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W.P.No.22390 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2023

CORAM

**THE HONOURABLE Ms.JUSTICE R.N.MANJULA**

W.P. No.22390 of 2021

and

W.M.P.No.23644 of 2021

V.Prabakaran  
S/o.Varadaraj  
No.3/95, Bajanaikoil Street  
Konavattam  
Vellore 13.

... Petitioner

/Vs/

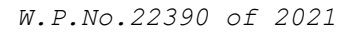
1.Secretary to Government  
Rural Development and Panchayat Raj  
Fort St. George  
Chennai 600 009

2.The Director  
Rural Development and Panchayat Raj  
Panagal Building  
Saidapet  
Chennai 600015

3.The District Collector  
Vellore

4.The Tamil Nadu Public Service Commission  
Rep.by its Secretary  
Chennai 600 003

... Respondents



For Petitioner : Mr.M.Muthappan

For Respondents : Mr.S.Nanmaran (for R1 to R3)  
Special Government Pleader

Mr.R.Bharanidharan (for R4)

This Writ Petition has been filed for issuance of Writ of Certiorarified Mandamus to call for the records relating to 3<sup>rd</sup> Respondent proceedings made in Na.Ka.No.Pa.Aa.3/11758/2016 dated 13.09.2021 and quash the same and direct the Respondents to appoint the Petitioner as Junior Assistant notionally in the year 2009 and placed him in appropriate place in the seniority list of Junior Assistant of year 2007-2008 and consequently promote him notionally in the post of the Assistant and Deputy Block Development Officer on par with immediate Junior.



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2. Heard Mr.M.Muthappan, learned counsel for the Petitioner and Mr.S.Nanmaran, learned Special Government Pleader for R1 to R3 and Mr.R.Bharanidharan, learned standing counsel for R4.

3. Mr.M.Muthappan, learned counsel for the Petitioner submitted that the Petitioner who is in the cadre of Record Clerk has been given with 10% quota and can be promoted to the cadre of Junior Assistant. Even though the Petitioner, was qualified in the year 2009 itself, and the vacancies are also pertaining to the year 2007-08, due to administrative delay, the Petitioner could get his promotion only in the year 2012 and he joined in the cadre of Junior Assistant on 05.10.2012 and thereafter, the Petitioner got promoted as Assistant.

4. The grievance of the Petitioner is that those persons, who are directly recruited to the post of Junior Assistant in the year 2009 against their quota for the vacancies of the year 2007-2008 have been promoted to Deputy Block Development Officer. Hence the Petitioner claims that his seniority should be refixed from the year 2009 on which date he becomes qualified for promotion as against 10% quota and that seniority should be refixed on par with the direct



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recruits, who joined on 27.05.2009. Admittedly the Petitioner got appointed as Junior Assistant only in the year 2012 and he assumed charge in the post of Junior Assistant on 05.10.2012.

5.In this regard, it is appropriate to refer the judgment of the Hon'ble Supreme Court held in State of Uttar Pradesh & Others Vs. Ashok Kumar Srivastava & Another in CrI.A.No.6967 of 2013 dated 21.08.2013. In the said judgment earlier judgment rendered in *Pawan Pratap Singh and others v. Reevan Singh and others* reported in (2011) 3 SCC 267 was referred in approval and it is held as under:

*“15. Learned senior counsel for the appellants has drawn inspiration from the recent authority in Pawan Pratap Singh and others v. Reevan Singh and others where the Court after referring to earlier authorities in the field has culled out certain principles out of which the following being the relevant are reproduced below:*

*“(ii) Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure*



*therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.*

xxx xxx xxx

*(iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.”*

*16. In view of the aforesaid enunciation of law, the irresistible conclusion is that the claim of the first respondent for conferment of retrospective seniority is absolutely untenable and the High Court has fallen into error by granting him the said benefit and accordingly the impugned order deserves to be lanced and we so do.”*

The above dictum of the Hon'ble Supreme Court is squarely applied to the facts of the present case.

6. Since the Petitioner could join in the cadre of Junior Assistant only in the year 2012, despite he possessed the required qualification, he cannot claim



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his seniority on par with the direct recruits who had assumed charge in the cadre of Junior Assistant in the year 2009 itself.

7.The principle is that an individual who has not borne in the cadre cannot seek a place in the ladder above those persons who are already in the same cadre and execute the functions of the said cadre.

8.In view of the above said position, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

**30.11.2023**

Index : Yes/No  
Neutral citation : Yes/No  
Speaking Order/Non-Speaking Order

*sai*



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**R.N.MANJULA, J.**

*sai*

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