



W.P.(MD) No.6561 of 2020

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.07.2022

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD) No.6561 of 2020
and W.M.P.(MD).No.5910 of 2020

C.Balakrishnan

... Petitioner

Vs.

1.The State of Tamil Nadu

represented by its Secretary to Government,
Higher Education Department,
Fort St. George,
Chennai – 600 009.

2.The Director of Collegiate Education,

Office of the Director of Collegiate Education,
Nungambakkam,
Chennai – 600 006.

3.The Regional Joint Director of Collegiate Education,

Bridge Station Road,
Sellur, Madurai – 625 002.

4.The Principal,

Government Women's Arts College,
Sivagangai.

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India to
issue a Writ of Certiorarified Mandamus, to call for the records relating to the

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order passed by the respondent No.2 herein in his proceedings Na.Ka.No. 42236/B3/2019, dated 15.5.2020, quash the same and to consequently direct the respondents herein to refix the petitioner's seniority in the post of Junior Assistant with effect from 20.02.2006 and to consequently promote the petitioner to the post of Assistant with effect from 08.10.2009 and to the post of Superintendent with effect from 04.03.2016, the dates on which the petitioner immediate junior was promoted as Assistant and Superintendent and consequently to direct the respondents to pay all consequential monetary and attendant benefits within the stipulated time that may be fixed by this Court,

For Petitioner : Mr.D.Sivaraman

For Respondents : Mr.A.Kannan
Additional Government Pleader

ORDER

Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

2.The petitioner's claim for promotion on par with his junior to the post of Assistant and Superintendent, by reckoning his service from the post of



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Driver onwards came to be rejected by the respondents through the impugned order, dated 15.05.2020, wherein, the respondents have placed reliance upon Section 40(2) of the Tamil Nadu Government Servants (Service Conditions) Act, 2016.

3.The petitioner was originally appointed as Sweeper on 29.12.1997. Thereafter, he was promoted to the post of Driver on 20.02.2006. On 05.03.2014, he was appointed as Junior Assistant by transfer, since the post of Driver and Junior Assistant carried the identical scale of pay. On completion of ten years of service commencing from 20.02.2006, when he was promoted to the post of Driver, he was awarded Selection Grade in the post of Junior Assistant through the proceedings of the second respondent, dated 29.03.2016. Thereafter, the petitioner's request to refix the seniority for the purpose of consequential promotions was not considered by the respondents, which necessitated the petitioner to file a writ petition before this Court in W.P. (MD).No.23774 of 2019 and by an order, dated 20.11.2019, this Court had held that since the second respondent had counted the services of the petitioner as a Driver while granting Selection Grade in the post of Junior



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Assistant, his claim for re-fixation of seniority requires to be considered by taking such service in post of transfer also. The relevant portion of the order reads as follows:

“5.The contention of the learned counsel appearing for the petitioner that the second respondent taking into consideration the service of the petitioner as Driver from 20.02.2006, which is equivalent to the post of Junior Assistant, granted selection grade to the petitioner on completion of 10 years of service rendered in both posts of Driver and Junior Assistant. Once the second respondent has taken the services of petitioner as Driver for granting selection grade in the post of Junior Assistant, his seniority in the post of Junior Assistant must be fixed taking into account the date of promotion of Driver as 20.02.2006. The said contention has considerable force. In view of the fact that the second respondent has granted selection grade to the petitioner in the year 2016 itself taking into consideration the service of the petitioner as Driver from 02.02.2006 (20.02.2006), the second respondent is directed to consider the claim of the petitioner for refixing the seniority taking into consideration the selection grade given to the petitioner, by proceedings dated 28.03.2016 and pass orders within a period of eight weeks from the date of receipt of a copy of this order.”



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4.The aforesaid extract is a mandatory direction to the respondents to consider the petitioner's service as a Driver and also for the purpose of fixation of seniority. However, per contra to such directions, the respondents have relied upon Section 40(2) of the Act, which deals with the General Rule with regard to the normal method of recruitment, for the purpose of fixation of seniority.

5.The relevant Rule for the purpose of fixation of seniority of a person, who has been transferred, is under Section 40(3) of the Act, which reads as follows:

“40(3)The transfer of a person from one class or category of a service to another class or category carrying the same scale of pay or pay band 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 provision, seniority shall be determined by the appointing authority.”



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6.A reading of the aforesaid provision reveals that when an employee is transferred from one class to another in the same scale of pay, it cannot be treated it as a first appointment. In the petitioner's case, he was originally appointed to the post of Sweeper and subsequently promoted to the post of Driver on 20.02.2006. He was thereafter, transferred to the post of Junior Assistant, since the post of Driver and Junior Assistant carried identical scale of pay. When such a transfer is made between two classes of persons, the seniority of the transferred person requires to be determined with reference to the rank from which he was transferred, in accordance with the Section 40(3) of the Act, as extracted above.

7.This apart, when the petitioner was granted with Selection Grade, the service in the post of Driver was also reckoned. This aspect was taken note of by this Court in its earlier order passed in W.P.(MD).No.23774 of 2019 and had directed the respondents to refix the petitioner's seniority by taking into consideration the proceedings, dated 28.03.2016, whereby, he was granted Selection Grade. In view of such direction, the respondents ought to have



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WEB CRY taken the petitioner's service in the post of Driver with effect from 20.02.2006 onwards and thereby, re-fix the seniority. Reference to Section 40(2) of the Act has no applicability to the case of the petitioner. In the light of the above observations and findings, the impugned order cannot be sustained and consequently, the petitioner would be entitled for re-fixation of the salary in accordance with the proceedings, whereby, he was granted Selection Grade.

8.At this juncture, the learned counsel for the petitioner submitted that his immediate junior namely one P.Thavamani was awarded with promotions to the post of Assistant and Superintendent, overlooking the petitioner's candidature. As such, the petitioner herein would also be entitled for promotion to such posts, on par with his immediate junior.

9.In the light of the above findings, the impugned order passed by the second respondent herein in his proceedings Na.Ka.No.42236/B3/2019, dated 15.05.2020 is hereby quashed. Consequently, there shall be a direction to the second respondent herein to pass appropriate orders re-fixing the petitioner's seniority in the post of Junior Assistant from the date 20.02.2006 i.e., from the



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date of appointment in the post of Driver and consequently, granting notional promotion to the post of Assistant and Superintendent from the date on which his immediate junior was promoted, together with all service and monetary benefits. Such orders shall be passed atleast, within a period of six weeks from the date of receipt of a copy of this order.

10.This writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

27.07.2022

Index : Yes / No
Speaking Order/ Non Speaking Order

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To

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M.S.RAMESH,J.

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