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W.P.Nos.4958, 4959 and 4960 of 2016



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.08.2023

Coram:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.Nos.4958, 4959 and 4960 of 2016
and WMP Nos.4301 to 4306 of 2016

M.Thanasekaran

... Petitioner in W.P.No.4958 of 2016

P.Rajagopal

... Petitioner in W.P.No.4959 of 2016

J.Ravichandran

... Petitioner in W.P.No.4960 of 2016

Vs.

1.Government of Tamilnadu,
represented by its Principal Secretary,
Labour and Employment Department,
Fort St. George, Chennai – 600 009.

2.The Director,
Employment and Training Department,
Guindy, Chennai – 32.

.... Respondents in the above W.Ps

Prayer: PETITIONs filed under Article 226 of the Constitution of India praying for the issuance of Writs of Certiorarified Mandamus to call for the records pertaining to the impugned order of the 2nd respondent in Ref.No.Nir3/34182/15 dated 12.01.2016 and quash the same and consequently direct the 2nd respondent to regularize the petitioners in the post of Assistant with effect from the date of joining viz., 30.10.2006, 01.11.2006 and 27.10.2006 and consequently to include the petitioners' name in the



approved panel for promotion for the post of Junior Employment Officer for the year 2009-2010 by issuing revised panel and to draw the panel for the post of District Employment Officer (Recruitment by Transfer) for the year 2015-2016 in accordance with the petitioners' revised seniority.

In all W.Ps

For Petitioner : Mr.V.Subramanian

For Respondents : Mr.S.Ravikumar
Special Government Pleader

COMMON ORDER

Since common arguments were advanced in all the three Writ Petitions and it is also urged that the three Writ Petitioners have raised the same grievance with respect to the regularisation of their post which was in accordance with a particular date fixed by the appointing authority and not on the date on which they were actually promoted, a common order is passed in the three Writ Petitions.

2. Let me take as a test the facts in W.P.No.4958 of 2016 in which M.Thanasekaran is the petitioner. The petitioner/Thanasekaran had joined the Labour and Employment Department in the year 1986 as Junior Assistant. He was then promoted as upgraded Assistant in the year 2004, more specifically 27.02.2004. At that particular point in time, his seniority was in serial No.13.

3. The common grievance raised by all the three Writ Petitioners was that they were further promoted as Temporary Assistants and they had joined



duty on the date on which they were so promoted. However, their regularisation in that further promoted post, namely, Temporary Assistant, was not determined with respect to the date on which they joined to the said promoted post but with respect to the date on which another employee G.Jagadeeswaran had joined the promoted post of Temporary Assistant.

4. It is claimed that G.Jagadeeswaran had subsequently been promoted as Temporary Assistant and the respondents had determined that particular date when he so joined on promotion as the date on which the petitioner Thanasekaran and the other two Writ Petitioners, namely, J.Ravichandran, petitioner in W.P.No.4960 of 2016 and P.Rajagopal, petitioner in W.P.No.4959 of 2016 were to be regularised in that promoted post.

5. To be a little more specific, the petitioner Thanasekaran has stated that he joined the Department of Employment as Typist on 29.12.1986. G.Jagadeeswaran with whom comparison is made in the Writ Petitions had joined the post of Typist on 25.06.1984. It is thus seen that in the first post in which they both joined, Jagadeeswaran is the senior. Thereafter, Jagadeeswaran was considered for promotion in the upgraded Assistant post in the panel 2001-2002 and was actually promoted on 18.11.2002.

6. The petitioner Thanasekaran was subsequently considered for promotion in the panel 2003-2004 and was promoted on 27.02.2004.



Naturally in that post of upgraded Assistant, G.Jagadeeswaran was senior to the petitioner Thanasekaran. Thereafter, the further promotion opportunity was available only in the panel year 2006-2007. Both Thanasekaran and Jagadeeswaran were promoted as per the panel. However, the petitioner Thanasekaran joined as Temporary Assistant on 30.10.2006, whereas Jagadeeswaran joined as Temporary Assistant on 30.05.2007. When viewed with respect to the post of Temporary Assistant, Jagadeeswaran is naturally junior in that particular post. Similarly, the other two Writ Petitioners, viz., J.Ravichandran and P.Rajagopalan had joined the promoted post as Temporary Assistant on 27.10.2006 and 01.11.2006 respectively.

7. Thus, all three Writ Petitioners had joined the promoted post of Temporary Assistant much earlier than G.Jagadeeswaran. However, while determining their regularisation in that particular post of Temporary Assistant, all the three Writ Petitioners were not considered as having joined the post of Temporary Assistant on that particular date when they originally joined but it was pushed much backward to the date when G.Jagadeeswaran joined, viz., 30.05.2007.

8. This is the reason for filing the Writ Petitions. They have raised grievance individually as well as through the Union and finally also had filed an appeal.



9. The only justification given for rejecting the appeals was that G.Jagadeeswaran was senior, since he had been appointed as Typist on 25.06.1984 and though he was promoted or rather joined the promoted post of Temporary Assistant later than the three Writ Petitioners. In order to maintain original seniority, all the three Writ Petitioners were made to wait and their date of joining the promoted post or regularisation in that promoted post was determined in accordance with the date on which Jagadeeswaran joined.

10. Learned counsel for the petitioners pointed out the injustice of this particular reasoning of the respondents by stating that by the time when Jagadeeswaran joined the promoted post as Temporary Assistant, the three Writ Petitioners had done nearly about 8 months of service in that particular promoted post as Temporary Assistant.

11. It is therefore contended that a junior who had joined in that particular post and was junior in that post of Temporary Assistant by about 8 months was retained on that particular date and the seniority of the petitioners were pushed backwards to that of the date on which Jagadeeswaran joined which was much later.

12. Reliance has been placed by the learned counsel for the respondents to justify this reasoning to Sections 23(a)(i), 35(a) and 39(f) of the Tamil Nadu State and Subordinate Services Rules, which are extracted below for



better appreciation of the matter:

'23. (a) (i) Date of Commencement of probation of persons first appointed temporarily - If a person appointed temporarily either under sub-rule (a) or sub-rule (b) of the rule 10 to fill a vacancy in any service, class or category otherwise than in accordance with the rules governing appointment thereto, such vacancy being a vacancy which may be filled by direct recruitment, is subsequently appointed to the service, class or category in accordance with the rules, he shall commence his probation if any, in such category either from the date of his first temporary appointment or from such subsequent date, as the appointing authority may determine. If the post is one to which appointment may be made by transfer, and the person who had been appointed there to either under General Rule 10(a) or 10(d) is subsequently recruited thereto by transfer and included in the list of approved candidates, the appointing authority may, in his discretion, allow such person to commence his probation if any, from the date of his first temporary appointment or from such subsequent date, as the appointing authority may determine:

Provided that the date so determined by the appointing authority to commence probation in this clause, shall not be earlier than the date of commencement of probation of the junior most person already in service.

Provided further that on the date so determined by the appointing authority to commence probation in this clause, the person shall not only possess all the qualifications prescribed for appointment to the service but also be fit for inclusion in the list of approved candidates drawn up by the Tamil Nadu Public Service Commission or the appointing authority, as the case may be.)

35 Seniority (a) The seniority of a person in a service, class or category or grade shall unless he has been reduced to a lower rank as a punishment be determined by the rank obtained by him in the list of approved candidates drawn up by the Tamil Nadu Public Service Commission or other



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Appointing Authority, as the case may be, subject to the rule of reservation where it applies. The date of commencement of his probation shall be the date on which he joins duty irrespective of his seniority.

(aa) The seniority of a person in a service, class, category or grade shall, where the normal method of recruitment to that service, class, category or grade is by more than one method of recruitment, unless the individual has been reduced to a lower rank as a punishment, be determined with reference to the date on which he is appointed to the services, class, category or grade;

Provided that where the junior appointed by a particular method or recruitment happens to be appointed to a service, class, category or grade, earlier than the senior appointed by the same method of recruitment, the senior shall be deemed to have been appointed to the service, class, category or grade on the same day on which the junior was so appointed:

Provided further that the benefit of the above proviso shall be available to the senior only for the purpose of fixing inter-se-seniority:

.....

39. Temporary promotion —

(f) (i) A person promoted under sub-rule (a) or (d) shall commence his probation if any, in such category either from the date of his temporary promotion or from such subsequent date as the appointing authority may determine;

Provided that on the date so determined, the person possesses all the qualifications prescribed for promotion to the service, class or category, as the case may be.'

13. In all the three provisions, where a person is promoted, then he should commence his probation either from the date of his temporary promotion or from such subsequent date as the appointing authority may determine.

14. This discretion which is vested with the respondents is strongly



emphasised by the respondents. The discretion exercised by the appointing authority in the instant case was to shift the date of probation or regularisation in the post of Temporary Assistant not from the date on which the petitioners joined but to the date on which G.Jagadeeswaran joined which was a clear 8 months later. It is thus contended that the petitioners have lost the regularised service for a period of 8 months and therefore lost that period from their being considered as senior in that particular post as Temporary Assistant.

15. In the counter affidavit, quite apart from placing reliance on the above Rules, it had been stated that G.Jagadeeswaran was senior at the time of initial appointment as Typist having joined in the year 1984 and therefore to maintain that particular seniority, even though he joined the post of Temporary Assistant much later than the petitioners, the petitioners were not considered as his seniors in that promoted post and therefore, to enable him to retain his seniority, the date of regularisation of the petitioners in the post of Temporary Assistant was shifted to the date when Jagadeeswaran was actually joined as Temporary Assistant.

16. The discretion vested in that authority to so shift the date of actual promotion or actual regularisation is a sacrosanct duty vested with the authority of the said appointing officer. That discretion should be exercised with caution and should be exercised only after putting on notice those who



would be prejudiced by usage by such discretionary power and after getting their remarks also. It cannot and should not be done to favour one particular individual and thereby putting to disadvantage those who had joined the promoted post much earlier. On the date when Jagadeeswaran joined as Temporary Assistant, the petitioners had already been working for clear 8 months and more and that 8 months should also be counted as service put in by the petitioners in that promoted post and that 8 months cannot be simply wiped away by usage of discretion.

17. If such discretion is exercised by the appointing authority, to reiterate, the petitioners or those who would be so affected, should have been put to notice. Further, the reason why Jagadeeswaran joined later on 30.05.2007, after 8 months, has not been disclosed anywhere in the counter. It is not known whether he had voluntarily joined later or actually joined later owing to the pendency of any disciplinary proceedings pending against him. This is very hypothetical, which can never be determined by this Court.

18. The fact remains that the petitioners joined on 30.10.2006, 27.10.2006 and 01.11.2006 respectively in the promoted of Temporary Assistant, whereas Jagadeeswaran joined on 30.05.2007. Instead of considering the petitioners' service on and from the date of their promotion which can also be considered as provided under the Rules, the respondents



had exercised their discretion to shift the joining date of the petitioners as if they had joined the promoted post only on 30.05.2007. This has caused serious prejudice to the petitioners herein and this has to be addressed by the respondents.

19. In the appeal which had been filed by the petitioners, no explanation has been given as to why discretion was used in favour of Jagadeeswaran except to state that his seniority in the original post of Typist had to be maintained. But that post had long gone past and it is now the promoted post of Temporary Assistant which has to be taken into consideration.

20. Therefore, since valid reasons have not been given and the petitioners have been seriously prejudiced, I hold that the grievance of the petitioners will necessarily have to be examined favourably by this Court. The respondents were given one opportunity to explain the actual reason why Jagadeeswaran joined the promoted post only on 30.05.2007 and as to why favouritism was shown to him resulting in the petitioners suffering prejudice by pushing their regularisation in the post of Temporary Assistant from the date on which they joined to a full 8 months and equivalence it to the date on which Jagadeeswaran joined.

21. However, no explanation has been given by the respondents.



Therefore, it is to be deemed that the petitioners have been regularised in the promoted post from the date on which they joined, which fact is also stipulated in the Rules themselves. If the respondents want to shift the said date to any other date, the petitioners must have been put to notice, granted an opportunity of being heard and then a considered decision should have been taken. But till such a decision is taken, the date on which the petitioners have joined the promoted post of Temporary Assistant alone shall be a guiding factor.

22. If the respondents want to revise the same, it should be only after following the principles of natural justice and after giving necessary explanation as to why Jagadeeswaran was fixed as a bench mark, though he joined much later in the promoted post of Temporary Assistant. The reason that he was senior when he joined the service originally as Typist no longer holds water, since there were subsequent two promotions from that particular post.

23. It is contended by the respondents that the petitioners have not objected to the seniority list within a reasonable time. This has been explained in the affidavit by stating that they had been taking the issue up individually as well as through the Union and had also later filed an appeal.

24. In light of the above, the impugned order stands quashed.



Necessary proceedings revising the seniority of the petitioners must be issued within a period of twelve (12) weeks from the date of receipt of a copy of this order. However, liberty is granted to the respondents to issue a fresh proceedings, if they want to shift the date of seniority, after giving notice to the petitioners, hear them and pass orders re-working the date of seniority in accordance with the Rules.

25. These Writ Petitions are allowed. No costs. Connected Miscellaneous Petitions are closed.

sl

29.08.2023

Index: Yes/No

Speaking/Non-speaking order

Neutral citation: Yes/No

To

1. Government of Tamilnadu,
represented by its Principal Secretary,
Labour and Employment Department,
Fort St. George, Chennai – 600 009.
2. The Director,
Employment and Training Department,
Guindy, Chennai – 32.



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C.V.KARTHIKEYAN,J.
SI

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