



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.12.2017

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P (MD) No.4977 of 2011

M.Santhanam

... Petitioner

Versus

1. The Secretary,
Home [Courts-VI] Department,
Secretariat, Chennai.
2. The Director of Prosecution,
Tamil Nadu Slum Clearance Board Complex,
2nd Floor No.5, Kamarajar Salai,
Chennai - 600 005.
3. Antony Christoper
4. S.Kandasamy
5. Tamilselvan
6. S.Chandraleka

... Respondents

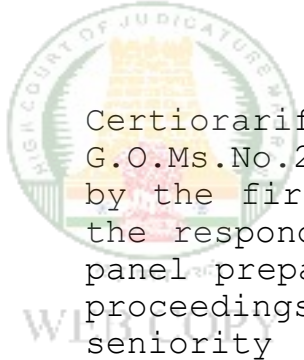
PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to G.O.Ms.No.287, Home (Courts VI) Department, dated 22.02.2008 issued by the first respondent and quash the same and consequently direct the respondents 1 & 2 to include the name of the petitioner in the panel prepared for the post of Deputy Director of Prosecution vide proceedings RC No.241/DOP/A1/2011, dated 19.01.2011 as per the seniority fixed vide G.O.Ms.No.615, Home (Courts-VI), dated 26.05.1998.

For Petitioner : Mr.C.Kasirajan

For RR 1 & 2 : Mr.V.Muruganantham

For RR 3 to 6 : No appearance

ORDER



Certiorarified Mandamus, to call for the records relating to G.O.Ms.No.287, Home (Courts VI) Department, dated 22.02.2008 issued by the first respondent and quash the same and consequently direct the respondents 1 & 2 to include the name of the petitioner in the panel prepared for the post of Deputy Director of Prosecution vide proceedings RC No.241/DOP/A1/2011, dated 19.01.2011, as per the seniority fixed vide G.O.Ms.No.615, Home (Courts-VI), dated 26.05.1998.

2.The petitioner was appointed as a Temporary Assistant Public Prosecutor (Grade II) on 07.12.1983 by the District Collector, Tirunelveli, vide its proceedings in C2/152177/83, dated 05.12.1983. The first respondent vide G.O.Ms.No.1032 Home, dated 21.04.1986, regularized the temporary services of the persons working as on 17.11.1984 in the post of Assistant Public Prosecutor [Grade - II] from the date of their appointment and their services were also regularized from 17.11.1984. Aggrieved by the said G.O.Ms.No.1032, Home, dated 21.04.1986, some of the Assistant Public Prosecutor filed T.A.Nos.325 of 1994 and 326 of 1994 before the State Administrative Tribunal, Chennai, challenging the seniority list of the Assistant Public Prosecutors [Grade - I and II], published by the Government in the year 1986, following the merger of State vide Post of Assistant Public Prosecutor [Grade I and II] viz-a-viz Metro and Mofussil as one unit from 17.11.1984. The Tribunal had directed the respondents to prepare and publish the seniority list of Assistant Public Prosecutor [Grade - I and II] from the State of Tamil Nadu taking into account the following directions:-

"a.The Assistant Public Prosecutor Grade-I [Metro] appointed before the issuance of G.O.Ms.No.2603, Home dated 17.11.1984 shall be placed higher in seniority than the Assistant Public Prosecutor Grade-I in the Mofussil.

b.The Assistant Public Prosecutor Grade-I [Metro] appointed before the issuance of G.O.Ms.No.2603, Home dated 17.11.1984 shall be placed below the Assistant Public Prosecutor Grade-I in the Mofussil in seniority.

c.The Assistant Public Prosecutor Grade-II [Metro] appointed before the issuance of G.O.Ms.No.2603, Home dated 17.11.1984 shall be placed above Assistant Public Prosecutor Grade-II in the Mofussil in seniority.

d.The seniority of Assistant Public Prosecutor Grade-I and Assistant Public Prosecutor Grade-II appointed after the issuance of G.O.Ms.No.2603, Home dated 17.11.1984 shall be placed in accordance with dates of their regular appointment in their respective posts."

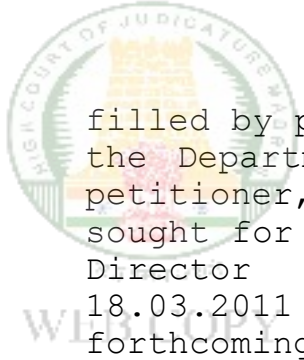
3.The combined seniority of Assistant Public Prosecutor was refixed vide G.O.No.615, dated 26.05.1998 and in the annexure to the said Order, the list of the Assistant Public Prosecutors, as per the revised seniority were mentioned in which the petitioner was placed in Serial No.217. Thereafter, some of the Additional Public Prosecutors had approached the Tribunal seeking retrospective regularisation of their service from their date of initial temporary



appointment. In the above original application, the Tribunal directed the Government to re-examine their case and to pass orders with reference to the Rules which were in existence prior to 1984. Accordingly, the first respondent issued G.O[3D]No.61, dated 17.03.1999 regularising the services of the Assistant Public Prosecutor Grade - II with effect from the date of temporary appointment. It was also ordered that the individuals are eligible to draw arrears of pay and allowance consequent on the retrospective regularization. However, it was made clear that such regularisation of service from the initial date of their temporary appointment shall not affect the existing seniority issued vide G.O.Ms.No.615, dated 26.05.1998 and they have no right to claim revision of seniority on the basis of their retrospective regularization.

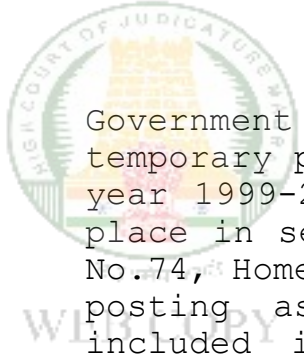
4. Challenging the said G.O.Ms.No.615, dated 26.05.1998, Original Application No.6834 of 1999 was filed before the Tamil Nadu Administrative Tribunal stating that the seniority list should be revised on the basis of date of initial temporary appointment of individuals. On abolition of the Tribunal, the said Original Application stood transferred to this Court and this Court, directed the respondents to revise the seniority, taking into account the date of initial temporary appointment. Again the first respondent vide G.O.Ms.No.287, dated 22.02.2008 issued a revised seniority list on the basis of the date on which the individual joined the temporary appointment. In so far as the petitioner is concerned, as per G.O.Ms.No.615, dated 26.05.1998, his rank was 217. However, in the revised seniority list, as per G.O.Ms.No.287, he was placed in rank No.89. The respondents 3 to 6, who were placed below the petitioner in the seniority list vide G.O.Ms.No.615 have superseded him and was placed above him in the revised seniority list issued vide G.O.Ms.No.217. Hence, according to the petitioner, the action of the first respondent in refixing the seniority on the basis of initial temporary appointments of individuals had unsettled the seniority list fixed earlier on the basis of date of regularization of services and the second respondent has not considered his case. If the seniority list fixed as per G.O.Ms.No.615, dated 26.05.1998 is retained, the respondents ought to have promoted the petitioner as Assistant Public Prosecutor Grade-I vide G.O.Ms[2D] No.74, dated 07.03.2000 and he was unaffected by the impugned G.O.Ms.No.287, when the respondents 1 and 2 promoted him as Assistant Director of Prosecution.

5. In the year 2010-2011, the second respondent has prepared and forwarded a panel for the post of Deputy Director of Prosecution. In the said panel, four persons, namely respondents 3 to 6, have been placed above the petitioner following the revised seniority list vide G.O.Ms.No.287 and his rank in the panel is only 10. If the panel is prepared as per the seniority list fixed vide G.O.Ms.No.615, respondents 3 to 6 would have been placed below him and there were 13 vacancies available for the post of Deputy Director of Prosecution and only the first 8 persons would have been promoted from the said panel as the balance vacancies would be



filled by promoting the Assistant Director of Prosecution working in the Department of Vigilance and Anti-corruption. According to the petitioner, he is due for retirement on 30.04.2011 and therefore, he sought for considering his name for promotion for the post of Deputy Director of Prosecution by sending a representation, dated 18.03.2011 to the second respondent. Since there was no action forthcoming, the petitioner has filed the present Writ Petition on 23.04.2011, one week before the date of his retirement.

6.The Additional Secretary to Government, Home Department, Secretariat has filed counter-affidavit denying all the averments and would submit that the Government in G.O.Ms.No.2603, Home Department, dated 17.11.1984, had integrated the Assistant Public Prosecutors in Madras City and in mofussil as one unit and framed Special Rules for governing the service conditions of the integrated Assistant Public Prosecutors. By G.O.Ms.No.1032, Home Department, dated 24.04.1986 the services of 146 temporary Assistant Public Prosecutors Grade - II were regularised besides interse seniority of such Assistant Public Prosecutors Grade - II was also fixed. The petitioner was appointed as an Assistant Public Prosecutor Grade - II temporarily by the District Collector, Tirunelveli on 07.12.1983. As per the above Government Order, his temporary service was regularized from 17.11.1984 and his name was included in serial No.113 in the said seniority list and during the year 1985-1988, some Assistant Public Prosecutors filed Writ Petitions challenging the seniority list of Assistant Public Prosecutors Grade-I and Grade-II issued by the Government during the year 1986. The Writ Petitions were transferred to the Tamil Nadu Administrative Tribunal, Chennai as T.A.Nos.325 of 1994 and 326 of 1994 and the Tamil Nadu Administrative Tribunal issued guidelines in preparing the seniority list of Assistant Public Prosecutors Grade-I and Grade-II. Accordingly, the Government in G.O.Ms.No.615, Home Department, dated 26.05.1998 fixing the seniority among Assistant Public Prosecutors Grade-I and Grade-II as on 17.11.1984. As per the seniority list, the petitioner's name was included in serial No.217 (Annexure-II) taking into account the date of regularization of his temporary services in the post of Assistant Public Prosecutor Grade-II on 17.11.1984. It is further stated that some Assistant Public Prosecutors filed Original Applications before the Tamil Nadu Administrative Tribunal for retrospective regularization of their services from the date of their initial temporary appointment. In these applications, the Tamil Nadu Administrative Tribunal passed an order holding that the Government shall re-examine the case of the applicants therein and to pass orders with reference to the Rules, which were in existence prior to 1984. Accordingly, the Government issued order in G.O.(3D)No.61, Home Department, dated 17.03.1999, regularizing their services retrospectively with effect from the dates on which they were temporarily appointed, subject to certain conditions. As per the Government Order, the service of the petitioner in the post of Assistant Public Prosecutor Grade-II was regularized from 07.12.1983 ie., date of his original temporary appointment in the post - vide serial No.89. Further, the



Government in G.O(2D)No.32, Home Department, dated 02.02.2000 issued temporary panel of Assistant Public Prosecutors Grade-II fit for the year 1999-2000. In the said panel, the petitioner's name was found place in serial No.66. The Government also issued orders in G.O(2D) No.74, Home Department, dated 07.03.2000 for temporary promotion and posting as Assistant Public Prosecutors Grade-I to all those included in the aforesaid temporary panel. The petitioner was promoted as Assistant Public Prosecutor Grade-I temporarily and posted to District Munsif cum Judicial Magistrate Court, Viruthunagar District vide serial No.62.

7.It is further stated in the counter affidavit that the Government in G.O(4D)No.107, Home Department, dated 27.09.2000, as part of implementation of the Tamil Nadu Administrative Tribunal order, dated 18.06.1997 in T.A.Nos.325 of 1994 and 326 of 1994 issued seniority list of Assistant Public Prosecutors Grade-II, who were appointed to the post subsequent to 17.11.1984 on regular basis. As per the Government Order, temporarily services of the respondents 3 to 6 were regularized a detailed below:-

Sl.No.	Revised seniority list Sl.No.	Name of respondents Thiru/Tmt.	Date of regularization
1.	1	Antony Christopher (3 rd respondent)	28.11.1984
2.	3	S.Kandasamy (4 th respondent)	06.02.1985
3.	14	S.Tamil Selvan (5 th respondent)	26.03.1985
4.	2	T.Chandralekha (6 th respondent)	12.12.1984

8.It is further stated that one P.K.Natarajan filed W.P.Nos.4259 of 2006 and 23866 of 2006 before the High Court, Madras and this Court passed an order, dated 31.11.2006, wherein the petitioner's service was regularized with effect from 16.04.1980 and at that time, it was clearly mentioned that the regularization of the employees is issued through G.O(3D)No.61, Home Department, dated 17.03.1999 and the same should be taken into effect with regard to seniority; that the first and second respondents were to prepare the revised Government Order fixing seniority within 30 days and based on that order, the petitioner's name will be considered, panel be prepared and the post of Deputy Director of Prosecution be filled up. The Government in G.O.Ms.No.287, Home Department, dated 22.02.2008 issued the seniority list of prosecuting officers as on 29.12.2006 subject to the outcome of W.A.No.994 of 2007 filed by one V.Jayakumar and W.P.No.15263 of 2007 filed by Pon Peter Amaldoss. As per the seniority list, the position of the petitioner and the respondents 2 to 6 are as detailed below:-



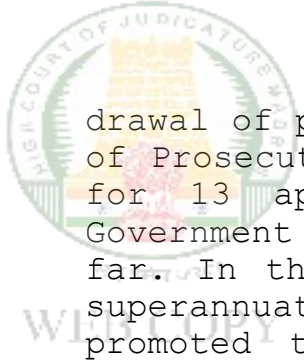
Sl.N o.	Revised seniority list Sl.No.	Name of petitioner and respondents Thiru/Tmt.	Date of regularization of appointment in the post of APP.Gr-II
1.	46	Antony Christopher (3 rd respondent)	12.04.1983
2.	102	S.Kandasamy (4 th respondent)	06.02.1985
3.	62	S.Tamil Selvan (5 th respondent)	01.06.1983
4.	84	T.Chandralekha (6 th respondent)	01.12.1983
5.	85	M.Santhanam (petitioner)	07.12.1983

9. In the above said Government Order, the Government also directed that the Government Order with revised seniority list be issued to all Prosecuting Officers concerned under acknowledgment and they had to send their objections, if any, on the said seniority list within 30 days from the date of receipt of the Government Order. Accordingly, the Government Order and the revised seniority list was communicated to all concerned and after receiving the objections from the Prosecuting Officers over the revised seniority list issued in G.O.Ms.No.287, Home Department, dated 22.02.2008, the proposal was sent to the Government by the Director of Prosecution for regularization of services of 15 prosecuting officers from the date of their initial temporary appointment in the post of Assistant Public Prosecutor Grade-II and consequent fixation of their seniority in the revised seniority list issued in G.O.Ms.No.287, Home Department, dated 22.02.2008.

10. The Government after examination in G.O(3D)No.30, Home Department, dated 02.06.2009 regularized the services of 15 prosecuting officers in the post of Assistant Public Prosecutor Grade-II with effect from the dates mentioned against their names in the Annexure to that order. Based on the said Government Order, the Government have re-revised seniority of 156 Prosecuting Officers as on 29.12.2006 in G.O.Ms.No.77, Home, dated 28.01.2010 subject to the outcome of W.A.No.268 of 2007 and W.P.No.15263 of 2007. The Government in G.O.Ms.No.77, Home Department, dated 28.01.2010 have directed to serve the said re-revised seniority list to all the Prosecuting officers and they have to send their objections, if any, on their seniority within 30 days from the date of receipt of the Government Order. Accordingly, the Government Order with the Annexure of re-revised seniority list has been communicated to all the prosecuting officers concerned.

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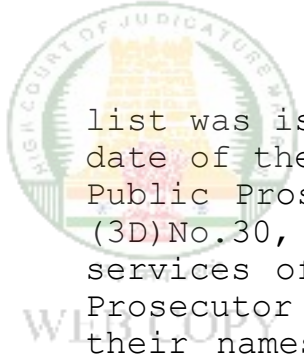
11. Based on the re-revised seniority list, issued in G.O.Ms.No.77, Home Department, dated 28.01.2010, the proposal for



drawal of panel of Additional Public Prosecutors/Assistant Directors of Prosecution fit for promotion as Deputy Directors of Prosecution for 13 approved estimate of vacancies has been sent to the Government and the Government Orders thereon have not been issued so far. In the meanwhile, the petitioner was retired from service on superannuation on 30.04.2011. No junior to the petitioner has been promoted to the post of Deputy Director of Prosecution before retirement of the petitioner. The Government issued revised seniority list of prosecuting officers in G.O.Ms.No.287, Home Department, dated 22.02.2008 in supersession of the seniority list of prosecuting officers already issued in G.O.Ms.No.615, Home Department, dated 26.05.1998. Further, the Government have issued re-revised seniority list of prosecuting officers in G.O.Ms.No.77, Home Department, dated 28.01.2010 in supersession of the revised seniority list of prosecuting officers issued in G.O.Ms.No.287, Home Department, dated 22.02.2008. The petitioner has no grievance at that time. Aggrieved with the proposal sent by the Director of Prosecution, Chennai, placing respondents 3 to 6 above the petitioner for preparation of panel for promotion as Deputy Directors of Prosecution for the year 2010-2011, the petitioner has filed the Writ Petition.

12. Heard the learned counsel for the petitioner and the learned counsel for the respondents 1 and 2.

13. From the above, it is clear that pursuant to the directions of this Court issued in the order dated 30.11.2006 in W.P.No.4259 of 2006 and W.P.No.23866 of 2006, the Government in G.O.Ms.No.287, Home Department, dated 22.02.2008 refixing the seniority among the prosecuting officers as on 29.12.2006 subject to the outcome of W.A.No.994 of 2007 and W.P.No.15263 of 2007 filed by various persons. As per the seniority list, the respondents 3, 5 and 6 were shown as seniors to the petitioner, but the fourth respondent was junior to the petitioner. The Government issued revised seniority list of prosecuting officers taking into consideration of the direction issued by this Court and the rule provision. The letter submitted by the petitioner objecting the revised seniority list of the Assistant Public Prosecutor Grade-II in G.O.Ms.No.287, Home Department, dated 22.02.2008, according to the respondents, has not been received by the Directorate of Prosecution. Even in the affidavit filed in support of the petition, there was no proof to show that the petitioner had sent any objections regarding the seniority list on that date. Based on the seniority list issued in G.O.Ms.No.615, Home Department, dated 26.05.1998, the Government in G.O.Ms.No.74, Home Department, dated 07.03.2000, issued orders for temporary promotion and posting as Assistant Public Prosecutors Grade-I for the year 1999-2000 including the petitioner. Based on the re-revised seniority list of prosecuting officers issued in G.O.Ms.No.77, Home Department, dated 28.01.2010, the seniority list was drawn for the year 2009-2010 and the respondents 3 to 6 have been included above the name of the petitioner and after receiving objections from various persons, namely 15 officers, the seniority



list was issued regularising the service of the individuals from the date of their initial temporary appointment in the post of Assistant Public Prosecutor Grade-II. The Government after examination in G.O (3D)No.30, Home Department, dated 02.06.2009, regularised the services of 15 prosecuting officers in the post of Assistant Public Prosecutor Grade-II with effect from the dates mentioned against their names in the Annexure to that order. As per this Government Order, the service of the fourth respondent in the post of Assistant Public Prosecutor Grade-II was regularised with effect from 09.05.1983 forenoon and as per the re-revised seniority, the respondents 3 to 6 are seniors to the petitioner. Based on the re-revised seniority list, proposal for drawal of panel of Assistant Public Prosecutors/Assistant Directors of Prosecution fit for promotion as Deputy Directors of Prosecution for 13 approved estimate of vacancies has been sent to the Government and the Government Order thereon have not been issued. At this stage, the petitioner retired from service on superannuation on 30.04.2011 and no promotion has come into effect before his retirement. Hence, there is no question of claiming any notional promotion for the post will arise and the prosecuting officers were given opportunity to raise their grievance on the seniority list within 30 days from the date of receipt of the Government Order and the petitioner did not submit any revision or any petition regarding the seniority list within the time stipulated and no proof has been produced before this Court that he has sent any representation as such. Hence, the prayer sought for in the Writ Petition cannot be granted and the Writ Petition is liable to be dismissed.

14. In fine, this Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,
Home [Courts-VI] Department,
Secretariat, Chennai.
2. The Director of Prosecution,
Tamil Nadu Slum Clearance Board Complex,
2nd Floor No.5, Kamarajar Salai, Chennai - 600 005.

+ 1 CC TO Mr.C.KASIRAJAN, ADVOCATE IN SR No. 91893

PS

TE/SKN-RSK/SAR-1 : 22/12/2017 : 8P/4C

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