

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 26.08.2016	Pronounced on 26.09.2016
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DATED: 26.09.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Appeal No.1283 of 2014
and M.P.No.1 of 2014
and C.M.P.No.6634 of 2016

- 1.V.Malathi
Assistant Govt. Industrial Training
Institute, Paramakudi.
- 2.V.Kalaiarasi
Assistant Govt. Industrial Training
Institute (Women),
Cuddalore - 607 001.
- 3.R.Amudha
Assistant,
Directorate of Employment and
Training, Guindy, Chennai - 32. ..Appellants/Respondent

Vs

- 1.M.Jayaprakash Rao
- 2.M.Vijaykumar
- 3.R.Usha
- 4.E.Kamalakannan
- 5.S.Natarajan

- 6.The Government of Tamil Nadu,
Rep. by Principal Secretary to the Government,
Labour and Employment Department,
Secretariat, Chennai - 9.

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7. Principal Secretary to the Government,
Government of Tamil Nadu,
Personal and Administrative Reforms Department,
Secretariat, Chennai - 9.
8. The Director,
Department of Employment and Training,
Guindy, Chennai - 32.
9. The Joint Director (Craftsmen Training),
Directorate of Employment and Training,
Guindy, Chennai - 32.
10. S. Soundarajan
Assistant,
Government Industrial Training Institute, Dindigul.
11. R. Eswaran
Assistant,
Government Industrial Training Institute, Erode.
12. S. Chinnaponnu
Assistant,
Government Industrial Training Institute,
Paramakudi - 623 707.
13. M. Bhavani
Assistant,
Directorate of Employment and Training,
Guindy, Chennai - 32.
14. A. Ponnappan
Assistant,
O/O. Regional Joint Director of
Training, Coimbatore - 29.
15. P. Gomathi
Assistant,
Government Industrial Training Institute,
Coimbatore - 29.
16. E. Baby Angelal
Assistant,
Government Related Instruction Centre,
Ambattur, Chennai - 98.

17.M.Selvaraj

Assistant,

O/O. Regional Joint Director of Training,
Coimbatore - 29.

(Respondents 10 to 17 are not necessary parties,
hence given up)

18.R.Madhumathi

Assistant, O/O Regional Joint Director of Training,
Guindy, Chennai - 32.

19.C.Sandhiya Sree

Accountant, Govt. Industrial Training Institute,
Guindy (Women), Chennai - 32.

20.R.Vasuki

Assistant, Directorate of Employment and Training,
Guindy, Chennai - 32.

21.A.Palanisamy

Assistant, Directorate of Employment and Training,
Guindy, Chennai - 32. ... Respondents

(Respondents 18 to 21 impleaded as party
respondents vide order of Court dated 23.02.2016
made in CMP.No.397 of 2016)

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 25.04.2013 made in W.P.No.34078 of 2012. Writ petition filed under Article 226 of the Constitution of India, praying for the issue of a writ of certiorarified madamus, calling for the records from the third respondent relating to the proceedings dated 23.11.2015 bearing ref. No.proceedings order No.PA2/28624/2011 releasing the panel for promotion to the post of superintendent/office manager in the Department of Employment and Training Chennai contrary to the settled inter-se seniority list dated 25.05.2000 and 18.09.2006 and in violation of Article 16 of the Constitution of India and quash the same as illegal arbitrary, without jurisdiction and consequently direct the respondents 1 to 4 to restore the panel as per the settled seniority list dated 25.05.2000 and 18.09.2006, grant promotions to the petitioners to the post of Superintendent/Office Manager as per the said seniority lists together with monetary, eniority and other attendant benefits from 23.11.2012.

For Appellants : Mr.S.Ramasamy Rajarajan

For Respondents : Mr.N.G.R.Prasad (for R1 to R5)

Mrs.A.Srijayanthi (for R6 to R9)

Special Government Pleader

Mr.A.Abdul Asees (for R10 to R17)
Mr.P.Kannan Kumar (for R18 to R21)

JUDGMENT

M.V.MURALIDARAN, J.

Heard Mr.S.Ramasamy Rajarajan, learned Counsel on behalf of the Appellants and Mr.N.G.R.Prasad for Respondents No. 1 to 5, Mrs.A.Srijayanthi, Special Government Pleader for Respondents No. 6 to 9, A.Abdul Asees for Respondents for 10 to 17, P.Kannan Kumar for Respondents No. 18 to 21.

2.The present Writ Appeal has been filed challenging the order passed by the learned Single Judge of this Court in W.P.No.34078 of 2012 dated 25.04.2013 whereby which the learned Single Judge has allowed the Writ Petition filed by the Writ Petitioners who are the first to fifth Respondents in the instant Appeal. The factual matrix leading to the present controversy is that the Writ Petition No. 34078 of 2012 was filed by the Respondents No. 1 to 5 in the instant Appeal challenging the proceedings of the 8th Respondent on the instant Appeal releasing the panel for promotion to the post of Superintendent/Office Manager in the department of employment and training wherein which the names of the Appellants and other persons have been placed above the Writ Petitioners/ Respondents 1 to 5 overlooking the settled seniority list dated 25.05.2000. The case of the Writ Petitioners before the learned Single Judge is that they were appointed as Junior Assistant in the department of Employment and Training and so were the Appellants appointed in the said post. It has also been submitted that the first and second Writ Petitioners were subsequently promoted as Accountants/store keepers on a regular basis before the Respondents 5 to 15 were promoted as Assistants and Petitioners 3 to 5 were promoted as Accountant/Store Keeper before Respondents 13 to 15 were promoted as Assistants.

3.In the Affidavit that was filed in support of the Writ Petition, the hierarchy of the cadre of post was mentioned and it could be seen that the entry level post is Junior Assistant/ Typist after which they would be promoted as Assistant/Accountant/Store Keeper and then to the post of Superintendent/ Office Manager, then subsequently to the post of Administrative Officer after which they would be considered to the post of Deputy Director (Administration). It was contended

that at the instance of one Ms.R.Amutha (3rd Appellant herein), who has filed W.P.No.4271 of 2012 before this Court claiming that the date of entry to the post of Junior Assistant must be taken into consideration for promotion to the post of Superintendent/ Office Manager and not the date of promotion to post of Assistant/Accountant/Store Keeper. In the promotion panel prepared for the year 2000 and 2006, the names of the Writ Petitioners have been placed above the private Respondents. But however, the tentative panel dated 23.11.2012 which has been assailed in the Writ Petition, the names of the Private Respondents have been placed above the Writ Petitioners in gross contravention to the seniority list of the year 2000 and 2006. It has been contended that the Petitioners were shown as seniors in the inter se seniority list dated 25.05.2000 and 18.09.2006 since they were promoted as Accountant/Store Keeper well before the private Respondents and the sudden change of the settled seniority in the impugned seniority list squarely illegal and in violation of Article 14 and 16 of the Constitution of India. It has been submitted that the private Respondents in the Writ Petition have declined to accept the post of Accountant/ Store Keeper because it was very arduous and have also given letters relinquishing their claims for such promotion and seniority. Thus the sum and substance of the Writ Petition filed was that the seniority list that was already published in the year 2000 and 2006 cannot all of a sudden be altered in 2011-12 and consequently, it was prayed to restore the settled seniority of the year 2000 and 2006.

4. In the Counter Affidavit that was filed by the State in the Writ Petition, it was contended that the private Respondents have been appointed much prior to the Writ Petitioners and in fact, the private Respondents were appointed in the year 1983-84 whereas the Writ Petitioners were appointed much later in the years 1987,89,92 & 94. It has also been contended that there is no rule to upgrade the seniority of the petitioners and the seniority as in the entry level post of Junior Assistant only will be the basis and as per the said seniority, the Writ Petitioners are much junior to the Private Respondents. It has also been contended that the seniority lists prepared on 25.05.2000 and 18.09.2006 are not as per the seniority in the entry level post of junior assistant and it has wrongly been prepared which is not in consonance with the rules. It has also been indicated that the promotion panel for the post of Superintendent/ Office manager was prepared based on the seniority prepared by the Tamil Nadu Public Service Commission and the seniority maintained in the entry level post of Junior Assistant. It has also been submitted that merely because the private Respondents have expressed no willingness to join as

Accountant/ Store Keeper in faraway places and the willing Junior Assistants were promoted and posted as Accountant/ Store Keeper, by virtue of this promotion, the promoted person has got limited rights to enjoy the benefits of the said post but however, has no right to overlook the seniority of the seniors in the said post.

5.The private Respondents have also filed Petitions to vacate the Stay that was granted in the Writ Petition and they have also pretty much adopted the same stand that has been adopted by the State and they have also submitted that the Writ Petitioners do not have any right to be considered to the next promotional post overlooking who are seniors to them. The learned Single Judge while deciding the Writ Petition has framed two questions that were decided. The first was whether the post of Accountant/ Store Keeper forms a common feeder category along with the post of Assistant for promotion to the next higher post of Superintendent/ Office Manager or whether these posts form a separate cadre. The second question naturally was the logical corollary of the first question and was whether the seniority at the entry level was to be taken for consideration or the seniority in the feeder category was to be taken for consideration.

6.The learned Single Judge after extracting the relevant Rule position and considering the rival submissions has come to the conclusion that it is admitted by the Official Respondents themselves that two seniority lists were earlier released on 25.05.2000 and 18.06.2006 and these two seniority lists were the common categories of Assistants, Accountants, Store Keepers. The names of the Writ Petitioners were admittedly shown in these two seniority lists over and above the contesting Respondents and as per Rule 35 (f) of the General Rules of the Tamil Nadu State and Subordinate Service, an application ought to have been preferred within a period of three years from the date on which the order of seniority was fixed. Since the contesting Respondents have not challenged either of the lists within the time prescribed and also considering the fact that once when a person is promoted to a higher category which is specified in the Special Rules as a Selection category, the seniority in such selection category posts shall be fixed on the basis of the date of appointment to such category of posts and accordingly has negated the stand taken by the official Respondents and consequently allowed the Writ Petition.

7. Assailing the order passed by the learned Single Judge, Mr. Ramasamy Rajarajan, learned Counsel for the Appellant would submit that the learned Judge erred in allowing the Writ Petition and submitted that Appellants, being senior to the Respondents 1 to 5 in the instant Appeal, ought to have been considered seniors and the Department after taking note of this fact has only rightly placed them above the Respondents 1 to 5 in the panel for promotion to the Post of Superintendent/ Office Manager dated 23.11.2012 that was challenged by the Writ Petitioners. In support of his contention to drive home the point that fortuitous promotion made de hors of the recruitment rules and consequential seniority that was fixed based on the said promotion cannot withstand and accordingly, seniority has to be revised only in accordance with the seniority at the entry level post which was rightly done as per the promotion panel that was assailed in the Writ Petition. He would place reliance upon the judgements of the Supreme Court in G.P. Doval and ors vs. Chief Secretary, Government of UP and ors, AIR 1984 SC 1527, Kuldeep Chand vs. Union of India and Ors, SLJ 1995 (2) 396 and Dinakar Anna Patel and Anr vs. State of Maharashtra and Ors., 1999 SCC (L&S) 216.

8. By order dated 23.02.2016, the impleading Petitions filed by persons who are at similar scale were allowed by this Court in C.M.P.No.397 of 2015 whereby which the Respondents 18 to 21 have been impleaded. Though, the controversy in the present Writ Appeal revolves around the question of determination of seniority, whether at the entry level post or the promotional post, the simple answer that has to be given by is whether the finding of the learned Single Judge that the promotion panel dated 23.11.2012 is erroneous is sustainable or not. The state has also filed a Counter Affidavit in the present Writ Appeal and it has been filed by the Deputy Secretary to Government, Labour & Employment Department. This Court deems it appropriate to extract the relevant paragraphs of the Counter Affidavit herein below:

"12. With regard to the averments made in ground 11 of the memorandum of grounds of Writ Appeal, it is submitted that the Respondents/ Petitioners 1 to 5 herein were promoted as Accountant and Store Keeper respectively from Junior Assistants due to administrative exigencies to hold the higher level post. As there were huge vacancies in that posts, the persons who were willing to act in the posts were called for and they were given promotion. But, there is no rule

to upgrade their seniority. They will take the seniority as in the entry level post of Junior Assistant only. As per the seniority in the post of Junior Assistant, these petitioners are juniors to all the Appellants/ Respondents herein.

13. With regard to the averments made in ground 13 of the memorandum of grounds of Writ Appeal, it is submitted that the seniority list published by the Department in the year 2000 and 2006 were not in line with the seniority fixed by Tamil Nadu Public Service Commission in the post of Junior Assistant, the entry level post. And the present impugned order of promotion panel was released as per the revised seniority, which is as per the existing rule.

14. It is further submitted that the seniority list published in the year 2000 and 2006 are not as per Tamil Nadu Public Service Commission seniority or not as per the seniority of the entry level post. This seniority had been fixed as per the date of joining in the next higher level post."

9.A cursory perusal of the above mentioned stand of the Government would clearly indicate that the seniority list that was published in 2000 and 2006 have placed the 1st to 5th Respondents higher in seniority than that of the Appellants and other persons. If at all the said seniority lists of the year 2000 and 2006 were erroneous and the Appellants were aware of that, it is not clear as to why they chose to sleep over it for a very long time and it is also unclear as to why the government, without assigning any reasons, has taken a U Turn from the previous stand and stated that the TNPSC seniority is only rightly followed in the 2012 promotion panel. It is trite proposition of law that settled seniority cannot be unsettled after a long delay. This is the letter and spirit of Rule 35 (f) which clearly stipulated a 3 year period for revision of seniority. Admittedly, neither in 2000 nor in 2006 or within 3 years thereafter, have the Appellants or similarly situated persons sought for revision of seniority. The learned Single Judge has also considered another fact that the inter se seniority in the selection post ought to be based on the date of such selection and not on the basis of the seniority at the entry level post.

10.It is also pertinent to point out that the 1st to 5th Respondents have taken the arduous task of working in the promotional post when the Appellants and other similarly situated persons have chosen not to work in the said post. Since the seniority is fixed based on the date of entry into the selection post, the subsequent change of seniority based on entry level post's seniority does not have any valid reason or basis.

11.Disturbing the settled seniority after a delay of almost 12 years is quite unnecessary and unwarranted and in fact will have a serious impact on the rights of the persons whose seniority has been followed for a very long time based on the previous seniority lists. This Court finds that the reasoning assigned by the learned Single Judge for allowing the claim of the 1st to 5th Respondents in the instant Appeal is well reasoned and justified. We do not find any infirmity in the line of reasoning adopted by the learned Single Judge and hence, the prayer of the Appellant cannot be granted. For the reasons stated, the Writ Appeal is dismissed as devoid of merits. Connected M.P.s are closed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

vs

To

1. Principal Secretary to Government,
Labour and Employment Department,
Secretariat, Chennai - 9.
- 2.The Principal Secretary to Government,
Government of Tamil Nadu,
Personal and Administrative Reforms Department,
Secretariat, Chennai - 9.

3.The Director,
Department of Employment and Training,
Guindy, Chennai - 32.

4.The Joint Director,
(Craftsmen Training) Directorate of
Employment and Training,
Guindy, Chennai - 32.

+1 CC M/s. Row & Reddy, Advocate Sr.No.54579
+1 CC Mr. S. Ramaswamy Rajarajan, Advocate Sr.No.55108
+1 CC Mr. P. Kannan Kumar, Advocate Sr.No.54990
+1 CC Government Pleader, Sr.No.55061

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CTK (CO)
MD : 22/10/2016



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