BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 14.03.2024

PRONOUNCED ON : 29.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.A(MD).Nos.4, 22 & 615 of 2020
and
CMP(MD).Nos.31, 254 & 3917 of 2020

1.The Principal Secretary/
Commissioner of Commercial Taxes
Chepauk, Ezhilagam
Chennai 600 005

2.The Joint Commissioner of Commercial Taxes
Madurai Division
Madurai ...Appellants/Respondents

Vs

1.D.Murugesan ....Respondent/Petitioner in WA.No.4 of 2020

2.R.Usha Devi ....Respondent/Petitioner in WA.No.22 of 2020

3.V.Jeevanandam ....Respondent/Petitioner in W.A.No.615 of 2020

Prayer in WA(MD).No.4 of 2020 : Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order passed by the learned Judge in W.P.No. 2656 of 2013 dated 22.11.2018.

Prayer in WA(MD).No.22 of 2020 : Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order passed by the learned Judge in W.P.No. 2657 of 2013 dated 22.11.2018.

Prayer in WA(MD).No.615 of 2020 : Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order passed by the learned Judge in W.P.No. 2658 of 2013 dated 22.11.2018.

For Appellants : Mr.Veera.Kathiravan
Additional Advocate General
Assisted by Mr.T.Amjadkhan
Government Advocate
in all the writ appeals

For Respondent : Mr.R.Venkataraman
Senior Counsel
For Mr.J.Pooventhera Rajan
in all the writ appeals

COMMON JUDGMENT

(Made by **R.VIJAYAKUMAR,J.**)

All the writ appeals arising out of final orders passed by the writ court in W.P.(MD).Nos.2656 to 2658 of 2013.

2.Since a common issue relating to seniority on being transferred to another division in the Commercial Department is under dispute, all the writ appeals are tagged together and a common order is being passed.

3.The petitioners in the writ petitions have challenged the orders passed by the Principal Secretary/ Commissioner of Commercial Taxes, Chennai wherein the authorities had held that the petitioners on being transferred from one division to another division on request transfer, after having expressed their willingness to forego seniority, will not be entitled to retain or restore their seniority in the transferred division. Challenging the same, the petitioners have filed the above said writ petitions.

4.The writ Court after considering the submissions made on either side, had relied upon Rule 20 of the Special Rules for Tamil Nadu Ministerial Service and proceeded to hold that the petitioners having been transferred within the Commercial Taxes Department and not from one department to another department, the question of surrendering or forgoing of seniority would not arise.

5.On the above said observations, the writ Court had allowed the writ petitions and directed the authorities to restore their original seniority that were conferred upon them in their original place of appointment. Challenging the same, the State has filed the present writ appeal.

(A)Facts leading to the filing of the present writ appeals are as follows:

6.The petitioner in WP(MD).No.2656 of 2013 (WA(md).No.4 of 2020) was appointed as a Typist in the Commercial Taxes Department at Thanjavur falling within Trichy Division on 03.01.1997. He was promoted as an Assistant on 16.06.2006. He had addressed a representation on 31.01.2007 to transfer himself to Madurai Commercial Taxes Division. The authority had forwarded the said representation to the Tamil Nadu Public Service Commission on 19.07.2008 and after obtaining concurrence from the Commission, the transfer order was passed on 20.05.2009. Therefore, he had challenged the order of transfer dated 20.05.2009 with regard to the portion wherein he was asked to forgo his seniority.

7.The petitioner in W.P(MD).No.2567 of 2013 (WA(md).No.22 of 2020) was originally appointed as Junior Assistant through Tamil Nadu Public Service Commission on 11.10.1994 to Trichy Commercial Taxes Division. Subsequently, she was promoted as Assistant on 09.06.2006. She made a representation on 30.04.2007 seeking transfer to Madurai Commercial Taxes Division. The said request was acceded to after getting concurrence from the Tamil Nadu Public Service Commission and transfer orders were passed on 03.10.2008 with a condition that she should forego her seniority.

The portion of the order of transfer which directs the petitioner to forego her seniority is put to challenge.

8.The petitioner in W.P(MD).No.2658 of 2013 (WA(md).No.615 of 2020) was originally appointed as as Junior Assistant through TNPSC on 05.03.1998 and allotted to Tirunelveli Commercial Taxes Division. He was promoted as Assistant on 31.05.2006. He submitted a representation on 25.07.2007 request one way transfer to Madurai Division. Her application was accepted and after getting concurrence from TNPSC an order of transfer was passed on 09.03.2009. The portion of the said order which directs the petitioner to forego her seniority was put to challenge.

9.It was contended by the writ petitioners before the writ Court that their appointment is through TNPSC and their seniority is a State wise seniority. Their transfer was not from one department to another department, but within the Commercial Taxes Department from one division to another division. Therefore, the question of foregoing their seniority on being transferred from one division to another division (falling within the same department) would not arise.

10.They had further contended that they were forced to give such a requisition letter that they would forego their seniority on being transferred from one division to another division. Such letter which is quite contrary to the service rules, could not have any effect whatsoever. Further they have contended that the next avenue for promotion is Deputy Commercial Taxes Officer and drawal of the list for the said promotional post is maintained State wise. They had further contended that they had lost their seniority and the juniors are likely to be promoted. The rules that is referred to in the impugned order namely Rule 20(a)(iii) of Special Rules of Tamil Nadu Ministerial Service is no way connected to the facts of the present case.

11.The respondents had contended that the petitioners having accepted and relinquished their seniority given in their parent division, they are eligible to claim seniority only with reference to the date of joining in the transferred division. Once the petitioners are transferred from one division to another division, they are not eligible to compare themselves to their juniors in their parent division and claim seniority. They had further contended that Rule 20(a)(iii) of the Special Rules of Tamil Nadu Ministerial Service are squarely applicable to the case of the petitioners. Further they had contended that the writ petitions have been filed with a delay of more than 4 years as an afterthought and hence, they are liable to be dismissed.

12.The writ Court while passing a common order interpreted Rule 20(a)(iii) of Tamil Nadu Ministerial Service Rules and arrived at a finding that the same is applicable only when there is an inter-departmental mutual transfer. However, in the present case, Rule 20(a)(i) would be applicable because the transfer is just from one office in a departmental unit to another office in the same departmental unit. The writ Court had further observed that the petitioners having been transferred from one division to another division in the same department, cannot be considered to have been transferred from one department to another department. The transfers were not administrative reason or on mutual transfer, but they were request transfers. Therefore, the question of surrendering or forgoing the seniority in such kind of transfers would not arise. Based on the said finding, the writ Court was pleased to allow all the three petitions and directed the authorities to permit the petitioners to retain their original seniority as per the seniority in their parent division. Aggrieved over the same, the present writ appeals have been filed by the State.

(B)Contentions of the learned Additional Advocate General appearing for the appellants are as follows:

13.The petitioners having been transferred in the year 2008-2009, have filed the present writ petitions with a delay of more than 4 years. The writ

Court ought to have dismissed the writ petitions on the ground of laches, especially considering the fact that the petitioners are claiming seniority. He had relied upon the judgement of the Hon'ble Supreme Court reported in ***(2022) 2 SCC 25 (Union of India Vs. N.Murugesan)*** and ***(2022) 2 SCC 301 (The Chairman, State Bank of India Vs. M.J.James)*** to impress upon the Court that the grievance over the service condition should be raised then and there and if there is any delay, the Court cannot be called upon to adjudicate and the same would cause prejudice to the other members of the service.

14.He had further contended that the writ Court had erroneously interpreted the word 'Departmental Unit' as a 'Department'. As per Rule 11 of the Tamil Nadu Ministerial Service Rules, a departmental unit only refers to the division of each department and therefore, each division in the Commercial Tax Department is a separate unit and the seniority is maintained separately for each one of the units. Therefore, when one of the members of the service is transferred from one unit to another unit, it should be construed to be a transfer between departmental units which would naturally result in forgoing of the seniority. He relied upon the judgement of the Hon'ble Supreme Court reported in ***2006 (5) SCC 386 (K.P.Sudhakaran & another Vs. State of Kerala & others)*** to fortify the submissions that when a

Government servant is transferred on his own request, from one unit to another unit or department, he cannot be permitted to disturb the seniority of the employees in the transferred unit or the department.

15.The learned Additional Advocate General had further contended that the writ Court had not properly appreciated that the Commercial Tax Department has maintained unit/division wise seniority in Ministerial Services like as Typist, Junior Assistant and Assistant. However, the State wise seniority is being followed for Subordinate services namely Sales Tax Officer and Deputy Sales Tax Officer in the Commercial Tax Department. He had further contended that unless the order of the writ Court is not reversed, it will have an adverse impact in the settled seniority in the transferred unit or division. Hence, he prayed for allowing the writ appeals.

(C)Contentions of the learned Senior Counsel appearing for the respondents are as follows:

16.The condition imposed in the impugned order of transfer to forego the seniority is meant for mutual transfers alone. Such condition ought not to have been imposed considering the fact that the present case do not fall under the category of mutual transfer, but it is a one way request transfer.

17.Rule 20(b)(i) of the Tamil Nadu Ministerial Service Rules imposed a condition to forego seniority, only in the cases of mutual transfer which is not applicable to the facts of the present case.

18.All the petitioners are now working as Assistants which is the feeder category for promotional post of the Deputy Commercial Tax Officer. The unit for consideration of seniority to the post of Deputy Commercial Officer is a State wise seniority. Therefore, even assuming that they have foregone their seniority, it should not have any effect upon their State wise seniority to claim promotion to the post of Deputy Commercial Tax Officer.

19.Rule 11 of Tamil Nadu Ministerial Service cannot be pressed into service, in view of the fact that the same is applicable only for direct recruitment and not in a case of transfer of an already appointed employees takes place. Rule 20(b)(iii) is applicable only to cases of mutual transfer and the same is not applicable for transfer on request which is a one way transfer.

20.A letter given by the employees cannot be treated as consent. Consent does not confer any jurisdiction. If any authority does not have any jurisdiction, the same cannot conferred by way of a consent. The learned Senior Counsel relied upon a judgement of the Hon'ble Supreme Court reported in ***AIR 1964 SC 1300 (Dhirendra Nath Gorai and others Vs. Sudhir Chandra Ghosh and others)*** to impress upon the Court that an objection to jurisdiction cannot be waived because, the consent cannot give a Court jurisdiction where there is none. The learned Senior Counsel had relied upon the another judgment of the Hon'ble Supreme Court reported ***in AIR 2014 SCC 2925 (State of Rajasthan Vs. Surendra Mohlot)*** and contended that there cannot be any estoppel against the law when rules do not provide for foregoing of seniority in the cases of one way transfer. Mere consent given by the employees would not empower the department to take away the seniority. Hence, he prayed for dismissing the writ appeals and to sustain the orders passed by the writ Court.

21.We have considered the submissions made on either side and perused the material records.

(D) Discussion:

22.The facts captured above and the submissions made on either side, raises the following issues.

(a)Whether the recruitment and the selection of the writ petitioners is division wise or it is a State level selection and the employees were thereafter appointed to different divisions?.

(b)Whether division wise or State wise seniority is followed in the cadre of Junior Assistants/Assistants in the Commercial Tax Department?.

(c)On being transferred from one division to another division, whether an employee covered under Tamil Nadu Ministerial Service Rules would have to forego his or her seniority ?.

23.The learned Additional Advocate General had referred to a notification issued by TNPSC dated 27.04.2017 in Notification No.10 of 2017 wherein the applications were called for direct recruitment for Group-II services which includes Assistants in the Commercial Tax Department. The said notification reveals that the applications have been called for vacancies notified for each one of the divisions in Commercial Tax Department falling under Tamil Nadu Ministerial Service. The appointment orders issued to the writ petitioners also reveal that the selected petitioners have been absorbed into their respective parent division and thereafter, appointment orders have been issued. It is also not in dispute that the Tamil Nadu Ministerial Service Rules is applicable to the Junior Assistant and the Assistants working in the Commercial Tax Department. The relevant rules of the Tamil Nadu Ministerial Service is extracted as follows:

"***Rule 11. Departmental Unit-Recruitment:-***

For purposes of direct recruitment to the service, a `departmental *unit' shall mean--*

(a) in the City of Madras, each office; and

(b) outside the City of Madras, each department in each District;

Provided that each office or group of offices specified below shall be a departmental unit:-

(i)	*Agriculture Department*	*All officers in the City of Madras and outside together*
(ii)	*Revenue Administration Department*	*Office of the Commissioner of Revenue Administration*
(iii)	*Commissioner of Land Administration*	*Office of the Commissioner of Land Administration*
(iii) (A)	*Commissioner of Agricultural Income Tax*	*Office of Commissioner of Agricultural Income Tax*
(iv)	*Office of the Commissioner of Commercial Taxes*	*Commercial Taxes Branch*
(v)	*Commercial Taxes Department*	***(i)All Officers in each Commercial Taxes Division other than Madras (North) and Madras (South) Divisions.*** ***(ii)All Officers in Madras (North) and Madras (South) Divisions together.***

24.A close scrutiny of the above said rules clearly reveal that as far as the Commercial Tax Department is concerned, all the officers in each Commercial Tax Division (other than the Madras South and Madras North Divisions) are treated to be one departmental unit. The officials in Madras North and Madras South form a single division put together. Therefore, it is clear that each division is considered to be an independent departmental unit. The petitioners who were originally appointed as Typist or Junior Assistants have later been promoted to the post of assistant within their own respective divisions before being transferred to another division. It is not the case of the petitioner that they got such promotion based on State wise seniority. Therefore, it is clear that the petitioners were promoted to the post of Assistant only based upon their divisional level seniority in their respective divisions.

25.All the petitioners have addressed a representation to the first appellant herein seeking transfer to another division. In their representations, they have specifically mentioned, that in case of their transfer to another division, they are ready to forego their seniority in their transferred division. Along with their representations, the petitioners have also enclosed a certificate that they are willing to forego their seniority and transfer travel allowance in the event of their request being granted. Based upon the said request and certificate, the first appellant had addressed a communication to TNPSC to signify their concurrence for one way divisional transfer subject to the condition laid down under Section 20(a)(iii) of Tamil Nadu Ministerial Service Rules. The Tamil Nadu Public Service Commission have accepted the said request and permitted one way divisional transfer of all the petitioners subject to the condition that they would forego their seniority in their parent division. Thereafter, individual transferred orders have been issued by the Deputy Commissioner of the respective divisions incorporating the said condition that they shall forego their seniority and their seniority shall be fixed the last in the list of Assistant of the division in which they are transferred. The transfer order further places a condition that the individual should not make any objection or representation to the fixation of the seniority as above or should not file any case.

26.The capturing of the above said events would clearly reveal that the petitioners have voluntarily made such a request for one way transfer accepting to forego their seniority in the parent division and to accept the seniority as a last list member of service in the transferred division. Only after accepting to forego seniority, the request has been forwarded by the appointing authority to TNPSC. TNPSC has also given their concurrence only on such a condition to forego their seniority. The transfer order also reveals that such a condition has been imposed to forego the seniority. Therefore, the contention of the learned senior counsel appearing for the writ petitioners that mere consent would not confer any jurisdiction on the authorities which they do not possess is not legally sustainable.

27.When the recruitment and the selection are division wise and the seniority of the writ petitioners up to the cadre of Assistants are division wise and the petitioners have derived benefits based on division wise seniority and got promotion to the post of Assistants, it is too late in the day to contend that their seniority is a State wise seniority and they would retain their seniority when they get transferred to another division.

28.Rule 11 of the Tamil Nadu Ministerial Service Rules (as applicable to Commercial Taxes Department) reveals that all the officers in each Commercial Tax Division, constitute a departmental unit for the purposes of recruitment as well as seniority. When Rule 11 of the Tamil Nadu Ministerial Service Rules clearly declares that all the officers in each division of the Commercial Taxes Department constitute an independent department unit, it is obvious that when an employee gets transferred from one departmental unit to another departmental unit, he would have to forego his seniority. When the Statutory Service Rules provide for fixation of division wise seniority, the contentions of the learned senior counsel appearing for the writ petitioners that the consent of the employee would not confer jurisdiction upon the authorities to direct them to forego seniority is not legally sustainable.

29.The learned senior counsel appearing for the writ petitioners had further contended that the post of Assistants is the feeder category to the post of Deputy Commercial Tax Officer for which State wise seniority is being maintained. It is clear from the Service Rules, only after being promoted as Deputy Commercial Tax Officer, a State wise seniority list would be prepared for further promotion to the post of Commercial Tax Officer. As long as the writ petitioners are in the cadre of Assistants, /typists their seniority continues to be division wise. The State wise seniority maintained for the promotional post cannot be relied upon for claiming seniority on the feeder category post.

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.

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.

35.All the writ petitioners have been transferred in the year 2008-2009. The transfer order clearly specifies that the petitioners should forego their seniority and they will be placed as last in the list of Assistants in the transferred division. Having given their undertaking to forego their seniority and accepted the order of transfer, the writ petitioners have chosen to challenge that the portion of the transfer order in the year 2013 after a lapse of more than 4 year. The Hon'ble Supreme Court in a judgment reported in ***(2008) 8 SCC 648 (Union of India and others Vs. Tarsem Singh)*** in

Paragraph No.7 has held as follows:

> "*7.To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties.* ***But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied.*** *In so far as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.*"

36.In view of the judgment of the Hon'ble Supreme Court, it is clear that whenever a claim relating to seniority or promotion is raised, after many years which would affect the right of others, the writ petition has to be dismissed on the ground of laches. In the present case, the petitioners have themselves foregone their seniority in their parent division and they have accepted the transfer order subject to the foregoing of the seniority 4 years prior to the filing of the present writ petitions. Probably when a panel is drawn for the next promotional post, namely Deputy Commercial Tax Officer, the petitioners have woken up and attempted to resurrect their alleged seniority. Any interference by this Court at this length of time would certainly affect the seniority and promotion of other Assistants in the said division who are already senior to the writ petitioners. Therefore, the writ petition ought to have been dismissed also on the ground of delay and laches.

37.In view of the above said deliberations, the orders of the writ Court in all the writ petitions are set aside and the writ appeals stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

(D.K.K.J.,) (R.V.J.,)

29.04.2024

Index :yes
Internet :yes
NCC : Yes/No

D.KRISHNAKUMAR, J.
AND
R.VIJAYAKUMAR,J.

msa

Pre-delivery Common Judgment made in
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