitioners joined CRA as early as on 06.07.1998 and 05.11.1997, respectively. Though their services were absorbed in the said Commissionerate, the concurrence was given by the TNPSC only on 26.04.2001. Unfortunately, the Commissionerate had taken into consideration the date of concurrence by the Tamil Nadu Public Service Commission and not the date of joining the Commissionerate by the petitioners herein.

16. Once concurrence was accorded by the Tamil Nadu Public Service Commission, for appointment of the petitioners to the Commissionerate by way of transfer, the concurrence must automatically relate back to the date of the petitioners' joining in the post of Typists of the Commissionerate. Otherwise, for no fault of the petitioners, they would be deprived of their due seniority and the consequential benefits of further promotions to higher posts. The petitioners cannot be allowed to suffer an adverse consequence of the administrative delay in obtaining the concurrence. The absorption of the petitioners in CRA from the date of their joining becomes complete in all respects, once the procedural formality of obtaining concurrence from

TNPSC is fulfilled. Any other conclusion in this regard would be opposed to fair play, good conscience and justice.

17. Even otherwise, in similar circumstances, the learned Administrative Tribunal has allowed the Original Application filed by one R.Krishnan and directed the CRA to fix the seniority taking into account the date of joining by the employee at CRA and grant promotion. The said decision of the learned Administrative Tribunal, would squarely apply to the factual matrix of the present cases as well. More importantly the decision of the Tribunal was also affirmed by a detailed order passed by the Division Bench of this Court in the aforementioned writ petitions.

18. Further, this Court also finds that as far as the training period to be undergone for the purpose of promotion to the post of Assistant, identically placed persons of the same establishment have obtained relaxation orders under the provisions of the rules and this Court is unable to understand as to why the petitioners, who are identically placed cannot be given relaxation, who had also incidentally completed the training at the appropriate time. As the adage goes what was sauce for the goose was also the sauce for the gander.

19. In the upshot, this Court is of the view that on all fours, the claim of the petitioners is justifiable and legitimate and covered by the decision of the Administrative Tribunal and as affirmed by the Division Bench of this Court in the cases cited supra. Any other view, in the matter would be a travesty of justice and would be invalid.

20. For the above said reasons, the impugned orders dated 03.11.2018 in Na.Ka.No.AA.NA.1(A)/43327/2014, are hereby set aside and consequently, the respondents are directed to fix the seniority of the petitioners, taking into account the date of their joining in the CRA on 06.07.1998 and 05.11.1997, respectively and on such refixation, petitioners are entitled to consequential promotion to the post of Assistant and Superintendent at the appropriate times with all attendant benefits, except

payment of differential salary. The petitioners are however entitled to notional fixation of pay. The Government is also directed in this regard to grant necessary relaxation, if it is required for complying with the above direction. The respondents are hereby directed to comply with the above direction within a period of eight weeks from WP Nos.945 & 950 of 2019 the date of receipt of a copy of this order."

8.In the above said circumstances, the impugned order dated 03.11.2018 is hereby set aside and consequently the respondents are directed to fix the seniority of the petitioners, taking into account the date of their joining in the CRA on 21.06.2001 & 28.01.2002 respectively and on such refixation, petitioners are entitled to consequential promotion to the post of Assistant and Superintendent at the appropriate times with all attendant benefits, except payment of actual differential salary.

9.The petitioners are however entitled to notional fixation of pay. The Government is also directed to grant necessary relaxation, if it is required for complying with the above direction.

10.The respondents are hereby directed to comply with the above direction within a period of eight weeks from the date of receipt of a copy of this order.

11.With the above observations, the Writ Petitions stand allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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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,
   Chepauk, Chennai - 600 005.

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

+1 CC to The Government Pleader sr 1076 & 1077.

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AJS(CO)
SP(16/03/2022)