



W.P.No.15246 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2023

CORAM

THE HONOURABLE MR.JUSTICE **D.KRISHNAKUMAR**  
and

THE HONOURABLE MR.JUSTICE **P.DHANABAL**

**W.P.No.15246 of 2009**  
**and M.P. No.1 of 2009**

1.Union of India rep. By  
Secretary to Government,  
Ministry of Finance,  
Department of Revenue,  
North Block, New Delhi – 110 001.

2.The Central Board of Direct Taxes  
rep. By its Chairman,  
North Block, New Delhi – 110 001.

3.The Chief Commissioner of Income Tax,  
Chennai – 34.

.. Petitioners

Vs

1.R.Muralidharan  
2.T.V.Swarna Kumar  
3.J.Kirubakaran  
4.R.Rajalakshmi  
5.N.Sivaraman  
6.R.Parameswaran  
7.V.Palanivel  
8.V.S.S.Chari  
9.V.Uma  
10.D.Arumugam



W.P.No.15246 of 2009

11.The Central Administrative Tribunal  
rep. By its Registrar,  
City Civil Court Building,  
High Court Complex,  
Chennai – 104.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari to call for the proceedings of the 11<sup>th</sup> respondent Tribunal in O.A. No.359 of 2007 dated 07.05.2009 and quash the same.

|                 |   |                                                                                            |
|-----------------|---|--------------------------------------------------------------------------------------------|
| For Petitioners | : | Mr.V.Vijay Shankar                                                                         |
| For Respondents | : | R1 - Tribunal<br>R4 and 7 to 9 – given up<br>R1, R2, R3, R5, R6 and R10<br>- No appearance |

### ORDER

[Order of the Court was made by **D.KRISHNAKUMAR, J.,**]

Challenging the order of the 11<sup>th</sup> respondent Tribunal dated 07.05.2009 made in O.A.No.359 of 2007, respondents 1 to 3 therein filed the present writ petition.

2. The brief facts of the case are that respondents 1 to 3 herein were appointed initially as Data Entry Operators in the Income Tax Department and they were re-designated as Group B Data Entry Operators in the year 1988 and their next avenue of promotion is to



*W.P.No.15246 of 2009*

the post of Programme Assistant/Console Operator, which is governed by the Recruitment Rules of the year 1990. As per the Recruitment Rules, Data Entry Operators with ten years of service are eligible for promotion to the post of Programme Assistant/Console Operator. Between 1989 and 1994, several persons were appointed as Programme Assistant/Console Operator and continued to work as such even after departmental candidates became eligible for promotion.

2.1 Respondents 1 and 3 and similarly placed departmental candidates filed O.A.No.932 of 2003 before the Tribunal seeking a direction to promote them to the post of Programme Assistant/Console Operator. Though the petitioners herein took a stand that the applicants in O.A.No.932 of 2003 are not eligible for promotion as per new Recruitment Rules, which came into force in 1995, the Tribunal, vide order dated 30.04.2004 held that 1995 Rules having been not notified yet, they are eligible to be considered for promotion in terms of 1990 Recruitment Rules. The said order was challenged before this Court in W.P.No.25260 of 2004 and the same was dismissed vide order dated 09.09.2004. The special leave petition filed against the order of this Court was also dismissed and thereafter,



*W.P.No.15246 of 2009*

the Tribunal has granted time till 31.10.2005 for implementing the order dated 30.04.2004.

2.2 Pursuant to the above, the petitioners issued orders dated 27.02.2006 and 17.08.2006 absorbing deputationists who were promoted as Programme Assistant/Console Operator and respondents 4 to 10. Contending that the said orders are illegal and contrary to the Recruitment Rules as well as the order of the Tribunal in O.A.No.932 of 2003 and for a direction to promote them to the post of Programme Assistant/Console Operator with effect from the date they became eligible and for other benefits, respondents 1 to 3 filed O.A.No.359 of 2007 before the Tribunal.

2.3 Reply statements have been filed by both official respondents and private respondents stating that there is provision for appointment by transfer on deputation and at the time of appointment of deputationists, there were no eligible departmental candidates available for promotion. It was further stated that two departmental candidates were given promotion and others could not be promoted for want of vacancies. However, respondents 1 to 3 filed rejoinder stating



*W.P.No.15246 of 2009*

that respondents 4 to 10 were only deemed to have been appointed in the post of Data Processing Assistant Grade A on regular basis and that does not amount to an order of absorption in the post of Programme Assistant/Console Operator and the amendment to Recruitment Rules can have only prospective effect.

2.4 Upon perusal of materials available on record, the Tribunal directed to consider the case of respondents 1 to 3 for promotion to the post of Programme Assistant/Console Operator as per the old Recruitment Rules within a period of two months from the date of receipt of a copy of the order. Aggrieved by the same, petitioners are before this Court.

3. Heard Mr.V.Vijay Shankar, learned standing counsel for petitioners. Despite service of notice and names of the respondents having been printed in the cause list, there is no representation for the respondents.

4. Learned standing counsel for the petitioners brought to the notice of this Court relying upon the additional reply statement filed by



*W.P.No.15246 of 2009*

them before the Tribunal stating that there was no vacancy according to them prior to the rules that have been framed in the year 2008. The post of Programme Assistant/Console Operator is not in existence in the Income Tax Department as the said posts have been re-designated as Data Processing Assistant Grade A and Grade B. As new rules had been framed with effect from 04.04.2008, respondents 1 to 3 are not eligible for consideration for the promotion to the post of Programme Assistant/Console Operator. According to the petitioners, based on the aforesaid new Rules, respondents 4 to 10 had been promoted and they have taken charge of the said posts respectively. But the additional reply statement filed by the petitioners was not considered in the order passed by the Tribunal. Learned standing counsel for the petitioners submits that the Tribunal, without taking into consideration the eligibility of respondents 1 to 3 in terms of revised Rules, directed the petitioners to consider respondents 1 to 3 for promotion to the post of Programme Assistant/Console Operator.

5. As rightly submitted by the learned standing counsel for the petitioners, when respondents 1 to 3 are not even eligible for promotion to the post of Programme Assistant/Console Operator as



W.P.No.15246 of 2009

per new Recruitment Rules, without challenging the said Rules, respondents 1 to 3 cannot make a request for promotion to the post of Programme Assistant/Console Operator. This aspect was not taken note of by the Tribunal. Therefore, we have no hesitation to set aside the order of the Tribunal on this ground.

6. In view of the above, the order dated 07.05.2009 in O.A. No.359 of 2007 is set aside and the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

**(D.K.K.,J.) (P.D.B.,J.)**  
08.11.2023

Index : Yes/No  
Neutral Citation : Yes/No  
mmi

To

The Registrar,  
Central Administrative Tribunal,  
City Civil Court Building,  
High Court Complex, Chennai – 104.

Chennai – 104.



WEB COPY



*W.P.No.15246 of 2009*

**D.KRISHNAKUMAR, J.,  
and  
P.DHANABAL, J.,**

mmi

W.P.No.15246 of 2009

08.11.2023

Page Nos.8/8