IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.10.2015

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THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.33226 of 2015
And
M.P.No.1 of 2015

Tmt.V.Radha ...Petitioner

Vs.

1 The State of Tamil Nadu
Represented by the Secretary to Government,
Commercial Taxes and Registration Department,
Fort St.George, Chennai-09.

2 The Principal Secretary /
Commissioner of Commercial Taxes, Ezhilagam,
Chepauk, Chennai-05. ...Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus Forbearing the Respondents from effecting any promotion to the cadre of Additional Commercial Taxes pending disposal of the petitioners representation dated 10.07.2015 and decision of the High Level Committee Constituted under G.O.(D) No.132 (Commercial Taxes and Registration (E1) Department) dated 31.03.2015.

For Petitioner : Mr.V.Vijayashankar
for Mr.P.Asokan

For Respondents : Mr.S.Kanmani Annamalai
Additional Government Pleader
(Taxes)
Mr.K.Venkataramani
Senior Counsel Assisted by
Mr.T.Ayygaraprabu for Intervenor
Mr.K.krishnamurthy for Intervenor

ORDER

By consent, the writ petition is taken up for final disposal.

2.The petitioner would state that she joined the services of Commercial Tax Department as direct recruit Assistant Commissioner of Commercial Taxes (previously known as Commercial Tax Officer) through Group I services on 14.08.1997 vide G.O.Ms.No.293 of the first respondent department dated 04.08.1997 and got promotion to the post of Deputy Commissioner of Commercial Taxes (previously known as Assistant Commissioner) on 30.08.2004 vide G.O.(D) No.362 of the same department dated 26.08.2004. The petitioner got her further promotion to the post of Joint Commissioner of Commercial Taxes (previously known as Deputy Commissioner) on 09.04.2010 vide G.O.Ms.No.45, of the said department on 08.04.2010 and at present working as Joint Commissioner (Commercial Taxes), Chennai (North) Division and according to her she is awaiting further promotion to the post of Additional Commissioner of Commercial Taxes.

3.The petitioner would further state that the post of Assistant Commissioner of Commercial Taxes comes under the Category 4 of the Tamil Nadu Commercial Taxes Services and as per Rule 2(a) of the Tamil Nadu Commercial Taxes Services, the appointment to the said categories are made by the following methods:

1. Direct recruitment or
2. Recruitment by transfer from the category of Commercial Tax Officers in the Tamil Nadu Commercial Taxes Subordinate Service or
3. Recruitment by transfer from the category of Section Officers of the Tamil Nadu Secretariat in Category 3 in Class XII of the Tamil Nadu General Service.

4.The petitioner would further state that in terms of Rule 2(c) of Tamil Nadu Commercial Taxes Services, appointments to the permanent vacancies for the posts included in the Category 4 would be made in the following manner:

1. Recruitment by transfer
2. Recruitment by transfer
3. Direct recruitment

5.It is the case of the petitioner that the normal method of recruitment is more than one method of recruitment. The seniority of a person in that category has to be determined with reference to the date on which he is appointed to that category in accordance with General Rule 35(aa) of the Tamil Nadu State and Subordinate Rules and further that the first respondent while issuing the G.O.(Ms) No.116 Commercial Taxes and Registration (E1) Department dated 24.08.2012, regarding inter-se seniority list by direct recruitment and recruitment by transfer in the regular list of Assistant Commissioner of Commercial Taxes for the years from 1984 to 2010, has not followed the same and the resultant position is, the officials who later on entered into service have marched over the petitioner and other persons similarly placed.

6.It is also stated by the petitioner that Group I Officers made a challenge to G.O.Ms.No.116, Commercial Taxes and Registration (E1) Department dated 24.08.2012 passed by the first respondent in W.P.No.18264 of 2013 and the same is pending.

7.It is also stated by the petitioner that based on the orders passed by this Court in W.P.No.12786 of 1985 dated 19.06.1986 as well as the order of the Hon'ble Supreme Court of India dated 10.02.1999 in Civil Appeal No.1454 of 1987, inter-se seniority in the Commercial Taxes Department between direct recruits and transferees is fixed only in relation to permanent posts and the Commercial Taxes Staff Association took a stand that due to above fixation of inter-se seniority, the direct recruits (Group II Officers) gain seniority over their transferee counterparts and they got promotion quickly than the transferees.

8.Inorder to address the said grievance, the first respondent has also constituted a High Level Committee by passing G.O.(D) No.132, Commercial Taxes and Registration (E1) Department, dated 31.03.2015, consisting of Principal Secretary to Government, Finance Department, Principal Secretary to Government, Personnel and Administrative Reforms Department, Principal Secretary to Government, Commercial Taxes & Registration Department, Secretary, Law Department and Principal Secretary/ Commissioner of Commercial Taxes and the Group I Officers had also submitted a joint representation dated 10.07.2015 to the High Level Committee and the

petitioner has also submitted individual representation dated 08.10.2015 to the first respondent through proper channel for redressal of their grievance. The petitioner apprehending that pending decision by the High Level Committee, promotion is sought to be made to fill up the post of Additional Commissioner of Commercial Taxes, came forward to file this writ petition.

9.The learned counsel appearing for the petitioner would submit that the first respondent in all fairness should have deferred the promotion to the post of Additional Commissioner of Commercial Taxes till the High Level Committee constituted under G.O.(D) No.132, Commercial Taxes and Registration (E1) Department, dated 31.03.2015 took a decision and also drawn the attention of this Court to the joint representation dated 10.07.2015 submitted by the Group I Officers as well as the individual representation dated 08.10.2015 submitted by the petitioner and prays for appropriate orders.

10.Per contra, Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes) who accepts notice on behalf of the respondents would submit that the challenge made to G.O.Ms.No.116, Commercial Taxes and Registration (E1) Department dated 24.08.2012 is still pending adjudication and seeks time to get instructions.

11.Mr.K.Venkataramani, learned Senior Counsel and Mr.K.krishnamurthy, learned counsel appearing for the intervenors would vehemently contend that the challenge made to G.O.Ms.No.116, Commercial Taxes and Registration (E1) Department dated 24.08.2012 has ended in dismissal and the writ appeal is also pending and the matter in issue has reached finality under the judgment dated 10.02.1999 made in Civil Appeal No.1454 of 1987, based on which the seniority has been fixed and therefore at this belated point of time it is not open to the petitioner to approach this Court and contend otherwise and prays for dismissal of the writ petition.

12.Mr.K.Venkataramani, learned Senior Counsel has also drawn the attention of this Court to the order dated 04.03.2009 made in Contempt Petition (C) No.263 of 2007 in Civil Appeal No.1454 of 1987 as well as the subsequent orders giving promotion to the post of Deputy Commissioner/ Joint Commissioner of Commercial Taxes.

13.This Court has carefully considered the rival submissions and also perused the materials placed before it.

14.It is relevant to extract the order dated 04.03.2009 made in Contempt Petition (C) No.263 of 2007 in Civil Appeal No.1454 of 1987 which reads as follows:

"In regard to the several intervention

applications (some by direct recruits and some by the promotees), learned counsel for the State Government/ respondents stated that if they make representations with reference to their grievance in regard to the provisional seniority list, the same will be considered within eight weeks from the date of receipt. If the intervention applicants are aggrieved by any order that may be passed on such consideration, it will be open to them to have recourse of such remedy as is available in law. The question of entertaining such applications in this contempt proceedings does not arise.

Contempt petitioners Nos.1 to 9 submitted that their grievances have been addressed and they do not want to pursue the contempt proceedings. So far as contempt petitioner No.10 is concerned, the learned counsel for the State Government/ respondents, submitted that he will be assigned appropriate seniority in 2002 as per his appointment (instead of in 2005). The learned counsel for the tenth petitioner stated that he will be satisfied if the same is given effect within six weeks from today. It is stated that all the contempt petitioners will be extended consequential benefit in accordance with law, within four months from today. In view of the above submission, the contempt proceedings are dropped and all the IAs are dismissed."

15.A perusal of the above said order of the Hon'ble Supreme Court of India has taken into consideration several intervention appliations filed by direct recruits as well as by promotees and upon hearing submission appearing for the State Government/ respondents, has directed the State Government to consider their grievance with regard to the provisional seniority within a stipulated time frame and also made it clear that if the intervention applicants are aggrieved by any order that may be passed on such consideration, it will be open to them to have recourse of such remedy as is available in law and ultimately, dropped the contempt petition and dismissed all the interlocutory applications.

16.It is also the submission of the learned Senior Counsel appearing for the intervenors that the constitution of High Level Committee in G.O.(D) No.132, Commercial Taxes and Registration (E1) Department, dated 31.03.2015 passed by the first respondent, is per se contemneous of the judgment of the Hon'ble Supreme Court of India dated 10.02.1999 in Civil Appeal No.1454 of 1987.

17.However, the fact remains, the said order has not been put to challenge by the intervenors. Group I Officers of the Commercial Tax Department as well as the petitioner had submitted their representation dated 10.07.2015 and 08.10.2015 respectively and the same is pending consideration before the High Level Committee. The Hon'ble Supreme Court of India in the above stated order dated 04.03.2009 made in Contempt Petition (C) No.263 of 2007 in Civil Appeal No.1454 of 1987 has made it very clear that if the intervention applicants are aggrieved by any order that may be passed on such consideration, it will be open to them to have recourse of such remedy as is available in law.

18.In the light of the above facts and circumstances, this Court is of the view that the representation dated 10.07.2015 submitted by the Group I Officers of the Commercial Tax Department to the High Level Committee constituted under G.O.(D) No.132, Commercial Taxes and Registration (E1) Department, dated 31.03.2015 have to be disposed of within a stipulated time and till then further decision effecting promotion to the post of Additional Commission of Commercial Taxes shall be deferred.

19.Though the petitioner prayed for a larger relief, this Court n the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioner either in this writ petition or in her representation dated 08.10.2015 or in the representation dated 10.07.2015 submitted by the Group I Officers of the Commercial Tax Department, directs the High Level Committee constituted under G.O.(D) No.132, Commercial Taxes and Registration (E1) Department, dated 31.03.2015 to consider the said representation on merits and in accordance with law after putting on notice, the persons concerned and pass orders within a period of six weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner as well as the persons concerned and till then, the first respondent shall defer further decision for effecting promotion to the post of Additional Commissioner of Commercial Taxes.

20.The writ petition is disposed of accordingly. No costs.

Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

1 The Secretary to Government,
Commercial Taxes and Registration Department,
Fort St.George, Chennai-09.

2 The Principal Secretary /
Commissioner of Commercial Taxes,
Ezhilagam,
Chepauk, Chennai-05.

1 CC to the Spl.Government Pleader (Taxes), SR.No. 57166

1 CC to Mr.T.Ayygaraprabu, Advocate SR.No. 57069

1 CC to Mr.K.krishnamurthy, Advocate SR.No. 57059
+1 CC to Mr.S.P.Ashokan,Advocate(sr.15700)27/10/2015

W.P.No.33226 of 2015
And
M.P.No.1 of 2015

PA (CO)
PSI (16.10.2015)