

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2017

CORAM

THE HONOURABLE MR. JUSTICE T. RAJA

W.P.No.23880 of 2017

D.Kannan

.. Petitioner

Vs.

1. The State of Tamil Nadu
rep. by its Secretary to Government,
Department of Home,
Fort St. George,
Chennai-9.
2. The Director General of Police,
Post Box No.601,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-4.
3. The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
V.O.C. Nagar, Park Town,
Chennai-3.
4. V.Baskaran
5. S.Jeyakumar
6. S.N.Umaiya

.. Respondents

Writ Petition filed under Article 226 constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings of the 3rd respondent dated 23.05.2017 under Memorandum No.2538/PSD-F1/1999 dated 23.05.2017, quash the same and consequently direct the respondents 1 to 3 to refix the petitioner's seniority according to the marks secured by the candidates in the qualifying examination for the selection and appointment as Deputy Superintendent of Police Category I as per G.O.Ms.No.98, Home (Pol.2) Department, dated 29.01.2003.

For Petitioner : Mr.V.Srikanth
For Respondents : Mr.R.A.S.Senthilvel,
Additional Government Pleader for
R1 and R2
Ms.C.N.G.Niraimathi,
Standing Counsel for TNPSC R3
Mr.K.Rajasekaran for R4

O R D E R

The Writ Petition has been filed seeking to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings of the 3rd respondent dated 23.05.2017 under Memorandum No.2538/PSD-F1/999 dated 23.05.2017, quash the same and consequently, direct the respondents 1 to 3 to re-fix the petitioner's seniority according to the marks secured by the candidates in the qualifying examination for the selection and appointment as Deputy Superintendent of Police Category I as per G.O.Ms.No.98, Home (Pol.2) Department, dated 29.01.2003.

2. In spite of service completed on all the respondents, no one appears for the respondents 5 and 6. The 3rd respondent Tamil Nadu Public Service Commission has filed its Counter affidavit along with typed set of papers enclosing two orders, one passed by this Court in W.P.No.11294/2017 dated 22.06.2017 and another passed by a Division Bench of this Court in W.A.No.871/2017 dated 20.09.2017.

3. Since the issue raised in the present Writ Petition is no longer res integra, this Court has taken up the matter for final disposal.

4. Learned Counsel for the petitioner would submit that the Tamil Nadu Public Service Commission, the 3rd respondent herein has selected the petitioner for the post of Deputy Superintendent of Police by applying 100 Point Roster System in its 35th turn and second rotation and fitted the petitioner in the General turn Category and placed him above a Backward Class Candidate, namely, Mr.S.Jaishankar and below the Most Backward Class candidate, namely, Mr.T.Senthilkumar. Accordingly, the Tamil Nadu Public Service Commission published the order of seniority for appointment on 14.06.2002. Thereafter, he has joined duty as per the orders issued by the Director General of Police, the 2nd respondent herein.

5. Continuing his argument, the learned Counsel for the petitioner would submit that when the petitioner belongs to Backward Community and secured higher marks of 1254.28, the 3rd respondent, TNPSC, has chosen to place the petitioner below the

Backward Community Candidate with lower marks, the 4th respondent Mr.V.Baskaran, who belongs to Backward Community and secured less marks than the petitioner as 1250.38 and shown in 4th rank in the Seniority List as per the 19th Turn Backward Community Category in the 2nd Rotation. Similarly, the 5th respondent S.Jeyakumar, who also belongs to Backward Community, having secured less than the petitioner as 1248.64 has been shown in 8th rank in the Seniority List as per the 23rd Turn of Backward Community Category in the 2nd Rotation and this apart, the 6th respondent, namely, S.N.Umayal, who also belongs to Backward Community, secured 1193.65 marks has been shown in 13th rank in the Seniority List as per the 28th Turn of Backward Community Women Category in the 2nd Rotation. Aggrieved by the ranking allotted by the 3rd respondent, namely, the Tamil Nadu Public Service Commission, the petitioner has given his representations dated 23.05.2008, 18.09.2010 and 04.04.2017 to the respondents 1 to 3 to rearrange the seniority list on the basis of the ratio laid down by the Apex Court in the case in Bimlesh Tanwar vs. State of Haryana reported in AIR 2003 SC 351. But the 3rd respondent has failed to consider the same and no reply was also sent to the petitioner's representations. Hence the present Writ Petition.

6. In this context, it is relevant to note that a Division Bench of this Court in the case in N.Santosh Kumar and Others vs. Tamil Nadu Public Service Commission rep. by its Secretary, Government, Chennai-2 and others reported in (2015) 4 MLJ 281 held that only on the basis of the marks secured by the candidates, seniority list should be prepared, without reference to the roster point and the Special Leave Petition which was filed by the TNPSC against the said order met with an order of dismissal and Review Petition has also been filed which is still pending.

7. In the meanwhile, the Government of Tamil Nadu has passed a new Act, namely, the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, with retrospective effect from 1.1.1955. As per sub-section (1) of Section 40, which is given as under,

"40(1) The seniority of a person in a service, class, category or grade shall, unless he has been reduced to a lower rank as a punishment, be determined in the order of his placement in the list prepared by the recruitment agency or appointing authority, as the case may be, in accordance with the rule of reservation and the order of rotation specified in Schedule-V, where it applies. The date of commencement of his probation shall be the date on which he joins duty irrespective of his seniority.",

the seniority of a person in a service shall be determined in the order of his/her placement in the list prepared by the appointment authority or recruitment agency, as the case may be, in accordance with the rule of reservation and the order of rotation specified in Schedule-V, where it applies.

8. Besides that, in the present case, in the Counter Affidavit filed by the 3rd respondent Tamil Nadu Public Service Commission, it has been stated that in view of the decision of the Hon'ble Supreme Court of India in the case of Bimlesh Tanwar Vs. State of Haryana and in accordance with Section 40(1) of Government Servants (Conditions of Service) Act, 2016 (Act 14/2016) issued in the month of September, 2016, the seniority of the selected candidates for the posts included in Group-I Services (1998-1999), recruitment has been revised by the Commission and recommended to Government. It has also been specifically stated in the said Counter Affidavit that the petitioner herein is also eligible for re-fixing his seniority according to his marks in the recruitment made for the year 1999-2000.

9. Under such circumstances, the 3rd respondent TNPSC is bound to consider the representations of the petitioner dated 23.05.2008, 18.09.2010 and 04.04.2017 respectively in the light of Section 40(1) of Government Servants (Conditions of Service) Act (Act 14/2016) and also in the light of the orders passed by this Court in W.P.Nos.14275/2017 to 14283/2015 dated 20.11.2017.

10. With the above direction, the Writ Petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

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To

1. The Secretary to Government,
State of Tamil Nadu,
Department of Home,
Fort St. George,
Chennai-9.

WEB COPY

2. The Director General of Police,
Post Box No.601,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-4.
3. The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
V.O.C. Nagar, Park Town,
Chennai-3.

+1cc to Mr.V.Srikanth, Advocate, S.R.No.88988
+1cc to the Government Pleader, S.R.No.89705

W.P.No.23880 of 2017

CS/27/12/17



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