

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.10.2015

Delivered on : 19.11.2015

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.1419 of 2015

and M.P.Nos.2, 3, 4 and 5 of 2015

1.Mr.N.Manigandan
2.Mr.C.Asokan
3.Mr.V.Madeswaran

.. Petitioners

Vs.

1.The State of Tamil Nadu
Represented by the Principal Secretary,
Department of School Education,
Fort St.George,
Chennai-600 009.

2.The Director of Public Libraries,
Directorate of Public Libraries,
737/1, Anna salai,
LLA Building,
Chennai-600 002.

3.K.Rajendran, .. Respondents
(R3 impleaded as per the order dated 20.07.2015
made in M.P.No.7 of 2015)

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the first respondent in connection with the impugned order passed in G.O (D).No.9, School Education (Public Libraries) Department dated 12.01.2015 and the consequential order of the second respondent issued in Na.Ka.No.14283/A1/2010 dated 12.01.2015 and quash the same and further direct the respondents to continue the petitioners in the post of District Library Officers.

For Petitioners: Mr.P.C.Harikumar

For Respondents: Mr.P.H.Arvind Pandian,
Additional Advocate General
assisted by
Mr.V.Subbiah, Special Govt. Pleader
and
Mr.P.Sanjay Gandhi, Addl. Govt. Pleader
for R1 and R2

Mr.S.Selvathirumurugan for R3

O R D E R

The petitioners challenge the impugned Government Order, in and by which, they along with one Mr.A.P.Sivakumar, were demoted from the post of District Library Officer to the post of Librarian Grade I and II respectively. The writ petition has been entertained and an interim order of Status Quo was granted in M.P.No.2/2015 on 22.01.2015 and it was extended from time to time. This writ petition is having a long and chequered history and it is not necessary to reproduce the entire facts for the reason that in the common order dated 08.04.2009 made in W.P.Nos.24947, 24250, 18231, 18232, 18233, 18707 and 36061 of 2007, the facts have been narrated in extenso and also dealt with by the learned Judge.

2. The petitioners would contend that they were appointed long back in the years 2002, 2005 and 2003 respectively by way of direct recruitment on the basis of merit and the selection was done under Rule 3(ii) r/w. Rule 4(b) of amended adhoc rules relating to temporary posts of District Library Officers in Education Department in terms of G.O.Ms.No.1234, Education Department dated 27.06.1981 and at that relevant point of time, District-wise seniority was maintained. All the writ petitioners were appointed as District Library Officers in terms of G.O.(2D).Nos.22, 23, 24 and 5 dated 17.04.2002, 09.06.2005 and 09.01.2003 respectively, by way of direct recruitment from the post/cadre of Librarians Grade I. As per amendment to adhoc rules relating to temporary posts of District Library Officers in the Department of Education issued under G.O.Ms.No.1234 dated 27.06.1981, direct recruitment can be resorted to from among Librarians Grade I in the Local Library Authorities and in the event of suitable person not available, recruitment can be done from open market. The petitioners would state that they are

direct recruitees from the District Libraries and Local Library authorities and they have fulfilled the necessary qualification such as Degree in Arts/Science, a Diploma or Degree in Library Science and Experience for a period of not less than five years as Librarian Grade I in the Local Library Authority. In terms of Rule 7, they have to undergo training and as per Rule 8, every person appointed to the posts shall pass Account Test for Executive Officers and District Office Manual Test within a period of two years or within the prescribed period of probation.

3. The Department of Education, Science and Technology, vide G.O.Ms.No.820 dated 03.05.1982, has taken note of the fact that the employees of Local Library Authorities, enjoyed almost all the concessions enjoyed by the Government Servants and taking into consideration all the relevant aspects, took a decision to provincialise their service with effect from 01.04.1982 and accordingly, the Director of Public Libraries was requested to submit necessary proposals to amend the Tamil Nadu Public Libraries Act, 1948 and the rules thereunder. The first respondent, vide G.O.Ms.No.1735 dated 11.12.1989, has noted the fact that each Local Library Authority continue to function as a separate unit for the purpose of seniority and promotion to all categories of staff and no inter-changeability of staff among the Director of Public Libraries, Connemera Public Library and Eighteen Local Library Authorities and the staff working in the said libraries cannot be transferred from one authority to another except by mutual request with prior permission of Director of Public Libraries and taking into the anomalies, the Director of Public Libraries/second respondent recommended for common seniority list at State Level for certain post has to be drawn in combining the two wings into one single unit. The Government have examined the matter and approved the proposal for institution of one unit system in the Public Libraries Department and directed that the Connemara Public Library shall be kept as a separate unit and the rest of them, namely the Director of Public Libraries and the Local Library Authorities shall be treated as another separate unit subject to the following conditions:

"(i) The one unit system shall be adopted only above the Assistant level of and above and level of Grade III Librarians in Local Library Authorities and office of the Director of Public Libraries, Madras.

(ii) The Seniority of the staff shall be fixed as on 1.4.82 i.e., the date on which the Local

Library Authority were provincialised.

(iii) Steps should be taken to inter se seniority between the staff in department of Public Libraries and the Local Library Authorities invoking General Rules 35 (aa) of the Tamil Nadu State and Subordinate Services after framing of rules."

The second respondent was also requested to draw a common seniority list immediately in respect of Director of Public Libraries in Local Library Authorities as per the orders above and send a copy of the Government for reference.

4. In compliance of G.O.Ms.No.1735 dated 11.12.1989, tentative seniority list of Grade I Librarians was published on 11.12.1989, in which some of the employees have been included in due places and subsequently reverted as Grade II Librarians without any notice and therefore, Mr.R.V.Shanmugasundaram and ten others made a challenge by filing O.A.Nos.1370, 1371, 1372, 1381, 1382, 1383, 1422, 1450, 1809 of 1990 and 443 of 1991 before the Tamil Nadu Administrative Tribunal. The Tribunal, on consideration of rival submissions, has directed that the implementation of Single Unit should be with reference to the date of issue of G.O.Ms.No.1735 dated 11.12.1989 by the first respondent and has issued the following directions:

"1. Protection should be afforded to all promotions made till the date of actual issue of the amendment to the rules. The services should be regularized, increment and pay protection should be given.

2. For the purpose of seniority, panels may be drawn up for each year with reference to the actual number of vacancies that had arisen during the year based on combined single unit seniority in the respective categories as on 11-12-89 and qualifications with reference to the crucial date for preparation of the panel in each year in respect of appointments made in each year, the crucial date for considering the eligibility for inclusion in the panel for that year should be a date prior to the year.

3. If this, will causes hardship in that seniors would be denied the promotion for want of vacancies, the only course would be to create certain number of supernumerary posts in lieu of an equal number of

posts in the lower category so that eligible persons whose claims have been overlooked due to improper implementation of the orders earlier may be suitably protected."

5. The official respondents, namely the State of Tamil Nadu, made a challenge to the above cited order passed by the Tribunal before the Hon'ble Supreme Court of India in Special Leave to Appeal (C) Nos.7218-50/1992 with SLP(C)Nos.14519-28, 15499-500/92, 16185/93, 2181/94 & 2182/94. The Hon'ble Supreme Court of India has disposed of the above SLPs with the following directions:

"The submission of learned Counsel for the Petitioner is that in order to implement the Tribunal's Order, the Petitioner, State Government may be required to create 327 supernumerary posts for accommodating the persons benefited by the Tribunal's order. It has been fairly admitted that the persons have been working on those posts from different dates between 1983 and 1987 so that even the latest appointee has been in that position for about seven years by now. In such a situation, we do not deem it fit go into the merits of the points raised in the S.L.P. leaving in open to raise the points in an appropriate case. The S.L.P. is dismissed."

6. The Education, Science and Technology (K1) Department has issued G.O.Ms.No.161 dated 7.3.1996, cancelling G.O.Ms.No.1080 of the same department dated 9.11.1994 and directed the second respondent to effect promotion in the Department of Public Libraries "based on District Seniority so as to enable him to fill up the vacancies particularly the skeleton posts like Inspector of Libraries etc., till such time adhoc rules for the various posts in the Public Library Department are issued by Government". Thereafter, Tamil Nadu Public Libraries (Amendment) Act, 2001 was passed amending the Tamil Nadu Public Libraries Act, 1948 and as per validation clause "Notwithstanding anything contained in any law for the time being in force, all things done or actions taken by any officer or authority, on or after the 1st day of April, 1982 and before the date of the publication of this Act in the Tamil Nadu Government Gazette, which are in conformity with the provisions of the Principal Act as amended by this Act, shall, for all purposes, be deemed to be, and to have always been, validly done

or taken in accordance with law as if the Principal Act, as amended by this Act, had been in force at all material times when such things or actions were done or taken. As already pointed out, as per G.O.(2D).Nos.22, 23, 24 and 5 dated 17.04.2002, 09.06.2005 and 09.01.2003 respectively of the first respondent, the petitioners were temporarily appointed as District Library Officers from the date of the said Government Orders.

7. Adhoc rules for temporary posts of Inspector of Libraries, Librarian Grade I, Librarian Grade II, Stock Verification Officer, Librarian Grade III, Building Supervisor, Building Maistry, Film Operator, Plumber, Electrician, Driver, Record Clerk, Sergeant, Binder and Binding Boy in Public Libraries Department came to be issued, vide G.O.Ms.No.60, of the first respondent dated 27.04.2006 under Article 309 of the Constitution of India and the said rules shall deemed to have come into force on 01.04.1982. Rule 11 is a Savings Clause and it states that "Nothing contained in these rules shall adversely affect any person holding any of the posts referred to in these rules on the date of issue of these rules". In para 3 of the said Government Order, it has been stated that "As Local Library Authority employees are made as Government servants from 01.04.1982 and promotions are given in the District Unit as per the Director of Public Libraries proceeding Rc.No.134/J2/54 dated 23.11.55 and G.O.Ms.No.161, Education dated 07.03.1996 and it is essential to give protection to the promotion already made and hence, saving clause (clauses 7 and 11) is proposed in adhoc rules".

8. Ms.Nirmala and Others filed W.P.Nos.24947, 24250, 28231, 28232, 28233, 18707 and 36061 of 2007, challenging the seniority list dated 02.05.2007 on the ground that it is not in consonance with the common order passed by the Tamil Nadu Administrative Tribunal in O.A.No.1370/1990 etc. batch, as confirmed by the Hon'ble Supreme Court of India in S.L.P. 7218/1992 etc. batch and to revise the seniority as per the previous list dated 29.08.2006. Counter affidavits have been filed in those writ petitions and this Court had framed the following points for consideration:

- (i) Whether respondents were justified in revising the seniority list dated 29.8.2006 and whether the revised seniority list dated 02.5.2007 is in consonance with the directions of TAT and Supreme Court?

(ii) Whether petitioners are not entitled to the relief on the ground that they have not challenged G.O.Ms.No.161 dated 07.03.1996?

The learned Judge had traced the entire history of the case and rejected the contention that the Tamil Nadu Administrative Tribunal itself has ordered affording protection to all promotions made till the date of actual issue of amendment to the rules and the date has not been intended to protect all future promotions made nearly after two decades thereafter and thereby, entirely upsetting the State wide seniority of Public Libraries and the respondents are not right in contending that by virtue of the order of the Tamil Nadu Administrative Tribunal affording protection to the promotions, all promotions made between 1996 and 2006 are protected. The learned Judge has also taken note of G.O.Ms.No.161 dated 07.03.1996 and given a finding that the Government granted promotions and permitted the second respondent to effect promotions based on District wide seniority, particularly in skeleton posts like Inspector of Libraries till such time adhoc rules are framed for the various post in Public Library Department and though the Government permitted to fill up vacancies only in skeleton posts like Inspector of Libraries, promotion granted in G.O.Ms.No.161 dated 07.03.1996 was greatly used/misused for effecting multitude of promotions based on District wide seniority and further noted the fact that in fact some of the Grade III Librarians were granted double promotion from Grade III to Grade I and one such person, namely Mr.N.Manikandan, Grade III Librarian (first petitioner herein) was given promotion and posted as Library Inspector, Nilgiris District. Likewise, Mr.A.P.Sivakumar, Grade III Librarian was given double promotion and promoted as Grade I Librarian, vide proceedings dated 22.03.1996 and after 1996, no endeavor was made to frame adhoc rules for the State wide one unit system, however, based on District Seniority, adhoc promotions were given to juniors and thereafter effected District transfers so as to upset the seniority in the various Districts. It was further noted by the learned Judge that while the writ petitioners were languishing as Librarians Grade III and Grade II, their juniors were promoted as District Library Officers and Deputy Director of Public Libraries, which is atleast two or three categories above the level of seniors and further noted that nearly 100 juniors, who joined after and whose names were not found in the State wide seniority list dated 11.12.1989, have got multiple promotions.

9. Heavy reliance was placed upon G.O.Ms.No.161 dated 07.03.1996 which enabled the second respondent to make promotions based on District seniority (until adhoc rules were approved by the Government) and to the said point, the learned Judge held that such promotions are subject to framing of adhoc rules for various posts in the Public Library Department and in fact, all promotions made between 1996 and 2006 were only temporary, subject to the order of the Government in respect of State wide seniority and the order of the Court. The learned Judge has also taken note of the fact that while approving the panel for District Library Officers in G.O.Ms.No.23, School Education Department dated 17.4.2002, it was made clear that appointment as District Library Officer is purely temporary and promotees cannot claim seniority and other rights. It is to be noted at this juncture that the name of the first petitioner has also been referred.

10. Contesting respondents in the above said writ petitions placed heavy reliance upon G.O.Ms.No.60 dated 27.04.2006, contending that promotions made between 1996 and 2006 were protected and also taken note of the submission of the learned Government Advocate, who contended that since number of persons were promoted during the years 1996 to 2006, common order cannot be passed for re-allocating or re-fixing the position and those who were promoted prior to framing of rules and taking into consideration the decision rendered by the Hon'ble Supreme Court of India in Tamil Nadu Education Department Ministerial and General subordinate v. State of Tamil Nadu [CDJ 1979 SC 43 SCC (L&S)], held as follows:

"65. In my considered view, the Savings clause is very vague. Based upon Savings clause to say that all promotions effected based on District wise seniority would negate order of Government in G.O.Ms.No.1735 (dated 11.12.1999) fixing the cut off date as 11.12.1989 and taking State wide seniority at the level of Gr.III and also the directions of TAT on the same lines. What was earlier passed by the Government in G.O.Ms.No.1735 dated 11.12.1989 and upheld by the TAT and also confirmed by the Supreme Court cannot be upset by introducing Savings clause.

66. As pointed out earlier, Savings clause negates two important aspects:- (i) 11.12.1989 being the cut off date ; (ii) State wide seniority at Gr.III level. As pointed out earlier, all the promotions were only temporary and promotees have an vested right to claim seniority. While so, the

learned Govt. Pleader is not right in contending by Savings clause, promotions effected between 1996-2006 are protected."

11. The learned Judge has given the finding after taking note of Rule 35(aa) of Tamil Nadu State and Subordinate Service Rules and held that all promotions were only temporary and the promotees have no vested right and only in the event of more than one method for appointment to Grade II, the above said Rule would have application. The learned Judge has given a further finding that merely because number of persons were promoted, cannot be a ground for placing juniors above seniors and also considered the question as to what would be the position of those promoted between 1996 and 2006 and held in para 76 that "it is needless to say that no recovery shall be made from those promotees, however those promotees will have to step down on account of correctional process, though they may not have to refund the pecuniary or other benefits enjoyed by them" and also placed reliance upon the decision in Mahomood Hasan & Others etc., v. State of UP and Others [JT 1997 (1) SC 353]. The learned Judge has quashed the impugned proceedings dated 02.05.2007 and allowed the writ petitions subject to the following directions:

- "Seniority List in Proceedings in Na.Ka.No.8400/A1/2005 dated 29.08.2006 is ordered to be restored.
- Respondents are directed to give notional promotion to the Writ Petitions who are all eligible for promotion.
- All ad-hoc promotions effected between 1996-2006 shall be re-worked based upon the seniority list dated 29.8.2006.
- Respondents shall comply the entire exercises within six months from today taking State level seniority list (29.8.2006) as final and conclusive for that purpose.
- As per the seniority list, respondents shall also consider names to promote them to Gr.I. Librarian as per the rules framed.
- Promotees based on promotions made between 1996-2006 shall be reverted to their respective position.
- In view of the above directions, W.P.No.36061/2007 is dismissed.
- No costs."

One such direction is that, promotees based on promotions made

between 1996-2006 shall be reverted to their respective position.

12. The official respondents as well as some of the private respondents, aggrieved by the above said common order, filed W.A.Nos.1173 to 1178 of 2010, 520 to 522 of 2009, 911 to 919 of 2009 and Cont.P.No.114 of 2010 and connected miscellaneous petitions and the Division Bench, during the course of the arguments, has taken note of the submission of the learned Additional Advocate General as well as the learned counsel appearing for the private parties that a consensus was arrived at among all the learned counsels to the proposals given by the learned Additional Advocate General and in view of the consensus, has disposed of the appeals, vide common judgment dated 20.09.2010 with the following directions:

"(i) The appellant shall prepare a draft state wide seniority list of Librarian Gr.I/Inspector of Libraries within a period of two weeks from the date of receipt of a copy of this order

(ii) The appellant shall publish the draft state wide seniority list by bringing to the notice of all the Librarians/Inspector of Libraries and all other persons who may be aggrieved through the District Library Officers.

(iii) The Librarians/Inspector of Libraries and other persons aggrieved shall submit their objections, if any to the draft seniority list within a period of two weeks from the date of publication of the draft seniority list.

(iv) On receipt of those objections, the applicants shall consider the same and publish the final seniority list within a period of four weeks from the date of receipt of the objections from aggrieved persons."

Contempt Petition No.114 of 2010 was also closed. Thereafter, the official respondents filed M.P.No.3 of 2010 in W.A.No.1173 of 2010 seeking clarification on the ground that the post of Librarian Grade II has been omitted to be included and the said petition was allowed with a direction that the petitioners/appellants shall prepare a draft State wide seniority list of Librarian Grade-II and the Librarian Grade I/Inspector of Libraries, within a period of two weeks from the date of the order and proceed with the matter accordingly.

13. The second respondent, in compliance of the common judgment passed in W.A.No.1173 of 2010 etc. batch, vide proceedings dated 10.02.2011, has published the State wide seniority list after considering the objections raised by the persons aggrieved. In the proceedings of the second respondent in Na.Ka.No.14283/A.1/2010-4 dated 10.02.2011, in para 2 at inner page No.13, objections of the petitioners 1 and 2 were also considered and rejected their objections and held that as per Savings Clause seniority given at the District Level and temporary posts, service protection will not be given effect. Along with the above said proceedings, final seniority list for the post of Librarian Grade II was also published. Persons like the writ petitioners herein approached the second respondent praying for protection of the promotions given to them and the second respondent, vide letter in Na.Ka.No.14283/A1/2010 dated 01.10.2011 addressed to the first respondent, made a recommendation that the said persons have been serving in the posts for a long period and they have been appointed due to delay on account of administrative reasons and hence, the said employees may be permitted to serve where they served already and in order to enable them to obtain pay and other allowances, extra vacancies may be created on their behalf and also enclosed the details. In Annexure II to the said letter, names of the petitioners 1 and 2 are shown in Sl.Nos.4 and 5.

14. The first respondent has issued G.O.Ms.No.110 dated 07.05.2012 temporarily appointing 16 Grade I Librarians as District Library Officers. The petitioners filed W.P.No.25076 of 2012 praying for issuance of a Writ of Mandamus directing the respondents 1 and 2 to treat them as regularly appointed to those posts with effect from the date from which they are continuously officiating in those posts, in view of the method of appointment of the petitioners and for the fact that they belong to Tamil Nadu Educational Service and not to Tamil Nadu Public Libraries Subordinate Service and in view of the recommendations of the second respondent dated 01.10.2011. The said writ petition was entertained and this Court has granted an order of interim injunction on 14.09.2012 and it was finally disposed of on 25.04.2014, directing the second respondent to take final decision in the light of the recommendation made by it and till then, the first respondent was directed to maintain Status Quo as on the date of disposal of the said writ petition.

15. The petitioners herein filed W.P.Nos.22633, 22646 and 22647 of 2011 respectively praying for issuance of a Writ of Certiorari calling for the records relating to the order dated

11.02.2011 passed by the second respondent and quash the same insofar as it seeks to revert the petitioners from the post of District Library Officers to the post of Librarian Grade I and II respectively and initially, interim order was granted and subsequently the petitioners instructed their Counsel to withdraw the said writ petition and it was dismissed as withdrawn. Thereafter, the impugned Government Order in G.O.Ms.No.9 dated 12.01.2015 came to be issued, reverting the petitioners herein and the petitioners herein have filed this writ petition challenging the said order and an interim order of Status Quo was granted. The petitioners herein has also filed W.A.No.585/2015 seeking clarification, since the order of Status Quo was not clear. A Division Bench of this Court has disposed of the said writ appeal, vide judgment dated 08.04.2015, by granting liberty to the petitioners to file application for clarification and in the event of said application being filed, appropriate orders may be passed. The petitioners herein also filed M.P.No.4 of 2015 to implement the interim direction to maintain Status Quo and this Court, vide order dated 20.07.2015, has directed the listing of the matter along with the main writ petition.

16. Tvl.P.Rajendran and Others had also filed S.L.P(C). Nos.22687 of 2011, 11092-11095 of 2011 challenging the order of clarification made in M.P.No.3 of 2010 in W.A.No.1173 of 2010 and it was admitted and converted as Civil Appeal Nos.1104-1107 and 1108 of 2015 and all the said civil appeals were dismissed by the Hon'ble Supreme Court of India, vide order dated 21.01.2015 with the following observations:

"...In view of the aforesaid, we only direct the appellants shall avail benefits of the concession order passed in the writ appeal and nothing shall be done qua them because of the clarificatory order passed by the High Court. Needless to say, we have not adverted to the merits of the clarificatory order. Because of our order, be it further clarified, the grant of any benefit to the present appellants will in no way cause any prejudice to the persons who are entitled to get benefit of the clarificatory order. As we have passed this order, regard being had to the special feature of the case, any proceeding pending before the High Court shall be disposed of on its own merits.

All the pending applications are disposed of.

The appeals are accordingly disposed of. There

shall be no order as to costs."

17. The learned counsel appearing for the petitioners has drawn the attention of this Court to the consolidated typed set of documents and would submit that as per G.O.Ms.No.161 of the first respondent dated 07.03.1996, promotions were effected based on District wide seniority list till such time adhoc rules for various posts are framed and subsequently, amendment has been made to Tamil Nadu Public Libraries Act, 1948 under Act No.5/2001 and it was also published in the Tamil Nadu Government Gazette on 14.02.2001 and as per the validation clause, promotions already done were also directed and it includes maintenance of District wide seniority and promotions were given based on that. It is the further submission of the learned counsel appearing for the petitioners that direct recruitment to the post of District Library Officers is also provided under G.O.Ms.No.1234 dated 27.06.1981 and since the petitioners herein had fulfilled the required qualification, they have been promoted to the post of District Library Officers as per G.O. (2D).Nos.22, 23, 24 and 5 dated 17.02.2002, 09.06.2005 and 09.01.2003 respectively and the adhoc rules. The Tamil Nadu Administrative Tribunal, vide common order dated 11.05.1992 in O.A.No.1370 of 1990 etc. batch has also made a positive observation that protection should be afforded to all promotions made till the date of actual issue of amendment to the rules and the services should be regularized, increment and pay protection should be given and also protected the interest of the persons, whose claims have been overlooked due to improper implementation of the orders, by directing the respondents to create certain number of posts in lieu of equal number of posts in the lower category and the said finding have not been disturbed in the order dated 29.04.1994 made in S.L.P.(c)Nos.7218-50/92 etc. batch. It is also contended by the learned counsel appearing for the petitioners that under G.O.Ms.No.60 of the first respondent dated 27.04.2006, adhoc rules came to be framed for the Tamil Nadu Public Libraries Subordinate Services and as per the Saving Clause, interests of the petitioners are also protected. The learned counsel appearing for the petitioners has also drawn the attention of this Court to the common order dated 08.04.2009 made in W.P.Nos.24947 of 2007 etc. batch and would submit that though in the said order the learned Single Judge has observed that all adhoc promotions effected between 1996 and 2006 shall be reworked based on the seniority list dated 29.08.2006 and it was put to challenge in W.A.No.1173 of 2010 etc. batch and taking note of the submission made by the learned Additional Advocate General, the Division Bench of this

Court has directed the preparation of draft seniority list and to give opportunity to the persons to raise objections and thereafter to finalise the same and in the light of the said judgment, the order passed by the learned Single Judge got merged and further clarification issued by the Division Bench in M.P.No.3 of 2010, which was also challenged before the Hon'ble Supreme Court of India in Civil Appeal Nos.1104-1107 of 2015, has not diluted the findings rendered by the Division Bench and consequently, by virtue of the impugned Government Order, they cannot be reverted. The learned counsel appearing for the petitioners would further submit that the second respondent has made a positive recommendation, vide letter dated 01.10.2011 and therefore, it is incumbent on the first respondent to consider the same favourably and thereby ought to have protected the interest of the petitioners, who are working as District Library Officers for more than 10 years. Lastly, it is contended by the learned counsel appearing for the petitioners that admittedly the petitioners through selection process was promoted to the post of District Library Officers between 2002 and 2005 and after a long lapse of time, they were reverted to the post of Librarians Grade I and II respectively and it would definitely cause undue hardship and mental agony and in any event, their position as District Library Officers have to be protected and prays for appropriate orders. The learned counsel appearing for the petitioners, in support of his submissions, placed reliance upon the decision in D.R.Nim, I.P.S. v. Union of India [AIR 1967 SC 1301].

18. Per contra, Mr.P.H.Arvind Pandian, learned Additional Advocate General assisted by Mr.V.Subbiah, learned Special Government Pleader appearing for the second respondent has drawn the attention of this Court to the counter affidavit, additional counter affidavit as well as to the reply affidavit filed by the petitioners and would submit that the order of the learned Single Judge dated 08.04.2009 made in W.P.Nos.24947/2007 etc. batch has not been diluted by the Division Bench in the judgment dated 20.09.2010 made in W.A.Nos.1173 to 1178 of 2010 etc. batch as well as in the subsequent clarificatory order dated 06.12.2010 made in M.P.No.3 of 2010 in W.A.No.1173 of 2010. It is the further submission of the learned Additional Advocate General that in pursuant to the judgment dated 20.09.2010 made in W.A.Nos.1173 of 2010 etc. batch, draft seniority list was published and objections were invited only with regard to obtaining Post Graduate Degree without basic educational qualification and the petitioners herein by placing reliance upon G.O.Ms.No.60 of the first respondent dated 27.04.2006,

prayed for protection of their present post and at inner Page Nos.13 and 14 of the second respondent proceedings in Na.Ka.No.14283/A.1/2010-4 dated 10.02.2011, it has been specifically rejected by the second respondent and it has not been put to challenge and so also the final seniority list. The petitioners did make a challenge only with regard to the order of reversion dated 11.02.2011 by filing W.P.Nos.22633, 22646 and 22647 of 2011 and initially obtained interim orders and subsequently withdrew the said writ petitions on 14.12.2011 and the said fact has not been disclosed in the affidavit filed in support of the present writ petition and since they have deliberately suppressed the said material fact, they are not entitled to any relief. The petitioners had obtained double/triple promotions overlooking the claims of their seniors who are numbering more than 100 and taking into consideration of the relevant facts and circumstances only, the first respondent has passed the impugned order of reversion and it is perfectly sustainable and hence, prays for dismissal of this writ petition with costs.

19. The learned counsel appearing for the private respondents would contend that while responding to the objections with regard to draft seniority list, the petitioners has placed reliance upon G.O.Ms.No.60 of the first respondent dated 27.04.2006 and taking note of the findings given by the learned Judge in W.P.Nos.24947/2007 etc. batch, it was rightly rejected and admittedly, the petitioners did not make a challenge to the said proceedings as well as to the final seniority list and they merely challenged the order of reversion and in any event, the long years of service rendered by the petitioners as District Library Officers based on the orders which have no legal backing, they cannot claim that they are continuing in the posts without further benefits and hence, prays for dismissal of this writ petition with costs.

20. This Court paid its anxious consideration and best attention to the rival submissions and also perused the materials placed before it.

21. No doubt, as per G.O.Ms.No.161 dated 07.03.1996, based on District wide seniority, the first respondent permitted the second respondent to effect promotions to fill up vacancies particularly the skeleton posts like Inspector of Libraries etc. till such time adhoc rules for various posts in the Public Libraries Department are issued by the Government. Subsequently, by the Amendment Act No.5/2001, certain amendments

were brought forward to the Tamil Nadu Public Libraries Act, 1948 and as per Schedule (Section 9A), various posts from Librarian Grade I to Scavenger has been covered and as per the validation clause, all things done or actions taken by any officer or authority, on or after 01.04.1982 before the date of the publication of the amendment on 14.02.2001, which are in conformity with the Principal Act as amended by the Amendment Act, are protected.

22. Admittedly, the petitioners got their temporary promotions as District Library Officers after the date of the Gazette publication on 14.02.2001 as District Librarian, vide G.O.(2D).Nos.22, 23, 24 and 5 dated 17.04.2002, 09.06.2005 and 09.01.2003 respectively. In W.P.Nos.24947 of 2007 etc. batch, the scope of the Government Orders commencing from G.O.Ms.No.161 dated 07.03.1996 ending with G.O.Ms.No.60 dated 27.04.2006 were elaborately considered and in para 52, the learned Judge has given demonstration as to how by placing juniors above seniors, has caused prejudice. In para 62 of the said order, the learned Judge has specifically dealt with the Savings Clause projected by the petitioners in Rule 35(aa) of the Tamil Nadu State and Subordinate Service Rules and in para 65 has given a finding that the cut off date was fixed on 11.12.1989, as per G.O.Ms.No.1735 dated 11.12.1989 and it cannot be upset by introducing the Savings Clause and taking into consideration of the fact that promotions were only temporary and promotees have no vested right, has rejected the plea of the official respondents as to the promotions given between 1996 and 2006 respectively and in concluding portion of the order at para 78, has held that all adhoc rules effected between 1996 and 2006 shall be re-worked based on the seniority list dated 29.08.2006 and also protected the interest of the petitioners by stating that recovery cannot be effected by observing that they may not have to refund the pecuniary or other benefits enjoyed by them. The said common order was put to challenge in W.A.No.1173 of 2015 etc., batch and during the course of arguments, has taken note of the submission of the learned Additional Advocate General that the draft seniority list would be published and after inviting objections, final seniority list will be published, has disposed of the writ appeals and accordingly, while disposing of the writ appeals, Librarians Grade III was not considered and by way of clarificatory order dated 06.12.2010 in M.P.No.3 of 2010 in W.A.No.1173 of 2010, the Division Bench has included the said post and also observed that all those persons who are affected, may file their objections to the draft seniority list. The said clarificatory order was put

to challenge by filing Special Leave to Appeal Nos.1104-1107 of 2015 and it was disposed of on 21.01.2015 by observing that the grant of any benefit to the present appellants in no way cause any prejudice to the persons who are entitled to get benefit of the clarificatory order and having regard to the special feature of the case, this Court was directed to dispose of the case on its own merits.

23. It is the vehement submission of the learned counsel appearing for the petitioners that since they are holding the promoted post for more than 10 years and in pursuant to the Savings Clause, their interest to be protected and in this regard, has placed heavy reliance upon the decision in D.R.Nim, I.P.S. v. Union of India [1967 AIR 1301], wherein the Hon'ble Supreme Court of India has taken into consideration of the fact that the services rendered by the appellants therein as Superintendent of Police for a particular period of time excluded for the purpose of seniority and taking into consideration the crucial date for classifying people as arbitrary and irrational, has also left open the points raised by the Government of India as to the appellants continuous officiation was a temporary or local arrangement to be decided and it is further observed that the stop gap arrangements cannot last for eight years and it has not been shown that the appellant was appointed temporarily in place of some persons as subsequently he has never been reverted. In the case on hand, it is an admitted fact that the promotion of the petitioners to the post of District Library Officers was temporary and it was effected between 2002-2005, after the amendment came into effect by Gazette notification dated 14.02.2001 by Act No.5 of 2001. Even in the order promoting the petitioners temporarily, it has been clearly indicated that by virtue of the order, they cannot claim seniority or other benefits.

24. It is also very pertinent to point out at this juncture that the second respondent has issued proceedings in Na.Ka.No.14283/A.1/2010-3 dated 10.02.2011 and on the same day issued yet another proceedings in Na.Ka.No.14283/A.1/2010-4 and in the first proceedings, two petitioners, namely Mr.C.Asokan and Mr.N.Manigandan had raised objections as to obtaining Post Graduate Degree without having basic educational qualification and it has been indicated that the second respondent has made a recommendation as to their retention and the same is pending with the Government. The petitioner, by placing reliance upon G.O.Ms.No.60 dated 27.04.2006 prayed for protection of service and it was dealt with in para 13 of the said proceedings dated

10.02.2011. The second respondent, by placing reliance upon the common order of the learned Single Judge dated 08.04.2009 made in W.P.Nos.24947 of 2007 etc. batch has held that as per the Savings Clause, seniority given on the district level for temporary posts, service protection will not be given and the final seniority list for Librarians Grade I and II was also given and admittedly, the said proceedings have not been put to challenge.

25. The petitioners made a challenge to the order of reversion dated 11.02.2011 by filing W.P.Nos.22633, 22646 and 22647 of 2011 and obtained interim orders and later on withdrew the same by circulating a letter to the Registry dated 08.12.2011 and all the writ petitions were dismissed as withdrawn, vide order dated 14.12.2011 and after passing of the impugned Government Order reverting them to Librarian Grade I and II respectively, they have filed this writ petition. In the present writ petition, the filing of the above said writ petitions and withdrawing of the same has not been disclosed. Be that as it may, final seniority list has not been challenged in the manner known to law. The learned Single Judge, in the common order dated 08.04.2009 made in W.P.Nos.24947 of 2007 etc. batch, has also expressed anguish that two persons who were working as Grade III Librarians were given double promotion and became District Librarians, overlooking the claim of so many persons and further that such promotion is atleast two or three categories above the level of seniors. It is to be noted at this juncture that the official respondents are also at fault for the reason that though the Tribunal, in the common order dated 11.02.1992 made in O.A.Nos.1370 of 1990 etc. batch granted protection to all promotions made till the date of actual issue of the amendment to the rules and regularization of service etc. and also creation of certain number of supernumerary posts in lieu of an equal number of posts in the lower category, the fact remains that the said recommendations/findings/ directions have not been implemented in letter and spirit. Though the adhoc rules for temporary posts of District Library Officers came to be framed in G.O.Ms.No.1234, Education Department dated 27.06.1981, the petitioners were given promotion as District Library Officers only during the years 2002 and 2005 after the publication of the Amendment Act No.5/2001 and before G.O.Ms.No.60 dated 27.04.2006. It is also pertinent to point out at this juncture that G.O.Ms.No.60 only deals with Inspector of Librarians and the posts down below and therefore, it would not also come to the aid of the petitioners.

26. Insofar as the plea of Doctrine of Merger is concerned, the observations/findings of the learned Single Judge in W.P.Nos.24947 of 2007 etc. batch have not been diluted by the Division Bench, as it passed orders on the submission of the learned Additional Advocate General that the draft seniority list would be published and it would be finalized after receiving objections and disposed of the writ appeals based on the said submission/instruction. The clarificatory order issued by the Hon'ble Supreme Court also did not water down/negate the effect of the orders of the learned Single Judge. It is once again pertinent to point out at this juncture that the objections raised by the petitioners were considered and rejected and final seniority list was also published and admittedly, it has not been put to challenge and the subject matter of challenge before this Court is only the order of reversion which is based on the final seniority list. Alternatively, it is submitted by the learned counsel appearing for the petitioners that though some of them, who acted as District Library Officers, had retired and got benefits; the petitioners, who are in service, are very few in number and hence, their present position may be protected without prejudice to the claim of their seniors. However, this Court is not inclined to give any specific direction to the official respondents in this regard, as it is always open to the petitioners to workout the said remedy, if it is open to them under law and if they are so advised.

27. In the light of the reasons assigned above, this Writ Petition deserves dismissal and accordingly dismissed. No costs. Interim orders, granted if any, shall stand vacated and consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

True Copy

सहायक न्यायाधीश
Sub Assistant Registrar

To

1. The Principal Secretary,
The State of Tamil Nadu
Department of School Education,
Fort St. George,
Chennai-600 009.

WEB COPY

2.The Director of Public Libraries,
Directorate of Public Libraries,
737/1, Anna salai,
LLA Building, Chennai-600 002.

+1cc to Mr.Selva Thirumurugan, Advocate Sr.62703
+1cc to M/S.P.C.Harikumar, Associaters, Sr.62778

Order
in W.P.No.1419 of 2015

svg[co]
srg 23/11/2015



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