

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 06.03.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

REV. APPLICATION NOS. 50 & 51 OF 2019

IN

W.P. NOS. 15683 & 15684 OF 2011

AND

W.M.P. NO. 5393 OF 2019

1. The Government of Tamil Nadu
rep. By its Chief Secretary
Tamil Nadu Secretariat
Chennai 600 009. .. 1st Petitioner in RA 50/19
2. The Government of Tamil Nadu
rep. By its Secretary to Government
Dept. of Personnel & Administrative Reforms
Tamil Nadu Secretariat, Chennai - 9.
.. 2nd Petitioner in RA 50/19
& Sole Petitioner in RA 51/19

- Vs -

1. J.Ganesan
2. M.Stephen Joseph Devados Pandian
3. Anne Joseph
4. E.Latha
5. V.Manivannan
6. R.Yesudoss Kennedy
7. The Secretary
Tamil Nadu Public Service Commission
Chennai 600 006.
8. V.Thiruvengkatam
9. D.Martin Chelladurai
10. S.Thenmozhi
11. K.Chandran
12. M.Dharuman ... Respondents in RA 50/19
1. M.Senthamarai
2. M.Shyam Sundar
3. M.Arachelvi
4. K.S.Selvakumar
5. R.Rajasekaran

6. G.Elangovan

7. The Secretary

Tamil Nadu Public Service Commission
Chennai 600 006.

8. L.Panneerselvam

9. K.S.Kabaleeswaran

10. P.L.Vijayal

11. A.Sivaprakasam

... Respondents in RA 51/19

Review Petitions filed under Order 47 Rule 1 r/w Section 114 of the Code of Civil Procedure to review the common order passed in W.P. Nos.15683 and 15684 of 2011 dated 3.8.2018.

Prayer in WP 15683 of 2011 : Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for call for the records of the Second Respondent in G.O.Ms.No.277 dt.22.7.96 passed by the Secretary to the Government of Tamil Nadu Personnel & Administrative Department Chennai the second respondent herein and quash the same and to direct the second respondent to revise the Seniority of the petitioners duly applying the Quota/Rota System as per Tamil Nadu Secretariat Service Rules as applicable to the Category of Assistant Section Officers and fix their Seniority at the appropriate places with all attendant benefits with due Seniority and consequently to fix the Seniority in the Category of Under Secretary to Government.

Prayer in WP 15684 of 2011: Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records of the relating to the orders in Letter No.80730/ U/96/-2 and Letter No.80730/ U/96/-3 dt.17.2.1998 passed by the Secretary to the Government of Tamil Nadu Personnel & Administrative Department Chennai the first respondent herein and quash the same and to direct the first respondent to revise the Seniority of the petitioners duly applying the Quota/ Rota System as per Tamil Nadu Secretariat Service Rules as applicable to the Category of Assistant Section Officers and fix their Seniority at the appropriate places with all attendant benefits with due Seniority and consequently to fix the Seniority in the Category of Section Officers.

For Petitioners: Mr. P.H.Arvind Pandian, AAG
assisted by Mr. J.Ramesh, AGP

For Respondents: Mr. L.Chandrakumar

Reserved on	Pronounced on
26.02.2019	06.03.2019

COMMON ORDER

The present review petitions have been filed by the respondents in the writ petition against the order passed by this Court directing the petitioners herein to revise the seniority of the respondents/writ petitioners by duly applying the Quota/Rota system as per the Tamil Nadu Secretariat Service Special Rules, applicable to the category of Assistant Section Officers and fix their seniority at the appropriate place and grant consequential attendant benefits.

2. Mr. Arvind Pandian, learned Addl. Advocate General appearing for the review petitioners submitted that the administration is facing certain difficulties in implementing the orders, since the Quota/Rota rule, as provided under the Special Rules, has broken down over the years. Learned Addl. Advocate General further submitted that the Quota/Rota system is to be followed in respect of the following seven category posts :-

- i) Direct Recruitment
- ii) Recruitment by Transfer
- iii) Assistant
- iv) Assistant
- v) Assistant
- vi) Assistant
- vii) Personal Clerk/Typist/Non-Graduate Assistant/Personal Assistant

3. Learned Addl. Advocate General submitted that the Quota/Rota system could not be operated partly in respect of the 2nd category, i.e., recruitment by transfer. Since the administration has not appointed any person by way of 'Recruitment by Transfer', the Quota/Rota rule could not be followed strictly and in which event the Quota/Rota Rule is deemed to have broken down. Therefore, learned Addl. Advocate General submitted that in terms of the order passed by the Hon'ble Supreme Court, the order has to be clarified that the seniority to be revised in terms of the new Rules, i.e, Rule 42 of the Tamil Nadu Government Servants (Conditions of Service) Rules, 2016, which replaced the old Rule 35 (aa). Learned Addl. Advocate General, particularly emphasised the fact that in terms of the ruling of the Hon'ble Supreme Court in the case of Direct Recruit Class II Engineering Officers' Association - Vs - State

of Maharashtra (1990 (2) SCC 715), where on the Quota rule promotion is done and the appointments are made from one source, in excess of the quota, but are made after following the procedure prescribed for appointment, the appointee should not be pushed down below the appointees from the other sources inducted into service at a later date. Learned Addl. Advocate General submitted that the petitioner should be permitted to take such course while revising the seniority of the writ petitioners. According to him, if such course is adopted, it will be equitable and reasonable to all stakeholders concerned.

4. On the other hand, Mr. L.Chandrakumar, learned counsel appearing for the writ petitioners/respondents herein strenuously objected to the review petitions being entertained by this Court for the reason that by filing the review petitions, the petitioners herein are attempting to re-argue the case, which cannot be done under Order XLI Rule 1 of the Code of Civil Procedure. According to the learned counsel, this Court has considered the above submissions in extenso while deciding the case in the writ petitions and only upon such consideration, this Court has come to a conscious conclusion and gave direction as found in paras 22 to 25 of the order dated 3.8.2018. For better clarity, paras 22 to 25 of the order are extracted hereunder :-

"22. The arguments advanced on behalf of the official respondents by the learned Addl. Advocate General that the erstwhile Rule 35(aa) of the Tamil Nadu State and Subordinate Service Rules and the present Section 40(2) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, was followed in the matter of fixation of seniority, cannot be acceptable as valid piece of argument, since the Section which was relied upon by the learned Addl. Advocate General has only a general application and cannot be pressed into service where quota-rota system is made mandatory. As per Rule 8 of the Special Rules, the ratio as prescribed for direct recruitment, transfer and promotion is 1:1:5, which means whenever first vacancy arises it has to be earmarked for direct recruit and once the vacancy is earmarked for direct recruitment, the consequential benefit of seniority has to be assigned on that basis. Unfortunately, the official respondents while granting retrospective regularization to the promotee Assistant Section Officers, have allowed encroachment by the promotee Officers into quota-rota meant for the direct recruits, thereby negated the right of the petitioners to

have their due seniority fixed on the basis of their substantive appointment. In simple terms, what has to be seen is whether a substantive appointee has a better right over a temporary appointee or vice versa and the inexorable conclusion would be that a substantive appointee will have better right than the temporary appointee and the service benefits have to be fixed on that basis including seniority. The impugned action of the official respondents by granting retrospective regularization detrimental to the interest of the direct recruitees like the petitioners herein, would only lend legitimacy to the violation of the mandatory Recruitment Rules of quota-rota system. Such action on the part of the official respondents, would completely undermine the statutory rules and its implementation. Once a statutory rule governs any appointment, such appointment to that post has to be governed by such rules. Although it is permissible to resort to temporary appointments in order to tide over the administrative exigencies, but that does not give a handle to the administration to grant higher seniority to such temporary appointments in complete negation of direct recruitees who were recruited against substantive vacancies. In fact, in this case, many of the temporary promotee Assistant Section Officers suffered reversion in between spells of appointment and therefore, this Court does not see any justification for the Government to pass orders by placing the promotee Assistant Section Officers enblock above the writ petitioners. Such exercise by the Government is not only against the mandatory recruitment rules, but also against the legal principles laid down by the Hon'ble Supreme Court. Therefore, the impugned action of the official respondents cannot be sustained in law.

23. In conclusion, the impugned Government Order in G.O.Ms.No.277 dated 22.7.1996 issued by the Secretary to the Government of Tamil Nadu, Personnel & Administrative Department Chennai/the second respondent herein, is hereby quashed.

24. This conclusion arrived at by this Court in W.P.No.15683 of 2011 will hold good in respect of other writ petition in W.P.No.15684 of 2011 though their panel year was different.

Accordingly, Letter No.80730/ U/96/-2 and Letter No.80730/ U/96/-3 dated 17.2.1998 of the Secretary to the Government of Tamil Nadu Personnel & Administrative Department, Chennai/the first respondent herein, is hereby set aside.

25. In the result, both the Writ Petitions are allowed. No costs. The respondents are directed to revise the seniority of the petitioners by duly applying the quota-rota system as per Tamil Nadu Secretariat Service Rules (Special Rules) applicable to the category of Assistant Section Officers and fix their seniority at the appropriate place and grant consequential attendant benefits. The said exercise shall be initiated and completed within a period of eight weeks from the date of receipt of a copy of the order."

5. It is submitted by the learned counsel for the writ petitioners/respondents herein that the above direction, is well founded, as the Court has considered all the relevant factors, including the service rules and other materials. That being the case, it is submitted that the review petitioners are not entitled to seek review of the order under the guise of informing the Court that the administration is having some difficulty in implementing this direction. No review is permissible in such contingency, since the scope of review by any court is very limited. Therefore, learned counsel for the writ petitioners/respondents herein submits that the review petitions filed by the State is not maintainable without merits and the same is liable to be dismissed.

6. This Court considered the submissions advanced by the learned Addl. Advocate General as also the submissions advanced on behalf of the writ petitioners/respondents herein.

7. As rightly contended by the learned counsel for the writ petitioners/respondents herein, the learned Addl. Advocate General is merely attempting to reagitate and re-argue the case by filing the present review petitions. The contention of the learned Addl. Advocate General that in the place of the erstwhile rule 35 (aa), the new Rule 42 could be followed for fixing the inter se seniority between direct recruits and promotees, which would be equitable to all concerned, cannot be acceptable for the reason that such consideration by this Court, at this stage, would undo the effect of the ultimate direction by this Court passed in the writ petition. In fact, this Court,

while giving a direction as aforementioned in para-25 of the order, has considered such submission in para-22. This Court has given elaborate reasons in para-22 of the order, already extracted above, by addressing the arguments advanced on behalf of the learned Addl. Advocate General.

8. In such a scenario, this Court has, even in the writ petitions, considered the submissions and also taken note of the order passed by the Hon'ble Supreme Court in Direct Recruit Class II Engineering Officers' case (supra). Although the submissions of the learned Addl. Advocate General that in respect of category-2, viz., 'recruitment by transfer', has not been effected at all over the years, it cannot be taken that Quota/Rota Rule has broken down and the petitioners herein to be permitted to resort to the application Rule 42 in the place of the erstwhile Rule 35 (aa). Once the Special Rules, which govern the appointments of the writ petitioners, such special rules will have precedence over the general rules.

9. In any event, this Court finds that the present review petitions cannot be entertained and the same does not satisfy the legal parameters and the scope of Order XLI Rule 1 of the Code of Civil Procedure. In the case of review of an order, the parties cannot be allowed to re-argue the case. The petitioners herein cannot approach this Court under the pretext of review petition and seek modification of a direction passed in the writ petition, since that would amount to changing the substratum of the decision passed by this Court in the writ petitions, which cannot be done, unless this Court is fully satisfied that there is an error apparent on the face of the record in issuing the direction in the writ petition.

10. This Court is of the considered view that there is no error apparent on the face of the record, which calls for review of the order passed by this Court at the instance of the petitioners herein.

11. For the reasons aforementioned, this Court finds that the review petitions are devoid of merits and, therefore, the same are dismissed. Consequently, connected miscellaneous petition is also dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Chief Secretary,
Government of Tamil Nadu,
Tamil Nadu Secretariat,
Chennai 600 009.
2. The Secretary to Government,
Dept. of Personnel & Administrative Reforms,
Government of Tamil Nadu,
Tamil Nadu Secretariat,
Chennai - 9.
3. The Secretary,
Tamil Nadu Public Service Commission,
Chennai 600 006.

+1cc to Mr.L.Chandrakumar, Advocate sr.21258

REV. APPLN. NOS. 50 & 51 OF 2019

sv[co]
srg 11/04/2019