IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2017

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

Writ Petition Nos.20198 of 2015 & 49108 of 2006
and
MP. Nos.1 &2 of 2015 in W.P.No.20198 of 2015
MP.No.2 of 2006 in W.P.49108 of 2006

1989-1990 Year
Local Fund Audit Department,
Direct Recruitment Assistant
Inspectors Welfare Association,
Reg. No.455/2006,
Rep. by its President,
45/2, Rathna Nagar,
Virugambakkam,
Chennai-92. ...Petitioner in both WPs.

Vs.

1.The Secretary to Government
Finance (L.F.)Department,
State of Tamil Nadu,
Chennai-600 009.

2.The Director of Local Fund Audit,
Kuralagam 4th Floor,
Chennai-600 108.

3.The Tamil Nadu Public Service Commission,
Chennai-3,
Rep. by its Secretary.
...Respondents 1to3 in both WPs.



4.N.Manimekalai
5.A.Jaqulin Sellathangam
6.M.Usha
7.S.Arumugam
8.D.S.Kathirvel
9.A.Kuppusamy
10.G.Sekar
11.G.Kathiresh Kumar
12.P.C.Sivalingam
13.M.Mathialagan
14.S.Karunanidhi
15.M.Vilanga Raja

16.Subramania Gowda Sampath
17.R.Ravikumar
18.Venkataragavan
19.K.Jeyaraman
20.S.Parthiban
21.K.Ramanathan Respondents 4 to 21 in W.P.No.49108 of 2006

Prayer in W.P.No.20198 of 2015

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, for bearing the respondents from drawing the panel for the post of Assistant Directors of Local Fund Audit for the period from 01.09.2014 to 31.08.2015 from the post of Inspectors of Local Fund Audit promoted temporarily based on the defective and illegal panel.

Prayer in W.P.No.49108 of 2006

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to G.O.Ms.No.131, Finance (LF) Department dated 19.02.1996 issued by the first respondent and the consequential seniority list issued by the second respondent in his proceedings in Na.Ka.No.2978/A5/86 dated 27.10.1999 and quash the same and direct the respondents to prepare common seniority list on the basis of the merit list of the third respondent without adopting 1:1 ratio.

For Petitioner:Mr.R.Thiyagarajan
SC for R.Damodaran (in WP.No.20198 of 2015)

: Mr.M.Muthappan, (in WP.No.49108 of 2006)

For R1 & R2 : Mr.K.Venkataramani,
Additional Advocate General Assisted by
: Mr.T.M.Pappiah, Special G.P(in both WPs)

For R3 : Ms.C.N.G.Niraimathi
(in both the writ petitions)



For R4 to R21: No Appearance (in WP.No.49108 of 2006)

COMMON ORDER

Writ Petition No.49108 of 2006 has been filed by the Local Fund Audit Department, Direct Recruitment Assistant Inspectors Welfare Association Reg. No.455 of 2006, represented by its President challenging G.O.Ms.No.131 Finance (LF) Department, dated 19.02.1996, issued by the Secretary to Government, Finance (LF) Department, the first respondent herein and the consequential seniority list issued by the Director of Local Fund Audit, Chennai, the second respondent herein, in his proceedings in Na.Ka.No.2978/A5/86 dated 27.10.1999, to quash the same with a further direction to the respondents to prepare common seniority list on the basis of merit list of the third respondent without adopting 1:1 ratio.

2. Writ Petition No.20198 of 2015 has sought for issuance of Writ of Mandamus to forbear the respondents from drawing the panel for the post of Assistant Directors of Local Fund Audit, for the period from 01.09.2014 to 31.08.2015 from the post of Inspectors of Local Fund Audit promoted temporarily based on the defective and illegal panel. By consent of both parties, these writ petitions are taken up for final disposal.

3.Mr.R.Thiagarajan, learned Senior Counsel appearing for the petitioner in both the writ petitions would submit that when all the members of the petitioner's Association were appointed as Assistant Inspectors in the second respondent Department during the year 1989-1980, on the basis of the selection made by the Tamil Nadu Public Service Commission, both the Director of Local Fund Audit and the Internal Audit Departments had given the estimated vacancies of the Assistant Inspectors separately to the Tamil Nadu Public Service Commission and allotments were made separately by the Tamil Nadu Public Service Commission upto 1991-1994. After the separate lists came to be prepared by the Tamil Nadu Public Service Commission for each Department, at the time of selection, since some difficulties had cropped up in fixing the inter-se-seniority among the Assistant Inspectors of these two departments, the Director of Local Fund Audit, the second respondent herein approached the Tamil Nadu Public Service Commission with a request to furnish the ranking list of the allottees for the purpose of fixing their seniority. In reply, it appears that the Tamil Nadu Public Service Commission advised the second respondent to fix the seniority as per Rule 35 (aa) of the Tamil Nadu State and Subordinate Service Rules. Therefore, expressing the difficulties experienced in fixing inter-se-seniority under Rule 35 (aa), the Government was addressed for clarification by the second respondent. Since the Government refused to agree for fixing seniority under Rule 35 (aa) of the said Rules, the following revised proposals were sent to the Government by the second respondent:

> (a) to add the list of candidates allotted to Internal Audit Department (formerly State Trading Schemes Department) after the names of the list of candidates allotted to the Local Fund Audit Department and arrive at a single seniority.
>
> (b) to combine the list of two sets of allotments according to the age of the candidates on the dates of their selection

without regard to rank/communal rotation as akin to provision to Rule 35 (aa) of the said Rules.

(c) to treat as 'A' list for Local Fund Audit and 'B' list for the Internal Audit Department (formerly State Trading Schemes Department) for the two sets of allotment and arrive at a consolidated list in the ratio of 1:1 in the respective years of allotment, till the candidates in the 'B' list are wiped off/exhausted. The candidates in the 'A' list of the respective year will be place first.

4.After consulting the Tamil Nadu Public Service Commission, the Government issued orders in G.O.Ms.No.131, Finance (LF) Department dated 19.02.1996 to fix the inter-se-seniority of the appointees in the Local Fund Audit and Internal Audit Departments against the estimates for the years 1979-1980 to 1986-1987 with two separate lists, one as “A” list for Local Fund Audit Department and another as “B” list for Internal Audit Department for the two sets of allotment containing the inter-se-seniority of the Assistant Inspectors allotted by the Tamil Nadu Public Service Commission in the ratio of 1:1 for the years from 1979-1980 to 1986-1987 till all the candidates in the “B” list are covered, making it clear that the candidates in the “A” list for the respective year shall be placed first. Aggrieved over the placement of the seniority, the members of the petitioner-Association made an objection on 31.05.1999. But they were informed that there was no irregularity in G.O.Ms.No.131, Finance(LF) Department dated 19.02.1996. Therefore, challenging the correctness of G.O.Ms.No.131 Finance (LF) Department dated 19.02.1996, the petitioner has come forward with the present writ petitions.

5.Mr.R.Thiagarajan, learned Senior Counsel for the petitioner, assailing the correctness of the method adopted by the first respondent in issuing G.O.Ms.No.131, Finance (LF) Department dated 19.02.1996, would submit that when Rule 6 of the Special Rules for the Tamil Nadu Local Fund Audit Subordinate Service Rules clearly and candidly makes the position clear that for the purpose of appointment to the respective categories included in the service, the Local Fund Audit Department and the State Trading Schemes Department shall be a single Unit, the issuance of G.O.Ms.No.131 Finance (LF) Department, dated 19.02.1996 adopting 1:1 ratio between the Assistant Inspectors in the Local Fund Audit Department and the Assistant Inspectors in the State Trading Schemes Department (now Internal Audit Department) is wholly unjustified and untenable in the light of the said Rule 6.

6.Secondly, it is contented that the Tamil Nadu Public Service Commission, while conducting selection for filling up of the vacancies for the post of Assistant Inspectors in the Local Fund Audit Department and Assistant Inspectors in the Internal Audit Department, has conducted one examination, and they were all appointed on the basis of the selection made by the Tamil Nadu Public Service Commission in one exam, therefore, when the source is only one and the ranking given by the Tamil Nadu Public Service Commission to the Assistant Inspectors in the Local Fund Audit Department is not different from one allotted to the post of Assistant Inspectors in the Internal Audit Department, at no point of time, the first respondent can mix-up these two officers for the purpose of giving promotion. Although, both the Assistant Inspectors in the Local Fund Audit Department and the Assistant Inspectors in the Internal Audit Department are coming under Tamil Nadu Ministerial Service, selection to the post of Assistant Inspectors in the Local Fund Audit and Internal Audit Department is conducted simultaneously by the Tamil Nadu Public Service Commission and only on the basis of the higher marks secured by the candidates, they are placed first in the Assistant Inspectors in the Local Fund Audit Department. Similarly, the candidates who secure less marks are accommodated as Assistant Inspectors in the Internal Audit Department. While so, the ranking given by the Tamil Nadu Public Service Commission cannot be interfered with by any agency in the matter of fixing the seniority, as this would run contrary to Rule 6 of the Special Rule for the Tamil Nadu Local Fund Audit Subordinate Service Rules. The learned Senior Counsel appearing for the petitioner in support of his submission has placed reliance upon the Judgment of the Hon'ble Supreme Court in State of Jammu and Kashmir v. Shri Triloki Nath Khosa & Ors, (1974) 1 SCC 19.

7. Again referring to the counter affidavit filed by the second respondent, the learned Senior Counsel appearing for the petitioner would submit that after preparing common seniority list for both the departments, the second respondent approached the Tamil Nadu Public Service Commission vide their letters in Rc.No.2978/AA1/88, dated 27.10.1999 and P & A II (5)/35461/2003 dated 16.03.2005 for furnishing the rank list for the allottees for the purpose of fixing their seniority. But the Tamil Nadu Public Service Commission has also refused to furnish the ranking of the allottees, in a way declined to accept the request of the second respondent to mix-up the seniority list of both the departments. Therefore, the ratio of 1:1 decided by the first respondent in G.O.Ms.No.131, Finance(LF) Department dated 19.02.1996 to fix inter se seniority in the Local Fund Audit Department and Internal Audit Department is absolutely unjustified and therefore, the impugned G.O.Ms.No.131, Finance(LF) Department dated 19.02.1996 is liable to be set aside and a direction should be issued to the second respondent to prepare a common seniority list on the basis of the ranking allotted by the

Tamil Nadu Public Service Commission to the Assistant Inspectors in the Local Fund Audit Department and also for the Assistant Inspectors in the Internal Audit Department.

8.Per Contra, Ms.C.N.G.Niraimathi, the learned Standing Counsel appearing for the Tamil Nadu Public Service Commission would submit that the Tamil Nadu Public Service Commission had already declined to furnish the ranking list of the allottees prepared for selection to the post of Assistant Inspectors in the Local Fund Audit Department and Assistant Inspectors in the Internal Audit Department. However, the learned Standing Counsel, adopting the arguments of learned Additional Advocate General appearing for the first and second respondents, submitted that they will abide by the orders passed by this Court.

9.Detailed counter affidavit has been filed by the second respondent. Mr.K.Venkataramani, learned Additional Advocate General appearing for the first and second respondents would submit that the Local Fund Audit Department and the Internal Audit Department are functioning under two separate Heads of Department and the Director of Local Fund Audit is the Cadre Controlling Authority for both the departments. The Local Fund Audit Department is a Statutory Audit Department for the local bodies. The learned Additional Advocate General would further submit that the Local Fund Audit Department being the Statutory Audit Department of local bodies is functioning under Director of Local Fund Audit Department, the second respondent herein. Similarly, the Internal Audit Department is also functioning under Chief Internal Auditor, which is meant for auditing Statutory Boards of Government of Tamil Nadu and Government Departments entrusted by Government. Therefore, the staff members working in both the Departments are liable for transfer from one department to another. Although the Local Fund Audit Department and the Internal Audit Department were bifurcated in the year 1969, they have composite character of service conditions with common seniority. Therefore, the estimate of vacancies for Assistant Inspectors for both the Departments was being sent to Tamil Nadu Public Service Commission by the Local Fund Audit Department during the year 1978 -1979. Subsequently, at the instance of the Tamil Nadu Public Service Commission, separate estimates for the post of Assistant Inspectors in the Internal Audit Department were sent by the then chief Auditor, State Trading Schemes ( now Chief Internal Auditor and Chief Auditor of Statutory Boards) from the year 1979 - 1980 onwards with reference to G.O.Ms.No.1198, P&AR Department, dated 27.10.1987. While maintaining the common seniority list, difficulties had arisen in fixing the inter-se-seniority among the Assistant Inspectors appointed in the Local Fund Audit and the Internal Audit Departments. Therefore, the second respondent approached the Tamil Nadu Public Service Commission for furnishing of the ranking list of the above allottees. But the Tamil Nadu Public Service

Commission refused to furnish the ranking of the allottees claiming it as "confidential" record of the Commission, however, advised to fix the seniority as per Rule 35 (aa) of the Tamil Nadu State and Subordinate Service Rules. Again expressing difficulties experienced in fixing their seniority under Rule 35 (aa) of the Tamil Nadu State and Subordinate Service Rules, the Government was addressed again for necessary clarification vide the letter dated 07.04.1992 issued by the second respondent. As the Government declined to agree for fixing seniority under Rule 35(aa) of the said Rules, the second respondent sent the revised proposals to the Government. After consulting the Tamil Nadu Public Service Commission, the Government issued orders in G.O.Ms.No.131, Finance Department dated 19.02.1996 to fix the inter-se-seniority for the appointees in the Local Fund Audit and Internal Audit Departments against the estimates for the years 1979-1980 to 1986-1987 with two separate lists, one as "A" list for Local Fund Audit Department and another as "B" list for Internal Audit Department for the two sets of allotment containing the inter-se-seniority of the Assistant Inspectors allotted by the Tamil Nadu Public Service Commission in the ratio of 1:1 for the years from 1979-1980 to 1986-1987 till all the candidates in the "B" list are covered, making it clear that the candidates in the "A" list for the respective year shall be placed first. Therefore, no infirmity can be found.

10. But this Court hardly finds any merit or justification on the part of the first respondent to issue the impugned G.O.Ms.No.131, Finance Department dated 19.02.1996, for the following reasons. When the Tamil Nadu Public Service Commission called for applications from the eligible candidates to fill up the vacancies in the Tamil Nadu Ministerial Service, namely, for the post of Assistant Inspectors in the Local Fund Audit Department and in the State Trading Schemes Department (now the Internal Audit Department), after the selection process was over, the Tamil Nadu Public Service Commission has appointed first the candidates on the basis of the higher ranking secured by them as Assistant Inspectors in the Local Fund Audit Department and also as Assistant Inspectors in the Internal Audit Department. Both the posts carry the same scale of pay and the source of selection is being one and the same for both the Assistant Inspectors in the Local Fund Audit Department and the Assistant Inspectors in the Internal Audit Department, two separate seniority list with 1:1 ratio will work against the ranking allotted by the Tamil Nadu Public Service Commission. Besides, Rule 6 also shows that for the purpose of appointment both departments shall be a single unit. It is relevant to extract Rule 6 as follows:

> 6.Departmental Unit:-For purpose of appointment to the respective categories included in the Service, the Local Fund Audit

Department and the State Trading Schemes Department shall be a single Unit.

11. A close reading of Rule 6 of the Special Rules for Tamil Nadu Local Fund Audit Subordinate Service Rules would show that for the purpose of appointment to the respective categories included in the Service, the Local Fund Audit Department and the State Trading Schemes Department shall be a single unit. Therefore, when the Rule makes it clear that the Local Fund Audit Department and the State Trading Schemes Department( now the Internal Audit Department) is a single unit, the issuance of G.O.Ms.No.131, Finance(L.F) Department, dated 19.02.1996 for preparing two separate seniority list and for promoting in the ratio of 1:1 is totally unwarranted and unjustified. Therefore, this Court is inclined to interfere with G.O.Ms.No.131, Finance (L.F.) Department, dated 19.02.1996 on the ground that it has been issued totally contrary to Rule 6 of the Special Rules for Tamil Nadu Local Fund Audit and Subordinate Service Rules.

12.In this context, paragraph No.49 of the Judgment of the Apex Court reported in (1974) 1 SCC 19(The State of Jammu and Kashmir vs. Shri Triloki Nath Khosa and Ors), can be usefully extracted hereunder,

> ''In Mervyn Coutinho & Ors. v. Collector of Customs, Bombay & Ors. (1966) 3 SCR 600: AIR 1967 SC 52, no question arose in regard to the validity of a classification based on educational qualifications. The question there was whether a rotational system for fixing seniority was discriminatory if the recruitment was partly by promotion and partly directly. It was held that there is no inherent vice in such a system if the service is composed in fixed proportion of direct recruits and promotees. The rotational system could therefore be adopted in fixing seniority in the cadre of Appraisers, to which recruitment was in actual practice made directly and by promotion in the ratio of 50 : 50. But different considerations were held to arise when the same system was applied for fixing seniority in the cadre of Principal Appraisers because there was only one source from which the Principal Appraisers were drawn, namely Appraisers. The ratio of the judgment is : "The rotational system cannot.. apply when there is only one source of recruitment". This is the principle within which Roshan Lal's case was expressed to fall. Neither the one nor the other of the two cases was concerned with the question which arises for consideration before us. The

> classification of which we have to determine the validity is not made in relation to the source of recruitment. Therefore cases like Roshan Lal's, Mervyn Coutindo's and Pandit's (17) fail in a class apart. The case last mentioned is a typical instance of that class, where directly appointed Mamlatdars were accorded a favored treatment qua the promotee Mamlatdars in the matter of promotion to the post of Deputy Collector. Mamlatdars, whether appointed directly or by promotion, constituted one class and therefore it was held no reservation could be made in favour of the directly appointed Mamlatdars for promotion to the cadre of Deputy Collectors.

In the light of the above ratio when there is only one source of recruitment the rotational system cannot apply.

13.Besides, in the light of Rule 6 of the Special Rules for Tamil Nadu Local Fund Audit and Subordinate Service Rules and in the light of the aforesaid ratio of the Apex Court, the impugned G.O.Ms.No.131, Finance (L.F.)Department, dated 19.02.1996 warrants interference. Accordingly, the writ petitions are allowed and the impugned G.O.Ms.No.131, Finance (L.F.)Department, dated 19.02.1996 is set aside. The respondents are directed to prepare a common seniority list for the post of Assistant Inspectors in the Local Fund Audit Department and also in the Internal Audit Department. It is needless to mention that the common seniority list shall be based on the ranking allotted by the Tamil Nadu Public Service Commission at the time of selection and appointment. The above exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.





Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government
Finance (L.F.)Department,
State of Tamil Nadu,
Chennai-600 009.

2.Director of Local Fund Audit,
Kuralagam 4th Floor,
Chennai-600 108.

3.The Secretary,
The Tamil Nadu Public Service Commission,
Chennai-3,

+1cc to Mr.R. Damodaran, Advocate, S.R.No.24127
+1cc to Mr.M. Muthappan, Advocate, S.R.No.24171
+1cc to the Government Pleader, S.R.No.24355

W.P Nos.20198 of 2015 & 49108 of 2006

RJ(CO)
EU 18.5.17