

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.A.No.1041 of 2012

V.Manivannan

.. Appellant/Petitioner

versus

1. The Secretary,
Tamilnadu Public Service Commission,
Chennai - 2.

2. The Secretary to Government,
Public & Administration Reforms Department,
Fort St. George, Chennai - 9 .. Respondents/Respondents

Writ Appeal filed against the order dated 04.01.2012 made in
W.P.No.12446 of 2007 (O.A.No.465 of 2002)

WP.No.12446/2007: This Petition come to be numeral by transfer
of OA.No.465/2002 from the file of the Tamil Nadu Administrative
Tribunal, for directing the respondents by revise the
petitioners placement in the Public Works Dept. instead of
Highways and Rural Works Dept based on his marks obtained in the
selection and grant him such other further relief.

For Appellant : Mr.L.Chandrakumar

For Respondents: Mrs.C.N.G.Niraimathi (for R1)
Standing counsel for TNPSC
Mr.T.N.Rajagopalan (for R2)
Special Government Pleader.

JUDGMENT

(Order of the Court was made by S.MANIKUMAR, J.)

Appellant has filed O.A.No.465 of 2002 before the Tamilnadu
Administrative Tribunal for a direction to the respondents to
revise his placement in Public Works Department instead of
Highways and Rural Works Department, based on the marks obtained
in the selection. On transfer, O.A.No.465 of 2002 has been
numbered as W.P.No.12446 of 2007. After considering the rival
submissions and while dismissing the writ petition, at paragraph
Nos.17 and 18, has held as follows:

"17 In this process, the petitioner who secured 569.38 marks in the written examination and in the oral test taken together and stood at 114 the place in the ranking list had to be considered for appointment in the General Turn (general) vacancies and upon such consideration, he did not reach his turn for selection for appointment in the Public Works Department with reference to his first option. He, however, reached in the Highways and Rural works department with reference to his second option. As the petitioner had reached his turn for selection for appointment in the general turn (general) vacancy by virtue of his ranking position in the ranking list which was prepared on the basis of the marks obtained by him in the written examination and oral test taken together and was selected in a general turn (general) vacancy in the Highways and Rural Works department, the question of considering him in the vacancies reserved for backward class category, the community category to which he belongs did not arise. Therefore, the writ petition deserves dismissal.

18 Though the stand of the first respondent cannot be accepted as the petitioner could not be put to disadvantage merely because he secured higher marks than backward class candidates, but at the same time, no relief can be granted to the petitioner at this stage as it will result in changing the settled position for number of years."

2. Though the said order is assailed on various grounds, we are not inclined to interfere with the same for the reason that in N.Santhosh Kumar Vs. The Tamilnadu Public Service Commission, rep. by its Secretary, Government, Estate, Chennai - 600 002 and two others, reported in 2015 (4) MLJ 281, a Hon'ble Division Bench of this Court held that seniority has to be based on merit. Relevant paragraphs are extracted hereunder.

"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.

85. In view of the above, the writ appeals are allowed, the order of the learned judge is set aside and the writ petitions filed by the appellants are allowed. There will be a direction to the official respondents to take the rank assigned by the Service Commission to the selectees, as the basis for fixation of seniority and issue appropriate orders within a period of 4 weeks from the date of receipt of a copy of this order. There will be no order as to costs."

3. On this day, when the matter came up for hearing, Ms.C.N.G.Niraimathi, learned standing counsel for TNPSC submitted that pursuant to the orders of the Hon'ble Division Bench and Hon'ble Supreme Court, seniority has been revised. Based on the Memorandum No.13748/Admn.II/2014, she further submitted that there is a revision of seniority of the appellant, and that the appellant's seniority has been revised from 255 to 123.

4. In view of the subsequent development, order of the writ Court is set aside and the writ appeal is allowed. No costs.

-s/d-
Assistant Registrar

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Sub-Assistant Registrar

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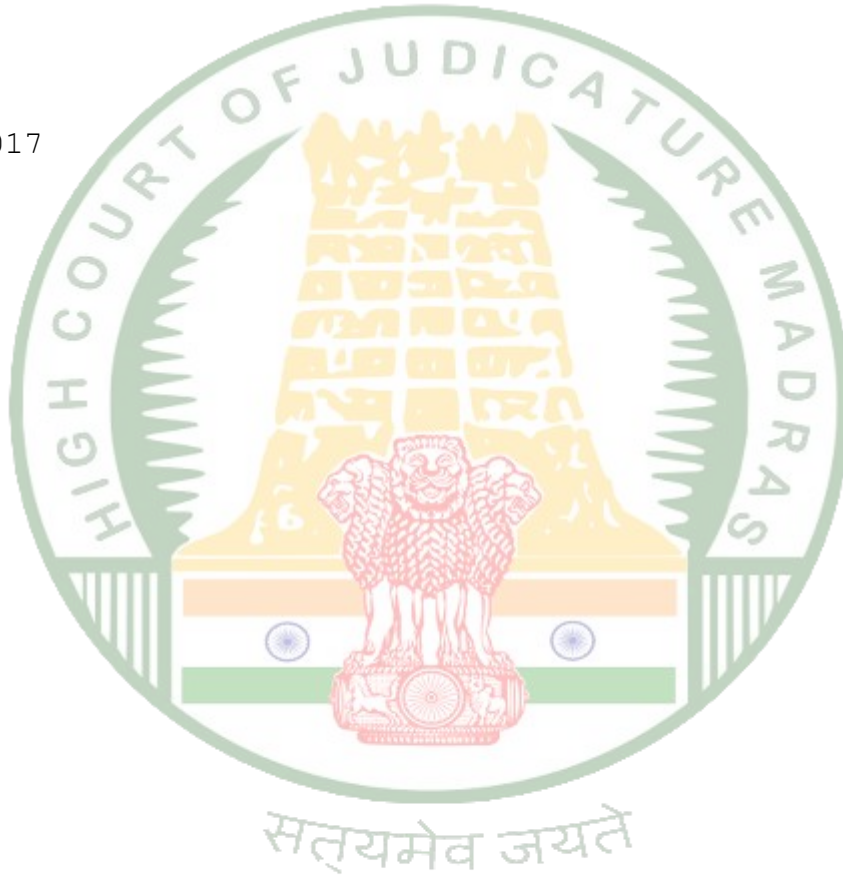
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+1 cc to Mr.L.Chandrakumar Advocate sr 10047/17

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