



W.P. No. 12438 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2023

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.P. No. 12438 of 2022

&

W.M.P. No. 11900 of 2022

Tmt. M. Bhuvaneswari

..Petitioner

Vs.

1. The Principal District Judge,
Ariyalur District, Ariyalur.

2. Thiru C. Rajendran

3. Tmt. P. Punithalakshmi

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorarified Mandamus to call for the records pertaining to the orders passed by the 1st respondent in A. No. 43/2022 dated 26.04.2022 and quash the same and consequently direct the first



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respondent to restore the seniority of the petitioner at Srl.No. 5 in the combined cadre of Protocol Officers, Head Clerks working in the District Courts and the Shrestrars of Sub-Courts.

For Petitioner :: Mr.S. Kamadevan

For Respondents :: Mr.M. Fakkir Mohideen for R1
No appearance for R2 & R3

ORDER

(Order of the Court was made by **S. Vaidyanathan,J.**)

Questioning the proceedings of the Principal District Judge, dated 26.04.2022, the present writ petition has been filed.

2. The facts of the case are:

(i) The petitioner was selected and appointed as Typist by the Tamil Nadu Public Service Commission and allotted to judicial service and allocated to erstwhile combined Perambalur-Ariyalur District on 10.08.2009. Her services were regularised with effect from 10.08.2009 by proceedings dated 22.09.2010 and after undergoing necessary training and also passing departmental examinations to complete the probation, the petitioner's probation was declared as completed on 10.01.2012. After the

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declaration of probation, the petitioner was promoted to the post of Assistant on 02.10.2011 and thereafter promoted to the post of Bench Clerk Grade III and as Translator on 01.07.2015 and ultimately promoted to the post of Protocol Officer on 29.04.2017. As per the seniority list published for the year 2021, the petitioner was placed at Serial No.5 in the seniority list, ahead of the 2nd respondent and 3rd respondent, who were placed at Serial Nos.11 and 6 respectively.

(ii) While so, the 2nd respondent, who was appointed as a Copyist on 02.05.2007 through Employment Exchange and now working as Head Clerk in Principal District Court, Ariyalur, made an application on 01.04.2021 stating that his seniority in the cadre of Head Clerk should be re-fixed as according to him, the petitioner and the 3rd respondent, who are his seniors, did not possess the qualification of Certificate Course in Computer on Office Automation while working in the post of typist. On receipt of the application, the 1st respondent issued notices to the petitioner and to the 3rd respondent seeking their explanation.

(iii) As far as the 3rd respondent is concerned, she had completed MCA., M.Phil (Computer Science) prior to joining the judicial service and



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therefore, she was fully qualified as per the exemption granted under Rule 2(ii) of G.O. Ms.No.130 Personnel and Administrative Reforms (S) Department dated 22.07.2008 and the claim made by the 2nd respondent as against the 3rd respondent stood rejected by the 1st respondent.

(iv) Insofar as the petitioner is concerned, she submitted her explanation to the notice on 02.08.2021. Thereafter, another show cause notice dated 24.11.2011 was issued to show cause why further action should not be taken. On receipt of the said show cause notice, the petitioner submitted her explanation dated 20.12.2021 and requested to drop further action. The 1st respondent, by the impugned order dated 26.04.2022, allowed the representation made by the 2nd respondent and re-fixed the seniority of the petitioner by placing her below the 2nd respondent at Serial No.11 and above Tmt.S. Najira Begum at Serial No.12 in Category 2 of Class IV of Tamil Nadu Judicial Ministerial Service in the combined seniority list of Ariyalur District. It was also ordered that the petitioner would be eligible to claim her next annual increment and future promotions only after she gets qualified with the Certificate Course in Computer on



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Office Automation. Challenging the same, the petitioner is before this Court.

3. According to the learned counsel for the petitioner, the application made by the 2nd respondent is liable to be rejected on the ground of delay and laches. According to the learned counsel, the 2nd respondent, having accepted the seniority already fixed several years ago, it was not open to him to make an application before the 1st respondent in 2021. Therefore, the learned counsel would submit that the claim of the 2nd respondent is barred by limitation fixed under Rule 36(CC) of Tamil Nadu Judicial Ministerial Service Rules. Further, according to the learned counsel for the petitioner, possession of Certificate Course in Computer on Office Automation is not a pre-requisite qualification for the recruitment of typists as per G.O.Ms.No.130 Personnel and Administrative Reforms (S) Department dated 22.07.2008 and it is only an additional qualification, which had to be acquired prior to the declaration of probation. That being so, according to the learned counsel, when her probation had been declared in the post of typist, without acquiring the additional qualification and she



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had also been granted further promotions, insisting for the additional qualification after so many promotions and so many years is not justified.

The learned counsel would further state that for the lapse committed by the 1st respondent administration, the petitioner cannot be made to bear the brunt of it as she is in no way responsible for the same. Moreover, re-fixation of seniority cannot be done after a lapse of so many years in the light of the principle laid down that “*the settled position of seniority cannot be unsettled after long years*”. Besides, the petitioner had completed Computer Course from Aptech Computer Education prior to joining the service and therefore, the claim that she has not passed any computer system application is incorrect. Hence, the learned counsel for the petitioner prays that the impugned order may be set aside and the writ petition may be allowed.

4. Per contra, learned counsel for the 1st respondent would submit that it is true that there had been an administrative lapse in declaring the probation of the petitioner and in granting her further promotions. However, she cannot be allowed to take undue advantage of the same at the cost of



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others. Though the petitioner has taken a stand relying on G.O.Ms. No. 130 dated 22.07.2008 that the Certificate Course in Computer on Office Automation is not a pre-requisite for appointment to the post of Typist, the note given below para 2(i) of the said G.O. states that possession of the said qualification is mandatory and the said paragraph is extracted hereunder:

“Candidates who do not possess the said qualification conducted by Technical Education Department may also apply. If selected, they should acquire such qualification within the period of their probation. The probation will be declared in their cases only after getting a pass in the said Certificate Course. Otherwise they will be dealt with as per the provision under General Rule 27 of Tamil Nadu State and Subordinate Services.”

The learned counsel would further contend that as far as limitation fixed under Rule 36(CC) of Tamil Nadu Judicial Ministerial Service Rules is concerned, which has been relied on by the petitioner to contend that the claim of the 2nd respondent is hit by laches, the said Rule deals with revision of seniority and the time limit fixed under the Rule for submitting an



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application regarding revision of seniority is 3 years. However, the Rule clearly states that the time limit would not be applicable to cases of rectifying orders arising out of mistake of act. In the instant case, the claim of the 2nd respondent is for refixing the seniority on account of mistake of fact. Therefore, the limitation fixed under Rule 36(CC) may not apply. Besides, stopping of future annual increments has been ordered based on G.O.Ms.No.130 dated 22.07.2008, which clearly defines that the further increments will be restored only on acquiring the Certificate Course in Computer on Office Automation. Learned counsel for the 1st respondent would add that Rule 31(4) of Tamil Nadu Government Servants (Conditions of Service) Act, 2016 contemplates a maximum period of 5 years upto which the probation of a Government Servant shall be extended so as to enable him to acquire the test qualification. In the event of failure to do so, the Government Servant shall be reverted and the qualified and eligible junior shall be considered for promotion and if such a person is appointed by direct recruitment and has not acquired the test qualification even within the maximum period of five years, his probation shall be terminated. That being so, merely because the petitioner's probation was declared erroneously



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without a valid Certificate Course in Computer on Office Automation, it would not mean that the petitioner has been exempted from acquiring the qualification and she is entitled to all the benefits that is available for qualified candidates. Furthermore, the petitioner has been given the benefit of the administrative lapse, in that, neither she has been reverted nor recovery of wrongly sanctioned annual increments has been effected. Therefore, the petitioner cannot have any grievance at all as regards the order under challenge.

5. Heard the learned counsel for the petitioner and the learned counsel for the 1st respondent.

6. It is not in dispute that Rajendran was initially appointed as copyist on 02.05.2007 and his service particulars indicated that he had possessed Certificate Course in Computer on Office Automation and his services were regularised with effect from 02.05.2007 and that his probation was declared on 09.04.2010. The probation of Bhuvaneswari had been erroneously declared on 10.01.2012 and admittedly she did not possess the qualification of Certificate Course in Computer on Office Automation. There has been a procedural lapse on the part of the 1st respondent



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administration in declaring the probation of the petitioner namely, Bhuvaneswari and she was temporarily promoted as Assistant on 01.10.2011 by proceedings dated 29.09.2011 even before the declaration of her probation, which itself is in violation of Section 41(1) of Tamil Nadu Government Servants (Conditions of Service) Act, 2016. Subsequently, Ariyalur Judicial District was formed after bifurcation from the Perambalur District and the independent seniority list was followed with effect from 01.10.2012 as per the orders of this Court dated 27.09.2012. The petitioner was temporarily transferred to the post of Bench Clerk III on 07.09.2014 and she was given temporary promotion to the post of translator on 01.07.2015. Yet another temporary promotion was given as Protocol Officer on 29.04.2017. On hearing the plea of the writ petitioner, the Principal District Judge came to the conclusion that Rule 36(CC) of Tamil Nadu Judicial Ministerial Service Rules would apply only in case of revision of seniority whereas the application made by Rajendran was with regard to re-fixing the seniority on account of mistake of fact. This observation made by the Principal District Judge would answer the contention raised by the learned counsel for the petitioner that the issue of seniority cannot be raised



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after a lapse of 3 years as it is not a case of revision of seniority, but it pertains to refixing the seniority for want of qualification of the individual.

7. The Principal District Judge, Ariyalur, after considering the service particulars of the petitioner and the 2nd respondent, came to the conclusion that the petitioner Bhuvaneswari had not completed Certificate Course in Computer on Office Automation even after the lapse of 12 years and that the declaration of her probation was a sheer mistake. Citing Rule 31(4) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, the Principal District Judge observed that as per the said Rule, in the event of failure to acquire the test qualification within the maximum period of five years, the individual could be either reverted or terminated. However, as in the instant case, the probation of the petitioner had been declared without considering the eligibility criteria for declaring the probation of a typist and also that the petitioner Bhuvaneswari, while employed in various posts, got salary/increments for the posts, she had held till date and for the mistake on the part of the administration, the individual cannot be blamed fully, but at the same time, she cannot be allowed to take advantage of it at



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the cost of others, passed the impugned order, instead of passing an order of reversion or recovery as sufficient period had rolled off and that such action, if not averted would unsettle the settled position of the individual. Thus, the petitioner's seniority was refixed and she was placed below the 2nd respondent and above one Tmt. Najira Begam in Category 2 of Class IV of TNJMS in the combined seniority list of Ariyalur District and it was also ordered that the petitioner would be eligible to claim her next annual increment and future promotions only after she gets qualified in the Certificate Course in Computer on Office Automation.

8. Since we find that there is no perversity in the order of the Principal District Judge and that possession of Certificate Course in Computer on Office Automation is required for declaration of probation on account of Rule 31(4) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, we refuse to interfere with the impugned order passed by the 1st respondent.

9. During the course of arguments, it has been brought to the



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notice of this Court that the petitioner Bhuvaneswari has cleared the Course in Computer on Office Automation in August, 2022. The said qualification shall be taken into account for further promotion and increment as observed by the Principal District Judge and the petitioner will gain seniority and increments, on and from the date of completion of the aforesaid course.

10. The writ petition is disposed of with the above observations.

No costs. Connected C.M.P. is also closed.

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(S.V.N.J.) (K.R.S.J.)
11.07.2023

To
The Principal District Judge,
Ariyalur District, Ariyalur.

S. VAIDYANATHAN,J.

AND

K. RAJASEKAR,J.



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