



W.P.(MD)No.5119 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.5119 of 2018

R.Selvarani

... Petitioner

VS

1. The Joint Registrar/Revisional Authority,
Office of the Regional Joint Registrar of
Co-operative Societies,
Collectorate Complex,
Ramanathapuram.
2. The Managing Director,
Ramanathapuram District Central Co-operative Bank,
Ramanathapuram.
3. M.Balasubramanian
4. M.Saravanan
5. K.Pancha
6. M.Soumiya Narayanan
7. K.Gopalakrishnan
8. S.Chellapandirajan
9. S.Shanthi
10. V.Meenakshi Sundaram
11. G.Elumalai
12. R.Muthu Sudha
13. T.Sivabalan



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14. R.Umayandi
15. M.Thenammal
16. S.Velmurugan
17. T.Poongodi
18. M.Sundarakaleeshwari
19. T.Ramesh
20. T.Kumutha
21. M.Gayathri Devi
22. R.Ganagavalli
23. M.Malathi
24. A.Seetha
25. A.Suriyalakshmi

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order made in Revision Petition No.6 of 2015 dated 29/12/2017 passed by the 1st respondent and quash the same and consequently direct the 1st and 2nd respondents to revise the seniority list pertaining to the year 2014 on the basis of merit and thereby promote the petitioner as Assistant Manager based on the revised seniority list and provide all the benefits accrued to her from the date of her promotion .

For Petitioner : Mr.P.R.Prithvi Raj

For Respondents : Mr.S.Kameswaran for R1
Government Advocate (Civil side)

Mr.D.Shanmugaraj Sethupathi for R2

No appearance for R3 to R25



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ORDER

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order made in Revision Petition No.6 of 2015 dated 29.12.2017 and consequently direct first and second respondent to revise the seniority list pertaining to the year 2014 on the basis of merit and thereby promote the petitioner as “Assistant Manager”.

2. The brief facts of the case are that the petitioner was appointed as Assistant in Q.1266, Pottakavayal Primary Agricultural Co-operative Bank, Pottakavayal, Ramanathapuram District, through Employment Exchange on 29.08.1998. The petitioner was deputed as Assistant to the second respondent Bank on 28.07.2009. The second respondent Bank conducted a selection process for the sanctioned 27 vacant post of Assistant by way of written examination as well as based on roster system as contemplated under Rule 149(3) Tamil Nadu Co-operative Societies Rules, 1988. The petitioner applied through the employer and participated in the selection process. The petitioner belongs to BC Community and got 57 marks in the examination. Based on merit, the second



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respondent has issued a list of selected candidates for the post of Assistant. In the said selected list, candidates selected for the post of Assistant, the petitioner was placed in Sl.No.11 of the merit list out of 26 selected candidates. Based on the same, the petitioner was appointed as Assistant on 26.11.2010. The petitioner submitted that at the relevant point of time, the petitioner was working at Chinnakadai Bazaar Branch, Paramakudi. The petitioner contended that there was delay in getting relieving order from the deputation Bank. Therefore, due to procedural Administrative delay, the petitioner cannot join immediately.

3. The contention of the petitioner that on 20.04.2011, the second respondent Bank issued the seniority list as on 01.04.2011 and called for objections. The petitioner's name was found in Sl.No.63. The contention of the petitioner is that since in the list the persons appointed in the year 2008 were listed, the petitioner was under the impression that persons who were appointed in the year 2008 were promoted and hence the petitioner did not prefer any objection for the said seniority list. While that being so the second respondent Bank, vide proceedings, dated 22.05.2014 issued the seniority list as on 01.04.2014 and called for objections. The petitioner's name was found in Sl.No.26. The



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contention of the petitioner is that the seniority list was not made on merit but in terms of date of joining which was prepared following reservation at the time of appointment. In the seniority list the private respondents who obtained lesser marks were placed on the top of the list. Hence the petitioner submitted his objection on 28.05.2014. Without considering the objection, the respondents have confirmed the seniority list, vide Memo, dated 31.03.2015 by citing the legal opinion of the Government Pleader. Based on such illegal list, the petitioner's juniors were granted promotion. Aggrieved over the same, petitioner has preferred this writ petition.

4. The second respondent has filed a counter affidavit stating that the selection process was initiated among the eligible candidates who were sponsored in the ratio of 1:5 through Employment Exchange under Rule 149 of the Tamil Nadu Co-operative Societies Act. Thereafter, an interview was conducted following “200 point roster”, the Recruitment Committee has selected the candidates and the petitioner was one among the selected candidates. The petitioner and other selected candidates were granted appointment order, vide order, dated 26.11.2010 and the petitioner joined on 08.12.2010. The



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Management has prepared inter se seniority as on 01.04.2011 among the Assistants including the 26 appointees appointed on 26.11.2010 taking into consideration the date of joining and the date of birth of the employees. The Management has called for objection for the fixation of seniority from the aggrieved employees. and has submitted representations. The petitioner was in the seniority number 63 and has submitted objections. Again in the year 2014, the seniority list was prepared and the petitioner's name in the seniority list was placed in seniority number 26. Based on the list, promotions were granted. The respondents are following the seniority list as per the Recruitment Committee. After processing the applications and interview, the respondents are following the date of joining as the seniority. Therefore, there is nothing legal in fixing the seniority. Moreover, all these years the respondents are following this method and if it is reversed, the settled position would be unsettled and there will be agitation among the employees. Therefore, the respondents prayed to dismiss the writ petition.

5. Heard Mr.P.R.Prithvi Raj, learned Counsel appearing for the petitioner, Mr.S.Kameswaran, learned Government Advocate appearing for first respondent



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and Mr.D.Shanmugaraja Sethupathi, learned Counsel appearing for the second respondent and there is no appearance for the respondent Nos.3 to 25.

6. The issue of fixing seniority was dealing 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 Constitution of India is applicable in the case of an appointment. It does not speak of fixation of seniority. Seniority is, thus, not to be 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



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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.”.

7. 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 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.



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8. A plea was raised that G.O. Ms. No. 107 and the Special Bye-law of the society prescribes to follow reservation / roaster 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 that the said Government Order and the Special Bye-law is not stating that for promotion also reservation / roaster ought to be followed. It is made clear that for recruitment reservation ought to be followed, but for drawing of seniority list for promotion marks and merits alone ought to be followed.

9. The impugned order is set aside and 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 respondents to follow reservation / roaster is incorrect and illegal. Therefore, the seniority list based on the marks has to be followed. The official respondents should strictly follow the Bimlesh Tanwar case and redraw the seniority list based on marks and grant promotion and the said exercise shall be completed within a period of six weeks from the date of receipt of a copy of this



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order.

10. With the above direction, the Writ Petition is allowed. No costs.

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Index : Yes / No

Internet : Yes

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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

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Ramanathapuram.
2. The Managing Director,
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S.SRIMATHY, J

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