IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 02.11.2020
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.5681 of 2013 and 8853 of 2012

W.P.No.5681 of 2013:

1.M.Baby Sudha Revathi
2.S.R.Balamurugan
3.R.A.Betrand Russel
4.S.Gowri Bai
5.A.Jaibunisha Begum
6.K.Kanni
7.S.Krishnamoorthy
8.N.Mohan
9.S.Sarulatha
10.G.Shanmugam
11.S.Singaram
12.S.Srinivasan
13.K.Sudha
14.A.K.Sugantha Kumar
15.V.S.Velan ... Petitioners

Vs.

1.The State of Tamil Nadu rep
by The Secretary to Government,
Commercial Taxes and
Registration Department,
Fort St.George,
Chennai - 600 009.

2.The Commissioner of
Commercial Taxes,
Chepauk,
Chennai - 600 005. ... Respondents

Prayer:
Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records in pursuant to the impugned inter-se seniority list published by the 1st respondent in proceeding No:P1/58439/2007 dated 04.01.2012 and quash the same and consequently direct the 1st respondent to redraw the inter se seniority list of the Deputy Commercial Tax Officer's for the years 2007 to 2010 by placing the combined unit candidates on top of the State unit candidates of the respective years in pursuance of special rule 3 read with General Rule 35 (a) as done in the case of their

respective seniors of the years upto 2006 in the lists already upheld by the Hon'ble High Court.

For Petitioners : Mr.R.Prem Narayan

For Respondents : Mr.R.Swarnavel
Government Advocate (Taxes)

W.P.No.8853 of 2012:

1.S.Satheesh Kumar
2.R.M.Saravanan ... Petitioners

Vs.

1.The Principal Secretary/ Commissioner
of Commercial Taxes,
Chepauk,
Chennai - 600 005.

2.Smt.P.R.Mythili ... Respondents

Prayer:
Petition filed under Article 226 of the Constitution of India to

issue a Writ of Certiorarified Mandamus to call for the records in pursuant to the impugned inter-se seniority list published by the 1st respondent in proceeding No:P1/58439/2007 dated 04.01.2012 and quash the same and direct the 1st respondent to redraw the inter se seniority list of the Deputy Commercial Tax Officer's for the years 2007 to 2010 by placing the combined unit candidates on top of the State unit candidates of the respective years in pursuance of special rule 3 read with General Rule 35 (a) Tamil Nadu State Subordinate Service Rules as done in the case of their respective seniors of the years upto 2006 in the lists already upheld by the Hon'ble High Court.

For Petitioners : Mr.R.Prem Narayan

For Respondents : Mr.R.Swarnavel
(R1) Government Advocate (Taxes)
(R2) : No Appearance

C O M M O N O R D E R

These writ petitions have been filed challenging the inter se seniority list of the Deputy Commercial Tax Officer's for the years 2007 to 2010.

2.The learned Government Advocate (Taxes) would submit that the issue involved in these writ petitions has already been discussed and decided by the Hon'ble Division Bench of this Court in W.A.No.2280 of 2011 (P.Shanmuganathan Vs. The Secretary to Tamil Nadu Government and others) on 31.08.2016, the relevant portion of which reads as follows:

> "19.It is seen from the records that the Hon'ble Supreme Court took note of the tabular statement placed before this Court showing 40% of the substantive vacancies to be filled up by way of direct recruitment and out of the remaining 60%, 50% of the substantive vacancies to be filled up by confirmation of persons recruited by transfer from among the Assistants and Gujarathi knowing Assistants employed in the Commercial Taxes Department and 10% of substantive vacancies by transfer from among the Assistants and Superintendents working in the Sales Tax Appellate Tribunal, Assistants and Superintendents working in the Commercial Taxes Branch of the Board of Revenue and Assistants who have dealt with or dealing with the subject 'Commercial Taxes' in the Commercial Taxes and Religious Endowments Department of the Secretariat. The Hon'ble Supreme Court therefore took note of the fact, that in the tabular statement, reference was expressly made to substantive vacancies which indicates that the reference was to apply to permanent posts which are substantive vacancies. It was also taken note that no material was placed to show that cadre comprised both the permanent and temporary posts. Therefore, the Hon'ble Supreme Court, by judgment dated 10.02.1999, confirmed the judgment passed by this Court in W.P.No.12786 of 1985 dated 19.06.1986, holding that as per the chart placed from the year 1972 to 1997, there were only 271 permanent posts as against 422 posts which were shown as temporary. In the year 1997, 1080 posts were shown as temporary out of the total 1351 posts, and that no other figures were given for the years 1973 and 1974. The Hon'ble Supreme Court also took note of the fact that no reference was made in the tabular statement, to any G.O. or Rule which fixed the cadre strength shown in the tabular statement. Therefore, it was concluded that if there was increase in the cadre strength from year to year, as contended, there should have been different Government Orders fixing

such cadre strength. The Hon'ble Supreme Court accepted the contention that temporary appointments will not by themselves increase the cadre strength and did not rely upon the tabular statement produced by the State of Tamil Nadu. Consequently, the Hon'ble Supreme Court upheld the judgment passed by this Court as stated supra, and the Special Leave Petition filed by one individual person and some other Special Leave Petitions were also ordered to be dismissed. Thereafter, vide order dated 20.10.2008 in Contempt Petition (C) No.263 of 2007 in Civil Appeal 1454 of 1987, the Hon'ble Supreme Court directed the State to publish seniority list in terms of the directions given. The Hon'ble Supreme Court did not entertain the intervening application moved by the employees and permitted them to raise objection to the provisional seniority list and to have recourse of such remedy available to them in the event of rejection of their representation. Pursuant to the judgment of the Hon'ble Supreme Court dated 10.02.1999 in Civil Appeal No.1454 of 1987, confirming the judgment of this Court in W.P.No.12786 of 1985 dated 19.06.1986, the impugned order under challenge in W.P.No.11618 of 2009, has been passed.

20.It is apparent that the promotion as well as upgradation are only for the permanent posts and hence G.O.Ms.No.1, Commercial Taxes and Registration (A2) Department, dated 04.01.2010, G.O.Ms.No.17, Commercial Taxes and Registration (A2) Department, dated 10.02.2014 and G.O.Ms.No.47, Commercial Taxes and Registration (A2) Department, dated 31.03.2015, have to be considered. Further, the seniority list placed before the Hon'ble Supreme Court, has been agreed to by all the parties concerned, and hence there cannot be any deviation with regard to the promotions subsequently claimed by them. With regard to the increase in cadre strength on 04.01.2010, since the list in this respect has been produced before the Hon'ble Supreme Court, the same cannot be tested at this juncture, before this Court. When the Hon'ble Supreme Court had considered the matter in detail and passed the order dated 10.02.1999 in Civil Appeal No.1454 of 1987, confirming the judgment of this Court in W.P.No.12786 of 1985 dated 19.06.1986, based on the list produced and thereafter, passed the order dated 20.10.2008 in Contempt Petition (C) No.263 of 2007 in Civil Appeal 1454 of 1987, directing the State to publish seniority list in terms of the directions given, this Court is of the considered view that the matter has reached finality and any endeavour to re-agitate the matter on a new ground, cannot be countenanced. The attempt of the appellant is nothing but re-appreciating or re-arguing the case which had already been decided by the Hon'ble Supreme Court and hence such an act to re-agitate is only to be rejected. If the appellant has any grievance with regard to the judgment passed by the Hon'ble Supreme Court, he has to approach the Hon'ble Supreme Court seeking necessary clarifications, as the seniority list placed before the Hon'ble Supreme Court, has been agreed to by all the parties concerned. Therefore, it is for the appellant to approach the Hon'ble Supreme Court, for clarification of the judgment, if so advised."

3.The learned Government Advocate (Taxes) would further submit that the inter se seniority list was drawn by the Department by following the principles enunciated by this Court and as confirmed by the Hon'ble Apex Court. When the same was challenged by the transferees, this Court in W.P.No.11618 of 2011 dated 06.04.2011 has confirmed the revision of seniority and also equivocally stated that the said principles should be followed in future also. Since this Court has directed to follow the already settled principles laid down by the Hon'ble Apex Court, the petitioners were given seniority as per the said principles.

4.The learned counsel appearing for the petitioners would submit that there are arguable points involved in these writ petitions.

5.Since the issue involved in these writ petitions has already been decided by the Hon'ble Apex Court, this Court is not inclined to take different view in this case. Since this Court in the order dated 06.04.2011 made in W.P.No.11618 of 2011 has directed to follow the already settled principles laid down by the Hon'ble Apex Court, this Court is not inclined to take a contrary view in these writ petitions.

6.The writ petitions stand disposed of. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
Commercial Taxes and
Registration Department,
Fort St.George,
Chennai - 600 009.

2.The Commissioner of
Commercial Taxes,
Chepauk,
Chennai - 600 005.

+1cc to Mr.R.Prem Narayan Advocate SR.NO.35295 dt.02.11.2020 in WP.No.5681/2013

+1cc to Special Government Pleader (Taxes) SR.NO.35355 dt.03.11.2020 in wp.5681/2023

W.P.Nos.5681 of 2013
and 8853 of 2012

PM CO
SDR 17/12/2020