



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 22.03.2018
CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WEB COPY

W.P. (MD) .No.7721 of 2017
and
W.M.P. (MD) .Nos.6014 to 6016 of 2017

V.Sasikumar

...Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary,
Department of Animal Husbandry Fisheries & Diary Development
Fort ST.George, Chennai-09.

2.The Director of Animal Husbandry,
O/o. the Director of Animal Husbandry & Veterinary Services,
Central Offices Building Part-II,
Teynampet, Chennai-600 006.

3.The Secretary,
Tamil Nadu Public Service Commission,
Frazar Bridge Road, VOC Nagar, Park Town,
Chennai-600 006.

4.Mr.P.Tilak,
Typist,
Office of the Regional Director of Animal Husbandry,
Erode, Erode District. ... Respondents

Prayer: Writ Petition 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 communication in Na.Ka.No.22570/R2/2014 dated 17.11.2016 and the impugned order of sanction to the combined seniority list in the post of Junior Assistant and Typists as on 01.03.2012 in Na.Ka.No.22570/R2/2014, dated 06.04.2017 on the file of the respondent No.2 and quash the same as illegal and consequently to direct the respondents to re-fix the seniority of the petitioner above the respondent No.4 in the post of Junior Assistant by adhering to the date of joining in service or the rank fixed by the respondent No.3 within the time stipulated by this Court.

For Petitioner	: Mr.S.Louis
For R1 & R2	: Mrs.S.Srimathy Special Government Pleader
For R3	: Mr.D.Sivaraman
For R4	: No Appearance

**ORDER**

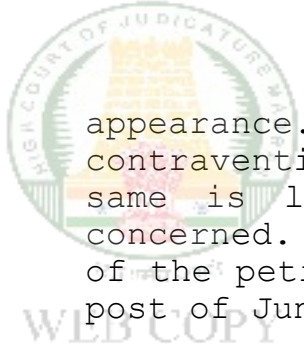
Heard the learned counsel on either side.

2. The petitioner entered Government Service as a Junior Assistant. He is a TNPSC appointee. The petitioner has now been promoted as Assistant. The petitioner's grievance is that while drawing the seniority list in the post of Junior Assistant, the department erroneously followed the roster point. The fourth respondent on the other hand is a compassionate appointee. The writ petitioner and the fourth respondent joined duty on the same date. Though the petitioner is elder to the fourth respondent, the fourth respondent was placed above him. Now the question that arises is that whether the department can follow the roster point while drawing up the seniority list.

3. The issue on hand is no longer res integra. It has been concluded by the Hon'ble Supreme Court in the decision reported in (2003) 5 SCC 604-Bimlesh Tanwar Vs. State of Haryana and others). The Division Bench of this Court in the decision reported in (2015) 4 MLJ 281-(N.Santhosh Kumar and others Vs. Tamil Nadu Public Service Commission, Chennai-600 002 and others) held as follows:-

"Rule 35(a) does not, to say the least, mandate that the 200 point roster would be determinative of the seniority of the selectees. It is merely determinative of the percentage of reservation. The second limb of rule 35(a) merely dictates that while according to the seniority on the basis of merit, the appointing authority is to ensure that the percentage of reservation was not sacrificed. Therefore, the proper way of interpreting and implementing rule 35(a) for the Service Commission is to (i) prepare a list of selectees in the order of merit and (ii) fit them against the 200 point roster in the Schedule III. Once such fitment is done and the process of appointment is over, with the selected candidates joining duty, the roster will lose its significance and will have nothing to do with the determination of seniority. Seniority will then be decided only by the rank secured by the candidates. The second limb of rule 35(a) will also stand satisfied by this process since the rule of reservation would have been observed, due to the fitment against roster. Therefore, the second contention of the respondents as though rule 35(a) mandates the roster to be the seniority is only a myth."

4. The case on hand is covered by the aforesaid decisions. Though the fourth respondent was served, he has not chosen to enter



appearance. Since the seniority list has been prepared in contravention of the law declared by the Hon'ble Supreme Court, the same is liable to be quashed in so far as the petitioner is concerned. The second respondent is directed to refix the seniority of the petitioner by placing him above the fourth respondent in the post of Junior Assistant.

5.The Writ Petition is allowed accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

- 1.The Secretary,
The State of Tamil Nadu,,
Department of Animal Husbandry Fisheries & Diary Development
Fort ST.George, Chennai-09.
- 2.The Director of Animal Husbandry,
O/o. the Director of Animal Husbandry & Veterinary Services,
Central Offices Building Part-II,
Teynampet, Chennai-600 006.
- 3.The Secretary,
Tamil Nadu Public Service Commission,
Frazar Bridge Road,
VOC Nagar, Park Town,
Chennai-600 006.

+2CC to Mr.T.Lajapathi Roy Advocate in SR.No.57394,57340.

+1CC to Mr.D.Sivaraman Advocate in SR.No.57108.

+1CC to Special Government Pleader in SR.No.57929.

TSG

DS/SKN-RSK/SAR-1 :08.06.2018: 3P/8C

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