**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 12.06.2023**

**CORAM**

**THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

**W.P.(MD).No.27212 of 2019**

K.Saravanan ... Petitioner

**Vs.**

1.The Secretary to the Government,
Government of Tamil Nadu,
Revenue Department, Fort St.George,
Secretariat,
Chennai – 600 009.

2.The Joint Director,
Revenue Administration,
Ezhilagam,
Chepauk,
Chennai – 600 005.

3.The District Collector,
Virudhunagar District,
Virudhunagar – 626 002.

4.Personal Assistant to the Collector (General),
Virudhunagar District, Virudhunagar – 626 002.

5.The District Revenue Officer,
Virudhunagar District,
Virudhunagar – 626 002. ... Respondents

**Prayer** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order Mu.Mu.A2/17359/19 dated 15.07.2019, issued by the third respondent/The District Collector, Virudhunagar District and quash the same as illegal and consequently direct him to give relaxation in Tamilnadu Ministerial Service Special Rules, Rule 30(b) r/w Annexure – IV and applying the power given in Section-58 in Tamil Nadu Government Servants (Service Rules) Act 2016 to relax the Special Rules-30(c) of Tamil Nadu Ministerial Service Special Rules and accordingly to keep him above the junior in the list of the Promotional Panel for the year 2016, Letter No.A.2/PDL.31/2016 dated 05.07.2016, within the stipulated time as fixed by this Court.

For Petitioner : Mr.C.Masilamani

For Respondents : Mr.R.Sureshkumar,
Additional Government Pleader.

**ORDER**

This Writ Petition is filed to quash the order dated 15.07.2019 and consequently direct the respondents to give relaxation in Tamilnadu Ministerial Service Special Rules, Rule 30(b) r/w Annexure – IV and applying the power given in Section-58 in Tamil Nadu Government Servants (Service Rules) Act 2016 to relax the Special Rules-30(c) of Tamil Nadu Ministerial Service Special Rules and accordingly to keep the petitioner above the junior in the list of the Promotional Panel for the year 2016, Letter No.A.2/PDL.31/2016 dated 05.07.2016.

2. The petitioner was recruited through TNPSC and appointed as Typist on 27.02.2013, on 27.02.2015, he completed the probation and the departmental exams were cleared on May, 2014. Thereafter, he has completed Junior Revenue Inspector Training on 12.03.2016 and Land Survey and Settlement Training on 09.08.2016. The contention of the petitioner is that the respondents have sent some of the Typist for Land Survey and Settlement Training while they are under Junior Revenue Inspector Training. It is not kept as mandatory that only after completion of Junior Revenue Inspector Training, the employees have been sent for Land Survey and Settlement Training. In the case of Senior Revenue Inspector panel for promotion from Typist for the year 2016, one S.Saravanaperumal, Typist was sent to Land Survey and Settlement Training between 04.02.2015 and 10.03.2015 well before he was under Junior Revenue Inspector Training between 13.03.2015 and 12.03.2016. Similarly, one R.Nagajothimani and S.Stella Dhavamani were sent to Land Survey and Settlement Training while they are under Junior Revenue Inspector Training. One person namely, P.Kaleeswari in the panel year 2017, one M.Kamaraj in the panel year 2018 and S.Senthilkumar in the panel year 2019 were sent to the

Land Survey and Settlement Training while they are in the period of Junior Revenue Inspector Training. The further contention of the petitioner is that he was directed to participate in the Land Survey and Settlement Training while he was undergoing Junior Revenue Inspector Training during the period between 27.02.2015 and 12.03.2016. Likewise in similar situation, one K.Prakash has requested the Government that he had been given Junior Revenue Inspector Training before the probation period then he would have completed the Land Survey and Settlement Training too before 15.03.2013 and he would have got into the promotional panel list. Since the respondent Government has delayed his training, he has lost his opportunity. Considering the request of P.Prakash, the Government facilitated to keep Prakash in the seniority list above the other persons for the year 2014. The petitioner was aggrieved by the same and demanded the same benefits to be granted to him. The petitioner has filed Writ Petition in W.P.(MD)No.10809 of 2019 for Mandamus and this Court on 29.04.2019 directed the respondents to consider and pass order and based on the order of this Court, the respondents have passed the impugned order dated 15.07.2019 declining the benefits. Hence, the petitioner is before this Court.

3. The respondents have filed a counter and has stated the service particulars of the petitioner which is extracted hereunder:

| SI.No. | Details | Date |
|---|---|---|
| 1. | Date of Joining in Government service | 28.02.2013 |
| 2. | Date of regularization service | 28.02.2013 |
| 3. | Date of Completion of Probation | 27.02.2015 |
| 4. | Date of Passing Revenue Department Tests | May 2014 |
| 5. | Date of Completion of one year Junior Revenue Inspector Training | 12.03.2016 |
| 6. | Date of Completion of Survey Training and Settlement Training | 09.08.2016 |

The only contention of the respondents is that as per instructions of the Special Commissioner and Commissioner of Revenue Administration, Chennai, the petitioner can be sent for Junior Assistant training after the completion of probation period. The third respondent cannot act according to the whims and fancies of the petitioner in ordering the petitioner to undergo Land Survey and Settlement Training. The petitioner has completed the period of probation on 27.02.2015, thereafter, he was sent for “one year” Junior Assistant Training from 13.03.2015 to 12.03.2016. The crucial date for the drawal of Senior Grade Revenue Inspector list for the year 2016 is 15.03.2016. On the crucial date of 15.03.2016, the petitioner had not completed Survey Training and Settlement Training. Hence, the name of the petitioner was not included in the Senior Grade Revenue Inspector list for the year 2016. Moreover, none of the juniors of the petitioner were included in the Senior Grade Revenue Inspector list for the year 2016. There was no administrative delay which warrants relaxation of Rule 30(b) read with Annexure IV and Rule 30(c) of Tamil Nadu Government Employees (Service Regulations) Act, 2016. Hence, the respondents prayed to dismiss this Writ Petition.

4. Heard Mr.C.Masilamani, learned counsel for the petitioner and Mr.R.Sureshkumar, learned Additional Government Pleader, for the respondents and perused the records.

5. The contention of the respondents is that the petitioner is working as Typist and he is comparing with one Kabir who was appointed on 31.05.2013 as Junior Assistant. Typist and Junior Assistant cannot be compared. In the G.O.Ms.No.78 Revenue [Ser 7(1)] Department dated 16.02.2015, it is stated that the Additional Chief Secretary / Commissioner of Revenue Administration has recommended to prepare the seniority list and the same is extracted hereunder:

> *i) The ratio for promotion as Assistant from Village Administrative Officer may be increased from 10% to 30%; (Out of two third vacancies arrived for filling through promotion – 65% is reserved for Junior Assistants & Typists, 30% is reserved for Village Administrative Officers and 5% is reserved for Steno-Typists)*

*ii) The period of pre-requisite qualification for promotion as Assistant from the post of Village Administrative Officer may be reduced from 10 (ten) to 6 (six) years of service in the category of Village Administrative Officer besides fulfilling other conditions already stipulated under ministerial service rules for promotion as Assistants.*
*Further, he has also stated that the estimate of vacancies for the post of Assistants for the year 2014-15 have already been finalized.*

Based on this recommendation, the respondents have prepared seniority list which is annexure to the said Government Order. In the annexure, it is stated that the crucial date is 15.03.2016. The petitioner is comparing him with one Kabir, who was placed in Serial No.52 and his date of joining is stated as 31.05.2013. The petitioner's name is kept in Serial No.68, whereas, his date of joining is mentioned as 28.02.2013.

6. The learned Additional Government Pleader submitted that the said Kabir comes under Junior Assistant service, whereas the petitioner comes under Typist service. Therefore, they cannot be compared with each other because both are in different service. The contention of the respondents cannot be accepted, since in G.O.Ms.No.78 dated 16.02.2015, the ratio that has been granted is out of $2/3^{rd}$ vacancies arrived for filling through promotion – 65% is reserved for Junior Assistants and Typist, which means the Junior Assistants

and Typist are taken on par, which implies the respondents ought to follow 1:1 ratio. Whereas on perusing the annexure, the respondents have taken all the Junior Assistants first and has granted seniority by assigning seniority number. After completion of Junior Assistants list, the respondents have taken the Typist separately and fixed the seniority. When Government Order categorically stated that the Junior Assistants and Typist are kept on par, the respondents ought to have taken 1:1 ratio and fixed the seniority. The petitioner has joined the month of February, 2013 itself, whereas the said Kabir was joined in the month of May 2013, if that is the case, admittedly, the petitioner is senior to Kabir by taking the date of joining. Therefore, this Court is of the considered opinion that the claim of the respondents that they have kept all the Typists in one category below the Junior Assistants cannot be accepted and hence the impugned seniority ought to be redrawn.

7. The next contention of the respondents is that the petitioner has not completed Survey Training at the time of crucial date. It is seen from the counter itself, the petitioner has completed probation and he was ready for next promotion. The petitioner has already completed departmental exams in the year 2014 itself and the crucial date is 15.03.2015. When the respondents are considering for the Senior Revenue Inspector panel for the year 2016, the

petitioner has already completed Junior Revenue Inspector Training and the petitioner has not completed Survey and Settlement Training. In several cases, this Court has held that service qualification cannot be put against the candidates and deny the promotion. Candidates cannot be blamed for not undergoing service training and the matter of posting in training lies within the domain of the respondent employer and hence the petitioner cannot be blamed for not servicing the training when the panel is prepared for next promotion. Sending for training is within the purview of the employer and in most of the cases for what of vacancy the employee would be send in time. This issue is considered by this Court in M.P.Malathy and others V. the State of Tamil Nadu in W.P.(MD)No.23155 of 2015 vide order dated 12.08.2022. Therefore, the respondents cannot put the service qualification against the petitioner and deny promotion to the next post.

8. Therefore, this Court is inclined to interfere with the impugned order and the impugned order is quashed. The petitioner is entitled to be considered in the year 2016 itself. The respondents are directed to redraw the seniority of Typist and Junior Assistant based on the date of joining in the said post by grating inter-se-seniority among themselves. After drawing the same, the petitioner is entitled to be considered for Senior Revenue Inspector for the year

2016 itself and the same shall be granted along with the monetary and service benefits attached to the said post. The said exercise shall be completed within a period of twelve (12) weeks from the date of receipt of a copy of this order.

9. In view of the above, this Writ Petition is allowed. No costs.

**12.06.2023**

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

To

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Secretariat,
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**S.SRIMATHY, J.**

Nsr

W.P.(MD).No.27212 of 2019

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