

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.42269 of 2016

- 1.P.Ranganathan
- 2.A.Sivaprakasam
- 3.R.Krishnamoorthy
- 4.K.R.Pandeeswari
- 5.P.Kavitha
- 6.M.Mathimaran
- 7.S.Gnanamani
- 8.P.Yogaraja
- 9.K.Mookaiah
- 10.K.Shanmugam
- 11.K.Chandrasekar
- 12.A.N.Logesh
- 13.S.Dhanarasu
- 14.M.Sridhar

... Petitioners

Vs.

- 1.The Secretary to Government,
Housing and Urban Development Department,
State of Tamil Nadu,
Fort St. George,
Chennai-600 009.

- 2.The Secretary to Government,
P & AR Department,
State of Tamil Nadu,
Fort St. George,
Chennai-600 009.

- 3.The Tamil Nadu Public Service Commission,
Represented by its Secretary,
Frazer Bridge Road,
VOC Nagar, Park Town,
Chennai-600 003.

- 4.The Director of Town and Country Planning,
No.807, Anna Salai,
Chennai-600 002.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the 1st respondent to forthwith consider the representation of the petitioners dated 21.09.2016 and 23.09.2016 in the light of the law laid down by the Hon'ble Supreme Court, reported in 2006 (6) SCC 558, in a time bound manner.

For Petitioners : Mr.S.Ramesh
For respondents : Mr.C.Selvam, GA (For R1, 2 & 4)
Mr.C.N.G.Niraimathi (For R3)

ORDER

This writ petition has been filed by the petitioner praying for issuance of a Writ of Mandamus, directing the 1st respondent to forthwith consider the representations of the petitioners dated 21.09.2016 and 23.09.2016 in the light of the law laid down by the Hon'ble Supreme Court, in the decision reported in 2006 (6) SCC 558, in a time bound manner.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioners as follows_

2-1.The petitioners herein were directly recruited by the TNPSC as Assistant Directors of Town and Country Planning for the vacancy arisen for the year 2006-2007 and they were appointed in the Town and Country Planning Department, Government of Tamil Nadu during the span of years 2009-2012. On 09.02.2008, the TNPSC had published advertisement for recruitment of 15 Assistant Directors to fill up the vacancies arisen for the year 2006-2007. Simultaneously, in order to fill up the 33 vacancies of posts of Assistant Directors of Town and Country Planning arisen and earmarked for promotion (recruitment by transfer) for the same year 2006-2007, as a stop gap arrangement, the 1st respondent by G.O.Ms.No.39, Housing and Urban Development, dated 22.02.2008, relaxed Rules 3(a) and 6(b) of Adhoc Rules for the post of Assistant Directors in the Town and Country Planning Department and promoted 33 ineligible individuals holding the feeder posts as Assistant Directors under Rule 10(a)(i) of the General Rules for the Tamil Nadu State and Subordinate Services. The seniority for the said 33 persons was determined inter se among themselves in ROC.No.21945/2012/K1, dated 17.10.2013 and they are still acting temporarily as Assistant Directors.

2-2.Insofar as the petitioners herein who were directly recruited by TNPSC were concerned, they were recruited for the post for the year 2006-2007. Under general Rule 23(a)(i), order was issued for 14 Assistant Directors to be regularized in the

category with effect from the respective dates of their joining under G.O.(3D).No.49, dated 26.10.2015. Thereafter, the probation period was also to be commenced from the said date. By G.O.(2D).No.55, Housing and Urban Development Department, dated 29.02.2016, it was declared that 13 Assistant Directors have completed probation on the dates mentioned as against their names. Having been appointed through direct recruitment, the petitioners' seniority is deemed to commence from the date of their appointment. The appointment to the post of Assistant Director shall be by way of direct recruitment or recruitment by transfer from among the holders of post of Architectural-cum-Planning Assistant/Supervisor in the Tamil Nadu Town Planning Subordinate Services or for special reasons by recruitment / transfer from another service.

2-3.The present issue relates to further promotion to the post of Deputy Director of Town and Country Planning. The same shall be made by way of direct recruitment or by promotion from among the holders of post of Junior Town Planning Expert, redesignated as Assistant Director of Town Planning (Special) or from among the holders of post of Junior Town Planner, re-designated as Assistant Director of Town Planning. The persons must have served as Assistant Directors for a total period of not less than two years. The petitioners herein have been directly recruited by TNPSC and they have completed more than two years and majority of them have served more than seven years in their present post of Assistant Director. Now, 33 persons who were appointed by promotion/recruitment by transfer under Rule 10(a)(i) of Tamil Nadu State and Subordinate Service Rules are still holding the post temporarily and the services of the 33 persons have not been regularized even after eight years of their appointment. The appointment of those 33 persons were made without preparing panel for the year 2006-2007, without obtaining the concurrence / approval from the TNPSC, without the concurrence of the Personnel and Administrative Reforms Secretariat and without following the due procedures. It has come to the notice of the petitioners that attempts are being made to regularize them in the post of Assistant Director with retrospective effect from the date on which they were appointed ie., on 22.02.2008.

2-4.According to the petitioners, several persons who were appointed on Adhoc basis temporarily do not possess the requisite qualifications to be appointed as Assistant Directors as per the service Rules. Further, even as on date, they are holding the post temporarily and by relaxing the basis service Rules contained under Rules 3(a) and 6(b) of the Adhoc Rules, they were appointed as a stop gap arrangement to fill up the vacancies earmarked for recruitment by transfer (promotion) for

the year 2006-2007. Several litigations were pending, whereby there were restraint orders for finalizing the panel inter se among the feeder category for being promoted as Assistant Directors. In the light of the said logjam, Government was constrained to make such temporary adhoc appointments under Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules, by relaxing the service requirements. Therefore, the same would not confer any absolute right over the seniority on such adhoc temporary appointees.

2-5. It is also submitted by the petitioners that the Hon'ble Supreme Court in the decision reported in 2006(6) SCC 558, has held that adhoc appointees cannot have their services regularized from the date of appointment and for the purpose of seniority, the crucial date would be the date on which their services were regularized in the appointed post. According to the petitioners, Rule 10(a)(i) appointees cannot seek to fix their seniority inter se among the Assistant Directors from the date of their initial appointment ie., 22.02.2008. Even as on date, their services have not been regularized in the post of Assistant Director. Therefore, firstly, their services will have to be regularized in the post of Assistant Director and only from that date their seniority would be counted for the purpose of further promotion to the post of Deputy Director. Moreover, as per Adhoc Rules, they will have to put in at least two years of service in the post of Assistant Director for being considered in the panel for promotion.

2-6. As per the service Rules, every year panel for the post of Deputy Director will have to be drawn with the crucial date being 1st September. As on date, the respondents have not drawn up any panel for promotion to the post of Deputy Director. More than 14 posts of Deputy Directors are lying vacant from 2012 and 7 posts of Joint Directors are vacant from 2011 thereby paralyzing the administration. Therefore, the respondents have to draw up a panel of eligible Assistant Directors for being promoted to the post of Deputy Directors of Town and Country Planning. The petitioners being direct recruits through TNPSC, their seniority would date back to the date of their appointment in 2009 for the panel year of 2006-2007. Therefore, the petitioners are eligible and within the zone of consideration for being promoted as Deputy Directors. In this regard, the petitioners gave detailed representations through proper channel on 31.03.2016, 20.04.2016 and 23.09.2016 to the respondents. But, the petitioners' representations were not considered by the respondents. Hence, they have come forward with the present writ petition before this Court.

3.Heard both sides and perused the materials available on record.

4.Considering the limited scope of the prayer sought for in the writ petition, without expressing any opinion on the claim of the petitioners, this Court directs the 1st respondent to consider the representations dated 21.09.2016 & 23.09.2016 given by the petitioners and to pass appropriate orders, on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.

With the above direction, the writ petition is disposed of.
No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssv

To

1.The Secretary to Government,
Housing and Urban Development Department,
State of Tamil Nadu,
Fort St. George,
Chennai-600 009.

2.The Secretary to Government,
P & AR Department, State of Tamil Nadu,
Fort St. George, Chennai-600 009.

3.The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
VOC Nagar, Park Town, Chennai-600 003.

4.The Director of Town and Country Planning,
No.807, Anna Salai,
Chennai-600 002.

+lcc to Mr.S. Ramesh, Advocate, S.R.No.70778

+lcc to Government pleader S.R.No.71267

nri(CO)

rs(05/01/2017)

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