BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

WP.(MD) No.1838 of 2019
and
WMP.(MD).No.1563 of 2019

P.Maya Krishna Moorthy .. Petitioner

Vs.

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

2.The Joint Commissioner of State Tax,
Tirunelveli Division,
Tirunelveli. .. Respondents

Prayer:Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus to call for the records of the first respondent in Proc No.H3/15216/2014 dated 27.04.2015 and quash the same as illegal in so far as the Paragraph 4 (i) and 4 (ii) is concerned and consequential order passed by the second respondent in Proc No.A8/5585/2018 dated 04.01.2019 and quash the same as illegal and further direct the respondents to fix my seniority in the cadre of Assistant by considering my service rendered in the cadre of Assistant with effect from 02.01.2013.

For Petitioner : Mr.J.Pooventhera Rajan

For RR1 & 2 : Mr.G.V.Vairam Santhosh
Additional Government Pleader

ORDER

This Writ Petition is filed to challenge the order passed to call for the records of the first respondent in Proc.No.H3/15216/2014 dated 27.04.2015 and quash the same as illegal in so far as the Paragraph 4 (i) and 4 (ii) is concerned and consequential order passed by the second respondent in Proc.No.A8/5585/2018 dated 04.01.2019 and quash the same as illegal and further direct the respondents to fix petitioner's seniority in the cadre of Assistant by considering his service rendered in the cadre of Assistant with effect from 02.01.2013.

2. It is the case of the writ petitioner that the petitioner is working as Assistant in the Office of State Tax Office – I, Kovilpatti, Tirunelveli State Taxes Division, Tirunelveli. He is a direct recruitee to the post of Assistant in the respondent Department through Tamil Nadu Public Service Commission and alloted to Vellore Commercial Taxes Division.

2 (i) . While the petitioner was in service of the Vellore Commercial Taxes Division, he left his family at Tirunelveli and hence, he was unable to take care of his family. Hence, he made a representation before the first respondent to transfer him to Tirunelveli Commercial Taxes Division. But his request for transfer to another Division in the same Department Unit was considered by the first respondent after a delay of merely one (1) year, he was transferred from Vellore Commercial Taxes Division to Tirunelveli Commercial Taxes Division with a condition to forego his seniority and not to file any case regarding fixation of seniority.

2(ii). While passing the impugned order, the first respondent had referred to Rule 20 (a) (iii) of the Special Rules for the Tamil Nadu Ministerial Service Rules, and the same is not applicable to the petitioner. Since it will only apply to the case regarding transfer of a member working under the Tamil Nadu Ministerial Service Rules from one Department Unit to another Department Unit. But the petitioner requested the first respondent to transfer him from Vellore Division to Tirunelveli Division of the same Commercial Taxes Department.

3. The second respondent has fixed the petitioner's seniority only in the year 2018 by way of *inter-se* seniority list of Assistants working in the Tirunelveli Commercial Taxes Division, wherein the petitioner was placed at seniority No.135, among the Assitants working in the Tirunelveli Commercial Taxes Division. The petitioner made an objection dated 31.07.2018 before the second respondent to fix his seniority in the cadre of Assistants reference to official date of appointment as Assistant. However, his objection was rejected by the second respondent. Hence, this writ petition.

4. The learned counsel appearing on behalf of the petitioner would submit that the order impugned, the first respondent had referred to Rule 20 (a) (iii) of the Special Rules of the Tamil Nadu Ministerial Service and the same is not applicable to the petitioner since it will apply only to the case regarding transfer of a member of Tamil Nadu Ministerial Service from one departmental unit to an office in another departmental unit. But the petitioner requested the first respondent to transfer him from Vellore to Tirunelveli of the Commercial Taxes Department and therefore, the petitioner is entitled to claim his seniority from the date of his original appointment as Assistant.

5. *Per-contra* Mr.G.V.Vairam Santhosh, learned Additional Government Pleader would submit that the petitioner was transferred from Vellore Commercial Taxes Division to Tirunelveli Commercial Taxes Division with a condition to forego his seniority and not to file any case, regarding fixation of his seniority. To strengthen his contention, he has relied upon the judgment of Hon'ble Division Bench Judgment of this Court dated 29.04.2014, in **The Principal Secretary/Commissioner of Commercial Taxes, Cheapuk, Ezhilagam, Chennai – 600 005. and Ors** Vs. **D.Murugesan and Anr.** in [W.A.(MD).Nos.4, 22 & 615 of 2020] and submitted that the petitioner himself forego his seniority thereafter he filed writ petition, which is contrary to Service Rules applicable to the writ petitioner.

6. This Court has considered the submissions advanced on either side and perused the materials available on record.

7. It is pertinent to mention that the Hon'ble Division Bench of this Court considered the similar issue of relating to fixing of seniority, being transferred to another Department in the Commercial Taxes Division and decided the issue cited *supra vide* common judgment dated 29.04.2024. Wherein, it is observed as follows:-

> *"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.*
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> *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."*

8. In the instant case on hand, the petitioner himself foregone his seniority in his parent division and he has been accepted the Transfer order subject to the foregoing of the seniority.

9. The above cited case is also squarely applicable to facts of the present case and there is no merit in this writ petition and the same is liable to be dismissed. Hence, this writ petition stands dismissed. No costs. Connected writ miscellaneous petition is also closed.

06.02.2025

NCC : Yes/No
Index : Yes/No
Internet : Yes
nst

To

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of Commercial Taxes,
Ezhilagam,
Chepauk,
Chennai – 600 005.

2.The Joint Commissioner of State Tax,
Tirunelveli Division,
Tirunelveli.

M.JOTHIRAMAN.J

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