



WP No. 23154 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED : 29.03.2023

CORAM:

THE HONOURABLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

Writ Petition No.23154 of 2016

V.Murugesan

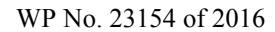
.. Petitioner

Versus

1. The Government of Tamil Nadu
Rep. by its Principal Secretary to Government
Rural Development & Panchayat Raj Department
Fort St.George,
Chennai 600 009.
2. The Director of Rural Development & Panchayat Raj
Panagal Building, Saidapet,
Chennai 600 015.
3. The District Collector (PD Section)
Erode District,
Erode.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order bearing ROC. No. 19434/2012/PA2-1 dated 11.07.2012 of the third respondent herein and quash the same in so far it relates to reckoning the seniority of the petitioner in the cadre of Junior Assistant from the date of his appointment viz., 11.07.2012 and further to direct the respondents to include the petitioner's name in the bottom of 2008-2009 list of Junior Assistant and grant consequential benefits notionally viz., retrospective promotion, re-fixation of seniority in the cadre of Junior Assistant and Assistant.



For Respondents : Mrs. Meera Arumugam,
Special Government Pleader

This Writ Petition is filed seeking for the issuance of Writ of Certiorari and Mandamus, calling for the records pertaining to the order bearing ROC.No.19434/2012/PA2-1, dated 11.07.2012 of the third respondent herein and quash the same in so far it relates to reckoning the seniority of the petitioner in the cadre of Junior Assistant from the date of his appointment viz., 11.07.2012 and further direct the respondents to include the petitioner's name in the bottom of 2008-2009 list of Junior Assistant and grant consequential benefits notionally viz., retrospective promotion, re-fixation of seniority in the cadre of Junior Assistant and Assistant.

2. The petitioner was initially appointed as Office Assistant on 10.04.1991 and posted at Sulthanpet Panchayat Union. After formation of Erode District, he was transferred and posted as Office Assistant at Perundurai from 07.04.1988. Subsequently, he was promoted as Record Clerk on 20.05.2000 and posted at Erode Block and thereafter transferred to Perundurai Block. According to the petitioner, the Special Rules governing the Rural



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Development Department viz., G.O. Ms. No. 240 Rural Development and Panchayat Raj, dated 07.09.2000 provides for reservation of 10% vacancies in the post of Junior Assistant to be appointed from the category of Record Clerk/ Office Assistant by way of appointment by transfer, which is the feeder category post for promotion to the post of Junior Assistant.. For conferment of such promotion, the employee has to possess minimum general qualification viz., SSLC pass and five years of satisfactory service in the cadre of Record Clerk/Office Assistant. According to the petitioner, he came into the zone of consideration for promotion to the post of Junior Assistant in the year 2008-2009 based on his seniority. Therefore, a proposal was sent by the third respondent containing the names of five persons, including the petitioner, for promotion to the post of Junior Assistant. After obtaining concurrence from the Tamil Nadu Public Service Commission, the first respondent, by an order dated 21.06.2012, appointed the petitioner to the post of Junior Assistant from the panel year 2008-2009. However, it was mentioned that the seniority of the petitioner has to be reckoned from the date of appointment as Junior Assistant on 21.06.2012. Accordingly, the petitioner joined the post of Junior Assistant on 11.07.2012 and posted in Perundurai Panchayat Union, Perundurai. Subsequently, the petitioner was also promoted to the post of Assistant on 15.06.2015 and posted at Gobichettipalayam Panchayat Union.



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3. The grievance of the petitioner is that his seniority in the cadre of Junior Assistant was reckoned only from 11.07.2012. Based on such seniority, he was promoted as Assistant and working as such from 27.06.2015. While so, instead of placing his name in the list of Junior Assistant for the year 2008-2009 in the bottom most place, his seniority has been fixed in the cadre of Junior Assistant based on his date of appointment as Junior Assistant. In this process, the petitioner is losing four years of service, and therefore, he has given a representation to the third respondent on 15.06.2016, requesting him to place his name in the list of Junior Assistant for the year 2008-2009 and grant him notional benefits both in the cadre of Junior Assistant as well as in the cadre of Assistant by re-fixing his seniority in the cadre of Assistant. His representation was forwarded to the third respondent on 15.06.2016 and the third respondent has issued a letter dated 11.07.2012, in ROC.No.19434/2012/PA2-1, rejecting his claim. Challenging the same, the petitioner has filed this writ petition specifically on the ground that similarly placed persons have filed W.P. Nos. 21459 and 21507/2014, seeking for notional benefits retrospectively from the date of inclusion in the panel and the same is also pending. Therefore, the petitioner has filed this writ petition challenging the order dated 11.07.2012 by which he was promoted to the post of Junior Assistant in so far as it relates to reckoning of his seniority.



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4. The third respondent filed a counter affidavit stating that on 11.07.2012 the petitioner was appointed as Junior Assistant. On 15.06.2015, the petitioner was further promoted as Assistant. His seniority in the cadre of Junior Assistant was reckoned from the date on which he was promoted as per Rule 35 (aa) of the Tamil Nadu State and Subordinate Service Rules which govern the *inter se* seniority. The petitioner was appointed as Junior Assistant on 11.07.2012, which date was rightly taken into account for the purpose of fixing his seniority. The petitioner has not been promoted as Junior Assistant in the year 2008-2009 and only his name was included in the panel drawn for that year. The petitioner was promoted actually on 11.07.2012 and therefore, reckoning of his seniority on the basis of Rule 35 (aa) is proper and prayed for dismissal of the writ petition.

5. The learned Senior counsel for the petitioner submits that the name of the petitioner was included in the panel drawn for the year 2008-2009 and it is the basis for promoting the petitioner to the post of Junior Assistant on 11.07.2012. Therefore, the seniority of the petitioner has to be reckoned from the panel year 2008-2009 but it was fixed from the date of his appointment to the post.



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6. The learned Special Government Pleader for the respondents submits that the third respondent viz., the District Collector, Erode, did not commit any error while fixing the inter-se-seniority as well as the appointment given to the petitioner. The petitioner was originally appointed as Junior Assistant on 11.07.2012 from which the date his seniority was fixed. Further, on the basis of the promotion given to the petitioner to the post of Junior Assistant, he was further promoted to the post of Assistant. The inclusion of the name of the petitioner in the panel year 2008-2009 will not be the determining factor for fixing his seniority but the date on which he was appointed to the post. Therefore, the learned Special Government Pleader would submit that the seniority of the petitioner has been rightly reckoned and he prayed for dismissal of the writ petition.

7. On going through the averments in the counter affidavit, it could be seen that the seniority of the petitioner in the cadre of Junior Assistant has been reckoned from 11.07.2012, the date on which he was appointed to the post of Junior Assistant. The grievance of the petitioner is that he was appointed to the post of Junior Assistant based on the inclusion of his name in the panel for the year 2008-2009 and therefore, his seniority has to be reckoned from that panel year. This contention of the petitioner cannot be



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countenanced for the simple reason that the panel drawn for promotion may or may not be given effect to for various reasons. The inclusion of the name of the petitioner in the panel year has nothing to do with the reckoning of his seniority upon promotion. Unless and until the name of the petitioner comes within the zone of consideration and he is promoted to the post, his seniority cannot be reckoned in the promoted post with retrospective effect from the date on which his name was included in the panel. The right of the petitioner to get this seniority reckoned will arise only from the date of his promotion and not earlier. The respondents are therefore wholly justified in reckoning the seniority of the petitioner from the date of his appointment to the post of Junior Assistant. As mentioned above, the petitioner was subsequently promoted to the post of Assistant on 27.06.2015, based on his experience in the post of Junior Assistant. In such circumstances, the relief sought for in this writ petition cannot be granted. The writ petition is devoid of any merits and it is liable to be dismissed. Accordingly, the Writ Petition stands dismissed. No costs.

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Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

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