

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13-06-2018

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.26440 and 26441 of 2016

And

W.M.P.Nos.22653 and 22659 of 2016

S.Meenalochani
P.Sadhasivam

.... Petitioner in WP 26440/2016
... Petitioner in WP 26441/2016

Versus

1.The Government of Tamil Nadu,
Represented by its Secretary,
Personnel and Administrative Department,
Fort St. George,
Chennai-600 009.

2.The Tamil Nadu Public Service Commission,
Frazer Bridge Road,
V.O.C. Nagar,
Park Town,
Chennai-600 003

Represented by its Secretary. .. Respondents in both WPs

PRAYER: Writ petitions are filed under Article 226 of the Constitution of India praying for the issuance of Writs of Certiorari, calling for the records of the letter No.4261/PSD-A1/2008 dated 25.11.2014 sent by the second respondent to the first respondent and the consequent letter No.24632/U1/2016-1 dated 11.7.2016 issued by the first respondent to the petitioner and quash the same.

For Petitioner in both WPs : Mr.Naveenkumarmurthy for
for M/s.D.Karthik and
M.Shanmugam.

For Respondent-1 in both WPs: Mr.M.Elumalai,
Government Advocate.

For Respondent-2 in both WPs :Mr.M.Loganathan

COMMON ORDER

The internal communication shared between the Secretary, Tamil Nadu Public Service Commission and the Principal Secretary to Government, Personnel and Administrative Department, Secretary, Chennai in letter No.4261/PSD-A1/2008 dated 25.11.2014 and the consequential show cause notice issued by the Principal Secretary to Government, P&AR Department, in letter dated 11.7.2016 are under challenge in these writ petitions.

2. The learned counsel appearing on behalf of the writ petitioners made a submission that the language used in the impugned notice issued in proceedings dated 11.7.2016 portrays the mind of the Executives and they have already predetermined the issues involved in these cases. Thus, it is contended that the writ petitioners would not get a fair decision from the authorities concerned.

3. The learned counsel for the writ petitioners further states that the issue involved is in relation to the seniority of the writ petitioners and in the event of altering the seniority, the service rights of the writ petitioners would be prejudiced. Thus, the writ petitioners are constrained to move these writ petitions.

4. The learned counsel, appearing on behalf of the Tamil Nadu Public Service Commission, opposed the contentions of the learned counsel for the writ petitioners by stating that the Tamil Nadu Public Service Commission issued a letter to the Principle Secretary to Government, P&AR Department in letter dated 25.11.2014, stating that as per Rule 35(aa) of the Tamil Nadu State and Subordinate Service Rules, the inter se seniority is to be fixed based on the service particulars of the Officers concerned. The clarification sought for by the Government has been elaborated in the letter sent by the Tamil Nadu Public Service Commission and was directed to follow the rules prescribed under the Tamil Nadu State and Subordinate Service Rules. Pursuant to the opinion given by the Tamil Nadu Public Service Commission, the Principal Secretary to Government, P&AR Department, issued notice to all the persons, who are connected with the inter se seniority list. Instead of submitting explanations/objections, the writ petitioners have chosen to prefer the present writ petitions, the only concern of the writ petitioners is that the language used in the impugned notice.

5. This apart, the learned counsel for the writ petitioners states that the inter se seniority has already been settled. May that it be, the rule provides an opportunity to be given to the

employees, who are likely to be affected on account of the alternation of inter se seniority list. All the employees concerned are entitled for an opportunity to submit their explanations/objections in respect of their seniority. In the event of receiving any such explanations/objections, the authorities competent are bound to consider the grounds raised therein and pass appropriate orders on merits and in accordance with law.

6. This Court is of an opinion that no writ can be entertained against a show cause notice unless the notice is issued by the authority having no jurisdiction or competency or an allegation of mala fides are raised or if the same is in violation of the statutory rules in force. Even in case of raising an allegation of mala fides, the authority against whom such an allegation is raised to be impleaded as party respondent in the writ proceedings in his personal capacity. In the absence of any one of the legal grounds, no writ can be entertained.

7. Intermittent intervention in the administrative actions are not certainly preferred in all circumstances. Such interventions can be made only on exceptional circumstances. Judicial review against the show cause notices are certainly limited. The Constitutional Courts should show some restraint in respect of such interventions. During the process of administrative actions, institutional respects enshrined under the Statutes must be allowed to perform by the Executives concerned. In the event of such interventions then and there frequently, the Executives cannot perform their duties in a coherent manner as the law required. Thus, the Courts must be cautious while exercising the quasi judicial review, when the matters are under adjudication before the competent authorities or before the Quasi Judicial Authorities. Such a judicial review can be exercised only in the event of institutions or if the authorities are incompetent or committed certain illegalities warranting such interventions. In all other circumstances, the authorities competent/quasi judicial authorities are bound to continue the proceedings and they must be allowed to continue the proceedings and take a decision on merits and in accordance with law.

8. This being the legal principles to be followed, while entertaining the writ petitions moved against the show caused notices, this Court is of an opinion that the writ petitioners have not made out any substantial grounds for such interventions. Thus, it is left open to the writ petitioners to submit their explanations/objections and participate in the adjudication. The authorities competent also bound to consider such explanations/objections and take a decision and pass orders on merits and in accordance with law.

9. In this view of the matter, no further adjudication needs to be entertained in respect of the grounds raised in these writ petitions. Accordingly, the writ petitions stand dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/--

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

Svn

To

1.The Secretary,
Government of Tamil Nadu,
Personnel and Administrative Department,
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2.The Secretary,
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sm:20.6.2018

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