
(2010) 06 MAD CK 0082
In the Madras High Court
Case No : Writ Petition No. 42276 of 2006

A. Ganesan

APPELLANT

Vs

Transport Commissioner and Joint Transport Commissioner

RESPONDENT

Date of Decision : 17-06-2010

Acts Referred:

Tamil Nadu Ministerial Service Rules — Rule 20

Tamil Nadu State and Subordinate Services Rules, 1955 — Rule 35

Citation : (2010) 06 MAD CK 0082

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : M. Ravi, for the Appellant; V. Manoharan, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

T. Raja, J.—The present writ petition has been filed by the petitioner to call for the records of the first respondent in Pro. R. No.

10195/R2/99 (E.O. No. 636/99) dated 16.10.1999, quash the same and issue directions to the respondents to fix the seniority of the petitioner in

the post of Junior Assistant in Transport Department below the approved probationers of Junior Assistants, as on the date of joining duty of the

petitioner in the Transport Department, i.e. 17.12.1987 and on that basis to give retrospective effect to the promotion of the petitioner as Assistant

from the date of promotion of his immediate junior with consequential benefits.

2. The petitioner was recruited through the Tamil Nadu Public Service Commission as Assistant in Tamil Nadu Secretariat Service w.e.f.

03.01.1985 in the Home Department. His services were also regularised with effect from the date of joining in the Home Department of

Secretariat. Thereafter, he completed the period of probation on 06.01.1987. Subsequently, the petitioner made a request for transfer to Tamil

Nadu Ministerial Service from the department of Secretariat. After accepting the request of the petitioner from the post of Assistant in the Home

Department in Secretariat was transferred as Junior Assistant in the office of Transport Department of Tamil Nadu Ministerial Service. The

grievance crept at that point of time to the petitioner was while the petitioner was transferred from the post of Assistant in Home Department,

Secretariat to the Transport Department of Tamil Nadu Ministerial Service as Junior Assistant, he should be placed in the bottom of the approved

probationers list.

3. Admittedly, the petitioner joined duty in the Transport Department on 17.12.1987. Thereafter, the petitioner made a representation dated

27.07.1992 to the Transport Commissioner, Chennai to fix and place him before G. Nagaraju who joined the Transport Department on

18.12.1985 in the said seniority list No. 8 of the panel issued in the Transport Commissioner's Proceedings No. 118328/R3/90 dated

07.12.1990. The Transport Commissioner, Chennai by proceedings in R. No. 126035/R3/91 dated 27.07.1992 answered the request of the

representation made by the petitioner dated 27.07.1992 stating that Mr. Ganesan, the petitioner herein has joined in the Transport Department on

17.12.1987. On departmental transfer, the petitioner was fixed in between Sl. No. 195 and 195A 3 of the seniority list. This was communicated to

him. Thereafter, the petitioner made one more representation dated 27.01.1999 requesting to refix his seniority as the last person among the

approved probationer of Junior Assistant in the Transport Department. Since there was no response once again, the petitioner reminded the

respondent by his subsequent representation dated 23.07.1999. By impugned order dated 16.10.1999, the Transport Commissioner who is the

first respondent herein turned down the request of the petitioner on the basis of Rule 20(a)(iii) of the Special Rules for Tamil Nadu Ministerial

Service stating that the request of the petitioner cannot be considered.

4. On the other hand, learned Counsel appearing for the respondent would further contend that the petitioner after his appointment in the

Department of Secretariat as Assistant on 03.01.1985 made a request for

transfer to Transport Department of Tamil Nadu Ministerial Service under Rule 20(a)(iii) of the Special Rules of Tamil Nadu Ministerial Service. After accepting the requests of the petitioner, he was transferred from the post of Assistant to the Transport Department as Junior Assistant. After the petitioner took over the charge as Junior Assistant in the Transport Department, when the petitioner made a representation, the same was answered by the respondent by proceeding dated 27.07.1992 stating that the petitioner would be placed in between Sl. No. 195 and 195A 3 of the seniority list. His contention that the petitioner was promoted in the year 1994 as Assistant and the serial number of the seniority list is not correct, cannot be accepted. Because when he made a representation once again on 27.01.1999, the respondent passed an order dated 16.10.1999 rejecting the request of the petitioner under Rule 35(f) of the Tamil Nadu State and Subordinate Services Rules pinpointing already that the request cannot be complied with and as his seniority to be fixed rightly above Nagaraj.

5. The learned Government Advocate would further submit that the petitioner on his own interest made a request to transfer him from the Department of Secretariat to Transport Department and after placing his request transfer from the Secretariat Department to the Transport Department, again, he made a written request requesting the Department to refix his seniority with reference to his original appointment and place him before Thiru S. Nagaraju, who had joined as Junior Assistant on 18.12.1985 in Sl. No. 8 of the panel issued in Transport Commissioner's Proceedings No. 118328/R3/90 dated 07.12.1990. His original representation was already examined and his seniority was refixed as Sl. No. 195-A in between Sl. No. 195-196 of seniority list communicated in R. No. R3/126035/91 dated 27.07.1992. The same was also communicated to him and after accepting the same, he was subsequently got promoted from the post of Junior Assistant to the promotional post of Assistant in the year 1994. In this case, the seniority of the individual was refixed and communicated in Proceedings No. R3/126035/91 dated 27.07.1992, but the representation for revision of seniority has been received only on 27.07.1999 after the lapse of seven years. As the representation for revision of seniority was received after the stipulated period of three years, the request could not be complied with as per Rule 35(f) of Tamil Nadu

State and Subordinate Services Rules. Therefore, the respondents has rightly passed the impugned order declining the claim of the petitioner under Rule 35(f) and on that basis he prayed for dismissal of the petition.

6. Heard Mr. M. Ravi, learned Counsel appearing for the petitioner and Mr. V. Manoharan, Government Advocate for respondents.

7. The petitioner was appointed as Assistant in the Department of Secretariat. After the petitioner's appointment was regularised in the post of

Assistant in the Department of Secretariat, the petitioner wanted transfer from the Department of Secretariat to the Transport Department in Tamil

Nadu Ministerial Service. On the basis of his request, the petitioner was transferred from the post of Assistant to the post of Junior Assistant in the

Transport Department. After accepting the request of the petitioner from the post of Assistant in the Home Department in Secretariat, he was

transferred as Junior Assistant in the office of Transport Department of Tamil Nadu Ministerial Service. Thereafter, the petitioner made his further

representation dated 27.07.1992 requesting the respondents to fix his seniority in the appropriate place. The respondents by another proceeding,

has answered the request of the petitioner specifically mentioning that on departmental transfer, the name of the petitioner A. Ganesan is fixed in

between Sl. No. 195-195A3 of the seniority list communicated in R. No. R3/126035/ 91 dated 27.07.1992. The same was also served upon the

petitioner and he has also acknowledged the said order. Subsequently, he was also promoted to the post of Assistant in the year 1994. At the time

of his promotion to the post of Assistant, he was well aware of the fact that he was just below one Nagarajan. But the petitioner without making

any representation from the year 1994, making belated representation only in the year 1999 is hopefully barred by time in view of Rule 35(f) of the

Tamil Nadu State and Subordinate Services Rules. An extract of Rule 35(f) of the Tamil Nadu State and Subordinate Services Rules is set out

here under for perusal of the same:

Application for the revision of seniority of a person in a service, class, category or grade shall be submitted to the appointing authority within a

period of three years from the date of appointment to such service, class, category or grade or within a period of three years from the date of

order fixing the seniority, as the case may be. Any application received after the

said period of three years shall be summarily rejected. This shall not, however, be applicable to cases of rectifying orders, resulting from mistake of facts.

A plain reading of Rule 35(f) leaves no doubt that the case of the petitioner cannot be considered since the petitioner had moved a belated representation only in the year 1999, which is beyond the period of three years from the date of his promotion to the post of Assistant. As the respondents has rightly passed the impugned order declining the claim of the petitioner holding that his claim cannot be considered in view of Rule 35(f) of the Tamil Nadu State and Subordinate Services Rules, holding that no application is maintainable beyond the period of three years from the date of his appointment/promotion to the post of Assistant or within a period of three years from the date of order fixing his seniority, as the case may be and any application received after the said period of three years shall be summarily rejected, the said reasoning cannot be found fault with.

8. On a careful consideration of the facts and circumstances of this case, this Court is not inclined to agree with the submissions put forth by the petitioner. The writ petition being devoid of merits, the same is dismissed. No costs.