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W.P.(MD)No.4938 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.01.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.4938 of 2018

and

W.M.P.(MD)No.4915 of 2018

L.Sugumaran

... Petitioner

VS.

- 1.State by the Secretary to Government
of Tamilnadu,
Home Department, Secretariat,
Fort St. George, Chennai.
- 2.The Director General of Police,
Director General of Police,
Chennai.
- 3.The Superintendent of Police,
Dindigul District, Dindigul.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 2nd respondent herein in his Rc.No.192987/



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NGB.VI(1)/2015, dated 15.09.2017 and to quash the same as illegal and consequent thereon to direct the respondents to include the petitioner's name in the “C” list of Junior Assistants fit for promotion as Assistant for the year of 1992-93 in the “C” list of Assistants fit for promotion as Superintendent for the year of 1996-97 as per rule 35(f) of Tamilnadu State and Sub-Ordinate Service Rules.

For Petitioner : Mr.N.Marimuthu
for Mr.A.Chandrakumar
For Respondents : Mr.Veera Kathiravan
Additional Advocate General
assisted by Mr.John Rajadurai
Government Advocate

ORDER

This writ petition is filed for writ of Certiorarified Mandamus, to quash the impugned order passed by the 2nd respondent, dated 15.09.2017 and consequently direct the respondents to include the petitioner's name in the “C” list of Junior Assistants fit for promotion as Assistant for the year of 1992-93 in the “C” list of Assistants fit for promotion as Superintendent for the year of 1996-97 as per rule 35(f) of Tamilnadu State and Subordinate Service Rules.



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2. The brief facts of the case are that the petitioner was appointed on 20.04.1987 as Junior Assistant, regularized as Junior Assistant with effect from 20.04.1987 in G.O. Ms.No.611 Home (Pol.XV) Department dated 21.03.1988, completed his Bhavanisagar Training from 23.06.1988 to 22.08.1988, declared to have completed probation as Junior Assistant on 25.04.1989, passed departmental examination in May 1989, then passed District Manual and Accountant Test for Subordinates Officers Part 1 in May 1991. The petitioner's name was included in the "C" list of Junior Assistants fit for promotion as Assistants drawn for the year 1996-1997 in Serial No.67 and promoted as Assistant on 04.06.1997, then promoted as Superintendent on 26.03.2010. The petitioner submitted a petition dated 04.08.2014 to include his name in the "C" list of Junior Assistants fit for promotion as Assistants drawn for the year 1992-1993, claiming that he was fully qualified to be promoted to the post of Assistants in the year of 1992-93, but the petitioner's name was not included in the list by the respondents without assigning any reason. The crucial date for inclusion of names in the panel to the post of Assistant was 15.03.1991, but due to the administrative delay in preparing



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the panel, the petitioner's name was not included in the "C" list fit for promotion for the year 1992-93. But the petitioner's name was included only in the year of 1996-1997 and was promoted as Assistant. The claim of the petitioner is that he should be included in the year 1992-93 panel for Assistants, which was prepared in the year 1992-1993, since his appointment was on 20.04.1987. The petitioner submitted representation on 01.09.2014, 23.02.2015 and so on, but there was no response from the respondents. Finally, on 15.09.2017, the respondents issued the impugned order rejecting the claim of the petitioner on the ground that since the petitioner was appointed through compassionate appointment, he cannot equate himself with the persons appointed through TNPSC, namely Santhanaraman. The petitioner submitted that the decision of the 2nd respondent is totally illegal and unsustainable, hence the present writ petition.

3. The 3rd respondent has filed counter affidavit stating that under 35(f) of the Tamil Nadu State Subordinates Service Rules the employee should submit objection to seniority list to the competent authority within three years from the



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date of fixing seniority. In the present case the petitioner ought to have submitted objection on or before 03.06.2000, but had submitted after a lapse of 14 years. His representation was considered vide order dated 15.09.2017, wherein it is stated that the petitioner was appointed through compassionate appointment and the person with whom the petitioner is comparing is one Santhanaraman, who was selected through TNPSC in 1983 batch. None of the juniors appointed through compassionate ground has been included above the name of the petitioner and also none of them were included in the “C” list. The impugned order was passed after considering the case of the petitioner as per Rule 10 of the Tamil Nadu Special Absorption Rules, 1987 framed in G.O.Ms.No.548 Personnel and Administrative Reforms (Personnel-1) dated 19.06.1987. The claim of the petitioner was not rejected only on the ground that the petitioner was appointed on compassionate ground. The issue of fixing seniority in the case of compassionate appointees has already been seized in Apex Court and as per the direction of the Court, the 2nd respondent has considered all the aspects and fixes seniority of candidates who were appointed through compassionate ground,



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TNPSC etc. vide proceedings dated 14.08.2012. Accordingly, the petitioner's name was included in the appropriate place. After analyzing the factual service particulars, Service Condition of Special Absorption candidates, the TNPSC candidates and Compassionate Ground appointees in the light of G.O.Ms.No.548, Personnel and Administrative Reforms (Personnel-1) Department, dated 19.06.1987, the necessary endorsement has been issued to the petitioner in accordance to law and there is no lethargic or arbitrariness attitude. The petitioner's name reached the zone of consideration for promotion as Assistant only for the year 1996-1997, as per the seniority and according to the estimate vacancy. Thus, he was included in the panel for the year 1996-1997 in S.No.67 and was promoted on 04.06.1997 and hence there is no delay. Further the petitioner is not eligible for inclusion in the year 1992-1993 and there is no question of advancement of promotion to Superintendent post. In view of the judgment dated 03.04.2006 rendered in W.P. No.21654/2004, 3822/2006, 3823/2006 and further the judgment is challenged in SLP (Civil) No.19902 of 2006 before Hon'ble Supreme Court filed by both the TNPSC candidates and



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Special Absorption candidates and the subject is sub-justice. Moreover, the claim is hit by the principles of delay and laches and the petition is not maintainable. Hence, the 3rd respondent prayed to dismiss this writ petition.

4. Heard Mr.N.Marimuthu, learned Counsel appearing for the petitioner and Mr.Veera Kathiravan, learned Additional Advocate General appearing for the respondents.

5. The persons who were selected in 1983 batch were appointed in the year 1983, 1984, 1987 and 1988, based on the available vacancies. After the completion of TNPSC 1983 batch, the petitioner was fixed in the seniority list of 1996-1997, even though the petitioner's appointment under compassionate ground was on 20.04.1987. His name was included in the list of Junior Assistant for the promotion panel of Assistants drawn for the year 1996-1997 as Serial No. 67 and promoted as Assistant. But the respondents submitted that the petitioner



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was appointed through compassionate appointment cannot equate himself with persons who were appointed through TNPSC in 1983 batch and also submitted that none of his juniors appointed through compassionate appointment ground has been included above the petitioner. Hence, it is not feasible to entertain the plea of the petitioner. It is seen that the petitioner was appointed in the year 20.04.1987 on compassionate ground and the said Santhanaraman was recruited in the year 1983 batch through TNPSC but appointed in 1987. Since the petitioner was appointed on 20.04.1987 prior to the appointment of the said Santhanaraman, the petitioner is claiming to fix the seniority above Santhanaraman. The said contention of the petitioner to keep the petitioner above Santhanaraman is not proper, since compassionate appointment cannot be equated to person who was recruited through TNPSC. The TNPSC appointees would have faced the competition, then he would have been selected based on merits. But the compassionate appointees would not have faced such competition and the merit is not assessed at all. However, the petitioner is entitled to keep his seniority in the year 1987 as junior most among the persons who were appointed in the year



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1987. The learned Additional Advocate General appearing for the respondents referred to the seniority list for the year 1987-1988, which was prepared based on the order of this Court, dated 03.04.2006. On perusing the seniority list, it is seen that one Padmavathi in Serial No.2 who was appointed in the year 1984 was kept below the TNPSC appointees who were appointed in the year 1984. The petitioner is claiming the same equal treatment, which was granted to the said Padmavathi. The learned Additional Advocate General submitted that the appointment of one Sundararajan in Serial No.1 was in the year 1985, since the appointment of the said Padmavathi is in the year 1984, she ought to be kept as junior most to the said Sundararajan. The said reply is not acceptable, since compassionate appointees are entitled to be kept as junior most in the same year of appointment itself. For example, if a TNPSC appointee appointed in the year 1985, the compassionate appointee appointed in the same year 1985, then the compassionate appointee is entitled to be kept as junior most in the year 1985 itself. From the seniority list, it is evident that the respondents have not followed any rules to fix the *inter-se* seniority between the TNPSC appointees and the



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compassionate appointees.

6. The learned Additional Advocate General appearing for the respondents referred to G.O.Ms.No.548, Personnel and Administrative Reforms (Personnel-1) Department, dated 19.06.1987. The said G.O. has been issued to fix the *inter-se* seniority between the TNPSC appointees and 10(a)(i) appointees. Admittedly, the 10(a)(i) appointees were appointed prior to 1983 batch of TNPSC appointees. The relevant portion of the said G.O.Ms.No.548 is extracted hereunder:

“GOVERNMENT OF TAMIL NADU

ABSTRACT

Public Services – Temporary Junior – Assistants Typists and Steno – Typists recruited through Employment Exchange – Absorption in Government Service – Fixation of Seniority, age, educational qualification, pay Leave etc – Special Rules – Issued.

Personnel and Administrative Reforms (Personnel-1) Department

*G.O.Ms.No.548
19.06.1987*

dated

Read:

*G.O.Ms.No.966, Personnel and Administrative Reforms (Placements)
Department, dated 22.09.1984*



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ORDER:

In the Government Order read above, the services of all the temporary personnel in the category of Junior Assistant, Typist and Steno-typist in the Tamil Nadu Ministerial Service/Tamil Nadu Judicial Ministerial Service and Typist and Steno-typist in the Tamil Nadu Secretariat Service recruited through Employment Exchange under General Rule 10(a)(i) and who were in temporary service as on 25.6.1984 be regularised with effect from 25.6.1984 in the same category and in the Department in which they were working.

2. The Government have examined the question of framing rules governing the service conditions of such persons appointed regularly as per Government order read above

3. The following Notification will published in the Tamil Nadu Government Gazette:-

NOTIFICATION

In exercise of the powers conferred under Article 309 of the Constitution of India, the Governor of Tamil Nadu hereby makes the following rules:-

The rules hereby made shall be deemed to have come into force on the 25th June 1984.

RULES

1. (i) Short title and application - These rules may be called the Tamil Nadu Special absorption Rules, 1987.

(ii) These rules shall apply to all candidates appointed through Special Absorption in 1984.

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*10. Seniority: The seniority of a candidate appointed through Special Absorption, in 1984, shall be fixed with reference to the date of first temporary appointment in the departmental unit in which he had been absorbed irrespective of whether he had been subsequently discharged for want of vacancies or appointed again through the Employment Exchange in that departmental unit, and not with reference to the date of first appointment in any other departmental unit where he had acted previously before his absorption in the particular departmental unit. **He shall be ranked below the candidates selected by the Tamil Nadu Public Service Commission on the results of the competitive examination held in November, 1983 irrespective of the date of appointment of these candidates.** If more than one candidate is appointed on the same day, their seniority shall be fixed with reference to the age as laid down in Sub-rule (a) of Rule 35 of the General Rules. The rule of reservation (general Rules 22) shall not apply to these candidates.*

Provided that if any person is appointed to the post of Junior Assistants/Typists/Steno-typists in accordance with the special rules the seniority of such person shall be placed above the candidates appointed through Special Absorption in 1984.

Provided also that if any of the persons appointed to the posts of Junior Assistant/Typist/Steno-typist in accordance with the Special Absorption Rules, 1984 and whose services were regularized in one department on 25.6.84 and. reallocated to a new department for want of vacancy through the Tamil Nadu Public Service Commission shall take his seniority in the new department from the date of his temporary appointment in the department from which he was reallocated.

The said G.O., is not dealing with the compassionate appointees. The learned Additional Advocate General appearing for the respondents interpreted the said



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G.O. and submitted that the compassionate appointees ought to be placed on par with the 10(a)(i) appointees. This Court is not inclined to supplement any words in the G.O. If supplemented then the same would attract the principles of “casus omissus”.

7. The purpose of passing the said G.O.Ms.No.548 is to regularize the service of the persons who were appointment in temporary service as on 25.06.1984 and they were ordered to be regularized with effect from the said date of appointment i.e. 25.06.1984. And for such appointment the government had examined the question of framing rules and service conditions of such persons appointed regularly as per G.O.Ms.No.996 Personnel and Administrative Reforms (Placements) Department dated 22.09.1984. From the bare reading of the G.O., it is evident that the persons recruited in the year 1983 by TNPSC ought to be protected and also the persons who were recruited under 10(a)(i).



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8. At the same breath the compassionate appointment is also to be protected. When the selected candidates of 1983 batch were not awarded any appointment orders until December 1983, the Government has two options,

- a. Either to appoint the compassionate appointees after the entire batch is over and ought to have kept the petitioner in waiting list,
- b. Or to consider the petitioner as appointed in the year 1987 and grant seniority in the year 1987 itself.

The Government has not followed any of these two options and has created a confusion. It is pertinent to state herein earlier the claim to appoint under compassionate ground was less in number, but now the claim is increasing day-by-day and the government is not in a position to grant the compassionate appointment immediately and the government has stated maintaining seniority list for compassionate appointment. Earlier there was no clear rules and regulations to deal with compassionate appointment, but the Government had formulated clear



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rules to this effect when the number of applications has increased. Consequently, fixing seniority for the compassionate appointees would also requires legislation. In the absence of such legislation then the petitioner is entitled to claim to fix seniority.

9. The learned Additional Advocate General relied on the order passed in W.P.No.21654 of 2004, dated 03.04.2006 and the relevant portion of the order is extracted here under:

“14. For the aforesaid reason, the Writ Petition Nos. 3822 and 3823 of 2006 filed by the Government, are dismissed. Writ Petition No.21654 of 2004 is partly allowed, and it is directed that the candidates selected by the TNPSC on the basis of the examination held in November, 1983, shall rank above General Rules 10 (a) (1) candidates; but, so far as compassionate appointees are concerned, the inter se rank of the compassionate appointees and TNPSC candidates shall depend according to the date of their initial appointment, as has been held in paragraph 9 of the judgment in W.P.No.7730/87 and W.A.No.787/88. No costs. Consequently, connected WPMPs are closed.”



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This Court is of the considered opinion that even the order of the Honourable Division Bench is favouring the petitioner, since the order has stated that all appointees are entitled to fix their seniority based on the date of their initial appointment. In the present case, the petitioner is claiming to fix his seniority based on the initial date of appointment. Admittedly, the petitioner was appointed in the year 1987 and he is entitled to be fixed in the year 1987 as junior most among the TNPSC appointees and 10(a)(i) appointees. However, the petitioner is claiming to fix his seniority above the TNPSC appointees which cannot be done. But the petitioner is entitled to fix his seniority below TNPSC appointees as the junior most person in the year 1987.

10. The learned Additional Advocate General appearing for the respondents raised limitation and submitted that the petitioner has claimed revision of seniority after a lapse of 14 years. The petitioner ought to have submitted an application within a period of three years, i.e., before 03.06.2000. The respondents relied on several judgments wherein it has been held if any petitioner



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needs to fix his seniority, he should approach the appropriate authority within a period of three years. Since the petitioner after obtaining two promotions has come up with this writ petition, the writ petition is hit by limitation. But the said contention cannot be accepted since the limitation issue would arise only when the rules and regulations are available and settled. In the present case, there is no rules and regulations to deal with compassionate appointment and to fix their seniority. And G.O.Ms.No.548 is not dealing with compassionate appointees and hence the said G.O. cannot be relied on to fix seniority for compassionate appointment. This Court is of the considered opinion is there are rules and regulations framed to claim seniority, then the petitioner is bound to claim it within a period of three years. But when there is no rules and regulations to deal with the issue, limitation will never arise. Therefore, the judgments which were relied on for limitation issue by the learned Additional Advocate General is not applicable to the present case. Therefore, this Court is not inclined to entertain the plea of limitation in the present writ petition. The impugned order is liable to be quashed and accordingly the same is quashed in so far as the petitioner is



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concerned.

11. With the above said observations and directions, the writ petition is allowed in above terms. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes

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To

1. Secretary to Government,
State of Tamilnadu,
Home Department, Secretariat,
Fort St. George, Chennai.
2. The Director General of Police,
Director General of Police,
Chennai.
3. The Superintendent of Police,
Dindigul District, Dindigul.



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S.SRIMATHY, J

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