BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 14.03.2018

ORDERS DELIVERED ON : 04.06.2018

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD) Nos.19909, 19311 of 2017and 971 of 2018
and
WMP(MD)Nos.16182, 16183, 15631, 15632 of 2017, 1014 & 1015 of 2018

S.Selvarani .. Petitioner in W.P.(MD).No.19909 of 2017

R.Catherine Arokiamary .. Petitioner in W.P.(MD).Nos.19311 of 2017 & 971 of 2018

vs.

1. The State of Tamil Nadu,
   Represented by its Principal Secretary,
   State of Tamil Nadu Revenue Department,
   Secretariat, Chennai.

2. The Additional Chief Secretary,
   / Commissioner of Revenue Administration,
   Chepauk, Chennai.

3. The District Collector,
   Thanjavur District, Thanjavur.

4. The District Revenue Officer,
   O/0. District Revenue Officer,
   Thanjavur District, Thanjavur.

5. V.Agathiyan
   Senior Revenue Inspector,
   Collectorate Office, Thanjavur.

6. R.Selvam,
   Senior Revenue Inspector,
   Taluk Office,
   Orathanadu.

7. A.Kalaivanan
   Senior Revenue Inspector,
   Revenue Divisional Office, Thanjavur.

8. A.Mangayakarasi
Senior Revenue Inspector,
Collectorate Office, Thanjavur.

9. K.Rajagopal
Senior Revenue Assistant,
Collectorate Office, Thanjavur.

10. G.Radhika,
Senior Revenue Inspector,
Collectorate Office, Thanjavur.

11. S.Seenivasan,
Firka Revenue Inspector,
Kavalipatti, Orathanadu Taluk.

12. P.Baranidharan,
Senior Revenue Inspector,
Taluk Office, Orathanadu.

13. S.Yuvaraj,
Senior Revenue Inspector,
Revenue Divisional Office, Pattukottai.

14. S.Senthilkumar,
Senior Revenue Inspector,
Collectorate Office, Thanjavur.

15. C.Balasubramanian,
Senior Revenue Inspector,
Taluk Office, Orathanadu.

16. Palanivel
Senior Revenue Inspector, Thiruvaiyaru.

17. S.Nallathambi,
Firka Revenue Inspector,
Orathanadu Firka, Orathanadu Taluk.

18. R.Karthikeyan,
Senior Revenue Inspector,
Collectorate Office, Thanjavur.

19. N.Rajakumar,
Firka Revenue Inspector,
Thondamrampattu Firka, Orathanadu Taluk.

20. R.Senthil,
Senior Revenue Inspector,
Collectorate Office, Thanjavur.

21. R.Santhameena,
    Senior Revenue Inspector,
    Taluk Office, Thiruvidaimaruthur.

22. S.Vimal,
    Senior Revenue Inspector,
    Taluk Office, Thiruvaiyaru.

23. M.Y.Tipu Sultan
    Senior Revenue Inspector,
    District Adi-Dravidar Welfare Office,
    Thanjavur.

24. G.Manikandan,
    Firka Revenue Inspector,
    Thanjavur Firka, Thanjavur Taluk.

25. K.Dharmendra,
    Senior Revenue Inspector,
    Taluk Office, Pattukottai.

26. T.Thiripurasundari
    Senior Revenue Inspector,
    Collectorate Office, Thanjavur.

27. S.Mohanaraman,
    Firka Revenue Inspector,
    Thirupananthal Saragam, Thiruvidaimaruthur Taluk.

28. V.Thayamanthi,
    Firka Revenue Inspector,
    Panthanalloor Saragam, Thiruvidaimaruthur Taluk.

29. R.Selvakumar,
    Senior Revenue Inspector,
    Revenue Divisional Office, Pattukottai.

30. D.Helanjoyce,
    Senior Revenue Inspector,
    District Adi-Dravidar Welfare Office,
    Thanjavur.

31. K.Vivekandndan,
    Firka Revenue Inspector,
    Kathiramangalam Saragam, Thiruvidaimaruthur Taluk.

32. Meena,
    Firka Revenue Inspector,
    Nadukaveri Saragam, Thiruvaiyaru Taluk.

.. Respondents in W.P.(MD).No.19909 of 2017

1. The State of Tamil Nadu,
   Represented by its Secretary,
   Rural Development & Panchayat Raj Department,
   Secretariat, Chennai.

2. The Principal Secretary / Personal & Administrative Reforms (B) Department,
   Secretariat, Chennai-9.

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

4. The District Collector,
   Thanjavur District, Thanjavur.

5. V.Agathiyan,
   Senior Revenue Inspector,
   Collectorate Office, Thanjavur.

6. A.Kalaivanan,
   Assistant, Revenue Divisional Office, Thanjavur.

7. A.Mangayakarasi,
   Assistant, Collectorate Office,
   Thanjavur. .. Respondents in W.P.(MD).No.19311 of 2017

1. The State of Tamil Nadu,
   Represented by its Principal Secretary,
   State of Tamil Nadu Revenue Department,
   Secretariat, Chennai.

2. The Additional Chief Secretary,
   / Commissioner of Revenue Administration,
   Chepauk, Chennai.

3. The District Collector,
   Thanjavur District, Thanjavur.

4. The District Revenue Officer,
   O/0.District Revenue Officer,
   Thanjavur District, Thanjavur.

5. Palanivel,
   Deputy Tahsildar,
   District Supply Office and Consumer Production Office,
   Thanjavur.

6. A.Mangayakarasi,
   Additional Zonal Deputy Tahsildar,
   Orathanad Taluk Office, Thanjavur.

7. R.Selvam,
Zonal Deputy Tahsildar,
Thiruvidai Maruthur Taluk Office, Thanjavur District.

8. S.Yuvaraj,
Additional Zonal Deputy Tahsildar,
Peravoorani Taluk Office,
Thanjavur District.

9. R.Santhameena,
Additional Zonal Deputy Tahsildar,
Thiruvidai Maruthur Taluk Office, Thanjavur District.

10. K.Dharmendra,
Zonal Deputy Tahsildar,
Pattukottai Taluk Office, Thanjavur District.

11. K.Vivekanandhan,
Zonal Deputy Tahsildar,
Kumbakonam Taluk Office, Thanjavur District.

12. P.Venkatraman,
Zonal Deputy Tahsildar,
Poothalur Taluk Office, Thanjavur District.

13. N.Kavitha,
Additional Zonal Deputy Tahsildar,
Pattukottai Taluk Office, Thanjavur District.

14. T.Thirupurasundari,
Superintendent, District Supply and Consumer Production Office,
Thanjavur District.

15. J.S.Uma Maheswari,
Additional Zonal Deputy Tahsildar,
Kumbakonam Taluk Office, Thanjavur District.

16. A.Moorthy,
Superintendent Office,
Thanjavur District.

17. A.Jesima Sulthana,
Chief Assistant,
Sub-Collector Office, Kumbokanam, Thanjavur District.

18. V.Agathiyan,
Zonal Deputy Tahsildar, Orathanad Taluk Office,
Thanjavur District.

19. A.Kalaivanan,
    Zonal Deputy Tahsildar, Orathanad Taluk Office,
    Thanjavur District.

20. K.Rajagopal,
    Zonal Deputy Tahsildar, Thiruvadaimaruthur Taluk Office,
    Thanjavur District.

21. G.Radhika,
    Superintendent (Minority Welfare),
    District Backward and Minority Welfare Office,
    Thanjavur District.

22. P.Bharanitharan,
    Chief Assistant ('E' Section),
    Collector Office,
    Thanjavur District.

23. S.Senthil Kumar,
    Additional Zonal Deputy Tahsildar,
    Babanasam Taluk Office, Thanjavur District.

24. C.Balasubramanian,
    Additional Zonal Deputy Tahsildar, Babanasam Taluk Office,
    Thanjavur District.

25. N.Nallathambi,
    Zonal Deputy Tahsildar,
    Pattukottai Taluk Office, Thanjavur District.

26. R.Kathikeyan,
    Chief Assistant,
    Revenue Divisional Office, Thanjavur District.

27. N.Rajakumar,
    Chief Assistant ('S Section),
    Collector Office, Thanjavur District.

28. R.Senthil,
    Chief Assistant ('I Section),
    Collector Office, Thanjavur District.

.. Respondents in W.P.(MD).No.971 of 2018

Common Prayer in W.P.(MD).Nos.19909 & 19311 of 2017: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the fourth respondent in his proceedings ந.க. 34709/2017 அ dated 03.10.2017 and quash the same as illegal in so far as fixing the seniority of the directly recruited assistant in the year of 2011 is concerned and consequentially to direct the respondents to draw the inter se seniority list on the basis of the date of their appointment / joining in the cadre of Revenue Assistants by placing the private respondents in the seniority of the year 2012 in the light of clause 9 of the Annexure IX r/w 38 (b) (ii) of the Tamil Nadu Ministerial Service Rules.

Prayer in W.P.(MD).No.971 of 2018: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to the impugned order passed by the third respondent in his proceedings ந.க.251/2017 அ5 dated 26.10.2017 and quash the same as illegal.

For Petitioners : Mr.Ajmal Khan
Senior Counsel
For M/s.Ajmal Associates
in all the Writ Petitions

For R.1 to R.4 : Mrs.S.Srimathy
In W.P.(MD).Nos.19909 &
19311 of 2017

For R.5 to R.26
& R.28 to R.32 : Mr.M.Muthugeethayan
In W.P.(MD).No.19909 of
2017

For R.1 to R.4 : Mr.Saravanan

For R.5 to R.10, R.11,
R.13, R.15 to R.28 : Mr.Veerakathiravan
Senior Counsel
For Veera Associates
In W.P.(MD).No.971 of 2018

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COMMON ORDER

The petitioner in W.P.(MD).No.19311 of 2017 was promoted as Assistant on 31.08.2012. She is now working as Revenue Inspector in Thanjavur District. The grievance of the petitioner is with regard to the inter-se seniority list of the Assistants published by the fourth respondent / the District Collector, Thanjavore District. The petitioner submits that the Revenue Assistants, who were directly recruited in the year 2012, have been placed in the seniority list of the year 2011. The petitioner and others submitted their objections to the tentative seniority list prepared by the fourth respondent. But the fourth respondent published the final seniority list dated 03.10.2017 ignoring the petitioner's objections. According to the petitioner, the preparation of the impugned seniority list placing the directly recruited Assistants of the year 2012 above the petitioner is clearly illegal. Therefore, she filed W.P.(MD).

No.19311 of 2017. During the pendency of the said writ proceedings, the fourth respondent viz., the District Collector, Thanjavur District issued the impugned proceedings dated 26.10.2017 granting promotion to the private respondents to the post of Deputy Tahsildar. The petitioner in W.P.(MD).No.19909 of 2017 was likewise promoted on 21.12.2012. According to the petitioner, since the seniority list itself is wrong and illegal, the consequential promotional order is also illegal. Thus, W.P.(MD).No.971 of 2018 has to abide by the out come of W.P.(MD). No.19311 of 2017.

2.Heard the learned Senior counsel on either side and also the learned Government Advocate and the learned Special Government Pleader appearing for the official respondents.

3.The contention of the learned Senior Counsel appearing for the promotee Assistants is that even though the private respondents were directly recruited as Assistants earlier in point of time in the same calender year, the inter-se seniority between them will have to be fixed as per Clause 9 of the Annexure IX r/w 38 (b) (ii) of the Tamil Nadu Ministerial Service Rules which reads as under:-

"9.The inter-se seniority of the directly recruited Assistants in the Districts shall be fixed in the following cyclical order irrespective of the date of their joining duty.

(a) First two vacancies : Persons appointed by promotion.
(b) Third vacancy : Persons appointed by direct recruitment.
(c) Fourth and Fifth vacancies : Persons appointed by promotion.
(d) Sixth vacancy : Persons appointed by direct recruitments."

4.The learned Senior Counsel placed particular emphasis on the non-obstante clause in Rule 38 (b) (ii) of the Tamil Nadu Ministerial Service Rules, which is as follows:-

> 38(b) .Special Provisions:-
> (i)....
> (ii)Appointment, training and condition of service of directly recruited Assistants:-
> Notwithstanding anything contained in the foregoing rules, the rules in Annexure IX shall govern the direct recruitment of Assistants in the Revenue Department."

5.Therefore, according to him, the writ petitioners who were promoted subsequent to the direct recruitment of the private respondents will have to be fixed above them. The error committed by the official respondents, according to the petitioner, is that instead of following the calender year concept, the panel year concept was adopted. The petitioner would further contend that there is no crucial date for the purpose of reckoning the seniority. The crucial date viz., 15th March is only for the purpose of promotion to the post of Assistants and not to fix seniority in the Assistant cadre.

6.According to the petitioners, the relevant year for them is only 2012 and it cannot be mentioned as 2011-12 panel year. According to them, the seniority list was published only in respect of the single year by mentioning one particular year.

7.This Court is unable to agree with the contentions of the learned Senior counsel appearing for the petitioners. In all these three writ petitions, the Government of Tamil Nadu has been made a party. Though in these writ petitions counters were not filed and it is the stand of the Government that seniority has been rightly fixed in these cases. This Court bestowed its anxious consideration to the rival contentions. One fact is beyond dispute. The Writ petitioners were promoted as Assistants only after the private respondents who had already been appointed as Assistants by way of direct recruitment. Their entry into service as Assistants was later in point of time. In the normal course of events, the Writ petitioners would naturally be ranked below the private respondents herein. But, then the Writ petitioners seek to steal a march over the private respondents by invoking Clause 9 of Annexure 9 of Tamil Nadu Ministerial Services Rules. As rightly pointed out by the learned Senior counsel for the Writ petitioners, the general rule set out in Rule 35(aa) of Tamil Nadu State and Subordinate Service Rules is subject to the special rules. Therefore, the benefit conferred by Clause 9 of Annexure 9 of Madras Public Service Commission Rules cannot be taken away by invoking the general rule. Clause 9 states that the inter-/se seniority of the directly recruited Assistants in the District shall be fixed in the cyclical order set out thereunder irrespective of the date of their joining duty. The expression "irrespective of the date of their joining duty" is the foundation for the claim of the Writ petitioners/promotees. According to them, even though they were promoted as Assistants later in point of time, by applying Clause 9 of Annexure 9, they have to be placed above the direct recruits.

8.The petitioner in W.P.(MD).No.19311 of 2017 was promoted as Assistant on 31.08.2012, while the petitioner in W.P.(MD).No.19909 of 2012 was promoted as Assistant on 21.12.2012. In the very same year viz., 2012, the private respondents in both the writ petitions who were directly recruited as Assistants, but it was prior to 15.03.2012. If the calendar year concept is followed, the writ petitioners will be considered together and their respective seniority and inter-se seniority will be fixed as per

Clause 9 of the Annexure IX r/w 38 (b) (ii) of the Tamil Nadu Ministerial Service Rules in the cyclical order. If the panel year concept is followed, the direct recruits will be in the seniority list of the year 2011-12 starting on 15.03.2011 and ending on 14.03.2012, while the writ petitioners will be relegated to the subsequent seniority list of 2012-13 (starting on 15.03.2012 and ending on 14.03.2013). Therefore, the issue to be decided is as to whether the Authority was right in following the panel year concept and wrong in not following the calender year concept.

9.The expression "year" will partake its meaning depending on the context. If one has a flair for hyperbole and exaggeration, one can say that there can be 365 different ways of defining an year. As per Section 45 of I.P.C., it is to be reckoned according to the British calender. In Cantonment Act, year commences on the first day of April. In Coffee Act, year commences on the first day of July and ends with 30th June. In Electricity Supply Act, it commences on the first day of April. In Sugar Export promotion Act, it commences on the first day of May. In Sugar (Regulation of production) Act, it commences on the first day of November. We have financial year, assessment year, accounting year, academic year and agricultural year. In one case, it was held that the expression "year" does not end in a particular period of 12 months in any particular manner.(Vide P.Ramanatha Aiyer's Advanced Law Lexicon)

10.The expression "year" has not been defined in the present statutory context. This Court is therefore of the view that when the rules are otherwise silent, it is open to the employer to adopt any reasonable yard-stick. The petitioners have not shown as to how the stand of the Department is violative of any statutory provision or rule. As there is no specific statutory mandate that the calender year concept must be adopted while fixing seniority, it is open to the authorities to take a stand that the panel year concept will be followed while finalising seniority. The employer can always set the standard in such situations. This Court will not be justified in negativing the stand of the authorities in the absence of a clear and positive statutory provision to the contrary. There is one other aspect. The purpose of finalising the seniority list is to prepare the panel for promotion. In other words, seniority and promotion are closely interlinked. It is not in dispute that it is panel year which is followed in the matter of promotion. The object of judicial interpretation must be to ensure internal harmony within a given statutory frame work. If panel year concept is followed in the matter of promotion, the same can be followed while reckoning seniority also.

11.In this view of the mater, these Writ Petitions stand dismissed. In view of the dismissal of W.P.(MD).Nos.19909 of 2017, W.P.(MD).Nos.19931 of 2017 and 971 of 2018 also stand dismissed. No costs. Consequently, the connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To:

1.The Principal Secretary to Government of Tamil Nadu,
Revenue Department, Secretariat, Chennai.

2.The Principal Secretary / Personal & Administrative
Reforms (B) Department,
Secretariat, Chennai-9.

3. The Secretary to Government of Tamil Nadu,
Rural Development & Panchayat Raj Department,
Secretariat, Chennai.

4. The Additional Chief Secretary,
/ Commissioner of Revenue Administration,
Chepauk, Chennai.

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

6.The District Collector,
Thanjavur District, Thanjavur.

7.The District Revenue Officer,
O/O.District Revenue Officer,
Thanjavur District, Thanjavur.

+ 3 ccs TO M/S.Ajmal Associates, Advocate in SR No. 66724,66723, 66722
+ 1 cc TO M/S.Veera Associates , Advocate in SR No. 66687
+ 1 cc TO Mr.M.Muthugeetayan , Advocate in SR No. 66613
+ 1 cc TO The Special Government Pleader in SR No. 66955

tsg
AE/KKR/SAR3/18.06.2018/11P/14C

Order Made in
W.P.(MD) Nos.19909, 19311 of 2017
and 971 of 2018
04.06.2018