IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved On : 03.08.2018

Order Pronounced On : 30.11.2018

CORAM:

THE HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

W.P.No.2871 of 2009
and M.P.No. 1 of 2009

1.C.Balan
2.Ka.Vezhavendhan
3.N.Manivannan
4.G.Moorthy
5.G.Baskaran
6.S.Uthayasooriyan ... Petitioners

Vs.

1.The Principal Secretary,
Finance Department,
Government of Tamilnadu,
Secretariat,
Chennai - 600 009.

2.The Director of Local Fund Audit,
Kuralagam, Chennai - 600 018.

3.A.Jayakaran Aruliah
4.V.Vimala
5.K.Murugesan ... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, calling for the records on the file of 1st respondent pertaining to the letter No.47550/LF/2008 dated 19.11.2008 and to quash the order of the 1st respondent Letter No.47550/LF/2008 dated 19.11.2008 and consequently direct the second respondent to place the petitioners above the respondent 3 to 5 and to provide all consequential benefit from the date 11.09.1992.

For Petitioners : Mr.R.Viduthalai
Senior Counsel assisted by
Mr. L.N.Praghasam

For Respondents : Mr.N.Manikandan
Government Advocate for R2

ORDER

The writ petitioners, have approached this court praying for a writ of mandamus directing the first respondent herein, to place the petitioners above the private respondents no.3 to 5, in the relevant seniority list, and grant consequential benefits.

2.Briefly stated the facts leading to the filing of the writ petition are as follows. On 18.12.1980, G.O.Ms.No.1129, Finance (Funds) department was issued. As per this G.O. 20% of the vacancies for the post of Assistant Inspector Local Fund Audit were to be filled by promotion from the post of Junior Assistant/Typist and the remaining be filled by way of direct recruitment, thus maintaining a 4:1 ratio between direct recruitment and recruitment by way of promotion to the post of Assistant Inspector Local Fund Audit over the period of one year. For the actual process of recruitment, the relevant authorities would estimate the number of vacancies every year, and invite applications for both direct recruitment and recruitment by way of promotion. Any such invitation would be in accordance with the ratio provided for in G.O.Ms.No.1129 Finance (Funds) Department.

3.The years relevant for the present lis are between 1981 and 1984. The actual ratio of recruitment during these years, would help us better understand the controversy before this Court.

Estimate year	Total Estimatee of Vacancies	No. of persons to be directly recruited	No.of persons to be promoted
		In a 4:1 ratio	
1981-1982	115	92	23
1982-1983	65	52	13
1983-1984	150	430	37
Total		574	73

4.It must be noted that for the year 1983-1984, 150 vacancies were estimated, and on this basis 37 persons were recruited by way of promotion. However, this estimate for vacancies was cancelled vide office order Lr.No.AA1/3369/1985 dated 12.03.1985. Further 400 new posts of Assistant Inspectors were notifies in light of the fact that this department was tasked with the audit of the Noon-day meal scheme of the State Government. The candidates allotted for recruitment during the relevant period by way of direct recruitment was 574, and was done in the following fashion;-

Year	No. of Candidates Allottted
1981-1982	92
1982-1983	52
1983-1984	430
Total	574

5.These 574 candidates who were selected, joined training on 23.06.1983, and completed training on 23.09.1983, and 527 of the candidates were given posting on the completion of training. Since all the anticipated vacancies had not arisen, the remaining 47 candidates were made to wait for postings till 01.11.1983. However, the services of all 574 candidates were regularised and deemed to be in effect from 23.06.1983. The petitioners before this court were amongst the direct recruits.

6.During the time period, the recruitment of Assistant Inspector Local Fund Audit by way of promotion from the feeder post of Junior Assistant /Typist was made in the following manner:-

Estimate year	No.of persons to be promoted (20%)	No. of persons actually promoted	Excess Promotion made
1981-1982	23	23	Nil
1982-1983	13	28	15
1983-1984	37	37	Nil

7.Admittedly, for the year 1982-1983, 15 excess promotions were made, which were not in accordance with G.O.Ms.No.1129 Finance (Funds) Department, dated 18.12.1980. Only 13 persons ought to have been promoted for this year, and therefore the services of only 13 of these recruits were regularised on 01.03.1983 (their actual date of joining) and the remaining 15 were regularised only on 24.09.1983(their actual date of joining was 01.03.1983, but could not be regularised at the time because of the excess promotion). Respondent Nos.3 to 5 from amongst the 13 persons whose services were regularised on 01.03.1983 itself.

8.Subsequently, seniority lists for the post of Assistant Inspector Local Fund Audit were being drawn out for the purpose of promotion to the post of Deputy Inspector and eventually

Inspector. The initial list was prepared in the ratio of 4:1 Direct recruits to Promotees, keeping in view the G.O.Ms.No.1129 Finance (Funds) Department, dated 18.12.1980. However, the State Government, subsequently issued a clarification vide letter Lr.No.142476/LF/90-8/Fin(L.F) Department, dated 05.06.1992 whereby a decision was taken that seniority amongst direct recruits should be in the order of ranks attained by them, and that the seniority amongst the promotes and the direct recruits was to be in accordance with rule 35(aa) of the Tamil Nadu State and Sub-ordinate Service Rules.

9.As per these rules, if the method of recruitment is by more than one method, the inter se seniority between persons appointed through different methods has to be determined on the basis of their date of joining. The date of joining of the petitioners was 26.06.1981, whereas the respondents were appointed to the post of Assistant Inspector Local Fund Audit on 01.03.1981. As a result of the same, the respondents had seniority over the petitioners. This was reflected in the Revised Seniority list issued in Proc.Rc.No.A5/2978/86, dated 27.10.1999. The Direct Recruits in this list were placed above the 15 persons who were appointed in excess of the promotee, but below the 13 persons who were regularly appointed on 01.03.1981.

10.Aggrieved by this seniority list, petitioner No.1 herein approached the Tamil Nadu Administrative Tribunal, in O.A.No.207 of 2000. The petitioner raised two grievances, namely in respect of his inter se seniority amongst the direct recruits, and also objected to the manner in which the promotees who were regularised on 01.03.1981 were given seniority over him. The Tribunal vide order dated 25.08.2003 disposed of all the applications pending before it set aside the seniority list dated 27.10.1999. The Tribunal took the view that the department must fix the seniority as per the ranking given to the Direct Recruits by the service commission, and said that the new seniority will only be in respect of the petitioners batch mates, and would not affect the seniority amongst the promotees or between the Direct Recruits and promotees. The Tribunal accepted his plea in respect of inter se seniority within the direct recruits, but rejected his claim for seniority in respect of the promotes who's services were regularised on 01.03.1981.

11.Petitioner No.1 approached this Court by way of W.P.No.31137 of 2003 against this order of the Tribunal. This Court noticed that a representation in this regard was pending with the Director of the Local Fund Audit (first respondent therein) and thought it appropriate to direct him to deal with such representation within twelve weeks from the date of the receipt of the order of this Court, and disposed of the petition.

12.The first respondent through its communication dated

11.02.2008 rejected the representation of petitioner No.1 for seniority over the promotes, in light of the fact that Rule 35 (aa) of the Tamil Nadu State and Subordinate Service Rules, which stated that where persons were appointed through two different methods, the date of joining would be the basis of seniority. Since the promotees who were regularised on 01.03.1981, joined on a date before the petitioner(23.06.1981), they were entitled to their seniority over petitioner No.1.

13.During the pendency W.P.No.31137 of 2003, six writ petitioners herein, filed W.P.No.13147 of 2006 praying for a direction to the Director of the Local Fund Audit (first respondent therein), to prepare a fresh Seniority of the Assistant Inspector Local Fund Audit following the 4:1 ratio while preparing the list. This Court vide its order dated 09.07.2008, while disposing of the petition, directed the Government of Tamil Nadu to consider the appeals of the petitioners already pending in this regard before them, in a period of 8 weeks from the date of the receipt of the order.

14.Vide order dated 19.11.2008, the Government of Tamil Nadu rejected the appeals of the petitioners in light of the fact that Rule 35(aa) of the Tamil Nadu State and Subordinate Service Rules, clearly stipulated that where there were more than two methods of recruitment, the seniority between the recruits would be determined on the basis of their date of joining, and as such the petitioners were not entitled to the seniority they had appealed for.

15.The petitioner have approached this Court by way of the instant writ petition challenging the order dated 19.11.2008, praying that the same be quashed, and that they be granted seniority over respondents 3,4 and 5 along with all the consequential benefits.

16.I have heard the learned counsel for the parties. The counsel appearing for the petitioners contended that respondents No.3,4 and 5 were unduly granted seniority over the petitioners, and that the seniority lists ought to have been made in accordance with the 4:1 ratio, and that the petitioners have deprived of the seniority, and all the consequential benefits that would have come with such seniority.

17.The counsel for the petitioner also placed reliance on the decision of the Honourable Supreme Court in the case of Union of India vs. N.R.Parmar (2012) 13 SCC 340, wherein the Supreme Court held that the seniority of direct recruits and promotes would have to be redrawn in a 1:1 ratio, in accordance with the various appointment rules and notifications in force therein. On the fact of this case however, the same has no application, as in the case before the Supreme Court, Rule 35 (aa) of the Tamil Nadu State and Subordinate Service Rules was not applicable. Thus this decision of the Supreme Court has no application herein.

18.At this juncture it is relevant to note only petitioner No.5 remains in service as on date, and the other 5 petitioners before this Court have already retired from service. Coming to the controversy before me, it is important to remember that as long as the rules in force and the executive instructions have been followed by the appointing authority, are followed, the scope of interference of the High Court in the exercise of its jurisdiction under Article 226 of the Constitution of Inida is limited. Moreover, it must be noted that the validity of Rule 35(aa) of the Tamil Nadu State and Subordinate Service Rules has not been challenged before this Court.

19.Turning to the present controversy, admittedly G.O.Ms.No.1129 Finance (Funds) Department dated 18.12.1980 directed that recruitment for the post of Assistant Inspector Local Fund Audit must be in a 4:1 ratio. On a perusal of this G.O. it is clear that the intention behind the passing of the G.O. was only to ensure that there were enough posts being offered to the general public by way of direct recruitment. The recitals of the G.O.indicate that at the time the Junior Assistants / Typists were filling up most of the vacancies in the post of Assistant Inspector Local Fund Audit, and there was no fixed ratio for the filling up of the vacancies. It was in this context that the G.O. Ms.No.1129 Finance(Funds) Department came into existence. Importantly, the G.O.did not give any instruction in relation to the inter se seniority of the Direct Recruits and Promotees and the manner of recruitment. In other words there was no stipulation in the G.O. directing the Service Commission to recruit 4 persons by way of Direct Recruitment for 1 Promotee, in that order necessarily. Instead the G.O. only directed the government to ensure that the ratio between direct recruits to promotes remains 4:1 over the course of a year. It is not the case of the petitioner that this requirement has not been complied with. This ratio has been maintained by the authorities.

20.From the record it appears that there was some confusion about the manner in which the seniority lists were to be prepared, the clarification issued by the State Government vide letter Lr.No.142476/LF/90-8/Fin(L.F) Dept. dated 05.06.1992 ended all confusion. It clearly stipulates that the determination of the seniority between the direct recruits and the promotes to the post of Assistant Inspector Local Fund Audit, would be determined in accordance Rule 35(aa) of the Tamil Nadu State and Subordinate Service Rules. This clarification has also not been challenged before this Court. The petitioner in his affidavit before this Court has taken the plea that these rules do not apply to the present case, as the rules came into force after their appointment to the post of Assistant Inspector Local Fund Audit. Though there is considerable force in this submission, it must be noted that the G.O.Ms.No.1129 dated 18.12.1980 does not provide for the manner in which inter se seniority between promotes and direct recruits is to be fixed. In the absence of the same, the drawing up of the seniority lists in accordance with clarification issued by the State Government cannot be faulted on the basis of G.O.Ms.No.1129 dated 18.12.1980. The clarification makes it abundantly clear that the Rule 35(aa) of the Tamil Nadu State and Subordinate Service Rules would apply for the preparation of the Seniority Lists amongst the Assistant Inspector Local Fund Audit. It is extracted below:-

> 35(aa) The Seniority of a person in a service, class, category or grade shall, where the normal method of recruitment to that service, class, category or grade is by more than one method of recruitment, unless the individual has been reduced to a lower rank as a punishment, be determined with reference to the date on which he is appointed to the services, class, category or grade;
>
> [emphasis supplied]

21.A bare perusal of this rule makes it clear that the respondents who were regularised on 01.03.1981 are senior to the petitioners who were regularised on 23.06.1981. Clearly recruitment was made to the same post by more than method of recruitment and therefore the seniority must be determined as per the date of joining of the service. In the absence of specific direction in the G.O.Ms.No.1129 Finance (Funds) department, the petitioners cannot be entitled to have their seniority fixed in accordance with the ratio recruitment specified in the said G.O.

22.The writ petition therefore is devoid of merit and accordingly fails, and is dismissed, and all pending applications are disposed of . There shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Principal Secretary,
Finance Department,
Government of Tamilnadu,
Secretariat,
Chennai - 600 009.

2.The Director of Local Fund Audit,
Kuralagam, Chennai - 600 018.

+1cc to Mr.L.N.Praghasam, Advocate, S.R.No.82173

W.P.No.2871 of 2009
and M.P.No. 1 of 2009

JP(CO)
GSP(20/12/2018)