BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated : 20.02.2017
CORAM :
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.(MD).No.16501 of 2013 and
M.P.(MD)No.2 of 2013 and
WMP(MD)Nos.15364 and 15365 of 2016

The Tamil Nadu Local Fund Audit
Department Inspectors' Association,
Rep. by its General Secretary,
Mr.A.Richard Britto
Having office at No.240,
Thiruneelakandar Nagar II Street,
Kavangarai, Puzhal Post,
Chennai - 600 066. .. Petitioner

-Vs-

1.The Principal Secretary to Government,
Government of Tamil Nadu,
Finance Department,
Fort St. George, Chennai - 600 009.

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

3.V.Marimuthu ... Respondents
(R3 is impleaded vide Court order
dated 04.11.2016 in
WMP(MD)No.15153 of 2016)

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, for issuance of writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 1st respondent in G.O.Ms.No.12 Finance (LF) Department dated 7.1.2012 quash the same and consequently direct the first respondent herein to review the reservation under direct recruitment to the post of Assistant Director in the Local Fund Audit Service Rules.

For Petitioner : Mr.C.Jeganathan (No Appearance)
For Respondents : Mr.K.Guru (for R1 and R2)
Additional Government Pleader

Mr.S.Kumaresan (for R3)

ORDER

The General Secretary of the Tamil Nadu Local Fund Audit Department Inspectors’ Association has come up with the present

Writ Petition to call for the records relating to the order of the 1st respondent in G.O.Ms.No.12 Finance (LF) Department dated 07.01.2011 with a consequential prayer to direct the 1st respondent to review the reservation and Direct Recruitment to the post of the Assistant Director as per the Local Fund Audit Service Rules.

2.The case of the Petitioner Association is that under the 1st respondent there are two departments are functioning in order to Audit the Local Bodies and Co-operative Societies. The object of Local Fund Audit Department is to audit the local bodies having or generating local fund like Corporations etc., and all the public authorities who have created funds. According to the petitioner, the audit of the local bodies is the basis and back-bone to the 1st respondent for implementing the Government projects. In addition to that the Director of Co-operative audit is also functioning under the 1st respondent. The function and duties of the said department are similar as that of the local fund audit. The service of the local fund department comes under the Special Rules for Tamil Nadu Local Fund Audit Service Rules and Subordinate Service Rules, 1993.

3.The members of the petitioner association are all Inspectors of Local Fund Audit and their next promotional avenue is to the post of Assistant Director of Local Fund Audit. The said post is earlier called as the Assistant Examiner and now re-designated as Assistant Director and this post is to be filled up by promotion and the post of Inspector is the feeder category. Since the inception of the Department, the post of Assistant Director has been filled up by promotion from the category of Inspectors. However by issued a Government Order in G.O.Ms.No.561 Finance (CA) dated 26.06.1987 the 1st respondent started to recruit Assistant Director of Co-operative and Audit directly. Against that an Original Petition in O.A.No.5784 of 1992 was filed before the Tamil Nadu Administrative Tribunal. By the direction dated 23.12.1994 the Tribunal directed the Government to reconsider the necessity of the Direct Recruitment. Thereafter, the Government issued G.O.Ms.No.811 Finance dated 18.10.1995 modified the service rules to the effect that 10% of the permanent post in the cadre strength of Assistant Director shall be reserved for Direct Recruitment.

4.It is the further case of the petitioner that as against the terms of G.O.Ms.No.811 Finance dated 18.10.1995 the 1st respondent all of a sudden issued the impugned Government Order and stipulated that 25% of the post of Assistant Director would be filled up by direct recruitment through Tamil Nadu Public Service Commission. According to the petitioner, in this regard a representation was given to the 1st respondent on 23.03.2013 but the same did not fetch any good thing. Moreover, the act of the 1st respondent is an infringement of the fundamental rights of the members of the petitioner association.

5.Moreover, though the earlier order of the Administrative Tribunal is in force, the impugned order by increasing the direct recruitment upto 25% is arbitrary and against the rules. Further, if the direct recruitment is made among Chartered Accounts and ICWA candidates who have no experience at the gross root level but the same will be detrimental to the entire administration. In the above circumstances out of the total vacancies, if 25% is reserved for direct recruitment, it would be unconstitutional and would seriously affect the promotional avenues of the member of the petitioner association. Hence the G.O.Ms.No.12 Finance (LF) Department dated 07.01.2012 is to be quashed.

6.Per contra, the Director of the Local Fund Audit Department, Chennai and Chief Internal Auditor of Statutory Boards (In charge) Chennai, filed his counter affidavit stating that the Writ Petition itself is not maintainable. It is further stated in the counter affidavit that the Local Fund Audit Department is a statutory Audit Department of Local Bodies under the Director of Local Fund Audit Department. Further, internal Audit is functioning under the control of Chief Internal Auditor, who is auditing the statutory Board of Government of Tamil Nadu and Government Departments. The staff members working in these two Departments will be transferred from one Department to another within the State. The hierarchy in the department is

Director/Chief Internal Auditor
Joint Director
Deputy Director
Assistant Director
Inspector

7.The services of these posts are governed by the Special Rules for Tamil Nadu Local Fund Audit Services Rules. At the same time the posts of Deputy Inspector and Assistant Inspector would be governed by the Special Rules for Tamil Nadu Local Fund Audit Subordinate Service Rules. As far as the post of Assistant Inspector is concerned, the appointment is made by direct recruitment and also by transfer of service from the post of Junior Assistant/Steno-Typist/Typist in the Local Fund Audit Department/Internal Audit Department at the ratio of 4:1 as prescribed in Rule 2(2) of Tamil Nadu Local Fund Audit Service Rules and Subordinate Service Rules, 1993.

8.Further, the entry level post of Assistant Inspector and its promotional post of Deputy Inspector is governed under Special Rules for the Tamil Nadu Local Fund Audit Subordinate Service Rules. At the same time from the post of Inspector of Local Fund Audit to the Director of Local Fund Audit is governed by the Special Rules for Tamil Nadu Local Fund Audit Service Rules. The appointment for the aforesaid post is made as per Rule 2 of Special Rules of Tamil Nadu Local Fund Audit Service Rules. The 2nd respondent would rely on a table of categories of various post and methods of appointments. Wherein, Category-IV the post of

Assistant Examiner of Local Fund Audit re-designated as Assistant Director of Local Fund Audit would show the method of appointment by promotion among the holders of the post of Category-V which is Inspector of Local Fund Audit.

9.Further the respondent has given the sanctioned strength of his Department in tabulator column which is as follows:

S.No.	Name of the Posts	Sanctioned Strength		Total
		Local Fund Audit Department	Internal Audit Department	
1	Inspector	311	101	412
2	Assistant Director	72	37	109
3	Deputy Director	18	4	22
4	Joint Director	6	1	7
5	Chief Auditor	-	1	1
6	Director	1	-	1

10.In the counter affidavit it is further stated that on the basis of the Second State Finance Commission under recommendation VII(2) Chapter 8th Accountabilities and Audit recommendation ear marking 25% of post of Assistant Director in Local Fund Audit Department for direct recruitment through Tamil Nadu Public Service Commission from the qualified holder of Chartered Accountant and cost and Works Accountant to increase professionalism and technical aspects in the Local Fund Audit Department. So, on the basis of the recommendation, the 1st respondent issued a Government Order which is under challenge in the writ petition.

11.Further, the respondent contended that the writ petition ought to have been filed before this Court instead of Madurai Bench of Madras High Court and therefore the respondent sought for the dismissal of the writ petition.

12.The third respondent Mr.V.Marimuthu, who impleaded in this writ petition in supported the case of the writ petitioner.

13.I heard Mr.K.Guru, learned Additional Government Pleader appearing for the respondents 1 and 2 and Mr.S.Kumaresan, learned counsel appearing for the 3rd respondent and no representation on behalf of the petitioner and all the materials are available on record are perused.

14.The issue involved in the writ petition is that the impugned Government Order issued by the 1st respondent is against the Special Rules for Tamil Nadu Local Fund Audit Service.

Further, the learned counsel for petitioner would submit that nowhere the Special Rules of Tamil Nadu Local Fund Audit would authorize the 1st respondent to issue the impugned Government Order for the recruitment of 25% of the post of Assistant Director directly. He has also pointed out that even in the counter affidavit itself in Para No.9, the respondent has admitted that the Government has proposal to amend the Special Rules of Tamil Nadu Local Fund Audit Service for the direct recruitment of 25% for the post of Assistant Director. So, according to him as on the date of Government Order, the Rule has not been amended. Hence, the Government Order is against the Rule and liable to be set-aside. On the other hand, learned Government Advocate would submit that the Government Order is passed based on the recommendation of the second State Finance Commission in order to increase professionalism and to develop technical skill in the Local Fund Audit Works. At this juncture, it would be more useful to extract the tabular given by the respondent. According to the tabular column, Category IV is dealing with the recruitment of Assistant Director, but the same is only from the feeder category that is from the post of Inspector. The tabular column is as follows:

Category IV Assistant Examiner of Local Fund Audit (now re-designated as Assistant Director of Local Fund Audit)	By promotion among the holders of the post in category V
Category V Inspector of Local Fund Audit	• By recruitment by transfer from among the holders of the post of Deputy Inspector in category 1 of the Tamil Nadu Local Fund Audit Subordinate Service. • If suitable person is not available for appointment under clause (i) by recruitment by transfer from among the holders of the post of Assistant Inspector in category 2 of the Tamil Nadu Local Fund Audit Subordinate Service.

15.Therefore, from the table itself it is very clear that the post of Assistant Examiner now re-designated Assistant Director of Local Fund Audit would be filled up by promotion. So, in the considered opinion of this Court, the impugned Government Order passed by the 1st respondent is not in consonance with the Special Rules of Tamil Nadu Local Fund Audit

Service. So, it is liable to be quashed for the following reasons:
The said Government order is passed not in terms or according to the Special Rules of Tamil Nadu Local Fund Audit Service.

The said Government order is passed without incorporating suitable amendments in the Special Rule of Tamil Nadu Local Fund Audit Service.

and the said Government order is passed against the existing mode of recruitment and against the ratio of Direct Recruitment of 10% as per the suggestive recommendation of the Tribunal in O.A.No.5784 of 1992.

16.Therefore, this Court has no hesitation to hold that the impugned G.O.Ms.No.12 Finance (LF) Department dated 07.01.2012 is against the Special Rules of Tamil Nadu Local Fund Audit Service and accordingly quashed and this Writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
ASSISTANT REGISTRAR(Records)

/TRUE COPY/

SUB ASSISTANT REGISTRAR

To

1.The Principal Secretary to Government,
Government of Tamil Nadu,
Finance Department,
Fort St. George, Chennai - 600 009.

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

+1 CC TO M/S.VEERA ASSOCIATES, ADVOCATE,SR NO.8320

vsa/skn
MAS/JC/SAR1:24.05.2017:6P-4C

Pre-Delivery order made in
W.P.(MD).No.16501 of 2013 and
M.P.(MD)No.2 of 2013 and
WMP(MD)Nos.15364 and 15365 of 2016
20.02.2017