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W.P. No.32004 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2024

CORAM :

**THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER
KUMAR**

W.P.No.32004 of 2014

M.Balachander

... Petitioner

Vs.

Additional Chief Secretary/Commissioner
of Revenue Administration, Chepauk,
Chennai-600005.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the respondent in Aa.Na.1(1)/59724/2014 dated 17.02.2014 and quash the same and direct the respondent to fix the petitioner's seniority in the post of Assistant with effect from the date of joining in the office of the respondent, that is, 07-10-2005 and treating him as a Direct Recruit Assistant and grant all consequential benefits to the petitioner.

For Petitioner : Mr.P.Rajendran

For Respondent : Mr.P.Ganesan
Additional Government Pleader.



ORDER

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The petitioner herein, while working as Assistant in Perambalur District Revenue Unit, on having joined in the said post on 08.10.2001, he made a request for transfer to the office of the Additional Chief Secretary/Commissioner of Revenue Administration, Chennai. On considering the said request made by the petitioner, the respondent issued proceedings Roc.No.DMR2/68913/05 dated 25.08.2005 transferring the services of the petitioner to the office of the Commissioner of Revenue Administration on lent basis and accordingly, the petitioner joined in the office of the respondent and has been working as such. While so, the petitioner made a request for permanent continuation in the office of the respondent by submitting a representation in the year 2011, and thereafter, he, after obtaining consent of TNPSC, was allowed to continue on permanent basis in the office of the respondent.

2. While so, the issue of fixing seniority in the category of Assistant came up for consideration, and the services of the petitioner were counted from the date on which the TNPSC granted its consent for permanent



continuation of the petitioner in the office of the respondent herein i.e., with effect from 27.11.2012 and accordingly, the petitioner was placed at Serial No.141. It is aggrieved by the same, the petitioner submitted his objections to take into account the actual date of joining in the office of the respondent instead of the date on which the TNPSC granted its consent. However, the said request of the petitioner was rejected by the respondent by passing the order in proceedings Aa.Na.1(1)/59724/2014 dated 17.02.2014. It is aggrieved by the said proceedings, the petitioner approached this Court by filing the present writ petition.

3. A perusal of the impugned order shows that, the order dealt with two aspects, firstly with regard to the ratio to be followed for further promotion from the post of Assistant to the promotional post, and secondly with reference to the date from which the petitioner is entitled to count his services for the purpose of seniority. In terms of the impugned order, the petitioner is only entitled for counting his services in the office of the respondent as Assistant from the date on which the TNPSC granted its consent for permanent continuance of the petitioner in the respondent office.

4. Mr.P.Rajendran, learned counsel appearing for the petitioner



contended that the action of the respondent in treating the date of consent issued by the TNPSC for the purpose of counting seniority is illegal and arbitrary and he also brought to the notice of this Court that the very same issue has fallen for consideration before a learned Division Bench of this Court and placed reliance on the decision rendered by the learned Division Bench in W.A.Nos.1797 and 1800 of 2021 dated 14.02.2022.

4.a) Insofar as the issue pertaining to the ratio to be followed for considering the person holding the post of Assistant for further promotion is concerned, the learned counsel for the petitioner submitted that the petitioner is not contesting the said issue. In the circumstances, the only issue that remains to be considered is as to the what date from which the petitioner is entitled to count her service for the purpose of seniority

5. A perusal of the said order indicates that the very same issue has fallen for consideration, and the learned Division Bench, after having taken note of Rule 20 (a) (iii) of Tamil Nadu Ministerial Service Rules and Rule 35(b) of Tamil Nadu State and Subordinate Service Rules came to the conclusion that the date of consent issued by the TNPSC for permanent continuance of the petitioner in the respondent office is totally an irrelevant



factor and the date of joining of the respondent therein has to be taken into consideration for the purpose of their seniority. The relevant paragraph from the said decision reads as under:

“14. It is not in dispute that, Writ Petitioners were initially selected and appointed as Typists in the Revenue Department at Coimbatore Collectorate, and on consideration of their request for one way transfer, they were transferred on loan basis at CRA and joined services on 06.07.1998 and 05.11.1997, respectively. After obtaining necessary concurrence from TNPSC, Writ Petitioners came to be permanently absorbed in CRA on 26.04.2001. The concurrence so obtained from the TNPSC is a procedural one and for that purpose, benefits accrued to the employees cannot be deprived retrospectively.

15. The Apex Court, in a catena of decisions has held that, all the services ever since the date of joining of the employees will have to be taken into account. In the present case, Writ Petitioners have restricted the relief from the date of their transfer, i.e. from 06.07.1998 and 05.11.1997, respectively.

16. The order dated 27.08.2009 passed in W.P.No.35600 of 2006 and the order dated 12.08.2010 passed in W.P.No.1144 of 2007, may not be applicable to the facts of this case, as, firstly, the Division Bench, by an order dated 23.07.2004 passed in W.P.Nos.21231 to 21233 of 2004, has confirmed the order dated 10.11.2003 passed by the Tribunal in O.A.No.6910 of 1999 and secondly, similar issue is before this Division Bench. Moreover, learned Single Judges of this Court have not considered Rule 20(a)(iii) of the Tamil Nadu Ministerial Service Rules and Rule 35(b) of the Tamil Nadu State and Subordinate Service Rules.



17. Hence, we are of the view that, the order of the learned Single Judge does not call for any interference by this Court, as the relief sought for by the Writ Petitioners have rightly been granted and the same has to be implemented. Since the time granted by the learned Single Judge has already expired, the same is extended by another four months from the date of receipt of a copy of this judgment, in order to grant the benefits due to the Respondent/Writ Petitioner in both cases, within the time frame.”

6. However, learned Additional Government Pleader appearing for the respondents placed reliance on the orders passed by coordinate bench of this Court in W.P.No.35600 of 2006 and W.P.No.1144 of 2007, wherein, it was held that the date of consent issued by the TNPSC would be relevant criteria. But both the said orders relied upon by the learned Additional Government Pleader were already considered by the learned Division Bench in W.A.Nos.1797 and 1800 of 2021 by an order dated 14.02.2022, and held that the said decisions were rendered without taking note of the relevant Rule position. Hence, the said decisions no longer hold good. In the light of the above decision rendered by the learned Division Bench as noted above, the date of consent issued by the TNPSC is totally an irrelevant factor and the services of the petitioner is bound to be taken into consideration from the date



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of joining in the office of the respondent No.2. Accordingly, the impugned order is quashed to the extent indicated above and the respondent is directed to take into consideration the date of joining of the petitioner in the respondent office as relevant date for the purpose of fixing seniority of the petitioner and take all consequential steps as expeditiously as possible at any rate within a period of twelve (12) weeks from the date of receipt of a copy of this order.

7. Accordingly, this writ petition is partly allowed. The connected miscellaneous petitions, if any, shall stand closed. No costs.

22.11.2024
(2/2)

Index : Yes/No
Speaking Order : Yes/No
dpa

To:

Additional Chief Secretary/Commissioner
of Revenue Administration, Chepauk,
Chennai-600005.



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MUMMINENI SUDHEER KUMAR,J.

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