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WP.No.19463 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2023

CORAM

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

WP.No.19463 of 2023
and W.M.P.Nos.18722 & 18723 of 2023

P.K.Ananda Kumar

.. Petitioner

Versus

1. The Principal Secretary to Government
Rural Development & Panchayat Raj Department
Chief Secretariat
St.George Fort
Chennai- 600 009.

2.The Additional Principal Secretary
Rural Development & Panchayat Raj Department
Chief Secretariat
St.George Fort
Chennai- 600 009.

3. The Joint Secretary
Rural Development & Panchayat Raj Department
Chief Secretariat
St.George Fort
Chennai- 600 009.

4. The Commissioner
Rural Development & Panchayat Raj Department
Panagal Building
Saidapet, Chennai – 600 015

5. The District Collector
Krishnagiri District
Collectorate Office
Krishnagiri – 635 115.



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6.The Personal Assistant (Development) to the Collector
Development Section

Collectorate, Krishnagiri – 635 115

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India

praying to issue a Writ of Certiorari, calling for the record on the file of the 5th

respondent in respect of the proceedings vide Na.Ka.No.K2/6021/2021 dated

30.12.2022 and quash the same as illegal, incompetent and ultravires.

For Petitioner : Mr.M.Guruprasath
for M.D.Ilayaraja

For Respondents : Mr.P.Baladhandayutham
Special Government Pleader

ORDER

This writ petition has been filed challenging the proceedings in Na.Ka.No.K2/6021/2021 dated 30.12.2022 passed by the fifth respondent and quash the same as illegal, incompetent and ultravires.

2. The case of the writ petitioner is that he has been initially appointed as a Typist on 21.10.2014 at District Rural Development Agency, District Collectorate Office, Krishnagiri District. Thereafter, he has been temporarily promoted as Assistant on 15.11.2016. His service as Assistant has been brought into Regular Panel and as per Section 40(2) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, seniority has been fixed taking into account of the date of appointment as Assistant. The seniority



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list has been published by the fifth respondent vide proceedings dated 04.05.2018, 26.12.2018, 10.02.2021 & 25.02.2021. The petitioner's service is also regularised, however, the fifth respondent has passed the impugned order vide Na.Ka.No.K2/6021/2021 dated 30.12.2022, refusing the seniority by holding that the temporary promotees' seniority will be based on the regularisation. Challenging the same, this writ petition.

3. The learned counsel for the petitioner would submit that the petitioner was originally appointed as typist on 21.10.2014 and he was regularised on 06.11.2015. He is also given temporary promotion as Assistant. Though appropriate seniority has been fixed from taking note of the date of appointment i.e., on 15.11.2016, later, the fifth respondent has revised the seniority list by invoking provisions under Section 47(5) of the Act. Hence, it is not proper and according to him, the date of Seniority has to be met out as the initial appointment.

4. Heard Mr.M.Guruprasath, learned counsel for the petitioner and Mr.P.Baladhandayutham, learned Special Government Pleader and perused the materials placed on record.



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5. On perusal of the entire materials, the fact that the petitioner was originally appointed as Typist on 21.10.2014 is not in dispute and he has been regularised on 06.11.2015 and temporarily promoted as Assistant on 15.11.2016. Though, initially, seniority list has been maintained on the date of appointment, the authorities later found that the temporary promotion will not entail the petitioner to claim seniority with direct employees. Accordingly, revised the seniority invoking the provisions under Section 47 Rule 5 of the Tamil Nadu Government Servants(Conditions of Service) Act, 2016. It is relevant to extract the provision hereunder:

"47. (1) Where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of a higher category in a service or class by promotion from lower category and there would be undue delay in making such promotion in accordance with the provisions of the Act, the appointing authority may temporarily promote a person, who possesses the qualifications prescribed for the post, otherwise than in accordance with the provisions of this Act.

(2) Where it is necessary to fill a short vacancy in a post borne on the cadre of a higher category in service or class by promotion from lower category and the appointment of the person who is entitled to such promotion under the provisions of the Act would involve excessive expenditure on travelling allowance or exceptional administrative inconvenience, the appointing authority may promote any other person who possesses the qualification, if any, prescribed for the higher category.

(3) A person temporarily promoted under sub-section (1) shall be replaced as soon as possible by the member of the service,



who is entitled to promotion under the Act.

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(4) Where it is necessary to promote an officer against whom an enquiry into allegations of corruption or misconduct is pending, but no charge sheet has been filed in the criminal case or where no charge under sub-rule (b) of rule 17 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules have been framed or no proceedings before the Tribunal for Disciplinary Proceedings is pending, the appointing authority may promote him temporarily pending enquiry into the allegations against him.

(5) A person promoted under sub-section (1), (2) or (4) shall not be regarded as a probationer in the higher category or be entitled by reason only of such promotion to any preferential claim to future promotion to such higher category. The services of a person promoted under sub-section (1), (2) or (4) shall be liable to be terminated by the appointing authority at any time without notice and without any reason being assigned.

(6) (i) A person promoted under sub-section (1), (2) or (4) 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.

(ii) He shall also be eligible to draw increments in the 1 [levels of pay in the pay matrix] applicable to him from the date of commencement of his probation. Where commencement of probation is ordered from a date earlier than the date of the order and if this has not been enabled by relaxation of any provisions of the Act, he shall draw increments, including arrears, in the 2 [levels of pay in the pay matrix] applicable to him from such earlier date. The appointing authority shall include a provision to this effect while issuing order in all such cases.

(7) A person promoted under the Act to hold a post borne on the



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cadre of a service, class or category, who has rendered continuous temporary service shall be eligible to draw annual increments in the 3 [levels of pay in the pay matrix] for the post, subject to the condition that this Act do not prescribe any special qualification to be acquired or test to be passed as a condition precedent to the drawal of such increment or increment is not denied as a measure of penalty."

6. On perusal of the above provisions, it would make it clear that the candidates promoted to such a post can be replaced immediately as and when qualified and eligible candidates are appointed directly; and the temporarily promoted employees cannot claim any preferential right for regular promotion by way of a temporary promotion and they cannot even be called and cannot make a claim as a substantive vacancy. Therefore, this section is akin to the Section 17 of the Act which relates to the appointment of Temporary appointments.

7. Such being the position, it is well settled that any person who have been promoted temporarily, even though, they have put long number of service, they cannot claim as a matter of right, the regularisation as against the sanctioned post. This has also been held by the Hon'ble Apex Court in the case of *Secretary to School Education Department, Chennai Vs. R.Govindaswamy and others* reported in (2014) 4 SCC 769. Similarly, in the case of *State of Tamil Nadu through Secretary to Government, Commercial Taxes and*



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Registration Department, Secretariat and another reported in (2017) 4 SCC

113, a similar view is also taken.

8. Such view of the matter, when the person has been promoted temporarily, he cannot seek seniority above the person directly appointed to the substantive vacancy. Accordingly, I do not find any merits in this case.

9. In view of the above, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

03.07.2023

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Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

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N.SATHISH KUMAR, J.

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