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R. RAMASWAMY

v.

GOVERNMENT OF TAMIL NADU AND ORS.

AUGUST 11, 1995

B

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

*Service Law :*

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*Tamil Nadu State and Subordinate Services Rules—Rule 35(b)—Seniority of Transferred persons—To be determined with reference to the rank in the category from which he was transferred.*

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The appellant was appointed temporarily as a Project Officer in the Directorate of Tamil Culture Centre on May 21, 1979. Both the post of Project Officer in the erstwhile Directorate of Traditional Tamil Arts and that of Assistant Director in the Tamil Development Directorate were equivalent in status with identical scale of pay. The service of the appellant as a Project Officer was regularised, and he became a permanent incumbent for the post of Project Officer in the erstwhile Department.

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When he was temporarily promoted as Assistant Director and he sought promotion as Deputy Director, the question arose whether the appellant was senior to respondent Nos. 3 and 4, who were appointed as Assistant Directors on December 10, 1979 and April 25, 1981 respectively. He approached the Administrative Tribunal which held that since respondent nos. 3 and 4 were substantively holding the post as Assistant Directors, the appellant was junior to them.

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Allowing the appeal, this Court

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**HELD :** 1. In view of the order passed by the Government appointing the appellant substantively as Project Officer w.e.f. May 22, 1979 and treating the said carrying equivalent to the post of Assistant Director post as the same status and scales of pay, the necessary implication that he is holding the status and scale of pay of post of the Assistant Director in the present Directorate. Respondent Nos. 3 and 4 were appointed later than the appellant. Rule 35(b) of the Tamil Nadu State and Subordinate Services Rules clearly envisages that the seniority of the transferred persons

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shall be determined with reference to the rank in the class or category from which he was transferred, which in the case of the appellant was the post of Project Officer. The appellant was deemed to have been transferred with the same status and scale of pay as that of Assistant Director w.e.f. May 21, 1979. Consequently, he became senior to respondent Nos. 3 and 4 in that category, i.e., Assistant Director. [657-B-E]

2. Rule 8 of Ad-hoc Rules does not have any effect on the claim for *inter se* seniority of the appellant and respondent Nos. 3 and 4 which needs to be determined by aid of Rule 35(b) of the General Rules. It only prohibits causing of adverse effect on persons named in the rule. The Government, therefore, should determine the *inter se* seniority, and consider the question of promotion to the next cadre, viz., Deputy Director, according to rules. [657-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No.7586 of 1995.

From the Judgment and Order dated 4.2.94 of the Tamil Nadu Admn. Tribunal, Madras in O.A. No. 632 of 1993.

S. Sivasubramaniam, R. Nedumaran and V.G. Pragasam for the Appellants.

K.K. Mani and Ms. A. Subhashini for the Respondents.

The following Order of the Court was delivered :

Leave granted,

The appellant was appointed, though temporarily, as a Project Officer in the Directorate of Tamil Culture Centre on May 21, 1979. The Government stated in G.O.M.S. No. 296 dated September 6, 1989 that both the post of Project Officer in the erstwhile Directorate of Traditional Tamil Arts and that of Assistant Director in the Tamil Development Directorate are equivalent in status and carry an identical scale of pay. The service of the appellant as a Project Officer was also regularised by G.O.M.S. No. 88 dated May 21, 1990 wherein the Government has stated that "the service of Thiru R. Ramaswamy in the cadre of Project Officer in the erstwhile Department of Tamil Culture Centre be regularised w.e.f. 22.5.1979, namely, the date of his appointment". Thereby he is a permanent incumbent for

A the post of Project Officer in the erstwhile Department.

When he was temporarily promoted as Assistant Director and sought promotion as Deputy Director, the question arose whether the appellant was senior to respondent Nos. 3 and 4, who were appointed as Assistant Directors on December 10, 1979 and April 25, 1981 respectively. When that status was not given, he approached the Administrative Tribunal in O.A. No. 632/93, which by order dated February 4, 1994 held that since respondent Nos. 3 and 4 were substantively holding the post as Assistant Directors, the appellant is junior to them and the order of appointment by transfer clearly indicates that his clam for seniority would be determined at a later date. In pursuance of the statutory order now made in G.O.M.S. No 296 dated September 6, 1989 constituting the Tamil Nadu Ad-hoc Rules for Temporary Posts of Assistant Directors, the appellant cannot be said to be senior to the respondent Nos. 3 and 4.

D Shri K.K. Mani, the learned counsel appearing for respondent nos. 3 and 4, sought support for the conclusion reached by the Tribunal under Rule 8 of the said Ad-hoc Rules which envisages the "Nothing contained in these rules shall adversely affect the persons holding the post of Assistant Director of Tamil Development Directorate on the date of issue of the Rules". Ms. A. Subhashini, the learned counsel appearing for the State also sought to contend that even Rule 35(b) of the Tamil Nadu State and Subordinate Services Rules, on which the appellant sought to place reliance in support of his claim, itself mentions that when any difficulty or doubt arises in applying the sub-rule, seniority needs to be determined by the appointing authority. The Government being the appointing authority has been considering the matter and even at the stage of consideration in the light of the directions issued by the Tribunal, this appeal was filed and that, therefore, the Government could to be blamed for not determining the *inter se* seniority of the persons.

G In view of the diverse contentions, the only question that arises for consideration is whether the appellant can be considered as senior to respondent nos. 3 and 4 as Assistant Directors in the present Directorate. Rule 35(b) of the Tamil Nadu State and Subordinate Services Rules states thus :

H "The transfer of a person from one class or category of a service to another class or category carrying the same pay or scale of pay

shall not be treated as first appointment to the latter for purpose of seniority and the seniority of a person so transferred shall be determined with reference to the rank in the class or category from which he was transferred; where any difficulty or doubt arises in applying this sub-rule seniority shall be determined by the appointing authority." A

In view of the order passed by the Government appointing the appellant substantively as Project Officer w.e.f. May 22, 1979 and treating the said post as equivalent to the post of Assistant Director carrying the same status and scale of pay, the necessary implication is that he is holding the status and scale of pay of the post of Assistant Director in the present Directorate. However, the question is whether the appellant is senior to respondent nos. 3 and 4. As already observed, respondent nos. 3 and 4 were appointed on December 10, 1979 and May 25, 1981 respectively, i.e. later than the appellant. Rule 35 (b) clearly envisages that the seniority of the transferred persons shall be determined with reference to the rank in the class or category from which he was transferred, which in the case of the appellant was the post of Project Officer. The necessary implication is that the appellant was deemed to have been transferred with the same status and scale of pay as of Assistant Director w.e.f. May 21, 1979. Consequently, he became senior to respondent nos. 3 and 4 in that category, i.e., Assistant Director. B C D E

Rule 8 of Ad-hoc Rules pressed into service by Sri Mani, does not have any effect on the claim for *inter se* seniority of the appellant and respondent Nos. 3 and 4 which needs to be determined by aid of Rule 35(b) of the General Rules. It only prohibits causing of adverse effect on persons named in the rule. The Government, therefore, should determine the *inter se* seniority, and consider the question of promotion to the next cadre, viz., Deputy Director, according to rules. F

The appeal is accordingly allowed but, in the circumstances, without costs. G

G.N.

Appeal allowed.