IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.02.2019

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

W.A Nos.625 and 626 of 2017,
CMP Nos.8699, 8700, 8702 and 8703 of 2017

1.The Secretary to Government,
Finance (L.F.) Department,
State of Tamil Nadu,
Chennai - 600 009.

2.The Director of Local Fund Audit,
Kuralagam, 4th Floor,
Chennai - 600 108. ...Appellants in both Appeals

Vs

1.1989-1990 Year
Local Fund Audit Department
Direct Recruitment Assistant Inspectors
Welfare Association,
Rep. by its President.

2.The Tamil Nadu Public Service Commission,
Chennai -3, Rep. by its Secretary.

...Respondents 1 and 2 in both Appeals

3.N.Manimekalai
4.A.Jaqulin Sellathangam
5.M.Usha
6.S.Arumugam
7.D.S.Kathirvel
8.A.Kuppusamy
9.G.Sekar
10.G.Kathiresh Kumar
11.P.C.Sivalingam
12.M.Mathialgan
13.S.Karunanidhi
14.M.Vilanga Raja
15.Subramania Gowda Sampath
16.R.Ravikumar
17.Venkataragavan

18.K.Jeyaraman
19.S.Parthiban
20.K.Ramanathan ...Respondents 3 to 20 in W.A.No.625/2017

Prayer:-

Writ Appeals filed under clause 15 of Letters Patent, against the common order dated 20.04.2017 made in W.P.Nos.49108 of 2006 and 20198 of 2015 respectively.

W.P.No.49108 of 2006:-

Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to G.O.ms.No.131 Finance (LF) Department dt.19.02.1996 issued by the first respondent and the consequential seniority list issued by the 2nd respondent in his proceedings Na.Ka.No.2978/A5/86 dt.27.10.1999 quash the same and direct the respondents to prepare common seniority list on the basis of the merit list of the 3rd respondent without adopting 1:1 ratio.

W.P.No.20198 of 2015:-

Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, Forbearing the respondents from drawing the panel for the post of Assistant Directors of Local Fund Audit for the period from 01.09.2014 to 31.08.2015 from the post of Inspectors of Local Fund Audit promoted temporarily based on the defective and illegal panel.

For Appellants : Mrs.Narmadha Sampath
Additional Advocate General
Assisted by Mrs.A.SriJeyanthi
Special Government Pleader
(in both appeals)

For Respondents : Mr.R.Thiyagarajan
Senior Counsel for
M/s.R.Dhamodaran for R1

Ms.C.N.G.Niraimathi for R2
(in both appeals)

Mr.P.Godson Swaminathan
for RR7, 14, 16 and 19
For RR3,8,10,12,13 and 17
- No appearance
in W.A.No.625 of 2017

C O M M O N J U D G M E N T
(Delivered by K.K.SASIDHARAN,J.)

The 1989-1990 Year Local Fund Audit Department Recruitment Assistant Inspectors Welfare Association filed a writ petition in W.P.No.49108 of 2006, challenging the Seniority list published by the Government in G.O.Ms.No.131, Finance (LF) Department, dated 19 February 1996 prescribing the criteria for fixing the seniority between Assistant Inspectors of Local Fund Audit and internal auditors and the consequential Seniority list dated 27 October 1999.

2. The learned single Judge took up the said writ petition along with another writ petition in W.P.No.20198 of 2015 filed for a mandamus to restrain the appellants from drawing the panel for the post of Assistant Directors of Local Fund Fund for the period from 01.09.2014 to 31.08.2015.

3. The learned single Judge without considering the basic fact that several employees whose names were included in the seniority list of the year 1999 either retired or dead, set aside the Government Order in G.O.Ms.No.131, Finance (LF) Department, dated 19 February 1996 and the seniority list, notwithstanding the delay and laches. Feeling aggrieved, the State has come up with these intra court appeals.

4. The Local Fund Audit Department and the Internal Audit Department were bifurcated in the year 1969. However, their composite service conditions with common seniority continued even thereafter. The Government estimated the vacancies in the post of Assistant Inspector for the Local Fund Audit Department and Internal Audit Department and sent to Tamil Nadu Public Service Commission (for short "TNPSC") for appointment. The Government appears to have approached the TNPSC with a request to furnish the ranking list for the allottees of the year 1979-80 to 1986-87 for the purpose of fixing their inter se seniority. However, no such particulars were given by the TNPSC.

5. The Government therefore issued an order in G.O.Ms.No.131 Finance (IF) Department, dated 19 February 1996 fixing inter se seniority of the appointees in the Local Fund Audit and Internal Audit Department against the estimates for the years 1979 -80 to 1986-87. Thereafter, the inter se seniority covering appointees in the Local Fund Audit Department and Internal Audit Department was published as per proceedings dated 27 October 1999.

6. There were original proceedings before the Tribunal at the instance of those who have been reverted to the post of Assistant Inspectors. However, there was no challenge to the

Government Order in G.O.Ms.No.131 dated 19 February 1996 and the consequential seniority list dated 27 October 1999 at any point of time. The common order passed by the Administrative Tribunal dated 25 August 2003 in O.A.No.8053 of 1999 etc.,batch was challenged before the Division Bench W.P.Nos.33316 of 2003 etc.,batch. The Division Bench was pleased to set aside the order passed by the Tribunal and directed to consider the matter afresh. The Division Bench made it clear that in the pending litigation, there was no challenge to the seniority list dated 27 October 1999.

7. The Director of Local Fund Audit, Chennai, passed an order dated 16 March 2005 confirming the seniority list dated 27 October 1999. The said order was taken as the basis by the first respondent to file writ petitions before the Writ Court. The learned single Judge considered the merits of the matter without addressing the issue as to whether it would be possible to challenge the seniority list of the year 1999 after a period of 16 years. The learned single Judge set aside the Government Order in G.O.Ms.No.131, Finance (LF) Department, dated 19 February 1996 and directed the Government to prepare a common seniority list for the post of Assistant Inspectors in the Local Fund Audit Department and the Internal Audit Department taking into account the seniority list maintained by the TNPSC.

8. We have heard the learned Additional Advocate General on behalf of the appellants and the learned Senior Counsel for the first respondent.

9. The core question is as to whether the learned single Judge was correct in setting aside the seniority list dated 27 October 1999 made in accordance with the Government Order in G.O.Ms.No.131 dated 19 February 1996 after a period of 16 years.

10. The Government Order in G.O.Ms.No.131 dated 19 February 1996 was issued for preparation of two separate lists, List "A" for Local Fund Audit Department and List "B" for Internal Auditors and Statutory Boards Department. The Government Order in G.O.Ms.No.131 would show that a consolidated list would be arrived at and the candidates in the "A" list shall be placed first. The inter se seniority list was thereafter prepared and it was published by proceedings dated 27 October 1999.

11. The first respondent has projected the case as if the seniority list was published only on 16 March 2005. The proceedings dated 16 March 2005 was issued taking into account the direction given by the Division Bench in W.P.No.33316 of 2003 etc.,batch. It would not give a fresh cause of action to the first respondent.

12. The members of the first respondent were appointed

during the year 1989-90. The Government Order containing the details regarding the manner and method of preparation of seniority list was issued on 19 February 1996. Thereafter, seniority list was published on 27 October 1999. Neither the first respondent nor its members challenged the Government Order or the Seniority List at any point of time. The Division Bench in Paragraph 5 of the order dated 27 September 2004 in W.P.No.33316 of 2003 etc.,batch made a clear observation that there was no objection raised by any of the parties to the seniority list prepared on 27 October 1999.

13. The Tribunal appears to have set aside the revised seniority list dated 27 October 1999 in O.A.No.8053 of 1999 etc. batch. There was no specific challenge to the seniority list in the Original Application. The Division Bench therefore by order dated 27 September 2004 set aside the order passed by the Tribunal. This would make the position very clear that there was absolutely no challenge to the seniority list dated 27 October 1999 either by the first respondent or any of the affected parties earlier.

14. The order passed by the Director of Local Fund Audit dated 16 March 2005 would not give a fresh cause of action to the first respondent to challenge the Government Order in G.O.Ms.No.131 dated 19 February 1996 or the Seniority list dated 27 October 1999.

15. The learned single Judge set aside the seniority list without impleading the affected parties. The seniority was fixed way back on 27 October 1999. It is not in dispute that several employees are either no more or some of them have retired from service. In case, the seniority is unsettled at this point of time and that too without notice to the affected parties it would create chaos and confusion. The seniority list should be challenged within a reasonable time. The first respondent suddenly filed the writ petition in 2006 taking the order dated 16 March 2005 as an adverse order. The said order would not give a fresh right to the first respondent to challenge the seniority finalised on 27 October 1999.

16. The aspect of delay and laches was not considered by the learned single Judge. The learned Judge was more on merits rather than on the finality attached to the earlier proceedings. We are therefore of the view that the appellants must succeed.

17. The common order dated 20 April 2017 is set aside. The

writ petitions in W.P.Nos.49108 of 2006 and 20198 of 2016 are dismissed.

18. The intra court appeals are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

svki

To

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

2. The Secretary to Government,
Finance (L.F.) Department,
State of Tamil Nadu,
Chennai - 600 009.

3. The Director of Local Fund Audit,
Kuralagam, 4th Floor,
Chennai - 600 108.

+1cc to Mr.P.Godson Swaminathan, Advocate, S.R.No.19076
+1cc to the Government Pleader, S.R.No.18950

W.A Nos.625 and 626 of 2017

LN(CO)
CS/23/04/2019