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WP No.35226 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13-03-2024

CORAM

**THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM
And
THE HONOURABLE MR. JUSTICE K.RAJASEKAR**

WP No.35226 of 2022

N.Annapoornam

.. Petitioner

-VS-

1.The Registrar-General,
High Court of Madras,
Chennai-600 104.

2.The Principal District Judge,
Nagapattinam,
Nagapattinam District.

3.Mr.R.Shanmugam

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the second respondent in Order No.369/2022 dated 29.11.2022 and quash the same in respect of the fixation



of the petitioner's seniority and the third respondent's seniority and direct the second respondent to place the third respondent below the petitioner in the seniority list dated 10.06.2020 issued by the second respondent and grant all consequential benefits to the petitioner.

For Petitioner : Mr.P.Rajendran

For Respondents-1 and 2: Mr.B.Vijay

For Respondent-3 : Mr.B.Jawahar

ORDER

[ORDER OF THE COURT WAS MADE

BY S.M.SUBRAMANIAM, J.]

The order impugned revising the seniority of the third respondent by placing him above the petitioner in the Combined Seniority List, is under challenge in the present writ petition.

2. The writ petitioner is presently working as Assistant (Grade-III Bench Clerk). She was initially appointed as Typist on 20.03.2013. The petitioner was promoted as Assistant on 18.04.2017. She was deployed as



Grade-III Bench Clerk, carrying identical scale of pay as Assistant on 07.08.2019.

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3. The third respondent Mr.R.Shanmugam was initially appointed as Steno-Typist on 07.09.1994. He was appointed by way of transfer of service to the post of Assistant on 11.08.2018. He was posted as Bench Clerk on 10.08.2019 and further promoted as Head Clerk on 18.10.2020.

4. The controversy arose with reference to the date of appointment to the post of Assistant. The petitioner was promoted as Assistant on 18.04.2017, but the third respondent was appointed as Assistant by way of transfer of service on 11.08.2018. Thus, the third respondent Mr.R.Shanmugam was junior to the petitioner in the post of Assistant.

5. It is not in dispute that the Combined Seniority List for both Civil and Criminal Units as on 01.07.2019, was published by the District Court, Nagapattinam in proceedings dated 10.06.2020. The crucial date was



1st July of every year. Thus, the Combined Seniority List as on 01.07.2019 was published on 10.06.2020.

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6. In the said list, the name of the third respondent was placed in Serial No.5 and the petitioner's name was placed in Serial No.10. Aggrieved by the said position in the Seniority List, the present writ petition came to be instituted by the petitioner.

7. Mr.P.Rajendran, learned counsel for the writ petitioner, would submit that the third respondent was not even appointed to the post of Assistant on the date when the petitioner was promoted to the post of Assistant. The petitioner was promoted as Assistant on 18.04.2017 and the third respondent was appointed by way of transfer of service on 11.08.2018. Therefore, suo motu revision initiated by the District Court Judicial Administration is in violation of the rules relating to fixation of seniority.

8. In this context, the rules stipulate that the date of appointment is to be taken into consideration for fixing the seniority. When the date of appointment of the third respondent is falling beyond the date of



appointment of the writ petitioner, suo motu revision of the seniority done by the District Judicial Administration by placing the third respondent above the writ petitioner is perverse and to be set aside.

9. Mr.B.Vijay, learned counsel for the respondents 1 and 2, would oppose the contentions raised on behalf of the petitioner, by stating that the ratio of 19:1 is being followed, while considering the names of eligible employees for promotion and by way of appointment through transfer of service respectively. One post of Assistant is allotted for appointment by way of transfer of service from amongst the eligible employees, working in the cadre of Steno-Typist Grade III.

10. In the present case, the name of the third respondent Mr.R.Shanmugam was inadvertently omitted against the one post of Assistant reserved for the employees working in the cadre of Steno-Typist Grade-I in the year 2017. In order to rectify the error, the learned Principal District Judge suo motu initiated revision and considered the case of the third respondent for granting respective seniority in the post of Assistant. Consequently, the third respondent was placed above the names of 19



candidates in the Seniority List. The third respondent was placed in Serial No.5 and other employees promoted to the post of Assistant, were placed below the name of the third respondent.

11. It is contended that the suo motu revision initiated by the learned Principal District Judge, is to correct the omission and therefore, cannot be faulted. Correction of error would not provide any right to the petitioner to seek further revision of seniority by placing her above the name of the third respondent.

12. Mr.B.Jawahar, learned counsel appearing on behalf of the third respondent, would also oppose the contentions raised on behalf of the petitioner, by stating that the name of the third respondent was omitted, when the process of promotion was considered amongst the eligible employees in the year 2017. Since the name of the third respondent was not considered, suo motu revision of seniority was undertaken by the learned Principal District Judge and accordingly, the third respondent was placed above the candidate, who were promoted to the post of Assistant in the year 2017. Subsequently, the third respondent was promoted to the post of Head



Clerk in the year 2020. That being so, the present writ petition is to be rejected.

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13. We have considered the arguments as advanced between the parties to the lis on hand.

14. It is not in dispute that the writ petitioner was promoted to the post of Assistant on 18.04.2017. The third respondent was appointed by way of transfer of service to the post of Assistant on 11.08.2018. Thus the petitioner is senior in the post of Assistant. No doubt, omissions and errors can be corrected by following the procedures as contemplated under the Service Rules. But in the present case, the third respondent Mr.R.Shanmugam had not preferred any appeal or seeking retrospective promotion in the post of Assistant on par with his juniors and for restoration of seniority. In the absence of any appeal preferred by a single aggrieved employee, the suo motu revision initiated by the learned Principal District Judge only to revise the seniority, cannot be appreciated. The third respondent has not filed any writ petition also. In the absence of any appeal or order in the writ petition, suo motu revision was initiated by the learned



Principal District Judge and the Seniority List was restored with retrospective effect without granting any retrospective promotion to the post of Assistant from the date on which the immediate junior of the third respondent was promoted to the post of Assistant. Thus the procedures adopted by the learned Principal District Judge, is in consonance with the established principles.

15. Restoration of seniority would arise only if retrospective promotion was granted from the date on which the junior to the third respondent was promoted. Fixation of seniority itself would arise from the date of appointment or promotion, unless retrospective promotion is granted. In such cases where error or omission occurred or departmental disciplinary proceedings are dropped, Seniority List, cannot be restored with retrospective effect. The employee in such cases, has not even appointed or promoted under the particular post from the particular date. Thus question of grant of retrospective seniority would not arise at all. Section 40 (2) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, stipulates the seniority, which reads as under:-

"(2) The seniority of a person in a service,



class, category or grade shall, where the normal method of recruitment to that service, class, category or grade is by more than one method of recruitment, unless the individual has been reduced to a lower rank as a punishment, be determined with reference to the date on which he is appointed to the services, class, category or grade:

Provided that where the junior appointed by a particular method of recruitment happens to be appointed to a service, class, category or grade, earlier than the senior appointed by the same method of recruitment, the senior shall be deemed to have been appointed to the service, class, category or grade on the same day on which the junior was so appointed: Provided further that the benefit of the above proviso shall be available to the senior only for the purpose of fixing inter-se-seniority:

Provided also that where persons appointed by more than one method of recruitment are appointed or deemed to have been appointed to the service, class, category or grade on the same day, their inter-se-seniority shall be decided with reference to their age."



16. Therefore, the date of appointment/promotion must be the date, based on which the seniority of employee, is to be fixed. Even if an employee has been denied promotion on account of an error, then such an employee is entitled to seek retrospective promotion from the date on which his immediate junior was promoted. In the absence of granting any such retrospective promotion, the question of fixation of seniority alone with retrospective effect, would not arise at all.

17. In this context, it is relevant to rely on the judgment of the Supreme Court in the case of **State of Uttaranchal vs. Dinesh Kumar Sharma [(2007) 1 SCC 683]**, wherein in paragraph-34, it has been held as under:-

"34. Another issue that deserves consideration is whether the year in which the vacancy accrues can have any relevance for the purpose of determining the seniority irrespective of the fact when the persons are recruited. Here the respondent's contention is that since the vacancy arose in 1995-96 he should be given promotion and seniority from that year and not from 1999,



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when his actual appointment letter was issued by the appellant. This cannot be allowed as no retrospective effect can be given to the order of appointment order under the Rules nor is such contention reasonable to normal parlance. This was the view taken by this Court in Jagdish Ch. Patnaik v. State of Orissa [(1998) 4 SCC 456 : 1998 SCC (L&S) 1156]."

18. Suo motu revision initiated by the learned Principal District Judge to grant retrospective seniority in favour of the third respondent in the post of Assistant, cannot be approved by this Court. Such suo motu revisions are to be initiated by the Appointing Authority or the Appellate Authority, only if the grievances are common in nature. Suo motu revision to redress the grievance of a single employee, more specifically, for restoration of seniority, is improper. Such initiation of suo motu revision will lead to anomalous situation and the consequences would have larger repercussions in the matter of promotions and fixation of seniority. The revision of seniority or retrospective promotion can be considered, if any objections are filed or appeal has been preferred or the High Court passed an order in the writ petition.



19. The post allotted for appointment by way of transfer to the post of Assistant from amongst the eligible candidates in the cadre of Steno-Typist Grade-III, in the year 2017, became lapsed, since no one was appointed. The third respondent was appointed by way of transfer to the post of Assistant only on 11.08.2018 after promotion of the writ petitioner to the post of Assistant on 18.04.2017. The third respondent was not granted retrospective appointment to the post of Assistant from the date on which his juniors were promoted.

20. Thus, the retrospective revision of seniority granted to the third respondent, is perverse and not in consonance with the Service Rules. The third respondent was not appointed as Assistant in the year 2017, nor retrospective appointment was granted. Thus, the third respondent is not entitled for retrospective seniority.

21. That being the position, the order impugned is infirm. Consequently, the impugned order passed by the second respondent in Order No.369/2022 dated 29.11.2022 stands quashed.



22. Accordingly, the present writ petition stands allowed.

However, there shall be no order as to costs.

(S.M.SUBRAMANIAM,J.)

(K.RAJASEKAR,J.)

13-03-2024

Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

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2.The Principal District Judge,
Nagapattinam,
Nagapattinam District.



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