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W.P. Nos.13065, 13070, 13077, 13080, 13083, 13087 & 13089 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P. Nos.13065, 13070, 13077, 13080, 13083,
13087 & 13089 of 2021

and

W.M.P.Nos.13867, 13869, 13874, 13875,
13886, 13887, 13889, 13890, 13893, 13894,
13896, 13898, 13899 & 13900 of 2021

W.P.No.13065 of 2021

S.Vijayaprasadh

... Petitioner

Vs.

1. The Principal Secretary to Government,
Personal and Administrative Reforms Department,
Fort St. George, Chennai - 600 009.
2. The Principal Secretary to Government,
Commercial Taxes and Registration Department,
Fort St. George, Chennai 600 009.
3. The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.
4. The Additional Commissioner (Administration),
O/o. Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

... Respondents



W.P. Nos.13065, 13070, 13077, 13080, 13083, 13087 & 13089 of 2021

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, Calling for the records pertaining to the impugned clarifications of the first respondent in Letters No. 42667/ B/ 2019- 1 and No.42667/ B/ 2019-2 dated 12.08.2020 respectively and D.O.Letter No. 42667/ B/ 2019- 3 dated 11.2.2021 and consequent impugned order of the Fourth respondent in circular No.9/ 2021, dated 28.04.2021 and quash the same as illegal and unlawful and consequently direct the first respondent to ratify circular No.18/ 2018 dated 1.10.2018 and Letter No. H2/ 32534/ 2015 dated 20.11.2018 issued by the third respondent in so far as its application in commercial Taxes Department is concerned and its consequent proceedings issued by the Fourth respondent in Proc.No.Y1/31589/2018 dated 20.09.2019 and direct the respondents to implement the inter-se seniority list of Assistants converted from the cadre of Steno Typist Grade III by transfer of service in Proc.No.Y1/31589/2018, dated 20.09.2019 issued by the fourth respondent with all service and monetary benefits.

In all W.Ps.

For Petitioners : Mr.J.Pooventherarajan

For Respondents : Mr.Haja Nazirudeen,
Additional Advocate General -I
Assisted by
Mrs.K.Vasanthamala,
Government Advocate

COMMON ORDER

The petitioners who are aggrieved due to the refixing of the petitioners' seniority in view of the circular dated 28.04.2021 in H2/32534/2015, Circular No.9/2021, 28.04.2021 passed by the 4th respondent, have filed the Writ Petitions, challenging the above order along



W.P. Nos.13065, 13070, 13077, 13080, 13083, 13087 & 13089 of 2021

with the Letters No. 42667/ B/ 2019- 1 and No.42667/ B/ 2019-2, dated 12.08.2020 and D.O.Letter No. 42667/ B/ 2019- 3 dated 11.2.2021 issued by the 1st respondent.

2. The petitioners were originally appointed as Steno Typist Grade III, and got appointed as Assistant by transfer after completion of 5 years of qualifying service. Subsequently, a letter of the Government, Personal and Administrative Reforms Department, Chennai dated 11.02.2021 and Circular No.18/2018, dated 01.10.2018 and Letter No.H2/32534/2015, 2011.2018 in respect of fixing inter-se seniority between the two categories of persons who are appointed to the post of Assistant, the petitioners' earlier seniority was restored. As per Special Rules for the Tamil Nadu Ministerial Servants, apart from the method of direct recruitment, the post of Assistants are being filled up by promotion from the category of Junior Assistants and Typists and by transfer from the post of Steno Typist Grade III for the ratio of 4:1. The petitioners opted to get appointed by transfer on her completion of 5 years of qualifying service as per Rules.



W.P. Nos.13065, 13070, 13077, 13080, 13083, 13087 & 13089 of 2021

service, which was initially 8 years and subsequently reduced to 5 years. Therefore, the contention of the first respondent in these Writ Appeals that the transfer of the respondents from the post of Steno Typist Grade III to Assistant is transfer simpliciter is incorrect and not tenable.”

4. Relying on the above said Judgment, this Court has disposed off ***W.P.Nos.11687 and 11701 of 2021*** in the case of ***B.Radhakraishnan and 14 Ors. Vrs. The state of Tamil Nadu and Ors.*** and confirmed the same.

5. Heard, Mr.J.Pooventherarajan, learned counsel for the petitioners and Mr.Haja Nazirudeen, learned Additional Advocate General -I assisted by Mrs.K.Vasanthamala, Government Advocate appearing for the Respondents in all Writ Petitions.

6. Mr.J.Poventhera Rajan, learned counsel for the petitioners submitted that 2nd Respondent had raised various clarifications in the matter of inter-se seniority with the Personal and Administrative Reforms Department. Clarifications have been offered by referring Section 40(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (in



W.P. Nos.13065, 13070, 13077, 13080, 13083, 13087 & 13089 of 2021

short the Act). For the sake of better understanding, Section 40(1) of the

Tamil Nadu Government Servants Act is extracted hereunder:

40 (1) The seniority of a person in a service, class, category of 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.

7. The attention of this Court was drawn to the earlier Judgement passed by this Court in ***W.P.Nos.998 batch case of 2018 in K.Raja and ors. Vrs. Additional Chief Secretary to Government, Highways and Minor Prots Department, Chennai and ors.*** wherein it has been held that the fixation of seniority basing on the roster, cannot be considered as a merit based seniority. It is submitted that Section 40 (1) of the Act has already been declared as unconstitutional and hence, the clarification offered by the Government by relying on the above Rule should also be



W.P. Nos.13065, 13070, 13077, 13080, 13083, 13087 & 13089 of 2021

rendered as illegal. Section 40(1) of the Act speaks about seniority to be determined as per the list prepared by the Recruiting Agency in accordance with the Rule of Reservation and the order of rotation specified in Schedule V of the Act.

8. In the instant case, the recruitment is not done by any Recruitment Agency, but by the Department. Since the Assistant post is being filled up by promotion from the two categories of the posts, there should be some method to fix inter-se seniority. The Judgement rendered in ***W.P.Nos.998 batch case of 2018 cited supra*** is only on the limited aspects of not considering the roster based seniority for deciding the merit of the candidate. So it has been held that after the appointment is done, the seniority has to be refixed in the order of merit. The Roster based seniority is for the purpose of selection on the basis of legislation.

9. Admittedly, the limited point raised by the 3rd respondent is only in respect of the mere seniority between two categories. There is no clarification in respect of merit on which the candidates ought to have been



W.P. Nos.13065, 13070, 13077, 13080, 13083, 13087 & 13089 of 2021

appointed in the post of Assistants. So the clarification is given by the Government by taking into consideration of the limited aspect of Section 40 (1) of the Act.

10. The law is well settled as against the Steno Typist Grade III who opt to go on transfer by getting appointment as Assistant that their minimum qualifying service of 5 years cannot be considered for the purpose of fixing promotion and the seniority in the cadre of Assistant can be considered only from the date of their appointment in the cadre of Assistant and not any time before. No doubt, the Steno typist could have completed 5 years of service and they also belonged to Ministerial service. However, it is up to the petitioners either to opt to shift their post to clerical cadre like Assistant or to remain as Steno Typist. Knowingly the Steno Typist who have completed 5 years of service opted to be promoted as Assistant in view of the further promotion in their carrier. Unfortunately, there is no weightage or assured carrier progression for Steno typist on their completion of every 5 years or more. A best they could have been designated as Grade II and Grade I. It is learnt that the 3rd respondent has



W.P. Nos.13065, 13070, 13077, 13080, 13083, 13087 & 13089 of 2021

requested the Government to amend the Ministerial Service Rules by considering the concerns addressed by the 3rd respondent. So far no amendment has been made. So the earlier Judgment addressing the issue will hold good and the petitioner cannot expect a different treatment by seeking the above relief.

11. With above observations, the Writ Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

15.02.2024

Index: Yes / No
Speaking order / Non-speaking order
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R.N.MANJULA ,J.

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3. The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.
4. The Additional Commissioner (Administration),
O/o. Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
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