



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 19.03.2018
CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P. (MD) .No.2394 of 2018

and

W.M.P. (MD) .Nos.2609 & 2610 of 2018

WEB COPY

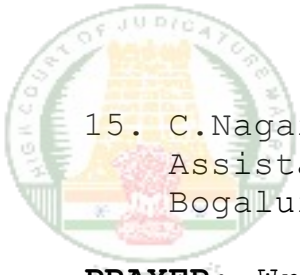
1. S.Jeyakarthik
Assistant, Block Development Officer,
Kadaladi, Ramanathapuram District.
 2. A.Selvarethinam,
Assistant, District Rural Development Agency,
Ramanathapuram District.
 3. B.Ranjithkumar,
Assistant, District Panchayat Office,
Collectorate, Ramanathapuram District.
 4. K.V.Suresh,
Rural Welfare officer Grade-I,
Block Development Office, Paramakudi,
Ramanathapuram District.
 5. G.R.Arunkumar,
Rural Welfare Officer Grade-I,
Block Development Office, kamuthi,
Ramanathapuram District.
- ... Petitioners

Vs.

1. The State of Tamil Nadu,
Represented by its Secretary,
Rural Development & Panchayat Raj Department,
Secretariat, Chennai.
2. The State of Tamil Nadu,
Represented by its Principal Secretary to Government,
Personal & Administrative Reforms (B) Department,
Secretariat, Chennai-9.
3. The Director,
Directorate of Rural Development & Panchayat Raj,
Panagal Maligai, Saidapet, Chennai-15.



5. R.Ramesh Babu,
Deputy Block Development Officer,
Development Section, Ramanathapuram District.
6. H.Mansoor Ali,
Deputy Block Development Officer, (Noon Meal),
Block Development Officer, Thirupulani,
Ramanathapuram District.
7. B.Jeya,
Deputy Block Development Officer (Zone-II),
Block Development Office,
Mudukulathur, Ramanathapuram District.
8. M.Malarvizhi,
Deputy Block Development Officer (Zone-I),
Block Development Office,
Mandabam, Ramanathapuram District.
9. P.Samundeswari,
Deputy Block Development Officer (Zone-II),
Block Development Office,
Bogalur, Ramanathapuram District.
10. R.Vijayakumar,
Deputy Block Development Officer (Zone-IV),
Block Development Office,
Ramanathapuram, Ramanathapuram District.
11. R.Thillaivanam,
Deputy Block Development Officer (Zone-II),
Block Development Office,
Mandabam, Ramanathapuram District.
12. K.L.Sridevi,
Deputy Block Development Officer (Zone-II),
Block Development Office,
Paramakudi, Ramanathapuram District.
13. A.Paramasivam,
Assistant,
Block Development Office,
Kamuthi, Ramanathapuram District.
14. P.G.Sripriya,
Rural Welfare officer Grade-I,
Block Development Office,
Kamuthi, Ramanathapuram District.



15. C.Nagarajan,
Assistant, Panchayat Union Office,
Bogalur, Ramanathapuram District.

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned final seniority list passed by the fourth respondent in his proceedings ந.க.வி3/1541/2017 dated 04.10.2017 and the consequential rejection order passed by the fourth respondent in his proceedings ந.க.வி3/1541/2017 dated 05.10.2017 and quash the same as illegal and consequentially to direct the fourth respondent to re-draw the inter se seniority list between the promotive Assistants and the directly recruited Assistants by placing the directly recruited Assistants ahead of the promotive Assistants.

For Petitioners	: Mr.Ajmal Khan Senior counsel for M/s.Ajmal Associates
For R1 to R4	: Mrs.S.Srimathy Special Government Pleader
For R5 to R15	: Mr.R.Vijayakumar

ORDER

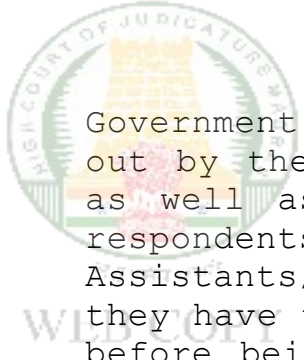
Heard the learned counsel on either side.

2.By consent of both parties, the main Writ Petition is taken up for final disposal.

3.The petitioners in these Writ Petitions are directly recruited as Assistants for the year 2012. They were appointed in December 2012. As per the Tamil Nadu Ministerial Service Rules, the post of Assistants, Cashiers in the Panchayat Union Offices and Rural Welfare Officer Grade-I is to be filled up by promotion from among the Junior Assistants, Typists in the Directorate of Rural Development and other offices as a one time measure by relaxing Rule 6(f) of the Tamil Nadu Ministerial Service Rules. G.O.(Ms).No.35, Rural Development and Panchayat Raj (E-4) Department dated 17.05.2011, was issued to fill up 1,600 vacancies by direct recruitment through the Tamil Nadu Public Service Commission. The petitioners, who were so appointed as direct recruits now contend that the private respondents herein were promoted as Assistants under Rule 39 (a)(i) of the Tamil Nadu State and Subordinate Service Rules and that therefore they cannot be placed in the seniority list of Assistants as they are yet to be regularised in their posts.

<https://hcservices.ecourts.gov.in/hcservices/>

4.The aforesaid claim is strongly opposed both by the



Government as well as the Private respondents. As rightly pointed out by the learned counsel appearing for the private respondents as well as the learned Special Government Pleader, the private respondents were originally in the feeder grade of Junior Assistants/Typists. It is no doubt true that as regards typists, they have to serve as a Junior Assistants for a period of one year before being qualified to be promoted to the post of Assistants. But then the learned Special Government Pleader produces a copy of G.O.(Ms).No.22, Rural Development and Panchayat Raj (E4) Department, dated 18.03.2010, whereby, this requirement has been done away with. No doubt in the said Government Order, it is stated that necessary amendment to the relevant Special Rules will be issued by the Government in this regard.

5.The learned Senior counsel appearing for the petitioners primarily relied on the decision of the Hon'ble Supreme Court reported in **(2006) 6 SCC 558-(K.Madalaimuthu and another Vs. State of Tamil Nadu and others)**. In the said decision, it was held that the person appointed under Rule 10(a)(i)(1) of the General Rules or Rule 39 of the Tamil Nadu State and Subordinate Service Rules can count a seniority in the cadre only from the date on which his services are regularised.

6.The learned Senior counsel appearing for the petitioners would point out that in this case, admittedly till date neither the Special Rules have been formally amended, nor the service of the private respondents regularised and that therefore the private respondents cannot find a place in the *inter se* seniority of Assistants.

7.This Court is unable to subscribe to the contention advanced by the learned Senior counsel for the petitioner. The decision reported in **(2006 6 SCC 558)** has been distinguished on facts by a subsequent bench. In the decision reported in **(2010 6 SCC 791)-(S.Sumnyan and others Vs. Limi Niri and others)**, the Hon'ble Supreme Court pointed out that in the case of **K.Madalaimuthu and another**, recruitment was admittedly *de hors* the relevant recruitment rules. It was an appointment made under Rule 10(a)(i)(1) of the General Rules but where the appointment is made in terms of the recruitment rules, the said decision cannot obviously be applicable.

8.Coming to the facts of the present case, there can be no dispute that the private respondents herein were promoted only in terms of the recruitment rules and not *de hors* the recruitment rules. Except the respondents 13 and 14 all others were working as Junior Assistants. In fact, the writ Petitioners got appointment as Assistants by relaxation of the relevant recruitment rule as a one time measure. The private respondents herein were promoted as Assistants between May and November 2012.



Admittedly, the petitioners got appointment only subsequently. Therefore the petitioners are below to the private respondents and they have to necessarily rank as juniors to the private respondents.

9. As already pointed out by the learned Special Government Pleader, the requirement that the typists, must serve as Junior Assistants for one year has been done away vide G.O.(Ms).No.22, Rural Development and Panchayat Raj (E4) Department, dated 18.03.2010. That apart as pointed out by the learned counsel for the private respondents, the said contention can be put against them, only if they were asked to serve as Junior Assistants for a period of one year and they did not avail the said above. In this regard, the decision cited by the Labour Court reported in **(1996) 8 SCC 762-(State Bank of India Vs.Kashinath Kher and others)** is apposite. Paragraph 12 of the said decision is particularly relevant. It is not correct to contend that the appointment of the private respondents were not against the substantive vacancies.

10. Looked at from any angle, the stand of the Department in favour of the private respondents herein cannot be faulted. They were appointed prior to the writ petitioners. Their appointments were against regular vacancies. They possess the requisite eligibility qualifications. They come from the feeder cadre. Their appointment is in terms of recruitment rules in every sense of the term. Therefore, they are entitled to be placed in the seniority list in the post of Assistants above the petitioners. There is no merit in the Writ Petition.

11. The Writ Petition stands dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

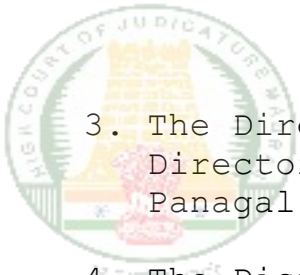
Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,
The Rural Development & Panchayat Raj Department,
Secretariat, Chennai.
2. The Principal Secretary to Government,
The Personal & Administrative Reforms (B) Department,
Secretariat, Chennai-9.



3. The Director,
Directorate of Rural Development & Panchayat Raj,
Panagal Maligai, Saidapet, Chennai-15.

4. The District Collector,
Ramanathapuram District, Ramanathapuram.

+1cc to Mr.R.Vijayakumar, Advocate Sr.No.56437
+1cc to SPECIAL GOVERNMENT PLEADER, Sr.No.56867
Tsg
MK/SB/SAR 4/27.06.2018/6P/7C

ORDER MADE IN
W.P. (MD) .No.2394 of 2018
19.03.2018