



W.A(MD)Nos.133 and 134 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 14.12.2022

CORAM

**THE HON'BLE DR JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR JUSTICE SUNDER MOHAN**

**W.A.(MD)Nos.133 and 134 of 2009
and
M.P(MD)Nos.1 and 1 of 2009**

- 1.A.Syed Sulaiman
Deputy Block Development Officer,
Panchayat Union, Thoothukudi,
Thoothukudi District. .. Appellant/Petitioner in A.S(MD)No.
133 of 2009
- 2.V.Babu,
Deputy Block Development Officer,
Panchayat Union, Tiruchendur,
Thoothukudi District.
- 3.S.Fadhu Mohamed Naseer,
Deputy Block Development Officer,
Panchayat Union, Srivaikuntam,
Thoothukudi District. .. Appellants/Petitioners in A.S(MD)
No.134 of 2009
- Vs.**
- 1.The District Collector,
Thoothukudi District,
Thoothukudi.



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2.S.Ayyamperumal
Block Development Officer
(Village Panchayat)
Kayathar,
Thoothukudi District.

3.S.Alangaram
Block Development Officer,
Kayathar

4.Saroja Devi,
Block Development Officer
(Village Panchayat)
Karungulam,
Thoothukudi Distirct.

5.M.Appana Sundaram,
Block Development Officer
(Village Panchayat)
Ottapidaram,
Thoothukudi District.

6.Getzi Leema Amalini,
Superintendent /Deputy Block Development Officer,
District Rural Development Agency,
Thoothukudi.

7.P.Vijayalakshmi,
Deputy Block Development Officer,
Collectorate (Development Section)
Thoothukudi.

8.A.N.S.Mary,
Deputy Block Development Officer,
(Project Office-DPAP)
Thoothukudi.



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9.C.Somasundaram,

Deputy Block Development Officer (Accounts)

District Rural Development Agency,

Thoothukudi.

.. Respondent/Respondents

Appeals filed under Clause 15 of the Letters Patent, praying this Court, to set aside the order dated 19.06.2008 passed in W.P(MD)Nos.6346 and 3927 of 2005 on the file of this Court.

For Appellants :Mr.S.R.Rajagopal
in both appeals Senior Counsel

For R1 in :Mr.D.Sasikumar,
both appeals Additional Government Pleader

For R6 :Mr.P.Muthuvel
in both appeals for M/s.Isaac Chamber

For R7 in both :Mr.T.Lajapathiroy
appeals

For R2 to R5, : No appearance
R8 & R9 in both appeals

COMMON JUDGMENT

DR. G.JAYACHANDRAN,J.

AND

SUNDER MOHAN,J.

On 31.11.2003, the District Collector, Thoothukudi District, passed the proceedings on the appeal preferred by one Iyyamperumal and 12 others



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seeking re-fixation of seniority in the Senior Grade Extension Officer. The District Collector, taking note of the date of appointment and the date of declaration of probation and their subsequent promotion to the post of Junior Assistant, had fixed the respondents 2 to 9 senior to the writ petitioners, hence, one Syed Sulaiman, Selvaraj and Babu along with Fadhu Mohammed Naseer had filed the writ petitions in W.P(MD)Nos.6346, 6220 and 3927 of 2005.

2.The fixation of seniority came to be challenged in the aforesaid writ petitions on the ground that these petitioners are entitled to be included in the panel of the the year 1988. The petitioners were appointed as Junior Assistant in the year 1987 and on the same proceedings, the respondents 2 to 9 were also recruited. While so, their service has been overlooked and not been included in the year of 1988 list and as the consequence, the subsequent promotion of these contesting parties to the post of Assistant and Extension Officer is being delayed. Now, they are all serving in the cadre of Block Development Officer, since the delay in fixing of seniority has caused cascading effect in their carrier, the same has to be revisited.



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3.The private respondents contested their claim on the ground that though the writ petitioners were recruited in the same year and claimed parity with the other private respondents, in fact, the date of appointment as Junior Assistant even according to their own admission, is subsequent to some of the private respondents. Further, their promotion was not declared till 1989, since they did not clear the departmental examinations. The private respondents, who have cleared the departmental examinations, were considered to be included in the panel drawn in the year 1988, whereas, the petitioners, who have not cleared the departmental examinations and cleared the departmental examinations later, were included in the panel of the year 1989. As a consequence, further promotion to the posts of Assistant and Extension Officer was also being given effect to according to the seniority. While so, after lapse of more than 20 years, these writ petitions been filed to refix the seniority, which is barred by limitation prescribed under the Rule 35 of the Tamil Nadu Subordinate Service Rules.

4.The learned Single Judge considered the rival contentions and after perusing the records, has passed the following order:



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“9.It is an admitted fact that the petitioners were appointed in Thoothukudi District in the year 1987 and the private respondents were appointed between 1985 and 1988 as shown above in the tabular column. It is also an admitted fact that initially, the petitioners' names were not included in the panel drawn in the year 1989 and the private respondents' names have been included in the panel drawn by proceedings dated 28.12.1989, 06.01.1989 and 16.02.1989 for promotion to the post of Assistant. As far as these panels are concerned, they are prepared for promotion to the post of Assistants for the year 1988. Even as per the order dated 09.06.2001 also, i.e, the modified order, the petitioners' names were directed to be included only in the panel of the year 1989. In other words, as per this order also, the petitioners' names were included only in the panel of 1989, whereas, the private respondents' names were included in the panel of 1988. Consequently, the private respondents who were included in the previous year panel have to be treated as seniors to the petitioners who were included in the subsequent panel.

10. Apart from this, the petitioners claim the relief only basing on the order dated 09.06.2001 passed by the District Collector, Thoothukudi and as far as this order is concerned, it has been passed for the inclusion of the petitioners' names in the 1989 panel after the lapse of 11 years. As far as fixation of seniority and inclusion in the panel is concerned, Rules 35 and



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36 of the State and Subordinate Service Rules governs the field. As per the said Rules, if the petitioners had any grievance with regard to either seniority or non-inclusion, they should have made representations within a period of three years. But, admittedly, as per the order dated 09.06.2001, some petitioners have made such a representation in the year 2001 only, which is admittedly a belated representation and even as per that order also, the petitioners' names were included in 1989 panel. When it is not disputed that the private respondents' names were included in the 1988 panel, the petitioners cannot claim seniority over the respondents. That as far as the argument of the learned counsel for the petitioners that on the date of promotion of the private respondents, they were not qualified since they have not passed the departmental tests is concerned, if the petitioners had any grievance that they should have been promoted prior to the private respondents, they should have challenged that order at the relevant point of time. Without challenging the same in time, after the lapse of 11 years, the petitioners cannot claim seniority over the private respondents. Apart from this, even in the representation made before the authorities concerned, challenge was not to the promotion given to the private respondents by inducting their names in the 1988 panel. As per the impugned orders, the claim of the petitioners is rejected on the ground that from the post of Assistant, Extension officer and Deputy Block Development



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officer, the private respondents were promoted earlier than the petitioners. When this is not disputed, in my opinion, the petitioners are not entitled for the relief sought for in these petitions.”

5.This order is now impugned in these writ appeals filed by two of the petitioners viz., V.Babu and S.Fadhu Mohammed Naseer in W.P(MD)No. 3927 of 2005 and one of the petitioner viz., A.Syed Sulaiman in W.P(MD)No.6346 of 2005.

6.The learned counsel appearing for the appellants submitted that re-fixing the seniority, is not barred by limitation or hit by Rule 35 of the Tamil Nadu Subordinate Service Rules. The learned Single Judge has failed to see that the respondents were transferred to Thoothukudi District from other Districts on the request foregoing their seniority in the parent District and joined Thoothukudi District subsequent to the appointment of the appellant. Therefore, the original date of appointment in the other Districts ought not to have been taken note to fix the seniority.



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7.This Court, on considering the rival pleas and examination of the records, finds that the appellants, A.Syed Sulaiman, V.Babu and S.Fadhu Mohammed Naseer, joined as Junior Assistant and their probation got declared, after completion of two years service, ie., in the year 1989. Whereas, the probation of the respondents was declared much prior to that of the appellants, more specifically, the respondents' probation was declared before 1988 and the probation of the appellants was declared in the year 1989. This crucial difference has determined the eligibility of the appellants to be considered for the next promotional post ie., Assistant, later than the private respondents.

8.Having accepted the promotion of the respondents as Assistant and thereafter, as Extension Officer, representation to refix the seniority is being made only in the year 2001. As pointed out by the learned Single Judge under Rule 35 of the Tamil Nadu Subordinate Service Rules, request for re-fixation of seniority or any grievance regarding the drawing of panel ought to have been made within three years. The appellants have miserably failed to do so. Furthermore, the impugned order, dated 19.06.2008 has clearly tabulated the date of joining service, date of declaration of promotion, date



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of promotion to the subsequent higher post for each of the candidates and the order of the District Collector, dated 03.11.2003, which is self-explanatory.

9. Therefore, this Court finds that the learned Single Judge has rightly considered the facts of the case and considered the right law and declined to grant the relief sought for in the writ petition. This Court, on re-appreciation of the facts and law, reiterate the findings of the learned Single Judge, confirms the order and dismiss the writ appeals as devoid of merits. No costs. Consequently, connected miscellaneous petitions are closed.

(G.J.,J.) (S.M.,J.)
14.12.2022

Index: Yes/No
Internet: Yes/No
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