

(2011) 07 MAD CK 0161
In the Madras High Court
Case No : Writ Petition No. 25114 of 2008

Smt. B. Vishnumathy

APPELLANT

Vs

The District Collector

RESPONDENT

Date of Decision : 06-07-2011

Acts Referred:

Tamil Nadu Ministerial Service Rules — Rule 20

Tamil Nadu State and Subordinate Services Rules, 1955 — Rule 39, 39(1)

Citation : (2011) 07 MAD CK 0161

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : K. Raja, for the Appellant; L.P. Shanmugasundaram, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

V. Dhanapalan, J.—The Petitioner has filed the above Writ Petition for issuance of a Writ of Certiorarified Mandamus, to call for the

records of the Respondent in his proceeding Na. Ka. No. PA2.10661/2007, dated 12.8.2008 and quash the same and consequently direct the

Respondent herein to fix the seniority of the Petitioner in accordance with Rule 20(b) of the Tamil Nadu Ministerial Service Rules, by placing the

name of the Petitioner in the seniority list of Assistant above Mr. Mohandas in the place of Mr. D. Subramanian and consequently give further

promotion to the Petitioner as Extension Officer with effect from the date on which the Petitioner's juniors got promotion as Extension Officer with

all monetary, seniority and other attendant benefits.

2. According to the Petitioner, she was initially appointed as Surveyor-cum-Draughtsman through Employment Exchange in 1983 and thereafter,

pursuant to the Government Order in G.O. Ms. No. 308, dated 11.6.1990 and G.O. Ms. No. 1765, Revenue Department, dated 7.8.1990, she

was appointed as Junior Assistant in the Rural Development Department as per the order of the District Collector, Tiruvannamalai District, dated

14.9.1990 and pursuant to the same, she joined as Junior Assistant in Rural Development Department in Tiruvannamalai District on 17.9.1990.

While holding that post, she passed all the five tests in 1991 and completed Bhavani Sagar Training in 1998. Thereafter, she was promoted as

Assistant on 16.8.1998 in Thiruvannamalai District.

3. While so, one Mr. D. Subramanian was appointed as Junior Assistant on 13.9.1990 and promoted as Assistant on 23.10.1998 in Vellore

District. By mutual transfer, the Petitioner was transferred from Thiruvannamalai District to Vellore District and Mr. D. Subramanian was

transferred from Vellore District to Thiruvannamalai District in the place of the Petitioner, vide proceedings of the Director of Rural Development

Department, dated 7.6.1999. As per the said proceedings, the Petitioner's seniority and the seniority of Mr. D. Subramanian should be fixed in

accordance with Rule 20(b) of the Tamil Nadu Ministerial Service Rules. As per Rule 20(b) of the said Rules, the Petitioner's seniority in Vellore

District in the post of Assistant, should have been fixed above Mr. K. Mohandas in the place of Mr. D. Subramanian. Instead of placing the

Petitioner in the seniority list above Mr. K. Mohandas in the place of Mr. D. Subramanian, the Respondent placed the Petitioner in the seniority list

of Assistant of the year 1998-1999 instead of the panel of the year 1997-1998. In the result, the Petitioner was placed at Sl. No. 82 in the

seniority list of Assistant, whereas, Mr. K. Mohandas was placed at Sl. No. 11 in the seniority list of Assistant, vide proceedings of the

Respondent, dated 8.3.2007. The said Mohandas was further promoted as Extension Officer on 5.10.2007 and likewise, more than 25 juniors

marched over the Petitioner and got further promotion as Extension Officer.

4. In that situation, the Petitioner approached the Respondent and it was informed by the Respondent that her probation was not declared and

ultimately, the Government declared her probation vide G.O.(1D). No. 11, Rural Development and Panchayat Department, dated 18.1.2007 in

the category of Junior Assistant with effect from 16.9.1992. The Respondent

ought to have revised the Petitioner's seniority in the category of Assistant and placed her name above the name of Mr. Mohandas in the place of Mr. D. Subramanian. As the Respondent did not take any action, the Petitioner made representation on 30.5.2007 to the Respondent requesting to fix the Petitioner's seniority in the category of Assistant as per Rule 20(b) of the Tamil Nadu Ministerial Service Rules in the place of Mr. D. Subramanian, above the name of Mr. K. Mohandas and the same was kept pending and hence, the Petitioner filed W.P. No. 11058 of 2008 before this Court seeking for issuance of a Writ of Mandamus, to direct the Respondent to fix her seniority in accordance with Rule 20(b) of the Tamil Nadu Ministerial Service Rules by placing the Petitioner's name in the seniority list of Assistant above Mr. Mohandas in the place of Mr. D. Subramanian and consequently to give further promotion to the Petitioner as Extension Officer with effect from the date on which the Petitioner's juniors got promotion as Extension Officer with all monetary, seniority and other attendant benefits. The said Writ Petition was disposed of on 29.4.2008 holding that though the relief sought for in this Writ Petition is larger, the learned Counsel for the Petitioner confined his argument to the limited extent of directing the Respondent to pass orders on the Petitioner's representation dated 30.5.2007 expeditiously. Considering the said submission, this Court passed orders without going into the merits of case and directed the Respondent to consider the representation dated 30.5.2007 and pass orders on merits and in accordance with law.

5. Pursuant to the said order of this Court, the Respondent passed the impugned order, dated 12.8.2008, rejecting the claim of the Petitioner on the ground that her probation was not declared in the post of Junior Assistant and permanent panel was not prepared for the post of Assistant in Tiruvannamalai District from where she was transferred and her promotion as Assistant was only under Rule 39(a)(1) of the Tamil Nadu State and Subordinate Service Rules and therefore, the Petitioner challenged the impugned order on the ground that it is illegal, arbitrary and without jurisdiction and it was passed with total non-application of mind, without looking into the order of the Government in G.O.(1D). No. 11, Rural Development and Panchayat Department, dated 18.1.2007. Therefore, the reason assigned by the Respondent in the impugned order is contrary

to the facts and law and the impugned order is not passed in accordance with Rule 20(b) of the Tamil Nadu Ministerial Service Rules and hence, it is liable to be quashed.

6. The Respondent has filed counter affidavit and inter-alia stated that the Petitioner was appointed as Junior Assistant in Rural Development

Department in Thiruvannamalai District and subsequently promoted temporarily as Assistant on 16.8.1998 under Rule 39(a)(i) of the Tamil Nadu

State and Subordinate Service Rules. As soon as the Petitioner got promotion as temporary Assistant, she applied for District Transfer on mutual

basis from Thiruvannamalai District to Vellore District and as per the proceedings of the Director of Rural Development, Chennai, dated 7.6.1999,

the Petitioner joined in Vellore District on 23.7.1999. While applying for District Transfer, the Petitioner had concealed the fact that her promotion

from the feeder category has not been regulated. Further, this fact has also not been informed by the District Collector, Thiruvannamalai to the

Director of Rural Development. The Director of Rural Development, based on the proposal, issued mutual transfer order of the Petitioner with the

routine directions on the fixation of seniority as such of regular genuine cases. Based on this erroneous proceedings, the Petitioner is claiming her

seniority re-fixation in the cadre of Assistant in Vellore District. It is further stated that Rule 20(b) of the Tamil Nadu Ministerial Service Rules is

not applicable to the regular incumbents of the said post. As far as the Petitioner is concerned, the individual has been promoted from Junior

Assistant to Assistant purely on temporary basis as per Rule 39(a)(i) of the Tamil Nadu State and Subordinate Service Rules. Therefore, the

question of fixation of the Petitioner's seniority in the Assistant cadre as per Rule 20(b) of the Tamil Nadu Ministerial Service Rules, in Vellore

District, does not arise, as she has not been fully qualified to hold the post of Assistant on the date of her transfer and her promotion as Assistant in

Tiruvannamalai District had been given only on temporary basis as per Rule 39(a)(i) of the Tami Nadu State and Subordinate Service Rules.

7. It is further stated in the counter affidavit that the Petitioner has not completed her probation in the feeder category on the date of her District

Transfer and also her Bhavani Sagar Foundational Training. Even ignoring these aspects, the Petitioner had been given temporary promotion as

Assistant in Tiruvannamalai District and her further request for District Transfer has been considered and recommended without reverting her as

Junior Assistant. In the normal course, in one way, the District Transfer application in the cadre of Assistant of an individual is not considered as a

policy issue, since the present incumbents of the District will be affected. Hence, mutual transfer in the cadre of Assistant is preferred and the same

has been considered and orders were issued accordingly. In the instant case, the Petitioner ought to have been reverted as Junior Assistant, as she

had been promoted temporarily as Assistant before forwarding her District Transfer application and this had been done, she would have got her

seniority only in the cadre of Junior Assistant and not in the cadre of Assistant.

8. Moreover, the Petitioner's name had been included in Tiruvannamalai District in the temporary panel for Assistant for the year 1998-1999

pending issue of regular panel for the year 1998-1999, vide proceedings of the District Collector, Tiruvannamalai, dated 15.8.1998. As such, the

Petitioner's contention to place her in the panel of Assistant for the year 1997-1998 in Vellore District is against the rules and against natural

justice. Hence, taking a lenient view and on humanitarian grounds, instead of remitting her back to the previous District, she had been given

seniority in the cadre of Assistant on the date of joining as Assistant in Vellore District. In this context, it is necessary to mention that while applying

for District Transfer, the status of the individual on the date of application alone had been taken into account, as the Petitioner is willing to forego

the seniority and Transfer Travelling Allowance and therefore, the question of revision of seniority as requested by the Petitioner, does not arise, as

this will hamper the entire proceedings, as status quo of the Petitioner as on the date of applying District Transfer is only taken into account. The

order passed by this Court is only to consider the request in her representation in accordance with law and on merits, and the said representation

has been rejected on the above grounds, vide the impugned order dated 12.8.2008. Therefore, the Respondent prayed for dismissal of the present

Writ Petition.

9. Mr. K. Raja, learned Counsel for the Petitioner, in his foremost submission, contended that the District Collector has not applied his mind to the

Government Order in G.O.(1D). No. 11, Rural Development and Panchayat

Department, dated 18.1.2007, which gives retrospective regularisation of the Petitioner's service from the date of her appointment and also her eligibility in passing the required examination as on 15.5.1991 and completion of the Foundational Training on 14.8.1999. He further contended that nothing has been discussed by the District Collector in the impugned order, even though the date of the proceedings are referred in the impugned order. Therefore, the impugned order is passed with total non-application of mind, mechanically, with arbitrary exercise of power, only to deny the claim of the Petitioner. Learned Counsel for the Petitioner further contended that as per Rule 20(b) of the Tamil Nadu Ministerial Rules, the seniority of the Petitioner who got the transfer on mutual basis, be fixed taking into account the above Government Order which gives the retrospective benefit to the Petitioner.

10. Per contra, Mr. L.P. Shanmugasundaram, learned Additional Government Pleader appearing for the Respondent submitted that Rule 20(b) of the Tamil Nadu Ministerial Service Rules, will apply to regular employees and the Petitioner has been promoted only under Rule 39(a)(i) of the Tamil Nadu State and Subordinate Service Rules and therefore, the question of fixation of seniority under Rule 20(b) of the Tamil Nadu Ministerial Service Rules, will not arise. It is his further submission that the Government Order has been taken into account while rejecting the claim of the Petitioner and it is also referred to in the reference column of the impugned order of the District Collector and so, the impugned order is perfectly in accordance with the Rules.

11. On the above background of pleadings and submissions made, this Court heard the learned Counsel on either side and perused the records.

12. The circumspection of the facts reveals that the Petitioner was initially appointed as Surveyor-cum-Draughtsman and then she was appointed as Junior Assistant from 14.9.1990 and joined in that post on 17.9.1990. Then, she was promoted temporarily to the post of Assistant from 16.8.1998 under Rule 39(a)(i) of the Tamil Nadu State and Subordinate Service Rules. While the Petitioner was working as temporary Assistant, she had applied for District Transfer on mutual basis between her and Mr. D. Subramanian. The Director of Rural Development, by proceedings dated 7.6.1999, passed the order transferring the Petitioner to Vellore District

and accordingly, the Petitioner joined on 23.7.1999. The

Petitioner's claim is that after her joining in the transferred place, namely Vellore District, her seniority is to be fixed in accordance with Rule 20(b)

of the Tamil Nadu Ministerial Service Rules. Rule 20(b) of the Tamil Nadu Ministerial Service Rules reads as follows:

Rule 20: Transfers of probationers and approved probationers:

...

(b) The grounds of administrative necessity referred to in Sub-rule (a) may be presumed to exist and the Commission's consent referred to in that

sub-rule may be presumed to have been given in the case of mutual transfers permanently from an office in one departmental unit to an office in

another departmental unit if the persons desiring mutual transfers agree-

(i) that the senior among the Assistants/Junior Assistants mutually transferred (on the basis of the date of their appointment to the service) be given

the same rank in the departmental unit to which he is transferred, which was held by the person in whose place he comes to that departmental unit

and the junior of them takes his rank in the administrative unit of the departmental unit to which he is transferred with reference to the date of his

first appointment in the service; and

(ii) that they will forego the travelling allowance for their journeys to the departmental units to which they are transferred.

13. As per Rule 20(b) of the Tamil Nadu Ministerial Service Rules, the grounds of administrative necessity referred to in Sub-rule (a) may be

presumed to exist and the Commission's consent referred to in that sub-rule may be presumed to have been given in the case of mutual transfers

permanently from an office in one departmental unit to an office in another departmental unit if the persons desiring mutual transfers agree and Rule

20(b)(i) states that that the senior among the Assistants/Junior Assistants mutually transferred (on the basis of the date of their appointment to the

service) be given the same rank in the departmental unit to which he is transferred, which was held by the person in whose place he comes to that

departmental unit and the junior of them takes his rank in the administrative unit of the departmental unit to which he is transferred with reference to

the date of his first appointment in the service and as per Rule 20(b)(ii), they will forego the travelling allowance for their journeys to the

departmental units to which they are transferred.

14. It is also relevant to notice Rule 39(a)(i) of the Tamil Nadu State and Subordinate Service Rules, which reads as follows:

Rule 39: Temporary promotion: (a) (i) Where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a

vacancy in a post borne on the cadre of a higher category in a service or class by promotion from lower category and there would be undue delay

in making such promotion in accordance with rules, the appointing authority may temporarily promote a person, who possesses the qualifications

prescribed for the post, otherwise than in accordance with the rules.

15. Rule 39(a)(i) of the Tamil Nadu State and Subordinate Service Rules provides that where it is necessary in the public interest owing to an

emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of a higher category in a service or class by promotion from

lower category and there would be undue delay in making such promotion in accordance with rules, the appointing authority may temporarily

promote a person, who possesses the qualifications prescribed for the post, otherwise than in accordance with the rules.

16. It is seen from the records that the Petitioner has passed all the relevant tests as per the Rules and completed the Bhavani Sagar Foundation

Training in 1998 and therefore, she was given promotion as Assistant on 16.8.1998. The Government passed the order in G.O.(1D). No. 11,

Rural Development and Panchayat Department, dated 18.1.2007, stating that on her continuous efforts to restore her seniority, her probation was

declared with retrospective effect from 17.9.1992 in the post of Junior Assistant. A perusal of this G.O. reveals that the regularisation will take

effect from the date of her initial appointment, namely 17.9.1990 and her declaration of probation was from 17.9.1992. This Government Order

has to be given effect to, by the District Collector, Vellore District, to which place, the Petitioner got the mutual transfer from Tiruvannamalai

District.

17. On a perusal of the impugned order, dated 12.8.2008, it is seen that G.O. (1D). No. 11, dated 18.1.2007 is mentioned in the "reference"

column, in which, though the G.O. number is mentioned wrongly, but the date has been correctly mentioned as 18.1.2007. The Respondent simply

passed the impugned order stating that as per the reference No. 1 cited therein, the Petitioner was given promotion as Assistant on temporary

basis under Rule 39(a)(i) of the Tamil Nadu State and Subordinate Service Rules based on the temporary panel drawn by the District Collector,

Tiruvannamalai and the Assistants who are on mutual transfer, should have completed probation and obtained and obtained regularisation also and

that Mr. Subramanian, who went on transfer on mutual consent to Tiruvannamalai District, got regularised and probation in the post of Junior

Assistant and besides that, his name was found in the regular list of Assistant. In the impugned order dated 12.8.2008, it is further discussed that

the Petitioner's service as Junior Assistant was not regularised and probation was not declared in Tiruvannamalai District and her name has not

been found in the regular list of Assistants in Tiruvannamalai District. It is further stated in the impugned order that she was given promotion as

Assistant on temporary basis and therefore, her seniority cannot be fixed in the place of Mr. Subramanian as per Rule 20(b) and therefore, it is

stated that her placement was fixed in the seniority list of Assistant below Mrs.S. Chellakannal, Accountant, who is the last in the seniority list of

Assistants, correctly.

18. A perusal of the impugned order dated 12.8.2008 reveals that the District Collector, Vellore, has not applied his mind to give effect to the

order of the Government in G.O.(1D). No. 11, Rural Development and Panchayat Department, dated 18.1.2007, which gives retrospective effect

of the regularisation of the Petitioner from the date of her initial appointment and mentions her declaration of probation from 17.9.1992 and

therefore, while considering the claim of the Petitioner, it is incumbent on the part of the Respondent to give due consideration of the retrospective

benefit given in the Government order and thereafter, to apply Rule 20(b) of the Tamil Nadu Ministerial Service Rules and also the applicability of

the Tamil Nadu State and Subordinate Service Rules to the post she was temporarily promoted, and then to fix the seniority of the Petitioner in

accordance with law. Without doing so, the Respondent has mechanically passed the impugned order, holding that Rule 20(b) is applicable only to

regular Assistants based on the panel drawn and it is not for the person promoted under Rule 39(a)(i) of the Tamil Nadu State and Subordinate

Service Rules, and if that is so, the benefits under the said G.O.(1D). No. 11, dated 18.1.2007 were not given effect to; on the other hand, the

Respondent proceeded on the basis of the position before the said G.O.(1D). No. 11, dated 18.1.2007, was passed, which gives retrospective benefit.

19. Law is well settled that when a Government Order is passed with retrospective effect, expressly stating therein that it will be effective from a

particular date, it is incumbent on the authority to give the same effect and whatever the benefits arising out of it, should also be looked into from

that date only, including the claim in respect of the application of the Rules at the relevant point of time and the fixation of seniority. Retrospection is

the cardinal principle to be applied for any case, when there is an express provision. On the contrary, the Respondent, in this case, without taking

into account the applicability of the retrospection of G.O.(1D). No. 11, dated 18.1.2007, i.e. the retrospective benefit of regularisation of services

of the Petitioner from the date of appointment viz., 17.9.1990 as well as the subsequent declaration of probation on 17.9.1992, has passed the

impugned order, which, in the opinion of this Court, is not proper and in accordance with the legal principles.

20. As the impugned order suffers from legal infirmity and is not sustainable, it is for the Respondent to apply his mind and give due consideration

of the relevant Rules/orders and hence, it is necessary for this Court to remand the matter to the Respondent for fresh consideration taking into

account the Government Order in G.O.(1D). No. 11, Rural Development and Panchayat Department, dated 18.1.2007 and apply the relevant

Rules and pass appropriate orders, on merits and in accordance with law, after giving notice to the persons concerned and after giving opportunity

of hearing to all concerned.

21. With the above direction, the impugned order is set aside and the Writ Petition is allowed. No costs.