



WEB COPY



W.A.No.2451 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2024

CORAM :

THE HON'BLE MR. D.KRISHNAKUMAR, ACTING CHIEF JUSTICE

and

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.A.No.2451 of 2024 and

CMP No.17492 of 2024

1. Government of Tamil Nadu,
Rep. by its Secretary, Revenue Department,
Fort St. George, Chennai-09.

2. The Director/Principal Secretary,
Survey and Settlement Directorate,
Chepauk, Chennai 600 005.

... Appellants

Vs.

1.T.Sundarrajan

2. The Secretary, Tamil Nadu Public Service Commission,
Chennai.

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letter Patent to set aside the order dated 01.09.2023 made in W.P.No.17379 of 2018.

For Appellant : Mr.J.Ravindran, Addl.Adv.General

Assisted by Mrs.Yamunadevi,

Special Government Pleader

For Respondents : Mr. P.Ganesan for first respondent



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JUDGMENT

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This intra court appeal has been filed to set aside the order passed by the learned Single Judge dated 01.09.2023 in W.P.No.17379 of 2018.

2. The first respondent/writ petitioner was originally appointed as Steno-typist on 13.01.1984 on temporary basis and his services were regularized from 25.06.1984. Thereafter, he was promoted as Assistant on 29.09.1988 and further promoted as Superintendent on 03.06.2009 and he retired from service on 30.04.2018. His grievance was that, when the second respondent has drawn a seniority list on 24.03.2003, one Ms.S.K.Fathima, who has promoted on 09.06.1989 as Assistant, (viz., subsequent to the date of petitioner's promotion as Assistant) was placed at Sl.No.10, whereas, his name was placed at Sl.No.127. Hence, he made a representation to fix his seniority based on his promotion on 29.09.1998 as Assistant and it was rejected, vide order dated 11.05.2018, due to the following reasons.



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9. I am to state that based on the orders of the Hon'ble High Court of Madras in the 15th cited (W.P.No.2429/2018, dated 05.02.2018), the Government have examined the issue in detail on the rules prevailing in force, on merits and in accordance with law and also with connected records and based on the proposal of Commissioner of Survey and settlement in R.C.No.R2/46552/2014(Sy), dated 09.05.2017, your request was rejected due to the following reasons:-

i) orders were already issued in G.O.(Ms) No.93, Personnel and Administrative Reforms Department dated 08.04.1994, in which it has been ordered in para 8 that the Seniority of persons already appointed to the posts of Assistants in Tamil Nadu Ministerial Service/Judicial Ministerial Service from the common category of Typist/Steno-typist due for the period from 01.06.1988 to 01.08.1992 shall not also be disturbed" and the orders are adhered.

ii) that you have not passed DOM and not completed survey training on the crucial date (i.e. 15.3.1988) for the panel of Assistant for the year 1988 and hence, you are not fully qualified. You have passed the Department test only after the crucial date (on 01.06.1988). Hence, your name was not considered for the panel of Assistant for the year 1988. Therefore, your request for revision of seniority from the date of passing the Department test on 01.06.1988 and further promotion to higher post could not be considered."

Challenging the above order, the first respondent filed the writ petition.

3. After hearing both side and upon perusing the documents, the learned Single Judge, has discussed the matter in detail and has passed the



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following order.

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" 9. Learned counsel states that since he had been promoted on 29.09.1998, which was between 1.06.1988 and 01.08.1992, as stated above, the seniority of the petitioner should not be disturbed. But, however, that promotion is only temporary. The petitioner is however eligible for consideration with right to be promoted as Assistant in the panel on 01.03.1989. He is entitled to that right, while the petitioner has to be granted. Therefore, to that limited extent, the impugned order is set aside and a direction is given to the respondents to consider the promotion of the petitioner in the panel 01.03.1989 on notional basis and examine as to where he would retire at the time of retirement, when he attained the age of superannuation and consider that particular aspect till the retirement as notionally, but grant necessary benefits with respect to the pension, which the petitioner is drawing. "

Assailing the above said order, the government has preferred the present appeal.

4. According to the appellants, Tmt.S.K.Fatima is senior to the respondent/writ petitioner in the category of Assistant, since she had passed all the pre-requisite qualifications viz., Department Tests and Survey Training will in time, before the crucial date (15.03.1988) for drawal of



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panel for the post of Assistant. But the respondent did not possess the said qualification on the said crucial date and hence, his service cannot be given retrospective notional promotion at this efflux of time by disturbing the settled seniority.

5. It is further contended by the learned counsel for the appellants that, in the instructions issued by the Director of Survey and Settlement in his letter dated 23.11.1987, it was specifically mentioned that the Assistant promotion granted under Rule 39(a) is purely temporary and should not stake any claim for seniority based on such promotion. Therefore, the petitioner does not deserve the right to claim seniority, based on his temporary promotion as Assistant, in violation of the conditions stipulated supra.

6. Though the appellants have raised the above said grounds in the present appeal, we are not satisfied to entertain the writ appeal. The learned Judge, after elaborate discussion has observed that, since the respondent was promoted as Assistant only on temporary basis, he is entitled to be



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promoted as Assistant for panel on 01.03.1989, i.e. after he passing the DOM test in May 1988. Therefore, the appellant may not have any grievance for inclusion of the respondent in the panel for promotion for the post of Assistant from 01.03.1989. Secondly, the learned Single Judge has directed the appellant to consider as to whether the respondent is entitled for promotion in the panel on 01.03.1989 or subsequent dates till his retirement and if so, directed to grant notional promotion alone, however, directed to grant monetary benefits with respect to pension. In such circumstances, we are of the view that, it is for the appellants to take appropriate decision in the case of the respondent/writ petitioner, as per the direction given by the learned Single Judge as stated supra and we find no error to interfere with the order passed by the Writ Court.

7. Accordingly, this writ appeal is disposed of by directing the appellants to comply the order of the writ court, within twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.



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(D.K.K., A.CJ.)

(P.B.B.J.)

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THE HON'BLE ACTING CHIEF JUSTICE

and

P.B.BALAJI, J.

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