

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.48789 of 2006

L.Sivasamy

... Petitioner

Vs.

1. The Secretary to Government,
Labour and Employment Department,
Fort St. George, Chennai - 600 009.

2. The Commissioner of Employment
& Training,
Thiru.Vi.Ka. Industrial Estate,
Guindy, Chennai - 600 032.

3. P.Anusiya Selvi
Assistant Director,
(Employment Assitants),
Commissionarate of Employment
and Training, Guindy,
Chennai - 600 032.

.... Respondents

Prayer:Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to G.O.Ms.No.135, Labour and Employment (P2) Department, dated 22.10.1998 and the G.O.(D)No.842, Labour and Employment (T1) Department, dated 01.12.2006 issued by the Secretary to Government, Labour and Employment Department, Fort St. George, Chennai - 600 009 the first respondent herein and quash the same and consequently direct the first and second respondents herein to refix the inter-se seniority list of District Employment Officer as per the proviso to sub-rule (i) and (ii) of Rule 2 of Special Rules for the State and Subordinate Service Rules relating to Department of Employment and Training /Class XLVIII-Officers of the Employment and Training Department and pursuant the order dated 07.05.1993 made in O.A.No.1571 of 1992 on the file of the Tamil Nadu Administative Tribunal, Madras and by placing the petitioner at the appropriate place and above the third respondent herein and to give the petitioner the consequential service benefits and within such time as may be prescribed by this Court.

(ii) to stay the G.O.(D) No.842, Labour and Employment (T1)

Department, dated 01.12.2006 issued by the Secretary to Government, labour and Employment Department, Fort St.George, Chennai - 600 009 the first respondent herein pending disposal of the above writ petition.

For Petitioner : Mr.N.Damodaran

For Respondent : Mr.K.Ravikumar for R1 & R2
Mr.Sundar Narayan for R3

O R D E R

The petitioner has filed the Writ Petition to call for the records relating to G.O.Ms.No.135, Labour and Employment (P2) Department, dated 22.10.1998 and the G.O.(D)No.842, Labour and Employment (T1) Department, dated 01.12.2006 issued by the Secretary to Government, Labour and Employment Department, Fort St. George, Chennai - 600 009 the first respondent herein and quash the same and consequently direct the first and second respondents herein to refix the inter-se seniority list of District Employment Officer as per the proviso to sub-rule (i) and (ii) of Rule 2 of Special Rules for the State and Subordinate Service Rules relating to Department of Employment and Training/Class XLVIII-Officers of the Employment and Training Department and pursuant to the order dated 07.05.1993 made in O.A.No.1571 of 1992 on the file of the Tamil Nadu Administrative Tribunal, Madras and by placing the petitioner at the appropriate place and above the third respondent herein and to give the petitioner the consequential service benefits and within such time as may be prescribed by this Court.

2. The case of the petitioner is that the petitioner was initially appointed to the post of Junior Employment Officer in the 2nd respondent department. Thereafter, he was promoted to the post of District Employment Officer and he was holding the said post from 27.07.1994 and he was being included in the panel for appointment to the said post by recruitment by transfer for the year 1993 - 1994. While the petitioner was in service he was promoted as Assistant Director of Employment with effect from 12.03.2003 and he was being included in the panel for promotion to the said post for the year 1998 - 1999.

3. The petitioner was further aver that his seniority in the post of District Employment Officer has been fixed at Sl.No.150, below one Mr.J.Viswanathan and above Mr.S.Natesan as per G.O.(3D) No.1, Labour and Employment Department, dated 04.01.2001. Thereafter, the respondent issued a G.O.M.S. No.353,

Labour and Employment Department, dated 12.03.1990, a panel of 16 persons was drawn for the appointment to the post of District Employment Officer by recruitment and by transfer for the year 1989 - 1990.

4. Thereafter, 9 persons were also recruited to this post through the Tamil Nadu Public Service Commission, in G.O., (4D) No.4, Labour and Employment Department, dated 25.02.1992. The said G.O. was challenged by the Tamil Nadu Employment Service Officials Association, in O.A.No.1571 of 1992 before the Tamil Nadu Administrative Tribunal, Madras. The State Administrative Tribunal on 07.05.1993 held that the direct recruitment of these 5 persons was made in excess of the ratio prescribed under the Rules. Accordingly, the said O.A. was disposed. However, the recruitment has been made and the following persons: 1. A.latha, 2. P.Anusiyaservi, 3. R.Natarajan, 4. T.Abraham and 5. P.SureshKumar were appointed to the post of District Employment Officer by direct recruitment and they had joined to the said post. Thereafter, the 2nd respondent fixed the inter-se seniority list in between the directly recruited candidates and the service candidates for promotion.

5. The petitioner was further aver that such an erroneous seniority list in G.O.M.S.No135, labour and Employment Department, dated 22.10.1998, 5 persons who were appointed in excess of the number with reference to the ratio prescribed in the said rules and who were entitled to count the seniority of the post only from the year 1996 to 1997. As soon as he came to know about the fixation of seniority for the post of District Employment Officer as against the statutory rules and against the order passed by the tribunal, the petitioner made a representation to the respondents 1 & 2 on 17.01.2006, pointing out that an fatal mistake was committed by them and requested the said respondents to re-fix the seniority as per the statutory rules. As against the inaction the other similarly placed persons filed a writ petition before this court in W.P.No.25818 of 2006 for the issuance of writ of mandamus to dispose the representation on merits. This Court by its Order dated 19.08.2006 directed the respondents to dispose of the representation submitted by the respective petitioners on merits in accordance with law, within a period of four weeks.

6. Thereafter, the 1st respondent passed the impugned order dated 01.12.2006, wherein the 1st respondent appointed the 3rd respondent herein as the Deputy Director of Employment, by approving the panel of Assistant Director of Employment Borne in the Tamil Nadu General Service for the year 2005 - 2006. However, the said order was passed without considering the petitioner's request of re-fixing the seniority. Hence, the petitioner challenging the above said impugned order

filed the present writ petition.

7. The learned Counsel appearing for the petitioner would submit that the seniority list of the year 1990 was challenged. Per Contra the respondents filed a counter denying the allegation made in the writ petition, however the relevant paragraph is as follows:-

"The proposals, revising the seniority list of District Employment Officers have been sent to the first respondent by the second respondent and is under consideration of the first respondent. It is further submitted that revision of inter-se seniority list will be examined in consultation with the Tamil Nadu Public Service Commission and Advisory Department and Final orders have to be issued thereafter."

8. Particularly in paragraph no.26, the respondents categorically stated that the proposal revising the seniority list of the District Employment Officers, have been sent to the 1st respondent by the 2nd respondent and the same is under consideration of the 1st respondent. With regard to the revision of the inter-se seniority in between the directly recruited candidates and the service candidates will be examined with consultation of the Tamil Nadu Public Service Commission and Advisory Department and thereafter final orders would be issued.

9. The learned Counsel appearing for the petitioner on perusal of the counter affidavit particularly in paragraph no.26, would submit that though larger issue has been raised in the writ petition, however it would suffice to pass orders in compliance with paragraph no.26.

10. In view of the limited prayer sought by the petitioner this court is inclined to issue direction to the 1st respondent to pass appropriate orders within a period of 3 Months from the date of receipt of a copy of this Order, if not already passed. With the above direction the writ petition is Disposed of. No costs.

Sd/-

Deputy Registrar

//True copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,

Labour and Employment Department,
Fort St. George, Chennai - 600 009.

2. The Commissioner of Employment
& Training,
Thiru.Vi.Ka. Industrial Estate,
Guindy, Chennai - 600 032.

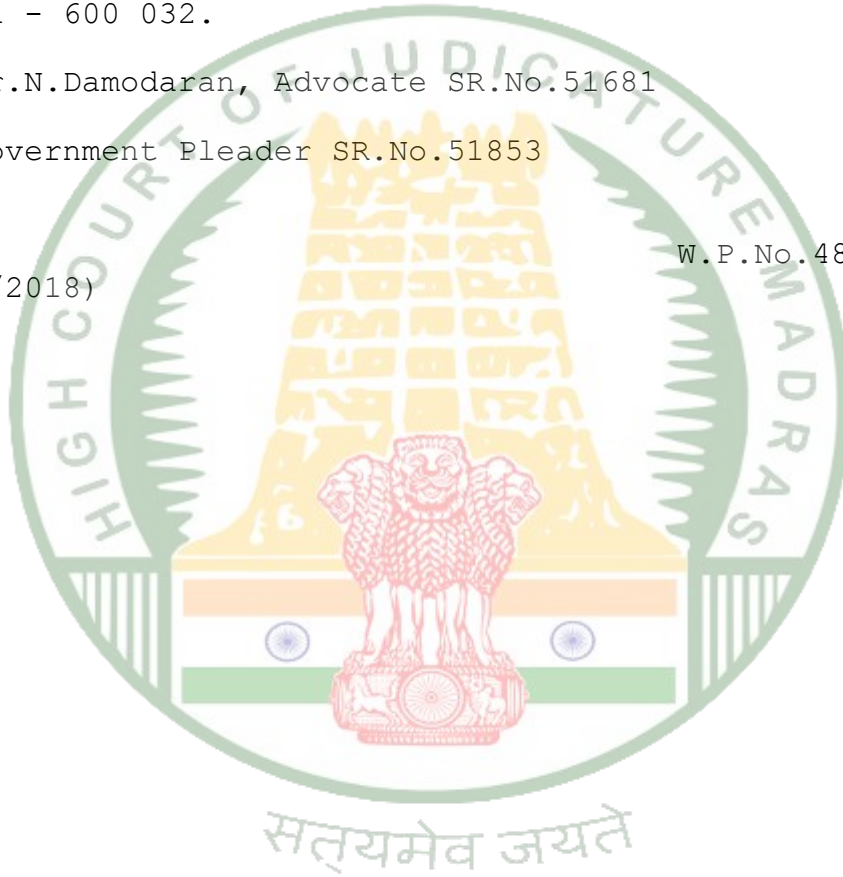
3. Assistant Director,
(Employment Assitants),
Commissionarate of Employment
and Training, Guindy,
Chennai - 600 032.

+1cc to Mr.N.Damodaran, Advocate SR.No.51681

+1cc to Government Pleader SR.No.51853

GMV (17/10/2018)

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