



W.P.No.2449



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2023

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.No.24496 of 2008
and M.P.No.2 of 2008

1.K.Jayaraman
Superintendent,
Government Primary Health Centre,
D.Thurungipady – 635 702,
Dharmapuri District.

2.S.Udhaya Kumar
Superintendent,
Government Primary Health Centre,
Kallamangalam,
Krishnagiri District.
...Petitioners

vs.

1.Government of Tamil Nadu rep by
Secretary to Government,
Health and Family Welfare Dept.,
Fort St.George,
Chennai – 600 009.

2.The Director of Public Health and
Preventive Medicine,
Chennai – 600 006.

3.P.Dinamani
Superintendent,
O/o. Deputy Director of Health Services,
Vellore – 9.



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4.V.Thangamani
Superintendent,
O/o. Deputy Director of Public Health
and Preventive Medicine,
Chennai – 600 006.

5.T.Mahalingam
Superintendent,
Government Primary Health Centre,
Aalangayam,
Tiruvannamalai District.

6.G.Gnanasekar,
Superintendent,
Government Primary Health Centre,
Olakkur,
Tindivanam Taluk,
Villupuram District.

7.Rasheed Ahamed,
Superintendent,
O/o.Director of Public Health and
Preventive Medicine,
Chennai – 600 006.

...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 orders passed in (1) Government letter (D) No.950, Health and Family Welfare Department dated 15.09.2006 of the first respondent and (2) Pro.R.No.134346/E4/2001/S2 dated 07.01.2007 of the second respondent (3) R.No.134346/EN/S2/2001 dated 27.08.2008 and (4) R.No.7153/E4/2007/S12 dated 04.09.2008 of the second respondent, in so far as it relates to the petitioner



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seniority of the petitioners in the Post of Junior Assistant fixed already with reference to G.O.Ms.No.951, P & A.R Department dated 14.09.1984 and the consequential seniority in the posts of Assistant and Superintendent already fixed with all consequential benefits.

For Petitioners : Ms.Apporva
for Mr.M.Ravi

For Respondents : Mr.S.Ravichandran for R1 & R2
Additional Government Pleader
R3 to R6 – served – no appearance
R7 – no appearance

ORDER

The Writ Petition has been filed challenging the proceedings of the respondents 1 & 2 in fixation of the seniority and to consequently direct the respondents to restore the seniority of the petitioners in the post of Junior Assistant fixed already with reference to G.O.Ms.No.951, Personnel and Administrative Reforms Department dated 14.09.1984 and the consequential seniority in the post of Assistant & Superintendent already fixed with all consequential benefits.

2.Heard Ms.Apporva, learned counsel appearing for Mr.M.Ravi, counsel on record for the petitioner and Mr.S.Ravichandran, learned Additional Government Pleader appearing for the respondents 1 & 2.



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3.The petitioners in this Writ Petition were appointed as Junior Assistants under the compassionate appointment on 17.12.1984 & 27.03.1985 respectively. Thereafter, they were promoted as Assistants on 27.12.1993 & 08.01.1994 and to the post of Superintendents on 17.12.1999 and 01.12.1999 respectively.

4.Learned counsel appearing for the petitioners would submit that the respondents 3 to 7 herein were all originally appointed as 10(a)(i) appointees and their services were regularized under G.O.Ms.No.548, Personnel and Administrative Reforms (Per.J) Department dated 19.06.1987. She would submit that the Government had issued a G.O.Ms.No.951, Personnel and Administrative Reforms Department dated 14.09.1984 as to how the seniority would have to be fixed in respect of the persons who have been appointed through the compassionate appointment. According to her, the said Government Order provided that the seniority should be fixed taking into account the date of joining of the appointees who were appointed through the Tamil Nadu Public Service Commission and fixed the seniority of the persons appointed under the compassionate appointment on the date when they joined duty. That would mean that the persons appointed under the compassionate appointment would have to be placed in the seniority list as per their date of joining along with the candidates appointed through the Tamil Nadu Public Service Commission and they should not be placed below the persons appointed during that year.



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5. She would further submit that such decision was taken, taking into consideration the fact that the appointment of the petitioners under the compassionate appointment was also made only with the concurrence of the Tamil Nadu Public Service Commission. While so, the first respondent had issued a Government Letter (D).No.950, Health and Family Welfare Department dated 15.09.2006 directing fixation of seniority in the following order:

“(a) Candidates recruited through Tamil Nadu Public Service Commission Examination during 1983 and joined duty as Junior Assistant irrespective of the date of joining.

(b) All candidates appointed if any, prior to 25.6.84 under Special Rules and on compassionate grounds etc. with reference to the date of their appointment.

(c) All Employment Exchange candidates whose services were regularized with effect from 25.6.84 under Special Absorption rules.

(d) Junior Assistants appointed under Special rules and on compassionate grounds etc. who have joined duty on or after 25.6.84 by fixing their inter-se seniority with reference to actual date of regularization of service among the Junior Assistants recruited through Tamil Nadu Public Service Commission in the respective year.”



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6. Thereafter, the second respondent by proceedings dated 07.01.2007 based upon the order extracted supra, issued a Communication to place 44 individuals listed in the annexure to the said letter for refixing their seniority as per the clarification issued by the first respondent. The said Communication was challenged by the petitioners along with two other persons in W.P.Nos.1911 to 1914 of 2007. However, considering the fact that the second respondent in his Communication dated 07.01.2007 had only proposed to refix the seniority and had called for representations in regard to any of the discrepancy of the seniority fixed without adverting to the merits of the case and had directed the petitioners to submit their representations/objections to the respondents 1 & 2 and on receipt of such objections had directed the respondents to pass appropriate orders. Thereafter, the petitioners had submitted their detailed objections both to the first and second respondents. She would submit that their requests were rejected simplicitor on the ground that the same could not be feasible in view of the revised norms fixed by the Government for fixation of seniority by a further order dated 04.09.2008. In view of rejection of the claim of the petitioners, an order of reversion came to be passed reverting the petitioners from the post of Superintendents to the post of Assistants and a deemed order of promotion was also given subsequently as Superintendents from a future date. Being aggrieved against those orders, the petitioners had approached this Court.



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7.Learned counsel appearing for the petitioners would vehemently contend that the seniority of the petitioners were originally fixed as per the Government Order in G.O.Ms.No.951, Personnel and Administrative Reforms Department dated 14.09.1984 and they were rightly placed. Only after the regularization of 10(a)(i) appointees under G.O.Ms.No.548, Personnel and Administrative Reforms Department dated 19.06.1987, the petitioners were sought to be brought down in their seniority that too after nearly two decades. She would submit that by the action of the respondents, the petitioners have already been vested with a right of seniority over the private respondents and disturbing such rights by the orders of re-fixing their seniority below the persons whose services were regularized after their date of appointments, severely affects such vested rights.

8.She would submit that the last impugned order would be more explicit as the petitioners have been sought to be reverted from the post of Superintendents to the post of Assistants and even though both of them had been promoted in the year 1999 in view of the revised seniority had sought to be given a deemed promotion only with effect from 13.09.2007. She would further rely upon a judgment of the Division Bench of this Court in the case of ***H.Nagarajan and Ors. vs. The State of Tamil Nadu dated 03.04.2006***, contend that the persons like the petitioners should be placed in the inter-se seniority rank



according to the date of the initial appointment and above the candidates who were absorbed by the Government under the said special rules of absorption.

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9.Countering her arguments, Mr.S.Ravichandran, learned Additional Government Pleader appearing for the respondents 1 & 2 would submit that the petitioners were appointed in December 1984 and March 1985 respectively. He would submit that various persons were working with the Department as being appointed under the provisions of 10(a)(i) of the General Rules and these persons were sought to be regularized on and from 25.06.1984 and the seniority for the date of regularizing the services from 25.06.1984 was that the ban order on making temporary appointments was issued on that date. Therefore, to protect the interest of those persons who were already in employment on temporary basis under Rule 10(a)(i) were all sought to be brought into regular appointment as a one time measure.

10.He would submit that since the services of such 10(a)(i) appointments was made on 25.06.1984 i.e. much prior to the date of appointment of these petitioners, the claim of the petitioners should not be entertained and the clarification of the first respondent dated 27.06.2006 is perfectly in order and therefore, the same need not be interfered with. He would further submit that in view of the correctness of the order passed by the first respondent, all the other



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orders which have been passed by the second respondent are consequential orders to the order passed by the first respondent and therefore, he would submit that there is no infirmity in the order impugned in this Writ Petition and would seek this Court to dismiss the Writ Petition.

11.I have considered the rival submission made by the respective counsel appearing on either side and perused the materials available on record.

12.The *lis* before me to be decided is with regard to the fixation of seniority between the petitioners and the private respondents who were admittedly 10(a)(i) appointees prior to the date of appointment of the petitioners as it is evident from the record. It would be ideal to analyze the present facts of the case on the orders passed by the Government in respect of appointments that had been made to the Department.

<i>S.No.</i>	<i>Dates</i>	<i>Detail</i>
1	25.06.1984	The Government had issued a ban of temporary appointments of candidates under 10(a)(i) through the Employment Exchange
2	22.09.1984	The Government had issued an order to regularize the services of the temporary personnel as Junior Assistant, Typist & Steno-Typist in the Tamil Nadu Ministerial Services/Tamil Nadu Judicial Ministerial Services and Typist and Steno-Typist in the Tamil Nadu Secretariat Services who were in service as on 25.06.1984 to be



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S.No.	Dates	Detail
		regularized with effect from 25.06.1984.
3	19.06.1987	Under G.O.Ms.No.548 Personnel and Administrative Reforms (Per.J) Department dated 19.06.1987, the Government had framed rules governing the service conditions of persons who were regularized as per G.O.Ms.No.996, Personnel and Administrative Reforms (Placements) Department dated 22.09.1984.
4	17.10.1997	The Joint Director of Public Health & Preventive Medicine had issued a proceeding fixing the seniority in respect of the candidates appointed through TNPSC, the candidates regularized under G.O.Ms.No.996, Personnel and Administrative Reforms (Placements) Department dated 22.09.1984 and the compassionate appointees.
5	15.09.2006	The first respondent issued an order as to how the seniority should be arrived at. It is pertinent to note that various proceedings had been initiated before this Court as regards to the fixation of seniority among TNPSC candidates, 10 (a)(i) appointees and the compassionate appointees, which was decided by the Division Bench on 03.04.2006
6	07.01.2007	Abiding by the instructions, the second respondent sought to fix a seniority and called for representations.
7	22.04.2008	Challenged to the aforesaid two orders in Sl.Nos.5 & 6. This Court finds that the rights of the petitioners could be agitated by making adequate objections to the second respondent had directed the petitioners to submit their representations. The petitioners submitted their objections.



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S.No.	Dates	Detail
8	27.08.2006	The second respondent rejected the request of the petitioners
9	04.09.2008	The second respondent passed an order of deemed reversion and deemed promotion by which the petitioners originally promoted as Superintendent was modified from the year 1999 to 13.09.2007.

13.From the dates tabulated above, the main contention of the learned counsel appearing for the petitioner that the services of 10(a)(i) appointees were regularized in the year 1987 would have to fall for the simple reason that the Government had regularized their services as early as on 22.09.1984 with effect from 25.06.1984, on which date the Government issued ban of temporary appointments which was issued in the year 1987 under G.O.Ms.No.548, Personnel Administrative Reforms (Per.J) Department dated 19.06.1987 was only the rules governing the service conditions.

14.When that be so, the Government order regularizing the services of 10(a)(i) appointees were issued on 22.09.1984 much prior to the date of appointment of the petitioners, as it is admitted by the petitioners that they have been appointed on 17.12.1984 and 27.03.1985 respectively. The contention of the petitioners is that even though 10(a)(i) appointees were appointed earlier, their services have been regularized only in the year 1987 after their date of



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appointment and therefore, they should be placed above them. The said contention is a factual fallacy and therefore at the out set itself it has to be rejected. 10(a)(i) appointees were regularized even prior to the date of their appointments, the petitioners cannot seek a march over them. Even applying G.O.Ms.No.951, Personnel and Administrative Reforms Department dated 14.09.1984, they are rightly to be placed in the seniority list from the date of their appointment even among the TNPSC candidates.

15.In the present case, 10(a)(i) appointees were appointed earlier but have been regularized with effect from 25.06.1984 by G.O.Ms.No.996, Personnel and Administrative Reforms (Placements) Department dated 22.09.1984. Even assuming G.O.Ms.No.951, Personnel and Administrative Reforms Department dated 14.09.1984 is applicable to the petitioners since all 10(a)(i) appointees have been with effect from 25.06.1984 that too by order dated 22.09.1984 and the appointment of the petitioners subsequent to such regularization, they would have to be necessarily placed below the 10(a)(i) appointees who were regularized by G.O.Ms.No.996, Personnel and Administrative Reforms (Placements) Department dated 22.09.1984.

16.I am also fortified by a judgment of the Division Bench of this Court

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relied upon by the learned counsel for the petitioners to that effect. In such view of the matter, I find no infirmity in the orders passed by the respondents that had been impugned in this Writ Petition. But, however, the monetary benefits that had been accrued to the petitioners ought not to be disturbed. There shall be no order of recovery pursuant to the order of deemed reversion and deemed promotion to the post of Superintendent from a subsequent date. There shall also be a direction that the petitioners shall continue to receive the salary that they have been receiving prior to 04.09.2008 and continue all other attendant benefits except for their claim for promotion. The promotion, if any, to the higher post from the feeder category of Superintendent would only be claimed by the petitioners as if they have been promoted on 13.09.2007.

17. With the aforesaid observations, the Writ Petition is dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

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Index: Yes/No
Speaking order: Yes/No
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K.KUMARESH BABU, J.

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To

- 1.The Secretary to Government,
Health and Family Welfare Dept.,
Fort St.George,
Chennai – 600 009.
- 2.The Director of Public Health and
Preventive Medicine,
Chennai – 600 006.

W.P.No.24496 of 2008