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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.06.2021

PRONOUNCED ON : 01.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.8611 & 8612 of 2020
and
WMP.Nos.10409 to 10414 of 2020
& WMP.Nos.2256 & 2257 of 2021

1.M.Sukumar ... Petitioner in W.P.No.8611/2020

2.K.B.Bhasavaraj ... Petitioner in W.P.No.8612/2020

Vs.

1. The Government of Tamil Nadu,
rep. by its Principal Secretary,
Revenue Department,
Secretariat, Chennai-600 009.
2. The Additional Chief Secretary,
Commissioner of Revenue Administration,
Disaster Management and Mitigation Department,
Chepauk,
Chennai-600 005.
3. The District Collector,
Krishnagiri.
4. V.Jayaraman
5. M.Annadurai
6. M.Alagulakshmi
7. N.Vetrivel
8. P.Parameshwari
9. J.Anand
- 10.P.Panneerselvam



11.A.Sivakumar

12.V.Kumar

13.M.A.I.Allahbagash Batcha

14.C.Shanthi

15.V.Srinivasan

16.K.Barathi

17.K.Arulmozhi

18.K.Madanraj

19.M.Rajakannu

20.J.Vetrivel

21.C.Sakthivel

22.J.Ammu

... Respondents in both WPs.

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the third respondent dated 09.06.2020 in ref. Na.Ka.No.5532/2020/A1 and quash the same and consequently direct the third respondent to publish the interse seniority of direct Assistants and the Promottee Assistants in accordance with Rule 9 of Annexure IX of the Special Rules of the Tamil Nadu Ministerial and promote the petitioner in accordance with such seniority list (in both WPs).

In both WPs:

For Petitioners :Mrs.A.L.Gandhimathi

For Respondent :Mr.K.V.Sajeev Kumar, Govt. Counsel
Nos.1 to 3

For Respondent :Mr.K.Govi Ganesan
Nos.8,9,11,17,18,20,21

For Respondent :Mr.K.Venkataramani, Sr. Counsel
No.19 for Mr.M.Muthappan



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For Respondent :Mr.A.K.Gopalan
Nos.5,7, 12 to 16

For Respondent :Mr.V.Stalin
No.6 for M/s.Row & Reddy

C O M M O N O R D E R

The present Writ Petitions are heard through Video Conferencing on 25.06.2021.

2. Heard the learned counsel for the parties.

3. The grievance of both the petitioners are one and the same and hence a common order is passed.

4. On 07.03.2019, the third respondent herein had published a inter-se seniority list among the Assistants appointed by promotion and the Assistants appointed by direct recruitment, in accordance with the Special Rules prescribed under the Tamil Nadu Ministerial Service Rules. The fixation of the seniority became the subject matter in W.A.(MD) No.836 of 2018 and batch dated 30.08.2019 before the Madurai Bench of the Madras High Court and on 30.08.2019, the Hon'ble Division Bench had, among other directions, directed the Government to make necessary amendments to the Special Rules for Tamil Nadu Ministerial Service Rules in connection with the fixation of seniority as well as for preparation of seniority list for every year. These directions are as follows:-

"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.

(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.



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(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."

5. Pursuant to the directions of the Hon'ble Division Bench extracted supra, the Special Rules for the Tamil Nadu Ministerial Service Rules, was amended by incorporating guidelines for fixation of the inter-se seniority list among the persons appointed by promotions and persons appointed by direct recruitment. The said amendment was introduced through G.O.Ms.106 [Personnel and Administrative Reforms] Department dated 01.09.2020.

6. The grievance of the petitioners in these Writ Petitions is that, after the authorities had granted temporary promotions to the respondents 4 to 22 in both the Writ Petitions on 18.01.2020, by the subsequent impugned order dated 09.06.2020, these temporary promotions were cancelled and all these respondents were regularly promoted to the post of Deputy Tahsildars. Hence, the petitioners have sought for quashing these promotions with a consequential prayer for publication of the inter-se seniority of these two categories of Assistants.

7. While the learned counsel for the petitioners submitted that even after filing of the Writ Petitions, the authorities have been granting temporary promotions to the post of Deputy Tahsildars to other Assistants also, the official respondents have filed a counter affidavit dated 21.08.2020, wherein they have sought to substantiate the inter-se seniority list published by them.



8. The averments in the counter affidavit dated 21.08.2020 may not have much credence, insofar as the further course of action to be adopted for fixation of inter-se seniority list is concerned, since the Special Rules under the Tamil Nadu Ministerial Service Rules have been amended subsequently on 01.09.2020. As stated earlier, this amendment was the outcome of the directions issued by the Hon'ble Division Bench of this Court on 30.08.2019 and the inter-se seniority list was prepared after the pronouncement after of the orders by the Hon'ble Division Bench.

9. Originally, the respondents 4 to 22 were temporarily promoted through an order dated 18.01.2020 with a condition that the promotion will not confer any rights on these promotees. These temporary promotions were on the basis of the inter-se seniority list dated 07.03.2018. This inter-se seniority list among the Assistants appointed by promotion/direct recruitment was the subject matter in Writ Appeal (MD)Nos.836, 892, 974 and 1683 of 2018 and W.P(MD)No.17169 of 2018 and the Hon'ble Division Bench, by its order dated 30.08.2019, directed the Government to make necessary amendments to the Special Rules indicating the date of preparing the seniority list as well as, to prepare the seniority list for every year without accumulating the same for years together. This inter-se seniority list was set aside by the Hon'ble Division Bench through its order dated 30.08.2019. Thus, the temporary promotions granted itself was an irregular promotions. While that being so, the consequential impugned order dated 09.06.2020, cancelling the temporary promotions granted on 18.01.2020 and granting regular promotions to the same posts of Deputy Tahsildars, without drawing the inter-se seniority list is also improper, since the promotions were granted without drawing up the inter-se seniority list.

10. However, since the amendments to Special Rules have now been brought in on 01.09.2020, wherein the guidelines for fixation of inter-se seniority list among the persons appointed by promotions and persons appointed by direct recruitment have been incorporated, it would be appropriate to direct the Government to prepare the inter-se seniority list in accordance with the amended provisions to the Special Rules. Though the petitioners herein had sought for cancellation of the impugned order of promotions granted to the respondents 4 to 22, this Court is of the view that the promotions already granted could be subjected to the outcome of the seniority list to be prepared and quashing of the impugned order may not be necessary.

11. In the light of the above observations, the following directions are given:-

a)The respondents 1 to 3 shall prepare and



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publish the inter-se seniority list among the directly recruited Assistants and the promotee Assistants, in accordance with the amended Special Rules under the Tamil Nadu Ministerial Service Rules and in conformity with the observations, directions and findings made in Writ Appeal (MD)Nos.836, 892, 974 and 1683 of 2018 and W.P(MD)No.17169 of 2018 dated 30.08.2019, within a period of three months from the date of receipt of a copy of this order;

b)It is reiterated that the promotions granted by the third respondent, to the respondents 4 to 22 through the impugned order passed in NA.Ka.No.5532/2020/A1 dated 09.06.2020, will not confer any right of seniority to the promotees, but shall be subject to their respective seniorities in the inter-se seniority list to be prepared, as directed in Clause (a) above;

c)Till the fresh inter-se seniority list is prepared, the respondents 1 to 3 shall not grant any promotions, either temporary or permanent, to the post of Deputy Tahsildars; and

d)With the above clarifications, observations and directions, the Writ Petitions stand allowed.

12. In fine, the Writ Petitions stand allowed. Consequently, connected Miscellaneous petitions are closed. There shall be no orders as to costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

DP
To

1. The Principal Secretary,
Government of Tamil Nadu,
Revenue Department, Secretariat, Chennai-600 009.
2. The Additional Chief Secretary,
Commissioner of Revenue Administration,
Disaster Management and Mitigation Department,
Chepauk, Chennai-600 005.



3. The District Collector,
Krishnagiri.

+2ccs to M/s. AL. GANDHIMATHI, Advocate, S.R.Nos.30681,30682

+2ccs to Mr. K. GOVI GANESAN, Advocate, S.R.Nos.30673,30674

+1cc to M/s. ROW & REDDY, Advocate, S.R.No.30602

+1cc to Mr. M. MUTHAPPAN, Advocate, S.R.No.30501

+1cc to the Government Pleader, S.R.Nos.29846,29848,30809

W.P.Nos.8611 & 8612 of 2020
and
WMP.Nos.10409 to 10414 of 2020
& WMP.Nos.2256 & 2257 of 2021

GPL (CO)
BE (19/07/2021)

01.07.2021