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W.P. Nos.2843 & 2844 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P. Nos.2843 & 2844 of 2009

S.Karunagaran

... Petitioner in W.P.No.2843 of 2009

S.Arputharaj

... Petitioner in W.P. No.2844 of 2009

Vs

1.The Secretary to Government
P&AR(Q) Department
Fort St. George
Chennai - 9

2.The Secretary
Tamil Nadu Public Service Commission
Government Estate
Chennai

3.G.Shanthi
Section Officer (MA&WS)
Fort St. George
Chennai - 9

... Respondents in both Writ Petitions

Prayer in both Writ Petitions: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to



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call for the records of the 1st respondent in connection with the impugned U.O.Note No.39128/U/97-8 dated 06.07.1999, quash the same and further direct the respondents to revise the seniority of the petitioners and grant them appropriate placement in the seniority list in the cadre of Section Officers and grant them all consequential service and other monetary benefits.

For Petitioners : Mr.S.Sivakumar
in both WPs

For Respondents : Ms.R.L.Karthika,
in both WPs Govt. Advocate for R1
Mr.R.Bharanidharan for R2
Mr.S.Mahesh for R3

COMMON ORDER

These writ petitions have been filed for a Writ of Certiorarified Mandamus to call for the records of the 1st respondent in connection with the impugned U.O.Note No.39128/U/97-8 dated 06.07.1999, quash the same and for a consequential direction to the respondent 1 to 2 to revise the seniority of the petitioners and grant them appropriate placement in the seniority list in the cadre of Section Officers and grant them all consequential service and other monetary benefits.



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2. The issue that arises for consideration in these writ petitions is one and the same, and as such both the writ petitions are taken up together for consideration and are being disposed of by this common order. The brief facts that are relevant for disposal of these two writ petitions are as under:

3.1. The third respondent herein was selected by the Tamil Nadu Public Service Commission in the year 1983 - 84 for the post of Assistant in Tamil Nadu Secretariat Service and she was issued with an allotment order dated 01.06.1985 requiring her to join duty within a period of three months. However, the third respondent failed to join the service within the time stipulated for joining into service.

3.2. In the meanwhile, in the year 1985, the Tamil Nadu Public Service Commission undertook recruitment process for the post of Assistants again and in the said process of selection, the petitioners in these two writ petitions, were selected and appointed as Assistants. While the petitioners have joined in the post of Assistants in the Tamil Nadu Secretariat Service and continuing as such, the third respondent herein has approached the Government seeking relaxation of the rules and to permit her to join service. The Government,



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having considered the request of the third respondent, issued G.O. Ms. No.550 Rural Development Department dated 16.7.1986 permitting her to join duty forthwith i.e. from the date of issuance of the said Government Order as Assistant in the Rural Development Department. Accordingly, the third respondent joined the service.

3.3. It is thereafter, the case of the petitioners as well as the third respondent were considered for promotion to the post of Assistant Section Officer and in the said panel finalised through G.O. Ms. No.125 Personnel and Administration Department dated 04.07.1992, the petitioners herein were placed at Sl. Nos.25 and 26 and whereas the third respondent was placed at Sl. No.36. Thereafter, the seniority list in the cadre of Assistant Section Officer was finalised by the Government in G.O.Ms. No.277/P&AR dated 22.07.1996. In the said seniority list, the petitioners herein were placed at Sl. Nos.35 and 36, whereas the third respondent was placed at Sl. No.50. It is thereafter, the third respondent appears to have made a claim for seniority with reference to her initial selection and to place her at the appropriate place in terms of the merit list that was finalised by the Tamil Nadu Public Service Commission by submitting a representation dated 31.07.1996. It is on considering the said



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representation of the third respondent, the Government appears to have issued a U.O Note No.39128(U)/97 dated 06.07.1999, restoring the seniority of the third respondent, with reference to the rank assigned to her in the list of Assistants selected by the Tamil Nadu Public Service Commission during the year 1983 - 84 and also to include her name in the panel of Assistant Section Officers as on 01.08.1990 and she was assigned Sl. No.21 in the said panel. Thereafter, a list of Assistant Section Officers fit for promotion to the post of Section Officers was prepared under U.O Note No.7819/H/2005-2 dated 05.05.2005 and in the said list also, the petitioners were placed at Sl. Nos.216 and 217 and whereas the third respondent herein was placed at Sl. No.227. However, thereafter, while finalising the said panel of Assistant Section Officers fit for appointment as Section Officers as on 01.06.2005, the name of the third respondent herein was included at Sl. No.102, whereas the names of the petitioners were not found in the said list of 163 candidates. It was at this stage, the petitioners have started agitating against the third respondent and on coming to know about the U.O. Note dated 06.07.1999 through the RTI Act, the petitioners have approached this court by filing these writ petitions questioning the said U.O. Note dated 06.07.1999.



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4. Heard the learned counsel for the petitioners and the learned Government Advocate and the panel counsel appearing for the respondent Nos.1 and 2 and the learned counsel appearing for the third respondent and also perused the entire material available on record.

5. There is no dispute on factual aspects. The third respondent herein joined the service by virtue of orders issued by the Government in G.O. Ms. No.550 Rural Development (OP) Department dated 16.07.1986 i.e. after 16.07.1986. By which date the petitioners herein were already working as Assistants in the Tamil Nadu Secretariat Service. The petitioners and the third respondent continued in the post of Assistants from the year 1986 till the year 1992, when the cases of the petitioners and the third respondent were considered for inclusion in the panel eligible for promotion as Assistant Section Officers and the petitioners herein were placed above the third respondent and accordingly, they were promoted to the post of Assistant Section Officers basing on the said panel. The third respondent has not raised any objection till the year 1996, when the seniority list in the cadre of Assistant Section Officers was finalised by issuing G.O.Ms. No.277/P&AR dated 22.07.1996. It is only thereafter, the third respondent has started making claim



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for seniority and to restore her seniority to the original place in terms of the selection list prepared by the Tamil Nadu Public Service Commission. Thus, it is clear that the claim of the third respondent for seniority was made for the first time only by submitting a representation dated 31.07.1996, and basing upon which the impugned U.O. Note dated 06.07.1999 came to be issued. Thus it is clear that for a period of more than a decade, the third respondent has not raised any objection against the seniority of the petitioners herein in the cadre of Assistants as well as in the cadre of Assistant Section Officers.

6. In terms of General Rule 35(a) of the State Subordinate Service Rules, any objection with regard to the seniority is required to be raised within a period of three years, otherwise, there is a bar on making any such claim. Admittedly, the claims of the petitioners and the third respondent were considered for promotion to the post of Assistant Section Officer in the year 1992 and the petitioners were given seniority over and above the third respondent. But, admittedly, the third respondent has not made any claim over the seniority till 31.07.1996 i.e. for a period of four years. Therefore, the claim of the third respondent for seniority with reference to her place in the selection list prepared by TNPSC for the year 1983 - 84 is lost by lapse of time.



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7. Be that as it may, the Government, while considering the claim of the third respondent for restoring the seniority with reference to her merit in the selection list prepared by the Tamil Nadu Public Service Commission, observed as under in paragraph 5 of the impugned U.O. Note dated 06.07.1999.

"5. In the meantime, she reached her turn for promotion as Assistant Section Officer as per original seniority assigned by the TNPSC. Her name was considered at the time of preparation of panel for promotion as Assistant Section Officer as on 01.08.1998 and it was decided to await the TNPSC views and to reserve one place in the panel. The TNPSC has stated that Tmt.G.Shanthi may be allowed to take up her seniority in the category of Assistant as originally assigned by the commission inasmuch as when she joined duty on 16.7.86 as Assistant in the Secretariat Service, there were no specific rules in regard to fixation of seniority of an individual who was allowed to join duty in relaxation of relevant rules."

8. From the above, it is noticed that the Government having taken note of the fact that there were no specific rules with regard to fixation of seniority of an individual who was allowed to join duty in relaxation of relevant rules,



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proceeded to allow the third respondent for restoration of original seniority in terms of the rank assigned to her in the list of Assistants selected in the year 1983 - 84. By virtue of the said benefit conferred upon the third respondent, the rights of several other individuals who were selected, appointed and joined as Assistants in the Tamil Nadu Secretariat Service before the date of the third respondent entering into service, would adversely get affected. But the Government failed to take the same into consideration and without affording any opportunity to any of the persons, who are treated as seniors to the third respondent by then, issued the impugned U.O Note No.39128/U/97-8 dated 06.07.1999, conferring undue benefit on the third respondent by allowing the third respondent to restore her seniority with reference to the rank assigned to her by the Tamil Nadu Public Service Commission in the selection list prepared for the year 1983 - 84. The third respondent was allowed to have the benefit of seniority from the date anterior to the date of her joining in the service. As the third respondent failed to join service within the time permitted, she lost her right. But, for G.O. Ms. No.550, dated 16.07.1986, the third respondent could not have joined service as Assistant. Hence, her rights if any shall be strictly in terms of the said G.O. only. It is settled law that allowing an employee to claim seniority before the date of her birth in the particular



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cadre/service cannot be allowed. In a recent decision, the Hon'ble Supreme Court in ***Mhabemo Ovung & Ors. vs. M.Moanungba & Ors*** dated 28.08.2024 in ***C.A. Nos.9927 of 2024*** has held as follows:

"15.....The dispute in the present appeals is only pertaining to the Sectional Officer, Grade-I, whose posts were upgraded on 11.10.2007 and not those whose posts were upgraded prior to the direct recruitment vide Notification dated 01.05.2003. The blatant error committed by the Division Bench of the High Court is that upgraded Sectional Officer, Grade-I, are directed to be given seniority in the cadre of Junior Engineers from a date on which they were not even born in the cadre as it was only after 11.10.2007 upgradation order that they became Junior Engineers, which was much after the direct recruitment made on 01.05.2003."

9. In the light of the above, the impugned U.O. Note No.39128/U/97-8 dated 06.07.1999, cannot be sustained under law. Accordingly, the same is hereby quashed. Consequently, if the petitioners come within the zone of consideration for promotion to the post of Section Officer, Under Secretary etc. by virtue of their own seniority as a consequence of quashing of the impugned



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U.O. note and the consequential promotion conferred on the third respondent, the same shall be extended to the petitioners by duly verifying the service records of the petitioners. All consequential steps shall be taken by the respondents 1 and 2, as expeditiously as possible, at any rate within a period of three months from the date of receipt of a copy of this order.

10. Accordingly, these writ petitions are allowed. However, there is no order as to costs.

12.09.2024

Index : Yes / No
Neutral Citation : Yes / No
Asr

To

1.The Secretary to Government
P&AR(Q) Department
Fort St. George
Chennai - 9

2.The Secretary
Tamil Nadu Public Service Commission
Government Estate
Chennai

3.The Government Pleader
High Court, Madras



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MUMMINENI SUDHEER KUMAR, J.

Asr

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