IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.08.2017

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The Hon'ble Mr.Justice S.M.SUBRAMANIAM

Writ Petition No.13459 of 2017
and
W.M.P.Nos.14513 & 23773 of 2017

1. C.Sundara Moorthy

2. J.Kavitha ...Petitioners

Vs.

1. The Government of Tamilnadu
Rep. by its Additional Chief Secretary
Commercial Taxes & Registration (A2) Department
Fort St. George, Secretariat
Chennai - 600 009.

2. The Additional Chief Secretary and
Commissioner of Commercial Taxes
Government of Tamil Nadu
Chepauk, Chennai - 600 005.

3. The Secretary to Government of Tamil Nadu
Department of Personal & Administrative Reforms
Fort St. George, Secretariat
Chennai - 600 009.

4. M.Rajendran

5. S.Kethareswara Prasad
Assistant Commissioner (CT) (ENF)
Vellore, Commercial Taxes Building
Government Buildings
No.4, Bharathiyar Salai
Fort Round Road
Vellore - 632 001. ...Respondents
(R4 impleaded on 26.07.2017 in W.M.P.No.19051/2017 in W.P.No.13459/2017)
(R5 impleaded on 23.08.2017 in W.M.P.No.23275/2017 in W.P.No.13459/2017)

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, directing the respondents herein to forthwith prepare a panel based on the permanent Seniority List in the post of Assistant Commissioners (Commercial Taxes) and make promotions as Deputy Commissioners (Commercial Taxes) only as per the Seniority List thus drawn.

For Petitioners : Mr.A.R.L.Sundaresan
Senior Counsel

For Respondents : Mr.S.Kanmani Annamalai
Additional Government Pleader (Taxes)
for R1 to R3

Mr.V.Vijay Shankar for R4

Mr.S.K.Raghunathan for R5

ORDER

The relief sought for in this writ petition is for a direction to direct the respondents to forthwith prepare a panel based on the permanent Seniority List in the post of Assistant Commissioner (Commercial Taxes) and make promotions to the post of Deputy Commissioner (Commercial Taxes) only as per the Seniority List thus drawn and pass further orders.

2. The learned Senior counsel appearing on behalf of the writ petitioners submitted that the Hon'ble Division Bench of this Court passed an elaborate and considered orders in W.A.No.2527 of 2012 etc. batch, dated 28.07.2016 and W.A.No.2280 of 2011 dated 31.08.2016. Paragraph 20 of the Order made in W.A.No.2280 of 2011 dated 31.08.2016 is extracted hereunder:-

> *"20.It is apparent that the promotion as well as upgradation are only for the permanent posts and hence G.O.Ms.No.1, Commercial Taxes and Registration (A2) Department, dated 04.01.2010,G.O.Ms.No.17, Commercial Taxes and Registration (A2) Department,dated 10.02.2014 and G.O.Ms.No.47, Commercial*

Taxes and Registration (A2) Department, dated 31.03.2015, have to be considered. Further, the seniority list placed before the Hon'ble Supreme Court, has been agreed to by all the parties concerned, and hence there cannot be any deviation with regard to the promotions subsequently claimed by them. With regard to the increase in cadre strength on 04.01.2010, since the list in this respect has been produced before the Hon'ble Supreme Court, the same cannot be tested at this juncture, before this Court. When the Hon'ble Supreme Court had considered the matter in detail and passed the order dated 10.02.1999 in Civil Appeal No.1454 of 1987, confirming the judgment of this Court in W.P.No.12786 of 1985 dated 19.06.1986, based on the list produced and thereafter, passed the order dated 20.10.2008 in Contempt Petition (C) No.263 of 2007 in Civil Appeal 1454 of 1987, directing the State to publish seniority list in terms of the directions given, this Court is of the considered view that the matter has reached finality and any endeavour to re-agitate the matter on a new ground, cannot be countenanced. The attempt of the appellant is nothing but re-appreciating or re-arguing the *case which had already been decided by the Hon'ble Supreme Court and hence such an act to re-agitate is only to be rejected. If the appellant has any grievance with regard to the judgment passed by the Hon'ble Supreme Court, he has to approach the Hon'ble Supreme Court seeking necessary clarifications,as the seniority list placed before the Hon'ble Supreme Court, has been agreed to by all the parties concerned. Therefore, it is for the appellant to approach the Hon'ble Supreme Court, for clarification of the judgment, if so advised."*

3. Relying on the Judgment of the Hon'ble Division Bench cited supra, the learned Senior counsel states that the respondent Department is attempting to grant promotion contrary to the directions given by the Hon'ble Division Bench of this Court.

4. However, this Court is of the view that such an apprehension is not based on any materials on record, in this writ petition. A mere apprehension cannot constitute a ground to consider the relief as sought for in this writ petition. It is needless to state that the respondent department

have to follow the directions earlier given by the Hon'ble Supreme Court as well as by this Court in relation to the subject of seniority and promotion.

5. The learned Additional Government Pleader (Taxes), appearing on behalf of the respondents 1 to 3 has stated that the department will follow and implement the Judgments passed by the Hon'ble Supreme Court as well as the Hon'ble Division Bench of this Court, in the matter of fixation of seniority and granting of promotions. The apprehension raised by the writ petitioners, in this regard is baseless and not substantiated with any records. Thus, the present writ petition filed is only on apprehension and the contentions raised in this writ petition are premature and the same are to be rejected by this Court. At the outset this Court is of the firm opinion that promotion can never be claimed as a matter of right by the employees. But consideration for promotion is a fundamental right of an employee. In the case on hand, no such exercise has been concluded by drawing panel and granting promotion to any one of the juniors to the writ petitioners. Even in such a case, the writ petitioners have not challenged the orders if any passed by the respondents 1 to 3. In the absence of any such challenge of orders of promotion or panel, this Court will not be in a

position to entertain the present writ petition, merely based on certain assumptions and apprehensions. Respondents 1 to 3 have to follow the rules regarding the fixation of seniority, preparation of panel and grant of promotion. Such rules are to be followed scrupulously by the competent authorities without violating the consequential procedures issued by the Government in the matters of preparation of panel and granting of promotions. In addition to these rules, the peculiar situation prevailing in the Commercial Tax Department was considered both by the Hon'ble Supreme Court as well as by the Hon'ble High Court. Thus, it is needless to state that the respondents 1 to 3 are bound to follow the service rules and the Judgments and accordingly consider the cases of the respective employees eligible for promotion to all higher posts in the Department of Commercial Taxes.

6. The prayer sought for in this writ petition is for a direction to forthwith prepare a panel and based on the seniority list and by following other rules to grant promotion. Since the relief sought for in this writ petition is general in nature, this Court need not issue any such direction. In view of the said fact, respondents 1 to 3 have to follow the rules and

implement Judgments of the Hon'ble Supremement Court and High Court without any further direction from this Court. In other words, the respondents 1 to 3 are bound to prepare the panel and grant promotion in accordance with the service rules in force and by following the directions issued by the Courts.

7. However, the writ petitioners herein cannot seek a direction for preparation of panel and grant of promotion, which is prerogative to the Government and no employee can claim promotion as a matter of legal right. Thus, the prayer sought for by the petitioners to direct the respondents to prepare the panel cannot be granted, and there is no right for the employees to seek such directions. The rules provide eligibility and qualifications for grant of promotions to higher posts. It is for the competent authorities to follow the rules in force and thereafter complete the exercise of preparation of panel, preparation of seniority and grant promotion. Thus, this Court is of the firm view that the respondents 1 to 3 are bound to follow the service rules in force and the Judgments delivered in this regard, both by the Hon'ble Supreme Court as well as by the High Court.

8. Accordingly, the writ petition stands dismissed. However, no order as to costs. Consequently, connected miscellaneous petitions are closed.

jer **23.08.2017**

Index : yes/no

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