IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2023

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.Nos.11687 & 11701 of 2021
and W.M.P.Nos.9797, 9800, 9808, 9811 of 2023 & 12442 to 12445, 12458 to 12460 of 2021

In W.P.No.11687 of 2021

1.B.Radhakrishnan
2.A.Mahendiran
3.T.Parameswari
4.A.Parimalam
5.P.Josephine Stella Sagaya Mary
6.D.Pushpa
7.M.Golden Sheela
8.D.Shanthi
9.S.Geetha
10.K.Vadivambal
11.V.Eswari
12.A.Bharathi
13.R.Vithyalakshmi
14.C.Rajalakshmi
15.A.Arunavathi ... Petitioners

Vs.

1.The State of Tamilnadu
Rep by the Secretary to Government,
Commercial Tax and Registration Department,
Fort St. George, Chennai 600 009.

2.The Secretary to Government,
Peronnel and Administrative Reforms Department,
Fort St. George, Chennai 600 009.

3.The Principal Secretary / Commissioner for Commercial Taxes,
Office of the Commissioner for Commercial Tax,
Ezhilagam, Chepauk, Chennai 600 005.

4.M.Saravanan
5.S.Rajasekaran
6.B.Sathis
7.D.Saravana Babu
8.R.Ranjeevi
9.M.Sumalatha
10.R.Karuppasamy
11.D.Ramya
12.N.Agila
13.K.Ramesh
14.P.Loganayagi
15.V.Arulmozhi
16.K.Kirubagaran
17.K.Durga Devi
18.R.Rekha
19.G.Divya
20.R.Pradeebha
21.T.Kuppuswamy
22.B.Muniraj
23.V.S.Boobalan
24.K.Ganeshkumar
25.C.Gowthami
26.R.Parvathi
27.T.Aadhisiva
28.K.Jeyanthimathi
29.S.Veeramanikandan

... Respondents

(Respondents 4 to 29 have been impleaded vide
order dated 28.11.2023, in W.M.P.No.31572 of 2023)

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the third respondent in his proceedings bearing No.H2/32534/2015 Circular No.9/2021 dated 28.04.2021 and quash the same.

In W.P.No.11701 of 2021

1.S.Lavagusa
2.M.Indhumathi
3.S.Selvakumari
4.B.Chidambaram
5.M.Ganapathy
6.K.Ramachandran
7.E.Kumaresan
8.M.Tamilselvi .. Petitioners

Vs.

1.The Commissioner of Commercial Taxes,
Chepauk, Chennai 5.

2.The Additional Commissioner (Admn)
Office of the Principal Secretary /Commissioner of
Commercial Taxes, Chepauk,
Chennai 5.

3.The Joint Commissioner (ST)
Commercial Taxes Department,
Tirunelveli Division.

4.The Joint Commissioner (ST)
Commercial Taxes Department,
Tiruchi Division.

5.The Joint Commissioner (ST)
Commercial Taxes Department,
Vellore Division.

6.M.Saravanan
7.S.Veeramanikandan ... Respondents
(Respondents 6 & 7 are impleaded vide
order dated 28.11.2023 in WMP.No.31979 of 2023)

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the second respondent in its Circular H2/32534/2015 dated 28.04.2021 and quash the same.

For Petitioners
in W.P.No.11687 of 2021 : Mr.K.S.Viswanathan, Senior Counsel
for Mr.G.Ilamurugu

For Petitioners
in W.P.No.11701 of 2021 : Mr.V.Vijayashankar

For Official
Respondents in both W.Ps. : Mr.Haja Nazirudeen,
Addl. Advocate General I
Assisted by Mr.M.Venkateswaran,
Special Government Pleader (T)

For Private
Respondents in both W.Ps : Mr.M.Purushothaman

COMMON ORDER

These Writ Petitions have been filed to call for the records of the impugned order in proceedings bearing No.H2/32534/2015 Circular No.9/2021 dated 28.04.2021 and quash the same.

2. Heard Mr.K.S.Viswanathan, learned Senior Counsel for the petitioner in W.P.No.11687 of 2021, Mr.V.Vijayashankar, learned counsel for the petitioner in W.P.No.11701 of 2021, Mr.Haja Nazirudeen, learned Additional Advocate General for the official respondents and Mr.M.Purushothaman, learned counsel for the private respondents in both Writ Petitions.

3. The dispute is between two categories of persons who have been initially appointed as Junior Assistant and then promoted to the post of Assistant and those persons who have been initially appointed as Stenotypist Grade – III and later promoted to the post of Assistant. So far as the recruitment to the post of Assistant is concerned, it is done through three methods:

1. by promotion from Junior Assistant
2. by direct recruitment as Assistant
3. recruitment by transfer

4. So the core issue is that those individuals who have been working as Stenotypist Grade – III and who have got promoted as Assistants through recruitment by transfer claim that their past services in the category of Stenotypist Grade – III should also be included for computing the qualifying service for the next promotion to the post of Deputy Commercial Tax Officer (DCTO). Those individuals who have been promoted from Junior Assistants to Assistants and the individuals who have been directly recruited as Assistants would claim that the Stenotypist Grade – III would fall under technical category and hence their past service cannot be considered as ministerial service and hence their qualifying service for the purpose of next promotion should be counted from the post of Assistant and not from their original post of Stenotypist Grade – III.

5. According to the learned counsel for the private respondents, the issue has already been decided in the judgment of the learned Division Bench of the Madurai Bench of this Court in W.A.Nos.339 to 342 of 2018 dated 17.10.2019.

6. The learned Additional Advocate General for the respondents submitted that similar such Stenotypist Grade – III who were working in Rural Development and Panchayat Raj Department have filed W.P.Nos.21358 to 21361 of 2016, by making the same claim that as per Rule 35(b) of the then Tamil Nadu State Subordinate Service Rules, *the transfer of a person from one class or category of service to another class or category carrying the same pay or scale of pay shall not be treated as first appointment to the latter for the purpose of seniority.* Hence it is claimed that the seniority of the Stenotypist Grade – III who have been transferred and recruited should be determined with reference to the rank in the class or category from which they got transferred.

7. To put it in other words, the Stenotypist Grade – III, who are the petitioners therein have claimed that for the purpose of seniority, their service rendered by them in the cadre of Stenotypist Grade – III should also be included and hence, they should be placed above the private respondents in the seniority list in that Writ Petition.

8. The prayer of the Stenotypist Grade – III were granted and the same was challenged in the Writ Appeal in W.A.Nos.339 to 342 of 2018 dated 17.10.2019. The attention of this Court was drawn to the following paragraphs in the order passed in W.A.Nos.339 to 342 of 2018:

> *"15.We are to consider as to what would mean by appointment by transfer. This aspect has been lucidly explained in the decision of the Hon'ble Apex Court in **Palure Bhaskar Rao v. P.Ramaseshaiah [(2017) 5 SCC 783]**, wherein it has been held that Transfer and recruitment by transfer are entirely two different concepts. It was further pointed out that if it is a transfer simpliciter it conveys a different meaning and if it is a*

recruitment by transfer it is a mode of selection/recruitment to the service. It would be beneficial to refer to the following paragraphs in the said judgment:

> *"14.Transfer and recruitment by transfer are entirely two different concepts. No doubt transfer can be from one category to another category or within the class if the rule permits interchangeability of the categories within a class. Any other transfer both intra-category and inter-category are in fact, under law is a selection and appointment by way of a transfer from one category to another or from one class to another class or from one service to another. If it is a transfer simpliciter it conveys a different meaning and if it is a recruitment by transfer, as we have clarified above conveys a different concept altogether. The latter is a mode of selection/recruitment to a service.*
>
> *15.Transfer in relation to service simply means a change of a place of employment within an organization. Such transfer being to a similar post in the same cadre and therefore obviously such a transfer does not result in the termination of his lien in the parent cadre but recruitment by transfer is a different service concept altogether. It is a method of recruitment to a service, in the instant case to a different category in the same service initially and thereafter to a different service altogether.*

Once an employee undergoes a transfer by way of a recruitment to a different cadre or to a different service, the employee loses his lien in the parent cadre/service. In that process, there is an induction to a new cadre and sometimes with a different type of duty. Such induction has distinct consequence on the career of the employee different from what would have been the normal course had he continued in the parent service. Thus the recruitment by transfer terminates the lien of an employee in the parent cadre/service whereas transfer simpliciter to a similar post in the same cadre results only in change of place of employment and therefore there is no termination of lien, (see ***V. Jagannadha Rao v. State of A.P. [(2001) 10 SCC 401]*** *and* ***B. Thirumal v. Ananda Sivakumar [(2014) 16 SCC 593]****).”*

16. Rule 9 of the Rules clearly says it is an appointment by transfer, in other words, recruitment by transfer, which is one of the mode of appointment. The other mode would be by promotion from Junior Assistant. One more aspect, which makes things clearer is stipulation of 5 years of service as Steno-Typist Grade – III. This is the qualifying service for Steno-Typist Grade III to opt for appointment by transfer to the post of Assistant. The parity in the scale of pay between the Steno-Typist Grade III and Assistant is not a matter to be *the basis for determining the seniority in the light of the specific Rule which provides for a minimum qualifying service, which was initially 8 years and subsequently reduced to 5 years. Therefore, the contention of the first respondent in these Writ Appeals that the transfer of the respondents from the post of Steno-Typist Grade III to Assistant is transfer simpliciter is incorrect and not tenable.*

.....

21.Similarly, Rule 35(b) will also have no application as it deals with transfer of person from one class or category to other class or category carrying the same scale of pay. This Rule would not have application since 5 years service as Steno-Typist is the minimum qualification for appointment as Assistant. Therefore, the first respondent cannot be heard to say that the qualifying service also should be reckoned for the purpose of determining their seniority in the post of Assistant."

9. The Rule 35(b) of the Tamil Nadu State and Subordinate Service Rules has evolved into Tamil Nadu Government Servants (Conditions of

Service) Act, 2016 (Tamil Nadu Act 14 of 2016). Section 40(3) of the new Act is analogous to the Rule 35(b) of the old Act, which reads as under:

> *"40(3). The transfer of a person from one class or category of a service to another class or category carrying the same levels of pay in the pay matrix shall not be treated as first appointment to the latter for the purpose of seniority and the seniority of a person so transferred shall be determined with reference to the rank in the class or category from which he was transferred; where any difficulty or doubt arises in applying this provision, seniority shall be determined by the appointing authority."*

10. Since the petitioners have been recruited through transfer from the category of Stenotypist Grade – III to the category of Assistant, their appointment in the category of Assistant cannot be considered as a mere transfer, but recruitment by transfer. Since the Stenotypist Grade – III belongs to technical category and the post of Assistant belonged to ministerial category, shifting from technical category to ministerial category and posting them in the cadre of Assistant is considered as recruitment by transfer and thus, distinction is made by the learned Division Bench in the above judgment.

11. It is further clarified that even for the purpose of appointment by transfer, the Stenotypist Grade – III ought to have completed five years of service in their original category. Since five years of qualifying service is fundamental or basis for achieving the post of Assistant, the period of qualifying service for the next promotion would naturally flow from the day when they assume charge to the post of Assistant and not from the day when they joined in the post of Stenotypist - Grade III. However, it is made clear in the counter filed by the respondents that the apprehension of the petitioners that they would be de-promoted after 2 years from the date of promotion is only a figament of their imagination and no such steps have been taken so far.

12. It is further assured that even in the event of considering such step, no action will be taken without putting the petitioners on notice by following the principals of natural justice. So the petitioners need not fret upon these aspects for now.

13. With the above observations, these Writ Petitions are disposed. No costs. Consequently, connected miscellaneous petitions are closed.

28.11.2023

Index : Yes
Internet : Yes/No
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R.N.MANJULA, J.

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