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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 17.02.2017

DELIVERED ON: 17.03.2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MRS. JUSTICE J. NISHA BANU

W.A. (MD) No. 1360 of 2014
and M.P. (MD) No. 1 of 2014

1. P. Perumal
2. S. Maheswaran
3. T. K. Rajasekaran

.. Appellants / Respondents 4 to 6

Vs.

1. N. Manivannan

.. 1st respondent / Writ petitioner

2. The Secretary,
Home Department,
Fort St. George,
Chennai - 600 009.

3. The Director General of Police,
Mylapore, Chennai - 600 004.

4. The Secretary,
Tamil Nadu Public Service Commission,
Greens Road, Chennai.

.. Respondents 2 to 4/
Respondents 1 to 3

Writ Appeal has been filed under Clause 15 of the Letters Patent, against the order dated 29.10.2010, made in W.P. (MD) No. 3547 of 2006 by a learned Single Judge of this Court.

WP (MD) No. (MD) No. 3547/2006:

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, directing the 1st respondent to place the Petitioners above the 4th respondent in the Seniority list.

For appellants

: Mr. S. Ramesh

For 1st respondent

: Mr. G. Prabhu Rajadurai,
for Mr. M. Muthugeethaiyan



For respondents 2 & 3

: Mr.V.R.Shanmuganathan,
Special Government Pleader

For 4th respondent

: Mr.K.K.Senthil

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JUDGMENT

(Judgment of the Court was delivered by R.SUBBIAH, J.)

The appellants herein, who are the respondents 4 to 6 in the writ petition, have filed this appeal as against the order dated 29.10.2010 made in writ petition in W.P.(MD).No.3547 of 2016 by a learned Single Judge, whereby and whereunder the learned Single Judge has allowed the writ petition filed by the first respondent herein by directing the Director General of Police, Chennai viz., the third respondent herein to consider the case of the first respondent in the light of the decision reported in **AIR 2003 SC 2000 (Bimlesh Tanwar Vs. State of Haryana and others)** by placing him above the respondents 4 to 6 within a period of six weeks.

2.The brief facts which are necessary to decide this writ appeal are as follows;

(a) The first respondent herein was selected for the post of Deputy Superintendent of Police through the examination conducted by the fourth respondent herein in the year 1997-1998. In that examination, he has got 1306 marks, out of 2050 marks. Though the first respondent was an MBC candidate, he was selected against 93rd turn which was a General Turn. He was appointed as Deputy Superintendent of Police on 03.12.2001. Thereafter, the appointees were directed to undergo training at the Police Training College, Chennai, wherein the first respondent was shown against Serial No.11 in the list of trainees. After completion of training, the third respondent herein, by an order dated 16.12.2002, posted the appointees for practical training, wherein the first respondent herein was shown against serial No.10 and the said order was treated as seniority list for 1997-1998 batch of Deputy Superintendent of Police. The first respondent very well knew that he has got more marks than that of the first appellant in the examination conducted by the fourth respondent.

(b) Though the first respondent herein and the appellants herein are MBC candidates, the first respondent herein was selected against 93rd turn, which was General Turn and placed in serial No.14 in the selection list and serial No.10 in the seniority list, whereas the first appellant herein was selected against 80th turn which was MBC turn and placed in serial No.1 in the selection list and in the seniority list. Since the first respondent got more marks than the first appellant herein and he is meritorious candidate than the first appellant herein, he ought to have been placed above the first appellant in the



seniority list. Hence, the first respondent has sent a representation dated 28.01.2003 to the 3rd respondent herein through the Superintendent of Police, Thanjavur, requesting to place him above the first appellant. As there was no response to the same, he has filed the writ petition seeking a direction to the second respondent herein to place him above the first appellant in the seniority list.

(c) In the counter affidavit filed by the fourth respondent herein, it has been stated that the first respondent / writ petitioner herein had secured higher marks than the appellants herein. The seniority list was drawn as per the guidelines issued by the Government based on the observation of Supreme Court of India in **P.S.Ghalaut Vs. State of Haryana (AIR 1996 SC 351)**. Though the appellants herein secured 1248.50, 1247.25 and 1244.75 marks respectively, as per the roster, they were fitted in 80th, 84th and 90th turn which were MBC/DC (G) turn, whereas the first respondent was fitted with 93rd turn, which was General Turn. The selection was made in the year 1998 and the list was drawn in line with the guidelines as existed then. Hence, the subsequent revision on the basis of the Supreme Court judgment in **AIR 2003 SC 2000 (Bimlesh Tanwar Vs. State of Haryana and others, dated 10.03.2003, overruling the judgment in P.S.Ghalaut Vs. State of Haryana, AIR 1996 SC 351** (which was communicated by the Government in D.O. Letter No.44429/S/98, dated 20.08.1998) does not arise. Thus, he sought for dismissal of the writ petition.

(d) The learned Single Judge, by considering the subsequent judgment reported in **AIR 2003 SC 2000 (Bimlesh Tanwar Vs. State of Haryana and others** which overruled **P.S.Ghalaut case**, cited supra, directed the third respondent herein to consider the case of the first respondent in the light of the said decision by placing him above the appellants within a period of six weeks.

3.0. The learned counsel appearing for the appellants submitted that the fixation of seniority and the list thereon was published as early as on 01.09.2001. No doubt, the first respondent has secured 1306 marks out of 2050 marks, in Group I Service. Though he belongs to Most Backward Class, he was selected against General Turn. The appellants were selected in 80th, 84th and 90th MBC quota respectively. The appellants took charge and are working as Additional Superintendent of Police, Villupuram Division, Additional Director General of Police, Prohibition Wing, North Zone, Chennai and Additional Superintendent of Police, Q-Branch CID, respectively. The seniority was fixed based on the law of the land at the relevant point of time, i.e. on the date of appointment of the appellants and the first respondent herein. In this regard, the learned counsel for the appellants has also invited the attention of this Court to the decision of the Hon'ble Supreme Court in **P.S. Ghalaut Vs. State of Haryana (AIR 1996 SC**

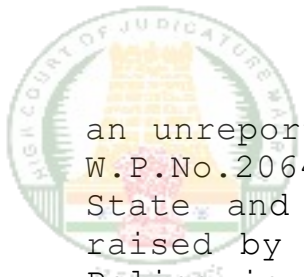


351). Therefore, no infirmity could be found on the seniority fixed based on a communal roster. Further the learned counsel for the appellants submitted that if the first respondent has any grievance with regard to the seniority list, he ought to have given a representation within a period of three years from the date of seniority list. But, in the instant case, the representation sent by the first respondent did not carry any date. More over, he has chosen to file the writ petition only in the year 2006. Since the challenge is made belatedly, the same is hit by laches. Therefore, on that ground alone, the order of the learned Single Judge is liable to be set aside.

3.1. That apart, the learned counsel for the appellants submitted that the decision of the Hon'ble Supreme Court in **P.S. Ghalaut** case, based on which the seniority of the employees have been fixed on the roster system, has been overruled by the subsequent decision in **Bimlesh Tanwar** case, cited supra, only in the year 2003 and therefore, the first respondent cannot claim to fix seniority above the appellants herein based on **Bimlesh Tanwar** case. Thus, the learned counsel appearing for the appellants submitted that by setting aside the order of the learned Single Judge, the matter may be remitted back to the file of the learned Single Judge with a direction to give an opportunity to the appellants to raise their objections or an alternative direction may be given to the third respondent to give an opportunity of personal hearing to the appellants before passing any order with regard to the seniority of the first respondent.

4.0. Countering the above submissions, the learned counsel appearing for the first respondent submitted that the issue involved in this writ appeal is no more *res integra*, in view of the authoritative pronouncement of the judgment of the Hon'ble Supreme Court in **Bimlesh Tanwar** case, wherein the Hon'ble Supreme Court in paragraph No.37 has held that "we have not been able to persuade ourselves to the view taken in **P.S.Ghalaut** case". When that be so, now the appellants cannot say that as on the date of law of the land, the seniority has been fixed based on the communal roster. Further, the learned counsel for the first respondent submitted that though the appellants herein secured lower marks than the first respondent herein, they have been placed above the first respondent in the seniority list based on the communal turn. Since the first respondent has secured higher marks than the appellants, he cannot be made to suffer. In this regard, the learned counsel for the appellants has also relied upon a judgment of the Division Bench of this Court in **N.Santhosh Kumar and others Vs. TNPSC and others, reported in (2015) 4 MLJ 281** and the unreported judgment of a Division Bench of this Court in W.A.No.753 of 2012 dated 13.08.2014.

4.1. The learned counsel for the first respondent by producing



an unreported decision of a learned Single Judge of this Court in W.P.No.2064 of 2012, dated 11.03.2014 (P.Shanmugha Priya Vs. State and others) further submitted that when a similar issue raised by a person who was appointed as Deputy Superintendent of Police in 1999-2000 batch, by filing the said writ petition, the learned Single Judge has allowed the writ petition and directed the respondents therein to refix the seniority of the petitioner at the appropriate place and that subsequently, the said order was implemented by the official respondents. Hence, according to the first respondent, he alone has been discriminated. Thus, he prays for dismissal of the writ appeal.

5. We have given our anxious considerations to the rival submissions made on either side. We have also perused the records carefully.

6. Admittedly, the first respondent herein has secured higher marks than the appellants herein. However, he has been placed in lower place than the appellants in the seniority list only based on the communal turn fixed by TNPSC. According to the fourth respondent / TNPSC, such communal turn has been fixed only based on the decision of the Hon'ble Supreme Court in **P.S. Ghalaut** case. But, the Hon'ble Supreme Court in the subsequent decision in **Bimlesh Tanwar** case, cited supra, has declared that the decision rendered in P.S.Ghalaut case does not lay down a good law. When the similar writ petitions were dismissed and the same were brought to challenge before a Division Bench of this Court in **N.Santhosh Kumar and others Vs. TNPSC reported in (2015) 4 MLJ 281**, the Division Bench, after analysing various decisions including the decisions in **P.S. Ghalaut** case, **Bimlesh Tanwar** case, has held in paragraph No.84 as follows;

"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 v. State of Haryana (Supra), 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 V. State of Haryana (supra) was declared as not a good law in Bimlesh Tanwar v. State of Haryana (supra) 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 29.04.2004, which was subsequent to the decision in Bimlesh Tanwar v. State of Haryana (supra). (iv) that all other proceedings issued prior to 29.04.2004, on which reliance is placed by the



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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 29.04.2004 and (v) that therefore, the seniority of the appellants vis-a-vis the other selectees under the notification dated 10.07.1999 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 of Tamil Nadu State and Subordinate Services and not as per the roster. Therefore, the appellants are entitled to succeed."

7. The above decision is squarely applicable to the facts of this case, as in this case also, only because of the roster system, the first respondent, who was an MBC candidate like that of the appellants and got marks more than the appellants herein, has been placed below the rank of the appellants herein. Absolutely, we do not find any infirmity or illegality in the order passed by the learned Single Judge. There is no merit in the writ appeal. Hence, this Court is inclined to dismiss the same.

8. In the result, this writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,
Home Department,
Fort St. George,
Chennai - 600 009.
 2. The Director General of Police,
Mylapore, Chennai - 600 004.
 3. The Secretary,
The Tamil Nadu Public Service Commission,
Greens Road, Chennai.
- +1cc to Mr.S.Ramesh, Advocate, SR.15884
+2cc to Mr.M.Muthugeethaiyan, Advocate, SR.15649

Pre-Delivery Judgment made in

Writ Appeal (MD) No.1360 of 2014

17.03.2017