

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE
AND
THE HON'BLE MRS.JUSTICE N.MALA

W.P.No.24177 of 2021

P.Srikumar

.. Petitioner

Vs

1.High Court of Judicature of Madras,
rep. by its Registrar General,
Chennai - 600 104.

2.The Government of Tamilnadu,
rep. by the Secretary to Law,
Fort St. George,
Chennai - 600 009.

3.The Tamilnadu Public Service Commission (TNPSC),
rep. by its Secretary,
Park Town, Chennai-600 003.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the first respondent to notify/publish the re-fixation of the petitioner's seniority in accordance with the resolution of its Administrative Committee dated 21.03.2016 and consequently grant all the attendant benefits commensurate with the petitioner's revised position in the seniority list, including pay refixation, disbursal of annual increments etc.

For the Petitioner : Mr.T.Gowthaman

For the Respondents : Mr.B.Vijay
for respondent No.1

: Mr.P.Muthukumar
State Government Pleader
assisted by
Mr.Alagu Gowtham
Government Advocate
for respondent No.2

: Ms.G.Hema
Standing Counsel
for respondent No.3

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

This writ petition has been filed to re-fix the seniority of the petitioner in accordance with the resolution of the Administrative Committee of the High Court dated 21.03.2016 and to grant consequential benefits to the petitioner.

2. The case of the petitioner is that he was recruited as Civil Judge along with 102 other officers in the year 2003. The petitioner secured 5th rank in the said selection and was, accordingly, given appointment on the post of Civil Judge in the year 2003 itself. As per the rules, seniority of the Judicial Officers should be determined based on the marks obtained by them in the recruitment i.e. in order of merit, and not based on the communal roster. The respondents, however, prepared the seniority list based on the communal roster and, accordingly, flouted the rules for determination of the seniority.

3. The petitioner was then promoted to the post of Senior Civil Judge during the year 2014 and his seniority was fixed based on the marks secured therein. Out of 10 officers promoted as Senior Civil Judges, only three of them had secured higher marks than the petitioner and, accordingly, seniority was drawn in order of merit position in the promotion. The petitioner then submitted a representation on 24.4.2015 to the first respondent for re-fixation of the seniority based on the merit ranking in the post of Civil Judge in the light of the judgment of the Apex Court in the case of Bimlesh Tanwar v. State of Haryana, (2003) 5 SCC 604.

4. It is stated that, in the meanwhile, few officers of subsequent batch of 2009 filed writ petitions, being W.P.Nos.20449 to 20452 of 2015, praying for fixation of

seniority as per merit ranking in the selection conducted by the Tamil Nadu Public Service Commissioner and not as per the communal roster point. A Division Bench of this Court held that seniority of the Judicial Officers is to be fixed based on the merit ranking in the recruitment and not based on communal roster point. In the light of the aforesaid, the representation made by the petitioner was considered by the Administrative Committee and a decision was taken on 21.3.2016 to re-fix the seniority of the petitioner's batch apart from other batches till the year 2012 and, accordingly, revision of seniority was to be made for the recruitees of 2003 till 2012. But it was not re-fixed. In the meanwhile, W.P.Nos.20449 to 20452 of 2015 were decided by the judgment dated 20.07.2021, wherein the following directions were given:

"41. Accordingly, W.P.Nos.20449, 20451 and 20452 of 2021 are disposed of with the following directions:

(i) The revised seniority lists as prepared in accordance with the marks obtained by the candidates recruited to the post of Civil Judge (Junior Division) would prevail irrespective of the order in which they may have been shown by the Public Service Commission or their roster positions. If two or more appointees obtain identical marks, the older or oldest in age, as the case may be, will occupy the higher or highest position between such candidates in the seniority list.

(ii) The above direction will apply only to appointees recruited to the post of Civil Judge (Junior Division) 2009 onwards.

(iii) It is needless to say that the dates of appointment are of crucial importance when preparing the seniority list, but when a common recruitment process is undertaken, all new recruits must be deemed to have been appointed on the same date and their order of seniority will be in accordance with the marks obtained in the recruitment examination, irrespective of the date of joining and regardless of the positions they occupied as per the roster.

(iv) The promotions obtained till today by candidates who have been recruited as Civil Judge (Junior Division) in or after the year 2009 will remain unaffected by this order, in the sense that no one already promoted should be demoted to a lower post.

(v) Even if the revision results in a higher ranked

officer remaining in a lower post than a lower ranked officer, promotion will be on the basis of the prospective vacancy in the promotional post.

(vi) For Civil Judges (Senior Division) who may be eligible to take the limited competitive examination in future, all judges ranked higher than the last-placed Civil Judge (Senior Division) who is entitled to take the examination on the basis of the time spent in the post, will be eligible irrespective of not having spent the requisite time in the post.

(vii) As far as the 2020 recruitment process is concerned, since the appointments have not yet been made, the seniority list must be prepared in terms of this order and on the basis of the descending order of marks obtained by the appointees at the recruitment examination. To clarify for all purposes, the person with the highest marks must be placed first in the seniority list and so on till the person with the lowest marks in the last position, irrespective of what slots they may have occupied as per the roster.

(viii) Any fixation or re-fixation of seniority made in accordance with law for judges recruited prior to 2009 will remain unaffected by this order."

5. The petitioner was expecting that his seniority position would be revised, but as no action was taken by the respondents, this writ petition was filed seeking a direction on the respondents to re-fix the seniority of the petitioner in the post of Civil Judge and to grant consequential benefits in promotion and fix seniority in the higher post.

6. The writ petition has been contested by learned counsel appearing for the respondents and it is submitted that it suffers from laches, as seniority list of Civil Judges recruited in the year 2003 cannot be challenged by bringing a writ petition in the year 2021. It is more so when during the intervening period, the petitioner was given promotion to the post of Senior Civil Judge, followed by promotion to the cadre of District Judge. The prayer to revise the seniority would affect not only the final seniority in the cadre of Civil Judges, but would further unsettle the promotions, which is not permissible by filing a belated petition. Thus, the writ petition suffers from laches, thus, deserves to be dismissed in the light of the judgment of the Apex Court in the case of Shiba Shankar Mohapatra and others v. State of Orissa and others,

(2010) 12 SCC 471. He further submitted that the prayer in the writ petition is going against the judgment of the Division Bench of this Court dated 20.07.2021, where the direction was not to alter the seniority list of those recruited prior to 2009. The judgment aforesaid has been upheld by the Apex Court in S.L.P.(C) Nos.18285-18286 of 2021, by order dated 25.02.2022. Thus, the prayer is to dismiss the writ petition.

7. We have considered the submissions made by rival parties and also perused the materials available on record.

8. The writ petition has been filed seeking re-fixation of seniority in the cadre of Civil Judge and consequential benefits. The writ petition has been filed by the petitioner who was recruited to the post of Civil Judge in the year 2003. He did not challenge the seniority position till 2015 and in between he was given promotion to the higher post of Senior Civil Judge. The subsequent challenge to the seniority was not by a writ petition, but by a representation submitted to the first respondent, which was considered by the Administrative Committee with a favourable direction, according to the petitioner, but the decision of the Administrative Committee was not given effect to. There is nothing on record to show that the decision aforesaid was approved by the Full Court.

9. In any case, the representation aforesaid was made after a lapse of 12 years of the recruitment and the present writ petition is filed after a lapse of 5 years of the decision of the Administrative Committee. Totally, the period intervening is of nearly 18 years. In the meanwhile, the petitioner along with others were promoted to the post of Senior Civil Judge, followed by promotion to the cadre of District Judge. The facts aforesaid have been given to show the laches in filing the writ petition, because acceptance of the prayer will not only unsettle the seniority of the recruitees of 2003 but even promotion and determination of seniority in a higher post and, that too, when none of the officers who would be affected by it are before this Court.

10. At this juncture, it is relevant to refer to the law enunciated by the Apex Court in the case of Shiba Shankar Mohapatra and others (supra), where a claim for seniority was made after passage of a considerable period of time. The Apex Court held as under:

"18. The question of entertaining the petition disputing the long-standing seniority filed at a belated stage is no more res integra. A

Constitution Bench of this Court, in Ramchandra Shankar Deodhar v. State of Maharashtra [(1974) 1 SCC 317] considered the effect of delay in challenging the promotion and seniority list and held that any claim for seniority at a belated stage should be rejected inasmuch as it seeks to disturb the vested rights of other persons regarding seniority, rank and promotion which have accrued to them during the intervening period. A party should approach the court just after accrual of the cause of complaint. While deciding the said case, this Court placed reliance upon its earlier judgments, particularly in Tilokchand Motichand v. H.B. Munshi [(1969) 1 SCC 110], wherein it has been observed that the principle on which the court proceeds in refusing relief to the petitioner on the ground of laches or delay, is that the rights, which have accrued to others by reason of delay in filing the writ petition should not be allowed to be disturbed unless there is a reasonable explanation for delay. The Court further observed as under: (Tilokchand case [(1969) 1 SCC 110] , SCC p. 115, para 7)

"7. ... The party claiming fundamental rights must move the Court before other rights come into existence. The action of courts cannot harm innocent parties if their rights emerge by reason of delay on the part of the person moving the Court."

19. This Court in Ramchandra Shankar Deodhar case [(1974) 1 SCC 317] also placed reliance upon its earlier judgment of the Constitution Bench in Rabindranath Bose v. Union of India [(1970) 1 SCC 84], wherein it has been observed as under: (Rabindranath Bose case [(1970) 1 SCC 84] , SCC p. 97, para 33)

"33. ... It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years."

21. The issue of challenging the seniority list, which continued to be in existence for a long time,

was again considered by this Court in K.R. Mudgal v. R.P. Singh [(1986) 4 SCC 531 : 1987 SCC (L&S) 6 : AIR 1986 SC 2086] . The Court held as under: (SCC pp. 532 & 536, paras 2 & 7)

"2. ... A government servant who is appointed to any post ordinarily should at least after a period of 3 or 4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity. ...

7. ... Satisfactory service conditions postulate that there should be no sense of uncertainty amongst the government servants created by writ petitions filed after several years as in this case. It is essential that anyone who feels aggrieved by the seniority assigned to him should approach the court as early as possible as otherwise in addition to the creation of a sense of insecurity in the minds of the government servants there would also be administrative complications and difficulties. ... In these circumstances we consider that the High Court was wrong in rejecting the preliminary objection raised on behalf of the respondents to the writ petition on the ground of laches."

23. In B.S. Bajwa v. State of Punjab [(1998) 2 SCC 523 : 1998 SCC (L&S) 611] this Court while deciding the similar issue reiterated the same view, observing as under: (SCC p. 526, para 7)

"7. ... It is well settled that in service matters the question of seniority should not be reopened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This alone was sufficient to decline interference under Article 226 and to reject the writ petition."

29. It is settled law that fence-sitters cannot be allowed to raise the dispute or challenge the validity of the order after its conclusion. No

party can claim the relief as a matter of right as one of the grounds for refusing relief is that the person approaching the court is guilty of delay and the laches. The court exercising public law jurisdiction does not encourage agitation of stale claims where the right of third parties crystallises in the interregnum. (Vide Aflatoon v. Lt. Governor of Delhi [(1975) 4 SCC 285 : AIR 1974 SC 2077] ; State of Mysore v. V.K. Kangan [(1976) 2 SCC 895 : AIR 1975 SC 2190] ; Municipal Council, Ahmednagar v. Shah Hyder Beig [(2000) 2 SCC 48]; Inder Jit Gupta v. Union of India [(2001) 6 SCC 637 : 2001 SCC (L&S) 1083] ; Shiv Dass v. Union of India [(2007) 9 SCC 274 : (2007) 2 SCC (L&S) 395]; A.P. SRTC v. N. Satyanarayana [(2008) 1 SCC 210 : (2008) 1 SCC (L&S) 161] and City and Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwalla [(2009) 1 SCC 168]).

30. Thus, in view of the above, the settled legal proposition that emerges is that once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained. In K.R. Mudgal, this Court has laid down, in crystal clear words that a seniority list which remains in existence for 3 to 4 years unchallenged, should not be disturbed. Thus, 3-4 years is a reasonable period for challenging the seniority and in case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum, by furnishing satisfactory explanation."

[emphasis supplied]

11. Even if the aforesaid is ignored, this Court cannot go against the decision of the Coordinate Bench, where the issue of seniority was considered and closed for those who were recruited prior to 2009. The relevant portion of the judgment has been quoted earlier. Though learned counsel for the petitioner referred to paragraph 41(viii) of the judgment as favourable to him, he has ignored the fact that the petitioner was not extended the benefit of re-fixation of seniority at any point of time. In view of the above, the direction in paragraph 41(viii) of the judgment in W.P.Nos.20449 to 20452 of 2015 is also adverse to the petitioner.

12. The judgment in W.P.Nos.20449 to 20452 of 2015 dated 20.07.2021 has been challenged before the Apex Court in SLP (C) Nos.18285-18286 of 2021 and the same was dismissed on 25.02.2022 and, thus, the order has attained finality.

13. In the light of the aforesaid, we are unable to accept the prayer made by the petitioner for re-fixation of seniority in the cadre of Civil Judge for the recruitment made in the year 2003.

The writ petition is dismissed. There will be no order as to costs. Consequently, W.M.P.No.25508 of 2021 is closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar

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To:

- 1.The Registrar General,
High Court of Judicature of Madras,
Chennai - 600 104.
- 2.The Secretary to Law,
Government of Tamilnadu,
Fort St. George,
Chennai - 600 009.
- 3.The Secretary,
Tamilnadu Public Service Commission (TNPSC)
Park Town, Chennai-600 003.
- 4.The Section Officer,
Legal Cell,
High Court, Madras.

+1cc to Mr.T.Gowthaman, Advocate SR.No.41648

+1cc to the Government Pleader SR.No.41925

W.P.No.24177 of 2021

KK(CO)

CB(11/07/2022)