



WEB COPY

W.P.(MD)No.2891 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.07.2020

DELIVERED ON : 06.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

W.P. (MD)No.2891 of 2013

and

M.P. (MD) .Nos.1 and 2 of 2013

A.Selvam Periyasamy

.. Petitioner

-vs-

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Hindu Religious & Charitable Endowments Department,
Fort St. George, Chennai-9.

2.The Commissioner,
Survey and Settlement Department,
Nungambakkam High Road,
Chennai-600 034.

3.V.Senthurpandian,
Executive Officer (Now Gr.I),
Arulmigu Siththi Puththi Vinayagar Thirukoil,
Royapettah, Chennai-600 014.

4.R.Rajendran,
Executive Officer (Now Gr.I),
Arulmigu Vedanarayenewarswami Thirukoil,
Vederanyum Town,
Nagapattinam District.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the order Na.Ka.No.55688/2011/L.1 dated 03.01.2013 and order Na.Ka.No.55688/2011-2/L.1 dated 03.01.2013 passed by the second respondent and quash the same and consequently, direct the respondents to promote the petitioner as Executive Officer Grade-I with effect from the date on which his juniors, ie., the third and fourth respondents have been promoted as Executive officer Gr.I and place the petitioner over and above the third and 4th respondents in the seniority list of Executive Officer Gr.I and grant all the service, monetary and other attended benefits.

For Petitioner : Mr.A.Thirumurthy

For R1 and R2 : Mr.VR.Shanmuganathan
Special Government Pleader

For R3 and R4 : No appearance



ORDER

The writ petition has been filed by the petitioner for the issuance of a Writ of Certiorarified Mandamus, to call for the records the order Na.Ka.No.55688/2011/L.1, dated 03.01.2013 and order Na.Ka.No.55688/2011-2/L.1, dated 03.01.2013 passed by the second respondent and quash the same and consequently, direct the respondents to promote the petitioner as Executive Officer Grade-I with effect from the date on which his juniors, ie., the third and fourth respondents have been promoted as Executive officer Gr.I and place the petitioner over and above the third and 4th respondents in the seniority list of Executive Officer Grade-I and grant all the service, monetary and other attended benefits.

2. The service matrix of the petitioner is as under:

(a) The petitioner was selected by Tamil Nadu Public Service Commission and appointed as Executive Officer Grade-IV in the year 1996 and then promoted as Executive Officer Grade-III in the year 2000 and then promoted as Executive Officer Grade-II in the year 2006 and now working as Executive Officer Grade II. The Writ Petitioner was promoted to the post of Executive Officer Grade-II by including him in the panel for the promotion to the post of Executive Officer Grade-II for the year 2006-2007 based on the seniority fixed in the year 2001 in the post of Executive Officer Grade-III.

(b) The petitioner's seniority as on 15.03.1999 in the cadre of Executive Officer Grade III was rightly retained and he was placed at 232nd place in the Seniority list of Executive Officer Grade III as on 01.01.2011 and consequently, the petitioner's name was placed at Sl.No.11 in the panel for promotion to the cadre of Executive Officer Grade II for the year 2006-2007 dated 28.08.2006 by the second respondent's proceedings. The third and fourth respondents, who were joined as Executive Officers Grade III in May 1999 were placed below the petitioner at Sl.No.12 and 13 respectively, in the said promotion panel and the third and fourth respondents did not raise any objection and accepted the petitioner's seniority over and above them from the year 1999.

(c) the petitioner was promoted as Executive Officer Grade II in the proceedings dated 08.11.2006 and he joined duty on 29.12.2006.

(d) based on the petitioner's seniority stated above, the petitioner's name was placed at Sl.No.17 in the panel for promotion to the cadre of Executive Officer Grade I for the year 2011-2012/L2 dated 13.07.2011 of the second respondent's proceedings and his juniors viz., third and fourth respondents were placed at Sl.No.18 and 19 respectively in the said promotion panel and the third and fourth respondents did not raise any objection for the same and thus accepted the petitioner's seniority over and above the third



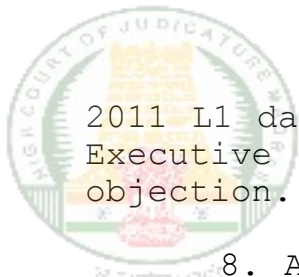
3. The learned counsel for the petitioner submitted that the petitioner herein was senior to the contesting respondents 3 and 4 in both Grade III and Grade II. Seniority list for the last 10 years shown as the petitioner is senior. That being so, after 12 years, his seniority was refixed in the cadre of Grade III, whereby the respondents 3 and 4 was shown as senior to him and hence, as per Rule 35(f) of the Tamil Nadu State and Subordinate Service Rules, if any person, aggrieved with the fixation of seniority has to make an application within a period of three years. However, the consideration of the contesting respondents and the alleged *inter-se* seniority between them after twelve years is contra to the said Rule.

4. Per contra, the learned Special Government Pleader appearing for respondents 1 and 2 would contend that it is not a case of re-fixation of seniority. Since a mistake had crept, in which it is noticed that for more than 70 people from the Department, seniority was not properly done and hence, a revised draft seniority list was made and objection was called for and received. Thereafter, the impugned seniority list was issued and he relied upon Rule 35(aa) of Tamil Nadu State and Subordinate Service Rules and hence only in ratification of the fact, the question of limitation does not arise.

5. The learned counsel for petitioner relied upon the decisions of the Hon'ble Supreme Court reported in **1993 Supp (3) SCC 181** and **AIR 1999 SC 1510**.

6. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents 1 and 2. No representation for the respondents 3 and 4. The learned Special Government Pleader has filed counter.

7. After hearing the rival contentions of the parties and after perusing the affidavit, it is seen that the petitioner is relying upon Rule 35(f) of the Tamil Nadu State Subordinate Service Rules. In the counter affidavit it is specifically stated that the petitioner was not included in the panel for promotion to the cadre of Executive Officer Grade I for the year 2011-12 because he had not reached the zone of consideration. Subsequently particulars were called for from subordinate officers for preparation of panel for promotion to the post of Executive Officer Grade I for the year 2012-13. At that time, some Executive Officers gave representations to revise the seniority list in the cadre of Executive Officer Grade III, because it was fixed by mistake of fact. After perusing the records, it was found that there is mistake in the seniority list published in the year 2001 and it was decided to revise the seniority list in the cadre of Executive Officer Grade III and accordingly, a draft seniority list in Proceedings in Rc.No.55688-



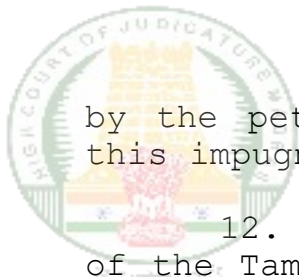
2011 L1 dated 25.05.2012 was issued calling for objections from the Executive Officers concerned and the petitioner also filed his objection.

8. After receiving the objections, taking into consideration that a mistake had crept in fixing the inter-se seniority of 70 or more persons suo motu action has been taken by exercising powers under Section 35(f) of the Tamil Nadu State and Subordinate Service Rules. It remains to be stated that the petitioner has joined as Executive Officer Grade III by promotion from the post of Executive Officer Grade IV on 29.06.2000. But the third and fourth respondents were recruited by the Tamil Nadu Public Service Commission and appointed as Executive Officers Grade III and joined duty on 12.05.1999, much before the date of joining duty in the same cadre category by the petitioner herein. Hence, they are rightly placed above the petitioner in the seniority list.

9. After perusing the counter and the respective rules relied upon by the respective counsels, it is seen that the contention of the petitioner that as per Rule 35 (f) of Tamil Nadu State and Subordinate Service Rules, revision of seniority should be made within three years of publication of seniority is acceptable. But, the seniority list published in the year 2001 was prepared based on roaster prescribed to fill up the vacancies in the post of Grade III issued in G.O.Ms.No.610, CT&RE Department, dated 14.06.1980. This rule is applicable only to fill up the vacancy.

10. As per Rule 35 (aa) of the Tamil Nadu State and Subordinate Service Rules, *"The seniority of a person in a service, class, category or grade shall, where the normal methods of recruitment to that service, class, category or grade is by more than one method of recruitment.... .. be determined with reference to the date on which he is appointed to the service, class, category or grade."*

11. Further, as per Rule 35 (f) of Tamil Nadu State and Subordinate Service Rules, *"if application for the revision of seniority of a person in a service, class, category or grade shall be submitted to the appointing authority within a period of three years from the date of order fixing the seniority, as the case may be. Any application received after the said period of three years shall be summarily rejected. This shall not, however, be applicable to cases of rectifying order, resulting from mistake of facts."* and hence as submitted by the learned Special Government Pleader, I find that in view of the mistake crept in respect of 70 people, in exercise of power under Rule 35(f) of the Tamil Nadu State and Subordinate Service Rules, the Department has made a draft seniority list on 25.05.2012 and called for objection from the executive officers concerned including the petitioner and the petitioner also filed his objection and the various objections filed



by the petitioner along with others reconsidered and subsequently this impugned order seems to have been passed.

12. After perusing the impugned order and also the Rule 35(f) of the Tamil Nadu State and Subordinate Service Rules, I find that in respect of Rule 35(f) of the Tamil Nadu State and Subordinate Service Rules, where rectification was done to correct the mistake that resulted on mistake of fact, the limitation of three years will not be made applicable. After perusing the orders, I am satisfied that it is a rectification of the mistake and hence the contention raised by the learned counsel for the petitioner that the limitation period of three years is applicable, cannot be countenanced and accordingly, the same stands negatived.

13. Yet another point is that the contesting third and fourth respondents were recruited by the Tamil Nadu Public Service Commission and they have joined the service on 12.05.1999, while the petitioner has joined the execution officer in Grade IV only on 29.06.2000 also assumes significance. The third and fourth respondents were recruited and joined duty as a direct recruit in Grade III on 12.05.1999, while the petitioner, who joined in the feeder category, namely, Grade IV and promoted to Grade III executive officer only on 29.06.2000. Hence, on the mistake of fact as noticed by the Department, they have drafted a revised *inter-se* seniority list and also duly called for the objections as referred under the rules and hence the exercises carried out by the respondents 1 and 2 is found to be in conformity with the Rule 35(f) of the Tamil Nadu State and Subordinate Service Rules and hence the limitation of three years as contended by the petitioner is not applicable to the case in hand and it squarely falls under the Rule 35(aa) as contended by the learned Special Government Pleader and hence I find there is no merit in the contention of the petitioner.

14. In the result, this Writ Petition stands dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)

PJL

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1.The Secretary to Government,
The State of Tamil Nadu,
Hindu Religious & Charitable Endowments Department,
Fort St. George, Chennai-9.

2.The Commissioner,
Survey and Settlement Department,
Nungambakkam High Road,
Chennai-600 034.

+1 CC to M/s.A. THIRUMURTHY, Advocate (SR-13870[F] dated 07/08/2020

ORDER MADE IN

W.P. (MD)No.2891 of 2013

06.08.2020

SMA/17/08/2020/6P/4C