



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **18.09.2020**

CORAM

THE HON'BLE MR.JUSTICE **R.SURESH KUMAR**

W.P. (MD)No.12022 of 2020

and

W.M.P(MD) .Nos.10365 and 10366 of 2020

WEB COPY

- 1.Muthu Vinayagam
- 2.P.Murugesan
- 3.P.Arockiya Birto

... Petitioners

-Vs-

- 1.The Principal Secretary,
Commissioner of Revenue Administration,
Chepauk, Chennai 600 005.

- 2.The District Collector,
Office of the Collectorate,
Dindigul District, Dindigul.

- 3.The District Revenue Officer,
Dindigul District,
Dindigul.

...Respondents

Prayer: Writ Petitions are filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the first respondent in his proceedings vide letter No.ser 4(2)/16026/2017 dated 05.09.2020 and quash the same and consequently, directing the respondents to implement the amended service rules of the Government issued in G.O.(Ms).No.106 Personnel and Administrative Reforms (B) dated 01.09.2020 for all the panels which are going to be drawn by the respondents with the prospective effect.

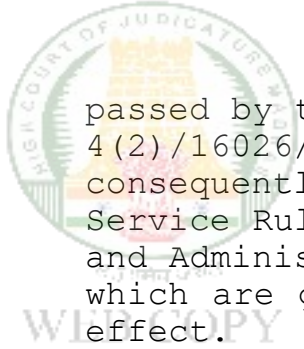
For Petitioner : Mr.Veerakathiravan
Senior Counsel
for M/s.Veera Associates

For Respondents : Mr.K.Chellapandian
Additional Advocate General
assisted by Mrs.J.Padmavathi Devi
Special Government Pleader

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order

<https://hcservices.ecourts.gov.in/hcservices/>



passed by the first respondent in his proceedings vide letter No.ser 4(2)/16026/2017, dated 05.09.2020 and quash the same and consequently, direct the respondents to implement the amended Service Rules of the Government issued in G.O.(Ms).No.106, Personnel and Administrative Reforms (B), dated 01.09.2020 for all the panels, which are going to be drawn by the respondents with the prospective effect.

2.Heard Mr.Veerakathiravan, learned Senior Counsel appearing for the petitioner, and Mr.K.Chellapandian, learned Additional Advocate General assisted by Mrs.J.Padmavathi Devi, learned Special Government Pleader appearing for the respondents.

3.By consent of both the learned counsel appearing for the parties, this writ petition is taken up for final disposal at the admission stage itself.

4.The issue raised in this writ petition though appears to be a major one, on reading the impugned order and after hearing both sides, this Court feels that, it is only a flimsy issue, that too occurred because of the ill drafted portion of the communication, dated 05.09.2020, which is impugned herein.

5.These petitioners are Assistants working in Dindigul Revenue District. The next avenue of promotion is Deputy Tahsildar and insofar as the promotion to the post of Deputy Tahsildar, the feeder category is Assistant. In the Assistant category, there are two type of employees, one is directly recruited Assistants and another one is promotee Assistants.

6.Among the directly recruited Assistants as well as promotee Assistants, regarding how the seniority have to be reckoned for preparation of seniority list for the purpose of promotion to the post of Deputy Thasildar, there had been a number of litigations.

7.Ultimately, the issue was given a quietus by a Division Bench of this Court in W.A(MD).Nos.836, 892, 974 & 1683 of 2018 and W.P (MD).No. 17169 of 2018, dated 30.08.2019, where the following order was passed by the Division Bench:-

".....

27.In the result, the Writ Appeal (MD)Nos.836, 892, 974 and 1683 of 2018 and W.P(MD)No.17169 of 2018 are disposed of as follows:-

(a) the orders impugned in the writ petitions are set aside and the matter is remitted back to the first respondent Government to make necessary amendments to the relevant rules indicating the date of preparing the seniority list by taking note of the observations and findings rendered



supra.

(b) the preparation of seniority list in this case should not go either by calendar year or by fixing 15th March as the crucial date.

WEB COPY

(c) such seniority list is to be prepared by giving a reasonable gap between the date of preparation of such list and date of preparation of panel for promotion.

(d) the inter se seniority of the direct recruit assistants shall be fixed by strictly following the cyclical order referred to under Clause 9 of Annexure IX of the Tamil Nadu Ministerial Service Rules.

(e) the first respondent Government thus shall pass appropriate orders making amendment to the rules as directed supra within a period of two months from the date of receipt of a copy of this order.

(f) on the basis of the orders to be passed by the first respondent Government amending the rules, the authority concerned shall prepare the subject matter seniority list afresh accordingly within a period of four weeks thereafter.

(g) the seniority list as well as panel for promotion to the next higher post shall be prepared for every year without accumulating the same for years together.

No costs. Consequently, connected Miscellaneous Petitions are closed. "

8. Pursuant to which, actually the Rule, namely, the Special Rules for the Tamilnadu Ministerial Service, especially, in Annexure IX Rule 9 had to be amended as per direction of the Division Bench judgment, referred to above. However, within a time frame given by the Division Bench, the amendment was not made by the Government.

9. With the results, in some of the revenue districts, seniority lists were prepared by taking into account March 15th as the crucial date. Therefore, again another round of litigations were there and while considering some of the promotions temporarily given to the post of Deputy Tahsildar in the Districts of Dindigul, Pudukottai and Ramanathapuram, litigations were filed in W.P(MD). No.7150 of 2020 etc., batch, where I had an occasion to consider



those writ petitions and in my order, dated 21.08.2020, I passed the following:

".....

49. In view of the aforesaid reasons and discussions, all these writ petitions are disposed of with the following order:

(i) **Dindigul District:**

The temporary promotions given by the District Collector, Dindigul in order dated 14.07.2020 in Na.Ka.No.9388/2020/A1 is valid and the same can be given effect to. Consequently the subsequent order made by the District Collector, Dindigul dated 23.07.2020 can be withdrawn and accordingly, a direction is given to the District Collector to withdraw the order dated 23.07.2020 which kept the order dated 14.07.2020 in abeyance.

ii) **Pudukottai District:**

- Insofar as Pudukottai District is concerned, the promotion temporarily given by order of the District Collector dated 01.11.2019 is valid. Therefore, the same can be given effect to. Consequently the order of the Pudukottai District Collector dated 05.03.2020 in Na.Ka.No.5293/2017-1/m2 and 05.03.2020 in Na.Ka.No.5293/2017-2/m2 are liable to be quashed accordingly are quashed.
- Since the order dated 05.03.2020 giving temporary promotions for another set of 36 persons has been stayed by this Court, by order dated 01.07.2020, thereby those promotees, who have been given postings in the promoted post were not permitted to be acted upon. Therefore, this Court has no hesitation to hold that no third party right pursuant to 05.03.2020 order have been created.

iii) **Ramanathapuram District:**

Insofar as Ramanathapuram District is concerned, the impugned panel dated 10.03.2020 is only to be construed as a temporary panel within the meaning of Section 47 (1) of the Act and Rule 39(a(i)) of the Rules and pursuant to



WEB COPY

which, whatever promotion/temporary promotion given by the District Collector, Ramanathapuram District shall also be construed only as a temporary promotion within the meaning of the said provisions of the Act and Rules. Therefore, by virtue of the order, dated 10.03.2020 of Ramanathapuram District Collector and consequential orders passed by him, no right would be conferred on the beneficiaries and once the regular panel is prepared and regular promotees are given promotion, such regular promotees shall immediately replace the temporary promotees, if any given, pursuant to the orders of the Ramanathapuram District Collector referred to above.

iv) Apart from the aforesaid directions, it is specifically directed that, all these temporary promotions now have been declared to be valid by virtue of this order, shall only be treated as temporary panel or temporary promotion to the post of Deputy Tahsildar in the concerned revenue districts within the meaning of Section 47(1) of the Act and Rule 39(a(i)) of the Rules. Therefore, pursuant to these temporary promotions, no right would be accrued to any of the temporary promotees and all the conditions imposed in the respective promotion orders shall be strictly applicable and imposable against the promotees and beneficiaries at a later point of time.

v) It is also specifically directed that, in view of the written instructions now have been given by the Additional Chief Secretary to Government, Revenue and Disaster Management, Government of Tamil nadu, dated 10.08.2020, the necessary amendment as directed by the Hon'ble Division Bench in W.A.No.836/2018 etc. batch, dated 30.08.2019 shall be made within a period of four weeks, as indicated in the said written instructions, without seeking any further extension of time.

vi) If the Government/revenue administration failed to comply with the order passed by the Division Bench by making the amendments indicated therein even after the four weeks time now has been sought, such failure on their part would be construed as a wilful violation of the judgment of



the Division Bench of this Court dated 30.08.2019 made in in W.A(MD) No.836/2018 etc. batch and in such circumstances, the matter would be referred to a Division Bench to take appropriate action against the erring authorities, for wilful disobedience of the orders of this Court, by invoking the provisions of the Contempt of Courts Act, 1971. It is made clear that, pursuant to this order, the promotees, who have now been benefitted by way of these impugned temporary promotion orders, shall continue to hold the post of promoted category, namely, Deputy Tahsildar concerned and they shall vacate the office the moment they reverted back, when need arises, once the regular promotion is given effect to.

50. With these directions, observations and orders, all these writ petitions in this batch are disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed. "

10. Pursuant to all these orders, now the Government has come forward to issue the amendment to the said Rule by issuing G.O(Ms). No 106, Personnel and Administration Reforms (B) Department, dated 01.09.2020 whereby the following notifications were issued:-

" Notification

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Tamil Nadu hereby makes the following amendments to the Special Rules for Tamil Nadu Ministerial Service (Section 22 in Volume III of the Tamil Nadu Services Manual, 2016).

Amendments

In the said Special Rules, in Annexure-IX, in rule 9,

(1) for the expression "by promotion", at the end, the expression "by promotion" shall be substituted;

(2) the following proviso shall be added, namely:-

"Provided that the inter-se-seniority of the persons appointed by direct recruitment and the persons appointed by promotion shall be prepared on 15th May of every year as per the cyclical order specified above."



(By order of the Governor)

S.Swarna

Secretary to Government"

WEB COPY

11. Therefore, by virtue of G.O.No. 106, the Rule got amended, as per which, the crucial date would be 15th May of every year, based on which, the inter-se seniority of the persons appointed by direct recruitment and persons appointed by promotion in the cadre of Assistant fit for promotion to the post of Deputy Tahsildar shall be prepared as per the cyclical order specified therein. Till this, there is no issue. However, pursuant to the said G.O.No.106, dated 01.09.2020, the Principal Secretary/Commissioner of Revenue Administration has issued letter No. Ser.4(2)/16026/2017, dated 05.09.2020, where the following instructions are given to all District Collectors:-

"

4. Accordingly, the following instructions are issued to all District Collectors to adhere the said Government Order in letter and spirit.

The inter-se-seniority of the Assistants shall be prepared and published every year on 15th May without fail.

The Districts of Madurai, Theni, Pudukkottai and Dindigul shall prepare their seniority lists, year-wise in lieu of the impugned seniority list quashed by Hon'ble High Court afresh on the basis of the amendment now issued by the Government, as per the Hon'ble High Court order.

All the District Revenue Units shall prepare inter-se-seniority between direct assistants and promote assistants as per the amendment issued by the Government with assistants promoted/recruited between the period from May 15, 2020 to May 14, 2021. For the first year alone i.e., for inter-se-seniority being prepared on March 15, 2020 to May 14, 2021 shall also be included due to the fact that all other districts except Madurai, Theni, Pudukkottai and Dindigul have prepared the inter-se-seniority every year with persons



recruited within a panel year (i.e.,) from 15th March of a year to 14th March of succeeding year. Subsequently, every year the inter-se-seniority list on May 15th shall be prepared with assistants promoted/recruited between the period from May 15 of hte previous year to May 14 of the present year.

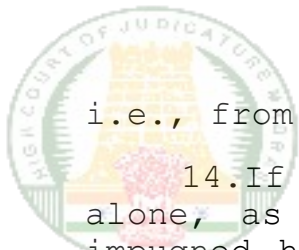
For the Districts of Pudukkottai, Theni, Dindigul and Madurai, the inter-se-seniority list shall be prepared on May 15 of hte years for which the impugned senirity list was quashed by the Hon'ble High Court. For example, suppose the seniority list for the year 2011 had been quashed, in that case, a new inter-se-seniority list shall be prepared by the district with all persons recruited/promoted and serving as assistants as on May 15, 2011, as per hte cyclical order 1:2 irrespective of their date of joining. Similarly inter-se-seniority for the other years where the Hon'ble High Court had quashed the earlier list shall also be prepared.

District Collector's Madurai, Pudukkottai, Dindigul and Theni are instructed to get concurrence from the Principal Secretary/Commissioner of Revenue Administration, before publishing the revised inter-se-seniority list preapred on the basis of the amendment issued by the Government.

For the benefit of all districts, the following illustration showing how the inter-se-seniority list should be prepared as on 15th May 2021 is as below."

12.This letter giving instructions to District Collectors by the Principal Secretary/Commissioner of Revenue Administration, dated 05.09.2020 is under challenge in this writ petition.

13.Heard the learned Senior Counsel appearing for the petitioner, who straight away take this Court to sub para (3) of Para 4 of the instructions and submitted that, the Commissioner of Revenue Administration by giving such instructions in Para-4(3) has intended to give exemption to four revenue districts, namely Madurai, Theni, Pudukottai & Dindigul for the preparation of seniority list for the year 2021 by taking into account 15th May as the crusial date for the year 2020-2021 and this was because except these four districts, since other districts have prepared inter-se seniority every year with persons recruited within a panel year



i.e., from 15th March of a year to 14th March of Succeeding year.

14.If such kind of exemption is given to four revenue district alone, as mentioned in the said Para -4 (3) of the instructions impugned herein, that will run contra to the Rule, which has been amended and also will run contra to the judgments referred to above. Therefore, the learned Senior Counsel would submit that, the impugned order is liable to be interfered with.

15.However, the learned Additional Advocate General assisted by the learned Special Government Pleader appearing for the respondents would submit that, that is not intended in Para-4(3) of the instructions, as has been understood by the petitioners. The learned Additional Advocate General has taken the entirety of impugned order i.e., letter, dated 05.09.2020 and has explained that, the instructions have been given to all District Collectors and insofar as the districts of Madurai, Pudukottai, Dindigul & Dheni are concerned, they were instructed to get concurrence from the Principal Secretary/Commissioner of Revenue Administration before publishing the revised inter-se seniority list prepared on the basis of the amendment issued by the Government. This is exactly mentioned sub para IV and V of para 4 of the instructions.

16.The learned Additional Advocate General would also submit that, except those four revenue districts, since all other districts have prepared the seniority list every year by taking into account 15th March as the crucial date, that was specifically mentioned in Para -4(3) of the instructions, therefore, it does not mean that those four revenue districts have been given exemption from the purview of the amended Rule and thereby, those four districts cannot escape from preparing fresh seniority list consisting of both promotees as well as directly recruited Assistants by the way of cyclical formula.

17.The learned Additional Advocate General would also submit that, the wordings mentioned in Para-4(3) of the impugned instructions could have been differently worded, but, merely because of the construction of the sentence, as has been worded in the said Para-4(3) of the instructions, it cannot be construed that, the Government as well as the department intended to give exemption to those four revenue districts from the purview of the amended Rule, following which, preparation or redrawal of the seniority list among Assistants, for the purpose of promotion to the post of Deputy Tahsildar, as has been directed or intended in the amended Rule.

18.Therefore, the said clarification has been given by learned Additional Advocate General, on instructions.

19.I have considered the said submissions made by the learned Senior Counsel appearing for the petitioner and learned Additional Advocate General appearing for the respondents.

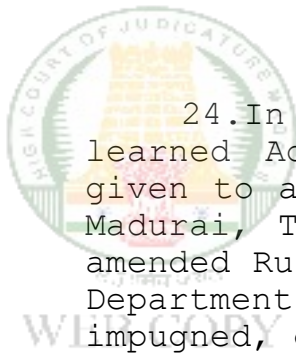


20.As has been rightly clarified by the learned Additional Advocate General on reading of the impugned instructions, this Court also feels that the Government or the Revenue Administration Department do not intend to give any exemption to any of the revenue districts like Madurai, Theni, Dindigul and Pudukottai, as apprehended by the petitioner.

21.The words occurred in para 4(3) of the impugned instructions, namely, "For the first year alone i.e., for inter-se seniority being prepared on May 2021, Assistants promoted/recruited between the period from March 15th 2020 to May 14th 2021 shall also be included due to the fact that all other districts except Madurai, Theni, Dindigul and Pudukkottai, have prepared the inter-se seniority every year with persons recruited within a panel year i.e., from 15th March of a year to 14th March of the succeeding year" only meant that, the department wanted to prepare fresh seniority list for all those years, where, the earlier seniority list has been quashed by the Court and upto the current year i.e., 2020-2021 by taking the crucial date i.e., March 15 and while preparing the list, those Assistants, who were promoted and newly recruited between the period of March 15th-2020 to May 15th-2021 shall also be included. This specific instruction was given by the department, in view of the fact that, in all districts, except these four districts, the seniority list was prepared by taking into account March 15th 2020 as the crucial date. Therefore, those, who become eligible to be included in the seniority list, between March 15th 2020 and May 15th 2021, by taking the crucial date as May 15th 2020, may lose the choice of getting included in the panel to be prepared for the year 2020-2021 taking into account the crucial date as 15th May 2021, pursuant to the amendment to the Rule and only in order to avoid such an exclusion of some of the candidates in various districts, except these four districts in para 4(3) of the instructions, those wordings have been given.

22.Those wording could have been differently made or drafted and in that case, this apprehension or conclusion on the part of the petitioners against the instructions in para 4(3) could have been avoided.

23.Be that as it may, now the position has been clarified beyond doubt by the learned Additional Advocate General appearing for the respondents, where he has clearly stated that, as per the amended Rule, redrawal of the seniority in the cadre of Assistant consisting of both directly recruited as well as promotee Assistants by taking the crucial date as 15th of May every year and while preparing the seniority with the crucial date May 15th 2021, those, who become eligible to be included between 15th March and 14th May 2021 also should be included. Therefore, the said clarification given by the learned Additional Advocate General would give a quitus to the issue raised in this writ petition.



24. In view of the above, the said clarification given by the learned Additional Advocate General that, no exemption has been given to any revenue District including the four districts, namely, Madurai, Theni, Dindigul and Pudukottai from the purview of either amended Rule as per G.O.No.106, Personnel and Administrative Reforms Department, dated 01.09.2020 or under the instructions, which is impugned, dated 05.09.2020, is hereby recorded.

25. Therefore, this Court is inclined to dispose of this writ petition by recording the aforesaid clarification given by the Government through the learned Additional Advocate General. Accordingly, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

rmk

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 Principal Secretary,
Commissioner of Revenue Administration,
Chepauk, Chennai 600 005.

2. The District Collector,
Office of the Collectorate,
Dindigul District, Dindigul.

3. The District Revenue Officer,
Dindigul District,
Dindigul.

+1 CC to M/s.GP (SR-17534[F] dated 21/09/2020)

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-17603[F] dated 21/09/2020)

W.P.(MD)No.12022 of 2020
18.09.2020

SCR(CO)

AP(07/10/2020) 11P 6C

<https://hservices.ecourts.gov.in/hservices/>