BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**RESERVED ON : 06.12.2023**
**DELIVERED ON : 12.12.2023**

CORAM:

**THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

W.P(MD)Nos.20718 & 20719 of 2021
and
W.M.P(MD)Nos.17328, 17330, 17333 & 17335 of 2021 and 4959 & 4977 of 2023

C.S.Shibukumar ... Petitioner in W.P(MD)No.20718 of 2021

R.S.Vijin ... Petitioner in W.P(MD)No.20719 of 2021

Vs.

1.The District Revenue Officer,
Kanyakumari District,
Collectorate,
Nagercoil.

2.D.B.Dharshiya,
Village Administrative Officer,
Kanyakumari District,
Collectorate,
Nagercoil.

3.T.Satheeshkumar,
Village Administrative Officer,
Kanyakumari District,
Collectorate, Nagercoil.

4.M.Saraswathi,
Village Administrative Officer,
Kanyakumari District,
Collectorate,
Nagercoil.

5.Maheswari,
Village Administrative Officer,
Kanyakumari District,
Collectorate,
Nagercoil.

6.Jeyarani,
Village Administrative Officer,
Kanyakumari District,
Collectorate,
Nagercoil. ... Respondents
(In Both Cases)

**Prayer in W.P(MD)No.20718 of 2021**: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned order passed by the first respondent in his proceedings in O.Mu.(A3)7970/2021, dated 23.09.2021 and quash the same in so far as rank assigned to the petitioner is concerned and consequently direct the first respondent to place the petitioner's name above the second respondent in the said seniority list and to promote the petitioner as Revenue Inspector from the date on which the petitioner's Junior was promoted to the post of Revenue Inspector with all attendant and monetary benefits.

**Prayer in W.P(MD)No.20719 of 2021**: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned order passed by the first respondent in his proceedings in O.Mu.(A3)7970/2021, dated 23.09.2021 and quash the same in so far as relates to the petitioner is concerned and consequently direct the first respondent to place the petitioner above the second respondent in the seniority list published by the first respondent in his proceedings A3/7316/2020, dated 09.04.2020 and to promote the petitioner as Revenue Inspector from the date on which the petitioner's Junior was promoted to the post of Revenue Inspector with all attendant and monetary benefits.

**(In Both Cases):**

For Petitioners : Mr.M.Saravana Kumar

For R-1 : Mr.J.Ashok
Additional Government Pleader

For R-2 to R-6 : No appearance

## COMMON ORDER

These writ petitions have been filed by two Village Administrative Officers, who are working in Kanyakumari District challenging the order passed by the first respondent herein, wherein their request for refixing the seniority list of Senior Revenue Inspector for the year 2020 was rejected.

2. **The undisputed facts are as follows:**

(i) The petitioner in W.P(MD)No.20718 of 2021, namely, Shibu Kumar was appointed as Village Administrative Officer in Sivagangai District on 17.01.2013. The petitioner in W.P(MD)No.20719 of 2021, namely, Vijin was appointed as Village Administrative Officer in Sivagangai District on 21.01.2013. Both the petitioners had made a request to the Commissioner of Revenue Administration to transfer them to Nagercoil Division. On 01.10.2014, the Commissioner of Revenue Administration had consented for their transfer to Nagercoil Division. Based upon the said order, the District Collector, Kanyakumari District has passed an order on 20.10.2014 appointing both the petitioners in Nagercoil Division. On 17.11.2014, District Revenue Officer, Sivagangai passed an order, relieving both the writ petitioners. In the said relieving order, it is pointed out that the petitioners will be placed last in the seniority list under the un-approved probationers.

(ii) Both the petitioners have joined duty in Kanyakumari District on 20.11.2014. The regularisation of the petitioner in W.P(MD)No.20718 of 2021, namely, Shibu Kumar was declared on 07.11.2013 with effect from 17.01.2013. The regularisation of the petitioner in W.P(MD)No.20719 of

2021, namely, Vijin was declared on 09.11.2013 with effect from 21.01.2013. The probation of Shibu Kumar was declared with effect from 09.02.2015 and the probation of Vijin was declared with effect from 20.01.2015. The private respondents herein, namely, R-2 to R-6 were appointed in the Nagercoil Division on 26th January and 28th January 2013. The private respondents were regularised with effect from the date of their initial appointment. The probation of the private respondents is between 25.01.2015 and 29.09.2015. Therefore, the petitioners were regularised prior to the private respondents. The probation of the petitioners was also declared prior to the private respondents. These facts are not in dispute.

3. **Contentions of the learned Counsel for the writ petitioner are as follows:**

(i) According to the writ petitioners, the order of the District Revenue Officer, Sivagangai, dated 17.11.2014, in which the seniority of the writ petitioners was directed to be placed at the bottom of un-approved probationers is not valid in the eye of law. The learned Counsel appearing for the writ petitioner relied upon the judgment of this Court in ***W.P(MD)No.2657 of 2013, dated 22.11.2018 [R.Ushadevi Vs. The Principal Secretary / Commissioner of Commercial Taxes and Another]*** and contended that such a Clause cannot be incorporated in a transfer order or relieving order when a Government servant is transferred from one District to another District.

(ii) When both the petitioners have been selected through TNPSC, they carry their seniority on the basis of merit list wherever they are posted all over the State of Tamil Nadu. After appointment, the Head of the Departments do not have any authority to refix the seniority which is contrary to the seniority fixed by the TNPSC.

(iii) The private respondents herein were not recruited through TNPSC but were appointed on a compassionate basis and therefore, they should always be placed below the writ petitioners.

(iv) This Court in ***W.P(MD)No.4625 of 2015, dated 01.07.2019 [R.Chinna Sakkaiah Vs. The District Collector, Karur and Others]*** has held that TNPSC seniority should be the criteria for fixing the *inter se* seniority and therefore, the petitioners should have been placed above the private respondents.

(v) As far as Village Administrative Officers are concerned, District Level Seniority is being maintained for the purpose of further promotion. The petitioners herein have got transferred to Nagercoil Division on

20.11.2014, even before the services of the private respondents were regularised. The probation of the writ petitioners were declared prior to that of the private respondents. Therefore, the respondent authorities ought to have placed the writ petitioners above the private respondents in the panel for promotion to the post of Revenue Inspector. Therefore, relying upon the condition imposed in the relieving order and placing the writ petitioners below the private respondents is not legally sustainable.

4. **Contentions of the respondents are as follows:**

(i) The learned Additional Government Pleader appearing for the first respondent contended that the petitioners have accepted the condition laid in the relieving order passed by the District Revenue Officer, Sivagangai and got transferred themselves to Nagercoil Division. Without challenging the said relieving order, the petitioners cannot contend that such a condition is bad in the eye of law.

(ii) On the date of transfer from Sivagangai Division to Nagercoil Division, the petitioners have not completed probation and therefore, they were placed as the junior most employees among the un-approved probationers.

(iii) The date of regularisation or date of declaration of probation has nothing to do with the fixation of seniority. Once the petitioners got transferred from Sivagangai Division to Nagercoil Division, they lose all their seniority and they have to get themselves fixed as the junior most employee among the un-approved probationers.

(iv) The judgments cited by the learned Counsel for the petitioner are not applicable to the facts of the present case.

5. I have carefully considered the submissions made on either side and perused the materials available on record.

**Discussion:**

6. A perusal of the relieving order issued by the District Revenue Officer, Sivagangai, dated 17.11.2014 reveals that the Commissioner of Revenue Administration in his proceedings, dated 01.10.2014 has granted approval for transfer of the writ petitioners from Sivagangai Division to Nagercoil Division subject to certain conditions. Those conditions have been extracted in the relieving order of the District Revenue Officer, Sivagangai, dated 17.11.2014. Clause 3 of the said relieving order indicates that the writ petitioners herein would be placed as the junior most members

of service either in the approved probationer or in the cadre of un-approved probationer as the case may be. The petitioners herein have not chosen to challenge the said condition imposed by the Commissioner of Revenue Administration or by the District Revenue Officer, Sivagangai till sending a representation to the first respondent herein on 25.02.2021 seeking up-gradation of seniority.

7. The learned Counsel appearing for the petitioner had relied upon the judgment of this Court in ***W.P(MD)No.2657 of 2013, dated 22.11.2018 [R.Ushadevi Vs. The Principal Secretary / Commissioner of Commercial Taxes and Another].*** In the said case, the transfer order wherein condition relating to seniority was imposed was under challenge. Therefore, this Court was pleased to set aside the said condition and allowed the writ petition. In the present case, the condition imposed in the relieving order issued by the District Revenue Officer, Sivagangai, dated 17.11.2014 has not been put to challenge. Therefore the said judgment is not applicable to the facts of the present case.

8. The learned Counsel appearing for the petitioner had relied upon a judgment of this Court in ***W.P(MD)No.4625 of 2015, dated 01.07.2019 [R.Chinna Sakkaiah Vs. The District Collector, Karur and Others]*** to contend that the seniority fixed by TNPSC is carried by a candidate when he gets transferred from one District to another District. A perusal of the said order reveals that it was not a case of transfer from one District to another District. It was a dispute relating to *inter se* seniority between the petitioners and the private respondents therein, who were appointed through the same selection process. The learned Single Judge in paragraph No.6 has categorically pointed out that the date of regularisation or date of completion of probation are irrelevant for the purpose of fixing the seniority. In fact, in the present case, the petitioner is seeking seniority only on the basis of date of regularisation and date of declaration of probation. Therefore, the said judgment is only in favour of the private respondents.

9. The petitioners herein having got transferred from Sivagangai Division to Nagercoil Division with a specific condition that they would be placed junior most in the list of un-approved probationers, cannot turn

around now and contend that they should be placed above the private respondents, who were already working in Nagercoil Division. The private respondents were appointed on 26th January and 28th January 2013 in Nagercoil Division and they were also regularised from their initial date of appointment. Both the petitioners herein had got transferred to Nagercoil Division only on 20.11.2014 and the private respondents were un-approved probationers. Therefore, the petitioners were rightly placed below the private respondents as per the condition imposed in the relieving order of the District Revenue Officer, Sivagangai, dated 17.11.2014.

10. When the petitioners are placed below the private respondents as un-approved probationers, the date of regularisation or the date on which probation was declared would not affect the seniority of the private respondents which they have already gained. Admittedly, the seniority for a Village Administrative Officer is a District based seniority. When the petitioners moved to Nagercoil Division by way of one way request transfer, they cannot disturb the seniority of the Village Administrative Officer's, who are already working in Nagercoil Division. Therefore, the first respondent had rightly rejected the request of the petitioners for placing them senior to

the private respondents in the panel for promotion to the post of Revenue Inspector.

**Conclusion:**

11. In view of the above said deliberations, there are no merits in these writ petitions and both these writ petitions stand dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

**12.12.2023**

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

1.The District Revenue Officer,
Kanyakumari District,
Collectorate,
Nagercoil.

2.The Village Administrative Officer,
Kanyakumari District,
Collectorate,
Nagercoil.

**R.VIJAYAKUMAR, J.**

BTR

Order made in
**W.P(MD)Nos.20718 & 20719 of 2021**

**12.12.2023**