



W.P.(MD) No.10628 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

WP(MD)No.10628 of 2019

and

WMP(MD) No.8152 of 2019

Anthony Raj

.. Petitioner

Vs.

The State of Tamil Nadu
Rep Through
The District Collector,
Thoothukudi District.

.. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus to call for the entire records relating to the impugned order No.Na.Ka.Va3/7604/2018 dated 29.03.2019 on the file of the respondent and quash the same and consequently direct the respondent to regularize petitioner's foreign service of one year four months five days rendered at Karur District and include the same in the service rendered in Thoothukudi District and to grant Selection Grade considering the total ten years of service pursuant to the G.O(Ms).No.68 of Personal Administrative Reforms (PER/M) department dated 23.01.1986 and based on his representation dated 18.03.2018 in accordance with law.



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For Petitioner : Mr.A.Prasannarajadurai
For Respondent : Mr.K.R.Badurus Zaman
Government Advocate
takes notice for the respondent.

ORDER

Mr.K.R.Badurus Zaman, learned Government Advocate takes notice for the respondent.

2. Under assail is impugned order No.Na.Ka.Va3/7604/2018 dated 29.03.2029 passed by the District Collector, Thoothukudi District.

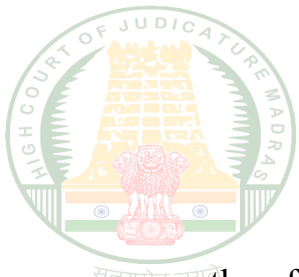
3.The case of the writ petitioner is that the petitioner was recruited through Tamil Nadu Public Service Commission as an Assistant on 26.03.1998 thereafter he was deputed as Assistant/Accountant to Karur District Rural Development Agency. He was deputed on foreign service in the unit of Bangaru Ammayar Memorial Mahalir Thittam at Karur from 27.09.2001 to 31.01.2003. On his own request he was transferred to his parent District, Thoothukudi as Junior Assistant from 10.02.2003 to 10.01.2007.



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4. It is further case of the petitioner that he was promoted as assistant from 11.01.2007 and continued in the post up to 02.02.2016 and thereafter he got the promotion of Deputy Block Development Officer and presently holding the post. He had been worked in foreign service in Karur for totally 1 year 4 months 5 days of service in the assistant post as such as per G.O(Ms).No.68 of Personal Administrative Reforms (PER/M) department dated 23.01.1986 for advancement of selection grade service rendered in an equivalent or higher post on other duty alone should be taken into account for advancement of selection grade to extend, he should have acted in his original post in the parent department for his deputation. Hence, he made a representation on 11.09.2015, the same was forwarded by JD/P.O., DRDA for which the respondent in his letter No.O.Mu.30944/2015 (Va3) dated 30.15.2015 stating that his post is regularised only on 11.01.2007 in assistant cadre, therefore, he had not completed in assistant post and could not be provided selection cadre since the petitioner has not completed ten years of service in the same post, the petitioner filed writ petition seeking relief of writ of mandamus in WP(MD).No.8621 of 2019. At the time of hearing it has been stated that the present impugned order dated 29.03.2019 came to be issued and



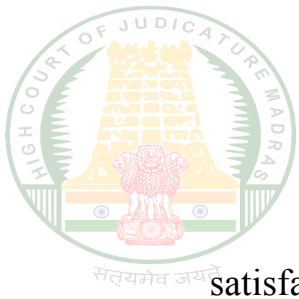
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therefore this Hon'ble Court directed him to file a fresh writ petition to challenge the order. Hence this writ petition.

5. The learned counsel appearing for the petitioner would submit that the petitioner has completed ten years of service in Assistant cadre that is in same cadre and he is entitled to regularize his post from the initial date of appointment.

6. *Per contra*, the learned Government Advocate took notice for the respondent and submitted that the petitioner on his own request voluntarily given up his seniority and after getting undertaking given by him, he was given district transfer and posted as Junior Assistant, the Rural Development and Panchayat Raj Department, where he joined duty on 10.02.2003, only upon his undertaking that he was willing to forego his seniority he was given district transfer as Junior Assistant in Thoothukudi District. He would submit that as per section 41(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 that “no member of a service or class shall be eligible for promotion from the category in which he was appointed to the service unless he has



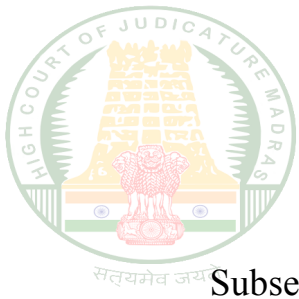
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satisfactorily completed his period of probation category”.

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7. He would submit that the promotion is not a legal right and the right of the individual is confined only to consideration for inclusion in the promotion panel as prepared by the department concerned. He also brought attention of this Court on earlier occasion he had preferred WP(MD).No.10912 of 2020 seeking a direction as against the director of Rural Development and Panchayat Raj Department to place him as Assistant in Thoothukudi District instead of Junior Assistant District transfer and consequentially prayed to include his name in the seniority list of assistant in Thoothukudi District as on 01.02.2003 in line of the letter dated 23.01.2020 issued by the first respondent therein.

8. He would submit that this Hon'ble Court vide order dated 20.01.2023 in WP(MD).No.10912 of 2020, held that when the petitioner himself accepted for the condition, he cannot claim for promotion or seniority. It is seen from the records as per the averments stated by the writ petitioner is that he was transferred to his parent district, Thoothukudi as Junior Assistant from 10.02.2003 to 10.01.2007.



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Subsequently, he was promoted as Assistant from 11.01.2007 and continued to the post up to 02.02.2016 thereafter he was promoted to the post of Deputy Block Development Officer and presently holding the post. It is also seen from the respondent letter dated 13.05.2015. Wherein it has been stated that his post has been regularized only on 11.01.2007 in Assistant cadre and therefore, the petitioner has not completed ten years of service in Assistant post and could not be provided selection grade since he has not completed ten years of service in the same cadre.

9. It is relevant to state that the petitioner already approached this Court as pointed out by the learned Additional Government Advocate, in WP(MD).No.10912 of 2020 *vide* order dated 20.01.2023 cited supra, in paragraph No.6 held as follows:-

“6.Admittedly, the petitioner entered into service as Junior Assistant through Tamil Nadu Public Service Commission in the year 1998 and his services were regularized in the year 2000 and his probation was declared in the year 2000. Thereafter, he was given temporary promotion as an Assistant on 27.09.2001. Subsequently, on his own request, he was transferred to Thoothukudi District on the undertaking that he will forego his seniority and he joined duty on 10.02.2003 as a Junior Assistant in the Office of the Assistant Director(Audit)Thoothukudi. When the



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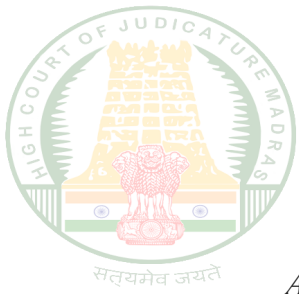


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petitioner himself accepted for the condition that he will be paced below the approved probationers in the Thoothukudi District and got transfer, after a lapse of a decade, he cannot claim for promotion or seniority. More over, the earlier promotion given to the petitioner as an Assistant is only a temporary promotion. Therefore, there is no merit in this writ petition and the same is liable to be dismissed.”

10. It is relevant that the counter filed by the third respondent in paragraph number 4 reads as follows:-

4. It is submitted that the averments of the Petitioner herein in paragraphs 2 and 3 of the affidavit is misconceived and devoid of truth. It is submitted that the Petitioner herein was recruited as Junior Assistant by the Tamil Nadu Public Service Commission and allotted to Karur District Rural Development unit where he joined as Junior Assistant on 26.03.1998. He has contended that he was transferred to Tuticorin Rural Development Agency and assured office on 10.02.2003 is not correct. Insofar the Rural Development and Panchayat Raj Department is concerned, each district is a single unit and that only on the request of the petitioner herein and the undertaking given by him on his own volition that he is foregoing and relinquishing, the seniority in the Thoothukudi District, he was given district transfer and posted as Junior Assistant in the Thoothukudi District Rural Development and Panchayat Raj unit where he joined duty on 10.02.2003. The Petitioner has also made a false averment that he made several representations to the authorities to consider his request to restore his seniority which is not correct. In-fact only on his undertaking that he was willing to forego his seniority, he was given posting in the Thoothukudi District as Junior



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Assistant. In-fact Rule 35(f) of the Tamil Nadu State and Subordinate Service Rules clearly stipulates that seniority dispute must be raised within a period of 3 years from the date of fixing such seniority.

4 (a). It is submitted that there are two distinctly different proceedings, one relating to fixing up of seniority and the other pertains to drawal of promotion panel and the Petitioner herein attempts to confuse the issue to gain some leverage to the Petitioner herein. As per fixing up of seniority is concerned, Rule 35 (aa) of the Tamil Nadu State and Subordinate Service Rules read with Section 40 (2) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 were in vogue which inter-alia states:-

"The seniority of a person on service, class, category or grade shall, where the normal method of recruitment to that service, class, category or grade is by more than one method of recruitment, unless the individual has been reduced to a lower rank as a punishment, be determined with reference to the date on which he is appointed to the service, category or grade"

4(b). On the other-hand, drawal of panel has been dealt with under section 36 of the Tamil Nadu State and Subordinate Service Rules which inter-alia provides for the drawl of panel for promotion consisting of persons eligible for promotion as on the crucial date. The crucial date for the drawal of panel of Assistants in the Department of Rural Development is 15th March of every year. It has been mandated that for preparing such lists to fill up vacancies, the names of qualified candidates in the seniority list in a class, category or service shall be considered. It has been specifically stated in Section 41(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 that "no member of a service or class shall be eligible for promotion from the category in which he was appointed to the service unless he has satisfactorily completed his period of probation in that category"



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11. This Court is of the considered view that it is not in dispute that on the request of the petitioner alone he was given district transfer from Karur to Thoothukudi on the undertaking given by him voluntarily foregone his seniority as such he is not entitled to once again claim his seniority as against the undertaking given by the petitioner.

12. There is no merit in this writ petition. Hence, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition also stands closed.

13.03.2025

NCC : Yes/No
Index : Yes/No
Internet : Yes
nst
To
The State of Tamil Nadu
Rep Through
The District Collector,
Thoothukudi District



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M.JOTHIRAMAN, J.

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