

C.M.P.Nos.19992, 16444, and 16791 of 2019
and
W.A.Nos.2537 and 2612 of 2019

S.MANIKUMAR, J.
AND
D.KRISHNAKUMAR, J.

(Order of the Court was made by S.MANIKUMAR, J.)

Mr.J.Ganesan, Under Secretary to Government, Home Department, Chennai and 5 others, have filed W.P.No.15683 of 2011, for a Writ of Certiorarified Mandamus, to call for the records of the Secretary to the Government, Department of Personnel and Administrative Reforms, Chennai/second respondent therein, in G.O.Ms.No.277, dated 22.07.1996, quash the same and to direct the Secretary to the Government, Department of Personnel and Administrative Reforms, Chennai/second respondent therein, to revise the Seniority of the writ petitioners duly applying the Quota/Rota System, as per the Tamil Nadu Secretariat Service Rules, as applicable to the Category of Assistant Section Officers and to 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 the Government.

2. Ms.M.Senthamarai, Deputy Secretary to the Government, Home Department, Chennai, and 5 others, have filed W.P.No.15684 of 2011, for a Writ of Certiorarified Mandamus, to call for the records, relating to the orders in Letter No.80730/U/96/-2 and Letter No.80730/U/96-3, dated 17.02.1998 passed by the Secretary to the Government of Tamil Nadu, Personnel and Administrative Reforms Department, Channai, the first respondent therein, and to quash the same and to direct the first respondent to revise the seniority of the writ petitioners duly applying the Quota/Rota System, as per Tamil Nadu Secretariat Service Rules as applicable to the Category of Assistant Section Officers and to fix their seniority at the appropriate place with all attendant benefits with due seniority and consequently, to fix the seniority in the category of Section Officers.

3. Government defended the orders impugned in the writ petitions.

4. After hearing the learned counsel for the parties, vide common order in W.P.Nos.15683 and 15684 of 2011, dated 03.08.2018, Writ Court, set aside G.O.Ms.No.277, dated 22.07.1996 issued by the Secretary to the Government, Personnel and Administrative Department, Chennai, and

Letter No.80730/U/96/-2 and Letter No.80730/U/96-3, dated 17.02.1998, issued by the Secretary to the Government, Personnel and Administrative Reforms Department, Chennai.

5. Writ Court further directed the respondents therein, to revise the seniority of the writ 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 to 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.

6. Being aggrieved, the Chief Secretary, Government of Tamil Nadu, and the Secretary to the Government, Department of Personnel and Administrative Reforms, Government of Tamil Nadu, have filed W.A.Nos.2537 and 2612 of 2019.

7. Record of proceedings shows that, after hearing the learned Additional Advocate General appearing on behalf of the appellants, on 06.08.2019, a Hon'ble Division Bench of this Court, in C.M.P.Nos.16444,

16791 and 16793 of 2019 in W.A.Nos.2537 and 2612 of 2019, ordered as hereunder:-

"Heard the learned Additional Advocate General on behalf of the appellants.

2. Mr.L.Chandrakumar, learned counsel takes notice for R1 to R6 in W.P.No.2537 of 2019. Mr.T.Ranganathan, learned counsel takes notice for R9 in W.A.No.2612 of 2019.

3. Notice to other respondents returnable by 28.08.2019. Private notice is also permitted.

4. As agreed to by the learned counsel on either side, let the appeals be posted for final disposal on 28.08.2019.

5. The order of Status Quo ante should be maintained. However, we make it clear that no further action shall be taken by the appellants on the basis of the order, which has already been quashed by the Writ Court.

8. While that be the position, C.Hilda Vasantha Kumari and 7 others, working as Deputy Secretaries to the Government in various departments in Secretariat, Chennai, have filed C.M.P.No.19992 of 2019 in W.A.No.2537 of 2019, for impleading themselves, as respondents 13 to 20 in the said writ appeal. According to them, they are seniors and ought to have been promoted to the next level, Joint Secretary/Additional Secretary, as the case may be.

9. Mr.L.Chandrakumar, learned counsel for the respondents in W.A.No.2537 of 2019, opposes the impleading petition and seeks time to file counter affidavit.

10. Mr.P.H.Arvind Pandian, learned Additional Advocate General, appearing on behalf of appellants, submitted that out of 23 writ petitioners in W.P.Nos.15683 and 15684 of 2011, 18 of them have already superannuated from service and that 5 writ petitioners alone are still working.

11. Learned Additional Advocate General further submitted that there are nearly 36 Additional/Joint Secretary posts, out of which 20 posts are vacant and due to the interim order, dated 06.08.2019, directing maintenance of Status Quo ante, administrative work is paralysed. He further submitted that the issue of seniority can be subject to the outcome of the writ appeals and pending lis, the remaining 5 writ petitioners in service, as well as the petitioners proposed to be impleaded as respondents 13 to 20 in W.A.No.2537 of 2019, can be considered for promotion to the post of Joint Secretary/Additional Secretary, as the case may be, and accordingly, interim order dated 06.08.2019, be modified.

12. Mr.Kandhan Duraisami, learned counsel for the impleading petitioners, submitted that his clients would have a chance to become Joint Secretaries.

13. On instructions from the department, Mr.Arvind Pandian, learned Additional Advocate General affirms the statement that the writ petitioners would also be considered for promotion to higher posts.

14. Heard Mr.P.H.Arvind Pandian, learned Additional Advocate General appearing on behalf of the appellants, Mr.L.Chandrakumar, learned counsel for the respondents in W.A.No.2537 of 2019 and Mr.Kandhan Duraisami, learned counsel for the proposed parties.

15. Petitioners in C.M.P.No.19992 of 2019, have sought for impleading themselves, as respondents 13 to 20 in W.A.No.2537 of 2019.

16. Mr.L.Chandrakumar, learned counsel for the writ petitioners/respondents in W.A.No.2537 of 2019, opposes the same.

17. Insofar as, State is concerned, it is the submission of Mr.P.H.Arvind Pandian, learned Additional Advocate General, that there is a dispute of inter-se seniority. Proposed impleading parties also raise the same contention. He therefore submitted that State may not have a serious objection for ordering the impleading petition. But Mr.L.Chandrakumar, learned counsel for the writ petitioners, has made objection for impleading. On said aspect, issue as to whether the proposed parties, are necessary and proper parties for the effective adjudication of *lis*, which in our considered view, can be considered, later. However, at this juncture, submission of the learned Additional Advocate General that administrative work is paralysed, due to non-filling up of the posts of 20 Joint Secretaries/Additional Secretaries, requires consideration.

18. Posts should not be kept vacant, much less, at higher levels namely, Joint Secretary/Additional Secretary, in various departments in Secretariat.

19. We are of the view that *lis* between the proposed respondents and writ petitioners, or for that matter anybody claiming rights to

consider for promotion to higher posts, cannot be an impediment for the Government for filling up the abovesaid posts. Need of the hour, is administration and inter-se seniority dispute can always be decided later.

20. Having regard to the distribution of work, administrative necessity to fill up the posts of Joint Secretary/Additional Secretary in Government of Tamil Nadu, we deem it fit that the interim order, dated 06.08.2019, Status Quo ante, requires modification. Secretaries to the Government in various departments should not be burdened with administration of departments, when Government have created the posts of Additional Secretaries/Joint Secretaries, in various departments.

21. We permit the Government of Tamil Nadu, represented by the Chief Secretary, Chennai, and Government of Tamil Nadu, represented by the Secretary to the Government, Department of Personnel and Administrative Reforms, Chennai, to fill up 20 vacancies, in the post of Additional Secretary/Joint Secretary, in Secretariat, Government of Tamil Nadu forthwith and while doing so, consider the case of the remaining 5 writ petitioners, as well as the petitioners, who have sought to implead themselves, as respondents 13 to 20 in W.A.No.2537 of 2019.

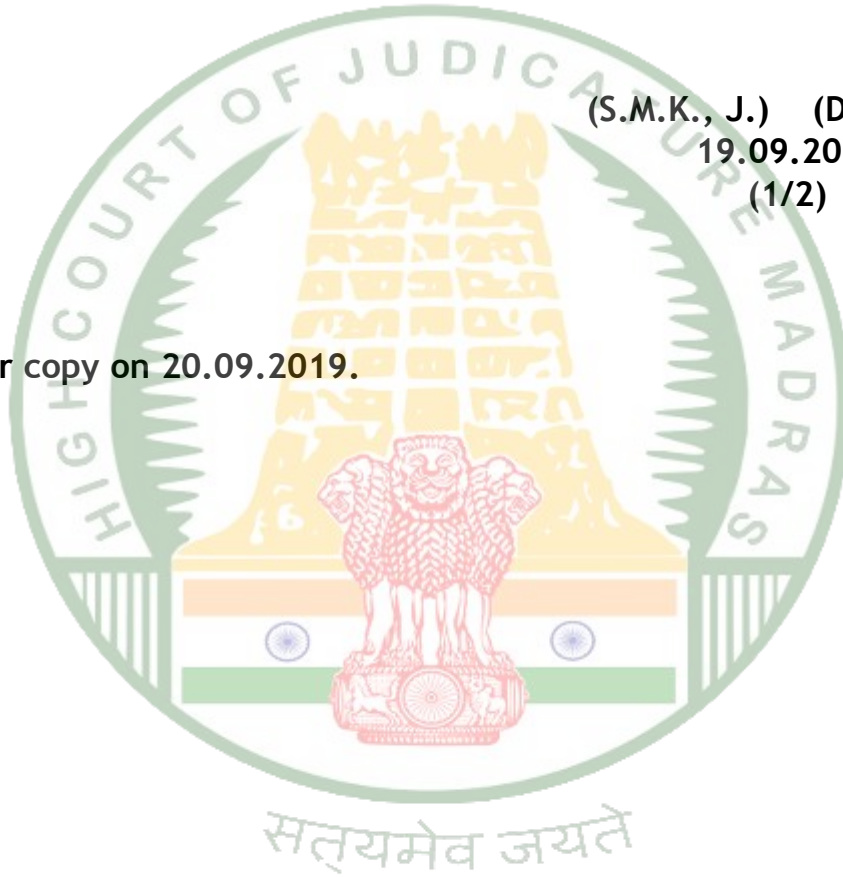
22. With the above modification, C.M.P.No.19992 of 2019 in W.A.No.2537 of 2019, is ordered.

Post on 03.10.2019.

(S.M.K., J.) (D.K.K., J.)
19.09.2019
(1/2)

dm

Note:
Issue order copy on 20.09.2019.

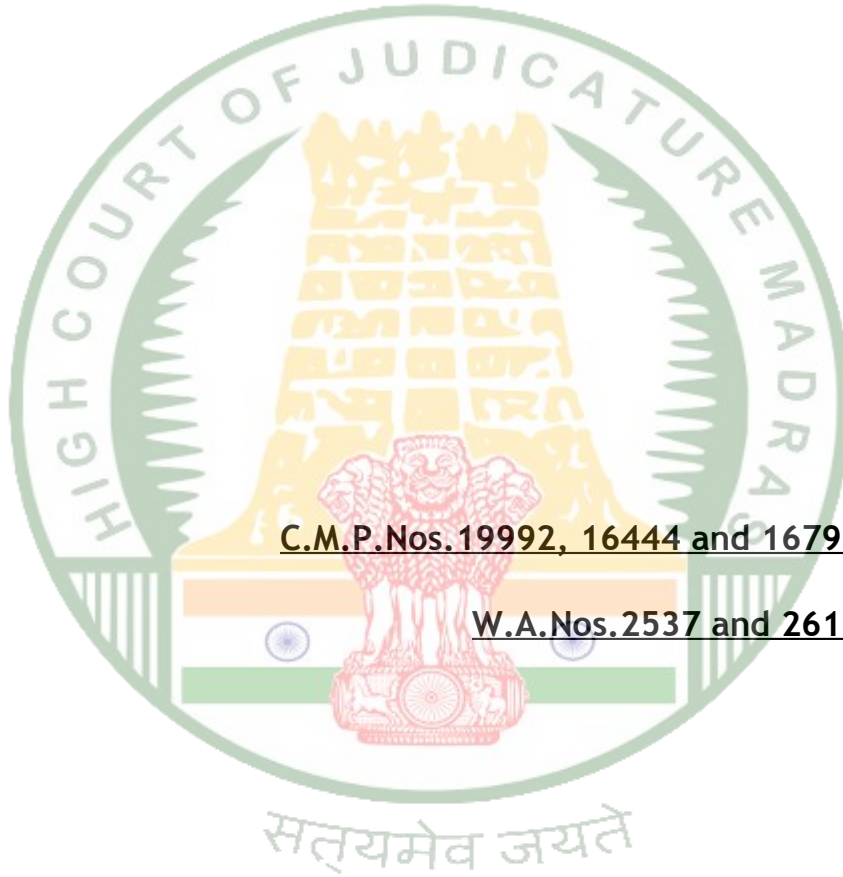


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C.M.P.No.19992 of 2019

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