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W.A.No.1483 of 2019 etc., (batch cases)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2023

CORAM :

**THE HON'BLE MRS.JUSTICE J.NISHA BANU
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.A.No.1483, 1496, 1494, 1493, 1510, 1513 and 1491 of 2019
and C.M.P.Nos.10204, 10255, 10190, 10208, 10158, 10219 and 10274 of
2019

In W.A.No.1483 of 2019 :

S.Vijayalakshmi

... Appellant

Versus

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Rural Development and Panchayat Department,
Secretariat, Fort St. George,
Chennai – 600 009.
2. The Director of Rural Development and Panchayat,
Panagal Building, Saidapet,
Chennai – 600 015.
3. The District Collector,
Salem District,



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Salem.

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4. J.R.Ravichandran

5. S.Tamil Selvan

6. N.Thiruverangan

... Respondents

Prayer in W.A.No.1483 of 2019 : Writ Appeal filed under Clause 15 of Letters Patent to set aside the orders passed by this Court in W.P.No.10438 of 2015, dated 06.01.2017.

For Appellant

(in all the cases)

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

For Respondents

(in all cases)

: Mr.Abishek, Government Advocate
for RR-1 to 3

: Mr.L.Chandrakumar, for R4

: Mrs.T.Hemalatha, for RR-6 to 7

: No Appearance for R5

COMMON JUDGMENT

D.BHARATHA CHAKRAVARHY, J.



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All these Writ Appeals are filed by the appellants / writ petitioners,

aggrieved by the common order of the learned Single Judge dated 06.01.2017, in and by which, the Writ Petitions filed by them were dismissed. The Writ Petitions were filed by the appellants / petitioners questioning the orders passed rejecting their representation to rectify the erroneous fixation of their seniority in the cadre of Assistant. Hereinafter, the parties are referred to as per their array in the Writ Petitions.

2. The case of the petitioners was that they were Junior Assistants in the Rural Development Department. To become eligible for promotion to the next higher post of Assistant, they have to pass the following five departmental tests:-

“I) Community Development Manual Paper-I

II) Village Swaraj

iii) Constitution of India and Miscellaneous Acts.

iv) Account Test

and



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v) *Tamil Nadu Panchayat Act, 1994.*”

3. The petitioners cleared the aforesaid departmental tests on various dates and thereafter, they were promoted as Assistants on various dates and they joined in the said posts and are working in the said cadre. While so, while determining *inter se* seniority in the cadre of Assistant, the date of becoming eligible to be promoted as Assistant was taken into consideration and accordingly, their seniority in the post of Assistant was fixed.

4. One *S.Yuvaraj*, challenged the same by filing the Writ Petition in W.P.No.14595 of 2009 and by a judgment dated 30.04.2010 in the said W.P.No.14595 of 2009, this Court allowed the Writ Petition and directed the respondents to fix the seniority of the petitioner therein by taking into consideration the date of promotion as Assistant and not the date of clearance of departmental tests. Aggrieved by the same, the official respondents filed W.A.No.2132 of 2011. However, the same was also



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dismissed by the order dated 13.02.2013 and thereafter, on 15.04.2013, the

order was implemented in respect of the said *Yuvaraj* alone. Immediately thereof, the petitioners submitted a joint representation dated 18.03.2014 submitting that the same mistake committed in respect of them shall also be corrected. Since there was no positive response, they approached this Court by way of W.P.No.31359 of 2014 and by the order dated 01.12.2014, this Court directed the respondents to consider the said representation and pass orders.

5. Pursuant thereto, the order dated 24.03.2015 was passed rejecting the request of the petitioners on the ground that even the request of the said *Yuvaraj* is not in accordance with rules, but, however, was implemented only because of the directions of the Court and therefore, rejected the claim of the petitioners. Challenging the same, the Writ Petitions are filed inter *alia* contending that the fixation of seniority shall be only as per the rules relating to seniority and according to the same, it is only the date of joining into the



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service in the cadre of Assistant which should be the criteria and not the date on which they clear the departmental tests to become eligible shall be the criteria.

6. The Writ Petitions were resisted by the respondents on the ground that in all cases identically situated persons need not be extended the benefit of a Judgment. When the petitioners did not approach the Court at the earliest point of time, they cannot seek remedy belatedly. The petitioners were all promoted as Assistants only by considering the fact of declaration of their probation and passing of departmental tests without verification of parental service as they have been absorbed from a different department and since they have been granted promotion in batches as and when vacancies arose, 'the adoption date' mode has been followed for administrative convenience. Therefore, the Writ Petitions have to be dismissed.

7. The learned Single Judge, after advertent to the cases of both the



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sides, found that even though relief is granted to identically placed employee

and that the other similarly situated persons should be treated alike, the exception lies in the form of latches, delay and acquiescence. Therefore, the belated claim of the petitioners cannot be entertained. The learned Single Judge further held that since their parent department is Survey Department and irrespective of the same, they have been given promotion as Assistants, they are not entitled to seek seniority on the basis of the date of appointment, date of promotion and dismissed the Writ Petitions, aggrieved by which, the present Writ Appeals are filed by the Writ Petitioners.

8. Heard *Mr.G.Sankaran*, learned Senior Counsel for the appellants in all the Writ Appeals; *Mr.Abishek*, learned Government Advocate for the respondents 1 to 3, *Mr.L.Chandrakumar*, learned Counsel for the fourth respondent and *Mrs.T.Hemalatha*, learned Counsel for the respondents 6 and 7 in all the Writ Appeals.



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9. *Mr.G.Sankaran*, learned Senior Counsel for the appellants would

submit that all the aggrieved employees including the petitioners have been making representations right from the date of erroneous fixation of seniority.

When the seniority is *inter se* and when relief is granted, it cannot be implemented for one individual alone. Therefore, the respondents cannot contend that the rule relating to fixation of seniority in respect of the said *Yuvaraj* will be the date of promotion and in respect of the petitioners will be the date of clearance of the departmental tests. There was no delay on the part of the petitioners. He would further submit that the other ground, on which the learned Single Judge dismissed the Writ Petitions, was that they belong to other department and therefore, their seniority can even be fixed on the basis of the clearance of departmental tests is without any basis.

10. Per *contra*, *Mr.Abishek*, learned Government Advocate for the respondents 1 to 3 would submit that in the matters of seniority, the parties should immediately approach the Court and the delay in respect thereof



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cannot be condoned as the same would lead to cascading the effect of undoing further promotions and upsetting the very administration itself. In any event, the order impugned in the Writ Petitions rightly rejected the claim of the petitioners on merits also and therefore, the Writ Appeal deserves to be dismissed.

11. We have considered the rival submissions made on either side and perused the material records of the case. Firstly, on merits, once the Writ Petitioners are granted promotion and they have joined the post of Assistant and are working, there cannot be any discrimination considering their source of appointment as to whether they are from a different department or from the same department. This position of law is clearly laid down by the Hon'ble Supreme Court of India in *State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Ors.*¹ and the paragraph No.45 of the said judgment is extracted as hereunder :

" 45. Thus, all that *Roshan Lal case* [AIR

¹ (1974) 1 SCC 19



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1967 SC 1889] lays down is that direct recruits and promotees lose their birth-marks on fusion into a common stream of service and they cannot thereafter be treated differently by reference to the consideration that they were recruited from different sources. Their genetic blemishes disappear once they are integrated into a common class and cannot be revived so as to make equals unequals once again.

(emphasis supplied)

12. Similarly, when the seniority is fixed, the relevant criteria is only the rules relating to seniority and the factors that they are absorbed from the other department and the promotion is given by considering clearing of the examinations, declaration of probation etc., will all become irrelevant. Once promotion is granted that same is good for all practical purposes. The respondent department cannot approbate and reprobate contending that it will re-arrange the seniority irrespective of promotion. The law is very clear that whenever any additional qualification or clearance of departmental test is prescribed for promotion, once a senior clears the tests even belatedly, thereafter, it is only the original seniority which will prevail and not the date



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of clearance of examinations. Useful reference in this regard can be made to

the judgment of the Hon'ble Supreme Court of India in ***R.B. Desai and***

Another Vs. S.K.Khanolker and Ors.² (1999 7 SCC 54), more particularly

paragraph 9, which reads as under :

“ 9.*We are of the opinion that if at the time of consideration of promotion the candidates concerned have acquired eligibility, then unless the rule specifically gives an advantage to a candidate with earlier eligibility, the date of seniority should prevail over the date of eligibility.* ...”

(emphasis supplied)

13. Thus, we are of the opinion that the order impugned in the Writ Petition, holding as if the judgment of this Court in the earlier round in the case of *Yuvaraj* is contrary to rules, is erroneous and this Court had appropriately directed re-fixation of seniority. Once the re-fixation of seniority is ordered, even though in a case of one individual, it is expected of the respondents to follow the principle in respect of all the persons in the

² (1999) 7 SCC 54



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same seniority list. Therefore, the case of the petitioners is squarely covered

by the earlier judgment and the respondents ought to have granted the benefit even without any claim from the petitioners. In that view of the matter, when the petitioners made representation immediately after grant of benefit to *Yuvaraj*, it can neither be termed as belated nor it can be termed as acquiescence. In that view of the matter, the prayer of the Writ Petitioners deserves to be allowed.

14. Even though we have held that there was no undue delay and that there is no acquiescence on the part of the petitioners, considering the timeline, we are of the view that the petitioners will only be entitled to re-fixation of their seniority and for consequential notional promotion, if any, to the next higher post, but, without any back-wages and arrears to pay.

15. In the result,

(i) The Writ Appeals in W.A.No.1483, 1496, 1494, 1493, 1510, 1513



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and 1491 of 2019 are allowed;

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(ii) The Writ Petitions filed by the appellants are allowed on the following terms:-

(a) The impugned order, dated 24.03.2015 in Na.Ka.No.82442/2014/C1 issued by the second respondent shall stand quashed;

(b) The respondents 1 to 3 shall re-fix the seniority by taking into account the original seniority in the post of Junior Assistant and their promotion as Assistant and not the date of declaration of probation or passing of the departmental tests;

(c) The appellants would be entitled for the consequential notional promotion, if any, from the date of promotion of their juniors and accordingly, will be entitled to notional fixation of their pay



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scale and salaries, but, however, will not be entitled to the back-wages / arrears of pay. It is also seen that of the seven appellants, five of them, except *V.Annadurai* and *D.Arulanandaraj* have now retired. In respect of the retired petitioners, they will be entitled to notional promotion and consequential re-fixation of their last on benefits, if any, without any financial benefits and they will be entitled for arrears of pension from the date of carrying out of this exercise.

(iii) The respondents shall carry out the exercise within two months from the date of receipt of a copy of this judgment and the actual financial benefits, including arrears of pay, will be payable from the said date of implementation of the orders;

(iv) If there is any delay on the part of the respondents in



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implementing the order, then the appellants will be entitled for financial benefits including back-wages and arrears from the date of this order;

(v) There will be no order as to costs.

(vi) Consequently, connected Civil Miscellaneous Petitions are closed.

(J.N.B., J.)

(D.B.C., J.)

13.06.2023

Index : yes

Speaking order

Neutral Citation : yes

grs

To

1. The Secretary to Government,
Rural Development and Panchayat Department,
Secretariat, Fort St. George,
Chennai – 600 009.

2. The Director of Rural Development and Panchayat,
Panagal Building, Saidapet,
Chennai – 600 015.

3. The District Collector,



Salem District,
Salem.

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