



W.P.(MD).No.16873 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 12.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.16873 of 2018

and

W.M.P.(MD).Nos.14898 and 14899 of 2018

S.Kumaravel

... Petitioner

Vs.

1.The Director of Rural Building and Panchayat Raj,
Directorate of Rural Building and Panchayat Raj,
Panagal Building,
Chennai – 15.

2.The District Collector,
Madurai District,
Madurai.

3.The Block Development Officer,
Usilampatti Panchayat Union,
Usilampatti,
Madurai District.

... Respondents

Prayer : 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 pertaining to the impugned order in Na.Ka.8487/08-3 U.VA.3 dated 15.04.2009 and the consequential order in Na.No.8487/2008/Uva.3 dated 19.12.2011 and the consequential order in Na.Ka.No.8036/2018/UVA.3 dated



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20.06.2018 on the file of the second respondent and quash the same as illegal and consequently direct the second respondent to reckon the original seniority from the date of his initial appointment with consequential benefits including promotion and monetary benefits to the petitioner.

For Petitioner : Mrs.A.L.Gandhimathi,
Senior Counsel.

For Respondents : Mr.R.Suresh Kumar,
Additional Government Pleader.

ORDER

This Writ Petition is filed to quash the order dated 15.04.2009 and the consequential order dated 19.12.2011 and 20.06.2018 with a consequential relief to direct the second respondent to reckon the original seniority from the date of petitioner's initial appointment with consequential benefits including promotion and monetary benefits to the petitioner.

2. The petitioner was initially appointed as Junior Assistant on 13.08.2005 in Usilampatti Panchayat Union, Madurai and subsequently, his service was regularized as Junior Assistant vide proceedings dated 03.11.2006. The petitioner was alleged to have committed misappropriation to a sum of Rs.96,937/- by fabricating the signature of one D.Udhayakumar. Hence a



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charge memo dated 16.03.2008 was issued under 17(b) of the Tamil Nadu Civil Service Discipline and Appeal Rules. After conducting enquiry, the petitioner was imposed with the punishment of reduction in rank for a period of two years vide order dated 15.04.2009. Hence the petitioner was posted as Office Assistant for the period from 21.04.2009 to 20.12.2011. Aggrieved over the same, the petitioner has preferred an Appeal. However, the petitioner has undergone the punishment. In the meanwhile, the respondents have prepared a seniority list. Since the pendency of the Appeal is affecting the petitioner's seniority, the petitioner has withdrawn the Appeal on 19.12.2011. Thereafter, the respondents have issued an order dated 21.12.2011 placing the petitioner again to his original post. The respondents have prepared a seniority list dated 01.01.2012 by keeping the petitioner in the seniority list in Serial No.104, thereby his original seniority was lost. The petitioner was aggrieved by the same and had submitted an objection dated 02.03.2012 to the District Collector through proper channel via the Block Development Officer, in turn the objection was forwarded to the District Collector in Na.Ka.No.50/2012/Thi2 dated 02.03.2012. However, the respondents have not considered the said objection which was raised in the year 2012. In the meanwhile, the petitioner was promoted as Assistant on 15.03.2017. Again, the petitioner had submitted an objection on 08.02.2018 with a prayer to refix his seniority from the date of



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his original appointment as Junior Assistant. Considering the same, the impugned order dated 20.06.2018 was passed rejecting the claim of the petitioner. Aggrieved over the same, the present Writ Petition is filed.

3. The respondents have filed a counter and the Learned Additional Government Pleader relying on the counter and submitted that once the delinquent has suffered the reduction in punishment, he lost his seniority as well. Therefore, the original seniority from the year 2005 cannot be restored. The seniority shall be calculated from the completion of date of punishment that is 2011 only. The Learned Additional Government Pleader further submitted under Section 40(1) and 40(2) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, if an employee has undergone any punishment of reduction in rank, then the petitioner cannot be considered for re-fixing the seniority to his original position. Hence, the respondents submitted that the petitioner is not entitled to. The respondents further submitted that the petitioner ought to have filed an objection within a period of 3 years, since the petitioner has not objected within time, hence the claim of the petitioner is hit to delay and laches and prayed to dismiss the writ petition.



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4. Heard Mrs.A.L.Gandhimathi, learned Senior Counsel for the petitioner and Mr.R.Suresh Kumar, learned Additional Government Pleader appearing for the respondents and perused the records.

5. The first contention that was raised by the petitioner is that the petitioner has submitted an objection as early as on 02.03.2012. The learned Additional Government Pleader appearing for the respondents submitted that the petitioner has not submitted any objections. The learned Senior Counsel appearing for the petitioner however submitted that the petitioner had submitted objection on 02.03.2012 and the said objection was received, Block Development Officer, Vadipatti has affixed the signature with a seal. After receiving the objection, the Block Development Officer, Vadipatti has forwarded the same to the District Collector vide proceedings in Na.Ka.No. 50/2012/Thi2 dated 02.03.2012 and the said covering letter is extracted hereunder:



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செய்தது
திருமதி. வெ. குழந்தை
சட்டம் வளர்ச்சி அறையாளர்(கிளை)
வாழ்ப்பட்டி காவல் துறைமுகம்.

பெறுதல்
மாண்புமிகு அட்டித் தலைவர்,
தேவாரச்சி பிளாட்
மதுரை - 20.

ந.க.எண்.50/2012/பி.நாள். 02.03.2012.

பொருள்
மாண்புமிகு அட்டித் தலைவர் - மதுரை மாண்புமிகு
இளநிலை உதவிமாண்புமிகு அறையாளர் தலைவர் II /
காவல் மற்றும் சட்ட சார் துறையில் பணி புரியும்
மாண்புமிகுக்கு 02.03.2012ம் நாள் தலைவர் தினைய
நாளைக்கு கொண்டு உத்தரவு பணிபுரியும் பட்டியல் வெளியிடு
-பிரதேசம் பெற்று வெளியிட வேண்டுகோள் - தொடர்பாக.

பார்க்க
என். குழந்தை, இளநிலை உதவிமாண்புமிகு, வாழ்ப்பட்டி
காவல் துறைமுகம் அறையாளர் விண்ணப்பம்
நாள்.02.03.12.

பார்க்கையில் காவல் விண்ணப்பத்தில் மதுரை மாண்புமிகு அட்டித் தலைவர்
அறையாளர் துறைமுக உதவிமாண்புமிகு (வளர்ச்சி பிளாட்) அறையாளர் உத்தரவில் இளநிலை
உதவிமாண்புமிகு துறையில் பணிபுரியும் பட்டியலில் அண்ணாள் பெயர் உரிய முகப்பில் இடத்தில்
கவனம் கொண்டு விண்ணப்பித்தல்.

மேற்படி விண்ணப்பம் பரிசீலனை செய்ய இடமுண்டு இவ்வாறு
அறையாளர் என்னும் பணிபுரியும் பெயரில் பெயர் பெறும்.

இவ்வாறு அறல் விண்ணப்பம்.
மாண்புமிகு அறையாளர்(கிளை)
வாழ்ப்பட்டி.

Therefore, the contention of the respondents the petitioner has not submitted any objection within a period of 3 years, is incorrect. Therefore, the petitioner is entitled to gain on this ground.

6. The next contention that was raised by the respondents is that under Rule 35 (a) of the Tamil Nadu State Subordinate and Service Rules and under



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Section 40(1) and 40(2) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, if an employee suffered any punishment of reduction in the rank, then he is not entitled to keep his seniority by taking the date of his appointment and hence the date of appointment of the petitioner in the post of Junior Assistant cannot be taken into account. The said provision under Rule 35(a) is extracted hereunder:

“35 (a) The seniority of a person in a service, class or category or grade shall unless he has been reduced to a lower rank as a punishment be determined by the rank obtained by him in the list of approved candidates drawn up by the Tamil Nadu Public Service Commission or other Appointing Authority, as the case may be, subject to the rule of reservation where it applies. The date of commencement of his probation shall be the date on which he joins duty irrespective of his seniority”.

The said provision under section 40(1) and 40(2) is extracted hereunder:

40. (1) The seniority of a person in a service, class, category or grade shall, unless he has been reduced to a lower rank as a punishment, be determined in the order of his placement in the list prepared by the recruitment agency or appointing authority, as the case may be, in accordance with the rule of reservation and the order of rotation specified in Schedule-V, where it applies. The date of commencement of his probation shall be the date on which he joins duty irrespective of his seniority.

(2) The seniority of a person in a service, class, category or grade shall, where the normal method of recruitment to that service, class, category or grade is by more than one method of recruitment, unless the individual has been reduced to a lower rank as a punishment, be determined with reference to the date on which he is appointed to the services, class, category or grade:

Provided that where the junior appointed by a particular method of recruitment happens to be appointed to a service, class, category or grade, earlier than the senior appointed by the same method of recruitment, the senior shall be deemed



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Appointment of full members. Appointment as full member, discharge and reappointment of member who are not probationers or approved probationers. Penalty for failure to pass prescribed test. Fixation of seniority. 32 to have been appointed to the service, class, category or grade on the same day on which the junior was so appointed:

Provided further that the benefit of the above proviso shall be available to the senior only for the purpose of fixing inter-se-seniority:

Provided also that where persons appointed by more than one method of recruitment are appointed or deemed to have been appointed to the service, class, category or grade on the same day, their inter-se-seniority shall be decided with reference to their age.

However, Section 40(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 was struck down by the Hon'ble Division Bench in the case of *K.Raja Vs Additional Chief Secretary to Government* reported in *2019 6 CTC 750*. Therefore, the impugned order citing Section 40(1) of the Act cannot be entertained. As on the date of passing the impugned order, Section 40(1) of the Act was in existence. But subsequently, based on the Division Bench order, the said provision was struck down. Therefore, at this juncture, citing Section 40 of the Act is not proper. However, the learned Additional Government Pleader appearing for the petitioner submitted that Rule 35(a) will rule as on date.

7. However, the learned Senior Counsel appearing for the petitioner submitted that the reduction in lower rank is different from reduction in lower



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post and relied on the Rule 8 of the Tamil Nadu Civil Service Discipline and Appeal Rules and the relevant portion is extracted hereunder:

*“(iv) Reduction to a **lower rank** in the seniority list or to a **lower post** not being lower than that to which he was directly recruited, whether in the same service or in another service, State or Subordinate, or to a lower time-scale, not being lower than that to which he was directly recruited, or to a lower stage in a time-scale ; Provided that in cases where the punishment of reduction to a lower stage in a time-scale cannot be given effect to fully, the monetary value equivalent to the difference in emoluments as a result of reduction to such lower stage in the time-scale for the unexpired period of the punishment shall be recovered from the person”.*

8. The said rule contemplates two punishments one is reduction to the **lower rank** in the seniority list and the other one is reduction to a **lower post**. In the present case, the petitioner was imposed with the punishment of “Reduction in Rank”. In the present case, the post was not reduced, only the rank was reduced and in such circumstances the Rule 35(a) of the Subordinate Service Rules may not be applicable. Moreover, the punishment fixes the period of punishment as two years, then on completion of two years then the petitioner necessarily ought to be brought to the original post. If the respondents argument ought to be accepted then the prescription of period would become meaningless and redundant. Therefore, as rightly pointed out by



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the learned Senior Counsel, the petitioner is entitled to fix the seniority by taking his original date of appointment as 13.08.2005.

9. The next contention that was raised by the learned Senior Counsel is that even if the argument of the respondents is taken into account, that will amount to punishing the petitioner for the entire service. This Court is of the considered opinion that the Learned Senior Counsel is absolutely right, such punishment would amount to perpetual punishment and the said punishment would be very cruel, which is not contemplated under the said Act. Moreover, the punishment would be disproportionate. Therefore, this Court is of the considered opinion that a punishment cannot be endlessly fixed on the delinquent which would amount to punishing in the petitioner's entire career.

10. Hence, the argument of the respondents is rejected and the impugned orders are quashed. The petitioner is entitled to refix the seniority by taking into account the date of his appointment as 13.08.2005. The respondents shall fix the seniority in between Serial No.17 and 18 and grant promotion notionally with consequential benefits. The said exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order.



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11. In view of the above, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

12.04.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr

To

- 1.The Director of Rural Building and Panchayat Raj,
Directorate of Rural Building and Panchayat Raj,
Panagal Building,
Chennai – 15.
- 2.The District Collector,
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Madurai.
- 3.The Block Development Officer,
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S.SRIMATHY, J.

Nsr

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