

MOHSIN UNISSA

v

TAMIL NADU PUBLIC SERVICE COMMISSION

MARCH 29, 1996

[K. RAMASWAMY AND G. B. PATTANAIK, JJ.]

*Service Law :*

*Tamil Nadu Public Service Commission—Finance Department—Junior Assistant—Appointment—Regularisation—Tamil language test—Employee passed the test while she was working temporarily—Held the candidate having passed Tamil language test while working temporarily, her services cannot be terminated for failure to pass the test after regular appointment—The Commission would regularise her service giving her past benefits of temporary service w.e.f. 1975-76—Seniority would be determined w.e.f. the date of regular appointment in August, 1990.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7019 of 1996.

From the Judgment and Order dated 6.7.89 of the Madras High Court in W.A. No. 1298 of 1988.

R. Mohan, R.A. Perumal and R. Nedumaran for the Appellants.

K. Venkataramani, A. Mariarputham and Ashok Mathur for the Respondents.

The following Order of the Court was delivered :

Leave granted.

We have heard learned counsel on both sides.

Appellant was temporarily appointed in the Tamil Nadu Public Service Commission itself in the year 1975-76, for regular recruitment, she was selected and appointed in the Finance Department as a Junior Assistant in August 1990. For regularisation of her service passing the Tamil language test was a pre-condition. Initially, she had appeared in the year 1977. While she was temporarily working she had passed the exam. She

was asked to pass the same examination again after her regular appointment. It would appear that she had requested a companion who was sitting by her side to keep an eye on her answer book and also it was taken that she committed malpractice in copying the paper. On that ground the paper written by her in the year 1977 was also cancelled along with the examination in which she is imputed to have committed malpractice. When she challenged the order, the High Court held that since the examination passed by her in 1977 was valid in law, the cancellation thereof on the ground of her committing malpractice in the second examination is not valid in law. That order has become final.

Under these circumstances, the only question is : whether the appellant's service could be terminated for her failure to pass the examination. No doubt, she did not pass the examination after her regular appointment but she has passed the examination when she was temporarily in service and that order having been allowed to become final, it is no longer open to the respondent to terminate her services for failure to pass the examination. The respondent is directed to regularise her service giving her past benefits of temporary service with effect from 1975-76 for purpose by perusal. However seniority would be determined, she being a direct recruit, w.e.f. the date of her appointment in August 1990.

The appeal is accordingly allowed. No costs.

Appeal allowed.