

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.04.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

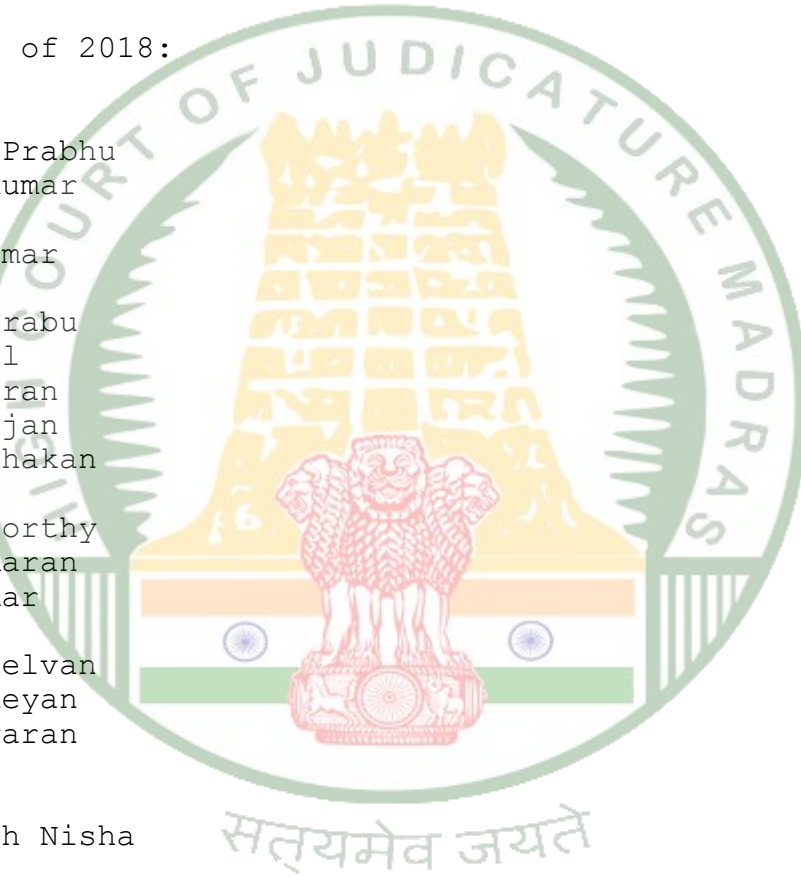
W.P.Nos.23302 of 2018, 2311 of 2015, 23649 of 2018 & 34223 of 2014

and

W.M.P.No.11313 of 2019, M.P.Nos.1,1 & 2,2 of 2014 & 2015

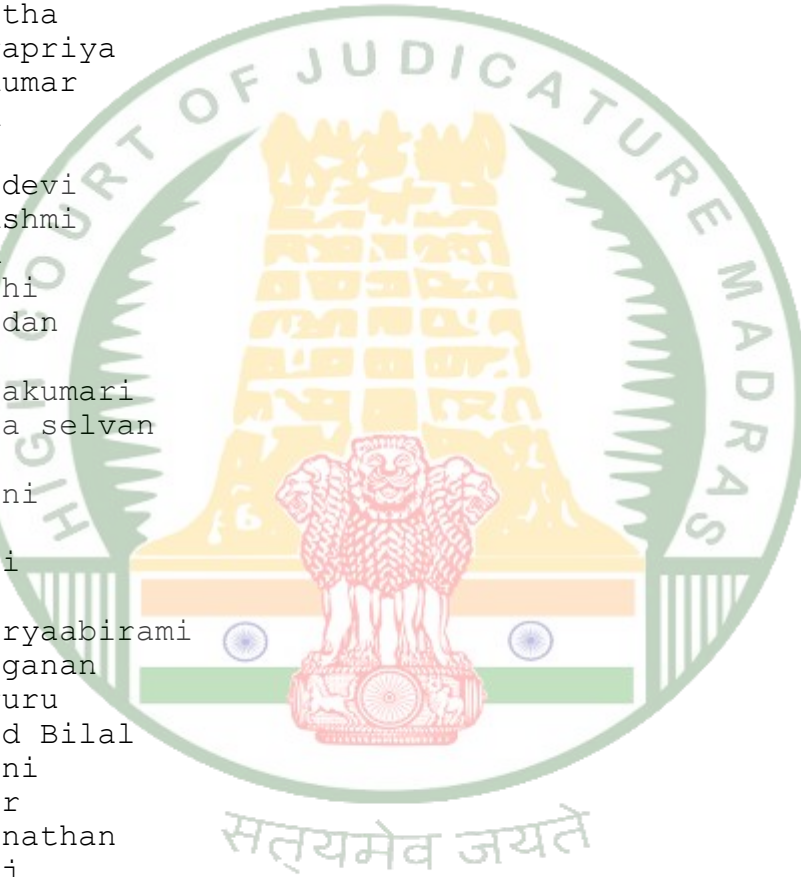
W.P.No.23302 of 2018:

- 1.R.Divandh
- 2.B.Krishna Prabhu
- 3.C.Vinoth Kumar
- 4.C.Subash
- 5.L.Dineshkumar
- 6.P.Perumal
- 7.S.Ananda Prabhu
- 8.S.Palanivel
- 9.R.Vigneswaran
- 10.A.Veerarajan
- 11.K.Mathiazhakan
- 12.M.Velu
- 13.R.Kaliamoorthy
- 14.M.G.Manimaran
- 15.E.Sivakumar
- 16.R.Karthi
- 17.K.V.Arulselvan
- 18.G.Karthikeyan
- 19.P.Rajeshwaran
- 20.N.Saranya
- 21.K.Sumathi
- 22.S.Rahamath Nisha
- 23.M.Geetha
- 24.K.Sarayana
- 25.V.Subhashini
- 26.H.Selvi
- 27.I.Irulaye
- 28.A.Chithrakala
- 29.P.Gomathi
- 30.M.Shanthi
- 31.E.G.Karthik Kumar
- 32.P.Jones Paul Kirubakaran
- 33.R.Parvathi raj
- 34.R.Iyampillai
- 35.P.Koppanamalai



WEB COPY

36.V.Vasanthbharathi
37.N.K.Gayathiri
38.K.Karnan
39.A.Raja
40.S.Jeyanthi
41.M.Azhagupichayee
42.R.Charles
43.K.Thamilarasan
44.R.Sangeetha
45.G.Pradeep
46.S.Balamurugan
47.K.Jones
48.N.Nivedhitha
49.K.Shanmugapriya
50.D.Mathankumar
51.P.Karthik
52.R.Anushya
53.S.Sathanadevi
54.K.Mahalakshmi
55.P.Gautham
56.P.Kanimozhi
57.M.Manikandan
58.A.Mehala
59.C.Saravanakumari
60.M.Vasantha selvan
61.K.Murugan
62.C.Kalaimani
63.S.Prema
64.K.Nandhini
65.M.Saranya
66.V.N.Ayswaryaabirami
67.C.Mayilvaganan
68.M.Ramanaguru
69.K.Mohammed Bilal
70.A.P.Kanmani
71.G.Sreethar
72.M.K.Vembunathan
73.S.Mohanraj
74.P.J.Usharani
75.S.Jeyanthi
76.S.Manikandan
77.W.Arockia raja xavier
78.R.Chandrasekar



WEB COPY

..Petitioners

vs

1.The Secretary to Government of Tamil Nadu,
Animal Husbandry Dairying and Fisheries Department
Secretariat, Fort St.George,
Chennai -9.

2.The Director of Animal Husbandry,
Veterinary Hospital Campus,
Nandanam, Chennai - 35.

3.The Secretary to Government
Personnel and Administrative Reforms Department
Secretariat, Fort St.George,
Chennai - 9.

4.R.Jayabaskaran
5.C.Balakrishnan
6.S.Munusamy
7.K.Palanichamy
8.G.Lalitha
9.C.Ravikumar
10.K.James Victor
11.K.Ravichandran
12.B.Jeganathan
13.M.Ethiraj
14.S.Jayalakshmi
15.T.Balamurugan
16.K.Rajaselvam
17.A.Stella Bai

(R4-R17 are impleaded as per order dated 27.04.2019
in W.M.P.No.38788/18 in W.P.No.23302/2018)

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records in connection with the impugned seniority list viz. Na.Ka.No.33085/ R1 /2018 dated 31.8.2018 and the consequential panel to the post of Superintendent of the year 2016 vide proceedings viz. Na.Ka.No.41717/ R1 /2016 dated 04.09.2018 issued by the 2nd respondents and quash the same and direct the respondents to fix Inter-se Seniority of the petitioners in the cyclical ratio of 1:1, taking into account G.O.(4D) No.15, Animal Husbandry, Dairying and Fisheries Department dated 12.12.2012, G.O.Ms.No.184, Animal Husbandry, Dairying and Fisheries Department dated 26.05.2015, G.O.Ms. No.31 Personnel and Administration (B) Department dated 13.3.2018 and award costs.

For Petitioners : Mr.V.Prakash, Senior counsel
for M/s.K.Krishnamoorthy

For Respondents : M/s.Narmadha Sampath
R1 to R3 Additional Advocate General Assisted
by M/s.Thangavadhana Balakrishnan
Additional Government Pleader

W.P.No.2311 of 2015:

- 1.R.Jayabaskaran
- 2.S.Munusamy
- 3.C.Balakrishnan
- 4.J.Manivannan
- 5.D.Chandiran
- 6.K.Palanichamy
- 7.M.Arumugam
- 8.V.Jagannathan
- 9.M.Ethiraj
- 10.K.Ravichandran
- 11.T.Balamurugan
- 12.S.Jayalakshmi
- 13.N.Vaijayanthi Mala
- 14.K.Rajaselvam
- 15.A.Stella Bai
- 16.C.Ravikumar
- 17.G.Lalitha

...Petitioners

vs

- 1.The Secretary,
Animal Husbandry, Dairying and
Fisheries (AH7) Department,
Fort St.George,
Chennai -600 009.
- 2.The Director,
Animal Husbandry & Veterinary Services Department
Central Office Building Part-II,
Tenampet,
Chennai - 6.
- 3.The Secretary,
Tamil Nadu Public Service Commission,
Chennai - 3.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the Respondents to first consider the petitioner and similarly placed Junior Assistants/Typists working under the 2nd Respondent for promotion to the Post of Assistants and only thereafter resort to appoint by direct recruitment made through the 3rd Respondent to the post of Assistants in the 2nd Respondent Department.

For Petitioners : Mr.M.Purushothaman

For Respondents : M/s.Narmadha Sampath
Additional Advocate General Assisted
by M/s.Thangavadhana Balakrishnan
Additional Government Pleader,
for R1 & R2

Dr.M.Devendran for R3

W.P.No.23649 of 2018:

R.Sivakumar

..Petitioner

vs

1.The Secretary to Government of Tamil Nadu,
Animal Husbandry, Dairying and Fisheries Department
Secretariat, Fort St.George,
Chennai -600 009.

2.The Director,
Animal Husbandry and Veterinary Services
Chennai - 600 035.

3.The Additional Director(Medical Services)
Animal Husbandry and Veterinary Services
Chennai - 600 035.

4.The Deputy Director(Personnel)
O/o.Director,
Animal Husbandry and Veterinary Services
Chennai - 600 035.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the third respondent herein in R.C.No.33085/R1/2018 dated 31.8.2018 releasing the seniority list of Assistant as on 1.3.2014 and the consequential order of the fourth respondent herein in R.C.No.41717/R1/2016 dated 4.9.2018 calling for proforma of candidates included in the Annexure for inclusion in the promotional panel for the year 2016 to the post of Superintendent and quash the same and consequently direct the respondents to fix the seniority of the petitioner and other directly recruited Assistant for the year 2013-14 and release the inter-se seniority list of Assistant for the year 2013-14 and thereafter confer the promotion post of Superintendent to the petitioner with due regards to petitioner's seniority and confer all the attendant benefits.

For Petitioner : Mr.R.S.Anandan

For Respondents : M/s.Narmadha Sampath
Additional Advocate General Assisted
by M/s.Thangavadhana Balakrishnan
Additional Government Pleader

W.P.No.34223 of 2014:

K.James Victor

..Petitioner

vs

1.The Secretary,
Animal Husbandry, Dairying and
Fisheries (AH7) Department,
Fort St.George,
Chennai -600 009.

2.The Director,
Animal Husbandry & Veterinary Services Department
Central Office Building Part-II,
Tenampet,
Chennai - 6.

3.The Secretary,
Tamil Nadu Public Service Commission,
Chennai - 3.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the Respondents to first consider the petitioner and similarly placed Junior Assistants/Typists working under the 2nd Respondent for promotion to the Post of Assistants and only thereafter resort to appoint by direct recruitment made through the 3rd Respondent to the post of Assistants in the 2nd Respondent Department.

For Petitioner : Mr.M.Purushothaman

For Respondents : M/s.Narmadha Sampath
Additional Advocate General Assisted
by M/s.Thangavadhana Balakrishnan
Additional Government Pleader, for R1 & R2

Dr.M.Devendran for R3

C O M M O N O R D E R

W.P.Nos.23302 & 23649 of 2018: The List of Seniority published by the 2nd respondent in proceedings dated 31.08.2018 as well as the Circular issued by the 2nd respondent, inviting particulars from the Subordinate officials in respect of the eligible persons for preparation for panel in proceedings dated 04.09.2018 are under challenge in the writ petitions.

1.1. W.P.Nos.2311 of 2015 & 34223 of 2014: The relief sought for in the present writ petitions is for a direction to direct the Respondents to first consider the petitioners and similarly placed Junior Assistants/Typists working under the 2nd Respondent for promotion to the Post of Assistants and only thereafter resort to appoint by direct recruitment made through the 3rd Respondent to the post of Assistants in the 2nd Respondent Department.

2.The parties to the lis on hand mainly on the ground that the very preparation of the Seniority List itself is in violation of Rule 40 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

3.It is further contended that the Seniority List was prepared, based on the date of joining and without considering the Merit Seniority List of the TNPSC Candidates, who all are to be placed above the other eligible candidates, who were appointed to the Post of Assistant by way of promotion or through Compassionate Appointment. In other words, at the time of preparation of seniority, in a particular year, the TNPSC candidates are to be placed first in the order of their Merit Ranking and thereafter, the promotees to be listed and thirdly, the Compassionate appointees. In view of the fact that the provisions of the Act was violated, it is urged before this Court that the list of seniority itself is to be scrapped. Consequently, the preparation of panel is also to be set aside.

4.The learned counsel appearing on behalf of the writ petitioner in W.P.No.34233 of 2014 and W.P.No.2311 of 2015 made a submission that these writ petitioners were appointed in the Post of Junior Assistant during the year 2010 and there was an administrative delay in promoting these writ petitioners to the Post of Assistant on account of the fact that the Department had not sponsored them to undergo Bhavanisagar Training, which is a requisite qualification for promotion to the Post of Assistant as per the Rules. Thus, these petitioners are to be placed above all these candidates. They are entitled to get promotion from the year 2012 itself.

5.The learned Additional Advocate General appearing on

behalf of the official respondents informed this Court that the Revised Seniority List was published, based on the date of joining of the employees in the cadre of Assistant, and the entire list was based on the basis of the respective date of joining.

6.This Court is of the considered opinion that date of joining cannot be the criteria as far as the TNPSC candidates are concerned. For the purpose of grant of promotion, TNPSC Merit Ranking List must be taken into account for the purpose of preparing the list of seniority. Thereafter, at the time of preparation of panel, the names of the eligible persons are to be considered for promotion to the next higher post. Thus, the seniority is to be fixed based on the Merit Ranking List published by the TNPSC at the time of selection and the date of joining of those candidates would not arise at all.

7.This being the principles settled by the Apex Court in number of decisions, this Court is of the considered opinion that the respondents are bound to prepare the Seniority List with reference to Section 40 of the Tamil Nadu Government Servants(Conditions of Service) Act 2016. Accordingly, they are bound to follow the following procedures.

1) The Inter-se Seniority List between the TNPSC appointees, promotees and Compassionate Appointees are to be prepared in the order of seniority. The TNPSC candidates as per their Merit Ranking List to be placed first in the seniority list of the particular year. For instance, the seniority List, which is under challenge in the present writ petitions was published on 31.08.2018 as on 01.03.2014. Thus, the TNPSC candidates selected during the year 2013-2014 are to be placed first in the Seniority List as per their Merit Ranking List.

2) Thereafter, the Departmental promotees promoted from the category of Junior Assistant to Assistant are to be placed based on their respective date of joining in the Post of Assistant.

3) Thirdly, the Compassionate Appointees, who all are holding the Post of Assistant are to be placed in the Seniority List based on their respective date of joining in the Post of Assistant for the purpose of finalizing the Seniority list. Thus, it is made clear that at the time of preparation of Inter-se Seniority List, the respondents are bound to follow the above order of preference strictly and scrupulously in order to comply with the provisions of the Act in this regard.

8.After finalizing the Seniority List as stated above, the authorities competent are bound to prepare the year-wise panel, considering the availability of vacancies in the post of Superintendent. Accordingly, all eligible candidates, who all are waiting for promotion are to be considered in the order of their respective seniority and thereafter, the approved Panel

shall be published and consequently, promotions are to be issued in accordance with the procedures contemplated under the Government orders.

9.As far as the writ petitions in W.P.No.34223 of 2014 and W.P.No.2311 of 2015 are concerned, the respondents are directed to consider their representation for grant of relaxation and if relaxations are already granted, then all suitable actions are to be taken for issuing orders, granting Notional Promotion with reference to their seniority in the cadre of Junior Assistant and accordingly, grant all consequential benefits by following the procedures as contemplated.

10.It is made clear that all such cases, where relaxation of rule is required and consequent orders are already passed, the respondents are bound to deal with those cases on case to case basis and separate orders are to be passed in respect of insertion of those candidates in the appropriate place in the Seniority List.

11.In view of the above facts and circumstances, the impugned Seniority Lists issued in Na.Ka.No.33085/R1/2018 and R.C.No.33085/R1/2018 dated 31.08.2018 in W.P.Nos.23302 & 23649/2018, as well as the consequential Provisional panel in Na.Ka.No.41717/R1/2016 and R.C.No.41717/R1/2016 dated 04.09.2018 in W.P.Nos.23302 & 23649/2018 stand quashed.

12.The respondents are directed to prepare and publish the Revised Seniority List and consequently, prepare the Panel and grant promotions to all the eligible persons by following the Statute, Rules and procedures within a period of twelve (12) weeks from the date of receipt of a copy of this order. In the event of any objections from any other individual candidates, who all are not parties before this Court, the same are to be considered by the respective competent authorities and those objections are also to be looked into and appropriate decisions are to be taken in the matter of fixation of seniority.

13.Accordingly, all the writ petitions stand allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government of Tamil Nadu,
Animal Husbandry Dairying and Fisheries Department
Secretariat, Fort St.George,
Chennai -9.
- 2.The Director of Animal Husbandry,
Veterinary Hospital Campus, Nandanam, Chennai - 35.
- 3.The Secretary to Government
Personnel and Administrative Reforms Department
Secretariat, Fort St.George, Chennai - 9.
- 4.The Secretary,
Animal Husbandry, Dairying and
Fisheries (AH7) Department,
Fort St.George, Chennai -600 009.
- 5.The Director,
Animal Husbandry & Veterinary Services Department
Central Office Building Part-II,
Tenampet, Chennai - 6.
- 6.The Secretary,
Tamil Nadu Public Service Commission, Chennai - 3.
- 7.The Additional Director (Medical Services)
Animal Husbandry and Veterinary Services
Chennai - 600 035.
- 8.The Deputy Director (Personnel)
O/o.Director,
Animal Husbandry and Veterinary Services, Chennai - 600 035.

+14 cc's to mr.M.Purushothaman, Advocate, Sr.No. 41171,41170
+1 cc to Mr.K.Krishnamoorthy, Advocate, Sr.No. 41376
+1 cc to Mr.R.S.Anandan, Advocate, Sr.No. 40990
+1 cc to Mr.M.Devendran, Advocate, Sr.No. 42265
+1 cc to The Government Pleader, Sr.No. 42553

W.P.Nos.23302 of 2018, 2311
of 2015, 23649 of 2018 &
34223 of 2014

SVI (CO)
CSL/03.06.2019