



WEB COPY



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2023

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.Nos.15901, 15903, 3057 & 3061 of 2021
& W.M.P.Nos.16801, 16803, 3439 & 3442 of 2021

G.Chitravalli,
D/o.V.Govindarajan,
Office Superintendent,
K.A.P.Viswanathan
Government Medical College,
Thiruchirappali - 1.

... Petitioner
[in W.P.Nos.15901 & 3057 of 2021]

R.Maria Janaki,
D/o.G.Rajamani,
Office Superintendent,
Government Stanley Medical College,
Chennai - 600 001.
On deputation,
Tirunelveli Government Medical College,
Tirunelveli.

... Petitioner
[in W.P.Nos.15903 & 3061 of 2021]

versus

1.The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat, Fort St. George,
Chennai - 600 009.



WEB COPY

2.The Director of Medical Education,
Kilpauk, Chennai - 600 010.

3.The Director of Medical and Rural Health Services,
DMS Compound,
Teynampet,
Chennai - 600 006.

...

Respondents
[in all W.Ps]

Common Prayer in W.P.Nos.15901 & 15903 of 2021: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to pass orders to include the name of the petitioners in 2021-2022 panel for promotion to the post of Junior Administrative Officer based on seniority by considering the objection/representation submitted by the petitioners and consequently to grant promotion to the petitioners on par with their juniors in the post of Junior Administrative Officer with revision of seniority in the post of Assistant and Office Superintendent with all consequential and other attendant benefits.

Common Prayer in W.P.Nos.3057 & 3061 of 2021: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to revise the seniority of the petitioners in the post of Assistant on inclusion of their names in 1997-98 panel on par with juniors and in the post of Office Superintendent on inclusion of their names in 2011-12 panel on par with their juniors, without reference to date of passing the departmental test - Account Test for Subordinate Officers Part-1 and consequently directing the respondents to promote the petitioners to the post of Junior Administrative Office on inclusion of their names in 2018-19 panel on par with her juniors, with all consequential and other attendant benefits, based on the representation submitted by the petitioners.

For Petitioner
[in all W.Ps]

: Mr.G.Sankaran
Senior Counsel
for Mr.S.Nedunchezhiyan



For Respondents : Mr.S.Silambanan
[in all W.Ps] Additional Advocate General
Assisted by
Mr.T.Arunkumar
Additional Government Pleader

COMMON ORDER

The petitioners, who were initially appointed as Steno-typist had opted to get promoted as Assistant in 5% category through transfer as contemplated under G.O.(Ms.)No.34, P&A Department, dated 21.02.2001. The petitioners have written the Account Test Part-I by participating in the examination conducted during December 2001. They were appointed by transfer to the posts of Assistant on 01.06.2005 and 21.07.2006. Later they were promoted to the post of Office Superintendent on 16.02.2017 and 08.03.2017 respectively.

2. While fixing the seniority in respect of Steno-typist appointed prior to 01.08.1992 and given appointment as Assistant subsequently, it was clarified by the Government that the Steno-typist Grade-III appointment prior to 01.08.1992 are entitled to fixation of seniority based on their initial date of appointment for the post of Steno-typist.



3. Based on the order of this Court made in W.P.No.29677 of 2012 etc. batch, the seniority of the petitioners and others was revised by including their names in 1997-98 panel list above their juniors, who were promoted along with them in the year 2005. The petitioners' seniority in the post of Office Superintendent was also reversed by including their names in 2013-14 panel when their juniors and others were included in the year 2011-12 panel.

4. As the petitioners' seniority had been lowered for the post of Assistant and Office Superintendent, they gave representations to the respondents to revise their seniority by including their names in the cadre of Assistant in respect of the year 1997-98 panel and with regard to Office Superintendent with effect from 2011-12 panel. If the original seniority of the petitioners is restored, they are entitled to be included in the panel with consequential promotion to the post of Junior Administrative Officer. Hence the petitioners had filed these Writ Petitions seeking a direction to the respondents to recast their seniority and restore them in the cadre of Assistant in the year 1997-98 panel and in the cadre of Office Superintendent in the year 2011-12 panel.



5. Heard Mr.G.Sankaran, learned Senior Counsel for the petitioners, Mr.S.Silambanan, learned Additional Advocate General for the respondents and perused the materials available on record.

6. Mr.S.Silambanan, learned Additional Advocate General for the respondents submitted that the Government has stopped only the increment granted for passing the Account Test but it did not relax the condition of passing of the Account Test itself for the purpose of promotion. Since the petitioners had passed the examination only in the year 2001, they were included in 2002-03 panel and hence their seniority had been rightly worked out.

7. Mr.G.Sankaran, learned Senior Counsel for the petitioners submitted that for petitioner's case, Rule 35(b) of the Tamil Nadu State Subordinate Services Rules will be applicable. For the sake of clarity, the said clause is extracted as under:-

“(b) 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 purpose of seniority and the seniority of a person so



WEB COPY



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 sub-rule, seniority shall be determined by the appointing authority.”

8. As per the above clause, transfer of a person from one category of service to another category carrying the same pay or scale of pay shall not be treated as first appointment to the latter for the purpose of seniority and the seniority of a person shall be determined with reference to his rank in the class or category from which he was transferred. In the instant case also, though the petitioners posting in the cadre is called as '*appointment by transfer*', as per the above Rule 35 clause (b), the appointment by transfer shall not be called as appointment i.e. '*first appointment*'.

9. *Seniority* can be determined only with reference to the rank or category from which the petitioners were transferred. There is no quarrel on the point that the petitioners' appointments is by transfer. So the petitioners' claim that for the purpose of seniority, 35(b) is applicable for their case and hence their seniority in the cadre of Assistant will relate back to the post of Steno-typist Grade-III from the date of appointment i.e. w.e.f. 01.08.1992.



So naturally the petitioners' seniority ought to have been kept on par with their juniors and not below their juniors.

10. There was a ban for promotion or appointment from the category of Steno-typist to Assistant from 1992 to 2001 and later when it was reintroduced in the year 2001, it was only through appointment by transfer and not through promotion by transfer. Some of the Steno-typists who have passed the Account Test during the interregnum got the appointment immediately after the ban was lifted. So far as these petitioners are concerned, they did not anticipate the lifting of the ban and hence they did not pass the test. When the ban was lifted they immediately wrote the Account Test and passed the same.

11. Had there not been a ban, the petitioners could have also been vigilant and passed the examination like others and prepared either to get promoted as Assistants or to get appointed as Assistants. Hence the ban cannot be held to the disadvantage of the petitioners in the matter of their seniority. The ban of promotion / appointment to the post of Assistant from



Steno-typist and later lifting the same are not under the control of the petitioners.

12. In such circumstances and also taking into consideration of the fact that no incentive increment is attached with passing the account test, I feel it is not fair to fix the seniority of the petitioners below their juniors. Hence their seniority ought to be restored as Assistant in 1997-98 panel and as Office Superintendent in 2021-22 panel.

13. In the result, these Writ Petitions are **allowed** and the respondents are directed to fix the seniority of the petitioners above their juniors and their seniority ought to be restored as Assistant in 1997-98 panel and as Office Superintendent in 2021-22 panel with all attendant benefits, but with the monetary benefits only from the date of promotion, within a period of eight (8) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

14.12.2023

Speaking order

Index : Yes

Neutral Citation : Yes

sri



To

WEB COPY

- 1.The Principal Secretary to Government,
State of Tamil Nadu,
Health and Family Welfare Department,
Secretariat, Fort St. George,
Chennai - 600 009.
- 2.The Director of Medical Education,
Kilpauk, Chennai - 600 010.
- 3.The Director of Medical and Rural Health Services,
DMS Compound,
Teynampet,
Chennai - 600 006.



WEB COPY

W.P.Nos.15901, 15903, 3057 & 3061 of 2021
W.M.P.Nos.16801, 16803, 3439 & 3442 of 2021



R.N.MANJULA, J.

sri

W.P.Nos.15901, 15903, 3057 & 3061 of 2021
& W.M.P.Nos.16801, 16803, 3439 & 3442 of 2021

14.12.2023