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W.P. No.20208 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2025

CORAM :

THE HONOURABLE Ms. JUSTICE **R.N.MANJULA**

W.P.No.20208 of 2019
and
W.M.P.No.19617 of 2019

Yasodha

... Petitioner

Vs.

1.The Additional Chief Secretary/
Commissioner of Revenue Administration,
Administration and Disaster Management,
Ezhilagam,
Chepauk, Chennai-5.

2.The District Collector,
Nagapattinam,
Nagapattinam District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, call for the records impugned proceedings in Proc.No.Ser:3(2)/1479/2018 dated 29.06.2019 on the file of the 1st respondent and quash the same.

For Petitioner : Mr.R.Rajarajan

For Respondents : Mr.T.Chezhan
Additional Government Pleader



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ORDER

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The petitioner has filed writ petition seeking to call for the records of the impugned proceedings in Proc.No.Ser:3(2)/1479/2018 dated 29.06.2019 on the file of the 1st respondent and quash the same.

2. The petitioner have joined a Steno typist-Grade III, in the revenue department on 06.07.2009. The petitioner has completed five years service in Grade III on 05.07.2014 and she expressed her unwillingness to move to Grade II followed by Grade 1. Therefore, conversion was ordered by posting her as Assistant with effect from 05.08.2014.

3. The petitioner was promoted as Deputy Tahsildar on 02.11.2018 and she was posted as Head Clerk, which is equivalent to the post of Deputy Tahsildar at Nagapattinam. When the seniority in the cadre of Assistant was refixed for the year 2009 on 23.04.2015, the petitioner was placed in the correct seniority.

4. When promotion panel of the Deputy Tahsildar was drawn in the year 2017, the petitioner name was not included. The petitioner has



completed the qualifying two years of service in the cadre of Assistant even in the year 2017. As the petitioner's representation was rejected, he has preferred an appeal before the 1st respondent on 30.11.2017. The appeal was rejected not only denying the petitioner's claim to be included in the panel for Deputy Tahsildar in the year 2017, but the earlier seniority list which included in the list of the year 2009, which had rightly placed the petitioner in serial number one was also set aside with a direction to redraw the list of Assistant and include the petitioner in the 2015 Assistant list

5. The learned counsel for the petitioner submitted that as per Rule 35(b) of Tamil Nadu Subordinate Service Rules, a person is transferred from one class or category of a service or another class or category carrying the same pay or scale of pay shall not be treated as first appointment to the later for the purpose of seniority of a person. It shall be determined with reference to the rank in the class or category from which the person was transferred. In case of any difficulty or doubt arises in the above Rule, the seniority shall be determined by the appointing authority. But the impugned order has been passed quite contrary to the above rule. The appointing authority have rightly



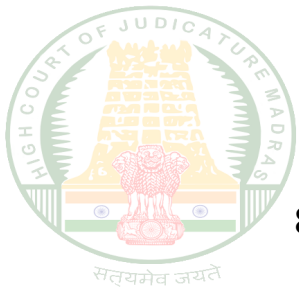
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fixed the seniority on 23.04.2015 itself by including the petitioner in the Assistant list for the year 2009 itself.

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6. The learned Additional Government Pleader submitted that as per the rule of Tamil Nadu Ministerial Services Rules, the petitioner has completed five years of service only on 05.07.2014. Therefore, Rule 35(b) of Tamil Nadu Subordinate Service Rules is not applicable to the case of the petitioner. He further submitted that the petitioner has not completed two years of service as Assistant on the crucial date for inclusion in the promotion panel for the post of Deputy Tahsildar.

7. According to Rule 9(f)(1) of Tamil Nadu Ministerial Service Rules, the Steno typist-Grade III, who has completed not less than five years of service, is eligible for appointment as an Assistant by transfer. Only because the petitioner has qualified herself by having completed five years of service as Steno typist-Grade III, she was considered for conversion as an Assistant in the year 2014.



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8. While the Tamil Nadu Ministerial Service Rules prescribes the qualification for considering a Steno typist-Grade III for conversion into an Assistant by transfer, they do not specify the rules governing seniority applicable to persons who have been converted as Assistant. Therefore, recourse have to be made to Section 35(b) of Tamil Nadu Subordinate Services Rules which states as follows:-

“The transfer of a person from one class or category of a service or another class or category carrying the same pay or scale of pay shall not be treated as first appointment to the later for the purpose of seniority of a person transferred all 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 the sub rule, the seniority shall be determined by appointing authority.”

9. The said Rule has been replicated in Rule 40(3) of Tamil Nadu Service (Conditions of Service) Act, 2016 also. The above rule not only states that the seniority of an incumbent will relate back to the class or category from which they transferred, but it also provides that in case of any difficulty or doubt arisen in its application, the decision will be taken by the



appointing authority.

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10. Even though, the appointing authority has rightly taken a decision without any difficulty on 23.04.2015 and issued proceedings in R.O.C.No.618/2014/A2 dated 04.08.2014, by rightly understanding the concept of seniority and fixing the seniority of the petitioner in the list of Assistant for the year 2009, the impugned order has been passed to set aside the same by considering the petitioner as a new appointee.

11. The petitioner was deprived of the benefit of the service already rendered in view of the impugned order setting aside the earlier proceedings dated 23.04.2015. The first respondent, appointing authority has passed an order on the issue which was not brought before him in the appeal preferred by the petitioner.

12. It is to be noted that the proceedings issued by the appointing authority on 23.04.2015 was not challenged by the department at any point of time. The issue came before the first respondent only because the petitioner's



request for inclusion in the Deputy Tahsildar panel for the year 2017 was denied. The first respondent authority has exceeded his jurisdiction by recalling the earlier settled order dated 23.04.2015, which was not under challenge before him and chosen to set aside the same. The appellant was not only denied the relief, but was also punished for having preferred an appeal before the authority.

13. Even if, for extraneous reasons, the respondents thought it fit to revisit the earlier proceedings which fixed the petitioner's seniority in the list of Assistant for the year 2009, they ought to have been done so by issuing a notice to the petitioner, rather than passing an order on an appeal preferred by the petitioner by challenging some other issue. As the order was passed in complete violation of the principle of natural justice, it is liable to be set aside.

14. In view of the above said reasons, the Writ Petition is allowed and the impugned order is set aside and the earlier order passed by the 2nd respondent dated 23.04.2015 by fixing the petitioner seniority in the cadre of



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Assistant is restored. Consequently, the connected Miscellaneous Petition is closed. There shall be no order as to costs.

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Index : Yes/No

Speaking Order : Yes/No

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