



W.P(MD)No.6216 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.10.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.6216 of 2021

and

W.M.P.(MD)No.9359 of 2021

1.R.Malavizhi

2.B.Ravi

3.V.M.Malarvizhi

4.S.Balasubramanian

... Petitioners

Vs.

1.The Secretary to Government,
Planning, Development and Special Initiatives Department,
Secretariat, Chennai.

2.The Commissioner,
Department of Economics and Statistics,
Teynampet, Chennai.

3.S.Natarajan,
Assistant Director of Statistics,
TNHB Colony, M-96, Stage II,
V.M.Chatram, Tirunelveli 627 011.

4.Arthur Tennis,
Assistant Director of Statistics,
13/124, Mankulthivilai, Keezhkulam Post,
Kanyakumari District 629 193.

5.N.Mohanraj,
Assistant Director of Statistics,



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No.5, Gokul 1st Street, Brindavan Flats,
Rajaji Nagar (Extn), Villivakkam,
Chennai 600 049.

6.S.Manoharan,
Assistant Director of Statistics,
Plot No.3, Sri Saradha Nagar, 1st Street,
Korattur, Chennai 600 076.

7.M.Mohamed Nazar,
Assistant Director of Statistics,
58, Bangala Pudhur, Sithaiyankottai,
Dindigul 624 708.

8.K.Kandarajan,
Deputy Director of Statistics,
41, T.M. Nagar (Extension) East Main Road,
Uthangudi, Madurai 625 107.

9.S.Suriyakala,
Deputy Director of Statistics,
District Statistical Office,
RDO Office (Back Side),
NGO 'B' Colony,
Tirunelveli 627 007.

10.D.Meenakshi Sundaram,
Assistant Director of Statistics,
149/10, Arulperum Jothi Nagar,
Vennamalai, Karur 6.

11.K.Subramaniam,
Deputy Director of Statistics,
District Statistical Office,
6th Floor, Collectorate Campus,
Erode 628 638.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Impugned letter No.19664/B1/2019 dated 28.01.2020 of the 2nd Respondent confirming the supplementary panel in G.O.(Ms) No.35 dated 23.04.2015 and to quash the same and consequently direct the Respondents 1 and 2 to appoint/promote the Petitioners Assistant Directors of Statistics with effect from 15.12.2014 by including the Petitioners name in the regular panel for the year 2014-2015 by placing them above Respondents 3 to 11.

For Petitioners : Mr.G.Prabhu Rajadurai

For Respondents : Mr.A.K.Manikkam,
Spl. Government Pleader for R1 & R2.
No appearance for R3 to R9 & R11.

ORDER

Heard the learned counsel for the writ petitioner and the learned Special Government Pleader for the official respondents. Even though the private respondents have been served, they have not chosen to enter appearance. Some of the private respondents have retired and one is said to be no more and only respondent No.11 is said to be still in service.

2.The case of the writ petitioners is that they were originally appointed as Assistant Statistical Investigator through TNPSC and that they were later



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promoted as Statistical Inspectors. They became Statistical Officers in the year 2013. The next promotional post is that of Assistant Direction of Statistics.

The case on hand relates to the preparation of the panel for the said promotional post for the year 2014-2015. The crucial date was 01.09.2013. As many as 78 Statistical Officers were included in the panel. The petitioners herein have no grievance regarding their empanelment. The specific allegation of the writ petitioners is that the private respondents were given temporary promotion vide G.O.(Ms) No.35, dated 23.04.2015 and the same was ratified as regular promotion vide G.O.(Ms) No.30, Planning Developmental Special Initiatives (ST.1) Department, dated 02.05.2017. The petitioners lodged their objections much later. Their objection was rejected by the impugned communication dated 28.01.2020 by the second respondent. Questioning the same, the present writ petition has been filed.

3.The learned counsel for the writ petitioners reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned communication and also the promotion granted in favour of the private respondents. It is further prayed that the petitioners should have been promoted in the place of the private respondents in the year 2017.



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4.The official respondents have filed a detailed counter affidavit and the learned Special Government Pleader took me through its contents. The objections raised by the official respondents is twofold:-

(a) The private respondents are admittedly senior to the writ petitioners herein and therefore the petitioners cannot have any grievance.

(b) The private respondents were given temporary promotion in the year 2015 and the same was ratified as regular promotion in the year 2017. Objections were received from the petitioners only on 18.07.2019. As per the Service Rules, objections should have been lodged within 15 days and therefore, the second respondent rightly rejected the petitioners' objections as belated. The learned Special Government Pleader relied on the decision reported in **2013 12 SCC 179** and **2018 4 MLJ 618 (SC)** in support of his contention that stale claims regarding promotion ought not to be entertained. He pressed for dismissal of the writ petition.

5.I carefully considered the rival contentions and went through the materials on record. The case on hand relates to promotion to the post of Assistant Director of Statistics. The Special Rules governing promotion to the said post prescribes the following qualifications:-



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Posts	Method appointment	Qualifications
Assistant Director of Statistics.	Recruitment by transfer from any other service	1.Must hold a degree of M.A., or M.Sc., or a first class degree of B.A., or B.Sc., with Statistics, Mathematics, Economics or Mathematical Economics as the main subject; and 2.Must have experience in Statistical Investigation for a period of not less than three years in the case of persons holding a Master degree and five years in the case of persons holding a Bachelor degree.
	(With effect from 27-10-87 as per G.O.Ms. No.162 P&D (ST) dept., dated: 24-11-88)	3. 'Must have passed the Account Test for Executive Officers". Provided that a person who has passed the Account Test for subordinate Officers Part I need not pass the Account Test for Executive Officers. Provided that the first Class degree of B.A., or B.Sc., with Statistics, Mathematics, Economics or Mathematical Economics as main subject referred to in item (2) above shall not be insisted upon in the case of Statistical Officers of the Economics and Statistics Department who have put in a total service of not less than two years of Statistical Officer, either in the Economics and Statistics Department or in the borrowing Department, if the person is on other duty, on deputation or on Foreign Service from the Economics and Statistics Department and are holding a degree of B.A., or B.Sc., with Statistics, Mathematics, Economics or Mathematical Economics as the main subject.



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	(With effect from 29-5-89 as per G.O.Ms.No.88 P&D (ST) Dept., dated 29-5-89)	4."Provided further that field experience for a period of not less than one year on duty in the post of Statistical Officer in any of the Revenue Division in the District Statistical Units shall be insisted." Provided also that such field experience shall not be insisted in respect of recruitment by transfer from any other service to be made for a period of two years from the 29th May 1989. (G.O.Ms.No.88, P&D (ST) Dept., dated: 29-5-89)
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6.A reading of the materials on record would indicate that the private respondents acquired the qualifications prescribed for the post of Assistant Director of Statistics only on 28.01.2015. On the other hand, the writ petitioners herein were qualified even on the crucial date ie., 01.09.2013. The question that arises for consideration is not whether the private respondents are senior to the writ petitioners in the post of Statistical Officer. On the other hand, the question is whether on the crucial date who was qualified. The answer cannot be in doubt. The writ petitioners were qualified on the crucial date whereas the private respondents were not qualified. Therefore, the question of seniority on the crucial date pales into insignificance.



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7.The next question that calls for consideration is whether the petitioners' objections could have rejected as belated. It is true that the Service Rules contemplate that objection should be lodged within 15 days. But then, the 15 days will have to be computed with reference to the date of publication of panel. The petitioners have taken a specific ground that the panel including the private respondents was not published and that the petitioners were never put on notice about the same. Only to enable to the learned Special Government Pleader to get instructions in this regard, the matter was adjourned for more than one occasion. Today, the instructing official is present and the learned Special Government Pleader fairly stated that the panel which included the private respondents herein was never published. The writ petitioners can only be expected to lodge their objections only after they became aware of the same. Therefore, the impugned order holding that the objections are stale and belated cannot be accepted. I have no hesitation to set aside the order dated 28.01.2020 issued by the second respondent.

8.There is no dispute that the department has to prepare the annual panel with reference to the crucial date. If there are no vacancies in the promotional post, then the panel will not be implemented. Of course the department cannot



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be compelled to grant promotion. But then preparation of the panel is an annual exercise. I have already held that inclusion of the private respondents herein by overlooking the writ petitioners was clearly illegal. I have therefore no hesitation to set aside the order promoting the private respondents to the post of Assistant Director of Statistic in the panel for the year 2014-2015. The petitioners herein ought to have been included in the said panel. Even while setting aside the order impugned in the writ petition, I direct the respondents 1 and 2 to notionally include the writ petitioners herein in the panel for the post of Assistant Director of Statistic for the year 2014-2015. The petitioners will not be entitled to consequential monetary benefits. Of course, they will be entitled to continuity of service and inclusion of the said period for the purpose of promotion and pension. It is seen that during the relevant year, there were seven vacancies. There are four petitioners before me. Therefore, out of seven respondents the senior-most three private respondents will not be affected by the outcome of this order. The remaining four also can be adjusted against the vacancies that had arisen during the subsequent years. Therefore, the private respondents also will not be affected and it is only a question of notional re-working even in their case also.



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9. With these observations, the writ petition is allowed. No costs.

Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes/ No
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To:-

1. The Secretary to Government,
Planning, Development and Special Initiatives Department,
Secretariat, Chennai.
2. The Commissioner,
Department of Economics and Statistics,
Teynampet, Chennai.



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G.R.SWAMINATHAN, J.

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