

(2011) 07 MAD CK 0015

In the Madras High Court

Case No : Writ Petition (MD) No. 245 of 2005

S. Deva alias S. Sundalaimuthu

APPELLANT

Vs

Director of Town Panchayats, District Collector and K.
Shanmugasundari, Selection Grade Executive Officer

RESPONDENT

Date of Decision : 14-07-2011

Acts Referred:

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

Citation : (2011) 07 MAD CK 0015

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : V. Kasinathan, for the Appellant; S. Bharathi, Government Advocate for R1 and R2, for the Respondent

Final Decision : Dismissed

Judgement

Vinod K. Sharma, J.—The Petitioner being aggrieved by the order, dated 5.1.2005 has approached this Court, with a prayer for issuance

of a writ, in the nature of certiorari, with consequential relief of mandamus, directing the Respondents to promote the Petitioner from the date, her

junior, 3rd Respondent was promoted, with all consequential benefits and further promotion.

2. In support of the prayer made, it is pleaded in the affidavit filed by the Petitioner that in the combined seniority list of Junior

Assistant/Typist/Revenue Inspector/Bill Collector, circulated on 14th December 1988, the Petitioner was shown as serial No. 177 and the

Respondent No. 3, K. Shanmuga Sundari, was placed in serial No. 184.

3. It is not disputed that the Petitioner was appointed as "Record Clerk" on 19.08.1986. Whereas the Respondent No. 3 was appointed as

"Record Clerk" in the year 1981.

4. The Petitioner there after was promoted as "Bill Collector" on 15.12.1988. Whereas the 3rd Respondent was promoted as "Junior Assistant"

on 3.01.1990. For the purposes of further promotion to the post of Assistant, the Department decided to prepare the combined seniority list of

Junior Assistant/Typist/Revenue Inspector/Bill Collector. In the combined seniority list, for the purposes of promotion, the Petitioner was shown as

serial No. 177, whereas 3rd Respondent was shown as serial No. 184.

5. The Petitioner, being aggrieved by the promotion of the 3rd Respondent prior to him, made a representation requesting the 1st Respondent to

promote the Petitioner from the date of the 3rd Respondent was promoted, by claiming to be senior to her, as per combined seniority list. The

representation of the Petitioner was not answered, which forced the Petitioner to file O.A. No. 6368 of 2001 before the learned Tamil Nadu

Administrative Tribunal, Chennai. The application filed by the Petitioner was accepted by the learned Tamil Nadu Administrative Tribunal and

directions were issued to the District Collector, Tirunelveli, to see whether the Petitioner was entitled to promotion, on the ground that

Shanmugasundari was promoted, and was now working as Executive Officer.

6. The case of the Petitioner is that the order of the learned Tribunal was not implemented. Instead of taking steps to execute the orders in

accordance with law, the Petitioner filed W.P. No. 29472 of 2004, which was disposed of by this Court, by issuing the following directions:

The prayer in this writ petition is to directing the Respondents 1 and 2 in implement the order of the Tamil Nadu Administrative Tribunal, Chennai

made in O.A. No. 6368 of 2001, dated 2.11.2001 and give promotion to the Petitioner retrospectively from the date on which the Petitioner's

junior Shanmuga Sundari was prompted. In view of the limited prayer, the Respondents 1 and 2 are directed to implement the order of the Tamil

Nadu Administrative Tribunal, Chennai made in OA No. 6368 of 2001, dated 2.11.2001 within a period of eight weeks from the date of receipt

of copy of this order if there is No. legal impediment in implementing the same.

7. In response to the directions issued by this Court, the impugned order has been passed, denying the relief to the Petitioner.

8. The stand taken by the Respondents is that the Petitioner was appointed as

"Record Clerk" on 19.8.1986 and his services were regularized from the date of his appointment. The Petitioner was given promotion as "Bill Collector" on 15.12.1988, wherein he is working as Bill Collector since then.

9. It is also the case of the Respondents that the services of Junior Assistant were provisionalised with effect from 5.02.1985. Whereas the post of Bill Collector was provisionalised only on 16.12.1988.

10. Thereafter, by G.O. dated 30.03.1998, the post of Junior Assistant/Typist/Revenue Inspector and Bill Collector were made feeder cadre for promotion as Assistant and the combined seniority list was directed to be prepared.

11. The case of the Respondents, in the reply, is that Petitioner was posted with Bill Collectors and those, who were appointed against the terms and conditions by promotion from non-provisionalised post, could not be countenanced, in claiming seniority till their post were provisionalised.

12. The case of the Respondent further is that as per the advise of the Director of Town Panchayat, Chennai, dated 14.12.1988, the Bill Collector appointed against the terms and conditions, were not entitled to the seniority before regularizing of their services.

13. It is also stated in the impugned order that after preparing the combined seniority list, afresh it was likely to be circulated shortly.

14. The stand taken by the Government is not clear, and the attempt seems to have been made to somehow denying the relief to the Petitioner and justify the action taken.

15. Therefore, becomes necessary to see, as to whether the Petitioner is entitled to the relief claimed, i.e. promotion from the date, the 3rd Respondent was promoted.

16. The learned Counsel for the Petitioner contended that the impugned order cannot be sustained, as for the post of Assistant, the feeder cadre is

the Bill collector/Junior Assistant/Typist/Revenue Inspector, and as per the combined seniority list, prepared the purposes of promotion to the post

of Assistant, the Petitioner was shown as senior under Serial No. 177. Whereas the 3rd Respondent shown as serial No. 184 for the reason that

the date of appointment of the petitioner as "Bill Collector" was 15th December 1988 against that of the 3rd Respondent promoted as Junior

Assistant on 03.1.1990.

17. The combined seniority on which reliance is placed by the Petitioner, and is under revision as stated in the counter, cannot advance the case of the Petitioner, as it violates statutory Rule 35-A of the Tamil Nadu State & Subordinate Services Rule, which govern the service conditions of the parties.

18. This contention of the learned Counsel for the Petitioner cannot be accepted. The answer to the question is in Tamil Nadu State and

Subordinate Service rule, the relevant part of rule reads as under:

*(aa) 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 or 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;

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

19. When this rule is applied, it is clear that in the feeder cadre, the 3rd Respondent was senior by 5 years, having been appointed as "Record

Clerk" in the year 1981. Therefore, for the purposes of combined seniority, the date of promotion of the 3rd Respondent is to be taken as that of

the Petitioner, and so as to avoid injustice to the senior because of the merger of cadre for purpose of promotion to next post.

20. No ground is made out to interfere with the impugned order. Consequently, the writ petition is dismissed. No. costs.