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W.P.No.19952 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.12.2023

PRONOUNCED ON : 26.02.2024

CORAM

THE HONOURABLE **MR.JUSTICE K.KUMARESH BABU**

W.P.No.19952 of 2011

R.Sugatha Kumari

. . . Petitioner

Vs

1.The Joint Commissioner (CT)
Salem Division, Salem.

2.The Principal Secretary/
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai -5.

. . . Respondents

PRAYER:Writ Petition filed u nder Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for records relating to the order passed by the first respondent Roc.No.4863/2011/A2, dated 19.08.2011, quash the same and the to consequently direct the respondents to confer all benefits based on second respondent's proceedings in Roc.No.5658/2006/A2, dated 16.06.2006 and to pass such other further.

For Petitioner : Mr.K.S.Narayanan

For Respondents : Mrs.K.Vasanthamala GA (T)



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ORDER

This Writ Petition has been filed challenging the order passed by the first respondent in Roc.4863/2011/A2 dated 19.08.2011, and to direct the respondents to confer all benefits based on the second respondent's proceedings in Roc.No.5658/2006/A2 dated 16.06.2006.

2. Heard Mr.K.S.Narayanan, learned counsel appearing for the petitioner and Mrs.K.Vasanthamala, learned Government Advocate appearing for the respondents.

3. The learned counsel appearing for the petitioner would submit that the petitioner was appointed as a Stenographer under Rule 10 (a) (1) on 10.10.1983, being sponsored by the Employment Exchange, and her services were regularized on 25.06.1984. He would contend that the Government issued G.O.Ms.No.34 dated 21.02.2001, providing promotional avenues to the post of Assistant to an extent of 5% of the vacancies by transfer of service. Pursuant to the Government Order the petitioner had expressed her willingness by a letter dated 27.03.2002 for transfer of service



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to the post of Assistant for the panel year 2005. He would further submit that when the turn came up for the petitioner in the year 2005, she had relinquished her right for the panel 2005, due to her family circumstances through a letter dated 22.06.2005, pursuant to the Government Order in G.O.Ms.No.34.

4. He would further submit that on 15.03.2006 the petitioner was promoted as an Assistant and on 06.07.2006 she joined in the said post. Thereafter the petitioner had passed all the departmental test required for further promotion as Assistant Commercial Tax Officer, and her name was included in the approved list of candidates eligible for inclusion and for promotion in the proceedings of the second respondent in No.P2/319/2011 dated 20.07.2011. He would further submit that the petitioner had made a representation dated 24.10.2011 claiming for equal treatment of fixation of seniority on par with her batchmates who were all extended with retrospective benefit of placement on promotion. But the representation of the petitioner has been improperly considered, without affording any opportunity to the petitioner the first respondent by proceedings in Roc.4863/2011/A2 dated 19.08.2011, directed to delete the name of the petitioner from the panel of Assistants for the year 2006, in view of the



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petitioner's relinquishment of rights through her letter dated 22.06.2005, which has resulted, the petitioner being reverted to the post of Stenographer and her claim for inclusion of her name in the panel for promotion as Assistant Commercial Tax Officer also stood nullified.

5. He would submit that three of the petitioner's juniors who joined as Stenographers during the years 1987, 1990, and 1992 namely P.Jayanthi, J.Nageswari and G.Shakila were duly considered and promoted. Therefore in any event the petitioner cannot be denied her legitimate seniority with reference to her letter exercising her option of relinquishment. He would contend that the petitioner was however, considered appropriately in the next panel year of 2006, within the 5% quota earmarked for this category and she was promoted as Assistant and the reasoning that the relinquishment having been treated for the year 2005 cannot deny the petitioner's inclusion for the panel year of 2001-2002 and further the willingness for the first time could have been sought only after February, 2001 when the G.O. was issued and at the first instance, the petitioner had expressed her willingness for conversion/consideration by transfer of service.



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6. He would further submit that the order dated 19.08.2011, passed by the first respondent is liable to be set aside, as the same is passed after a lapse of five years of petitioner being duly appointed and was discharging her duties in the post of Assistant. Hence seeks interference of this Court to quash the order of the first respondent and to allow this Writ Petition.

7. Countering his arguments the learned Government Advocate, appearing for the respondents would submit that, the petitioner joined duty as Steno Typist Grade-III on 16.11.2011, in the Office of the Appellate Deputy Commissioner (CT), Erode. He would contend that through G.O.Ms.No.34, P & AR (B) Department dated 21.02.2001, the Government has stated that the eligible Steno-typists Grade-III may be appointed as Assistants by transfer at the ratio of 5%. He would contend that *vide* Letter No.73950/8/2002-1 P& A R (B) Department, dated 22.08.2003, a combined list of Assistants, including the personnel from Junior Assistants and Steno-typists, Grade-III, appointed prior to 01.08.1992, may be drawn for the year 2001 as on 15.03.2001 and the seniority of the Steno- Typists Grade-III appointed after 01.08.1992, may be fixed as per Rule 35(aa) of the General Rules for Tamil Nadu Subordinate Services.



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8. He would submit that the seniority list of Steno-Typists Grade-III was drawn *vide* Roc 6996/2005/A2 dated 02.08.2005, with reference to their date of joining in the department. He would further submit that when the respondents had drawn the panel for the year 2001-2002, the Steno-Typists in Grade-III who have joined in service prior to 01.08.1992 have been requested to exercise their option in writing, such as *(i) either to continue their service as Steno-Typists-Grade-III and to avail the promotional opportunities therein; (ii) or to convert into Assistant in the ministerial cadre*. He would contend that based on this, the persons in the cadre of Steno-Typists Grade-III have to opt for any one of these two alternatives and the option once exercised would be the final, as per G.O.Ms.No.34. Therefore, he would submit that based on the said Government Order, there would be no possibilities for any individuals in the cadre of Steno-Typists Grade-III to relinquish their rights temporarily for conversion of their post into the cadre of Assistants and to accomplish their conversion later on.

9. He would contend that in this scenario, the petitioner herein while her transfer to the post of Assistant relinquished her rights through a letter dated 22.06.2005 to transfer for one year, therefore the petitioner was not



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converted into Assistant in the Assistant Panel for the reason of having relinquished her rights as per the Proceedings of the Deputy Commissioner, Salem Division in Roc. 6996/2005/A2 dated 02.08.2005. Later on the petitioner was converted into Assistant by transfer *vide* Proceedings of the Deputy Commissioner, Salem Division in Roc. 4937/2006/A2 dated 27.06.2006. He would submit that the petitioner had made a request to the Principal Secretary, Salem, to refix her seniority as per the guidelines issued by the Government *vide* letter dated 22.08 2013.

10. He would submit that certain clarification was sought for from the second respondent regarding the following such as; the ban for conversion of Steno-Typists into Assistants was in force from 01.08.1992 and the same has been lifted with effect from 05.08.2000, *vide* G.O.Ms.No.34 and, Secondly, if the persons in the cadre of Steno-Typists Grade-III should give their option in writing that either they are willing to continue as Steno-Typists Grade-III or to get promotion by transfer into Steno-Typist Grade-II or to convert into Assistants and either of the option should be exercised in writing which would be considered as final, then how could fresh application be obtained from the individual and fresh order be passed? And what would be the fate of the option exercised by the individual already



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which was to be considered to be "final"? Thirdly, as the option once exercised by the individual would have to be considered "final", how would the individual be considered for conversion by transfer into Assistant, in the Assistant list drawn for the year 2006-07.

11. He would submit that in reply to the above queries the second respondent *vide* proceedings No.H2/57010/2007 dated 29.06.2011, issued certain instructions such as it is not correct to get a re-option, even, if it is a temporary relinquishment, according to Tamil Nadu State and Subordinate Rule 47, no transfer of work should be given within 3 years and in G.O.Ms.No.34, Department of Personnel and Administrative Reforms, dated 21.02.2001 that 5% percentage transfer to be given to the Steno-Typists from 21.02.2001 onwards. Accordingly, the petitioner's name was not included in the list of Assistants in the year 2005, the inclusion of her name in the list of Assistants in 2006 was cancelled, based on the G.O.Ms.No.34.

12. He would further submit that based on the above report, the name of the petitioner was deleted from the panel of Assistants for the year 2006, stating that the option exercised by the petitioner dated 22.06.2005 as final.



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He would contend that the persons namely P.Jayanthi, J.Nageswari and G.Shakila were included in the seniority list based on their willingness for transfer from the post of Stenographer to Assistant and they have been included in the list of Assistants for the year 2000 and the petitioner has relinquished her rights for appointment as Assistant for a period of one year and therefore the petitioner has not been included in that list. He would submit that there is no infirmity in the order passed by the first respondent, and hence seeks to dismiss this Writ Petition.

13. I have heard the submissions made by the learned counsels on behalf of their respective parties and perused the materials available on record before this Court.

14. The petitioner had been appointed as a Stenographer in the year 1983 and had been regularised in the said post on 25.06.1984. The Government had also issued a ban on promotion of such stenographers to the post of Assistant by G.O.Ms.No.93, dated 08.04.1994. The said ban seems to have been removed by a further Government order in G.O.Ms.No.34, Department of Personal and Administration Reforms, dated 21.02.2001. To decide the *lis*, it would be appropriate for this Court to first



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analyse the effect of the said Government order. A reading of the Government Order would show that

- a) the ban imposed in the year 1994 was lifted;
- b) since the post of Stenographer Grade III and the Assistant carried the same pay, the appointment of the Stenographers to Assistant should be made by way of transfer;
- c) To draw a panel of Assistant for every year, the crucial date should be 15th March.
- d) that the persons working as Stenographer Grade III should exercise their option for transfer from the said post to the post of Assistant or otherwise, they will be entitled to only promotion to the higher category only in the said line;
- e) that in the estimated vacancy of each year 5% of the post should be reserved for appointment of Stenographers by way of transfer in each year.

15. Pursuant to the said Government Order, the petitioner had exercised her option to be appointed as an Assistant by way of transfer. This has not been disputed by the respondent also. The petitioner's turn for transfer was available to her only in the year 2005. During that year, the



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petitioner had submitted a letter of relinquishment of her right to be appointed as an Assistant for that year. The respondents are trying to treat the same as withdrawal of her option to remain in the cadre of Stenographer Grade III. But however, during the next panel year namely in the year 2006, she had been given an appointment of Assistant by way of transfer. She has also been subsequently included in the approved list of candidates eligible for inclusion and for promotion as Assistant Commercial Tax Officer by proceedings of the second respondent dated 20.07.2011. The petitioner at that point of time had made a claim for equal fixation of seniority on par with her batchmates, who were all extended with retrospective benefit of placement on promotion. This is where the trouble had started for the petitioner.

16. When such a request had been made, the respondent had sought to revisit the entire episode including her promotion to the post of Assistant, by treating a letter of relinquishment of her right to transfer for a particular year as a withdrawal of her option. An order had been passed reverting her to the post of Stenographer Grade III by holding that she should not have been entitled to be appointed as Assistant in the year 2006.



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17.The conduct of the respondents in treating a letter of relinquishment of a particular year as withdrawal of her option is wholly unsustainable.

18.I have already analysed the Government Order in G.O.Ms.No.34, the Government Order and the same provides that for an appointment by transfer of a Stenographer as Assistant, a Stenographer who had been appointed prior to 1992 should have given their option. On the basis of such option exercised, the Stenographer appointed prior to 1992, whenever the panel of promotion is drawn up, vacancies sought to be filled up for the post of Assistant, 5% of such vacancy were earmarked for such persons, who had exercised their option to be appointed as Assistant by way of transfer. The petitioner had given her option for appointment as Assistant by way of transfer. She had only relinquished her right to be considered in the panel of Assistant for the year 2005 only. Such relinquishment cannot be treated as withdrawal of her option. In fact, the respondents had correctly concluded so and had given her appointment of Assistant by way of transfer in the year 2006 and she continued to work for five years. Her name has also been included in the list of persons eligible to be promoted as Assistant Commercial Tax Officer.



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19. For the aforesaid reasons, I am inclined to set aside the order impugned in this Writ Petition. The appointment of the petitioner as Assistant in the year 2006, shall be restored and the claim of the petitioner for further promotion, pursuant to the proceedings of the second respondent dated 20.07.2011 shall also be considered by the respondents. It is also noted that the petitioner would have attained superannuation as of today and therefore, the respondents shall calculate the monetary benefits that would have been available to the petitioner after the date of the impugned order in this Writ Petition notionally. The respondents are also directed to calculate her terminal and pensionary benefits thereafter and the same alone shall be payable to the petitioner. Such exercise shall be carried out by the respondents within a period of eight (8) weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs.

26.02.2024

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Index/ Yes/No

Speaking order: Yes/No

Neutral citation: Yes/ No



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To

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- 1.The Joint Commission (CT)
Salem Division, Salem.
- 2.The Principal Secretary/
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai -5.



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K.KUMARESH BABU,J.

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A Pre-delivery order made in

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