(2016) 09 MAD CK 0084

MADRAS HIGH COURT (MADURAI BENCH)

Case No: W.A.(MD) No. 155 of 2016 and C.M.P.(MD) No. 736 of 2016 (Writ Appeal filed under Clause 15 of Letters Patent, against the order of Hon''ble Mr. Justice K.K. Sasidharan, dated 24.09.2014, made in W.P.(MD) No. 3291 of 2013 on the file of Madurai Bench of Ma

State of Tamil Nadu, by Principal Secretary, Micro, Small and Medium Enterprises Department, Fort St. George, Chennai - Appellant @HASH Z. Rahmathullah — APPELLANT

Vs

RESPONDENT

Date of Decision: Sept. 1, 2016

Acts Referred:

- Tamil Nadu State and Subordinate Services Rules, 1961 - Rule 10(a)(i)(1), Rule 35(1), Rule 38

Citation: (2016) 8 MLJ 9

Hon'ble Judges: S. Manikumar and C.T. Selvam, JJ.

Bench: Division Bench

Advocate: Mr. A.K. Baskarapandian Special Government Pleader, for the Appellant; Mr. H. Lakshmi Shankar, Advocate, for the Respondent No. 1; Ex parte in Writ Petition, for the Respondent Nos. 2 to 6

Final Decision: Dismissed

Judgement

1. Challenging the order of learned Single Judge dated 24.09.2014, passed in W.P.(MD) No. 3291 of 2013, this Writ Appeal has been filed.

2. Before the Writ Court, it was the contention of first respondent/petitioner that he was appointed as Junior Assistant in the Industries and Commerce Department on 01.09.1983 on compassionate grounds. He was declared as an approved probationer on 04.09.1985.

He was promoted as Assistant on 10.05.1994 and thereafter as Superintendent on 28.03.2002. He now is working as Assistant Director of Industries and Commerce with effect from 12.09.2008 and is due to be promoted as a Deputy Director, in the usual course as he stands next to one Gopal, in seniority. After his appointment on 01.09.1983, the Tamil Nadu Public Service Commission (hereinafter referred to as "TNPSC") conducted examinations in the month of November, 1983, for the post of Junior Assistants/Typists. Respondents 2 to 6/respondents 5 to 9 have been regularised in their posts only in the year 1985. Second appellant/second respondent department had earlier prepared a combined seniority list of Junior Assistants and Typists by its proceedings dated 02.02.1994. After considering objections, Government in proceedings No.166008/EB2/96 dated 28.01.2000, refixed seniority. Based thereon, first respondent/petitioner was promoted as Assistant, then Superintendent and Assistant Director, much prior to respondents 2 to 6/respondents 5 to 9. G.O.Ms.No.951, Personnel and Administrative Reforms (Employee - I) Department, dated 14.09.1984, informs that seniority is to be fixed by considering the date of appointment. While so, Government issued G.O.(D) No. 81 Micro, Small and Medium Enterprises (EII-1) Department, dated 15.06.2012, empowering second appellant/second respondent to revise orders issued by it for fixation of seniority among Junior Assistants and Typists appointed by various methods from 1983 onwards on the basis of guidelines formulated thereunder. Owing thereto, first respondent/petitioner''s seniority considerably has been altered and respondents 2 to 6/respondents 5 to 9, who were very much junior to first respondent/petitioner, have been placed above him. First respondent/petitioner sought quash of G.O.(D) No.81 Micro, Small and Medium Enterprises (EII-1) Department, dated 15.06.2012 and the subsequent revised seniority lists. First respondent/petitioner sought promotion in keeping with the original seniority list.

3. It was the contention of appellants/respondents 1 to 4 that first respondent/petitioner was appointed as Junior Assistant on compassionate grounds with effect from 01.09.1983 and his services were regularised from the said date. After promotions, he now is working as Assistant Director. During 1983, vacancies in the post of Junior Assistant and Typist were filled up temporarily through the employment exchange. TNPSC has also conducted examinations for the said posts in the same year and respondents 2 to 6/respondents 5 to 9 were sponsored by TNPSC. By G.O.(Ms).No.996, Personnel and Administration Reforms (Placements) Department, dated 22.09.1984, Government regularised all temporary personnel in the category of Junior Assistants, Typists and Steno Typists recruited through employment exchange with effect from 25.06.1984. Seniority of first respondent/petitioner, who was temporarily appointed on compassionate grounds during the year 1983, was fixed below the 1983 batch TNPSC Direct Recruits as per G.O.(Ms.)No.951, Personnel and Administrative Reforms (Per-B) Department dated 14.09.1984. First appellant/first respondent has passed the impugned Government Order on due consideration. Seniority of first respondent/petitioner in the post of Junior Assistant was re-fixed based on Rule 35(f) of Tamil Nadu State and Subordinate Service Rules since this was a case of mistake of fact. Though respondents

2 to 6/respondents 5 to 9 have not objected to first respondent/petitioner"s seniority, several others, similarly placed, raised the issue and first appellant/first respondent has passed the Government order impugned. As per existing rules, seniority of a person appointed under compassionate grounds during a particular year can be fixed only after the seniority of TNPSC candidates recruited in that year. First respondent/petitioner was appointed on compassionate grounds temporarily under rule 10(a)(i)(1) of the General Rules for Tamil Nadu State and Subordinate Services during the year 1983 and his temporary services were regularised with effect from 01.09.1983 during the year 1984 and in the meanwhile, a notification was issued by the TNPSC during November 1983 for direct recruitment of Junior Assistants/Typists. Respondents 2 to 6/respondents 5 to 9 have successfully qualified in the above recruitment process and joined second appellant/second respondent department. Hence, the seniority of first respondent/petitioner who was temporarily appointed on compassionate grounds during the year 1983 was fixed below the 1983 batch TNPSC direct recruits as per existing rules. The Writ Petition was liable to be dismissed.

4. Considering the rival submissions, learned Single Judge, set aside the impugned seniority list and remitted the matter to second appellant/second respondent to consider the matter afresh and to restore the seniority of the first respondent/petitioner on the ground that the Government order relaxing Rule 38 of General Rules for Tamil Nadu State and Subordinate Service Rules, is in the nature of a guideline and there was no intelligible criteria followed by Government in the matter of fixing seniority. Learned Single Judge has also followed the order made in W.P.No.26943 of 2012, informing that those who have joined after 25th June, 1984, cannot claim seniority over others who joined earlier. Challenging the same, appellants/respondents 1 to 4 have preferred this Writ Appeal.

5. We have heard learned counsel on either side and perused the materials available on record.

6. Learned Special Government Pleader for appellants submitted that learned Single Judge was in error in treating persons such as the first respondent, who have been appointed on compassionate grounds as similarly placed to those who has been recruited through the TNPSC. The calibre and merits of those selected through TNPSC has been tested while those appointed on compassionate grounds has been in employment merely as recompense for loss of the bread winner of the family. While the earlier norm was that those appointed on compassionate grounds would be placed below those recruited through TNPSC, Government, on reconsideration and under G.O.(Ms) No.951, Personnel and Administrative Reforms (Placement-B), Department, dated 14.09.1984, ordered that the seniority of persons appointed on compassionate grounds also would rate from the date of their appointment. However, such Government Order made clear that the same was not applicable to persons appointed prior thereto. Under G.O.(Ms).No.548, Personnel and Administrative Reforms (Personnel-J) Department, dated 19.06.1987, G.O.(2D) No.250, Revenue Department, dated 26.05.2009 and G.O.(D) No.81, Micro,

Small and Medium Enterprises (EII-1) Department, dated 15.06.2012, Government had issued orders emphasizing, that the candidates selected by the TNPSC by way of competitive examination and allotted by the TNPSC to various departments of Government shall be ranked above all the candidates viz., (1) those appointed under Special Rules by transfer of service after 25.06.1984, (2) those appointed under Special Absorption Rules, 1987 and 1984 recruited through Employment Exchange under temporary provisions and rule 10(a)(i) of the General Rules for the Tamil Nadu State and Subordinate Service. On their absorption into Government service and regularisation thereof on obtaining concurrence from the TNPSC in keeping with G.O.(Ms).No.996, Personnel and Administration Reforms (Placements) Department, dated 22.09.1984, they, irrespective of their dates of joining service, were required to be placed below those who has been selected through the TNPSC competitive examination of November, 1983. G.O.(Ms) No.951, Personnel and Administrative Reforms (Placement-B), Department, dated 14.09.1984, categorically directed that all candidates appointed through all methods of appointment would be placed below those recruited through TNPSC and provision has been made for seniority of candidates appointed through all modes of appointment only after the date thereof. G.O.(Ms).No.548, Personnel and Administrative Reforms (Personnel-J) Department, dated 19.06.1987, runs on the same lines. Orders similar to G.O.(D) No.81, Micro, Small and Medium Enterprises (EII-1) Department, dated 15.06.2012, came to be passed upon consideration of several judgments of the Apex Court, this Court as also orders of Tamil Nadu Administrative Tribunal. Though respondents 2 to 6 had not challenged the seniority of the first respondent/petitioner when he has been placed above them, several had raised the issue. As a consequence, G.O.(D) No.81, Micro, Small and Medium Enterprises (EII-1) Department, dated 15.06.2012, as also similar orders came to be passed. First respondent was wrong in challenging G.O.(D) No.81, Micro, Small and Medium Enterprises (EII-1) Department, dated 15.06.2012 and learned Single Judge had erred in accepting the same. Learned Special Government Pleader contended that those recruited through the TNPSC could not join immediately after selection, post conduct of competitive examinations due to administrative reasons.

7. We have heard learned counsel for first respondent on the above submissions.

8. In allowing W.P.(MD) No.3291 of 2013, learned Single Judge has taken note of the position that first respondent was appointed as Junior Assistant on 01.09.1983 and his seniority earlier has been fixed. A combined seniority list was prepared on the basis of G.O.(Ms.)No.417, Personnel & Administrative (Per-B) Reforms Department dated 01.12.1993. Such a combined seniority list for Junior Assistants and Typists dated 02.02.1994, placed the first respondent at Sl.No.110 and respondents 2 to 6 were ranked below him. As per further seniority list published on 28.01.2000, first respondent again was placed at Sl. No.110 and again respondents 2 to 6 were ranked below him. Learned Single Judge also noted that it was very much after and that too on the basis of a subsequent Government Order in G.O.(D) No.81, Micro, Small and Medium Enterprises

(EII-1) Department, dated 15.06.2012, that first respondent was placed at Sl. No. 152 and respondents 2 to 6 were placed above him. Learned Single Judge took the view that appellants, without any basis, unsettled settled seniority, long after the appointment of first respondent. Learned Single Judge informed that the Government order which regulates Rule 38 of General Rules for Tamil Nadu State and Subordinate Service Rules was in the nature of a guideline and there was no intelligible criteria followed by Government in the matter of fixing seniority. We find no reason to interfere with the order of learned Single Judge and further would inform our own reasons for affirming the same. What G.O.(Ms) No.951, Personnel and Administrative Reforms (Placement-B), Department, dated 14.09.1984, seeks to achieve is to remove the anomaly in placing those appointed under compassionate grounds below those recruited through TNPSC by informing that those appointed under compassionate grounds can be inserted in between those appointed through TNPSC by maintaining inter se seniority. When such is the purpose we see no rationale in holding the rule applicable to those appointed subsequently but denying the same to those appointed before 14.09.1984. Seniority opens up avenues of promotion and once settled, the same easily is not to be undone. Seeking to place persons appointed on compassionate grounds on the last rung of the ladder amounts to informing that Government will be compassionate, but a little less so. Learned Single Judge has not found it necessary to quash the G.O.(D) No.81, Micro, Small and Medium Enterprises (EII-1) Department, dated 15.06.2012 and following the order of this court in W.P.(MD) No.26923 of 2012 has clarified that those who had joined after 25.06.1984 could not claim seniority over those who had joined earlier. We affirm such view.

9. In the result, the Writ Appeal shall stand dismissed. No costs. Connected miscellaneous petition is closed.