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W.P.No.23041 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2023

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THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.23041 of 2015

and

M.P.No.2 of 2015 and W.M.P.No.3167 of 2016

M.Jayamala

... Petitioner

-Vs-

1. The Secretary,
Legislative Assembly Secretariat,
Chennai-600 009.

2. The Secretary,
Agriculture Department,
Government of Tamil Nadu,
Chennai-600 009.

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the first respondent in his Letter No.2091/2015 SaMaPeSe (ANaBi-1) dated 20.05.2015 and quash the same and direct the first respondent to treat the promotion to Assistant Section Officer Grade of Steno Typist on 11.07.2005 of the petitioner as promotion to the Post of Assistant Section Officer and count the service from the said date as qualifying service in the Post of Assistant Section Officer for the purpose of Seniority and for further promotion to the next higher Grade i.e. Section Officer in Legislative Assembly Service.



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For Petitioner : Mr.Arvinth Viveks.P.A
for M/s M.Srividhya

For Respondents : Mr.V.Veluchamy
Additional Government Pleader

ORDER

This Writ Petition has been filed challenging the order the first respondent in his Letter No.2091/2015 SaMaPeSe (ANaBi-1) dated 20.05.2015, thereby denying the promotion as per her seniority.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials available on record.

3. The petitioner was earlier appointed as Steno-typist in the Agriculture Department namely the second respondent on 16.02.1987. After 15 years, she had applied for transfer to the first respondent department and she was appointed as Steno-Typist in the first respondent department on 29.07.2002. In the second respondent department, she was neither promoted as Steno-typist Grade II or Steno-Typist Grade I as per G.O.Ms.No.284 dated 19.08.1992 nor she was considered for promotion to the grade of Assistant, before the Steno-Typists were debarred from promotion to the post of Assistant. In fact, after her transfer to the first respondent, she was not granted any promotion. In this



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regard, this Court already issued directions to the Government to decide to provide promotional avenues in Supervisory cadre for Steno-Typists Grade II and Steno-Typists Grade I, who worked as such during the period from 01.08.1992 to 21.02.2001. Accordingly, the Government issued an order dated 18.05.2007, whereby Steno-Typist Grade II and Grade I were given the option to consider for promotion to the supervisory grade against 5% of vacancies available in the supervisory grade or to continue in the grade of Steno-Typist. The petitioner was not promoted either as Steno-Typist Grade II or Grade I in the second respondent department. She was not even considered for transfer to the ministerial post of Assistant either in the second respondent department or in the first respondent department. Even after the lifting of the ban for promotion to the grade of Assistant from the post of Steno-Typist, she was not asked to exercise any option as required by the Government in its order dated 05.08.2000. She was finally promoted and appointed as Assistant Section Officer Grade Steno-Typist with effect from 11.07.2005. However, the first respondent did not treat this as a promotion to the grade of Assistant Section Officer.

4. Ultimately, almost seven years after she was promoted to the



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Assistant Section Officer grade of Steno-Typist, she was actually promoted to the grade of Assistant Section Officer by an order dated 26.03.2012. Therefore, the petitioner made a representation to the first respondent to treat as if she had been promoted as Assistant Section Officer from 11.07.2005. When she was issued with an order of promotion as Assistant Section Officer grade Steno-typist, number of persons who had joined service as Attenders, directly appointed by the first respondent who got accelerated promotion as typists for the reason that they possessed 10th, +2 and degree qualification by way of special dispensation and finally she could get actual promotion as Assistant Section Officer on 26.03.2012.

5. Admittedly, there is an anomaly in the petitioner's case. However, the first respondent stated that the said anomaly is due to the fact that the post of Steno Typist is not a feeder grade to the post of Assistant. Whereas, all others whose cases she had referred in her representation as having got faster promotion than the petitioner. Therefore, the seniority of the petitioner in the grade of Assistant Section Officer is liable to be accounted for her next promotion.

6. In M.P.No.2 of 2015, this Court passed an order of interim stay on



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29.07.2015, thereby directed the respondents to count the service of the petitioner in the post of Assistant Section Officer from 11.07.2005 for promotion to the post of Section Officer, while pending disposal of this writ petition.

7. The first respondent filed counter and revealed that the Steno-Typists of the Tamil Nadu Legislative Assembly Secretariat have multi-level promotional opportunities as Personal Assistants and then as Private Secretary. In some cases, Private Secretary to Secretary had also been upgraded to that of Under Secretary cadre. Therefore, the petitioner is not liable for any promotion since she was appointed as Steno-Typist in the second respondent department. There is no provision in the Tamil Nadu Legislative Assembly Secretariat Service Rules to transfer the Steno-Typist to the post of Assistant. The ratio prescribed in the Tamil Nadu Legislative Assembly Secretariat for promotion to the post of Assistant Section Officer is 4:1. The petitioner was transferred from the second respondent department to the first respondent department on 29.07.2002 and subsequently, she was promoted as Assistant Section Officer Grade Steno-Typist on 11.07.2005. As per the adhoc rules for the said post, it shall constitute a distinct category in the Legislative Assembly Secretariat service. Therefore, she cannot be treated as Assistant Section Officer.



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WEB COP 8. The person holding the post of Assistant Section Officer Grade Steno-Typist has been treated as Steno-Typist on other duty as Assistant Section Officer Grade Steno-Typist and it is not a feeder category to any other post. Therefore, the seniority would be the same as in the post of Steno-Typist and they will be promoted as Assistant Section Officer only as per the ratio of 4:1 in the respective turn along with other Steno-Typists. In order to provide promotional opportunities to 13 persons, including the petitioner, who were officiating as Steno-typist and who could not be promoted due to prescription of ratio of 4:1 and as per certain conditions for degree qualification as per G.O.(Ms).No.107 Personal Administrative Reforms (M) Department dated 18.08.2009, Appendix-II read with rule 6 of the Tamil Nadu Legislative Assembly Secretariat Service Rules was relaxed in the year 2012 and they were promoted as Assistant Section Officer. Therefore, the post of Steno-typist is not a feeder category to the post of Assistant since the pay of Steno-typist is higher than that of Assistant.

9. Admittedly, there is an anomaly in the belated promotion of the petitioner and it has to be corrected. Further there is an anomaly in the constitution and having been given promotion to other employees in relaxation



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of the rules with the approval of the Governor with effect from 16.03.2012

could have taken the same steps, when the petitioner was promoted as Assistant Section Officer Grade Steno-Typist on 11.07.2005.

10. It is seen from Rule 47 of Tamil Nadu Legislative Assembly Secretariat Service Rules, the Power of Governor is that notwithstanding anything contained in these rules, the Governor shall have power to deal with the case of any person in such a manner as may appear to him to be just and equitable. The Rule 20 speaks about the seniority. Accordingly, the seniority of a member of the service or class or category shall, unless he has been reduced to a lower rank as a punishment be determined by the date of his first appointment to the service, class or category. The Juniors to the petitioner were regularized in service in the category of Assistant Section Officer by an order dated 14.12.2007, the similarly placed person as like the petitioner who was also transferred from different departments to the Legislative Assembly Secretariat as Steno-typist and thereafter she was promoted as Assistant Section Officer. However, the petitioner was regularized in the post of Assistant Section Officer with effect from 26.03.2012.

11. Therefore, the impugned order cannot be sustained and is liable to be



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quashed. Accordingly, the order passed by the first respondent in his Letter

No.2091/2015 SaMaPeSe (ANaBi-1) dated 20.05.2015 is hereby set aside.

12. Now, the petitioner had attained superannuation as early as on 30.06.2023. The first respondent is directed to treat the petitioner's promotion to the post of Assistant Section Officer Grade of Steno-typist and count her service as qualifying service to the post of Assistant Section Officer for the purpose of seniority and for further promotion to the next higher post. Since she had retired from service, she is entitled for monetary benefits in accordance with her promotion.

13. In the result, this writ petition stands allowed. Consequently, connected Miscellaneous petitions are closed. There shall be no order as to costs.

05.07.2023

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

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To

1. The Secretary,
Legislative Assembly Secretariat,
Chennai-600 009.
2. The Secretary,
Agriculture Department,
Government of Tamil Nadu,
Chennai-600 009.



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G.K.ILANTHIRAIYAN, J.

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