

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :13.02.2018

PRONOUNCED ON :04.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

W.P.No.35056 of 2013

& MP.No.1 of 2014

A..Samuel

.. Petitioner

Vs.

1.The Deputy Director General,

National Cadet Corps Directorate,

Tamil Nadu, Puduchery & Andaman Nicobar,

Fort St. George,

Chennai-09.

2.Officer Commanding,

No.2, Tamil Nadu Batalian NCC, Crawford Colony,

Tiruchirapalli-620 012.

3.P.Rangaraj

4.The Principal Secretary,

Youth Welfare and Sports

Development Department,

Fort St. George,

Chennai-9.

.. Respondents

(R4 has been impleaded as per order dated 25.02.2015 by KKSJ in MP.No.2 of 2014 in W.P.No.35056 of 2013)

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus, to call for the records of the first respondent in relation to the proceeding issued in Letter No.1325/1/SC dated 30.10.2013 and quash the same and issue a consequential direction to the first respondent to fix petitioner's seniority above the rank of the third respondent.

For Petitioner : Mr.S.Saravanan

For RR1, 2 & 4 : Mrs.R.Janaki

O R D E R

This writ petition has been filed by the petitioner invoking the jurisdiction of this Court under Article 226 of the Constitution of India with the prayer to quash Letter No.1325/1/SC dated 30.10.2013 rejecting his representation of the petitioner to fix the seniority above the Respondent No.3 and consequential direction of the Respondents to fix his seniority above the rank of 3rd respondent.

2. As it appears, the petitioner was appointed as Junior Assistant at 4 TN Girls Battalion NCC, Trichy on 21.12.1983 on compassionate ground. He having completed his probation and also the departmental test, in due course promoted to the post of Superintendent with effect from 01.09.2003. The Respondent No.3 who was subsequently appointed as Junior Assistant to him, was shown as senior in the rank of Superintendent in the revised seniority list published for the post of Superintendent on 01.04.2012. The petitioner, as such, made representation against the same on 16.07.2013, but the same was rejected vide the impugned letter No.1325/1/SC dated 30.10.2013 on the ground that the same has been made beyond the period of three years, hence cannot be entertained in view of the limitation prescribed in Rule-35(f) of the Tamil Nadu General Subordinate Service Rules (hereinafter referred to as "the Rules"). It is the case of the petitioner that since he is senior to the respondent No.3 and the fair seniority list was published on 21.07.2010 and he had filed the representation on 30.10.2013, as such, rejection of his prayer indicating the fact that the representation was made beyond the period of limitation was illegal and arbitrary and, as such the same is liable to be quashed and the respondent no.1 be directed to fix a seniority above the 3rd respondent.

3. Counter affidavit has been filed by the first respondent disputing the fact that the petitioner is senior to the respondent no.3. According to the first respondent, the petitioner being appointed on compassionate ground while the selection list prepared by the TNPSC for appointment to the post of Junior Assistant was valid and the respondent no.3 having been appointed out of the said selection list, the petitioner even appointed earlier to respondent no.3 ranks junior to the respondent no.3 in view of the Government Letter No.68208/U1/80 of Labour and Employment Department dated 09.07.1982. Accordingly, after his promotion alongwith respondent no.3 and others to the post of Superintendent in the year 2003, he was shown as a Junior to respondent no.3 in the draft seniority list prepared in the year 2008 in respect of persons appointed from 01.01.2003 to 31.12.2007. The said draft seniority list was circulated by letter NO.1325/1/SC/superintendent dated 04.11.2008 to all serving

Superintendents including the petitioners. The petitioner made no grievance against his placement in the said seniority list, though he acknowledged receipt of the same on 17.12.2008. Thereafter, a fair seniority list was prepared on 21.07.2010. Therefore, the rejection of his prayer to revisit the seniority list at belated stage is devoid of merit inasmuch as the same is beyond the period prescribed under Rule 35(f) of the Rules.

4. It is submitted by the learned counsel appearing for the petitioner that since the petitioner had applied for revision of the seniority list within the time stipulated, inasmuch as the seniority list is published on 21.07.2010, he applied for revision of the same on 16.10.2013, and he having been appointed earlier to the 3rd respondent, and as such ranked senior to the third respondent, the same could not have been rejected on the ground of limitation prayed and Rule 35 (f) of the Rules. Hence, the said seniority list is required to be revisited by placing him above the 3rd respondent, as such, necessary direction in this regard be issued to the 1st respondent.

5. However, learned counsel appearing for the respondents would submit that the petitioner having not made representation within the time stipulated challenging the draft seniority list published in the year 2008 and thereafter the seniority list having been finalized, which is also revised from time to time and the seniority list which is challenged, is not a draft seniority list, but a revised list, taking note of the provisions in service rules, the prayer made by the petitioner thereafter has been rightly rejected vide the impugned order, in view of the Rules. Otherwise also, the petitioner cannot be said as a senior inasmuch as he was recruited on compassionate ground and the 3rd respondent had come through the regular process of recruitment, hence the writ petition is devoid of merit.

6. It is not disputed in this case that the petitioner was appointed on compassionate ground while 3rd respondent and others similarly situated to him, were appointed through a regular process of recruitment conducted by Tamil Nadu Public Service Commission. It is also not in dispute that if a person is recruited through regular process by Tamil Nadu Public Service Commission and is appointed during the period when the aforesaid list is valid, any other person appointed on compassionate ground during such period is required to be placed below the persons appointed through a regular process of recruitment conducted by Tamil Nadu Public Service Commission, even if joined in service earlier to such regular

Department dated 22.07.1985 prescribes the aforesaid and as such, the seniority of the petitioner as well as the 3rd respondent were maintained accordingly and they were promoted to the post of Superintendent in regular course, subsequent to their such appointment in the year 2003. Thereafter, in the year 2008, taking into consideration their such seniority and also promotion, a seniority list was prepared which indicates that the petitioner was shown as junior to the 3rd respondent maintaining their seniority in the feeder cadre. The petitioner then virtually had made no grievance, even though the same was circulated by the authority to the petitioner and other superintendent. Thereafter, a fair list was prepared in the year 2010 taking into considerations the persons who are then in service and eliminating the persons who had retired by the time, so also the grievance of any persons in this regard. The petitioner thereafter however rising from his slumber, made the representation in 2013 which appears to be beyond the period of three years inasmuch as the first draft seniority list published in the year 2008 which was circulated to the present petitioner. Nothing has been brought to the notice of this Court that the petitioner was shown as senior to the third respondent in the first seniority list published in the year 2008. The list of the year 2010 also cannot be said to be a draft list inasmuch as another seniority list was published in 2012, a list eliminating the persons who had already superannuated or promoted and also a newly appointed person, after 2008, when the Rules prescribed to challenge, the seniority within certain period as stated, three years in this regard in view of Rule-35(f) of the Rules and the petitioner admittedly had made no grievance within such time limit, such grievance has been rightly rejected to be barred by limitation. Otherwise also, nothing has been brought to my notice that the petitioner was any way senior to the 3rd respondent, in view of the Rule fixing the seniority of person regularly recruited vis-a-vis a person appointed on compassionate ground, when such list of regular recruitment was valid.

7. Hence, this writ petition is devoid of merit and liable to be dismissed and, accordingly, the same stands dismissed. However, in the circumstances, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Deputy Director General,
National Cadet Corps Directorate,
Tamil Nadu, Puduchery & Andaman Nicobar,
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- 3.The Principal Secretary,
Youth Welfare and Sports
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KS (CO)

sm:12.6.2018

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