

PETITIONER:
R. RAMASWAMY

Vs.

RESPONDENT:
GOVERNMENT OF TAMIL NADU & ORS.

DATE OF JUDGMENT 11/08/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
HANSARIA B.L. (J)

CITATION:
1995 SCALE (5)26

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

The appellant was appointed, thought 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 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 claim 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.

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 that "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 not be blamed for not determining the inter se seniority of the persons.

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:

<SLS>

"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."

<SLE>

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.

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.

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

JUDIS