



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.19400 of 2010

K.Chakrapani

..Petitioner

Versus

1. The District Collector,
Tiruvallore District,
Tiruvallore - 602 001.

2. S.Yuvaraj
3. S.Gopal
4. T.E.Sivaprakasam
5. M.Narasimhan
6. A.Mohan
7. M.Babu
8. G.Madhavan
9. G.Balasubramanian
10. D.Lakshmi
11. M.Dhanapal
12. Syed Lathupudin
13. Raja T.Vasuki
14. B.Arul
15. K.Ravi
16. S.Natarajan
17. M.Balakrishnan
18. Meivazhi Anjaneya Gounder
19. D.Vijayakumar
20. VR.Rajasekaran
21. S.Anandan
22. M.Ramakrishnan
23. R.Venkatesan
24. K.M.Thamilarasu
25. K.Vijayakumari
26. V.Jayabalan
27. S.V.Sudakar Pillai
28. D.Mahendran

(R2 to 28 impleaded vide Order, dated 12.04.2022
made in M.P.No.1 of 2012 in W.P.No.19400 of 2010) ..Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to the impugned proceedings of the respondent issued in



Na.Ka.No.10163/2010/Establishment-2, dated 29.03.2010 and quash the same.

For Petitioner : Mr.R.Parthiban

WEB COPY

For Respondents: Mrs.E.Ranganayaki
Additional Government Pleader
for R1

: No Appearance for RR-2 to 28

ORDER

The petitioner, who was working as Assistant under the first respondent, has filed the present Writ Petition, challenging the impugned seniority list, dated 29.03.2010. According to the petitioner, the petitioner was promoted to the post of Assistant on 31.03.1998, while the respondents 2 to 28 herein were promoted subsequently from the year 2000 onwards. Therefore, when the first respondent sought to publish the seniority list in respect of the post of Assistant, they correctly fixed the seniority and published the tentative list on 15.10.2009 in which the petitioner's name was in Serial No.46 and the respondent Nos.2 to 28 were placed below him. However, it seems that the respondent Nos.2 to 28 filed objections to the said tentative seniority list, dated 15.10.2009 and based on their objections, the impugned seniority list is issued which is dated 29.03.2010 in which the petitioner's name is now pushed to Serial No.66-B while the respondent Nos.2 to 28 are brought above the petitioner. Aggrieved by the same, the present Writ Petition is filed.

2.The primary contention of the petitioner is contained in ground (F) and (G) of the affidavit, the essence of which is that as per Rule-35 of the Tamil Nadu State and Subordinate Services General Rules, when the seniority is issued in respect of the post of Assistant, the date on which the incumbents are promoted as Assistants is the only relevant factor and by any reason, if the respondent Nos.2 to 28 were wrongfully denied promotion, unless the same is reviewed and their date of promotion as Assistants precedes the date of promotion of the petitioner before 31.03.1998, the respondent Nos.2 to 28 can never be placed as seniors as that of the petitioner.

3.The respondents sought to contest the Writ Petition by filing a counter affidavit on three grounds. Firstly, it is their contention that the respondent Nos.2 to 28 submitted the objections to the tentative seniority list wherein they have pointed out valid grounds by which they were not included in the panel earlier and therefore, their grievance had to be redressed



4. The second objection is that the petitioner did not submit any objection to the tentative seniority list and therefore cannot file the Writ Petition. The third objection is that there is an appeal remedy to the petitioner as against the seniority list and the same has not been availed and therefore, the Writ Petition is liable to be dismissed.

6. As a matter of fact in matters of inter se seniority, it has been held that the first respondent almost takes the place of an arbiter when two sets of employees claim inter se seniority and therefore, it has to be first noted that the respondent Nos. 2 to 28 are not before this Court to defend their seniority over and above the petitioner. Now, the stand of the first respondent is that various grievances of respondent Nos. 2 to 28 that they ought to have been included in the panel before the petitioner was taken into account and accordingly their seniority was restored. In my view, the same is not a relevant factor. For any reason, if the first respondent felt that the respondents 2 to 28 were not validly given promotion, unless the same is rectified and their date of promotion of Assistants is notionally pre-dated to that of the petitioner before 31.03.1998, the respondents 2 to 28 cannot be placed as seniors above the petitioner even while their date of promotion of Assistants is from the year 2000 onwards. The seniority is in respect of the cadre of Assistant and the respondent Nos. 2 to 28 cannot claim seniority even before the day when they were born into the cadre and therefore, the impugned seniority list goes against the very basic tenet of service jurisprudence. Thus, the petitioner is entitled to succeed.

8. The final objection raised by the respondent is that the impugned order of seniority itself provides for an appeal and without availing the alternative remedy, this Writ Petition is



not maintainable. To that there were two replies on behalf of the petitioner. The learned Counsel for the petitioner would submit that even though it is mentioned in the impugned order, there is no specific statutory provision providing for appeal. Further there was no delay in filing the Writ Petition in as much as the impugned order is dated 29.03.2010 and the Writ Petition is filed on 23.08.2010 itself and when the Writ Petition having been entertained at this point of time he cannot be relegated to the alternative remedy. While it is correct that there is no specific provision providing an appeal as against the seniority list, however Rule 57 of the Tamil Nadu State and Subordinate Services Rules provides that whenever there is no specific provision for appeal or review is there in the rules against any order passed under the said rules in redressal of the grievance, a general appeal or review is maintainable to the appropriate authority. Therefore, the submission of the learned Counsel for the petitioner that there is no statutory appeal cannot be accepted as there is an appeal provided. But, however, when this Court had admitted the Writ Petition and entertained the same on merits and the pleadings have been completed, after 12 years of the entertainment of the Writ Petition, now the petitioner cannot be relegated to the remedy of alternative relief. This position is clearly laid down by the Hon'ble Supreme Court of India in the judgment of Durga Enterprises (P) Ltd. Vs. Principal Secretary, Govt. of U.P.¹. Therefore, when the petitioner categorically succeeds on merits, at this belated point of time, he cannot be relegated to the alternative remedy and therefore, I am not in a position to accept the plea of the learned Additional Government Pleader in the facts and circumstances of the case.

9. The petitioner was aged 48 years at the time of filing of the Writ Petition and now has reached the age of 60 years and he is likely to have been superannuated. However, the learned Counsel for the petitioner is not exactly sure of the date of superannuation.

10. Therefore, I am inclined to allow the Writ Petition on the following terms:-

(i) The impugned seniority list, dated 29.03.2010 is set aside in as much as it places the petitioner below the respondent Nos.2 to 28 and consequently, the first respondent is directed to restore the seniority of the petitioner as per the tentative seniority list, dated 15.10.2009 over and above the respondent Nos.2 to 28;

(ii) The petitioner will be entitled to the consequential promotion, if any, on account of the revision of the seniority, but, however, such benefit will be granted notionally without

1 (2004) 13 SCC 665



any actual arrears of pay/pension, while the petitioner is entitled to arrears prospectively from the date of this order;

(iii) The above exercise shall be carried out by the first respondent within a period of four months from the date of receipt of copy of the order.

(iv) However, there shall be no order as to costs. Consequently, M.P.No.1 of 2010 is closed.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

grs

To

The District Collector,
Tiruvallore District,
Tiruvallore - 602 001.

+1cc to Mr.P.Parthiban, Advocate, S.R.No.30322

+1cc to the Government Pleader, S.R.No.30968

W.P.No.19400 of 2010

RSV(CO)
RGA(25/05/2022)