

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on
04.02.2021

Orders Pronounced on :
23.02.2022

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Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.27367 of 2019

V.Rajendiran

Vs.

... Petitioner

1. The Director,
Rural Development and
Panchayat Raj Department,
Panagal Building,
Saidapet,
Chennai - 15
2. The District Collector,
Development Section,
Collectorate,
Krishnagiri.
3. The District Collector,
Development Section,
Collectorate,
Nagapattinam District.
4. Manikandan,
Deputy Block Development Officer (Panchayat)
Panchayat Union,
Keelaiyur,
Nagapattinam District.
5. P.Suganthi,
Zonal Deputy Block Development Officer,
Panchayat Union,
Hosur,
Krishnagiri District.

..Respondents.

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the second respondent vide proceedings Na.Ka.No.K2/107/2017 dated 4.5.2018 and to quash the same and consequently direct the second respondent to place the petitioner above P.Suganthi and below T.Ravichandran.

For petitioner : Mr.S.Vijayakumar



For respondents : Mr.L.S.M.Hasan Fizal
Additional Government Pleader
R1 to R3
No appearance - R4 and R5

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O R D E R

The prayer in the writ petition is as follows:

To issue a Writ of Certiorarified Mandamus to call for the records relating to the second respondent vide proceedings Na.Ka.No.K2/107/2017 dated 4.5.18 and to quash the same and consequently direct the second respondent to place the petitioner above P.Suganthi and below T.Ravichandran.

2. The case of the petitioner is that he joined as Assistant in the Rural Development and Panchayat Raj Department having been recruited through Tamil Nadu Public Service Commission dated 19.12.2012. He was originally allotted to Nagapattinam District and he joined in the office of Panchayat Union, Seerkazhi on 19.12.2012 itself. He successfully completed his probation and the same was declared by the second respondent in his proceedings Na.Ka.No.K2/21411/2016 dated 26.10.2016.

3. While serving as Assistant in the office of the Panchayat Union, Seerkazhi, the petitioner had opted for mutual transfer from Nagapattinam District to Krishnagiri District. Accordingly, the 4th respondent herein had also opted to go from Krishnagiri District to Nagapattinam District in the place of the petitioner. Both the petitioner and the 4th respondent submitted their application to the 1st respondent through proper channel requesting for mutual transfer.

4. The District Collector, Nagapattinam, the 3rd respondent, vide its proceedings dated 11.02.2014, recommended to the 1st respondent to accede to the request of the petitioner and so was the 2nd respondent, Krishnagiri Collector vide its proceedings dated 05.03.2013, recommended transfer of the 4th respondent to Nagapattinam District. Consequent upon the recommendation from the respective District Collectors, the 1st respondent passed an order on 25.02.2014, ordering mutual transfer of the petitioner and the 4th respondent to the respective district, namely, Krishnagiri and Nagapattinam.

5. According to the petitioner, he had accepted the terms and conditions as contained in the proceedings dated 25.02.2014 and so also the 4th respondent. In pursuance of the mutual transfer, the petitioner joined as Assistant in the office of the District Rural Development Unit, Krishnagiri on 09.06.2014 and the 4th respondent joined as Assistant in the office of the District Rural Unit, Nagapattinam, on 09.06.2014. After joining



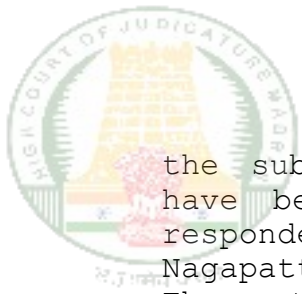
at Nagapattinam District, the 4th respondent was placed in the seniority list in Serial No.47. According to the petitioner, while assigning the seniority list to the 4th respondent, it was made clear that the same was fixed in terms of Rule 20(b) of the Tamil Nadu Ministerial Service Rules.

6. The grievance of the petitioner herein is that while granting seniority to the 4th respondent in Nagapattinam District, a proper seniority ought to have been assigned to the petitioner herein also when he joined at Krishnagiri District on the basis of his original date of joining in the department on 19.12.2012. According to the petitioner, he was placed below the 5th respondent, who joined as Assistant only on 04.03.2013 as against the petitioner date of joining on 19.12.2012. The petitioner therefore, moved the authority by submitting a representation for proper assignment of seniority. However, in response to his representation dated 13.03.2017, by proceedings dated 05.05.2018, the seniority of the petitioner was affirmed and eventually, he has been placed at Serial No. 52. The impugned seniority position assigned to the petitioner was arbitrary, contrary to the rule position and also contrary to the terms and conditions of the mutual transfer. Hence, the petitioner is before this Court, challenging the proceedings of the authority dated 04.05.2019.

7. Mr.S.Vijayakumar, the learned counsel for the petitioner, at the outset would straight away draw the attention of this Court to the rule position governing the assignment of seniority in the matters of mutual transfers. This Court's specific attention has been drawn to Rule 20(b)(i), which is extracted hereunder.

(i) that the senior among the Assistants/ Junior Assistants mutually transferred (on the basis of the date of their first appointment to the service) be given the same rank in the departmental unit to which he is transferred, which was held by the person in whose place he comes to that departmental unit and the junior of them takes his rank in the administrative unit of the departmental unit to which he is transferred with reference to the date of his first appointment in the service; and

8. According to the learned counsel, a simple reading of the above would go to show that the petitioner ought to have been granted seniority rank in departmental unit to which he was transferred which was held by the person in whose place, he comes to the department unit. According to the learned counsel, the 4th respondent is an appointee of the year 2012 in Krishnagiri District and the 5th respondent was an appointee of



the subsequent year 2013. Therefore, the petitioner ought to have been ranked above the 5th respondent, whereas the 4th respondent has been assigned proper seniority list in Nagapattinam District on the basis of his date of appointment. The action of the authorities in assigning the seniority is contrary to the provisions of law and therefore, the impugned order is liable to be rejected.

9. Mr.L.S.M.Hasan Fizal, the learned Additional Government Pleader appeared on behalf of the respondents and a counter affidavit has been filed. It is admitted in the counter affidavit that the petitioner's transfer was effected as per Rule 20(b) of the Tamil Nadu Ministerial Service Rules. It is also admitted that the seniority has also been fixed in terms of the said Rule. It is further admitted that the date of original joining in the department by the petitioner was 19.12.2012. However, there appears to be some lack of clarification in respect of assigning of seniority to the 5th respondent. This Court is unable to fathom out as to what prompted the authority concerned to fix the seniority of the petitioner, below the 5th respondent, which is not properly explained either by the petitioner's counsel or by the respondent. However, the following is stated in the counter.

13. It is submitted that the seniority of Assistants was confirmed as per the proceedings of the Krishnagiri District Collector in RC.No.K2/107/2017, dated 04.05.2018 affirming Petitioner's seniority at 52, reiterating the orders of the second respondent rejecting the appeal of the petitioner in regard to seniority of Assistants.

14. It is submitted that seniority of all the respondents have been fixed in accordance with the rule of reservation as enacted in section 40(1) of the TN Govt. Servants (Conditions of Service) Act 2016 and as such, the petitioner's contention has no merits.

15. It is submitted with regard to petitioner's contention in para 13 to 16 and the grounds - 1 to 7 that in accordance with Rule 35(a) (a) of TN State & Subordinate Services the date of seniority of the fifth respondent was considered as on 15.12.2012, which is the date her junior G.Kuralvani, Assistant at seniority No.48 actually joined in the service.

And complied with the rule of reservation as per section 40(1) of the TN Govt Servants (Conditions of Service) Act 2016, seniority of fifth respondent has rightly been fixed at 28.



14. For the above reason, the impugned order dated Na.Ka.No.K2/107/2017 dated 04.05.2018 is hereby set aside and



the matter is remitted back to the authority concerned for fresh consideration and passing of the reasoned order.

15. The petitioner is also at liberty to make a fresh representation highlighting the rule provision which supports his claim and in case, he proposes to give representation, the same shall be done within a period of two weeks from the date of receipt of a copy of this order.

16. On receipt of any fresh representation from the petitioner, the competent authority is directed to pass appropriate speaking order with reference to particular Rule 20 (b) (i) of the Tamil Nadu Ministerial Service Rules and read with in any other relevant provisions, within a period of four weeks thereafter.

17. In case, the claim of the petitioner is to be allowed in terms of the rule provision as applicable, the same shall be allowed and such order to be passed by the competent authority in any event whatsoever, in compliance of the above directions, a copy of the same shall be communicated to the petitioner forthwith. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vsi

To

1. The Director,
Rural Development and
Panchayat Raj Department,
Panagal Building, Saidapet, Chennai - 15
2. The District Collector,
Development Section,
Collectorate, Krishnagiri.
3. The District Collector,
Development Section,
Collectorate, Nagapattinam District.

+1cc to Mr.S.Vijayakumar, Advocate, S.R.No.11848

+1cc to the Government Pleader, S.R.No.12772

W.P.No.27367 of 2019

MT(CO)

CT 15/03/2022