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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.02.2020**

CORAM:

THE HONOURABLE MR.JUSTICE **M.S.RAMESH**

W.P.(MD) No.6932 of 2018
and
W.M.P.(MD) Nos.6675 & 6676 of 2018

1.A.Alagar Raja

2.P.Chandrakrishnan

3.M.Prakash

4.M.Chockalingam ... Petitioners

/vs./

1.The Secretary,
Tamilnadu Public Service Commission,
Chennai.

2.The Secretary to Government,
Personnel and Administrative Reforms Department,
Fort St.George,
Chennai -9.

3.The Commissioner,
Milk Production and Diary Development Department,
Chennai – 51. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order issued by the first respondent in proceedings in Memo No4702/OTD-B3/2013 dated 03.01.2018, which was forwarded by the first respondent to the petitioners, quash the same and consequently, to direct the respondents to promote the petitioners to the post of Co-operative Sub Registrar in Dairy Development Department in accordance with law.

For Petitioners : Mr.T.Arul
For R1 : Mr.D.Sivaraman
Standing Counsel
For R2 & R3 : Mr.M.Jeyakumar
Additional Government Pleader

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ORDER

This Writ Petition is filed to quash the order dated 03.01.2018 passed in Memo No.4702/OTD-B3/2013 by the first respondent and to direct the respondents to promote the petitioners to the post of Co-operative Sub Registrar in Dairy Development Department.

2.By placing reliance of Sections 40 & 70 of the Tamilnadu Government Servants (Conditions of Service) Act, 2016, the impugned order dated 03.01.2018 has been passed, rejecting the petitioners' request seeking for revision of seniority.

3.Pending the writ petition, the Hon'ble Division Bench of this Court in the case of ***K.Raja and others Vs. The Additional Chief Secretary to Government Highways and Minor Ports Department, Chennai and others*** passed in a batch of writ petition in ***W.P.(MD) No.998 of 2017, etc., and W.A.No.2610 of 2019***, had struck down the provisions under Section 1 (2) of Sections 40 and 70 of the Tamilnadu Government Servants (Conditions of Service) Act, 2016 as ultra vires and unconstitutional. Strictly speaking, the reasoning in the impugned order cannot be found fault with, since the order of the Hon'ble Division Bench of this Court came to be passed after the impugned order was passed on 03.01.2018. However, the fact remains that the provisions under Sections 40 & 70 of the said Act have already been struck down and as such, the impugned order placing reliance on the same cannot be sustained.

4.Though the petitioners herein have raised several grounds in order to substantiate that they are entitled to be promoted to the post of Co-operative Sub Registrar in Dairy Development Department, this Court is of the view that the matter could be remanded back to the first respondent herein for fresh consideration, in the light of the development on the provisions of law being struck down by the Hon'ble Division Bench of this Court.

5.Accordingly, the impugned order dated 03.01.2018 passed in Memo No.4702/OTD-B3/2013 by the first respondent is set aside and consequently, the matter is remanded back to the first respondent for fresh consideration of the petitioners' earlier request. The petitioners are also at liberty to raise further grounds by way of representations to the respondents 1 and 2, within a period of 15 days from the date of receipt of a copy of this order and on receipt of such representations, the respondents 1 and 2 shall pass appropriate orders on its own merits and in accordance with law, after giving due opportunity of hearing to the petitioners, as well as any other individual employees, who may be interested

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in the subject matter.

6.With the above direction, the Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar(CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1.The Secretary to Government,
Personnel and Administrative Reforms Department,
Fort St.George,
Chennai -9.

2.The Commissioner,
Milk Production and Diary Development Department,
Chennai – 51.

+1 CC to M/s.SPL GP (SR-5577[F] dated 11/02/2020)

+1 CC to M/s.T.ARUL, Advocate (SR-5593[F] dated 11/02/2020)

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-5662[F] dated 11/02/2020)

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10.02.2020

VR(CO)
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