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W.P.No.27399 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.03.2023

CORAM :

THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

W.P.No.27399 of 2013

1. R.Sridhar

2. V.Sankaravelayuthem

3. S.Umaya Parvathy

4. R.Subramanian

..Petitioners

Vs

1. The Secretary to Government,
Home Department,
Fort St.George,
Chennai - 9.

2. The Director General of Police,
Mylapore,
Chennai - 4.

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondents to re-fix the seniority of the petitioners in the cadre of Assistant, based on the combined



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inter-se-seniority list in the cadre of Junior Assistant/ Typist/Steno-typist as per Rule 35(a) of the Tamil Nadu State and Subordinate Service Rules and consequently promote the petitioners to the post of Assistant and Superintendent retrospectively with effect from the date on which their juniors in the combined seniority list were promoted with all monetary and consequential service benefits within a stipulated period.

For Petitioners	: Mr.R.Prem Narayan
For Respondents	: Mr.U.M.Ravichandran Special Government Pleader

ORDER

This Writ Petition has been filed to issue a Writ of Mandamus to direct the respondents to re-fix the seniority of the petitioners in the cadre of Assistant, based on the combined inter-se-seniority list in the cadre of Junior Assistant/ Typist/Steno-typist as per Rule 35(a) of the Tamil Nadu State and Subordinate Service Rules and consequently promote the petitioners to the post of Assistant and Superintendent retrospectively with effect from the date on which their juniors in the combined seniority list were promoted



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with all monetary and consequential service benefits within a stipulated period.

2. The brief facts of the case of the petitioners are as follows:

i) The petitioners were initially recruited to the post of Steno-typists through Tamil nadu Public Service Commision under Rule 10(a)(1) of the Tamil Nadu State & Subordinate Service Rules and their services were also regularised. The recruitment by TNPSC was conducted commonly for the post of Junior Assistant/ Steno-typists/ Typists and the posts belong to Group IV category. A combined seniority was being maintained for the above 3 cadres and all the cadres are eligible for promotion to the post of Assistants and Superintendents in accordance with inter-se-seniority list amongst these 3 cadres and these petitioners were waiting for promotion as they are fully qualified for promotion.

ii) During the year 1992, the Government imposed a ban for promotion to the post of Assistant from the category of Steno-typist in G.O.Ms.No.417 Personnel and Administrative Reforms Department dated



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01.12.1993 and G.O.Ms.No.256 Personnel and Administrative Reforms (Per.B) Department dated 01.08.1992. Accordingly, the steno- typists were deprived of their promotion to the post of Assistant, but their counter parts from the common category namely Junior Assistants/ Typists were going on getting promotions to the post of Assistants and Superintendent. More specifically most juniors to the petitioners in the inter-se-seniority were promoted as Assistants and Superintendents and they are made to work under their juniors.

iii) Aggrieved by the action of the Government in closing the promotional avenues for the category of steno-typists, 'Surukkezhuthalargal Sangam' filed O.A.No.1705 of 1996 . Subsequently, after the closure of the Tribunal, the case was transferred to this Court and renumbered as W.P.No.6550 of 2006 and the said W.P. was disposed of on 04.11.2006 with a direction to the respondents to have a fresh look at the issue of providing promotional avenue for stenographers in the light of the observations stated therein.

iv) As per G.O.Ms.No.121 the petitioners are entitled for promotion to



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the post of Assistant and Superintendent based on their original seniority in the combined cadre of Steno-typist which was based on their initial appointment. The Government issued clarification in proceedings dated 22.08.2003 stating that prior to 01.08.1992, the combined seniority list of the Tamil Nadu Public Service Commission may be maintained and appointment of eligible Steno-typist Grade-III as Assistant by transfer and seniority of such persons may be fixed as per Rule 35(a) of General Rules for the Tamil Nadu State & Subordinate Service Rules. The petitioners made representations and the respondents did not pass any orders so far. Hence, the present writ petition.

3. Heard the learned counsel for the petitioners and the learned Special Government Pleader appearing for the respondents.

4. i) Learned counsel for the petitioner would submit that based on G.O.Ms.No.34 and clarification issued by the Government in its letter dated 22.08.2003, number of departments have restored the seniority of Steno-



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typist based on their initial appointment in the combined category as per Rule 35(a) of the Tamil Nadu State and Subordinate Service Rules and those persons are now working as Assistants and Deputy Thasildars. The only claim of the petitioners is that their original seniority in the combined category to be taken into account for appointment to the post of Assistant and Superintendent because the ban period of 1992 to 2001 should not have any adverse implication on the service conditions of the petitioners.

ii) Learned counsel would further submit that similar issue was dealt with by this Court in W.P.(MD).No.7417 & 7418 of 2005 and this court passed an order on 22.11.2006, directing the authorities to give retrospective promotion with monetary benefits and accordingly, those persons were promoted as Superintendents. When the benefit of seniority was extended to the similarly placed persons in the other Departments, the same cannot be denied to the petitioners and the action of the respondents are arbitrary and discriminatory. The petitioners had submitted several representations to the respondents and no final order has been passed. Contrarily, the respondents orally informed that clarifications are sought for from the Government.



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Subsequently, though the Personnel and Administrative Reforms Department has unambiguously clarified that the Tamil Nadu Public Service Commission combined the seniority prior to 1992 to be fixed for eligible Steno-typist Grade-III as Assistants, there is no reason whatsoever to deny the benefit of seniority to the petitioners as per Rule 35(a) of the Tamil Nadu State and Subordinate Service Rules. When the juniors to the petitioners and similarly placed persons were given the benefit of seniority, the action of the respondent in not extending the benefit to the petitioners as per the above clarification is in violation of Articles 14 and 16 of the Constitution of India.

iii) Learned counsel would further submit that recently, this Court in W.P.Nos.14282, 14287/2008 & 11467/2009, passed final orders on 07.12.2009, directing the respondents to pass necessary orders in the light of the clarification issued on 22.08.2003. The Government, based on the above order, issued G.O.Ms.No.356, Home (Police-V) Department dated 07.04.2010, restoring the combined seniority list and place those petitioners and accordingly, granted the benefit of revision of seniority. Hence, the learned counsel would pray to allow the writ petition.



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5. i) Per contra, the learned Special Government Pleader appearing for the respondents would submit that initially Junior Assistant, Typist and Steno-typist were the feeder categories for considering promotion as Assistant as per the ratio of 4:1 prescribed in G.O.(Ms)No.224 dated 08.03.1984. Subsequently, the Government, vide G.O.(Ms)No.284 Personnel and Administrative Reforms Department dated 19.08.1992, have created a separate avenue of promotion viz., Steno-typist Grade II and Steno Typist Grade-I from Steno-typist Grade III by fixing higher scales of pay as follows:

Steno-typist (Grade-I)	-Rs.1600-2660
Steno-typist (Grade-II)	-Rs.1400-2600
Steno-typist (Grade-III)	-Rs.1200-2040

ii) Learned counsel would further submit that in view of the aforesaid new category with higher scale of pay, the Government vide letter dated 23.12.1992, imposed ban on promotion of Steno-typists Grade-III as Assistants with effect from 01.08.1992. Subsequently, vide G.O.Ms.No.417 dated 01.12.1993, certain guidelines were issued that Junior Assistant and



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Typist alone should be considered for promotion as Assistant in the Tamil Nadu Ministerial Service and Steno-typist stand excluded from promotion as Assistant with effect from 01.08.1992, since Steno typists can be promoted from Grade-III to Grade-II and Grade-I. Thereafter, responding the demand raised by Service Associations, the Government issued G.O.Ms.No.34, dated 21.02.2001 and removed the ban with effect from 05.08.2000 and Steno-typists Grade III were required to exercise their option either to continue in the category of Steno typist Grade-III for further promotion in the same line, viz., Steno typist Grade-II and Steno typist Grade-I or for appointment as Assistants by method of transfer in 5% vacancy of Assistant post and also ordered that the period from 01.08.1992 to 04.08.2000 should be treated as qualifying period (i.e, 8 years). Further, in G.O.Ms.No.122 dated 02.09.2005, the Government reduced the qualifying period of 8 years as 5 years conceding the request of certain Service Associations.

iii) Learned counsel would further submit that after lifting the ban vide G.O.No.34 dated 21.02.2001, the petitioners have opted to serve as Steno- typist Grade-III. While exercising their option in writing to continue



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as Steno-typist Grade III, the petitioners are aware that the option once exercised should be the final and they are also aware of the consequences of such option. They have also assured that they will not claim any right/seniority in future on a later date and they were opted to serve as Steno-typist Grade-III continuously and get promotion as Steno typist Grade-II as and when their name will be considered and not willing to serve as Assistant by appointment by transfer. Hence, the seniority in respect of the petitioners in the cadre of Assistant, based on combined seniority list as per clarification dated 22.08.2003, cannot be fixed. They are not entitled for promotion as Assistant and Superintendent retrospectively with effect from the date on which their junior in the combined seniority were promoted. They are not eligible for promotion to Assistant and Superintendent on par with juniors in the combined list.

iv) Learned counsel would further submit that as far as the common order passed in W.P.No.14282/2008 etc. is concerned, the petitioners therein were promoted as Assistants by transfer of service as per their option, subject to outcome of SLP.No.19324 of 2009 filed before the the Hon'ble



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Supreme Court and the judgment is applicable to the petitioners who were appointed prior to 01.08.1992 as Steno-typist Grade-II and promoted as Assistant by transfer from Steno-typist Grade II. But the petitioners have opted their willingness to continue to serve as Steno-typist Grade-III and get promotion as Steno-typist Grade-II as and when their name will be considered and they were not willing to serve as Assistant by appointment by transfer. Therefore, the petitioners are not eligible for promotion to the post of Assistant and Superintendent retrospectively with effect from the date on which their juniors in the combined list were promoted. Hence, he would pray to dismiss the writ petition.

6. This Court considered the submissions made on either side and perused the materials available on record.

7. The petitioners are working as Stenographers under the control of the respondents. They have filed this writ petition to direct the respondents to re-fix the seniority of the petitioners in the cadre of Assistant, based on



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the combined inter-se-seniority list in the cadre of Junior Assistant/ Typist/Steno-typist as per Rule 35(a) of the Tamil Nadu State and Subordinate Service Rules and consequently promote the petitioners to the post of Assistant and Superintendent retrospectively with effect from the date on which their juniors in the combined seniority list were promoted with all monetary and consequential service benefits.

8. The employees in the post of Junior Assistant, Typist and Steno-typist were considered for promotion to the post of Assistant in the ratio of 4:1 i.e., 4- Junior Assistant: 1- Typist/Steno-typist as per G.O.Ms.No.224 P& AR department dated 08.03.1984. Thereafter, the Government have ordered to bring the categories of Typist and Steno-typist as two different categories and the scale of pay of Steno-typist has been revised equivalent to the post of Assistant as per G.O.Ms.No.256 P& AR Department dated 01.08.1992, based on the request from Service Association.

9. Subsequently, the Government have created a separate avenue of



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promotion for Steno-typist viz., Steno-typist Grade II and Steno-typist Grade-I from the post of Steno-typist Grade III by fixing higher scales of pay viz., Rs.1600-2660 for Steno-typist Grade-I (equivalent to Administrative Officer), Rs.1400-2600 for Steno-typist Grade-II (equivalent to the post of Superintendent) and Rs.1200-2040 for Steno-typist Grade-III(equivalent to the post of Assistant) as per G.O.Ms.No.284 P& AR Department dated 19.08.1992. In view of the creation of new category with higher scale of pay, the Government have imposed ban on promotion of Steno-typist Grade III as Assistants w.e.f. 01.08.1992.

10. Thereafter, based on the request of the Service Association, the Government, in their order in G.O.Ms.No.34, P&AR Department, dated 21.02.2001, removed the ban with effect from 05.08.2000 with a condition that the Steno-typists Grade-III were required to exercise their option either to continue in the category of steno-typist Grade III for further promotions in the same line or for appointment as Assistants by method of transfer in 5% vacancy reserved to the post of Assistant and also ordered that the period



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from 01.08.1992 to 04.08.2000 should be treated as qualifying period.

11. The petitioners have exercised their options in writing to continue as Steno-typist Grade III and also assured that they will not claim any right/seniority in future and got promotion as Steno-typist Grade II i.e., equivalent to the post of Superintendent in the Tamil Nadu Ministerial Service.

13. The petitioners have already enjoyed the benefit of higher scale of pay as Steno-typists Grade II i.e., equivalent to the post of Superintendent. Therefore, now their request to promote them to the post of Assistant and Superintendent retrospectively with effect from the date on which their juniors in the combined seniority list were promoted, cannot be considered. Therefore, this Court is of the opinion that there is no merits in the writ petition and the same is liable to be dismissed.

14. In the result, the Writ Petition stands dismissed. No costs.



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Index :Yes/No
Speaking/Non-speaking order
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J.NISHA BANU, J.

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