



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.03.2018

Pronounced on : 05.07.2018

CORAM :

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P(MD)Nos.18157 of 2017 & 2441 of 2018

and

WMP(MD)Nos.2637 & 2638 of 2018

in WP(MD)No.18157 of 2017 :

1.M.Sankar

... Petitioner

Vs.

1.The Principal Secretary,
Commissioner of Revenue Administration,
Chepauk, Chennai - 600 006.

2.The District Collector,
Sivagangai District,
Sivagangai.

... Respondents 1 & 2

- 3.M.Uma Meenakshi
- 4.D.Princy Pradeepa Sayarani
- 5.N.Sundari
- 6.K.Ilango
- 7.M.Selvam
- 8.Rama Yuvaraja
- 9.P.Poongulali
- 10.R.Lakshmi
- 11.K.Muthukumar
- 12.A.G.Anbuselvi
- 13.R.Prabhakaran
- 14.M.Amutha
- 15.K.Chellamuthu
- 16.S.Thedaselvi
- 17.K.M.Jeyaraman
- 18.S.Sekar
- 19.G.Balakrishnan
- 20.P.Latha
- 21.A.Amutha
- 22.M.Valarmathi
- 23.N.Usharani
- 24.S.Ramesh
- 25.S.Mareeswaran
- 26.K.Malaichamy
- 27.P.Rajaji
- 28.S.Sundaramoorthy
- 29.K.Jagadeesh



30.R.Palanikumar
31.G.Revathy Vijaya
32.A.Thanabalan

... Respondents 3 to 32
in WP(MD)No.18157 of 2017

(Respondents 3 to 32 are impleaded
vide Court order dated 22.03.2018
in WMP(MD)NoS.1068 , 1111, 1203, 2555
and 2328 of 2018 in WP(MD)No.18157 of 2017)

in **WP(MD)No.2441 of 2018 :**

1.S.Arivuchutar
2.K.Ramanathan
3.C.Rajasekaran
4.P.Rajaji
5.I.Bhrathi
6.G.Muthuramalingam
7.G.Mariappan
8.R.Balaji
9.V.Ganesh
10.P.Nagendramurugan
11.G.Balasubramanian
12.I.Kamarudeen
13.V.Banupriya
14.K.Malaichamy
15.M.Vinothkumar

...Petitioners in WP(MD)No.2441 of 2018

Vs.

1.The Principal Secretary,
Commissioner of Revenue Administration,
Chepauk, Chennai - 600 006.

2.The District Collector,
Sivagangai District,
Sivagangai.

... Respondents 1 & 2

3.The District Revenue Officer,
Sivagangai District, Sivagangai.

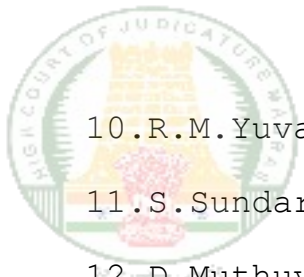
4.P.Umamaheswari

5.N.Sundari

6.G.Balakrishnan

7.M.Thedaselvi

8.S.Jagadeesan



10.R.M.Yuvaraja

11.S.Sundareswari

12.D.Muthuvelu

13.P.Latha

14.R.Lakshmi

15.N.Poongani

16.A.Amutha

17.M.Valarmathi

18.S.Sekar

19.K.M.Jayaraman

20.K.Ilangovan

21.N.Usharani

22.A.G.Anbuselvi

23.M.Selvam

24.M.Uma Meenakshi

25.S.Ramesh

26.S.Mareeswaran

27.D.Princy Prathiba Sagaya Rani

28.K.Muthukumar

29.K.Chellamuthu

30.P.Poomgulali

31.P.Prabhakaran

Head Assistant, A-Section,
Collector's Office,
Sivagangai District.

...Respondents

3 to 31 in WP(MD)No.2441 of 2018

(R-31 is suo motu impleaded
vide Court order dated 07.02.2018
in WP(MD)No.2441 of 2018)



Prayer in WP(MD)No.18157 of 2017 : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the second respondent in his proceedings in ROC.A1/13701/2017 dated 22.09.2017 and consequential proceedings issued by the second respondent in Na.Ka.No.A1/04/2017 dated 22.09.2017 and quash the same and consequently direct the respondents to issue revised panel for the post of Deputy Tahsildar 2017 in Sivagangai District Unit.

(Prayer is amended as per Court order dated 22.03.2018 in WMP(MD)No.2557 of 2018 in WP(MD)No.18157 of 2018)

Prayer in WP(MD)No.2441 of 2017 : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the second respondent in his proceedings in ROC.A1/13701/2017 dated 22.09.2017 and consequential proceedings issued by the second respondent in Na.Ka.No.A1/04/2017 dated 22.09.2017 and quash the same and consequently direct the respondents to issue revised panel for the post of Deputy Tahsildar 2017 in Sivagangai District Unit.

For Petitioner

in both writ petitions : Mr.Veera Kathiravan
Senior Counsel

in WP(MD)No.18157 of 2017 :

For Respondents : Mrs.S.Srimathy,
Special Government Pleader
for R1 and R2

Mr.G.Prabhurajadurai
for R3 to R 10

Mr.Anand for R11 to R18

Mr.Veerakathiravan,
Senior Counsel for R19 to 25

Mr.G.Thalaimutharasu,
for R26 to R32

in WP(MD)No.2441 of 2018 :

For Respondents : Mrs.S.Srimathy,
Special Government Pleader
for R1 to R3

Mr.G.Prabhurajadurai,
for RR4, 5, 6, 8, 9 10, 11,
12, 13, 20, 21, 23, 24, 25,
26, 27 & 30,14,15,17



Mr. Anand for RR 7, 16, 18, 19,
22, 28, 29 & 31

COMMON ORDER

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The petitioner in WP(MD)No.18157 of 2017 Thiru.M.Sankar is working as a Revenue Assistant in Sivaganga District. He felt aggrieved by his seniority ranking. He therefore lodged his objections by filing a petition dated 15.09.2017. His apprehension was that even without passing orders on his objection dated 15.09.2017, the promotion panel for the post of Deputy Tahsildar, Sivaganga District would be finalized. He therefore filed WP(MD) No.18157 of 2017 before this Court.

2.The matter came up for admission on 22.09.2017. This Court granted an interim order of status quo. The said order was passed in the presence of the Government counsel. However, on the same day, the District Collector, Sivaganga issued proceedings bearing ROC.A1/13701/2017 dated 22.09.2017 finalizing the promotion panel for the post of Deputy Tahsildar. On the very same day, the District Collector, Sivaganga issued yet another proceedings bearing Na.Ka.No.A1/04/2017 dated 22.09.2017 granting temporary promotion and posting orders to all the 27 Revenue Assistants who had been empaneled.

3.Alleging deliberate and willful violation of the interim order of status quo granted by this Court on 22.09.2017, the petitioner in WP(MD)No.18157 of 2017, Thiru.M.Sankar filed CONT P (MD)No.2328 of 2017. This Court closed the said contempt petition since it was proposed to take up the main issue itself for adjudication. In the meanwhile, one Thiru.Arivuchudar and 14 others filed WP(MD)No.2441 of 2018 questioning both the aforesaid proceedings dated 22.09.2017 issued by the District Collector, Sivaganga. Since the issues raised in both these writ petitions are one and the same, they were clubbed together and taken up for adjudication.

4.Heard Shri.Veera Kathiravan, learned Senior Counsel appearing for the writ petitioners and Shri.Prabhu Rajadurai and Mr.Anand, the learned counsel appearing for the private respondents and Mrs.S.Srimathy, the learned Special Government Pleader appearing for the official respondents also.

5.Even though in the affidavit filed in support of these writ petitions, the eligibility of the private respondents to be promoted as Deputy Tahsildars was questioned, it became apparent during the course of proceedings that the private respondents are very much eligible to be promoted. Therefore, the learned Senior Counsel appearing for the petitioners fairly admitted that he is not pressing those grounds insofar as the private respondents are concerned. The petitioners' Senior counsel had filed his written



submissions and he reiterated them during the course of his arguments.

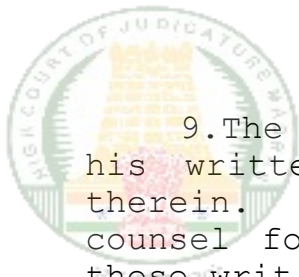
6.The learned Special Government Pleader as well as the learned counsel for the private respondents in unison questioned the locus standi of the writ petitioners. They would contend that the writ petitioners are directly recruited Assistants and that on the crucial date, namely, 15.09.2017, they lacked the requisite eligibility experience to be considered for promotion to the post of Deputy Tahsildar. Their submission is that in any service matter only a personally aggrieved person can maintain a writ petition. In this case, on account of their lack of eligibility, they did not have the locus standi to maintain these writ petitions. They also drew the attention of this Court to Section 7 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. Focus was laid particularly on the proviso to Section 7(1) of the said Act. They pointed out that estimate vacancies were finalized by taking into account the parameters and criteria set out in the said provision.

7.The District Collector had filed her pleadings in which the details of estimate vacancies worked out was furnished in the following tabular column.

Sl. No.	Details	No.of Posts
1.	Vacancies as on 15.09.2017	19
2.	Retirement Vacancies	6
3.	Promotion Vacancies	9
4.	Leave reserve (5%)	3
5.	Staggered vacancies (As per G.O.Ms.No.103, P & AR Department, dated 10.09.2014)	7
	Total	44

8.It was also contended that communal roster system was scrupulously adhered to. One other submission was that at any given point of time, certain number of officials would be on training and that therefore, it is open to the appointing authority to treat those vacancies as available vacancies for granting promotion. In this regard, F.R.20(5) was relied upon. It reads as under :

"If a Government servant either permanent or officiating is deputed to undergo training or a course of instruction, treating such period as duty under rule 9 (6) (b) (i) and if a substitute is to be appointed in his place, it is not necessary to issue formal orders creating a new post in order to accommodate him during the period of training since the very order of posting him for training, etc., would be considered a sanction in this regard."



9. The learned counsel for the private respondents also filed his written submissions and reiterated the contentions set out therein. The learned Special Government Pleader and the learned counsel for the private respondents wanted this Court to dismiss these writ petitions.

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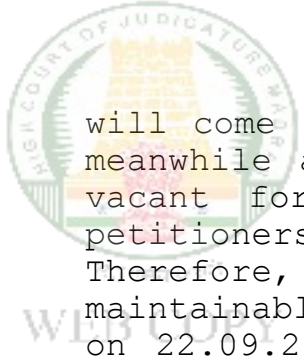
10. This Court carefully considered the rival contentions. At the very outset, this Court holds that there cannot be a challenge to the impugned panel dated 22.09.2017. This is for more than one reason. If a candidate has been wrongfully excluded from the panel, then, of course he can mount a challenge questioning his exclusion. In the present case, the petitioners admittedly cannot claim inclusion in the impugned panel. Therefore, there is considerable substance in the contention raised by the learned counsel for the respondents that the petitioners cannot be really be said to be aggrieved by the preparation of the impugned panel dated 22.09.2017.

11. That apart, it is settled position of law that mere inclusion in the panel will not confer any legal right on the empaneled candidate. It is a mere list that is available for the appointing authority to draw upon. In *N.M. Siddique v. Union of India* reported in (1978) 2 SCC 349, the Hon'ble Supreme Court has held as follows :

"In the first place, the mere circumstance that the appellant was put on a panel for promotion does not mean that he would have been automatically promoted to the higher post. Being empaneled for promotion confers upon the person concerned the limited right of being considered for promotion, which is another way of saying that persons who are put on the panel framed for promotion to a higher post, are at the given moment considered eligible for promotion. Events subsequent to the formation of the panel may render any person, who is included in the panel, unfit for promotion, which is what has happened in the instant case."

That apart, this Court is satisfied that most of the criteria set out in Section 7 of the 2016 Act has been kept in mind when preparing the impugned panel. Therefore, the challenge to the impugned panel dated 22.09.2017 stands repelled.

12. The primary contention raised by the learned counsel for the respondents is that the petitioners do not have the locus standi to question the impugned orders. This Court is of the view that this submission does not merit acceptance. It is for more than one reason. The petitioners are not strangers or busy bodies. They are working as Revenue Assistants and very much in the queue for being promoted to the post of Deputy Tahsildars. They may not be having the requisite service experience as on date. But, they



will come to possess the said qualification very soon. If in the meanwhile all the vacancies get filled up, there would be no post vacant for them to occupy when their turn comes. Thus, the petitioners have sufficient interest in the subject matter. Therefore, the writ petition filed at their instance is certainly maintainable. That apart, the impugned posting orders were issued on 22.09.2017, on which date, an interim order of status quo was granted. Contempt petition was filed and prosecuted with considerable force. It was this Court that closed the contempt proceedings by assuring the petitioners that the correctness of the order would be questioned later. Therefore, after closing the contempt proceedings, it would not be proper on the part of this Court to decline to examine the correctness of the order on merits. In fact, when such a course of action was suggested, it was very much welcomed by the official respondents. After the closure of the contempt proceedings, it is not open to the official respondents to now take a stand that the issue should not be examined on merits. In any event, when a statutory violation is complained of, the stand of the authority must be to permit the Court to go into the issue on merits and not take shelter behind technicalities.

13.The core issue is whether the order dated 22.09.2017, granting promotion to all the 27 persons who have been empaneled is correct or not. It is accepted on either side that the cadre strength of the post of Deputy Tahsildar in Sivaganga District is 63 (Permanent posts - 23, Temporary posts - 40). It is again not in dispute that as on 15.09.2017 as many as 42 Deputy Tahsildars were already working in Sivaganga District. In fact, the writ petitioners have filed an additional typed set of papers, in which the names of all the 42 Deputy Tahsildars who were actually working in Sivaganga District as on 15.09.2017 has been set out. In the reply affidavit filed by the official respondents, this factual position has not been questioned. If the cadre strength is 63 and 42 Deputy Tahsildars were actually working in the district on the crucial date namely, 15.09.2017, then it leaves the number of vacancies for grant of actual promotion only at 21.

14.The learned Special Government Pleader made available the relevant original file. It is seen therefrom that in the year 2014, the Carry Forward Vacancies meant for SC and ST candidates was 7. The Carry Forward Vacancies for SC and ST candidates for the subsequent years, namely, 2015, 2016 and 2017 are 5, 3 and 8 respectively. Therefore, adding Carry Forward Vacancies of all these years, it comes to 23. As on 15.09.2017, only 4 SC candidates namely, B.Uma Maheswari, N.Sundari, G.Balakrishnan and S.Theda Selvi were available. The learned Special Government Pleader would contend that even these vacancies pertained to the year 2014 and that by adjusting the said 4 vacancies, the remaining 3 would lapse.

15.This submission cannot be accepted. Because, as per the provision to Section 27(f) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, for de-reserving the said



vacancies, orders of the Government will have to be obtained. In this case, it is not the case of the respondents such orders of the Government were obtained. Therefore, this Court will have to proceed on the footing that even after the giving promotion to the aforesaid four candidates, the number of carry forward vacancies remained at 19.

16. The issue on hand can be resolved by invoking the proviso to Section 27(f) of the said Act. The proviso reads as under :

"Provided that if qualified and suitable candidates belonging to any of the Scheduled Castes and Scheduled Tribes are not available for selection for appointment by recruitment by transfer or by promotion in the turns allotted to them in the cycle, the turns so allotted to them shall not lapse and the number of candidates to be selected in that recruitment shall be reduced by the number of candidates belonging to Scheduled Castes and Scheduled Tribes not available for selection against the turn allotted to them. The unfilled vacancies reserved for the Scheduled Castes and Scheduled Tribes to be filled by recruitment by transfer or by promotion shall be carried over to four consecutive recruitment years, namely year of recruitment plus three subsequent recruitment years. The selection for appointment to the vacancies in the next recruitment years. The selection for appointment to the vacancies in the next recruitment shall be made first for the carried over turns and then the normal rotation shall be followed. If qualified and suitable candidates belonging to any of the Scheduled Castes and Scheduled Tribes are not available for selection for appointment by recruitment by transfer or by promotion even thereafter, the vacancies reserved for those categories shall first be dereserved by obtaining the orders of the Government before filling them by candidates in the next turn in the order of rotation."

17. The operation of the aforesaid proviso will result in shrinking the number of vacancies to be earmarked for the General Turn candidates. It is obvious that the District Collector has issued orders of promotion and posting without keeping in mind the mandate set out in the proviso to Section 27(f) of the Act. The mandate is "the number of candidates to be selected in that recruitment shall be reduced by the number of candidates belonging to Scheduled Castes and Scheduled Tribes not available for selection against the turn allotted to them." Here, the number of candidates not available is 19. The cadre strength is 63. 42 are already working. Therefore, only 21 can be appointed. There are 4 reserved category candidates available and adjusting their appointments, the remaining number of vacancies available for regular promotion is 17. But, unfilled carry forward vacancies are 19. That is, two over and above. This aspect of the matter



has been completely lost sight of by the official respondents both while preparing panel as well as when issuing promotion and posting orders. The impugned order dated 22.09.2017 is sustained only insofar as it grants promotion to the Scheduled Caste candidates, namely, B.Uma Maheswari, N.Sundari, G.Balakrishnan and S.Theda Selvi. The impugned order insofar as the rest are concerned is liable to be set aside.

18.At this stage, the learned counsel for the private respondents contended that the orders granting promotion to them can very well be sustained with reference to Section 17 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. The learned Special Government Pleader on instructions also submitted that the promotion orders were given only as per Section 17 of the Act.

19.This Court is unable to agree with the said submission. In fact, this Court would unhesitatingly reject such a submission as a clear after-thought. A mere look at the impugned proceedings dated 22.09.2017 would show that it is based on the promotion panel dated 22.09.2017. The panel was prepared on 22.09.2017. It was operated and implemented immediately by issuance of the impugned promotion order dated 22.09.2017. There is absolutely no reference to Section 17 of the said Act.

20.Section 17 of the Act can be invoked where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of a service, class or category. In this case, no such recitals are found in the impugned order. A look at the impugned order would show that it was issued in regular course. This Court is conscious that non quoting or even wrong quoting of a legal provision would not vitiate the proceedings if it is otherwise in order. But, in the present case, the aforesaid provision did not figure in the scheme of things. When the authority issued the impugned proceedings, Section 17 of the Act was nowhere present in the mind of the authority. If it had really been so, there is no need to refer to the preparation of the panel in terms of Section 7 of the Act in the counter affidavit. The authority had filed counter affidavit and also reply affidavit. Section 17 of the Act has nowhere been even remotely referred to. It is an argument of desperation.

21.One more contention remains to be dealt with. The learned counsel appearing for the respondents as well as the learned Special Government Pleader pointed out that at any given point of time, a set of persons will be out on training. Therefore, in view of the F.R.20(5), it is open to the appointing authority to appoint substitutes in their place. This Court is of the view that F.R.20(5) which was incorporated on the strength of Finance Memo No. 71833/A/64-A, dated 30.07.1965 cannot be invoked so as to justify exceeding of cadre strength. Administration must be lean



and mean and not bloated. If the cadre strength is 63, the number of appointees also will have to be 63. In any event, when the 2016 Act has already come into force, the impugned action will have to be tested only in the light of the statutory provisions.

22. Therefore, this Court has no hesitation to partly allow WP (MD) No. 2441 of 2018 by quashing the order dated 22.09.2017 except in the case of the respondents 4 to 7, namely, B. Uma Maheswari, N. Sundari, G. Balakrishnan and S. Theda Selvi. For all these reasons, while closing WP (MD) No. 18157 of 2017, this Court partly allows WP (MD) No. 2441 of 2018. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary,
Commissioner of Revenue Administration,
Chepauk,
Chennai - 600 006.

2. The District Collector,
Sivagangai District,
Sivagangai.

3. The District Revenue Officer,
Sivagangai District,
Sivagangai.

+1CC to Special Government Pleader in SR.No.71531.

+1CC to M/s. Veera Associates in SR.No.71785.

+4CC to Mr. C. Gangai Amaran Advocate in SR.No.71798.

SKM

DS/SV/SAR-1 : 13.07.2018 : 11P/10C

W.P (MD) Nos. 18157 of 2017 & 2441 of 2018
and

WMP (MD) Nos. 2637 & 2638 of 2018
05.07.2018