
(2010) 07 MAD CK 0269

In the Madras High Court

Case No : Writ Petition No. 37433 of 2006 (T) and O.A. No. 9420 of 1998

S. Palanidoss

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 27-07-2010

Acts Referred:

Tamil Nadu Ministerial Service Rules — Rule 20

Tamil Nadu State and Subordinate Services Rules, 1955 — Rule 47, 9

Citation : (2010) 07 MAD CK 0269

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : M. Ravi, for the Appellant; S. Gopinathan, AGP, for the Respondent

Final Decision : Dismissed

Judgement

T. Raja, J.—The petitioner challenged the impugned order passed by the 2nd respondent in Pro. Rc. No. 93445/96/C2, dated 11.03.1997, as confirmed by the 1st respondent in Lr. No. 74000/T & A.I/97-7, dated 27.07.1998, seeking to quash the said orders with a consequential directions to the respondents herein to include the name of the petitioner on top of the panel for promotion as Accountant for 1996 in Tirunelveli District Treasury Unit and promote the petitioner as Accountant with retrospective effect from 04.04.1986, with consequential benefits, and consequently include his name in the panel for promotion as Superintendent, Grade II, with reference to his seniority in the post of Accountant as on 04.04.1986.

2. After the petitioner's selection through TNPSC as Junior Assistant, he was allotted to the Treasuries and Accounts Department

3 in the Kanchipuram District Treasury Unit on 24.08.1997 and after completion of the period of probation satisfactorily on 21.01.1980, he was transferred at his own request to Tirunelveli District Treasury Unit and joined duty on 18.08.1980. Again, he was transferred to District Treasury Unit, Ramanathapuram on

administrative grounds. While serving as Accountant in Ramanathapuram, in spite of his relinquishment for three years in Tirunelveli District Treasury Unit temporarily, he was promoted as Accountant on 03.04.1986. Thereafter, he joined as Accountant on 04.04.1986 and continued to serve as Accountant till 30.01.1989.

3. The petitioner, at the time of entry into the service, was having B. Com. Degree, but later on acquired M. Com. (Advanced Accountancy), M.A. (Sociology), B. Ed., M. Ed. and M.A. (Economics) Degree qualifications and also passed requisite departmental tests with a view to enter teaching profession. With these qualifications, when he applied to the Education Department with the concurrence of the TNPSC, the petitioner was posted as Junior Assistant in the District Institute of Education and Training, T. Kallupatti, as per orders of the Director of School Education, dated 21.12.1988. After serving for about 4 years, 8 months and 15 days from 06.02.1989 to 20.10.1993, the petitioner was not given any suitable posting in the teaching profession. Therefore, the petitioner made a request to come back to his parent department. Accepting the request of the petitioner to revert back to his parent department, by taking consent of the TNPSC, he was reverted to the parent department as Junior Assistant on 28.10.1993.

4. The petitioner, after joining his parent department as Junior Assistant in Tirunelveli District, submitted a representation to the 2nd respondent for inclusion of his name in the panel of Superintendents Grade-II by considering his seniority from the year 1986, namely, 04.04.1986. But, the same was rejected by the 2nd respondent by order dated 11.03.1997. Therefore, the only contention raised by the learned Counsel for the petitioner is that at the time of his transfer in Education Department, the petitioner was serving as Accountant in Ramanathapuram District Treasury Unit, which post is higher than that of Junior Assistant. Therefore, when the petitioner was re-transferred and absorbed in the Treasuries and Accounts Department, at his own request, he should have been posted as Accountant only in Ramanathapuram District Treasury Unit, but for no reason, when the petitioner was reverted back to his parent department, instead of reverting the petitioner as Accountant, wrongly reverted the petitioner in a lower post as Junior Assistant, that too, in a different district unit of Tirunelveli instead of Ramanathapuram. Since he was serving as Accountant in Ramanathapuram District Treasury Unit from 04.04.86 onwards till his transfer to Education Department in February 1989, his services in the post of Accountant in Ramanathapuram Unit had been regularised. Therefore, it was argued that the petitioner should be given all the service benefits.

5. Per contra, learned Counsel appearing for the respondents submits that the petitioner has applied for departmental transfer to Education Department and with the concurrence of the Tamil Nadu Public Service Commission, he was transferred to the Education Department as per the Director of School Education, Chennai, in his proceedings Rc. No. 127559/C6/88, dated 21.12.88. After

relieving from the Treasuries and Accounts Department on 01.02.89, he joined duty as Junior Assistant at the District Institute of Education and Training, T. Kallupatti, Madurai District, on 06.02.89. After some time, the petitioner made another request for departmental transfer to Treasuries and Accounts Department and therefore, with the concurrence of the TNPSC, he was transferred to Treasuries and Accounts Department, at his own request as per the Director of Treasuries and Accounts proceedings No. Rc.78558/93/C3, dated 07.09.93 and the Director of School Education proceedings No. Rc.24682/C6/93, dated 07.10.93. Thereafter, the petitioner joined duty on 28.10.93 as Selection Grade Junior Assistant. Since the petitioner got departmental transfer on his own request from one place to another place, that too, with the concurrence of the TNPSC, the petitioner has no service right whatsoever in Treasuries and Accounts Department from 01.02.89 onwards. In such a situation, his services in the Treasuries and Accounts Department from 28.10.93 has to be treated as fresh appointment. Therefore, he has no right at all regarding his past services in the Treasuries and Accounts Department, prior to his joining in Education Department. Therefore, as per Rule 20(a)(iii) of the Tamil Nadu Ministerial Service Rules, when he was transferred with the concurrence of the TNPSC to serve as Junior Assistant, he has no service right in Treasuries and Accounts Department to post him as Accountant in Tirunelveli District. On that basis, prayed for dismissal of the writ petition.

6. Heard the learned Counsel appearing on either side and perused the materials available on record.

7. The only question needs to be answered is whether his representation dated 25.10.96 sent to the 2nd respondent for inclusion of his name in the Accountant panel for the year 1996-97 in Tirunelveli District Treasuries Unit taking into account his seniority from the year 1986 and consequently for inclusion of his name in the panel of Superintendent in Treasuries and Accounts Department, has to be accepted or not.

8. The petitioner, on his own request, got transfer to the Education Department from Treasuries and Accounts Department by foregoing his seniority in Treasuries and Accounts Department, that too, with the concurrence of the TNPSC. After serving in the Education Department from 06.02.89 to 20.10.93, again the petitioner had made his request for second departmental transfer to Treasuries and Accounts Department and accordingly, again he was transferred to Treasuries and Accounts Department as Junior most Junior Assistant with the concurrence of the TNPSC as per Rule 20(a)(iii) of the Tamil Nadu Ministerial Service Rules. Before coming on second transfer, the petitioner was very well aware of the fact that he cannot claim any seniority either in the previous department or in the joining department. It is a pre-condition for any Government employee for making a request transfer to relinquish his seniority at the time of submitting his application seeking a request transfer from one department to another department. If the person concerned failed to relinquish

his request transfer, generally it would not be accepted, as this would create serious administrative and seniority problems, in the place where he was going to be transferred. Knowing pretty well about this logic, the petitioner made his request transfer to be transferred to Treasuries and Accounts Department by foregoing his seniority. Therefore, the petitioner cannot rely upon General Rule 9 of the Tamil Nadu State and Subordinate Services, as it is not applicable to those like that of the petitioner, who came to the Department on his own request transfer. Once he opted to go out from the Treasuries and Accounts Department on his own request, by relinquishing his post of Accountant, he has no right at all, again when he comes back on departmental transfer from Education Department to Treasuries and Accounts Department to claim that he should be posted back with the same post with seniority. Therefore, the question of retaining lien in Treasuries and Accounts Department does not arise.

9. As rightly contended by the learned Counsel for the respondents, since the petitioner relinquished his right in Tirunelveli District Treasury Unit under Rule 47 of the General Rules of the Tamil Nadu State and Subordinate Services for three years from 1986 and since the petitioner left the Treasuries and Accounts Department on his own request on 06.02.89, by relinquishing his rights to serve in Education Department, after the acceptance of the said request, he has no right whatsoever in Treasuries and Accounts Department again. He was fully aware of the consequences of the departmental transfer at the time of applying for departmental transfer as Junior Assistant in Education Department.

Further, the request of the petitioner for departmental transfer to Treasuries and Accounts Department was also considered by the TNPSC and after considering his request, the TNPSC gave its concurrence with a condition that he will take his seniority as the junior most among the approved probationers in the category of Junior Assistants in the Treasuries and Accounts Department. Therefore, the petitioner was also given posting at Tirunelveli District Treasury Unit, where the vacancy for the post of Junior Assistant category was available at that time. Thus, the grievance of the petitioner, as sought for in the present writ petition, has no basis to stand on and accordingly, this Court finds no merit in the writ petition hence, the same is dismissed. No Costs.