



W.P.(MD)No.7137 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.04.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.7137 of 2018

and

W.M.P.(MD)No.6873 of 2018

K.Jeyakrishnan

... Petitioner

VS

1. The Authority under Section 153 of the Tamilnadu
Co-operative Societies Act,
(Joint Registrar of Co-operative Societies),
Collectorate, Ramanathapuram.
2. The Managing Director,
Ramanathapuram District Central
Co-operative Bank Ltd.,
Ramanathapuram.
3. M.Balasubramanian
4. M.Saravanan
5. K.Paanja
6. M.Sowmiya Narayanan
7. K.Gopalakrishnan
8. S.Chellapandi Rajan
9. S.Santhi



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10. V.Meenatchisundaram
11. R.Selvarani
12. G.Ealumalai
13. R.Muthusudha
14. D.Sivabalan
15. Umayapandi
16. M.Thenammal
17. S.Velmurugan
18. T.Poongodi
19. M.Sundarakaleeshwari
20. T.Ramesh
21. T.Kumutha
22. M.Gayathri Devi
23. R.Kanagavalli
24. M.Malathi
25. A.Seetha
26. A.Suriyalakshmi

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the 1st Respondent relating to the order passed in Revision Petition No.6/2012(Na.Ka.No. 3461/2015/Sapa) dated 29.1.2017 and quash the same grant such other relief(s) as expedient to the facts and circumstances of the matter.

For Petitioner : Mr.S.Seenivasagan
for M.Ganesan

For Respondents : Mr.S.Kameswaran for R1
Government Advocate (Civil side)
Mr.D.Shanmugaraj Sethupathi for R2
No appearance for R3 to R26



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ORDER

This Writ Petition is filed for issuance of a Writ of Certiorari, to quash the impugned order passed in Revision Petition No.6 of 2012.

2. The facts of the case are that the petitioner and other 25 employees including as respondent Nos.3 to 26 were selected for an appointment to the post of Assistant. The process of recruitment was by way of calling from the eligible candidates through Employment Exchange and calling for applications from the qualified employees of the affiliated Societies. Thereafter, conducting written examination as well as the interview and individual orders of appointments were communicated to the selected candidates on 26.11.2010. The recruitment is based on Rule 149 (3) of Tamil Nadu Co-operative Societies Rules as per By-law of No: 9 reservation of appointment is followed. The Registrar of Co-operative Society by referring to the Gazette No.107 dated 08.04.2013 bearing G.O.Ms.No.55, Personnel and Administration Reforms (S) dated 08.04.2010 has stated that channelizing the 'Turn' for every Class of reservation rotation table consisting of 200 appointments as a Unit, shall be followed from 29.04.2009 itself. As per the



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Circular of the Registrar of the Co-operative Society through the communication in Na.Ka.No.99306/09/MaVa dated 27.05.2010 circulated the copy of the Gazette No:107 dated 08.04.2010 and directed to follow the communal rotation within four months of the petitioner's appointment. The Bank published a seniority list on 24.04.2011 for the post of Assistant on 01.04.2011. The list was published by including the Assistants of the direct recruitment who were already in service. The contention of the petitioner is that the seniority list did not indicate the mode of issuing the seniority list. Since the seniority list was not in accordance with the list prepared during the appointment and several objections were submitted. Thereafter, the respondents stated that the said list is prepared based on the merits and marks obtained at the time of recruitment. The contention of the petitioner is that the respondents did not rely on the specific By-law relating to the service conditions and other all service conditions. Therefore, the petitioner has filed this writ petition.

3. The respondents have filed a counter affidavit stating that the issue of seniority in the Co-operative Society was under litigation for several years. Some Societies are following the seniority list based on the roster system and in some of



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the Societies the seniority list was revised based on the marks. In the present case, the seniority is revised based on the marks. The Special By-law and the G.O.No.107 has stated to follow the roster system during the time of appointment. As far as the promotion is concerned, the revised seniority list ought to be issued based on the marks. Therefore, the respondents prayed to dismiss the writ petition.

4. Heard Mr.S.Seenivasagan, learned Counsel appearing for the petitioner, Mr.S.Kameswaran, learned Government Advocate appearing for first respondent, Mr.D.Shanmugaraja Sethupathi, learned Counsel appearing for the second respondent and there is no appearance for the respondent Nos.3 to 26.

5. The issue of fixing seniority was dealt with in ***Bimlesh Tanwar vs. State of Haryana and others reported in (2003) 5 Supreme Court Cases 604*** and the relevant portion is extracted hereunder:

“40. An affirmative action in terms of Article 16(4) of the Constitution is meant for providing a representation of a class of citizenry who are socially or economically backward. Article 16 of the Consitution of India is applicable in the case of an appointment. It does not speak of fixation of seniority. Seniority is, thus, not to be



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fixed in terms of the roster points. If that is done, the rule of affirmative action would be extended which would strictly not be in consonance of the Constitutional Schemes. We are of the opinion that the decision in P.S.Ghalaut does not lay down a good law.

50. It has been noticed hereinbefore, that the Punjab and Haryana High Court in exercise of its power of control under Article 235 of the Constitution of India had been determining inter se seniority of the candidates in terms of the instructions of the State dated 27.04.1972, as quoted supra. In absence of any statutory rules, the said practice was developed which cannot be said to be arbitrary. In any event, such practice cannot be interfered with at this stage, keeping in view the fact that the rights of a large number of officers must have already been determined in terms thereof. In the instant case, Respondents 8 to 11 admittedly were more meritorious. They were unjustly deprived of their right of appointment, although they were entitled thereto having regard to Rule 10 of the Rules. They suffered for no fault on their part. They had to approach the High Court for ventilating their grievances. The High Court directed the first respondent herein to make appointment and only pursuant thereto and in furtherance thereof they were appointed. Should they in the aforementioned situation be permitted to lose their seniority is the question involved in this appeal. The answer thereto must be rendered in the negative. Long-standing practice as well as justice and equity favour the respondents. It is beyond any cavil that merit has a role to play in the matter of determination of inter se seniority.”

6. The question raised in the said judgment is whether the seniority has to be fixed based on the list prepared based on reservation or it should be on the basis of merits. The Honourable Supreme Court has held that Inter se seniority of



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the candidates who are appointed on the same day would be dependent on the rules governing the same. Moreover, it has been held that the Recruitment Committee ought to appoint based on the roster system. Thereafter, the seniority list ought to be published based on the merits. In short, the Recruiting Authority should follow the roster system, thereafter, the Appointing Authority should prepare the list based on the merits and that would be the seniority list for further promotions. Therefore, the issue is settled in Bimlesh Tanwar's case. Therefore, the Official respondents are directed to prepare the list based on merits and marks and publish the seniority list among the Assistants. Thereafter, further promotion shall be considered.

7. A plea was raised that G.O. Ms. No. 107 and the Special Bye-law of the society prescribes to follow reservation / roster and the same is rejected, since the said Government Order and the Special Bye-law only states that while recruitment reservation ought to be followed. This Court is of the considered opinion the said Government Order and the Special Bye-law is not stating that for promotion also reservation / roster ought to be followed. It is made clear that for recruitment reservation ought to be followed, but for drawing of seniority list for



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promotion marks and merits alone ought to be followed.

8. The respondents are directed to issue the revised seniority list based on marks in the light of Bimlesh Tanwar's case, thereafter, issue promotion. Since the issue is settled in Bimlesh Tanwar's case, the claim of the petitioners to follow reservation / roaster is incorrect and illegal. Therefore, the seniority list based on the marks has to be followed and hence there is no merits in this case. The official respondents should strictly follow the Bimlesh Tanwar case and draw the seniority list based on marks and grant promotion. This shall be followed for persons who were granted illegal promotion earlier and reverse their promotion.

9. Since the claim of the writ petitioners is against the order passed in Bimlesh Tanwar's case, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index :Yes / No

Internet :Yes

jbr

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Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The Authority under Section 153 of the Tamilnadu Co-operative Societies Act,
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2. The Managing Director,
Ramanathapuram District Central
Co-operative Bank Ltd.,
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S.SRIMATHY, J

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Order made in
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