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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21-03-2024

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

And

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

**WP Nos.20928, 20929 of 2011 and 20987 of 2012,
22354 of 2017, 15621 and 15625 of 2019**

And

**WMP Nos.21627, 15519, 21622, 15510, 15511, 15514, 15517, 15522,
15621 of 2019,**

K.Rajendran .. Petitioner in WP 20928/2011

G.Babu .. Petitioner in WP 20929/2011

- 1.M.Ramesh
- 2.M.Ramachandran
- 3.K.Rajkumar
- 4.Tmt.A.Kuttiamma Selvi
- 5.Tmt.R.Chitra
- 6.Tmt.C.Thanalakshmi
- 7.T.Kumaravel
- 8.V.Ravichandran
- 9.M.E.Gopi,
- 10.Tmt.S.Parimala
- 11.Tmt.K.Rani



WP Nos.20928, 20929 of 2011 and 20987 of 2012
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12.B.LKumar
13.Tmt.V.Parameswari
14.Tmt.P.Thanalakshmi
15.Tmt.K.Krishnaveni
16.Tmt.V.Nirmala

.. Petitioners in WP 20987/2012

Tamil Nadu Judicial Employees
Association, Represented by its
President R.Emaichandran,
Vellore District.

..

Petitioner in WP 22354/2017

K.Mohankumar

..

Petitioner in WP 15621/2019

M.Boopathiraja

..

Petitioner in WP 15625/2019

Vs.

1.The Secretary to Government,
Home (Courts) Department,
Government of Tamil Nadu,
Fort St. George,
Chennai-9.

2.The Registrar-General,
High Court,
Madras-600 104.

3.The Principal District Judge,
Vellore District,
Vellore-632 009.

.. Respondents in WPs 20928 and
20929/2011



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- 1.State of Tamil Nadu,
Represented by its Secretary to Government,
Home (Courts) Departments,
Chennai-600 009.
- 2.The Registrar General,
High Court,
Chennai-600 104.
- 3.The District Judge-cum-Chief Judicial Magistrate
of the Nilgiris,
Udhagamandalam.
- 4.N.Kalaiselvi
- 5.C.Rufus Marshal Ananth
- 6.P.Subha .. Respondents in WP 20987/2012

- 1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Finance Department,
Secretariat,
Chenna-9.
- 2.The Secretary,
Home (Pay Cell) Department,
Secretariat,
Chennai-9.



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3. The Principal District Judge,
Vellore.

4. The Registrar-General,
High Court, Madras,
High Court Buildings,
Chennai-600 104.

[R-4 impleaded vide order of Court dated 31.08.2018
made in WP 22354 of 2017] .. Respondents in WP 22534/2017

1. The Registrar-General,
Madras High Court,
Chennai-600 104.

2. The Principal District Judge,
Salem District,
Salem.

.. Respondents in WPs 15621 and
15625/2019

WP No.20928 of 2011 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the order of the third respondent passed in his proceedings A.No.3370/2011 dated 18.04.2011 and quash the same and further direct the third respondent to refix the seniority of the petitioner with effect from 01.06.1988 based on his representations dated 16.09.2010, 23.02.2011 and 18.04.2011 in the combined cadre of Copyist and Typist in terms of the order passed by the Division Bench in WP No.5969 of 2008 dated 17.07.2008.



WP No.20929 of 2011 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the order of the third respondent passed in his proceedings A.No.3370/2011 dated 18.04.2011 and quash the same and further direct the third respondent to refix the seniority of the petitioner with effect from 01.06.1988 based on his representations dated 16.09.2010, 23.02.2011 and 18.04.2011 in the combined cadre of Copyist and Typist in terms of the order passed by the Division Bench in WP No.5969 of 2008 dated 17.07.2008.

WP No.20987 of 2012 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the order of the third respondent passed in his proceedings A.No.43/2012 dated 28.02.2012 and quash the said order dated 28.02.2012 and consequently, direct the third respondent herein to give due promotion to the petitioners based on the seniority list drawn by the third respondent as per the directions of the Hon'ble High Court of Madras in WP No.5969 of 2008 dated 17.07.2008.

WP No.22534 of 2017 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records made in the impugned order of the third respondent in Dis.No.1587/2012 dated 21.03.2012 and quash the same and direct the respondents to fix the Petitioner's Association Members in the scale of pay



of Rs.975-25-1150-30-1660 i.e., at Rs.1025/- w.e.f. 01.06.1988 and consequently revise the present scale of pay with all consequential benefits.

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WP No.15621 of 2019 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned orders in A.No.210/A/2018 dated 24.04.2019 and A.No.39/A/2019 dated 13.03.2019 on the file of the second respondent in respect of non-grant of promotion to the petitioner by fixing correct his correct seniority and quash the same, consequently direct the second respondent to refix the petitioner's original seniority on par with the persons, whose names are found in the proceedings of the Principal District Judge, Salem in A.No.39/A/2019 dated 13.03.2019 and to grant promotion to the petitioner in the respective posts upto the cadre of Head Clerk, Judicial Magistrate Court along with the backwages for the corresponding period due to the petitioner.

WP No.15625 of 2019 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned orders in A.No.210/A/2018 dated 24.04.2019 and A.No.39/A/2019 dated 13.03.2019 on the file of the second respondent in respect of non-grant of promotion to the petitioner by fixing correct his correct seniority and quash the same, consequently direct the second respondent to refix the petitioner's original seniority on par with the persons, whose names are found in the proceedings of the Principal



District Judge, Salem in A.No.39/A/2019 dated 13.03.2019 and to grant promotion to the petitioner in the respective posts upto the cadre of Head Clerk, Judicial Magistrate Court along with the backwages for the corresponding period due to the petitioner.

For Petitioner in WPs 20928
and 20929/2011 : Ms.N.R.Jasmina Padma

For Petitioner in WP 20987/2012 : Mr.B.Srinivasan

For Petitioner in WP 22354/2017 : Mr.S.N.Ravichandran

For Petitioner in WPs 15621 and
15625/2019 : Mr.P.Rajavel

For R-1 in WPs 20927,
20928/2011 and 20987/2012 : Ms.P.Rajarajeswari,
Government Advocate.

For R-2 in WPs 20927 and
20928/2011 : Mr.P.K.Rajagopal

For R-2 and R-3 in WP
20987/2012

For R-4 to R-6 in WP
20987/2012 : Mr.S.N.Ravichandran

For R-1 & 2 in WP 22354/2017: Ms.P.Rajarajeswari,
Government Advocate.



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WP Nos.20928, 20929 of 2011 and 20987 of 2017
22354 of 2017, 15621 and 15625 of 2019



For R-3 & 4 in WP 22354/2017: Mr.M.Baskar

For Respondents in
WP 15621 and 15625/2019 : Mr.R.Sunilkumar

COMMON ORDER

[COMMON ORDER OF THE COURT WAS MADE

BY S.M.SUBRAMANIAM, J.]

The issues regarding merger and preparation of Combined Seniority List have been already decided by the Division Bench of this Court. Since the issues are no more *res integra*, no further adjudication needs to be undertaken with reference to the similar grounds raised in the present writ petitions.

2. In this connection, the Division Bench of this Court in the case of **K.A.Baskaran vs. State and others [orders pronounced in WP No.5969 of 2008 dated 17.07.2008] Mr. Justice S.J.MUKHOPADHAYA, as His Lordship then was**, passed the following order, wherein in



paragraphs-11 to 15, it has been observed as under:-

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“11. A post can be stated to be a promotional post or higher post if it fulfils three conditions, namely, (i) it is higher in rank with higher duty and responsibility; (ii) higher status and (iii) higher scale of pay. In absence of any of such condition, such post cannot be stated to be a promotional post. It is settled law that mere grant of higher scale of pay do not amount to promotion. For example, higher scale of pay are granted either by way of time bound promotion or under Assured Career Progression scheme (ACP), but in absence of posting against a higher rank with higher duty and responsibility or grant of higher status, it cannot be held to be a promotion. Therefore, since 1st June, 1988, if any person has been granted promotion from the post of Copyist to any equivalent post of Typist, if the word promotion used in the order, such so called promotion being redundant, cannot be termed as promotion to the higher post, but to be treated as “appointment by transfer” from one post to another. However, if any Copyist has been promoted as Typist prior to 1st June, 1988, the



post of Copyists having lower scale of pay than Typists prior to 1 st June, 1988, it should be treated to be a promotion for all purpose.

12. So far as seniority is concerned, in absence of a rule, normally a person holding higher post or cadre to be treated as senior to those who are holding lower post or cadre. If posts or cadres are different, the person holding post with higher scale of pay is to be treated as senior to those who are holding posts with a lower scale of pay. If both the persons are holding posts in the same scale of pay, the person appointed in such common scale of pay earlier should be treated to be senior to the person granted such scale of pay later. In cases where appointment in the same scale of pay is made on the same date, in absence of a merit list, age may be a criteria for determination of seniority. However, if there is a rule prescribing determination of seniority, it is to be determined on the basis of such statutory rule and not otherwise.

13. Rule 36 deals with seniority. While sub-rule (a) of rule 36 deals with seniority of direct



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recruits based on rank obtained by persons in the list drawn by public service commission or the appointing authority, sub-rule (b) of rule 36 relates to seniority between persons transferred from one class or category of service to another class or category carrying same scale of pay, as quoted hereunder :-

“Seniority :

*36. (a) * * * * **

(b) The transfer of a person from one class or category of a service to another class or category carrying the same pay or scale of pay shall not be treated as first appointment of the latter for purpose of seniority; and the seniority of a person so transferred shall be determined with reference to the rank in the class or category from which he was transferred. Where any difficulty or doubt arises in applying this sub-rule, seniority shall be determined by the appointing authority.”

14. So far as seniority between Copyists and Typists are concerned, we have already held that prior to 1 st June, 1988, post of Typists (Rs.975 – 1660) having higher scale of pay than Copyists (Rs.825 – 1200), the Typists shall rank senior to



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Copyists enmass. Therefore, the letter dated 11th Jan., 2008, issued by the Registrar General, High Court, may hold good in respect of the Copyists and Typists, who were appointed prior to 1 st June, 1988, but such principle cannot be followed for Copyists and Typists appointed/promoted after 1st June, 1988. Since 1st June, 1988, if any copyist has been appointed by promotion as Typist, for all purposes as they are to be treated to have been transferred to the post of Typists, scale of pay being same, in such cases, rule 36 (b) shall apply for determination of seniority. The date of first appointment will be the criteria for determination of seniority between the Copyists and Typists, if appointed since 1st June, 1988 and the guideline issued by the Registrar General of this Court dated 11th Jan., 2008, to that extent, we hold as illegal. The Principal District Judge/Appointing Authorities cannot act on the basis of letter dated 11th Jan., 2008, for determination of seniority of Copyists and Typists, if appointed/ transferred/ promoted on or after 1st June, 1988 and provisional seniority list, if so prepared on the basis of letter dated 11th Jan., 2008, is to be



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recalled.

15. So far as notification of merger dated 3rd July, 2007 is concerned, no specific pleading or submission has been made to show as to how it is illegal or ultra vires. On the other hand, we find the notification dated 3rd July, 2007, is legal and proper as it is always open to the competent authority to merge two cadres or posts having same qualification and scale of pay for the purpose of taking common nature of work.”

3. All consequential orders under challenge, were passed in implementation of the order of the Division Bench of this Court in WP No.5969 of 2008. Since the issues have already been considered and settled, the writ petitions are not entertainable.

4. In respect of writ petitions seeking implementation of the orders of the Division Bench in WP No.5969 of 2008, there is no impediment for the Competent Authorities/learned Principal District Judges/Unit Strength, to consider the cases of employees as per Rules in force and based on their eligibility.



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5. With the above observations, all the writ petitions are disposed of. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

(S.M.SUBRAMANIAM,J.) (K.RAJASEKAR,J.)

21-03-2024

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
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To

1.The Secretary to Government,

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Home (Courts) Department,
Government of Tamil Nadu,
Fort St. George,
Chennai-9.

2.The Secretary to Government,
State of Tamil Nadu,
Finance Department,
Secretariat,
Chenna-9.

3.The Secretary,
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7.The Principal District Judge,
Vellore.

S.M.SUBRAMANIAM, J.
AND
K.RAJASEKAR, J.



WP Nos.20928, 20929 of 2011 and 20987 of 2012,
22354 of 2017, 15621 and 15625 of 2019



Svn

8. The Principal District Judge,
Salem District,
Salem.

WPs 20928, 20929 of 2011 and 20987 of 2012,
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