



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.10.2021

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD)Nos.22537 to 22550 of 2017

and

W.M.P. (MD)Nos.18825 to 18852 of 2017

WEB COPY

S.Saravanan	... Petitioner in WP (MD)No.22537/2017
B.Sivakumar	... Petitioner in WP (MD)No.22538/2017
M.Sethupathy	... Petitioner in WP (MD)No.22539/2017
S.Balamurugan	... Petitioner in WP (MD)No.22540/2017
N.Ravichandran	... Petitioner in WP (MD)No.22541/2017
S.Sathiyendran	... Petitioner in WP (MD)No.22542/2017
V.Sethuraja	... Petitioner in WP (MD)No.22543/2017
M.Muruganantham	... Petitioner in WP (MD)No.22544/2017
A.Murugaraj	... Petitioner in WP (MD)No.22545/2017
V.Tamilarasu	... Petitioner in WP (MD)No.22546/2017
V.Muruganantham	... Petitioner in WP (MD)No.22547/2017
R.Kasinathadurai	... Petitioner in WP (MD)No.22548/2017
T.R.Ganesamoorthi	... Petitioner in WP (MD)No.22549/2017
B.Murugan	... Petitioner in WP (MD)No.22550/2017

vs.

1.The Principal Secretary and

Commissioner of Revenue Administration,
Ezhilagam, Chepuak, Chennai - 600 005.

2.The District Collector,

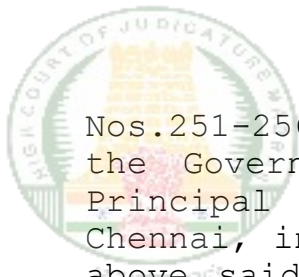
Ramanathapuram District,

Ramanathapuram - 623 503.

... Respondents in All Cases

Common Prayer:-

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Pleased to amend the prayer as to issue a WRIT OF MANDAMUS directing the 2nd respondent i.e., the District Collector, Ramanathapuram, to draw the inter-se seniority list between Directly Recruited Assistants and Graduate Promotees following the cut-off date 15th May of every year. The revised inter-se seniority has to be prepared after 08.04.2009 to till date between Directly Recruited Assistants and Graduate Promotees following the ratio 1:2 i.e., one Direct Recruited Assistant and two Promotee Graduate Assistant and the panel year concept and following the crucial date 15th May for every year. The District Collector, Ramanathapuram has to get the concurrence of the Principal Secretary and Commissioner of Revenue Administration, Chennai, before publishing the revised inter-se seniority list prepared on the basis of the orders of the Honourable Supreme Court in Civil Appeal



Nos.251-256 of 2015, dated 12.03.2019 and the amendment issued by the Government fixing the cut-off date and communicated by the Principal Secretary and Commissioner of Revenue Administration, Chennai, in his Letter No.Ser4(2)/16026/2017, dated 05.09.2020. The above said exercise shall be completed by the District Collector, Ramanathapuram within the time frame that may be fixed by this Hon'ble Court.

(Prayer Amended vide Court order dated 24.09.2021 in WMP(MD)Nos.13093 of 2021 in WP(MD)No.22537 of 2017, WMP(MD)Nos.13095 of 2021 in WP(MD)No.22538 of 2017, WMP(MD)Nos.13092 of 2021 in WP(MD)No.22539 of 2017, WMP(MD)Nos.13089 of 2021 in WP(MD)No.22540 of 2017, WMP(MD)Nos.13088 of 2021 in WP(MD)No.22541 of 2017, WMP(MD)Nos.13086 of 2021 in WP(MD)No.22542 of 2017, WMP(MD)Nos.13090 of 2021 in WP(MD)No.22543 of 2017, WMP(MD)Nos.13091 of 2021 in WP(MD)No.22544 of 2017, WMP(MD)Nos.13098 of 2021 in WP(MD)No.22545 of 2017, WMP(MD)Nos.13085 of 2021 in WP(MD)No.22546 of 2017, WMP(MD)Nos.13084 of 2021 in WP(MD)No.22547 of 2017, WMP(MD)Nos.13087 of 2021 in WP(MD)No.22548 of 2017, WMP(MD)Nos.13094 of 2021 in WP(MD)No.22549 of 2017, WMP(MD)Nos.13097 of 2021 in WP(MD)No.22550 of 2017 respectively)

For Petitioner	:Mr.S.Visvalingam
For Respondents	:Mr.M.Linga Durai
	Government Advocate
For Directly Recruited Assistants	:Mr.Mohamed Imran
	for M/s.Ajmal Associates

COMMON ORDER

All these Writ Petitions were originally filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order passed by the first respondent, dated 29.10.2015, and the second respondent, dated 19.06.2015, and to direct the respondents to revise the *inter se* seniority list based on the specific provision under Rule 38(b)(ii) paragraph 9 Annexure-IX of Tamil Nadu Ministerial Service Rules and the proceedings of the first respondent, dated 19.06.2017, within a specified time stipulated by this Court.

2.Heard Mr.S.Visvalingam, learned Counsel for the petitioners, Mr.M.Linga Durai, learned Counsel for the respondents and Mr.Mohamed Imran, learned Counsel for Directly Recruited Assistants.

3.The prayer in these Writ Petitions was substituted by a common order in all the Writ Petitions and the prayer in the Writ Petitions as amended, reads as follows:

"for issuance of Writ of Certiorarified Mandamus, to direct the second respondent i.e., the District Collector,

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



Ramanathapuram, to draw the inter-se seniority list between Directly Recruited Assistants and Graduate Promotees following the cut-off date 15th May of every year. The revised inter-se seniority has to be prepared after 08.04.2009 to till date between Directly Recruited Assistants and Graduate Promotees following the ratio 1:2 i.e., one Direct Recruited Assistant and two Promotee Graduate Assistants and the panel year concept and following the crucial date 15th May for every year. The District Collector, Ramanathapuram has to get the concurrence of the Principal Secretary and Commissioner of Revenue Administration, Chennai, before publishing the revised inter-se seniority list prepared on the basis of the orders of the Honourable Supreme Court in Civil Appeal Nos.251-256 of 2015, dated 12.03.2019 and the amendment issued by the Government fixing the cut-off date and communicated by the Principal Secretary and Commissioner of Revenue Administration, Chennai, in his Letter No.Ser4 (2)/16026/2017, dated 05.09.2020. The above said exercise shall be completed by the District Collector, Ramanathapuram within the time frame that may be fixed by this Court."

4.The petitioners in all the Writ Petitions were appointed as Junior Assistant in the respondent department. It is not disputed that all the petitioners were regularized in the cadre of Junior Assistant based on G.O.(2D)No.242, Revenue Department, dated 15.05.2011. The grievance of the petitioners is that the inter se seniority list of Promotee Assistants and Directly Recruited Assistants published by the District Collector, Ramanathapuram, is basically not correct. It is pointed out that while preparing the inter se seniority list, the District Collector has not followed the specific provisions made in Rule 38(b)(ii) read with Paragraph (9) Annexure-IX of the Tamil Nadu Ministerial Service Rules.

5.During the pendency of the Writ Petitions, the Honourable Supreme Court resolved certain issues by order, dated 12.03.2019, in **Civil Appeal Nos.251 to 256 of 2015** in the leading case of **A.Rajagopalan vs The District Collector, Thiruchirapalli District and others**. The Honourable Supreme Court in the operative portion of the order has held as follows:

"19. In the result, the impugned judgement of the High Court is set aside and these appeals are allowed with the following observations and directions:-

(i) Promotions of the Direct recruit Assistants effected between 07.02.1995 and 08.04.2009 and their seniority in their respective positions as on date, shall not be disturbed;



(ii) The benefit extended to the graduate promotee Assistants by placing them on par with Direct recruit Assistants is to be given effect to prospectively from the date of judgment of this Court dated 08.04.2009 rendered in the case of *M. Rathinaswami v. State of T.N.* reported in (2009) 5 SCC 625;

(iii) After 08.04.2009, the promotion to the post of Deputy Tahsildar from its feeder category, i.e., Direct recruit Assistants and Promotee graduate Assistants, shall be strictly in accordance with the judgment of this Court referred above, i.e., treating Promotee graduate Assistants on par with Direct recruit Assistants. Such promotion shall be given effect to, without reference to any interim order(s) passed by the High Court;

(iv) If any panels are prepared, and promotions are given, after 08.04.2009 for promoting the Assistants to the post of Deputy Tahsildars in Tamil Nadu Revenue Subordinate Service contrary to the judgment of this Court dated 08.04.2009, such panels and promotions have to be revised so as to bring in conformity with the judgment of this Court referred above;

(v) By virtue of the judgment of this Court dated 08.04.2009, referred above, Promotee graduate Assistants are placed on par with Direct recruit Assistants. So far as Promotee non-graduate Assistants are concerned, the amended rule holds the field, which gives preferential treatment to Direct recruit Assistants, over Promotee non-graduate Assistants;

(vi) Promotee non-graduate Assistants, who are impleaded as party respondents in these appeals, are not entitled to any directions in their favour, as much as, all these appeals are preferred by Direct recruit Assistants;

(vii) While implementing the above directions, if the seniority and promotion, of the persons who are already retired or dead, is affected in any manner, payments made on account of such seniority and promotion earlier granted to them during the interregnum period, i.e., from 08.04.2009 till this date shall not be recovered.

(viii) So far as Promotee non-graduate Assistants are concerned, it is open for them to pursue with the Government for appropriate amendment to the Rules, in which event we keep it open to Government to consider such request on its own merits."



6.It is also admitted that a Division Bench of this Court has followed the judgment of the Honourable Supreme Court above referred to, in the case of **A.Senthil Kumar and others vs Government of Tamil Nadu represented by its Principal Secretary and others** in **W.A. (MD) No.836 of 2018 and batch**, and held 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.

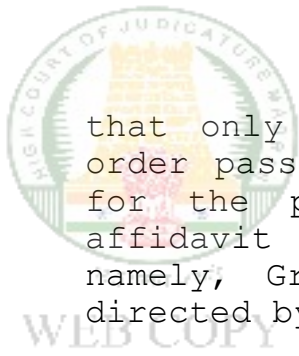
(d) the inter se seniority of the direct recruit assistants shall be fixed by strictly following the cyclical order referred to under Clause 9 of Annexure IX of the Tamil Nadu Ministerial Service Rules.

(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."

7.It is to be seen that the prayer in the Writ Petitions has now been amended in view of the subsequent developments. However, the learned Counsel for the petitioners in all the cases is unable to categorize the petitioners. It is now admitted before this Court



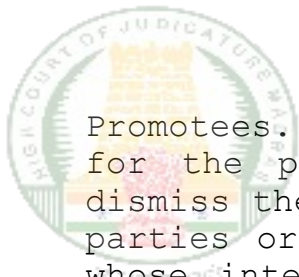
that only the Graduate Promotees are entitled to the benefit of order passed by the Honourable Supreme Court. The learned Counsel for the petitioners is not prepared to disclose or file any affidavit furnishing sufficient informations, as to the persons, namely, Graduate Promotees, who are entitled to the relief, as directed by the Honourable Supreme Court.

8.It is also relevant to mention that the petitioners have not impleaded the Directly Recruited Assistants, who are also interested. Since there are several other candidates, the petitioners should have impleaded one of the interested persons in a representative capacity resorting to Rule 2(A) of Appendix V of Appellate Side Rules applicable to Writ proceedings.

9.The Honourable Supreme Court in the case of **Suresh vs Yeotmal District Central Cooperative Bank Limited** reported in **(2008) 12 SCC 558**,_had an occasion to deal with the fate of writ proceedings in case necessary and proper parties are not impleaded for an effective adjudication. The Honourable Supreme Court reiterated in several judgments that if the petitioners are not inclined to implead the necessary parties, the dismissal of Writ Petitions on the ground of non joinder of necessary parties cannot be avoided.

10.In this case, when the learned Counsel for the petitioners was duly informed that these Writ Petitions are liable to be dismissed on the ground of non joinder of necessary parties, the learned Counsel for the petitioners submitted that there can be appropriate direction, which would protect the interest of the petitioners as well as anyone, who are not made as parties in the proceedings. The learned Counsel for the petitioners then submitted that subject to the rights reserved for those people, who are not impleaded as parties before this Court, this Court can very well consider the entitlement of Graduate Promotees, as per the direction of the Honourable Supreme Court referred to above. If the Writ Petitions are dismissed, it is likely to affect at least a few of petitioners, who are entitled to get the relief in the light of the judgment of the Honourable Supreme Court above referred to. It is also represented that a rule has been introduced by the State Government pursuant to the order passed by the Honourable Supreme Court.

11.Learned Counsel Mr.Mohamed Imran, raised an objection that there are several Directly Recruited Assistants, who are likely to be affected, if any order is passed by this Court and that therefore, they must be permitted to implead themselves as parties. Even though the matter was already heard earlier and today no steps have been taken by the learned Counsel for the petitioners to file a petition to implead the Directly Recruited Assistants as parties to the *lis*. Learned Counsel for the petitioners has expressed some difficulties in identifying the persons, who are all Graduate



Promotees. In view of the reluctance shown by the learned Counsel for the petitioners, this Court has only two options either to dismiss the Writ Petitions on the ground of non joinder of necessary parties or to grant relief without affecting the rights of anyone, whose interest also should be considered along with the claim of petitioners.

12. In such circumstances, this Court is inclined to pass the following order.

12.1. The petitioner/s in the above Writ Petitions, who are not Graduate Promotees Assistants are not entitled to any relief. However, the benefit extended to all the petitioners, who are Graduate Promotee Assistants are entitled to get the benefit of order passed by the Honourable Supreme Court in the case of **A.Rajagopalan vs District Collector, Thiruchirapalli District and others**, in Civil Appeal Nos.251 to 256 of 2015, dated 12.03.2019.

12.2. Insofar as preparation of seniority list among Graduate Promotee Assistants, who are entitled to the benefit of judgment of Honourable Supreme Court above referred to, are concerned, the respondents are directed to consider the *inter se* seniority of the Directly Recruited Assistants first following the cyclical orders, as directed by the Honourable Division Bench of this Court in W.A. (MD)No.839 of 2018 after hearing the Directly Recruited Assistants before granting any relief to the Graduate Promotee Assistants, as per this order. Since the Directly Recruited Assistants are not before this Court, the respondents shall invite objections from the eligible Directly Recruited Assistants, before granting any relief. The order passed by this Court in these Writ Petitions does not prevent the respondents from passing any order, which the Directly Recruited Assistants are entitled to, as per the direction of Honourable Supreme Court or by this Court.

13. All the Writ Petitions are accordingly disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS III)

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Sub Assistant Registrar(CS)

cmr/tmg



To

1.The Principal Secretary and
Commissioner of Revenue Administration,
Ezhilagam, Chepuak, Chennai - 600 005.

2.The District Collector,
Ramanathapuram District,
Ramanathapuram - 623 503.

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