IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2022

Coram

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A.No.452 of 2022
and
CMP.No.3267 of 2022

M. Ravi ... Appellant

-vs-

1. Y. Divyadarshini

2. The Principal Secretary to Government
   Commercial Taxes & Registration Department
   Fort St.George, Secretariat,
   Chennai 600 009.

3. The Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk,
   Chennai 600 005.

... Respondents

Prayer:Writ Appeal is filed under clause 15 of the Letter Patent praying to set aside the order made in WP No.10154 of 2021 by the order dated 29.11.2021.

Prayer in WP No.10154 of 2021: The Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to prepare a comprehensive seniority list from the Cadre of DCTO/ACTO in relation to permanent post by taking into account the 4 principles laid down by this Court in WA No.626 to 628 of 2020 in a time bound manner.

For Appellant : Ms.Dakshayani Reddy

For Respondents: Mr.V.Vijay Shankar for R1
Mr.Haja Nazirudeen
Addl.Advocate General - I
Asst.by Mr.Venkateswaran
Spl.Govt.Pleader (Taxes) for R2 & R3

J U D G M E N T

S.VAIDYANATHAN, J.
AND
MOHAMMED SHAFFIQ, J.

The present appeal has been preferred against the order of the learned Single Judge made in W.P.No.10154 of 2021 dated 29.11.2021.

2. The appellant is a direct recruit Assistant Commissioner (earlier Commercial Tax Officer (CTO)) and is presently working as the Joint Commissioner (ST), VAT & Audit, O/o.The Additional Chief Secretary/Commissioner of Commercial Taxes, Ezhilagam Chepauk, Chennai - 5. The next avenue of promotion is to the post of Assistant Commissioner (Commercial Taxes).

The entry level cadre post to the State Services is that of Assistant Commissioner and the appellant was appointed by a Direct Recruitment by Tamil Nadu Public Service Commission (TNPSC) under Group-I Services in the year 2009 (hereinafter referred to as direct recruit AC (erstwhile CTO) (Group I Services)).

Even though, the contesting parties are not aggrieved by the direction of the learned single Judge that the seniority list have got to be published, the only grievance of the appellant is that, without being influenced by the order of the learned single Judge the objection have got to be considered and a decision have got to be taken inasmuch four principles have been laid down by the Division Bench of this Court and upheld by the Hon'ble Supreme Court in C.A.No.1454 of 1987, to be followed with regard to fixation of inter-se seniority. The four principles laid down by the Division Bench of this Court are as under:

> "1. Each year should be taken as a unit for fixing the inter se seniority.
>
> 2. Persons not actually appointed in the year 1966 should not be included in 1966 year's list and that seniority should be determined with reference to the date of their joining as Joint Commercial Tax Officer; and
>
> 3. The date on which an officer commences probation is the proper criterion for fixing the inter se seniority.
>
> 4. If there are vacancies out of the required reservation of 40% in the permanent cadre of ACTOs for

direct recruits, any appointment made either by transfer or by promotion cannot be utilized to fill up those vacancies. Such appointments being of a temporary character, whenever direct recruits are appointed through Public Service Commission, they being holders of permanent posts by direct recruitment, they have a right to be appointed to whatever posts that are taken out of the 40% posts reserved for direct recruitments."

3. The grievance of the appellant is that the fourth principle would be given a go by in terms of Para 3 of the counter filed by the State before the learned Single Judge in W.P.No.10154 of 2021.

4. The learned Additional Advocate General would submit that the appellant is not at all in the zone of consideration and not entitled to challenge any portion of the order as there is no adverse finding against the appellant.

5. Mr.Vijay Shankar, learned counsel appearing for the first respondent would submit that the leave itself ought not to have been granted and pursuant to the earlier order of this Court wherein the Court has observed that the seniority list have got to be finalised and given quietus to.

6. Since the case of the appellant/intervenor is that the objection alone has got to be considered dehors the finding of the learned single Judge without rendering any finding on merits with regard to the various points raised by both the parties, including the one whether the appellant is in the zone of consideration or not, the authorities are expected to take a decision on the objections made by the parties concerned and independently take a decision on the said objection for the Draft Seniority and go head with finalising the final seniority list in accordance with the principles laid down vide the orders of this Court and the Hon'ble Supreme Court governing the issue. In case any other person has not filed any objection, they are expected to file objection within one week from the date of receipt of a copy of the order and the Department is expected to communicate it on the notice board.

7. It is represented by the learned Additional Advocate General that all the categories of the posts for which promotion is going to be considered, it will be done in a phased manner after taking the objections to the draft seniority list and it will be finalised.

8. With the above observation, the Writ Appeal is disposed of. No costs. Consequently connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

dpq

To:

1. The Principal Secretary to Government
Commercial Taxes & Registration Department
Fort St.George, Secretariat,
Chennai 600 009.

2. The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai 600 005.

+1cc to Mr.Dakshayani Reddy, Advocate, S.R.No.14827

+1cc to the Special Government Pleader (Taxes), S.R.No.14797

W.A.No.452 of 2022
and
CMP.No.3267 of 2022

MT(CO)
SU(21/04/2022)