

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2018

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice N.ANAND VENKATESH

W.A.No.2426 of 2010
and
M.P.Nos.1 and 2 of 2010

D.Devaki

Appellant

Vs

- 1.Secretary to Government,
Home (Police XVI) Department,
Chennai - 9.
- 2.The Director of Forensic Science,
Forensic Sciences Department,
Chennai - 4.
- 3.The Secretary,
Tamil Nadu Public Service Commission,
Chennai - 2.
- 4.N.Mahalakshmi
- 5.V.Devi
- 6.M.Hemalatha
- 7.D.Chithra
- 8.Vijayalatha
- 9.V.S.Mallika
- 10.B.Umadevi
- 11.V.Valliammal
- 12.E.D.Thamarai Selvan
- 13.M.Padma
- 14.Florence Devasudamani
- 15.T.P.Thara
- 16.N.Thilagavathi
- 17.M.S.Vasanth Sundari
- 18.B.Shanthi
- 19.K.Manjula Devi
- 20.V.Sivapriya
- 21.V.Jaganathan
- 22.D.Shanmugam

23.V.Arunagiri
24.G.Sridharan
25.D.Panchatcharam
26.S.Uma
27.D.V.Arulraj
28.A.Visalakshi

.. Respondents

Appeal preferred under Clause XV of Letters Patent against the order dated 02.09.2010 made in W.P.No.2111 of 2007.

WP.NO.2111/2007:

Petition filed Under Article 226 of the Constitution of India by way of Transfer of O.A.No.7206/1999 from the file of the Tamil Nadu Administrative Tribunal with the prayer to quash the seniority list of Scientific Assistant Grade II issued by the Second Respondent in proceedings Proc.No.A4/18829/97 / O.O.No.107/97 dated 20.4.1998 in so far as it relates to the applicants herein as the said seniority list is contrary to General Rule 35 (a) and is not based on the rank assigned to the applicants in the list of selected candidates for the post of Scientific Assistant Grade II by the Tamilnadu Public Service Commission and to direct the respondents 1 to 3 herein to revise the seniority list of Scientific Assistant Grade II issued by the Second Respondent in proceedings Proc.No.A4/18829/97/ O.O.No.107/97 dated 20.4.98 based on the rank assigned to the applicants herein by the TamilNadu Public Service Commission in the competitive examination held in the year 1989 for Scientific Assistant Grade II and under General Rule 35(a) and consequently to include the name of the applicants in the panel of Scientific Assistant Grade I issued by the Second Respondent in proceedings Rc.No.A4/883/99 / O.O.5/99 dated 22.1.1999 and consequently promote the applicants herein as Scientific Assistant Grade I, based on the seniority list so revised

For Appellant .. Mr.M.Gnanasekaran
for Mr.R.Sekaran

For Respondents.. Mr.N.Sakthivel,
Addl. Govt. Pleader for R1 to R3
Mr.Ravi Shanmugam
for R4 to R21, R25 and R27
No appearance for R22 to R24,
R26, R28 and R29

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

The appellant is the second writ petitioner. The writ petition has been filed seeking to challenge the seniority list

fixed with the consequential relief. As the learned single Judge dismissed the writ petition, the present appeal has been filed.

2.The appellant along with the private respondents were initially appointed on 10 (a) (i) of the Tamil Nadu State and Subordinate Services Rules in the year 1987-1988. Admittedly, the private respondents were seniors to the appellant. In O.A.Nos.1727 and 1728 of 1989, an order was passed on 04.12.1991 directing the official respondents to regularise the services of the applicants therein which is inclusive of the appellant as well as the private respondents before us on the premise that till 09.12.1988, the post of Scientific Assistant Grade II did not come within the purview of the Tamil Nadu Public Service Commission. The aforesaid order has become final.

3.Though a challenge was made in the aforesaid application by the appellant and the private respondents, the appellant did participate in the selection process. The appellant was accordingly given posting orders as Scientific Assistant Grade II by the order dated 08.03.1997. The order of the Tribunal was thereafter given effect to and the services of the appellant as well as the private respondents were regularised with effect from the date of their initial entry as 10 (a) (i) employees by the order dated 04.07.1997.

4.The order dated 04.07.1997 clearly states that the services are to be regularised with effect from the date of their initial entry as stated supra. Therefore, the appellant was placed below the private respondents being the initial entry subsequent to that of the private respondents. A challenge was made by such of those Scientific Assistants Grade II appointed on permanent basis to the order dated 04.07.1997. It is the Government Order passed in G.O.Ms.No.996 Home (Police XVI) Department dated 04.07.1997 referred supra. The writ petition and writ appeals filed were dismissed upholding the aforesaid Government Order in W.A.Nos.1270 and 1271 of 2015. Before the learned single Judge, the appellant took a plea supporting the case of the petitioners therein inter alia contending that she should be placed above the private respondents before us for having appointed on 08.03.1997, which is much prior to the order of regularisation passed in G.O.Ms.No.996 Home (Police XVI) Department dated 04.07.1997. Thus, it could be seen that the appellant took the plea along with the similarly placed persons, which was accordingly repelled.

5.The appellant has come forward to file the present writ petition inter alia contending that there cannot be any retrospective regularisation by giving credence to the back door entry under Rule 10 (a) (i) of the Tamil Nadu State and Subordinate Services Rules done as per G.O.Ms.No.996 Home (Police XVI) Department dated 04.07.1997, without even

challenging the same. Learned single Judge dismissed the writ petition. Hence the present writ appeal.

6.Learned counsel appearing for the appellant would contend that the earlier orders would not bind the appellant. The writ petition filed earlier was not by the appellant. There cannot be any retrospective regularisation by reckoning the service rendered as a temporary employee which is back door entry. To buttress his submission, reliance has been made on the decision of the Apex Court in State of Tamil Nadu and another Vs. E.Paripoornam and Others (AIR 1992 SC 1823).

7.Learned counsel appearing for some of the private respondents would submit that the order of the Tribunal has become final inter se parties. It is the appellant along with the private respondents filed an application before the Tribunal and warranted the order. She continued to take the same stand till the Apex Court. However, a contra stand was taken in the subsequent writ petition filed in W.P.Nos.464 and 465 of 2011. The writ petitions filed were also dismissed as confirmed by the Division Bench. Thus, it is nothing but a relitigation in different form and the appellant cannot be permitted to do so. The appellant also got the benefit of G.O.Ms.No.996 Home (Police XVI) Department dated 04.07.1997 and got two promotions. Now she has retired. Seven of the private respondents also retired and others are on the verge of retirement. Hence no interference is required.

8.The narration of the facts would clearly show that the appellant is making an attempt to relitigate the issue which has already been concluded. In the earlier round of writ petition filed by the similarly placed persons viz., those who are appointed by the Tamil Nadu Public Service Commission in permanent vacancy, challenging the validity of the Government Order regularising the services of 10 (a) (i) employees including the appellant dated 04.07.1997, the contentions raised including that of the appellant were rejected. The decision of the learned single Judge was also confirmed by the Division Bench. The appellant was quite aware of the aforesaid proceedings. Therefore, it is not open to the appellant to raise any plea in a different form at this stage. The appellant was also beneficiary of the regularisation dated 04.07.1997. She has since attained the age of superannuation.

9.In such view of the matter, we are of the view that certainly the principle of constructive res judicata would apply to the case on hand. Thus, we do not find any merit in the

appeal. Accordingly, the appeal stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
Home (Police XVI) Department,
Chennai - 9.

2.The Director of Forensic Science,
Forensic Sciences Department,
Chennai - 4.

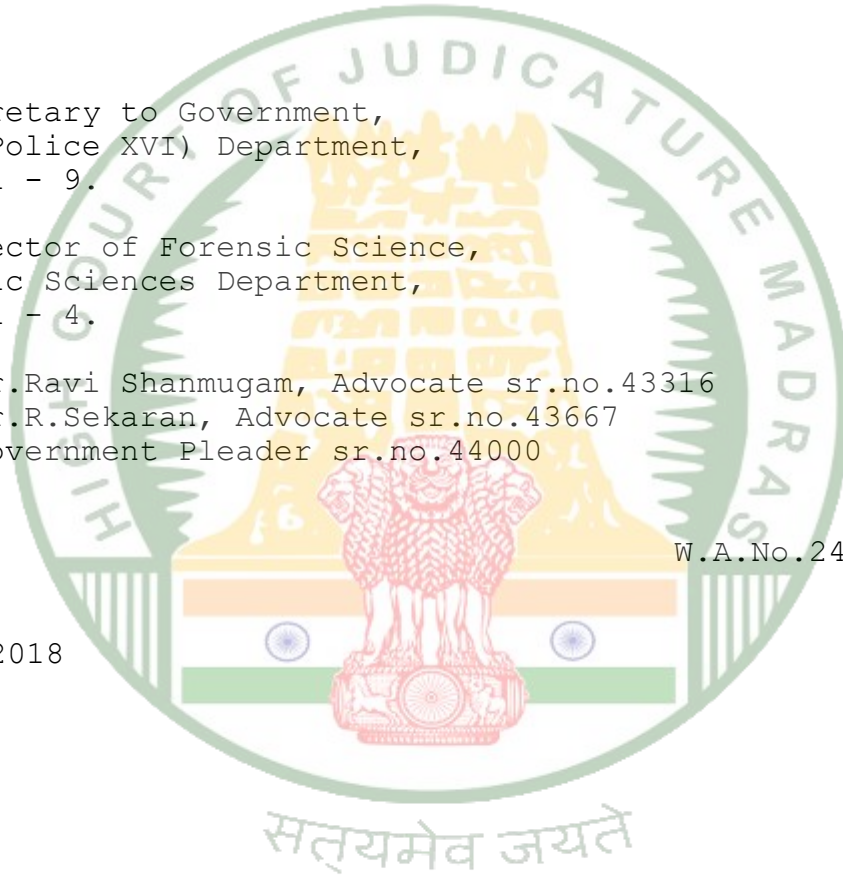
+2cc to Mr.Ravi Shanmugam, Advocate sr.no.43316

+1cc to Mr.R.Sekaran, Advocate sr.no.43667

+1cc to Government Pleader sr.no.44000

W.A.No.2426 of 2010

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