



W.A.(MD) Nos.541 and 542 of 2018

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.04.2024

CORAM

JUSTICE N. SESHASAYEE

and

JUSTICE P.VADAMALAI

W.A.(MD) Nos.541 and 542 of 2018

and

C.M.P.(MD) Nos.3096 and 3097 of 2018

W.A.(MD) Nos.541 and 542 of 2018:

P.Vijayalakshmi

... Appellant/
3rd Respondent

Vs.

1.A.Iyamperumal

... 1st Respondent/
Writ Petitioner

2.The Director of Rural Development,
Chennai.

3.The Collector,
Tuticorin District,
Tuticorin.

... Respondents 2 & 3/
Respondents 1 & 2



W.A.(MD) Nos.541 and 542 of 2018

Prayer in both Writ Appeals: Appeals filed under Clause 15 of Letters Patent against the common order dated 17.07.2012 made in W.P.(MD) Nos.7606 of 2006 and 9434 of 2009.

In both Appeals

For Appellant	:	Mr.P.Mahendran
For RR2 & 3	:	Mr.V.Nirmal Kumar Government Advocate
For R1	:	No appearance

COMMON JUDGMENT

(Judgment of the Court was delivered by N.Seshasayee, J.)

This twin appeals is preferred by the 3rd respondent in W.P.(MD) No.7606 of 2006 and W.P.(MD) No.9434 of 2009 challenging the common order passed by the learned Single Judge dated 17.07.2012.

2. The issue relates to re-working the seniority of the appellant, who while the impugned proceedings was challenged in W.P.(MD) No.7606 of 2006, was placed above the writ petitioner. The other writ petition is preferred



W.A.(MD) Nos.541 and 542 of 2018

challenging a consequential order in re-fixing the pay scale pursuant to the re-fixation of seniority referred to now.

3. The facts may be stated as below:

- On 14.06.1985, the writ petitioner/1st respondent was appointed as a Junior Assistant in the Divisional Development Office, Karur. On a request made by him, he was transferred to Tuticorin *vide* proceedings dated 05.06.1987. The present appellant was appointed as a Typist couple of months before the appointment of the writ petitioner at Kadaladi Block in Ramnad District. She too sought a transfer to Tuticorin and this was ordered *vide* proceedings dated 14.07.1986.
- It is admitted on either side that for being considered to the next promotional post of Assistant, those who are in the feeder category must have passed five Departmental Examinations. According to the 1st respondent, he had passed all the qualifying examinations in May, 1986 whereas the appellant had passed those examinations only in May, 1988. While so, in the seniority list prepared on 28.12.1988, the



W.A.(MD) Nos.541 and 542 of 2018

appellant's name was included, whereas the 1st respondent's name was omitted. The 1st respondent appeared to have made a representation to the District Collector, Tuticorin, based on which his name was included *vide* proceedings dated 16.02.1989.

- Subsequently, in the seniority list prepared on 16.05.1991, the 1st respondent was placed below the appellant. The writ petitioner again made a representation for re-fixing his seniority and *vide* proceedings dated 31.10.1996, the District Collector, Tuticorin has fixed the seniority of the 1st respondent at Sl.No.237A and the appellant herein was placed at Sl.No.242. Subsequent to that, both the 1st respondent and the appellant herein were promoted in the order of their seniority as fixed in the proceedings dated 31.10.1996. To state it differently, after re-fixation of seniority on 31.10.1996, the 1st respondent had already been promoted to the next promotional post first and the appellant was promoted next. As things continued, the appellant appeared to have approached the authority concerned for re-fixation of her seniority and *vide* proceedings dated 09.03.2006, the Director of



W.A.(MD) Nos.541 and 542 of 2018

WEB COPY

Rural Development, Chennai has re-fixed the seniority and placed her above the 1st respondent. This came to be challenged by the 1st respondent in W.P.(MD) No.7606 of 2006. Consequent to the same, the District Collector, Tuticorin the 2nd respondent before the learned Single Judge had passed a proceeding dated 20.08.2009 re-fixing the scale of pay and this was challenged by the 1st respondent in W.P.(MD) No.9434 of 2009.

4. In his order, the learned Single Judge accepted the contentions of the 1st respondent and allowed both the writ petitions. The line of reasoning of the learned Judge is essentially two fold: (a) That the 1st respondent had acquired necessary qualification for empanelment for the next promotional post first, whereas the appellant has passed those tests only thereafter; and (b) The appellant could not seek re-fixation of seniority after considerable length of time after the impugned proceedings dated 31.10.1996 (a proceeding in which the 1st respondent was assigned seniority at Sl.No.237A). This is under challenge.



W.A.(MD) Nos.541 and 542 of 2018

WEB COPY

5. Learned counsel for the appellant made a valiant effort to convince this Court that the order of the learned Single Judge overlooks the fact that the proceedings dated 31.10.1996 of the District Collector re-fixing seniority was made without giving appellant fair opportunity to represent her case. The learned counsel took this Court through the entire typed set of papers and submitted that the only right available to the 1st respondent was to challenge the earlier seniority list dated 16.05.1991 before the Director of Rural Development. This is procedurally faulty.

6. Per contra, learned Government Advocate appearing for Respondents 2 and 3 submitted that:

(a) It is not in dispute that the 1st respondent had acquired the minimum qualification for empanelling for the next promotional post before the appellant had acquired the said qualification. It was a mistake which the 3rd respondent in this appeal had committed initially, which was rectified in 1996. If only the appellant was aggrieved, she could have challenged the same right at that time. It is required to be underscored



W.A.(MD) Nos.541 and 542 of 2018

WEB COPY

here that since the re-fixation of the seniority on 31.10.1996, the 1st respondent was promoted first at every stage and this would be a notice to the appellant about the change in seniority.

(b) Today, both the appellant as well as the 1st respondent have superannuated.

7. The only ground on which the appellant seek justification for filing a representation which led to the passing of the order of the 1st respondent in 2006, some 10 years after the seniority was re-fixed in October, 1996 was that she was not heard before such re-fixation. The larger point is even if she was given any such opportunity, would it have changed the seniority list earlier published. When admittedly the 1st respondent had acquired all required qualification essential for empanelment to the promotional post as Assistant when the 1988 seniority list was prepared, before the appellant, necessarily he should have been placed above the appellant in the seniority list. Now assuming an opportunity of hearing was given to the appellant at the time when the 3rd respondent came out with his proceedings dated



W.A.(MD) Nos.541 and 542 of 2018

31.10.1996, could it have changed her seniority essentially when she had acquired her eligibility criterion in passing the five Departmental Tests after the 1st respondent?

8. Principles of natural justice is mandatory in every case where an action affects the civil right of a citizen. An alternation to the seniority list in that sense is a civil right, but here is a case that the appellant's seniority itself was wrongly fixed when her name was placed above the 1st respondent, when it ought to be otherwise. As earlier emphasised, even if she had been granted an opportunity, that could not have changed anything in her favour. Extending a right of fair hearing before an action cannot be an empty formality, nor a mandatory ritual at all times. To state it differently, it would have been appropriate if the District Collector heard the appellant at the time when he passed the proceedings dated 31.10.1996, but the failure to do the same at the time by itself need not necessarily be a ground for interfering with the same some 10 years, later especially after few promotions have been enjoyed both by the 1st respondent as well as by the appellant during this intervening period.



W.A.(MD) Nos.541 and 542 of 2018

WEB COPY

9. To conclude, this Court does not find merit in these appeals. Accordingly, these Writ Appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(N.S.S., J.)

(P.V.M., J.)

24.04.2024

NCC : Yes/No

Index : Yes/No

Internet : Yes

ABR

To

1.The Director of Rural Development,
Chennai.

2.The Collector,
Tuticorin District,
Tuticorin.



WEB COPY



W.A.(MD) Nos.541 and 542 of 2018

N. SESHASAYEE, J.
and
P.VADAMALAI, J.

ABR

W.A.(MD) Nos.541 and 542 of 2018

24.04.2024