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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2025

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

Rev.Aplw. No. 118 of 2024

S.Vijayaprasadh … Petitioner

-vs-

1.The Principal Secretary to Government
Personal and Administrative Reforms Department
Fort St. George, Chennai-600009.

2.The Principal Secretary to Government
Commercial Taxes and Registration Department
Fort St. George, Chennai-600009.

3.The Commissioner of Commercial Taxes
Ezhilagam, Chepauk, Chennai-600005.

4.The Additional Commissioner (Administration)
O/o.Commissioner of Commercial Taxes
Ezhilagam, Chepauk, Chennai-600005. ... Respondents

Prayer:- Review Application filed under Article 226 of Constitution of India read with Order 47 Rule 1 read with Rule 114 of Code of Civil Procedure, praying to review the order of the Court dated 15.02.2024 made in W.P. No. 13065 of 2021, on the file of this Court.

For Petitioner : Mr.J.Pooventherarajan

For Respondents : Mr.C.Harsharaj, SGP(T)

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ORDER

Heard Mr.J.Pooventherarajan, learned counsel for the review applicant and Mr.C.Harsharaj, learned Special Government Pleader (T) for the respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. This review application has been filed to review the order of this Court dated 15.02.2024 made in W.P. No. 13065 of 2021.

3. The learned counsel for the review applicant submitted that the impugned order is liable to be reviewed in view of the later judgment of a Division Bench of this Court, which was omitted to be referred at the time when the writ petition was heard. The other judgment, which has been passed by another Division Bench of this Court in ***Director of Rural Development & Panchayat Raj -vs- B.Siddarthan*** [The order made in W.A.(MD) No.1402 of 2014 on 11.01.2024] has been referred by the learned counsel for the review applicant and submitted that the pay scale of the Stenographers and Assistants carry the same scale of pay and hence, Stenographers, who ought to be appointed as

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Assistant by way of transfer should be reckoned in the cadre of Assistant from the date on which the transferee acquires five(5) years qualification in the cadre of Steno-Typist Grade-III for the purpose of appointing as Assistant. The said judgment has made a reference about Rule-9(f) of the Tamil Nadu Ministerial Service Rules, which enables Stenographers Grade-III, who have got five years qualification to be transferred and appointed as Assistants. The said Rule 9(f) is extracted as follows:

> *"9. Transfers between categories: (f) Five percent of the estimated vacancies, in the category of Assistant in a Department, shall be filled up by transfer from the category of Steno-Typist, Grade-III, who has put in not less than eight years of service and opts for transfer as Assistant as on the 15th March of the year in which the selection is made and the option so exercised is final.*
>
> *Provided that on and from the 2nd September 2005, Steno-Typist, Grade III who has put in not less than five years of service shall be considered for appointment as Assistant by transfer."*

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4. Insofar as the seniority is concerned, it is governed by Section 40(3) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, which reads as under:-

"***Section 40 in Tamil Nadu Government Servants (Conditions of Service) Act, 2016***

40. Fixation of seniority.

3. *The transfer of a person from one class or category of a service to another class or category carrying the same scale of pay or pay band shall not be treated as first appointment to the latter for purpose of seniority and the seniority of a person so transferred shall be determined with reference to the rank in the class or category from which he was transferred; where any difficulty or doubt arises in applying this provision, seniority shall be determined by the appointing authority."*

5. In the matter of appointment on transfer from Stenographer Grade III, there is no combined seniority maintained between the Stenographers and Assistants and hence, it obviously raises a difficulty as contemplated under Section 40(3) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. In that case, seniority has to be determined by the appointing

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authority.

6. As the order of the Division Bench has not dealt the rule governing fixation of seniority prescribed under Section 40(3) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 citing the above judgment as a ground of reviewing the order passed in the writ petition is not correct.

7. Hence, this Review Application stands dismissed. No costs.

01.04.2025

Index: Yes/No
Speaking /Non-speaking order

Maya

To

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R.N.MANJULA, J.

Maya

4.The Additional Commissioner (Administration)
O/o.Commissioner of Commercial Taxes
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