BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.10663 of 2019

R.Rajagopal ... Petitioner

Vs

1.The Director,
Rural Development and Panchayat Raj Department,
Panagal Building,
Saidapet,
Chennai – 600 015.

2.The District Collector,
Ramanathapuram District,
Ramanathapuram. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, call for the records of the first respondent in Na.Ka.Pa. 69927/2015/C3 dated 10.12.2015 and quash the same as illegal insofar as the condition No.1 is concerned and quash the same was illegal and further direct the respondents to fix the seniority of the petitioner in the cadre of Assistant by considering the service rendered by the petitioner in the cadre of Assistant w.e.f. 31.05.2013.

For Petitioner : Mr.J.Pooventherarajan
For Respondents : Mr.G.V.Vairam Santhosh, Additional Government Pleader

O R D E R

The petitioner was appointed as an Assistant in Panchayat Union Office, Arimalam, Pudukkottai on 19.12.2012 and his service has also been regularised on 09.07.2014. The petitioner has submitted a representation to the respondents to transfer him from Pudukkottai to Ramanathapuram and the same was considered by the respondents. Accordingly, he was transferred from Pudukkottai to Ramanathapuram District vide proceedings of the first respondent in Na.Ka.P 69927/2015/C3, dated 10.12.2015. The grievance of the petitioner is that he has been transferred to Ramanathapuram District, without protecting his seniority. According to the petitioner, he has not forgone his seniority at any point of time. However, by the order impugned in this writ petition, the petitioner's seniority has been placed as last in the list of

Assistants in the transferred place. Therefore, the petitioner is before this Court, challenging the portion of transfer order, placing the petitioner's seniority in the last list of Assistant in Ramanathapuram District.

2.Today(03.12.2024), when this writ petition is taken up for consideration, the learned Additional Government Pleader appearing for the respondents submits that the issue in this writ petition has already been decided by the Honourable Division Bench of this Court in ***WA(MD) Nos.4,22 & 615 of 2020, dated 29.04.2024*** and therefore nothing survives in this writ petition.

3.For better appreciation, the relevant portion along with the relevant provisions from the above Judgment of the Honourable Division Bench is extracted as under:-

30.Rule 20 of Tamil Nadu Ministerial Service Rules is extracted as follows:

"20.Transfers of probationers and approved probationers:

(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 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 --

(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 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."

31.A perusal of the above said Rules reveal that a transfer of a probationer or an approved probationer can be made on grounds of administrative necessity or on the ground of mutual consent of the appointing authorities. The transfer orders may fall within any one of the following categories:

(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;

(iii)permanently from an office in one departmental unit to an office in another departmental unit;

32.In the present case as already discussed, as far as the Commercial Tax Department is concerned, a departmental unit means, a division in the Commercial Tax Department as contemplated under Rule 11 of Tamil Nadu Ministerial Service Rules. Therefore, a transfer from one division to another division in the Commercial Tax Department, should be considered to be a transfer from one departmental unit to another departmental unit. Further in the present case, it is not a temporarily transfer, but a transfer permanently from one division to another division. Hence, Rule 20(a)(i) and (ii) are not applicable to the facts of the present case.

33.The petitioners have been transferred permanently from an office in one division to another division. In other words, from one departmental unit to another departmental unit. Only because of the said fact, a consent has been obtained from TNPSC as contemplated under the first proviso to Rule 20(a)(iii) of TNMS Rules. When a transfer is effected under Rule 20(a)(iii), the senior employee in the parental division will *have to forego his seniority and accept the rank assigned to him in the division to which he is transferred. The writ Court had interpreted this provision and has arrived at a finding that the foregoing of seniority would arise only in the cases of transfer on administrative ground or on the ground of mutual transfer. But being a case of one way request transfer, the said provision is not applicable.*

(iii)34.A perusal of Rule 20 further reveals that there is no provision for a one way transfer from one administrative unit to another administrative unit on the basis of request. Hence, if such an interpretation is given to Rule 20, the petitioners could not even be transferred from one division to another division. Though a request has been made by the petitioners, the authorities considered their request sympathetically and treated it as an administrative transfer. Hence, the writ petitioners were called upon to issue a certificate that they are ready to forego their seniority, when they are transferred to a different division. Only after such an undertaking was given by the writ petitioners,

their cases were referred for concurrence to TNPSC. Therefore, though it is not a case of mutual transfer, the request transfer falls within the category of administrative necessity and therefore certainly the petitioners have to forego their seniority. The fact that the petitioners have not challenged the non-granting of travelling allowance which they have foregone as contemplated under Rule 20 would clearly indicate that the petitioners also treated the transfer only as on administrative necessity. Therefore, we are not inclined to accept the interpretation of the Writ Court that the transfer is not covered under Rule 20(a)(iii) of Tamil Nadu Ministerial Service Rules.

4.Since the issue has already been settled by the Honourable Division of this Court as stated supra, nothing survives in this writ petition. Accordingly, this writ petition is closed. No costs.

03.12.2024

NCC:Yes/No
Index:Yes
vrn

To

1.The Director,
Rural Development and Panchayat Raj Department,
Panagal Building,
Saidapet,
Chennai – 600 015.

2.The District Collector,
Ramanathapuram District,
Ramanathapuram.

B.PUGALENDHI, J.

vrn

Order made in
W.P(MD)No.10663 of 2019

03.12.2024
(1/5)