



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.11.2016

WEB COPY

CORAM:

THE HONOURABLE DR.JUSTICE S.VIMALA

W.P (MD) No.21662 of 2016

and

W.M.P (MD) No.15477 of 2016

- 1.S.Siva Ramachandran
- 2.G.Sam Robust
- 3.S.Karthick
- 4.J.Raghunath
- 5.M.Madhavan
- 6.T.Ponnambalam
- 7.K.Gurunathan

: Petitioners

Vs.

1. The Secretary,
Tamil Nadu Public Service Commission,
Chennai.
2. The Secretary to Government,
Finance (Local Fund) Department,
Fort St. George, Chennai - 9.
3. The Secretary to Government,
Personnel and Administrative Reforms Department,
Fort St. George, Chennai - 9.
4. The Director of Local Fund Audit,
Local Fund Audit Department,
Kuralagam IV Floor,
Chennai - 6.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to refix the seniority in terms of marks obtained in respect of the appointees selected under Notification No.19(A), dated 13.06.2012 to the post of Assistant Inspector in Local Fund Audit Department, based on the petitioners' representation dated 26.08.2016, vide Dairy in Na.Ka.No. 938/A3/2016.

For Petitioners : Mr.C.D.Johnson

For Respondent No.1 : Mr.K.K.Senthil

For Respondents 2 to 4: Mr.V.R.Shanmuganathan,
Special Government Pleader.



O R D E R

This writ petition has been filed for issuance of a Writ of Mandamus, directing the respondents to re-fix the seniority in terms of marks obtained in respect of the appointees selected under Notification No.19(A), dated 13.06.2012 to the post of Assistant Inspector in Local Fund Audit Department, based on the petitioners' representation dated 26.8.2016.

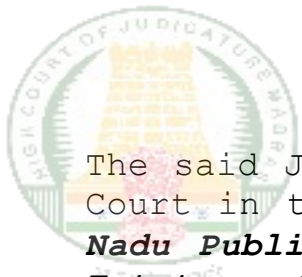
2. Heard the learned counsel appearing for the petitioners, the learned counsel, who took notice for the first respondent and the learned Special Government Pleader, who took notice for the respondents 2 to 4. By consent, the writ petition itself is taken up for final disposal.

3.0. The facts leading to the filing of this writ petition are as follows:

The petitioners are working as Assistant Inspectors in the Local Fund Audit Department in Sivaganga and Theni, which is coming under the control of the fourth respondent. The first respondent conducted an examination (CSSE-I) to the post of Assistant Inspectors in Local Fund Audit Department for the years 2011-2012 and 2012-2013. The petitioners passed in the examination and got selected and appointed in Local Fund Audit Department. Totally there were 365 candidates were selected and appointed and the petitioners are one among them. Later on, it is alleged that all the 365 were not originally considered for promotion and now the numbers have been reduced into 302. The appointments were made following the Communal Roaster System.

3.1. The contention of the petitioners is that the Communal Roaster System will be applicable only in the case of appointment and not in the case of promotion. In support of the said contention, the Judgment of the Hon'ble Supreme Court in **Bimlesh Tanwar v. State of Haryana and Others reported in (2003) 5 Supreme Court Cases 604**, is relied on, under which, it has been held that seniority cannot be fixed in terms of roaster points. The relevant observation is made in paragraph No.45 of the said Judgment and the same is extracted here-under:

"40. An affirmative action in term of Article 16(4) of the Constitution is meant for providing a representation of a class of citizenry who are socially or economically backward. Article 16 of the Constitution of India is applicable in the case of an appointment. It does not speak of fixation of seniority. Seniority is, thus, not to be fixed in terms of the roaster points. If that is done, the rule of affirmative action would be extended which would strictly not be in consonance of the constitutional schemes. We are of the opinion that the



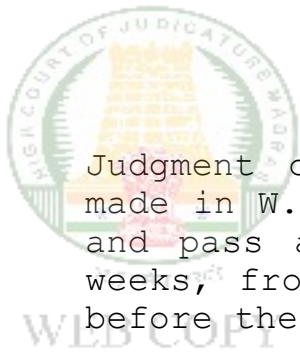
The said Judgment has been followed by the Division Bench of this Court in the Judgment in **N.Santosh Kumar and Others v. The Tamil Nadu Public Service Commission rep. by its Secretary, Government Estate, Chennai - 00 002 and Others**, dated 31.03.2015 (W.A.Nos.2705, 2730, 2731 of 2012 and 2394 and 1033 of 2013) and the relevant observations are made in paragraph No.84 and the same is extracted here-under:

"84.It will be clear from the above discussion (i) that the decision of the respondents to treat the 100 point roster itself (prevailing at that time) as the seniority list, on the basis of the decision of the Supreme court in P.S.Ghalaut, was not correct in view of the peculiarity of the roster in the State (ii) that in any case, the decision rendered in P.S.Ghalaut was declared as not a good law in Bimlesh Tanwar in the year 2003, without specifically invoking the doctrine of prospective overruling (iii) that at any rate, the first ever seniority list was released by the Engineer-in-Chief of the Highways department only on 29.4.2004, which was subsequent to the decision in Bimlesh Tanwar (iv) that all other proceedings issued prior to 29.4.2004, on which reliance is placed by the respondents to attribute knowledge of the seniority position to the appellants herein, did not speak about fixation of seniority specifically and hence the first seniority list should be taken to have been issued only on 29.4.2004 and (v) that therefore, the seniority of the appellants vis-a-vis the other selectees under the notification dated 10.7.1999 should be determined only with reference to the rank assigned to them by the Service Commission in terms of rule 35(a) of the General Rules for Tamilnadu State and Subordinate Services and not as per the roster. Therefore, the appellants are entitled to succeed."

Reiterating this contention, the petitioners sent representations dated 26.08.2016 and 27.10.2016 to the respondents. As the representations have not been considered, this writ petition has been filed.

4.The learned Special Government Pleader appearing for the respondents 2 to 4 would submit that it is agreeable for the second respondent to consider the representations of the petitioners and to pass appropriate orders.

5.Recording the submission made by the learned Special Government Pleader for the respondents 2 to 4, the second respondent is directed to consider the representations of the petitioners dated 26.08.2016 and 27.10.2016 in the light of the judgment of the Hon'ble Supreme Court in **Bimlesh Tanwar v. State of Haryana and Others(2003)5 Supreme Court Cases 604** and the



Judgment of the Division Bench of this Court dated 31.03.2015, made in W.A.Nos.2705, 2730, 2731 of 2012 and 2394 and 1033 of 2013 and pass appropriate orders, preferably, within a period of six weeks, from the date of receipt of a copy of this order and also before the finalisation of the list.

6.With the above directions, this writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/
Assistant Registrar(Crl.Side)

/TRUE COPY/

Sub Assistant Registrar

To

1. The Secretary,
Tamil Nadu Public Service Commission, Chennai.
 - 2.The Secretary to Government, Finance (Local Fund) Department,
Fort St. George, Chennai - 9.
 - 3.The Secretary to Government,
Personnel and Administrative Reforms Department,
Fort St. George, Chennai - 9.
 - 4.The Director of Local Fund Audit,
Local Fund Audit Department, Kuralagam IV Floor, Chennai - 6.
- +1cc to M/s.C.D.Johnson, Advocate, in SR No.68352.
- +1cc to M/s.K.K.Senthil, Advocate, in SR No.68478.
- +1cc to Special Government Pleader in SR.No.68319.

ORDER MADE IN
W.P(MD)No.21662 of 2016
and W.M.P(MD)No.15477 of 2016
11.11.2016

smn
msm/sk-skn/sar1/17.11.16/p4/8c(IT)