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Writ Petition No.1448 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.07.2023

PRONOUNCED ON : 31.07.2023

Coram:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Writ Petition No.1448 of 2012
and M.P.No.1 of 2014

Adhiyaman

.... Petitioner

Vs.

1. The Transport Commissioner,
Chepauk, Chennai – 5.

2. The Secretary to Government,
Home (Transport) Department,
Fort St. George,
Chennai – 9.

3. The Principal Secretary to Government,
Personnel & Adm. Reforms Department,
Fort St. George,
Chennai – 9.

.... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in connection with the impugned order passed by the 1st respondent in letter R.No.24212/R2/2011 dated 18.4.11 and quash the same and further direct the respondents to consider the claim of the petitioner for promotion as Assistant in the Transport Dept. by taking into consideration the service rendered by him as Typist in the Police Dept. from 14.11.2006 to 19.08.2009 and grant him promotion with all consequential service and monetary benefits.

<https://www.mhcservices.in>



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WEB COPY

For Petitioner: : Mr.K.Venkatramani, Sr. Counsel
for Mr.M.Muthappan

For Respondents : Mr.K.H.Ravikumar
Government Advocate.

ORDER

The petitioner filed the writ petition for a Writ of Certiorarified Mandamus to set aside the order dated 18.04.2011 made by the 1st respondent Transport Corporation and to further direct the respondents to give him promotion by taking into consideration the past service rendered by him as a Typist in the police department from 14.11.2006 to 19.08.2009 and to grant all consequential service and monetary benefits.

2. The service matrix of the petitioner that are necessary for determination of this case is that the petitioner entered the services as Typist through selection conducted by Tamil Nadu Public Service Commission in the year 2005 and on selection, he was allotted to police department and appointed as Typist in District Police Office, Dharmapuri by an order dated 17.12.2006 and joined the service on the same day and probation was declared on 10.12.2006.



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3. According to the petitioner, he has obtained permission from the Superintendent, Dharmapuri and again appeared for TNPSC Examination in the year 2008 for Group-IV for the post of Typist and has come out successful and he was allotted to Transport Department by the proceedings of the Public Service Commission in Memo No.4321/TSDA/2007 dated 10.07.2009. The petitioner was issued with an appointment order by the Regional Transport Officer, Gobichettypalayam in his order No.Na.Ka.25495/C2/2009 dated 05.08.2009 and the petitioner was relieved from the office of the District Police, Dharmapuri as Typist on 25.08.2009 afternoon and the petitioner reported for duty as Typist in the office of the Regional Transport Officer, Gobichettypalayam on 26.08.2009 FN without any break. Thereafter, the petitioner has also completed the departmental tests as required.

4. The grievance of the petitioner is that the 1st respondent with whom the petitioner has joined subsequently as a second post has fixed the scale of pay as Typist as fresh entrant in the scale of pay Rs.5200-20200 + Gr. Pay of Rs.2000. The petitioner's further grievance is that he has not been granted any pay protection, besides, the previous service rendered in the same category in the Police department, Dharmapuri, has not been taken into consideration and



Writ Petition No.1448 of 2012

hence, he made a representation to count the service rendered by him in the police department as stated supra. Such a representation was rejected and hence, the writ petition.

5. The contesting respondent filed the counter and the sum and substance of the counter is that the petitioner has not produced any certificate wherein permission was granted by his earlier Head of Department viz., the Police Department for appearance in the examination and what was produced by him is only a 'no objection', for relieving him and hence relied upon Rule 23(b) of the Tamil Nadu State and Subordinate Service Rules.

6. It is further stated in the counter that the petitioner has not joined the transport department by transfer of service and hence, it is mandatory for the petitioner to undergo the probation period in the transport department.

7. On factual ground, the petitioner has admitted the fact that he has resigned the job in police department and joined transport department. No prior permission was obtained by the petitioner and furthermore, the petitioner is not appointed by transfer of service.



Writ Petition No.1448 of 2012

WEB COPY

8. From the counter, I find that the petitioner was selected by the TNPSC to the direct recruitment of the post of Typist in the Tamil Nadu Ministerial Services by way of declaring the results for these Group-IV Services examination for 2006-2007 held on 27.01.2008 and allotted to the first respondent department that is Transport Department. The petitioner has joined as Typist on 26.08.2009 in the first respondent department as per the proceedings of Regional Transport Officer, Gobichettipalayam.

9. It remains to be stated that under provisions of Tamil Nadu Ministerial Services, the date of commencement of probation shall be the date of joining into the service. The petitioner has joined as Typist on 26.08.2009, hence his date of probation commence on 26.08.2009 and completed on 26.08.2011. The petitioner has joined the 1st respondent department on 05.08.2009 only and hence his seniority runs from that date only in the 1st respondent i.e. Transport department. The petitioner on his own willing appeared for the examination conducted by the TNPSC and joined the 1st respondent department and it was not transfer of service.

10. On perusal of Rule 23(b) of the Tamil Nadu State and

<https://www.mhca.org.in/portal/index.php> Subordinate Service Rules, it clearly specifies that a probationer in a service or



Writ Petition No.1448 of 2012

WEB COPY

a class or category of service shall be eligible to count for probation, his service, if any, performed otherwise than in a substantive capacity on regular appointment, to another service in accordance with the rules, if the normal method of recruitment to the later services, according to the rules by transfer from the former service or class thereof as the case may be. The petitioner was not recruited to the 1st respondent department by transfer from the former service (i.e.) from Police Department. He joined after selection by TNPSC. Hence, the contentions of the petitioner are denied.

11. On the above factual background, the learned Government Advocate has stated that the services rendered by the petitioner in the department namely Police Department can only be considered for the purpose of pension and that has been already taken into account for the purpose of pensionary benefits in the department of Transport Department and relied on Rule 23 (b) of the Tamil Nadu State and Subordinate Service Rules.

12. In the additional typed set of papers, 'No Objection Certificate' issued by the police department has been enclosed by the petitioner. On perusal of the same, I find that the 'No Objection Certificate' dated 24.11.2008 issued by the Superintendent of Police, Dharmapuri District, was to attend certificate



Writ Petition No.1448 of 2012

verification in the office of the TNPSC, Chennai and on the very same date, 24.11.2008, the particulars of the person and the post occupied by him were also been stated and the no objection was issued to the extent that he has no objection for considering the candidature and no punishment or disciplinary proceedings are pending against the said person. Hence, I find that the contention of the learned Government Advocate that on the facts and circumstances, Rule 23(b) of the Tamilnadu State and Subordinate Service Rules, shall come into operation, is upheld.

13. The relieving order has been issued permitting the petitioner to relieve from the police department so as to accept the new appointment. It is also represented by the learned Government Advocate that the services rendered in that previous department viz., police department, were already taken into account for the purpose of pensionary benefits under Section 23(b) of Tamil Nadu State and Subordinate Service Rules. Thus, I do not find any merit in this case and accordingly, the writ petition is dismissed. No Costs. Consequently, the connected Miscellaneous Petition is closed.

Index : Yes/No
Speaking order / Non-speaking order
Neutral Citation: Yes/No.

31.07.2023



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Writ Petition No.1448 of 2012

RMT.TEEKAA RAMAN,J

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To

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Fort St. George, Chennai – 9.
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Pre-delivery order in
Writ Petition No.1448 of 2012

31.07.2023