



W.P.No.12027 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.12027 of 2024

K.Kumaravel

...Petitioner

-Vs-

1. The Director,
Rural Development and
Panchayat Raj Department,
Panagal Building,
Saidapet, Chennai – 15.

2. The District Collector,
Villupuram District,
Villupuram.

...Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent in connection with the impugned order passed by him in Proceeding NaKa.No.32450/2015/C3 dated 11.06.2015 and to quash the same as illegal insofar as paragraph 3(1) and the subsequent rejection order passed by him NaKa No.15084/2017/C1 dated 17.07.2017 and the impugned order passed by the second respondent in (O.mu).paa3/1137244/2023 dated 29.12.2023 and quash the same and further direct the respondents to fix the seniority of the petitioner in the



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cadre of Assistant on merit base based by considering the mark secured by petitioner in selection process.

For Petitioner : Mr.S.Sivakumar

For Respondents : Mr.Yogesh Kannadasan
Special Government Pleader

ORDER

This Writ Petition has been filed for the issuance of Writ of Certiorarified Mandamus, calling for the records of the first respondent in connection with the impugned order passed by him in Proceeding NaKa.No.32450/2015/C3 dated 11.06.2015 and to quash the same as illegal insofar as paragraph 3(1) and the subsequent rejection order passed by him NaKa No.15084/2017/C1 dated 17.07.2017 and the impugned order passed by the second respondent in (O.mu).paa3/1137244/2023 dated 29.12.2023 and quash the same and further direct the respondents to fix the seniority of the petitioner in the cadre of Assistant on merit base based by considering the mark secured by petitioner in selection process.

2. Heard the learned counsel on either side and perused the



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materials available on record.

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3. The petitioner has been directly recruited to the post of Assistant and he had joined duty on 19.12.2012. During selection, the petitioner had selected Pudukottai District and there was no vacancy in the native district of Villupuram. Thereafter, the petitioner made request to consider his case of transfer from Pudukottai to Villupuram District to take care of his parents and his wife. Accordingly, by an order dated 11.06.2015, the petitioner was transferred from Pudukottai to Villupuram District. After transfer, the petitioner's seniority was kept junior to the person who is working in Villupuram District. The respondents passed orders that the seniority of the petitioner shall be fixed in the bottom of list of Assistants in Villupuram District, on the date of his joining in Villupuram District. Therefore, the petitioner made a request to re-fix the seniority, on the basis of merits, on the ground that the petitioner made request for transfer and his request was considered only on the non-joining vacancy in Villupuram District. Therefore, fixing the seniority in the bottom of the list does not arise. Therefore, the respondents ought to have fixed the



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petitioner's seniority on par with his batch mates.

4. A perusal of the counter filed by the second respondent and also submissions made by the learned Special Government Pleader appearing for the respondents revealed that the petitioner was selected to the post of Assistant and he himself selected the district as Pudukottai, though he belongs to Villupuram District. Accordingly, he was posted at Pudukottai district as Assistant and he had joined on 19.12.2012. In order to revise the merit based seniority list, as per the order passed by the Hon'ble Supreme Court of India, it was already complied with by the Pudukottai Rural Development and Panchayat Raj department. Accordingly, they had revised the petitioner's merit based seniority in Pudukottai district. Since the petitioner had originally opted to choose Pudukottai District Unit, now on his request, he was transferred to Villupuram District. Therefore, the claim made by the petitioner to revise his seniority on merit base cannot be considered. In case the petitioner is transferred to Pudukottai District, then the request made by the petitioner can be considered.

5. In fact, similar issue was already dealt with by the Hon'ble



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Division Bench of this Court in W.A.No.1938 of 2023, in the case of ***The State of Tamil Nadu, represented by its Secretary, Commercial Taxes and Registration Department Vs M.Vivekanandan Assistant, O/o the Commercial Tax Officer***, wherein it was held as follows:-

“ a. Thiru. M.Vivekanandan, Assistant was recruited directly to the post of Assistant through an open competitive written examination conducted in the year 2011 by the Tamil Nadu Public Service Commission.

b. The Respondent was posted to Coimbatore Division and was issued with the order of appointment by the Joint Commissioner (CT), Coimbatore. He joined the service on 12.12.2012 and his probation was declared satisfactory on 09.06.2016 with effect from 10.12.2014.

c. The Respondent, in the meanwhile, was transferred to the Trichy Division of the Commercial Taxes Department at his request vide order dated 10.11.2014, i.e., even before declaration of probation.

d. The order of transfer records that the Respondent had expressed his willingness to forego seniority and transfer travelling allowance and that, he was willing to work anywhere in the Trichy Commercial Tax Department. The Respondent was transferred from Coimbatore Division to Trichy Division at his request in view of his mother's medical condition. The transfer order also provides that it was being made under Rule 20(a)(iii) of the Rules subject to the following conditions:

“ i. He shall forego his Seniority consequent on the transfer, and that his seniority shall be fixed last in the list of Probationers in the cadre of Assistant in Trichy Division in force, on the date of joining of the



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individual in Trichy Division.

ii. The individual should not make any objection or representation to the fixation of Seniority, as above or should not file any case.”

It was further submitted that Against this background, a writ of mandamus in W.P.No.12359 of 2017 was filed seeking a direction to the 3rd Appellant to recommend the inclusion of the respondent's name as qualified for appointment to the post of DCTO to the 2nd Appellant as on the crucial date of 01.03.2016 and further direct the 2nd Appellant to issue the order of appointment to the post of DCTO with all consequential benefits including the monetary benefits on par with Mrs.Karthiyayini, highlighting the facts as set out above.

11.2. Eligibility and Seniority are two distinct concepts - Transfer at own request - To be placed at the bottom of the seniority at the transferee unit / region: It is trite law that eligibility and seniority are two different and distinct concepts. Service at the original unit cannot be wiped out even if transfer is at the request of the employee, and would be placed at the bottom of seniority in the transferee unit i.e., Trichy Unit in the instant case. In this regard, it may be relevant to refer to the order of the learned Judge and the judgments of the Hon'ble Supreme Court, wherein it has been held that transfer does not wipe out the service rendered for considering eligibility for promotion:

11.4. Reliance on Rule 20(a)(iii) of the Tamil Nadu Ministerial Service Rules – misplaced : Rule 20 of the Tamil Nadu Ministerial Service Rules has been relied upon by both sides. It may thus be relevant to examine the scope of the said Rule, which reads as under:

"(a) Notwithstanding anything contained in rules 12 to 16 and 19, a probationer or an approved probationer may, in special cases and on grounds of administrative necessity, be transferred with the mutual



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consent of the appointing authorities and the authorities nominated by the head of the department for the purpose of allotment of candidates where there is more than one appointing authority, in the departmental unit concerned

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(i) from one office in a departmental unit to another office in the same departmental unit;

(ii) temporarily from an office in one departmental unit to an office in another departmental unit if both the offices belong to a department in which full members are ordinarily subject to transfers from one departmental unit to another; and

(iii) permanently from an office in one departmental unit to an office in another departmental unit: Provided that a transfer under clause (iii) shall be made only with the consent of the Commission except in the case of Gujarathi knowing Assistants of the Commercial Taxes Department. Provided further that the consent of the Commission may be deemed to have been accorded in the cases of transfer of Probationers and Approved Probationers from one unit to another unit, necessitated consequent on the formation of new district.

(b) The grounds of administrative necessity referred to in sub-rule (a) may be presumed to exist and the Commission's consent referred to in that sub-rule may be presumed to have been given in the case of mutual transfers permanently from an office in one departmental unit to an office in another departmental unit if the persons desiring mutual transfers agree --

(i) that the senior among the Assistants/Junior Assistants mutually transferred (on the basis of the date of their first appointment to the service) be given the same rank in the departmental unit to which he is transferred, which was held by the person in whose place he comes to that departmental unit and the junior of them takes his rank in the administrative unit of the



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departmental unit to which he is transferred with reference to the date of his first appointment in the service; and

(ii) that they will forego the travelling allowance for their journeys to the departmental units to which they are transferred."

11.4.1. A reading of the above Rule would show that it governs two situations, viz., transfer by mutual consent of the appointing authorities and transfer on the basis of mutual consent governed by Rule 20(a) of the Rules. We are concerned with only Rule 20(a) of the Rules. A reading of the same, as a whole, would show that it only provides for the procedure for transfer on the basis of consent by appointing authorities, where there is more than one appointing authorities and does not provide for fixation of seniority pursuant to such transfer. It thus appears that any reliance on Rule 20(a) of the Rules for the purposes of fixation of seniority in respect of transfer by mutual consent of more than one appointing authorities, is misplaced.

12. From the foregoing discussions, we are of the view that the order of the learned Judge insofar as it finds that the Respondent herein ought to be placed at the bottom of the Coimbatore Unit, suffers from error apparent inasmuch as he ought to be placed at the bottom of the Transferee Unit i.e., Trichy. Resultantly, the consequential direction to the appellants to promote the Respondent retrospectively to the post of DCTO from the date on which he was qualified for promotion along with his batch mates after making necessary correction to the service register, cannot be sustained and thus, requires interference. Accordingly, the order of the learned Judge passed in W.P. No. 12359 of 2017 alone, is set aside and the appropriate authority is directed to consider the Respondent's entitlement to promotion in



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accordance with law by placing him at the bottom of the seniority at the Trichy Unit and pass orders afresh, within a period of 8 weeks from the date of receipt of a copy of this order.”

6. Thus, it is clear that even in the case where an employee is transferred at his own request, his service would not get wiped out and would be taken into account for considering eligibility for promotion. The further question relates to his fixation of seniority at the transferee unit. It is no longer *res integra* and it is well settled in service jurisprudence that as a general rule, where a Government servant is transferred at his request, he will have to forego his seniority in the transferor unit and will be placed at the bottom of the seniority list in the transferee unit. This is with a view to ensure that the seniority of the employees in the Department/Unit to which they are transferred, is not disturbed. Further the application for the revision of seniority of a person in a service shall be made within a period of three years from the date of appointment to such service. Whereas, the petitioner made an application to revise the seniority after a period of three years.



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7. Therefore, this Court finds no infirmity or illegality in the order passed by the respondents and the writ petition is devoid of merits and is liable to be dismissed. Accordingly, this writ petition stands dismissed.

No costs.

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Internet: Yes

Index : Yes/No

Neutral Citation: Yes/No

Speaking/Non Speaking order
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To

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G.K.ILANTHIRAIYAN. J.

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