

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2017

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.P.Nos.17447 and 16433 of 2017 and
W.M.P.Nos.18945, 18946, 21777, 17771 and 19365 of 2017

W.P.No.17447 of 2017:

1. Secretary to Government of Tamil Nadu,
Public (Special-A) Department,
Secretariat, Fort St.George,
Chennai-600 009.
2. The Chief Secretary to Government of Tamil Nadu,
Fort St.George,
Chennai-600 009. ... Petitioners

Vs.

1. K.Madalaimuthu
2. The Secretary,
Union Public Service Commission,
Dolpur House, Shahjahan Road,
New Delhi-110 011.
3. The Joint Secretary and
The Selection Committee for
Selection to the IAS,
Union Public Service Commission,
Dolpur House, Shahjahan Road,
New Delhi-110 011.
4. The Secretary to Government of India,
Department of Personnel and Training,
North Block, Government of India,
New Delhi-110 001.
5. The Registrar,
Central Administrative Tribunal,
City Civil Court Buildings,
Chennai-600 104. .. Respondents

W.P.No.16433 of 2017:

1.Dr.A.R.Sihag, I.A.S.,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi-110 011.

2.Mr.Shailendra Singh, I.F.S.,
Joint Secretary,
Union Public Service Commission,
Dolpur House, Shahjahan Road,
New Delhi-110 011.

.. Petitioners

Vs.

1.K.Madalaimuthu

2.Mr.Sanjay Kothari, I.A.S.,
The Secretary to Government of India,
Department of Personnel and Training, North Block,
Government of India, New Delhi-110 011.

3.Mr.K.Gnanadesikan, I.A.S.,
The Chief Secretary to Government of Tamil Nadu,
Fort St.George,
Chennai-600 009.

4.Mr.Jaindranath Swain, I.A.S.,
The Secretary to Government of Tamil Nadu,
Public (Special-A) Department,
Secretariat, Fort St.George,
Chennai-600 009.

5.The Registrar, Central Administrative Tribunal,
City Civil Court Buildings,
Chennai-600 104.

.. Respondents

W.P.No.17447 of 2017 filed under Article 226 of the Constitution of India, for issuance of a writ of Certiorarified mandamus calling for the records pertaining to the order dated 10.02.2015 passed by the Hon'ble Administrative Tribunal, Madras Bench in O.A.No.1669 of 2013 and the consequential contempt proceedings being Contempt Petition No.13/2016 dated 06.06.2017 and 20.06.2017 on the file of the Central Administrative Tribunal and to quash the same.

W.P.No.16433 of 2017 filed under Article 226 of the Constitution of India, for issuance of a writ of Certiorari

calling for the records of the fifth respondent Tribunal culminating the impugned order dated 06.06.2017 in C.P.No.13 of 2016 in O.A.No.1669 of 2013 and the consequential order dated 20.06.2017 in M.A.No.482 of 2017 in C.P.No.13 of 2016 in O.A.No.1669 of 2013 and quash the same.

W.P.No.17447 of 2017:

For Petitioners : Mr.C.Manishankar,
Additional Advocate General
assisted by
Mr.K.V.Dhanapalan, Spl.GP

For Respondents : Mr.R.Thiagarajan, Sr.Counsel
for Ms.S.Sarumathy for R1
Mr.G.Rajagopalan, Additional
Solicitor General of India,
assisted by Mr.R.Priyakumar
for R2 to R4

W.P.No.16433 of 2017:

For Petitioners : Mr.G.Rajagopalan,
Addl.Solicitor General of India,
assisted by Mr.R.Priyakumar

For Respondents : Mr.R.Thiagarajan, Sr.Counsel
for Ms.S.Sarumathy for R1
Mr.C.Manishankar,
Additional Advocate General
assisted by
Mr.K.V.Dhanapalan,
Spl.GP for R3 &R4

COMMON ORDER

(Order of the Court was made by HULUVADI G.RAMESH, J.)

These writ petitions have been filed challenging the orders passed by the Central Administrative Tribunal, Chennai in O.A.No.1669 of 2013 dated 10.02.2015 and the orders passed in the contempt proceedings in Contempt Petition No.13/2016 in O.A.No.1669 of 2013 dated 06.06.2017 and 20.06.2017. W.P.No.17447 of 2017 has been filed by the State Government and W.P.No.16433 of 2017 has been filed by the Union Public Service Commission, Government of India.

2.It is the case of the first respondent in these writ petitions that he is a non-State Civil Service Officer of Tamil Nadu. He is a direct recruit District Registrar, selected on the basis of Group-I Examination conducted by the Tamil Nadu Public Service Commission. He joined service in the year 1989. There were certain anomalies in the fixation of seniority in the cadre of District Registrar with the State Government regarding reckoning of the seniority of the promoted District Registrar from the date of initial temporary appointment. Since the writ petition filed by the first respondent and others in this connection, before this Court was dismissed, they approached the Hon'ble Supreme Court in Civil Appeal Nos.2791 to 2793 of 2002 and the Apex Court allowed those appeals in favour of the first respondent directing refixation of seniority of promotees from the date of regularisation instead of initial appointment. Accordingly, the seniority of the first respondent was refixed on 11.04.2008 vide proceedings of the Inspector General of Registration in No.57043/A1/07-4. Even though the Supreme Court passed the order in the year 2006, due to administrative reasons, his seniority was fixed in the year 2008. The first respondent and others filed a contempt petition in Cont.P.No.208 of 2006 before the Hon'ble Supreme Court and the same was closed on 27.02.2007 when the State Government granted him and others promotion on 19.01.2007 as Additional Inspector General of Registration and tendered apology for the belated implementation of the Apex Court order. It was also undertaken by the State Government that consequent seniority will be refixed. In 2009, two vacancies were notified for appointment to Indian Administrative Service by selection. Since the first respondent's name was not sponsored by the State Government, he moved the Supreme Court by filing Cont.P.Nos.381-383 of 2009.

3.With the above background, the first respondent filed an application before the Central Administrative Tribunal in O.A.No.954 of 2010 praying for considering him for appointment to Indian Administrative Service by selection against the two vacancies notified in 2009 and the same was allowed by order dated 02.11.2010 directing the Government that the first respondent shall be considered for appointment to IAS without reference to the Annual Confidential Reports ("ACRs" in short) in respect of the first respondent. The State Government challenged the said order before a Division Bench of this Court in W.P.No.29573 of 2010 and the Division Bench disposed of the said writ petition on 22.02.2011 observing that the first respondent should have claimed for inclusion in the list for the vacancies of 2007 itself and also permitted the first respondent to file a comprehensive application afresh. Accordingly, the first respondent filed O.A.No.565 of 2011 and the same was disposed of on 31.05.2011 observing that he should be considered for appointment to IAS by selection against the vacancies of the

year 2007. Aggrieved by the same, the State Government moved this Court by filing W.P.No.16147 of 2011 and the same was dismissed.

4. Thereafter, the first respondent filed O.A.No.1669 of 2013 in view of the non-consideration of his relevant ACRs by the Union Public Service Commission while considering him for appointment to Indian Administrative Service (IAS) as per the provisions of IAS (Appointment by Selection) Regulations, 1997. The main submission put forth on the side of the first respondent before the Tribunal is that his ACRs all along had been written by some promotee officers who ultimately became juniors to him after the revision of seniority pursuant to the direction of the Apex Court. It was also contended that some of the ACRs were also written by authorities who were contemnors in the contempt petition filed by him. The Tribunal, on consideration of the entire submissions, passed the order on 10.02.2015, which is impugned in W.P.No.17447 of 2017, directing the Union Public Service Commission to consider the case of the first respondent by convening a fresh Review Selection Committee Meeting for the vacancies of 2007 by considering the legally acceptable ACRs of the previous five years; directing the State Government to send all the ACRs for the period of five years preceding the year 2007, to the UPSC. It was also directed that the UPSC shall convene a fresh Review Selection Committee for the year 2007 within two months from the date of receipt of the ACRs from the State Government and if no ACRs are received, UPSC was given liberty to take appropriate decision regarding the admissibility of the available ACRs in view of the adversarial disposition of the writers of such ACRs towards the first respondent. A contempt application in Cont.P.No.13 of 2016 was also filed before the Tribunal by the first respondent alleging contempt on the part of the State Government and the Union Public Service Commission in implementing the order passed by the Tribunal in O.A.No.1669 of 2013 dated 10.02.2015 in which an order was passed on 06.06.2017 directing the Secretary of UPSC, the Joint Secretary and the Selection Committee of UPSC, the Secretary to Government of India, the Chief Secretary to Government of Tamil Nadu and the Secretary to Government of Tamil Nadu, Public (Special A) Department, to appear in person or through a duly authorised Advocate on 20.06.2017 at 10.30 a.m. Thereafter, another order was passed on 20.06.2017 in an application filed by the UPSC in M.A.No.482 of 2017 in the said contempt petition, granting time to comply with the final order passed in O.A.No.1669 of 2013. Now the said Contempt Petition is pending before the Tribunal.

5. Challenging the said order passed in O.A.No.1669 of 2013, W.P.No.17447 of 2017 has been filed by the State Government and challenging the orders passed in the contempt petition, the

Union Public Service Commission has filed W.P.No.16433 of 2017.

6.We have heard the learned Additional Solicitor General of India appearing for the Union Public Service Commission, Additional Advocate General appearing for the State Government and the learned senior counsel appearing for the first respondent and perused the materials available on record.

7.For selection to the Indian Administrative Service from the Department of Registration, there were some anomalies, mainly with regard to Annual Confidential Reports. According to the first respondent, his ACRs all along had been written by some promotee officers who ultimately became juniors to him after the revision of seniority pursuant to the direction of the Apex Court. It is also the stand of the first respondent that some of the ACRs were also written by authorities who were contemnors in the contempt petition filed by him. This matter was taken up to the Central Administrative Tribunal by the first respondent, by way of filing an application in O.A.No.954 of 2010 praying to consider him for appointment to Indian Administrative Service by selection against the two vacancies notified in 2009 and the same was allowed by order dated 02.11.2010 with a direction to the Government to consider the case of the first respondent for appointment to IAS without reference to his ACRs. Subsequently, the matter was dealt with by the Tribunal on an application filed by the first respondent in O.A.No.565 of 2011 wherein it was observed that the first respondent should be considered for appointment to IAS by selection against the vacancies of the year 2007. Aggrieved by the same, the State Government moved this Court by filing W.P.No.16147 of 2011 and the same was dismissed. Finally, the matter was dealt with by the Tribunal on an application filed by the first respondent in O.A.No.1669 of 2013, and the Tribunal has passed the impugned order dated 10.02.2015 directing the Union Public Service Commission to consider the case of the first respondent by convening a fresh Review Selection Committee Meeting for the vacancies of 2007 by considering the legally acceptable ACRs of the previous five years; directing the State Government to send all the ACRs for the period of five years preceding the year 2007, to the UPSC. It was also directed that the UPSC shall convene a fresh Review Selection Committee for the year 2007 within two months from the date of receipt of the ACRs from the State Government and if no ACRs are received, UPSC was given liberty to take appropriate decision regarding the admissibility of the available ACRs in view of the adversarial disposition of the writers of such ACRs towards the first respondent.

8.The learned Additional Advocate General appearing for the State has submitted that upon the directions issued by the

Tribunal in its order dated 31.05.2011 in O.A.No.565 of 2011, the State Government moved this Court by filing W.P.No.16147 of 2011 and in compliance of the order passed in the said writ petition on 12.01.2012, the State Government forwarded the case to the Union Public Service Commission to consider and appoint the first respondent to Indian Administrative Service vide D.O.Letter dated 04.07.2012, pursuant to which the UPSC has convened a Review Selection Committee meeting on 17.09.2012 at 3.00 p.m.at New Delhi and the first respondent was called for interview on 17.09.2012 and he also attended the interview. The marks obtained by him for the ACRs and in the interview were 35 and 25, which are less than those obtained by one P.Muthuveeran, who was the last person recommended for appointment by the Selection Committee in its meeting on 30th and 31st December 2007. Hence, the Committee did not recommend inclusion of his name in the Select List of 2007 for appointment by selection to the IAS of Tamil Nadu cadre. Further the recommendation of the Review Selection Committee was sent to the State Government for comments and the State Government, in turn, requested the UPSC to reconvene the Selection Committee Meeting and to place the matter before the Selection Committee to reconsider the recommendation dated 17.09.2012 and the additional particulars in respect of the first respondent were forwarded to UPSC, New Delhi vide D.O.Letter dated 07.06.2013. He further submitted that the minutes of the Review Selection Committee Meeting was also forwarded to the Government of India, Department of Personnel and Training, New Delhi for offering their observations in this regard and they in turn, vide letter dated 16.05.2013, stated that they have 'no comments' to offer on the findings rendered by the Review Selection Committee Meeting held on 17.09.2012. It is also further submitted that the UPSC, New Delhi have approved the recommendations of the Review Selection Committee which met on 17.09.2012 as contained in the minutes without any modifications. Finally, he submitted that the State has complied with the directions issued by the Tribunal in its order dated 10.02.2015 in O.A.No.1669 of 2013 and as such the State has not committed any irregularity or contempt.

9. In so far as the first respondent is concerned, the learned counsel for the first respondent has submitted that in respect of the ACRs which have been recorded for consideration of his promotion, it was specifically contested before the Tribunal that the same were all along been written by some promotee officers who ultimately became juniors to him after the revision of seniority pursuant to the direction of the Apex Court. Hence if those ACRs were taken into consideration, it would ultimately be fatal to the case of the first respondent. It is pertinent to note that the first respondent has retired as of now and if his case is considered, it would benefit him ultimately only in the future pensionary benefits. It is also

specifically submitted that the ACRs written by the Inspector General of Registration, only should be considered for the case of the first respondent and only then it would be appropriate.

10. The Additional Solicitor General appearing for the Union Public Service Commission has submitted that the Review Selection Committee Meeting carefully examined the ACRs of the first respondent for the five years upto the year 2005-2006 and it also gave serious consideration to the records of the meritorious service rendered by the officer during this period, as furnished by the State Government. The total marks obtained by the first respondent were 61 on the basis of the service records assessed by the Review Selection Committee Meeting held on 10.07.2015 and the interview taken by the Review Selection Committee which was held on 17.09.2012, ie., 36 marks in respect of assessment of service records and 25 marks in the interview. As the total marks obtained by the first respondent was less than one P.Muthuveeran, who was the last person recommended for appointment by the Selection Committee in its meeting held on 30th and 31st December 2007, the Committee did not recommend the inclusion of the first respondent's name in the Select List of 2007 for appointment by selection to the IAS of Tamil Nadu Cadre. Thus, he submitted that only the directions made by the Tribunal in the impugned order dated 10.02.2015 in O.A.No.1669 of 2013 has been complied with and nothing contrary to the same has been done. But, however, he submitted that the impugned order in O.A.No.1669 of 2013 dated 10.02.2015 has been passed by a single Member of the Tribunal, but it should have been dealt with by a larger Bench of the Tribunal in view of the contravening decisions taken by the Tribunal consisting of two Members, in the earlier decisions, ie., the orders made in O.A.No.954 of 2010 and O.A.No.565 of 2011.

11. Mr. G. Rajagopalan, learned Additional Solicitor General of India would further submit that since a single Member of the Tribunal has taken the decision after the matter has been referred to him in view of the divergent view of the two-Member Bench in the earlier decisions, ie., the orders made in O.A.No.954 of 2010 and O.A.No.565 of 2011, the matter has to be referred to a Large Bench in accordance with Section 26 of the Administrative Tribunals Act, 1985.

12. At this juncture, it would be appropriate to refer to Section 26 of the Administrative Tribunals Act, 1985, which reads as follows:

"If the Members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but

if the Members are equally divided, they shall state the point or points on which they differ, and make a reference to the Chairman who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Tribunal and such point or points shall be decided according to the opinion of the majority of the Members of the Tribunal who have heard the case, including those who first heard it." (emphasis supplied).

13. We have given our anxious consideration to the said submission made by the learned Additional Solicitor General of India. However, on a perusal of the orders passed in O.A.No.954 of 2010 dated 02.11.2010 and O.A.No.565 of 2011 dated 31.05.2011, it is seen that the two Member Bench has taken a view in which one of the Judicial Member has allowed the O.A. in entirety and ordered the official respondents to appoint the first respondent herein as an IAS Officer. However, the other member of the Bench rejected the prayer and ordered for dismissal warranting reference of the matter to the third Judge, viz. an Administrative Member.

14. On a perusal of the order passed by the third Member after referral as stated above, we find that the third Member has concurred with the findings of the one of the Member of the two Members Bench who has allowed the O.A. The third Judge has also concurred with the views and also the finding that the ACRs written by the Inspector General of Registration during the year 2001 to 2006-2007 have to be taken into consideration for considering the first respondent for appointment to Indian Administrative Service. It is no doubt true that only the ACRs which were all along been written by some promotee officers who ultimately became juniors to the first respondent, after the revision of seniority pursuant to the direction of the Apex Court, have been considered, which this Court feels are not in accordance with law.

15. Hence, we are unable to comprehend ourselves to the contentions raised by the learned Additional Solicitor General of India for more than one reason. On a close scanning and scrutinizing of the view of the third Judge, we are of the view that he has concurred with all the findings with regard to the deficiency that has occurred in the process of selection of IAS Officer in the cadre from non-State Civil Service Officer. However, instead of directing the official respondents to appoint the first respondent herein as an IAS Officer, he has

directed the official respondents to place all the ACRs of the first respondent other than those ACRs written by the Juniors of the first respondent, since admittedly both the third Judge as well as the one Member of the two Member Bench has concurred with the same findings (viz)., those ACRs are tainted with mala fide intentions and the Officers, who are Juniors to the first respondent, have acted as senior Officers in view of certain Executive orders or interim orders obtained in the Court which deliberately appears to have inflicted certain adverse remarks thereby preventing the direct recruit District Registrar viz., the first respondent by curtailing his future promotion. Hence, for the discussion in the preceding paragraphs and also in view of the views expressed by the third Judge who is in full conformity with one of the two Member Bench, we are of the view that the order passed by the third Member cannot be construed as a different view, since he has concurred with all the findings of the one of the Judge in the two Member Bench, except for the fact that he has directed the official respondents to place the ACRs of the first respondent other than those written by his Juniors to be decided by the UPSC for eligibility and suitability. It is also seen from the records that the first respondent has already attained the age of superannuation and now he is 66 years old and hence, in view of the finding of the third Judge (Administrative Member), which is in concurrent with the one of the two Member Judge, we find that referral to Section 26 of the Administrative Tribunals Act does not arise. We have been informed that contempt applications that have been filed against the State as well as the UPSC are pending before the Central Administrative Tribunal, Chennai. Since we are concurring with the findings given by the third Member, both the contempt applications pending before the Central Administrative Tribunal stands closed.

16. In fine, as already observed, ends of justice would be met only if the ACRs of the first respondent other than those written by his Juniors and to be decided by the UPSC alone has to be taken into consideration, for consideration of the first respondent for appointment to Indian Administrative Service. If the recommendations made by the Committee to be considered by the UPSC and the first respondent is found eligible to be conferred with IAS, he be conferred with IAS. Since he has already retired on attaining the age of superannuation, he would be entitled for the retirement benefits as that of the IAS Officer. Thus, the authorities concerned are directed to carry out the exercise as directed by the UPSC for consideration of the first respondent to Indian Administrative Service, within a period of three months from the date of receipt of a copy of this order, if he is found eligible.

17.With the above observations and direction, the writ petitions are disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary,
Union Public Service Commission,
Dolpur House, Shahjahan Road,
New Delhi-110 011.
 - 2.The Joint Secretary and
The Selection Committee for
Selection to the IAS,
Union Public Service Commission,
Dolpur House, Shahjahan Road,
New Delhi-110 011.
 - 3.The Secretary to Government of India,
Department of Personnel and Training,
North Block, Government of India,
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 - 4.The Registrar,
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 - 5.The Chief Secretary to Government of Tamil Nadu,
Fort St.George, Chennai-600 009.
 - 6.The Secretary to Government of Tamil Nadu,
Public (Special-A) Department,
Secretariat, Fort St.George, Chennai-600 009.
- +1cc to Mr.P.S.Vijaya Kumar, Advocate, S.R.No.78770
+1cc to the Government Pleader, S.R.No.79365

W.P.Nos.17447 and 16433 of 2017
and
W.M.P.Nos.18945, 18946, 21777,
17771 and 19365 of 2017

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