

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.A. Nos. 988, 2619 and 2641 of 2018
and
W.A. Nos. 559, 562, 563, 612, 649 and 669 of 2019
and
C.M.P. Nos. 8431, 21348 and 21455 of 2018
and
C.M.P. Nos. 4800, 4822, 4832, 5024, 5292, 5451 and 5455 of 2019
W.A. No. 988 of 2018:-

1. The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Rural Development Department,
Secretariat,
Fort St. George,
Chennai - 600 009.
 2. The Commissioner of Rural Development and Panchayat Raj,
Panagal Building,
Saidapet,
Chennai - 600 015.
 3. The District Collector (PD Section),
Salem District,
Salem.
- ... Appellants/Respondents

सत्यमेव जयते
-vs-

R. Murugesan ... Respondent/Petitioner

PRAYER:- Writ Appeal filed under Clause 15 of Letters Patent,
praying to set aside the order dated 11.01.2018 in W.P. No. 7949
of 2013.

W.A. No. 2619 of 2018:-

1. The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Rural Development Department,

Secretariat,
Fort St. George,
Chennai - 600 009.

2. The Commissioner of Rural Development and Panchayat Raj,
Panagal Building,
Saidapet,
Chennai - 600 015.

3. The District Collector (PD Section),
Nilgiris District,
Nilgiris. ... Appellants/Respondents

-vs-

R. Suganthi ... Respondent/Petitioner

PRAYER:- Writ Appeal filed under Clause 15 of Letters Patent,
praying to set aside the order dated 11.01.2018 in W.P. No. 7948
of 2013.

W.A. No. 2641 of 2018:-

1. The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Rural Development Department,
Secretariat,
Fort St. George,
Chennai - 600 009.

2. The Commissioner of Rural Development and Panchayat Raj,
Panagal Building,
Saidapet,
Chennai - 600 015.

3. The District Collector (PD Section),
Tiruvallur District,
Tiruvallur. ... Appellants/Respondents

-vs-

A.Tamil Selvi ... Respondent/Petitioner

PRAYER:- Writ Appeal filed under Clause 15 of Letters Patent,
praying to set aside the order dated 11.01.2018 in W.P. No. 7944
of 2013.

W.A. No. 559 of 2019:-

1. The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Rural Development Department,
Secretariat,
Fort St. George,
Chennai - 600 009.
2. The Commissioner of Rural Development and Panchayat Raj,
Panagal Building,
Saidapet,
Chennai - 600 015.
3. The District Collector (PD Section),
Coimbatore District. Appellants/Respondents

-vs-

K.A. Balamurugu
... Respondent/Petitioner

PRAYER:- Writ Appeal filed under Clause 15 of Letters Patent,
praying to set aside the order dated 11.01.2018 in W.P. No. 7945
of 2013.

W.A. No. 562 of 2019:-

1. The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Rural Development Department,
Secretariat,
Fort St. George,
Chennai - 600 009.
2. The Commissioner of Rural Development and Panchayat Raj,
Panagal Building,
Saidapet,
Chennai - 600 015.
3. The District Collector (PD Section),
Coimbatore District. Appellants/Respondents

-vs-

P. Jayachandran
... Respondent/Petitioner

PRAYER:- Writ Appeal filed under Clause 15 of Letters Patent,
praying to set aside the order dated 11.01.2018 in W.P. No. 7951
of 2013.

W.A. No. 563 of 2019:-

1. The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Rural Development Department,
Secretariat,
Fort St. George,
Chennai - 600 009.
2. The Commissioner of Rural Development and Panchayat Raj,
Panagal Building,
Saidapet,
Chennai - 600 015.
3. The District Collector (PD Section),
Coimbatore District. ... Appellants/Respondents

-vs-

S. Balaganesan ... Respondent/Petitioner

PRAYER:- Writ Appeal filed under Clause 15 of Letters Patent,
praying to set aside the order dated 11.01.2018 in W.P. No. 7950
of 2013.

W.A. No. 612 of 2019:-

1. The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Rural Development Department,
Secretariat,
Fort St. George,
Chennai - 600 009.
2. The Commissioner of Rural Development and Panchayat Raj,
Panagal Building,
Saidapet,
Chennai - 600 015.
3. The District Collector (PD Section),
Coimbatore District, ... Appellants/Respondents

-vs-

N. Ramesh ... Respondent/Petitioner

PRAYER:- Writ Appeal filed under Clause 15 of Letters Patent,
praying to set aside the order dated 11.01.2018 in W.P. No. 7947
of 2013.

W.A. No. 649 of 2019:-

1. The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Rural Development Department,
Secretariat, Fort St. George,
Chennai - 600 009.
2. The Commissioner of Rural Development and Panchayat Raj,
Panagal Building,
Saidapet,
Chennai - 600 015.
3. The District Collector (PD Section),
Tiruvannamalai District,
Tiruvannamalai. Appellants/Respondents

-vs-

P. Rajakanthan ... Respondent/Petitioner

PRAYER:- Writ Appeal filed under Clause 15 of Letters Patent,
praying to set aside the order dated 11.01.2018 in W.P. No. 7943
of 2013.

W.A. No. 669 of 2019:-

1. The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Rural Development Department,
Secretariat,
Fort St. George,
Chennai - 600 009.
2. The Commissioner of Rural Development and Panchayat Raj,
Panagal Building,
Saidapet,
Chennai - 600 015.
3. The District Collector (PD Section),
Tiruvannamalai District,
Tiruvannamalai. Appellants/Respondents

-vs-

M.M. Shanmugam ... Respondent/Petitioner

PRAYER:- Writ Appeal filed under Clause 15 of Letters Patent,
praying to set aside the order dated 11.01.2018 in W.P. No. 7946
of 2013.

Prayer in WP No.7943 to 7951 of 2013:-

These Petitions filed under Article 226 of the Constitution of India, praying for issue of writ of certiorarified Mandamus to call for the records pertaining to G.O.(3D) No.43, Rural Development and Panchayat Raj (E3) Department dated 09.12.2011 passed by the first respondent and quash the same in so far as fixing of seniority of the Petitioners by placing them in the bottom most in the seniority list of

(a) Assistant as on 09.12.2011 and further direct the respondents to reckon the seniority of the Petitioners in the cadre of Assistant with effect from 1.5.2001, the date of posting them as Assistants with all consequential service benefits such as retrospective promotion and pay benefits within the time limit that may be stipulated by this Honourable Court.

For Appellants : Mr. S.T.S. Murthy,
Additional Advocate General
assisted by Mrs. A. Sri Jayanthi,
Special Government Pleader
(in all W.A.s)

For Respondent : Mr. A.S. Palanisamy (in all W.A.s)

J U D G M E N T

(Judgment of the Court was delivered by P.D. AUDIKESAVALU, J.)

The intra-Court Appeals arise out of the common order dated 11.01.2018 in W.P. Nos. 7943 to 7951 of 2013 passed by the Learned Judge of this Court. The parties are hereinafter referred to as per their description in the Writ Petition for the sake of convenience. The case particulars with reference to each of the Petitioners is shown below:-

S. No.	Name of the Petitioner	Writ Petition	Writ Appeal
1.	P. Rajakanthan	W.P. No. 7943 of 2013	W.A. No. 649 of 2019
2.	A. Thamizselvi	W.P. No. 7944 of 2013	W.A. No. 2641 of 2018
3.	K.A. Balamurugu	W.P. No. 7945 of 2013	W.A. No. 559 of 2019
4.	M.M. Shanmugam	W.P. No. 7946 of 2013	W.A. No. 669 of 2019

S. No.	Name of the Petitioner	Writ Petition	Writ Appeal
5.	N. Ramesh	W.P. No. 7947 of 2013	W.A. No. 612 of 2019
6.	R. Suganthi	W.P. No. 7948 of 2013	W.A. No. 2619 of 2018
7.	R. Murugesan	W.P. No. 7949 of 2013	W.A. No. 988 of 2018
8.	S. Balaganesan	W.P. No. 7950 of 2013	W.A. No. 563 of 2019
9.	P. Jayachandran	W.P. No. 7951 of 2013	W.A. No. 562 of 2019

2. The chronological sequence of events leading to the filing of these Writ Appeals are given below:-

- (i) The Petitioners were selected to the post of Radio Supervisors by the Tamil Nadu Public Service Commission to work for the Tamil Nadu Local Administration Radio and Television Maintenance Organization.
- (ii) The Government of Tamil Nadu in G.O. Ms. No. 229, Rural Development (E4) Department dated 30.08.2000 had decided to disband the Tamil Nadu Local Administration Radio and Television Maintenance Organization pursuant to devolution of Panchayat Raj, and as a sequel thereto, the Commissioner of Rural Development Department by letter R.C. No. 91508/2000-1/RCP.2 dated 23.04.2001 issued instructions to the District Collectors that from 01.05.2001 onwards, the Radio Supervisors shall be attached to the respective Collectorates where their services shall be utilized and suitable work allotted which shall serve as a part of training before posting issued.
- (iii) Though the Radio Supervisors were serving as Assistants in the District Collectorates, formal orders for their absorption in service in that post were issued in G.O. (3D) No. 43, Rural Development and Panchayat Raj (E3) Department dated 09.12.2011, but it was directed that they shall be placed at the bottom of the seniority list as on that date.
- (iv) M/s. T. Kaliarajan and N. Sivaprakasam, two of such erstwhile Radio Supervisors had filed W.P. Nos. 25256 and 25257 of 2012 before this Court challenging their placement at the bottom of the seniority list. The said Writ Petitions were opposed by the State Government on the ground that though the Petitioners were working with effect from 01.05.2001 in the post of Assistants in the Rural Development Department, their seniority could not be

assigned with effect from that date as they had not been recruited to that post following the procedure prescribed for the same through the Tamil Nadu Public Service Commission and that it would affect the rights of those persons appointed to that post between 01.05.2001 and 09.12.2011 through the prescribed procedure. After referring to the rival submissions, the Learned Judge, who heard the matter, disposed those Writ Petitions, holding as follows:-

"9. From the various facts narrated supra, it is a clear case of extracting work in the post of assistants and continued them as assistants after the abolition of Radio Supervisors. Admittedly, the petitioners have not worked as junior assistants to be promoted as assistants. The contention of the Government that service qualification is required for promotion to the post of assistant cannot be doubted at all. Since it is not a case of promotion to the post of Assistant from Junior Assistant and that the petitioners have been directly appointed to the post of Assistants and that the policy decision has been taken and a promise has been given to the petitioners, I find much force in the contention of the learned counsel for petitioners and thus the petitioners are entitled to the relief sought for in the writ petition and they are entitled for absorption from the date of their initial appointment to the post of Assistant.

10. Even though a larger prayer has been sought for, this court, having found that the petitioners are entitled for absorption in the post of assistants with effect from the date they joined the service, with regard to promotion and other benefits which flows from the absorption, will be decided based on the service rules or guidelines applicable from time to time and the petitioners, cannot, as a matter of right, demand promotion. If the petitioners are otherwise eligible and fulfill norms laid down by the Government, the petitioners should be considered to the next level by applying the rules and regulations, including the rules of reservation, the names of the petitioners can be interpolated in the appropriate list and the same can be notionally considered. Since the petitioners are languishing in the post for more than a decade, this court expects the Government to complete the exercise within a period of eight weeks from the date of receipt of a copy of this order. Any other benefits that have been accrued to the petitioners

by means of absorption in the post of assistants, may be released forthwith and with regard to the other exercise, namely promotion etc., need not be clubbed for the purpose of withholding any other benefits due to the petitioners in the post of assistants."

(v) The State Government had preferred appeals against the aforesaid order in W.A. Nos. 736 of 2016 and 1762 of 2015 and the same were dismissed by orders dated 23.06.2016 and 09.08.2016 respectively.

(vi) Similar Writ Petitions in W.P. Nos. 27207 and 27208 of 2012 filed by two other erstwhile Radio Supervisors, viz., S. Sivagami and M. Lakshmi, were allowed by this Court by order dated 26.03.2015, in which the following direction was passed:-

"12.The Respondents are directed to fix seniority of the Petitioners as Assistants taking into account the date of commencement of their officiation as Assistant in the District Collectorate at Cuddalore. They should be given due placement in the seniority list taking into account the date of commencement of their functioning as Assistant in the concerned Collectorate. Such exercise shall be completed within a period of three months from the date of receipt of copy of this order."

(vii) Another Writ Petition in W.P. No. 43299 of 2016 filed by an erstwhile Radio Supervisor, viz., M. Parivelan, was allowed by order dated 03.04.2017, holding as follows:-

"9. It may be mentioned that the issue is squarely covered by an order dated 26.03.2015 passed in W.P.Nos.27207 and 27208 of 2012, therefore, this Court, applying the Rule 35(b) and also keeping in mind the order passed by this Court in the afore mentioned two writ petition Nos.27207 and 27208 of 2012 dated 26.03.2015, directs the respondents to fix seniority of the petitioner as Assistant taking into account the date of commencement of his officiation as Assistant in the District Collectorate at Salem and he should be given due placement in the seniority list taking into account the date of commencement of his functioning as Assistant in the same place. The said exercise shall be completed within a period of three months from the date of receipt of a copy of this order."

(viii) The appeals against the orders passed by the Learned Judges of this Court in W.P. Nos. 27207 and 27208 of 2012 and in W.P. No. 43299 of 2016 were heard together by the Division Bench of this Court in W.A. Nos. 1460 and 1461 of 2016 and 1165 of 2017 and disposed by common order dated

15.11.2017, in which it has been stated as follows:-

"5. On going through the orders passed by the learned Single Judge, we find that the learned Single Judge has properly appreciated the fact that the writ petitioners had undergone certain selection process at the hands of Tamil Nadu Public Service Commission and some credence needs to be given to their past service as the present state of affairs had not arisen because of any fault on the part of the writ petitioners. Hence, we do not find any reason to interfere with the order passed by the learned Single Judge.

6. However, we find that the question of regularisation and fixation of seniority of the writ petitioners, from the date of their original appointment or from the date of absorption is a moot question to be considered by the Government and a policy decision has to be taken which shall be done within a period of three months from the date of receipt of copy of this judgment. The writ appeals are disposed of accordingly. No costs. The connected miscellaneous petitions are closed."

- (ix) The Petitioners in W.P. Nos. 7943 to 7951 of 2013, who are also erstwhile Radio Supervisors similarly placed to the Petitioners in the earlier Writ Petitions, which have been confirmed in appeal, sought the same relief, which was allowed by the Writ Court by common order dated 11.01.2018, and it has been stated therein as follows:-

"5. In view of the aforesaid decision of this Court in the aforesaid writ petitions in similar facts and situation, these writ petitions filed by the petitioners in these cases stand allowed. Consequently, the respondents are directed to fix the seniority of the petitioners from the date they have joined as a Assistant in the District Collectorate on officiation after abolition of their parent cadre ignoring the direction on the impugned Government Order which has already been quashed and such exercise of fixation of seniority be completed within a period of eight weeks from the date of receipt of copy of this order. Needless to say that the petitioners after fixation of such seniority are entitled to the service benefits available to that cadre. With the aforesaid order, these writ petitions stands disposed of being allowed and the connected Miscellaneous petitions are closed. "

Aggrieved thereby, the Respondents have preferred this appeal.

3. We have heard Mrs. A. Sri Jayanthi, Learned Special Government Pleader appearing on behalf of the Respondents, Mr. S. Ramesh, Learned Counsel appearing for the Petitioners and perused the materials placed on record, apart from the pleadings of the parties.

4. The Learned Additional Advocate General appearing for the Respondents strenuously urged that the Petitioners cannot be granted the benefit of seniority with effect from 01.05.2001, when they started to work as Assistants in the Rural Development Department as it would affect the promotional chances of the Junior Assistants, who were initially appointed through direct recruitment to that post through Tamil Nadu Public Service Commission and later promoted as Assistants after passing the departmental tests, till G.O. (3D) No. 43, Rural Development and Panchayat Raj (E3) Department dated 09.12.2011 was issued and in the absence of those persons, who have been prejudicially affected, the earlier orders passed by this Court could not be given effect and the matter requires re-consideration.

5. The Learned Counsel for the Petitioners brought to the notice of this Court that despite various orders passed by the Division Benches of this Court confirming the orders passed by the Learned Judges, the Respondents have not given them the benefit, which would naturally follow to all similarly placed persons like the Petitioners and hence, they have been forced to file those Writ Petitions for getting specific orders. It is further contended that as the aforesaid orders having attained finality, it was not open to the Respondents to re-agitate the same by way of the present appeals.

6. We have given anxious consideration to the rival submissions and we find that the aforesaid contention of the Learned Additional Advocate General does not deserve acceptance.

7. It is not in dispute that the Petitioners who were working as Radio Supervisors in the Tamil Nadu Local Administration Radio and Television Maintenance Organization have been posted from 01.05.2001 onwards as Assistants in the Rural Development Department by the Government of Tamil Nadu pursuant to the decision to disband the said Organization where they were working and it was not on account of any option made by them in that regard. The Secretary to Government, Rural Development Department by letter No. 41040/E4/2000-7 dated 13.03.2001 while obtaining the views of the Tamil Nadu Public Service Commission, had stated as follows:-

"3. The proposal to redeploy the staff of the disbanded TNLA Radio and TV Maintenance Organisation with the regular establishment of Panchayat Development Unit has been consulted with various

service Associations including Tamil Nadu Rural Development Officials Association by DRD and the Secretary, RD Department, informally in various occasions though they are Associations. As the employees of the disbanded organization are proposed to be fitted as last man of the corresponding categories in the Panchayat Development Unit the seniority of the existing personnel may not be affected as contended. Also the number to be redeployed is negligible, it may not create any major impact in seniority level taking into consideration of staff strength of the Panchayat Development Unit."

In response to the same, the Tamil Nadu Public Service Commission had also sent their concurrence for that proposal by letter No. 5468/CD-B2/2000 dated 06.07.2001.

8. The delay in issuing orders for the absorption of the Petitioners in the post of Assistants in G.O. (3D) No. 43, Rural Development and Panchayat Raj (E3) Department dated 09.12.2011, was not due to any fault of the Petitioners. Moreover, this Court has already made it clear that by merely fixing the seniority of the erstwhile Radio Supervisors in the post of Assistants in the Rural Development Department, they cannot as a matter of right claim promotion to any higher post and they would have to be otherwise eligible and fulfill the norms laid down for the same. That being the factual position, it was unfair to have placed the Petitioners at the bottom of the seniority list in the post of Assistants as on 09.12.2011 and it is not explained as to how the persons recruited for the post of Assistants from 01.05.2001 could be aggrieved. Further, when some of the Radio Supervisors, similarly placed to the Petitioners, challenged their placement at the bottom of the seniority list as on 09.12.2011 in earlier Writ Petitions, this Court held the same to be invalid and directed their names should be placed in the seniority list as on the date on which they had joined in the post of Assistants on 01.05.2001, which has attained finality. We do not find any reason to differ from the consistent view taken by this Court in the matter. The Hon'ble Supreme Court of India in State of Uttar Pradesh -vs- Arvind Kumar Srivastava [(2015) 1 SCC 347] has reiterated that when a particular set of employees have been given a relief by the Court, all other identically situated employees should be treated alike by extending that benefit and not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India.

9. We also find that despite repeated orders passed by this Court granting relief to the similarly placed persons, the Respondent have not issued orders fixing their seniority in the

post of Assistants as directed in those orders. Hence, we are constrained to direct the Secretary to Government, Rural Development Department, Government of Tamil Nadu to file a report of compliance by 30.06.2019 before the Registrar (Judicial) of this Court, showing the fixation of seniority of the Petitioners and other similarly placed persons, who were earlier working as Radio Supervisors in the post of Assistants in the Rural Development Department without fail.

10. In the aforesaid circumstances, we do not find any merits in these Writ Appeals and we dismiss the same. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vjt

To

1. The Secretary to the Government of Tamil Nadu,
Rural Development Department,
Secretariat, Fort St. George,
Chennai - 600 009.
2. The Commissioner of Rural Development and Panchayat Raj,
Panagal Building,
Saidapet,
Chennai - 600 015.
3. The District Collector (PD Section),
Salem District,
Salem.
4. The District Collector (PD Section),
Nilgiris District,
Nilgiris.
5. The District Collector (PD Section),
Tiruvallur District,
Tiruvallur.
6. The District Collector (PD Section),
Coimbatore District.

7. The District Collector (PD Section),
Tiruvannamalai District,
Tiruvannamalai.

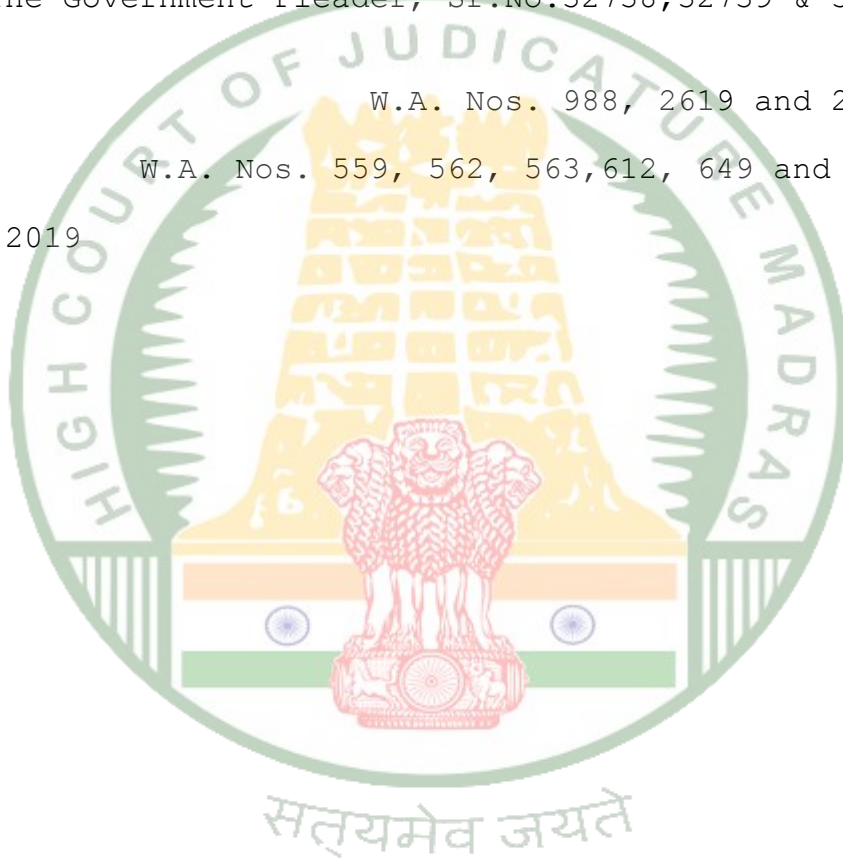
Copy to

The Registrar (Judicial),
Madras High Court,
Chennai.

+2 cc's to Mr.A.S.Palanisamy, Advocate Sr.No.31518
+1 cc to The Government Pleader, Sr.No.32738,32739 & 32740

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CSL/12.04.2019



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