



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.02.2022**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**

W.P.(MD)No.2436 of 2018

W.M.P(MD).No.2631 of 2018

C.Iyyamperumal

...Petitioner

/Vs./

1.The Registrar,
Manonmaniam Sundaranar University,
Tirunelveli-627 012.

2.P.Joseph Basker,
Superintendent,
Directorate of Distance & Continuing Education,
Manonmaniam Sundaranar University,
Tirunelveli-627 012.

3.P.Jeyakumari,
Superintendent, Finance Bill Section,
Manonmaniam Sundaranar University,
Tirunelveli-627 012.

4.V.Sangaramahalingam, Superintendent,
Directorate of Distance & Continuing Education,
Tirunelveli-627 012.

...Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records connected with the impugned order of promotion of fourth respondent as Superintendent passed by the first respondent in Memo No.MSU/R/Estt/Admn/E1/CV/2017 dated 07.12.2017 and quash the same and consequently direct the first respondent to prepare and release the Seniority List and Panel of Assistants for promotion to the post of Superintendent in terms of Rule 35(aa) of the Tamil Nadu State and Subordinate Service Rules and to promote the petitioner as Superintendent, the date on which the petitioner junior got promoted.

For Petitioner
For Respondents

: Mr.S.Govindan
: Mr.Mahabaoob Athiff
for M/s.Ajmal Associates
for R1
Ms.D.Geetha for RR2 to 4

**ORDER**

Heard Mr.S.Govindan, learned counsel for petitioner, Mr.Mahaboob Athiff, learned counsel for R1 and Ms.D.Geetha, learned counsel for R2 to 4.

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2. This Writ Petition has a checkered history and the brief facts that would be relevant to decide the present challenge to Memo dated 07.12.2017 issued by R1, are encapsulated in the paragraphs below.

3. The petitioner had been appointed as a Tabulator on temporary basis on 11.05.1993. A group of Tabulators, appointed more or less at the same time, approached this Court in a batch of writ petitions seeking regularization as well as the fixation of inter se seniority. The writ petitions came to be disposed by this Court on 21.12.2001.

4. In sum and substance, this Court required the Syndicate of the University to finalise and publish a seniority list, first in draft form such that objections may be received from the Tabulators and thereafter, after due consideration, in final form.

5. The Syndicate met and resolved in their meeting on 11.12.2001 as follows:-

*MINUTES OF THE MEETING OF THE CONVENERS COMMITTEE
HELD ON 11.12.2001 TO TAKE A DECISION OF THE TABULATORS
ISSUE:*

*PREAMBLE: The Manonmaniam Sundaranar University is carved out of Madurai Kamaraj University during September 1990. The High Level Committee consisting of the Vice Chancellors of Madurai Kamaraj University and Manonmaniam Sundaranar University had agreed to deploy 132 staff from Madurai Kamaraj University. But only 57 had been deployed on various dates. In order to attend the day to day work, Tabulators were appointed through Employment Exchange. In order to take a final decision on the issue a meeting was convened and
RESOLVED THAT:*

The Tabulators will be absorbed as and when Budgetary vacancies arise and such absorption will be on the basis the seniority list.

Prepared by taking into account the date of first entry in the University as Tabulators

(ii) Relaxation in age restriction will be given to the extent of service in the University.



(iii) This is subject to fulfilment of qualification prescribed in the Statute of this University.

(Sd/xx xx xx)

Registrar,

Manonmaniam Sundaranar University, Abishekapatti,
Tirunelveli 627012.

6. Thereafter, the draft list was circulated to the Court and assumed a final form on 20.11.2002. The ranking of the private respondents in the seniority list formulated on 20.11.2002 is at serial Nos.1, 2 and 3, whereas, the petitioner, who has admittedly not been subject to the same procedure for recruitment, was arrayed as serial No.22.

7. Though the petitioner admittedly entered into service of R1 in 1993 and R2 to R4 have joined service only thereafter, it appears that the private respondents were preferred in seniority over the petitioner for the reason that the former had been sponsored by the employment exchange, and had written the required written tests and had been successful, therein which procedure the petitioner has, admittedly, not followed.

8. Admittedly, the seniority list prepared on 20.11.2002 has become final and the petitioner has acquiesced to the same. One assumes that, since the draft list was circulated prior to finalization, any objection that the petitioner or other candidates might have had in regard to the fixation of seniority would have been raised and allayed at that point in time and duly taken note of.

9. The question of revisiting the seniority at this distance of time therefore, does not arise. It is based upon the seniority fixed on 20.11.2002, that the employees, including the petitioner have moved through the organization, having been the beneficiaries of promotions at various points in time, on 19.09.2008 to the post of Junior Assistant and on 11.02.2010 as, Assistant.

10. In both the aforesaid instances of promotion, the private respondents continued to be placed higher in rank to that of the petitioner and notably, no dispute was raised at that point of time. Though the petitioner had, on 12.07.2010, as an isolated and stray instance, sought fixation of seniority in a proper manner and in line with Tamil Nadu State and Sub-ordinate Service Rules and applicable Syndicate resolutions, this representation was never pursued.

11. Pending writ petition, the petitioner has superannuated on 30.04.2020. The challenge in this writ petition is to an order issued in the case of R4 promoting him as Superintendent, the petitioner averring that he should have been preferred for the said promotion.



12. As stated by me earlier, I believe that it is wholly inappropriate for the Court to entertain a challenge to seniority that has been fixed and implemented over a span of two decades. As rightly pointed out by the respondents, the petitioner as well as private respondents have moved through the ranks based upon the seniority fixed in 2002.

13. The submission of learned counsel for petitioner to the effect that an error committed by the respondents may be questioned by an employee at any time during his service has very limited application and militates against the settled proposition that a litigant must be prompt in approaching Court for redressal of grievances.

14. The petitioner would rely up on a decision of a learned Single Judge of this Court in W.P.No.8063 of 2001 (order dated 05.11.2009) wherein that petitioner has challenged the fixation of seniority of 27 private respondents employed in R1 University.

15. He specifically draws attention to the observations of this Court approving the report of the One Man commission fixing seniority on the basis of date of joining of the candidate and where, in case several candidates joined entry on the same day, the date of birth should be taken to fix seniority.

16. There is no quarrel with this principle, that however, has no relevance to the present case where my decision turns entirely on the anvil of acquiescence by the petitioner and laches on his part. Accepting the claim of the petitioner at this distance in time will unsettle the hierarchy fixed and followed over two decades. This Writ Petition is thus dismissed on this ground, this Court being of the view that the challenge of the petitioner is significantly belated.

17. The judgment of the Hon'ble Supreme Court in the case of *Shiba Shankar Mohapatra & Others vs. State of Orissa and others*, (2010(12) SCC 471) is relevant in this regard, and paragraph No.30 thereof is extracted below:

30. The Tribunal ought to have dismissed the case of Parsuram Sahu (supra) only on the ground of delay and the laches, as the applicant approached the Tribunal at the verge of his retirement and after getting two promotions while the other parties have got three promotions. In the said case, the private respondents have not considered it proper to contest the case because both of them were likely to superannuate just thereafter on attaining the age of retirement. Undoubtedly, the said judgment and order has not been challenged by anybody and it attained finality but that remained the judgment in personem. More so, there is nothing on record to show as to whether the said applicant Parsuram Sahu could ever get any relief from the State Government. The O.A. filed by Shri Sudhir Chandra Ray, had similar facts as



in Pursuram Sahu's case. While deciding the said application the Tribunal itself had taken note of the facts that promotions had been made 8-9 years ago prior to issuance of the combined gradation list in 1999. It is evident from the impugned judgment that Shri Sudhir Chandra Ray joined as SI(g) on 4.1.1973. He was promoted to the rank of Inspector with effect from 12.3.1991. We are of the considered opinion that the said application ought to have been rejected by the Tribunal only on the ground of delay and laches. The High Court has also not dealt with this issue, however, it goes to the root of the cause. Such an inordinate delay cannot be ignored particularly when the issue of delay has been pressed in service before this Court.

18. Incidentally, only the order passed in the case of R4 has been challenged now, whereas R2 and R3 are also beneficiaries of identical orders which the petitioner has for reasons best known to him, not chosen to challenge though dutifully arraying them as respondents.

19. Miscellaneous petition is closed with no order as to costs.

Sd/-

Assistant Registrar(AS)

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/ /2022

Sub Assistant Registrar(CS)

ssb

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+1 CC to M/s.R.DIWAKARAN, Advocate (SR-3760[F] dated 02/02/2022)

Order made in
W.P.(MD)No.2436 of 2018
Dated: 02.02.2022

sb (CO)

TR(14.02.2022) 5P 2C