IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2023

CORAM:

THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

W.P.No. 9971 of 2019

S. Valli ...Petitioner

Versus

1.The Principal Secretary
Commissioner of Commercial Taxes
Ezhilagam, Chepauk, Chennai-5.

2. The Joint Commissioner of Commercial Taxes
Vellore.

3. The Assistant Commissioner
Commercial Taxes (Enforcement)
Cuddalore. ...Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to consider the representation of the petitioner dated 18.01.2019 for the revision of seniority in the cadre of Assistant in the light of the order passed in WP(MD).No. 2657/2013/dated 22.11.2018 on the file of High Court, Madras at Madurai, within a reasonable time.

For Petitioner : Mr.M. Vignesh Raj

For Respondents : Mr.Hagunazhruddin
Additional Advocate General
Assisted by
Mr.M. Venkateshwaran
Special Government Pleader

ORDER

This writ petition has been filed seeking for a direction to the respondents to consider the representation of the petitioner dated 18.01.2019 for the revision of seniority in the cadre of Assistant in view of the order passed in WP.(MD).No. 2657/2013, dated 22.11.2018.

2. The grievance of the petitioner is that she was appointed as Assistant in the Commercial Taxes Department, Chepauk, Chennai-600 005, on 20.03.2013 through the Tamil Nadu Public Service Commission. At the time of joining duty, she had a baby of 8 months and she experienced difficulties to stay at Chennai, since her child was suffering from Tuberculosis and also had Primary Complex. Therefore, she submitted a representation requesting for transfer to her native place at Cuddalore District and the same was not entertained by the Department. But, the fact

remains that the petitioner being a candidate selected by the Tamil Naud Public Service Commission in a permanent post, cannot be denied regularization and accept her representation for one way transfer to Cuddalore District. Therefore, the petitioner made a representation, dated 04.12.2013 to the 2nd respondent and the same was accepted for one way transfer to Cuddalore District. But, no order has been passed, in spite of the vacancies available. Due to severity of illness of the child, the petitioner had applied for medical leave for a period of five months on loss of pay for the period from April, 2014 to August, 2014. However, she was issued a posting order by the second respondent to resume the office of the Deputy Commissioner, Commercial Taxes, Cuddalore. Ultimately, she was relieved from the office of the 1st respondent on 27.02.2015 and she reported for duty on 02.03.2015 in Cuddalore District. In the meanwhile, the 3rd respondent published *inter se* seniority list in the cadre of Assistant between directly recruited Assistants and promoted Assistants from the year 2012-2017, wherein the petitioner's seniority had been fixed in Sl.No. 37 at the bottom of the directly recruited Assistants for the year 2009-2011. In the meanwhile, the Madurai Bench of Madras High Court ordered a similar claim of an individual (Assistant) and held that the Rule 20(a) (iii) of the Tamil Nadu

Ministerial Service Rules, will not be applicable to intra-departmental transfer and W.P.(MD).No.2657 of 2013 was partly allowed by order dated 22.11.2018. The Court further held that the petitioner therein cannot be denied seniority on his transfer from Chepauk, Chennai Division to Cuddalore Division. Therefore, the petitioner sent a detailed representation, dated 19.01.2019 to the 1st respondent through proper channel, but no order has been passed by the first respondent. Hence, the petitioner has come forward with the present writ petition.

3. Counter affidavit has been filed by the 3rd respondent, wherein it has been stated that the petitioner was selected by the Tamil Nadu Public Service Commission and allotted to the Commercial Taxes Department for appointment as Assistant. She was posted as Assistant in the office of the Commissioner of Commercial Taxes, Chennai in the proceedings in Y1/36505/2012, dated 15.03.2013 and she joined as Assistant in the office on the forenoon of 20.03.2013. It is submitted that due to personal family problems, the petitioner requested one way transfer to her native District of Cuddalore and the same was not entertained, as the petitioner was a probationer at the time of request of transfer. Her request was considered

after the service of the petitioner was regularized with some conditions. It is further submitted that in her application for one way transfer to Cuddalore District, she had given her willingness to forego her seniority and transfer traveling allowance etc., Accordingly, the petitioner's seniority was fixed by the 2nd respondent, vide proceedings in Rc.B1/1662/2017, dated 20.12.2018. The petitioner joined as Assistant in the office of the Deputy Commissioner (CT), Cuddalore on 02.03.2015. Then, she was transferred from the Deputy Commissioner (CT), Cuddalore to the Assistant Commissioner (CT) (Enforcement), Cuddalore. It is further submitted that the delay in one way transfer is due to administrative grounds. It is further submitted that the Rule 20(a) (iii) of the Special Rules for Tamil Nadu Ministerial Service does not apply to the petitioner's case. It is submitted that the petitioner in her application for transfer had given her willingness to forego her seniority in the event of her transfer. Now, the petitioner has filed the present writ petition. It is also submitted that the petitioner in the affidavit has stated that the conditions were imposed for obvious reasons in order to defeat the legitimate right of the petitioner. The petitioner herself in her application for transfer had stated her willingness to forego her seniority in the event of her transfer. Now, the petitioner has approached this Court for fixing her seniority. Therefore, the respondent prays to restore the seniority list issued by the 2nd respondent vide in Rc.B1/1662/2017, dated 06.09.2018.

4. Heard the learned counsel appearing for the petitioner as well as the learned Additional Advocate General, assisted by the learned Special Government Pleader appearing for the respondents and perused the materials available on record.

5. On a perusal of the impugned order, it is seen that the petitioner was transferred to Cuddalore District from Chennai Division with the following conditions:

> (i) She shall forego her seniority consequent on the transfer, and that his seniority, shall be fixed last in the list of Assistants of Cuddalore District, in force, on the date of joining of the individual in Cuddalore District.
>
> (ii) The individual should not make any objection or representation to the fixation of seniority, as above or should not file any case.
>
> (iii) She shall forego her Transfer Travelling Allowance claim.
>
> (iv) She should work anywhere in Cuddalore Division, in which, she will be given postings.
>
> (v) After joining in Cuddalore Division, she should not make any representation for transfer to other Commercial Taxes Divisions on any account. Even if made, such representations will not be

considered.

6. According to the petitioner, she was appointed as Assistant with the first respondent, through Tamil Nadu Public Service Commission and her service was regularized. Thereafter, the petitioner made a representation before the 1st respondent to transfer her from Chennai Commercial Taxes Division to Cuddalore Commercial Taxes Division, citing personal and family reasons.

7. The petitioner was thereafter transferred to the Cuddalore Commercial Taxes Division, vide impugned proceedings No. Y1/37089/2013, dated 31.12.2014 with certain conditions that she shall forego her seniority and the petitioner shall be placed in the list of Assistants on the date of joining Chennai Commercial Taxes Division, invoking Rule 20 (a) (iii) of the Special Rules for the Tamil Nadu Ministerial Service.

8. Rule 20 of the Special Rules for the Tamil Nadu Ministerial Service which reads as follows:-

Rule 20. Transfers of probationers and approved probationers:-

(a) Notwithstanding anything contained in rules 12 to 16 and 19, a probationer or an approved probationer may, in special cases and on grounds of administrative necessity, be transferred with the mutual consent of the appointing authorities and the authorities nominated by the head of the department for the purpose of allotment of candidates where there is more than one appointing authority, in the departmental unit concerned --

(i) from one office in a departmental unit to another office in the same departmental unit;

(ii) temporarily from an office in one departmental unit to an office in another departmental unit if both the offices belong to a department in which full members are ordinarily subject to transfers from one departmental unit to another; and

(iii) permanently from an office in one departmental unit to an office in another departmental unit:

Provided that a transfer under clause (iii) shall be made only with the consent of the Commission except in the case of Gujarathi knowing Assistants of the Commercial Taxes Department.

Provided further that the consent of the Commission may be deemed to have been accorded in the cases of transfer of Probationers and Approved Probationers from one unit to another unit, necessitated consequent on the formation of new district.

9. The learned counsel for the petitioner submitted that the above Special Rules for the Tamil Nadu Ministerial Service deals with transfer of probationers and approved probationers and not to regular employees.

10. It was further submitted that Rule 20(a) (iii) of the Special Rules for the Tamil Nadu Ministerial Service referred by the first respondent, will not apply to the petitioner, as it applies only to the cases of a transfer from one Departmental Unit to another Departmental Unit, whereas the petitioner was transferred fom Chennai Division to Cuddalore Division of the same Commercial Taxes Department. In other words, it was further submitted that the Rule 20(a) (iii) will not apply for intra-departmental transfer.

11. The respondents reiterated the averments made in counter and submitted that the petitioner gave a representation dated 18.01.2019 and requested for one way transfer to Cuddalore District and also consented to forego her seniority gained in the Cuddalore Division and accepted the seniority to be fixed in Chennai Division accordingly. Therefore, the respondents pray to dismiss the above writ petition.

12. Rule 20(a)(iii) read with Rule 20(b) will apply only where there is an intra-departmental mutual transfer i.e., from one Department of the Government to another Department of the Government. The petitioner was merely transferred with the same department i.e., from Chennai Division to Cuddalore Division as a special case. In this case, the transfer does not appear to be on account of administrative reasons. It appears to be on account of special reason, viz., family situation of the petitioner. The transfer also was not on account of any mutual transfer. It was also not intra-departmental transfer. Though the petitioner consented to forego her seniority and traveling allowance, there was no legal basis for imposing the same. Hence, this Court is of the view that the denial of seniority to the petitioner was not justified, even though the petitioner had consented for

surrendering her seniority and not challenged the same earlier, as the impugned order has lasting impact on the seniority and pay of the petitioner. At the same time, the petitioner had approached the Court belatedly.

13. The learned Additional Advocate General appearing for the respondents submitted that the writ appeal in W.A.(MD) No. 615 of 2020 has been filed by the Principal Secretary, Commissioner of Commercial Taxes, Chepauk, Chennai - 600 005, and there is an order of interim stay granted on 21.08.2020, which has been extended till date. Hence, at present the petitioner's claim cannot be considered. The Respondents may consider the petitioner's claim after the disposal of the Writ Appeal pending before this Court in accordance with law.

14. With the above observations, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

17.03.2023

Speaking Order : Yes/No
Neutral Citation : Yes/No

V.BHAVANI SUBBAROYAN, J.

msm

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