



W.P.(MD) No.893 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

W.P.(MD) No.893 of 2019

1. A.Sankar

2. R.Manimaran

...

Petitioners

Vs

1 The Secretary to Government,
Personnel & Administrative Reforms Department,
Government of Tamil Nadu,
Fort St.George,
Chennai-600 009.

2 The Director of Agriculture,
Chepauk,
Chennai-600 005.

3 The Joint Director Of Agriculture,
Office of Joint Director of Agriculture,
Collectorate Campus,
Karur-639 007.

4 The Joint Director Of Agriculture,
Office of Joint Director of Agriculture,
Multiple Complex Block-II,
Theni District.

...

Respondents



W.P.(MD) No.893 of 2019

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PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of certiorarified mandamus, to call for the records relating to the impugned order of the 2nd respondent in No.Appi. 1/188649/2004, dated 27.06.2007, and consequential impugned order of 2nd respondent in Lr.No.MESI/159554/2017, dated 28.06.2018, quash the same and consequently direct the respondents herein to follow the provisions of Sec. 40 (1) & (2) of the conditions of service to fix the seniority among the compassionate appointees and direct recruits for the purpose of promotion.

For Petitioners : Mr.K.Appadurai

For Respondents : Mr.G.V.Vairam Santhosh,
Addl. Govt. Pleader.

ORDER

Under assail is the order impugned, dated 27.06.2007, passed by the second respondent, and the consequential impugned order, dated 28.06.2018, passed by the second respondent.

2. The case of the petitioners is that they were appointed on compassionate ground on 20.04.2000 and 21.07.2000 respectively, as Junior Assistants. They completed probation; their services were regularised, and



W.P.(MD) No.893 of 2019

WEB COPY

their seniority was fixed in October,2000, itself. The first petitioner was promoted as Assistant on 13.10.2008 and the second petitioner was promoted as Assistant on 17.04.2008. As per Section 40 (1) of the Tamil Nadu Government Servants (Conditions of Service) Act,2016, in short, "the Act", seniority of a person in service, class, category or grade can be reckoned from the date of commencement of his or her probation, on which he or she joins duty. As per Section 40 (2) of the Act, where the method of recruitment to service is by more than one method, seniority is reckoned from the date of appointment. While so, the second respondent passed the impugned order, stating that persons, appointed on compassionate ground in a year through out, will be placed in seniority list below the direct recruits, appointed through Tamil Nadu Public Service Commission. The order impugned also states that since the process of selection and appointment through the Recruitment Board causes delay due to administrative reasons, the said system of seniority is followed in the recent years. The said reasons, in so far as compassionate appointments are made in the year 2000, are incorrect. As far as the petitioners are concerned, they joined duty on 20.04.2000 and 21.07.2000 respectively in the post of Junior Assistant on compassionate ground, whereas the direct recruits were selected subsequently through publication of results, by assigning seniority. Therefore, the petitioners submitted a representation to



W.P.(MD) No.893 of 2019

WEB COPY

the second respondent, requesting to revise their seniority. Hence, this Writ Petition.

3. Learned counsel, appearing on behalf of the petitioners, would submit that the impugned order is against law, arbitrary in nature, and contrary to the provisions of Section 40 (1) and (2) of the Act. He would further submit that as per the provisions of the Act, the date of commencement of probation of an employee shall be the date on which he or she joins duty. Hence, the criterion for fixing seniority is the date on which he or she joins duty, commencing his/her probation. He would also submit that where the method of recruitment to service, class, category or grade, is by more than one method, unless the individual has been reduced to a lower rank as a punishment, seniority shall be determined with reference to the date on which he/she joins the service, class or grade. Therefore, fixing seniority of compassionate appointees below the direct recruits is totally misconceived and without following due process of law.

4. Per contra, learned Additional Government Pleader, appearing for the respondents, would submit that the petitioners were declared to have completed probation, considering their date of entry into Government service and their seniority in the post of Junior Assistant-cum-Typist was assigned as Sl.No.110/2000 and 129/2000 respectively, by proceedings of the second



W.P.(MD) No.893 of 2019

WEB COPY

respondent, dated 27.06.2007. He would further submit that the impugned order was passed, based on sub-section (2) of Section 40 of the Act, which clearly provides that where the normal method of recruitment is by more than one method, seniority shall be determined with reference to the date on which the person is appointed to that service and, therefore, there is no violation of statutory rules. The learned Additional Government Pleader would also submit that considering the date of death of Government employee and receipt of when application for compassionate appointment from the deceased family, such application can only count for seniority for the purpose of employment and it has nothing to do with seniority in respect of promotion. According to him, the petitioners themselves accepted that the order of fixing their seniority for the post of Junior Assistant-cum-Typist was released way back in the year 2007 and they were made aware of their seniority in the year 2007 itself. The seniority of the petitioners and the similarly placed persons would find place in the seniority list of the Junior Assistants-cum-Typists for the year 1999-2000, immediately below the direct recruited candidates, selected by the Tamil Nadu Public Service Commission, and such list was rightly issued by the second respondent, based on the Tamil Nadu Public Service Commission's seniority and also considering Rule 35 (a) and (aa) of the Tamil Nadu State and Subordinate Service Rules, now sub-sections (1)



W.P.(MD) No.893 of 2019

WEB COPY

and (2) of Section 40 of the Act. Therefore, fixation of seniority of the petitioners was done, by following relevant rules and procedures. The learned Additional Government Pleader also drew the attention of this Court to the Counter Affidavit, filed by the respondents, in particular, paragraph 8, which states as under :

"8. I submit that therefore, applying the said rule, the seniority of the petitioners and similarly placed persons have been ordered, considering their date of entry into Government service, and their seniority in the post Junior Assistant cum Typist was assigned as 110/2000 and 129/2000, respectively as per the proceedings of the Second Respondent No.APP.1/188649/2004, dated 27.06.2007. Such order of the 2nd respondent was based on the Statutory rule 35 (aa) of the Tamil Nadu State and Subordinate Service Rules, now the Sub-Section 2 of Section 40 of the Tamil Nadu Government Servants (Conditions of Service) Act,2016, which propounds, that where the normal method of recruitment is by more than one method of recruitment, seniority will be determined with reference to the date, he is appointed to that service...."

5. The impugned order, dated 27.06.2007, states that by applying Rule 35 (a) and (aa) of the Tamil Nadu State and Subordinate Service Rules, now Sub-Section (1) and (2) of Section 40 of the Tamil Nadu Government Servants (Conditions of Service) Act,2016, the seniority of the petitioners and



W.P.(MD) No.893 of 2019

WEB COPY

similarly placed persons had been ordered, considering their date of entry into Government service and their seniority in the post of Junior Assistant cum Typist was assigned as in Sl.No.110/2000 and 129/2000 respectively. Therefore, the order of the second respondent was based on the statutory Rule 35 (aa) of the Tamil Nadu State and Subordinate Service Rules, now Sub-Section (2) of Section 40 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

6. At this juncture, it is relevant to extract Section 40 (2) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, which reads as under :

"The seniority of a person in a 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 services, class, category or grade:

Provided that where the junior appointed by a particular method of recruitment happens to be appointed to a service, class, category or grade, earlier than the senior appointed by the same method of recruitment, the senior shall be deemed to have been appointed to the service, class, category or grade on the same day on which the junior was so appointed:



W.P.(MD) No.893 of 2019

WEB COPY

Provided further that the benefit of the above proviso shall be available to the senior only for the purpose of fixing inter-se-seniority:

Provided also that where persons appointed by more than one method of recruitment are appointed or deemed to have been appointed to the service, class, category or grade on the same day, their inter-se-seniority shall be decided with reference to their age."

7. The above Section provides that where the normal method of recruitment to the service is by more than one method of recruitment, seniority of a person shall be determined with reference to the date on which he or she is appointed to that service. Therefore, there is no violation of statutory rules in fixing the seniority of the petitioners.

8. It is pertinent to mention that under direct recruitment by Tamil Nadu Public Service Commission, seniority of the persons appointed to Government service is outside the purview of the Tamil Nadu Public Service Commission, whereas for the appointment under compassionate ground as in the present case and similarly appointed persons in the post of Junior Assistant cum Typist, seniority had been fixed by the second respondent by the impugned order, in the year 2007 itself.



W.P.(MD) No.893 of 2019

WEB COPY

9. At this juncture, it is relevant to cite a judgment of the Hon'ble Supreme Court of India, in *Vijay Kumar Kaul v. Union of India*, (2012) 7 SCC 610, wherein it has been held as under :

"27....It becomes an obligation to take into consideration the balance of justice or injustice in entertaining the petition or declining it on the ground of delay and laches. It is a matter of great significance that at one point of time equity that existed in favour of one melts into total insignificance and paves the path of extinction with the passage of time.

It is also pertinent to mention that neither has it been pleaded nor is it apparent from the material on record that the Respondent was unable to approach the court-of-law in time on account of any social or financial disability. Had such been the case, he ought to have availed free legal aid and should have ventilated his grievances in a timely manner."

10. In the instant case, the petitioners themselves had accepted the same that they were aware of the said order of fixing seniority in the post of Junior Assistant cum Typist in the year 2007 itself. Now, after a lapse of more than a decade, the petitioners submitted a representation, stating that the seniority list ordered by the second respondent in the post of Junior Assistant cum Typist is improper and incorrect, which cannot be accepted at this later stage.



W.P.(MD) No.893 of 2019

WEB COPY

11. For the above reasons, finding no merit, this Writ Petition is dismissed. No costs. Consequently, the connected W.M.P.(MD) Nos.717 and 718 of 2019 are closed.

19.02.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To:

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Personnel & Administrative Reforms Department,
Government of Tamil Nadu,
Fort St.George,
Chennai-600 009.
- 2 The Director of Agriculture,
Chepauk,
Chennai-600 005.
- 3 The Joint Director Of Agriculture,
Office of Joint Director of Agriculture,
Collectorate Campus,
Karur-639 007.
- 4 The Joint Director Of Agriculture,
Office of Joint Director of Agriculture,
Multiple Complex Block-II,
Theni District.



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W.P.(MD) No.893 of 2019

M.JOTHIRAMAN, J.

dixit

W.P.(MD) No.893 of 2019

19.02.2025