

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.4182 of 2016

A.Berchmans Rajadurai

.. Petitioner

-vs-

1. Government of Tamil Nadu
represented by its Secretary
Finance Department
Fort St.George
Chennai 600 009

2. The Director of Local Fund Audit
Kuralagam IV Floor
Chennai 600 108

.. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the entire records which culminated in passing the proceedings in Na.Ka.No.B&NE.II(5)/1841/2015 dated 19.02.2015 on the file of the second respondent, quash the same and consequently direct the respondents to refix the seniority of the petitioner in the cadre of Assistant Inspector with effect from 15.03.1978 as per the judgment delivered by the Division Bench of this Court on 11.07.2013 in W.A.No.862 of 2010 etc., batch by virtue of revision of seniority with all consequential monetary benefits for the post of Deputy Director, including enhanced pension, within a time that may be stipulated by this Hon'ble Court.

For Petitioner :: Mr.L.Chandrakumar
for Mr.N.Senthil Kumar

For Respondents :: Mr.V.Kadhirvelu
Special Government Pleader

ORDER

The question raised in the present writ petition as to whether a direct recruit can claim seniority only from the date of his regular appointment, has been answered by the Hon'ble Division Bench in its judgment dated 11.7.2013 made in

W.A.No.862 of 2010 etc. (E.Sankara Subramanian and others v. B.Srinivasan and others).

2. Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondents.

3. In the case on hand, although the services of the petitioner/promotee in the cadre of Assistant Inspector were regularised with effect from 15.3.78, he was placed below the directly recruited Assistant Inspectors in the seniority list, who had joined the post only on 1.8.78 after five months of his promotion. Therefore, the request of the petitioner to place him above the directly recruited Assistant Inspectors (now called as Audit Assistants) in the seniority list should not have been refused by the impugned order, on the ground that the judgment passed by the Hon'ble Division Bench of this Court on 11.7.2013 in W.A.No.862 of 2010 cannot be made applicable to the petitioner. Even the averment in paragraph-10 of the counter affidavit filed by the respondents stating that the judgment rendered on 11.07.2013 by the Hon'ble Division Bench dismissing the writ appeal and writ petitions and confirming the seniority list prepared in accordance with the above mentioned Government Order cannot be implemented with retrospective effect in favour of persons who were not parties to the writ proceedings, is wholly misconceived.

4. When the law is well settled that a direct recruit cannot claim seniority from a date before his birth in the service or when he was in school or college, more particularly, when the services of the promotees like the petitioner herein were regularised on 15.3.78, whereas the directly recruited Assistant Inspectors had joined duty only on 1.8.78, as per the settled legal position in the aforementioned judgment holding that the direct recruits can claim seniority only from their regular appointment, the impugned order is set aside and the writ petition stands allowed. The respondents are directed to extend the benefit of the judgment passed by the Hon'ble Division Bench of this Court on 11.7.2013 in W.A.No.862 of 2010 etc., to the petitioner as well for re-fixation of his seniority in the appropriate place. Needless to mention that the petitioner is entitled to get the consequential benefits. No costs.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

ss

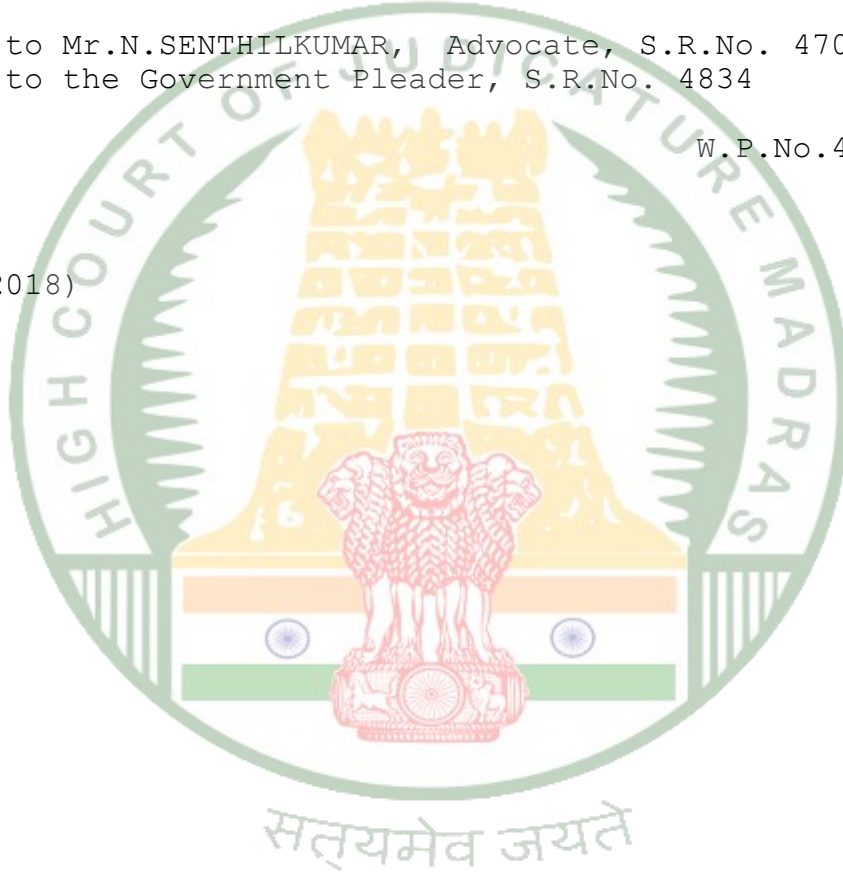
To

1. The Secretary to Government
Finance Department
Fort St.George
Chennai 600 009
2. The Director of Local Fund Audit
Kuralagam IV Floor
Chennai 600 108

+1cc to Mr.N.SENTHILKUMAR, Advocate, S.R.No. 4705
+1cc to the Government Pleader, S.R.No. 4834

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LRS (CO)
TR(07/02/2018)



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