



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A. (MD)No.885 of 2018

and

C.M.P. (MD)No.5609 of 2018

and

W.P. (MD)No.17885 of 2018

W.A. (MD)No.885 of 2018:

- 1.K.Shanmuga Vijayan
- 2.P.Jayakarthigai Deepan
- 3.M.Periyadurai
- 4.E.Ganesan
- 5.K.Malathi
- 6.R.Sudhakar
- 7.N.Parvatha Ramalakshmi
- 8.R.Ramthilaka
- 9.V.Mala
- 10.S.Pattathi
- 11.S.Babu
- 12.M.Ariyanayagam
- 13.A.Kalaiselvaraja
- 14.R.Balamurugan
- 15.M.Velmurugan
- 16.R.Thangavelswamy
- 17.A.Paramasivan
- 18.A.Sivasundaram
- 19.J.Sumitha
- 20.K.Marimuthu
- 21.M.Diwan
- 22.M.Sujatha
- 23.M.Muthamil Selvan
- 24.T.Jeyamithra
- 25.V.Ponnuswamy
- 26.E.Chandra
- 27.K.Maharaja

: Appellants/Petitioners

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of Rural Development and
Panchayat Raj,
Fort St. George,
Chennai-600 009.



2.The Director of Rural Development,
Panagal Building,
Saidapet,
Chennai-19.

3.The District Collector,
Collectorate,
Thoothukudi,
Thoothukudi District.

4.A.Chellapandian,
Assistant,
Collectorate,
Thoothukudi,
Thoothukudi District.

: Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent against the order of Writ Court dated 04.06.2018, made in W.P.(MD) No.11678 of 2017.

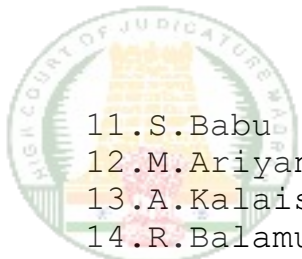
Prayer in WP(MD). 11678/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.Va3/3183/2016, dated 08.05.2017 on the file of the respondent no.3 and quash the same as illegal and consequently to direct the respondents to publish the final seniority in the post of Assistant in the Department f Rural Development and Panchayat Raj in Thoothukudi District by placing the petitioners above the promotes within the time stipulated by this Honble Court.

For Appellants : Mr.T.Lajapathi Roy
For Respondents 1to3 : Mr.K.Chellapandian,
Additional Advocate General,
Assisted by Mr.A.K.Baskarapandian,
Special Government Pleader
For Respondent No.4 : Mr.H.Md.Imran
for M/s.Ajmal Associates

W.P.(MD)No.17885 of 2018:

1.K.Shanmuga Vijayan
2.P.Jayakarthisgai Deepan
3.M.Periyadurai
4.E.Ganesan
5.K.Malathi
6.R.Sudhakar
7.N.Parvatha Ramalakshmi
8.R.Ramthilaka
9.V.Mala
10.S.Pattathi



11.S.Babu
12.M.Ariyanayagam
13.A.Kalaiselvaraja
14.R.Balamurugan
15.M.Velmurugan
16.R.Thangavelswamy
17.A.Paramasivan
18.A.Sivasundaram
19.J.Sumitha
20.K.Marimuthu
21.M.Diwan
22.M.Sujatha
23.M.Muthamil Selvan
24.T.Jeyamithra
25.V.Ponnuswamy
26.E.Chandra
27.K.Maharaja
28.P.Balasubramaniam

: Petitioners

Vs.

1.The State of Tamil Nadu,
Department of Personnel and Administrative Reforms,
Fort St. George,
Chennai-600 009.

2.The State of Tamil Nadu,
Rep. by its Secretary,
Department of Rural Development and Panchayat Raj,
Fort St. George,
Chennai-600 009.

3.The Director of Rural Development,
Panagal Building,
Saidapet,
Chennai-19.

4.The District Collector,
Collectorate,
Thoothukudi,
Thoothukudi District.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents to prepare the seniority panel for the post of Deputy Block Development Officer by fixing the ratio of 1 : 1 among the Directly Recruited Assistants and Promotee Assistants on parity with all other Departments such as Revenue, Treasury and Hindu Religious Endowment Department etc., within the time period stipulated by this Court.



For Petitioners : Mr.T.Lajapathi Roy
For Respondents : Mr.K.Chellapandian,
Additional Advocate General,
Assisted by Mr.A.K.Baskarapandian,
Special Government Pleader

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C O M M O N J U D G M E N T**[Judgment of the Court was delivered by M.M.SUNDRESH, J.]**

Though the issues involved in the Writ Petition and the Writ Appeal are not exactly similar, being overlapping each other, they have been taken up and disposed of by a common judgment.

2. We prefer to take the Writ Appeal first, as the adjudication will help the disposal of the Writ Petition.

3. The appellants herein are the direct recruits in the post of Assistants. The private respondent and others were promoted as Assistants from the feeder category. Initially, they have been promoted in the post of Assistants on a temporary basis. Thereafter, in the year 2014 - 16.06.2014, by the order of the District Collector, Tuticorin, temporary promotions of the promotees were regularized with retrospective effect from the date of their induction. In the meanwhile, the appellants were appointed directly as Assistants, which is obviously after the temporary promotion of the promotees. Under those circumstances, the present Writ Petition was filed claiming that the promotees, who are working in the cadre of Assistants now, will have to be placed below the appellants, who are the direct recruits.

4. The learned Single Judge was pleased to dismiss the Writ Petition by taking note of the proceedings dated 16.06.2014, by which, the promotees were regularized with retrospective effect.

5. The learned counsel appearing for the appellants would submit that there has to be a difference between a promotee and a direct recruit. Admittedly, the promotees were working on a temporary basis in the promoted post of Assistant. Before the order of regularization, the appellants have been appointed as Assistants. Therefore, the promotee Assistants will have to be placed below them. To support his contentions, the learned counsel has made reliance upon the following judgments:

"(i) Sanjay K.Sinha-II v. State of Bihar [2004(10) SCC 734];

(ii) K.Madalaimuthu v. State of T.N. [2006(6) SCC 558];

(iii) S.Sumnyan v. Limi Niri [2010(6) SCC 791]; and

(iv) G.Panneerselvam and others v. The Principal

Chief Conservator of Forests and Head of Forest Force,
Chennai-600 015 and others [W.A.Nos.811 of 2011, etc.
batch, dated 17.04.2018].



6. The learned Additional Advocate General and the learned counsel appearing for the promotees would submit that the order dated 16.06.2014 has not been challenged. It is not an irregular promotion. Promotion has been made on a substantive vacancy. It is not as if there was a ratio that is being maintained,

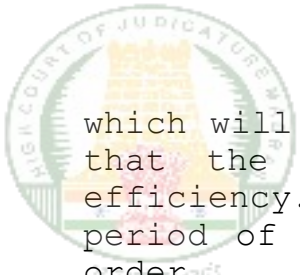
7. As rightly submitted by the learned Additional Advocate General, the promotees have been regularized from the date of their initial entry. Though the order promoting them was a temporary one and did not give them any right, the subsequent order of regularization from that date onwards would certainly make them to count their seniority from the date of their entry in the promotional post. Suffice it to say that the said order has not been put into challenge. There is no law, which prohibits such an action, as the promotees were appointed indeed in substantive vacancies. In such view of the matter, the decisions relied upon by the learned counsel for the appellants are not applicable to the case on hand. We are also not dealing with 10(a)(i) appointments which are made de hors the rules. Here, we are dealing with the inter se seniority in a promoted post, insofar as the promotees are concerned and direct recruitment insofar as the appellants are concerned. Suffice it to say that at the time of entry into the promotional post by the promotees, the appellants were never in the picture. Therefore, we are of the considered view that the order of the learned Single Judge is not liable to be interfered with. Accordingly, the Writ Appeal stands dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

W.P. (MD) No.17885 of 2018:

8. The sum and substance of the grievance of the petitioners is that though they were appointed in substantive vacancies on a permanent basis, they have been placed below the promotees, who are initially appointed on temporary basis. Since promotions were made on a large scale, the petitioners are being deprived of promotion. When there are two status of employees working, a ratio has to be necessarily fixed between them, which will solve the dispute. Therefore, appropriate directions will have to be given to the respondents to undertake the said exercise by amending the rule.

9. The learned Additional Advocate General, on instructions, would submit that the rules stand as of now do not provide for ratio to be followed. We feel, the representation made on 17.05.2018 will have to be considered by the first and second respondents objectively.

10. Considering the above, we direct the first and second respondents to consider the representation of the petitioners dated 17.05.2018 and take a decision on the need for making amendment providing for ratio between the promotees and the direct recruits,



which will go a long way in solving the dispute. We are of the view that the same may also be required for better administrative efficiency. Such exercise will have to be completed, within a period of eight weeks from the date of receipt of a copy of this order.

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11. The Writ Petition stands disposed of with the above direction. No costs.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

- 1.The State of Tamil Nadu,
Department of Personnel and Administrative Reforms,
Fort St. George,
Chennai-600 009.
 - 2.The Secretary,
State of Tamil Nadu,
Department of Rural Development and Panchayat Raj,
Fort St. George,
Chennai-600 009.
 - 3.The Director of Rural Development,
Panagal Building,
Saidapet,
Chennai-19.
 - 4.The District Collector,
Collectorate,
Thoothukudi,
Thoothukudi District.
- 1 CC TO Mr.T.LAJAPATHI ROY , ADVOCATE IN SR No. 92129.
 - + 1 CC TO M/S.AJMAL ASSOCIATES IN SR No. 92321.
+1 cc to Special Government Pleader, SR.No.92191

SML

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Common Judgment made in
W.A.(MD)No.885 of 2018
and
C.M.P.(MD)No.5609 of 2018
and
W.P.(MD)No.17885 of 2018
Dated: 25.10.2018