



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.09.2019

CORAM:

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI**

**W.A. (MD) Nos.1347, 1348, 1349, 1152, 1153, 933, 934 & 935 of 2018
and
C.M.P. (MD) Nos.6104, 6105, 6107, 8333, 9556, 9558, 9559 & 9560 of
2018
and
W.P. (MD) No.21774 of 2018
and
W.M.P. (MD) Nos.19694 & 19695 of 2018**

WA(MD). No.1347 to 1349 of 2018 :

N.Subbiah ...Appellant / 3rd party in All Cases

Vs

1 State of Tamil Nadu, Secretary to the Government
Finance (Treasuries and Accounts)
Fort St. George, Chennai - 09.

2 The Commissioner of Treasuries and Accounts
Integrated Finance Department Complex, 3rd Floor,
Nandhanam, Anna Salai, Chennai - 35.
...Respondents 1 and 2 in All Cases

P.Balamurugan, Accountant, District Treasury Office Theni.

... 3rd Respondent in WA(MD). No.1347 of 2018

S.Udayakumar, Pay and Account office, Madurai
... 3rd Respondent in WA(MD). No.1348 of 2018

M.Rajarajan, Accountant, District Treasury Office, Thanjavur.
... 3rd Respondent in WA(MD). No.1349 of 2018



Prayer :-

Writ Appeals are filed under clause 15 of Letters Patent Act, praying this Hon'ble Court to set aside the order dated 28.02.2018 made in WP(MD).Nos.19126, 19127 of 2017 and 522 of 2018.

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Prayer in WP(MD).Nos.19126 and 19127 of 2017 :

Writ Petitions are filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified mandamus calling for the records relating to the impugned order passed by the 2nd respondent in Na.Ka.No.18923/C3/2017 dated 09.08.2017 and quash the same as illegal and consequently direct the respondents to consider the petitioner for appointment by transfer to the post of Superintendent in the 2nd respondent department by preparing State-wide inter seniority list among the directly recruited and promote Accountants in the ratio of 1:2 in terms of G.O.Ms.No.63 Finance (T&A) Department dated 24.01.75 within the period that may be stipulated by this Honble court.

Prayer in WP(MD).No.522 of 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 2nd respondent in Na.Ka.No.18923/C3/2017 dated 18.09.17 and quash the same as illegal and consequently direct the respondents to consider the petitioner for appointment by transfer to the post of Superintendent in the 2nd respondent department by preparing State-wide inter seniority list among the directly recruited and promote Accountants in the ratio of 1:2 in terms of G.O.Ms.No.63 Finance (T and A) Department dated 24.01.1975 within the period that may be stipulated by this Court.

WA(MD).No.1152 of 2018 :

1. P.Sivakumar, Accountant, District Treasury, Theni District.
2. T.Palanikumar, Accountant, District Treasury, Theni.
3. P.Saravanan Accountant, Sub-Treasury, Theni District.

...Appellants/3rd Parties

- Vs. -

1. P.Balamurugan Accountant, District Treasury Office, Theni
- ...1st Respondent/Writ Petitioner



2. The State of Tamil Nadu
Rep.By its Secretary to Govt.,
Finance (Treasuries & Accounts),
Fort.St.George, Chennai-600 009.

3. The Commissioner of Treasuries and Accounts
Integrated Finance Department Complex,
3rd Floor, Nandhanam, Anna Salai, Chennai-35.

...2nd and 3rd Respondents /1st and 2nd Respondents

Prayer in WA(MD).No.1152 of 2018 :-

Writ Appeal is filed under clause 15 of Letters Patent Act, praying this Hon'ble Court to set aside the order dated 28.02.2018 made in WP(MD).Nos.19126, and dismiss the writ petition with costs.

Prayer in WP(MD).Nos.19126 of 2017 :

Writ Petitions are filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified mandamus calling for the records relating to the impugned order passed by the 2nd respondent in Na.Ka.No.18923/C3/2017 dated 09.08.2017 and quash the same as illegal and consequently direct the respondents to consider the petitioner for appointment by transfer to the post of Superintendent in the 2nd respondent department by preparing State-wide inter seniority list among the directly recruited and promote Accountants in the ratio of 1:2 in terms of G.O.Ms.No.63 Finance (T&A) Department dated 24.01.75 within the period that may be stipulated by this Honble court.

WA(MD).No.1153 of 2018 :

1. S.Saravanan, Accountant, District Treasury, Theni District
2. R.Selvaraj Accountant, District Treasury, Theni District
3. C.Ramu Accountant, Sub Treasury, Theni District

... Petitioner(s) in WA(MD).No.1153 of 2018

- Vs. -

1. Rajarajan Accountant, District Treasury Office, Thanjavur.
...1st Respondent/Writ Petitioner



2. The State of Tamil Nadu
Rep by its Secretary to Government,
Finance (Treasuries and Accounts),
Fort St.George, Chennai 600 009.

3. The Commissioner of Treasuries and Accounts,
Integrated Finance Department Complex, 3rd Floor,
Nandhanam, Anna Salai, Chennai 35.

...2nd and 3rd Respondents /1st and 2nd Respondents

Prayer in WA(MD).No.1153 of 2018 :-

Writ Appeal is filed under clause 15 of Letters Patent Act, praying this Hon'ble Court to set aside the order dated 28.02.2018 made in WP(MD).No. 522 of 2018.

Prayer in WP(MD).No.522 of 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 2nd respondent in Na.Ka.No.18923/C3/2017 dated 18.09.17 and quash the same as illegal and consequently direct the respondents to consider the petitioner for appointment by transfer to the post of Superintendent in the 2nd respondent department by preparing State-wide inter seniority list among the directly recruited and promote Accountants in the ratio of 1:2 in terms of G.O.Ms.No.63 finance (T and A) Department dated 24.01.1975 within the period that may be stipulated by this Court.

WA(MD).No.933 to 935 of 2018 :

1. The State of Tamil Nadu,
Secretary to Government,
(Now Additional Chief Secretary)
finance(Treasuries & Accounts),
Fort St.George, Chennai-600 009.

2. The Commissioner Of Treasuries and Accounts,
Integrated Finance Department., Complex,
3rd Floor,Nandhanam, Anna Salai, Chennai-35.



- Vs. -

P.Balamurugan, Accountant, District Treasury Office, Theni.

... 3rd Respondent/Petitioner in WA(MD).No.933 of 2018

S.Udayakumar, Accountant, Pay Account Office, Madurai

... 3rd Respondent/Petitioner in WA(MD).No.934 of 2018

Rajarajan, Accountant, District Treasury Office, Thanjavur.

... 3rd Respondent/Petitioner in WA(MD).No.935 of 2018

Prayer in WA(MD).No.933 to 935 of 2018 :

Writ Appeals are filed under clause 15 of Letters Patent Act, praying this Hon'ble Court to set aside the order dated 28.02.2018 made in WP(MD).Nos.19126, 19127 of 2017 and 522 of 2018.

Prayer in WP(MD).Nos.19126 and 19127 of 2017 :

Writ Petitions are filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified mandamus calling for the records relating to the impugned order passed by the 2nd respondent in Na.Ka.No.18923/C3/2017 dated 09.08.2017 and quash the same as illegal and consequently direct the respondents to consider the petitioner for appointment by transfer to the post of Superintendent in the 2nd respondent department by preparing State-wide inter seniority list among the directly recruited and promote Accountants in the ratio of 1:2 in terms of G.O.Ms.No.63 Finance (T&A) Department dated 24.01.75 within the period that may be stipulated by this Honble court.

Prayer in WP(MD).No.522 of 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 2nd respondent in Na.Ka.No.18923/C3/2017 dated 18.09.17 and quash the same as illegal and consequently direct the respondents to consider the petitioner for appointment by transfer to the post of Superintendent in the 2nd respondent department by preparing State-wide inter seniority list among the directly recruited and promote Accountants in the ratio of 1:2 in terms of G.O.Ms.No.63 finance (T and A) Department dated 24.01.1975 within the period that may be stipulated by this Court.



WP(MD).No.21774 of 2018 :

N.Subbiah

... Petitioner

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- Vs. -

1. State of Tamilnadu, Secretary to Government , Finance (Treasuries and Accounts), Fort.St.George, Chennai-9.
2. The Principal Secretary /
Commissioner of Treasuries and Accounts,
Integrated Finance Department Complex, 3rd Floor,
Nandhanam, Anna Salai, Chennai-35.
3. The Pay and Accounts Officer (South),
Integrated Finance Department Complex, 1st Floor,
Nandhanam, Anna Salai, Chennai-35.

... Respondents

Prayer in WP(MD).No.21774 of 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified mandamus call for the records pertaining to the impugned proceedings of the 3rd respondent in PAO (S) / Proc.Rc.14407 / 2018 / A1 dated 29/05/2018 and quash the same as illegal and consequently direct the respondents to promote the petitioner as Superintendent by giving effect the order of the 2nd respondent in Rc.No.1881 / 2018 / N1 dated 28/05/2018.

in WA(MD). Nos.1347 to 1349 of 2018 :

For Appellant : Mr.C.M.Arumugam

For Respondents : Mr.K.Chellapandian
Additional Advocate General
assisted by Mr.A.K.Baskara Pandian
Special Government Pleader for R1 & R2
Mr.M.E.Elango for R3

in WA(MD) Nos.1152 and 1153 of 2018 :

For Appellant:Mr.Ajmal Khan, Senior Counsel for
M/s.Ajmal Associates



For R1 :Mr.M.E.Ilango

For RR2 and 3 :Mr.K.Chellapandian, AGP
Assisted by Mr.A.K.Baskara pandian
Spl.Govt.Pleader

in WA(MD). Nos.933 to 935 of 2018 :

For Appellant :Mr.K.Chellapandian, AGP
Assisted by Mr.A.K.Baskara pandian
Spl.Govt.Pleader

For Caveator :Mr.M.E.Ilango

in WA(MD). No.21774 of 2018 :

For Petitioner :Mr.C.M.Arumugam

For Respondents :Mr.K.Chellapandian, AGP
Assisted by Mr.A.K.Baskara pandian
Spl.Govt.Pleader

C O M M O N J U D G M E N T

[Judgment of the Court was made by T.S.SIVAGNANAM, J.]

All these writ appeals are directed against the common order dated 28.02.2018, passed in W.P.(MD) Nos.19126 & 19127 of 2017 and 522 of 2018.

2. The petitioners in these writ petitions are Mr.P.Balamurugan, Mr.S.Udayakumar and Mr.Rajarajan. The reliefs sought for in the writ petitions were identical and since the writ petitions were disposed of by a common order, dated 28.02.2018, we have heard all the matters together and dispose of all these appeals by a common Judgment.

3. For the sake of convenience, the parties shall be referred to as per the ranking assigned in the writ petitions, except for the appeals filed by the private parties, who were not respondents in the writ petitions, but were permitted to file writ appeals against the order passed in the writ petitions pursuant to the leave granted by this Court.

4. Heard the learned counsel on either side.

5. The petitioners sought for issuance of a writ of certiorarified mandamus to quash the order, dated 09.08.2017, passed by the Commissioner of Treasuries and Accounts, rejecting the request to fix inter se seniority in a cyclic manner by



following the ratio of 1:2 in terms of G.O.Ms.No.63, Finance (T and A) Department, dated 24.01.1975 and for a consequential direction to consider them for appointment by transfer to the post of Superintendent in the Department of Treasuries and Accounts by preparing a State-wide inter se seniority list among the direct recruits and promotees in the ratio of 1:2 in terms of G.O.Ms.No.63, Finance (T and A) Department, dated 24.01.1975.

6. The writ petitions were allowed by the impugned order and while doing so, the learned Single Judge pointed out that it is the duty of the Commissioner of Treasuries and Accounts to prepare a State-wide seniority list and there is no reason for not doing so when the basic data is available. Further, it was conceded before the learned Single Judge that the inter se seniority list between direct recruits and promotees has not yet been prepared. On taking note of the same, the learned Single Judge pointed out that this is not an acceptable state of affairs and therefore, issued a direction to the respondents to prepare inter se seniority list of promotees as well as direct recruits as per the principles laid down in G.O.Ms.No.63, Finance (T and A) Department, dated 24.01.1975.

7. The issue before us is whether the learned Single Judge could have issued a direction to the official respondents to prepare an inter se seniority list for promotees and direct recruits and if the answer is "Yes", whether it has to be prepared as per the principles laid down in G.O.Ms.No.63, Finance (T and A) Department, dated 24.01.1975.

8. Insofar as the first question is concerned, there can be no dispute, because the Commissioner of Treasuries and Accounts is bound to prepare the inter se seniority list. Therefore, there can be no quarrel on this issue.

9. The next issue to be considered is whether the learned Single Judge is right in holding that G.O.Ms.No.63, Finance (T and A) Department, dated 24.01.1975, should be adhered to while preparing the inter se seniority list.

10. We are of the view that such a direction could not have been issued for more than one reason. Firstly, G.O.Ms.No.63, Finance (T and A) Department, dated 24.01.1975, was issued by the Government by following the provisions of the Special Rules for direct recruitment. The Government accepted the proposal sent by the Director of Treasuries and Accounts, who opined that since large number of Junior Assistants have been upgraded as Assistants and due to promotion of Assistants to the category of Sub Treasury Officer Grade II / Accountant Grade II, there are vacancies in



the post of Assistant and in order to surmount the difficult situation, the Director of Treasuries and Accounts has suggested that a provision may be made in the Special Rules for direct recruitment to the post of Assistant on a permanent basis and also recommended that the appointment of direct recruit Assistants may be one out of every three substantive and temporary vacancies and their appointment and seniority may be in the following cyclical order:

- i) Direct recruitment
- ii) Promotion
- iii) Promotion

The recommendation of the Director of Treasuries and Accounts was considered by the Government and the same was accepted, subject to the modification that one of three substantive vacancies may be reserved for direct recruits. Accordingly, it was directed that direct recruitment of Assistants be made one out of every three substantive vacancies. It was further ordered that the appointment and seniority shall be in the following cyclical order:

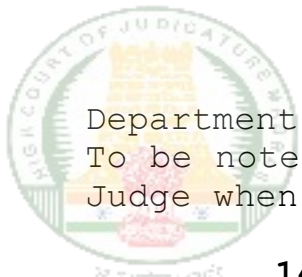
- i) Direct recruitment
- ii) Promotion
- iii) Promotion

It was further ordered that necessary amendments to the Special Rules for the Tamilnadu Ministerial Service will be issued by the Public (Services - D) Department, separately.

11. The writ petitioners pitched their case on G.O.Ms.No.63, Finance (T and A) Department, dated 24.01.1975. Before the learned Single Judge, the argument advanced by the State Government was that the Special Rules were yet to be amended. However, one most important feature placed before the learned Single Judge was that there has been an amendment to G.O.Ms.No.63, Finance (T and A) Department, dated 24.01.1975.

12. The Tamil Nadu Public Service Commission, by letter dated 19.12.1975, recommended that "the proposal to fix the inter se seniority of Assistants (substantive vacancies) in the cyclical order should be deleted". The proposal of the Tamil Nadu Public Service Commission was considered by the Government and by order, dated 29.09.1976, the last sentence in Paragraph No.3 of G.O.Ms.No.63, Finance (T and A) Department, dated 24.01.1975, was deleted and a paragraph was added to make the orders to take retrospective effect from 14.10.1974.

13. It is the argument of Mr.M.E.Elango, learned counsel appearing for the writ petitioners, that the order dated 29.09.1976, passed by the Deputy Secretary to Government, Finance Department, cannot say that G.O.Ms.No.63, Finance (T and A)

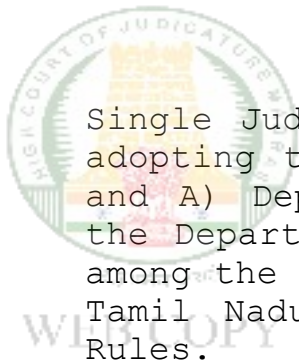


Department, dated 24.01.1975, was issued in the name of Governor. To be noted that these facts were not placed before learned Single Judge when the writ petitions were heard and disposed of.

14. Now, we have to test as to whether the order, dated 29.09.1976, suffers from error of jurisdiction for want of notification to supersede or modify G.O.Ms.No.63, Finance (T and A) Department, dated 24.01.1975. We need not labour much to find a solution, because pursuant to the Memorandum dated 29.09.1976, the Government issued G.O.Ms.No.12, Personnel and Administrative Reforms (Personnels), dated 05.01.1977, amending the Special Rules, wherein the cyclical order does not find place. Furthermore, the amended Rules came into force from 14.10.1974. That apart, this position remains always and in the Tamil Nadu Ministerial Service Rules, it is clear that in Category-12, which deals with the post of Assistant, it is clearly mentioned that it shall be one out of every three substantive vacancies. Therefore, G.O.Ms.No.63, Finance (T and A) Department, dated 24.01.1975, cannot be said to be read to cover both appointment and seniority and it should be read to mean only for direct recruitment of Assistants to be made one out of every three substantive vacancies. Therefore, the direction issued by the learned Single Judge in this regard requires to be interfered.

15. In the earlier portion of the Judgment, we approved the direction issued by the learned Single Judge to prepare an inter se seniority list of promotees as well as direct recruits. Having held that it cannot be done by G.O.Ms.No.63, Finance (T and A) Department, dated 24.01.1975, for the reasons stated earlier, it is to be seen as to how the inter se seniority list has to be prepared. The answer lies in the Tamil Nadu Treasuries and Accounts Subordinate Services Special Rules. Rule 9 deals with fixation of inter se seniority. It states that for the purpose of appointment to the post in Category 4, the inter se seniority shall be fixed with reference to the date of commencement of probation, in the case of directly recruited Assistants and the date of regular appointment as Assistant in the case of promotees from the category of Junior Assistants. Further, it states that where the date of regularization of a senior person in the category of Assistant in the Treasuries and Accounts Department is later than of his junior, the seniority of the senior shall be reckoned notionally with reference to the date of regularization of the junior. Therefore, the inter se seniority, which has to be prepared, is required to be prepared in accordance with Rule 9 of the Tamil Nadu Treasuries and Accounts Subordinates Services Special Rules.

16. For all the above reasons, the writ appeals are partly allowed and the order and directions issued by the learned



Single Judge directing to prepare the inter se seniority list by adopting the principles as laid down in G.O.Ms.No.63, Finance (T and A) Department, dated 24.01.1975, are set aside and instead, the Department is directed to prepare the inter se seniority list among the promotees and direct recruits by following Rule 9 of the Tamil Nadu Treasuries and Accounts Subordinate Services Special Rules.

17. One of the appellants, namely Subbiah, has filed a writ petition in W.P.(MD) No.21774 of 2018 and challenged the order, dated 29.05.2018, passed by the Pay and Accounts Officer (South), Chennai, reverting him from the post of Superintendent, after the writ petitions were allowed by the learned Single Judge. In the light of this Judgment pronounced by us in the writ appeals, no further direction is required in W.P.(MD) No.21774 of 2018 and accordingly, the said writ petition stands closed. The parties to the said writ petition shall abide by the directions issued in this Judgment.

18. At this juncture, Mr.M.E.Elango, learned counsel appearing for the writ petitioners pointed out that in several Districts, promotions are effected by following the ratio of 1:2 and pursuant to this Judgment, if the official respondents take any knee jerk action in dealing with the matter, it would affect the promotions.

19. We direct the learned Additional Advocate General to suitably instruct the official respondents on this issue, so that the functioning of the Department will not be hampered and this Court will not be burdened with further litigations.

20. The learned Additional Advocate General submitted that till the inter se seniority list is prepared in terms of the directions issued in this Judgment, whatever promotions effected will not be disturbed and after the provisional inter se seniority list is published and objections are called for, further directions would be issued.

21. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)



To: கீழ்க்கண்ட

1.The Secretary to the Government,
Finance (Treasuries and Accounts),
State of Tamil Nadu,
Fort St.George, Chennai-09.

2.The Commissioner of Treasuries and Accounts,
Integrated Finance Department Complex,
3rd Floor, Nandhanam,
Anna Salai, Chennai-35.

3.The Pay and Accounts Officer, (South)
Integrated Finance Department Complex
1st Floor, Nandhanam, Anna salai
Chennai 35

+1 CC to M/s.GP (SR-85942[F] dated 09/09/2019)

+3 CC to M/s.C.M.ARUMUGAM, Advocate (SR-86007 to 86009[F] dated 09/09/2019)

+1 cc to Mr.M.E.Ilango , Advocate SR.No.85802

+5 cc to M/S.AJMAL ASSOCIATES. , Advocate SR.No.85926,85927

W.A. (MD) Nos.1347, 1348, 1349, 1152,
1153, 933, 934 & 935 of 2018
and
C.M.P. (MD) Nos.6104, 6105, 6107, 8333,
9556, 9558, 9559 & 9560 of 2018
and
W.P. (MD) No.21774 of 2018
and
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