



W.P(MD)No.12565 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 26.04.2022

DELIVERED ON : 01.09.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD).No.12565 of 2014

and

W.M.P(MD).Nos.2, 3 and 4 of 2014

and

8774 and 8983 of 2016

1.S.Justin Santhappa,
Deputy Tahsildar (Election),
Taluk Office, Periyakulam,
Theni District.

2.K.Suruli Mydeen,
Deputy Tahsildar (Election),
Taluk Office, Theni,
Theni District.

... Petitioners

Vs.

1. The State of Tamil Nadu,
represented by its Secretary to Government.
Revenue Department,
Secretariat, Chennai.

2. The Additional Chief Secretary and
Commissioner of Revenue Administration,
Disaster Management and Mitigation Department,
Elizlagam, Chepauk,
Chennai - 5.



W.P(MD)No.12565 of 2014

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3. The District Collector,
Theni District, Theni.

4. A. Jalal,
Head Quarters Deputy Tahsildar,
Taluk Office, Periyakulam,
Theni District.

5. N. Senthil Murugan,
Zonal Deputy Tahsildar,
Taluk Office, Theni,
Theni District.

6. U. Rathnamala,
Head Assistant,
'H' Section Collectorate,
Theni, Theni District.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the second respondent in his proceedings ந.க.பண்4(3)/34422/2011, dated 01.04.2014, confirming the order passed by the second respondent in his proceedings in ந.க.பண்4(3)/34422/2011-1, dated 06.07.2013 and quash the same as illegal.

For Petitioner	: Mr.M.Ajmal Khan Senior Counsel for Ajmal Associates
For R1 to R3	: Mrs.D.Farjana Ghoushia Special Government Pleader
For R4 to R6	: Mr.T.Aswin Rajasimman



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W.P(MD)No.12565 of 2014

for Mr.T.Lajapathi Roy

ORDER

This Writ Petition has been filed seeking to quash the impugned order, dated 01.04.2014, confirming the order passed by the second respondent, dated 06.07.2013.

2. The brief facts of the case are that the petitioners and the respondents 4 to 6 were initially joined as Junior Assistant. At present, the first petitioner is working as Deputy Tahsildar (Election) at Periyakulam. The second petitioner ____ The petitioners and the private respondents were selected in the Group IV examination through Tamil Nadu Public Service Commission (TNPSC) for the year 1993-1994. On account of the marks secured by the candidates, the candidates were placed in the main list and initially, the candidates were appointed as Junior Assistant. The respondents 4 to 6 were not placed in the main list as they had secured lesser marks than the petitioners. The selected candidates joined on various dates depending upon the vacancies. While that being so, initially the first petitioner was appointed as Junior Assistant in Coimbatore District on 06.03.1995, completed probation thereafter, transferred from Coimbatore to Theni District on 23.11.1998.



W.P(MD)No.12565 of 2014

The second petitioner was initially appointed as Junior Assistant at Coimbatore on 24.10.1994, completed probation and subsequently, was transferred to Theni District on 08.03.2000. When the petitioners were transferred to Theni District, the respondents 4 to 6 were working as Typist in Theni District and at that point of time, they have not even completed the probation. Hence, the petitioners were placed ahead of the respondents 4 to 6 in the list of approved probationers. Thereafter, the petitioners were promoted as Assistant in the year 2002, by including their names in the list of Assistant and the respondents 4 to 6 were not promoted. Hence, in the cadre of Assistant, the petitioners were senior than the respondents 4 to 6. However, the District Revenue Officer, Theni, vide proceedings, dated 03.04.2001, published a supplementary list for the year 2000. In that, the respondents 4 to 6 were included and also promoted as Assistant, on 03.04.2001.

3. The contention of the petitioners is that the said District Revenue Officer is not competent to draw the supplementary list. In fact, a query in this regard was raised by the second respondent as early as on 12.11.2003, as drawing the supplementary list is against the Rule 4 of the Tamil Nadu State and Subordinate Service Rules. However, no response



W.P.(MD)No.12565 of 2014

was received. The promotion of the respondents 4 to 6 was bad at the inception as they have not completed the Junior Assistant training as contemplated under Rule 30(c) of the Tamil Nadu Ministerial Service. However, the State Government, considering the welfare of the respondents 4 to 6, vide G.O.Ms.No.567 Revenue Department, dated 04.09.2006, relaxed the condition that they should complete Junior Assistant training. While that being so, the petitioners were promoted as Deputy Tahsildar on 16.11.2009 and the petitioners are working from that date onwards without any complaints and their names were included in the panel of Deputy Tahsildar fit for the promotion of Tahsildar for the year 2013. The respondents 4 to 6 were initially appointed as Typist at Madurai District on 30.12.1994, 26.12.1994 and 26.12.1994 respectively. They were originally included in the waiting list. By reason of bifurcation of Madurai District, the petitioners and the respondents 4 to 6 are seniors in the promoted cadre and the respondents 4 to 6 are promoted only subsequent to the petitioners. However, the respondents 4 to 6 had not even raised any objection as against the above seniority and subsequent promotions nor had they given any representation, objecting the seniority and promotion of the petitioners. The respondents 4 to 6 had filed a writ petition before this Court, in W.P.(MD)No.1937 of 2009,



W.P.(MD)No.12565 of 2014

seeking Mandamus to direct the third respondent to include the name of the respondents 4 to 6 in the approved list of Deputy Tahsildar for the year 2008. It was the contention of the respondents 4 to 6 in the Writ Petition that they are the seniors than the petitioners in the cadre of Junior Assistant and Typist and according to them, they should be placed ahead of the petitioners. This Court, by order, dated 20.08.2010, was pleased to dismiss the above Writ Petition, *inter alia* on the ground that the respondents 4 to 6 had slept over the matter for more than eight years and that their claim is rejected on the ground of laches. Thus, the entire dispute had attained finality as there was no Appeal against the order made in W.P.(MD)No.1937 of 2009, dated 20.08.2010. Then, the respondents 4 to 6 filed a representation and the same was considered by the second respondent herein, vide order dated 06.07.2013, directing the third respondent to draw the consolidated list of Assistant for the year 2000. Then, the petitioners had filed further representation to the higher authorities. The respondents 4 to 6 submitted representation only in the year 2012 and the same is liable to be rejected summarily. Even in the affidavit filed by the respondents 4 to 6 in respect of the writ petition in W.P.(MD)1937 of 2009, it is not the case that they gave representation in time and there is no averment to the effect that they gave objections.



W.P(MD)No.12565 of 2014

Hence, based on limitation, their plea was rejected. Now, they cannot re-agitate the issue, which was already dismissed by this Court. Hence, the petitioners prayed to quash the impugned order.

4. The official respondents had filed counter affidavit along with the Vacate Stay Petition, stating that the contention of the petitioners is totally misconceived, the petitioners herein were appointed as Junior Assistant and on one way District Transfer, they were transferred from Coimbatore to Theni District, based on the petitioner's request. They had lost their seniority fixed at Coimbatore Revenue Unit and their seniority at Theni Revenue Unit was fixed with reference to their date of joining as per the Rule 35 (aa) of General Rule of Tamil Nadu State & Subordinate Service Rules. In view of the above fact, it is clear that the respondents 4 to 6 are continuously working right from 1994, after their appointment as Typist in the composite Madurai Revenue Unit and after bifurcation, Theni District Unit. Since the appointment of the private respondents were kept in waiting list by the TNPSC, the action relating to their regularization of services and declaration of probation were kept in abeyance till the issuance of G.O.Ms.No.77, Personal and Administrative Reforms Department, dated 29.04.1999 and G.O. Ms. No.156, Personal



W.P(MD)No.12565 of 2014

and Administrative Reforms Department, dated 17.10.2000, where their service were ordered to be regularized with retrospective effect and subsequent declaration of probation. But, in the case of the petitioners, they were appointed as Junior Assistant in Coimbatore Revenue Unit, in the year 1995 and subsequently transferred to Theni Revenue Unit, based on their own request. It is further submitted by the respondents that nowhere in the existing rules, to place the persons appointed from the waiting list categories below the persons appointed from the permanent list under one way District transfer. The respondents further submitted that the respondents 4 to 6 herein, contesting for their seniority from 1999 onwards administratively and construed that they have been included in the panel of Assistant when the first respondent herein had ratified their inclusion in the panel for the year 2000, vide orders passed in G.O.(Permt)No.567, Revenue (Ser-VI), Department, dated 04.09.2006. The inclusion of the respondents 4 to 6 is only supplemental one, drawn by the District Revenue Officer, who is not competent to do so. Therefore, their inclusion in the year 2000 list was subsequently regularized by the orders of the second respondent, which is impugned in this writ petition. While the issue was under consideration and without understanding the above facts, the respondents 4 to 6 had filed a writ



W.P.(MD)No.12565 of 2014

petition in W.P.(MD)No.1937 of 2009 and this Hon'ble Court had observed that without challenging the seniority in the cadre of Assistant and no one below the petitioners has been promoted before dismissing the writ petitions on 20.08.2010 by stating that the petitioners are not entitled for the relief sought for. In the light of the above observation the respondents are at liberty to challenge their seniority and accordingly they have approached the second respondent herein and got succeeded vide the impugned order. Hence the contention of the petitioners is lacking substance. Therefore, the official respondents submitted that the individual respondents 4 to 6 are eligible for the promotion after merging the supplementary list with the main list and hence prayed to dismiss the writ petition.

5. Heard Mr.M.Ajmal Khan, Senior Counsel for Ajmal Associates appearing for the petitioner, Mrs.D.Farjana Ghoushia, the learned Special Government Pleader appearing for the respondents 1 to 3 and Mr.T.Aswin Rajasimman for Mr.T.Lajapathi Roy, the learned Counsel appearing for the respondents 4 to 6.

6. The first contention of the petitioners are that the individual



W.P(MD)No.12565 of 2014

respondents 4 to 6 participated in the recruitment process but were kept in the waiting list and hence they cannot be kept on par with the petitioners. This plea cannot be considered since there is no such provisions in law to deny any person who was recruited from the waiting list. It may be that the petitioners have secured more marks than the individual respondents. In such circumstances the petitioners would be senior to the respondents as per the judgment of Hon'ble Supreme Court rendered in Bimlesh Tanwar Vs. State of Haryana and others reported in 2003 5 SCC 604, wherein it is held that the recruitment should be based on roaster system and after recruitment, the seniority list ought to be prepared based on marks. However, the seniority underwent a change because of subsequent "one way transfer" of the petitioners. The petitioners and the respondents were recruited and appointed in same recruitment process held in the year 1993-1994. The first petitioner was appointed as Junior Assistant in Coimbatore District on 06.03.1995, completed probation thereafter, transferred from Coimbatore to Theni District on 23.11.1998. The second petitioner was appointed as Junior Assistant at Coimbatore on 24.10.1994, completed probation and subsequently, was transferred to Theni District on 08.03.2000. When the petitioners were transferred to Theni District, the respondents 4 to 6 were



W.P(MD)No.12565 of 2014

working as Typist in Theni District. The contention of the petitioners is that the individual respondents have not completed probation at the time when the petitioners were transferred to Theni. But the official respondents had denied the said contention and submitted that the regularization was delayed and hence the declaration of probation was also delayed and the official respondents vide order 17675 / 99 / A-3 dated 21.02.2001 had declared probation for the individual respondents with effect from the date of completion of probation. The relevant portion of the counter of the official respondents is extracted hereunder:

“The petitioners herein were appointed as Junior Assistant and on one way District Transfer, they were transferred from Coimbatore to Theni District, based on the petitioner’s request. They had lost their seniority fixed at Coimbatore Revenue Unit and their seniority at Theni Revenue Unit was fixed with reference to their date of joining as per the Rule 35 (aa) of General Rule of Tamil Nadu State & Subordinate Service Rules. In view of the above fact, it is clear that the respondents 4 to 6 are continuously working right from 1994, after their appointment as Typist in the composite Madurai Revenue Unit and after bifurcation, Theni District Unit. Since the appointment of the private respondents were kept in waiting list by the TNPSC, the action relating to their regularization of services and declaration of probation were kept in abeyance till the issuance of G.O.Ms.No.77, Personal and Administrative Reforms Department, dated 29.04.1999 and G.O. Ms. No.156, Personal and Administrative Reforms Department, dated 17.10.2000, where their service were ordered to be regularized with retrospective effect and subsequent declaration of probation. But, in the case of the petitioners, they were appointed as Junior Assistant in Coimbatore Revenue Unit, in the year 1995 and subsequently transferred to Theni Revenue Unit, based on their own request. It is further submitted by the respondents that nowhere in the existing rules, to place the persons appointed from the waiting list categories below the persons appointed from the permanent list under one way District transfer”



W.P(MD)No.12565 of 2014

The following table would indicate the date of completion of probation of the petitioners and the individual respondents.

S. No.	Names	Declared probation on the date
1.	K. Suruli Mydeen Writ Petitioner	23.10.1996
2.	Justin Santhappa Writ Petitioner	04.03.1997
3	A. Jalal 4 th respondent	25.04.1997
4	N. Senthil Murugan 5 th respondent	27.04.1997
5	U. Rathinamala 6 th respondent	21.04.1997

The first petitioner Justin Santhappa was transferred from Coimbatore to Theni on 23.11.1998 and the second petitioner Suruli Mydeen was transferred from Coimbatore to Theni on 08.03.2000 and they had lost their seniority fixed at Coimbatore Revenue Unit and their seniority at Theni Revenue Unit was fixed with reference to their date of joining in Theni District as per the Rule 35 (aa) of General Rule of Tamil Nadu State & Subordinate Service Rules. The individual respondents have



W.P(MD)No.12565 of 2014

completed probation on 25.04.1997, 27.04.1997, 21.04.1997 respectively which was declared vide proceedings dated 21.02.2001. Since the proceedings “declaring probation” was passed belatedly will not give any right to the petitioners to claim seniority before the respondents. Moreover, it is the mistake of the official respondents for not regularizing the individual respondents in time (due to delay in clearance from TNPSC) and not declaring the probation in time and the petitioners cannot take any advantage of this delay which is purely on the part of the official respondents. The individual respondents cannot be denied their valuable right for the mistake of the official respondents. Therefore, this Court is of the considered view that the plea of the petitioners that the respondents have not completed probation on the date of their transfer is incorrect and the respondents are senior to the petitioners.

7. The next contention raised by the petitioners is that the supplementary panel cannot be taken into account for revising the main seniority panel. On perusing the seniority fixed in the year 2000, it is seen that vide gazette publication, dated 07.06.2000 in Na.Ka.No. 13384/2000/ 2, dated 30.05.2000, a seniority list comprised of 13 members was issued. After seeing this, the affected individual



W.P(MD)No.12565 of 2014

respondents 4, 5 and 6 had submitted a petition to refix the seniority by including their names. After verifying their claim, the official respondents have issued a separate panel under the caption of “supplementary panel” including the names of the individual respondents 4 to 6 and published the supplementary panel in the Gazette publication dated 03.04.2001. The contention of the petitioners is that the respondents names were found in the supplementary panel dated 03.04.2001 and the supplementary panel was drawn by the District Revenue Officer who is not the competent authority and hence the respondents cannot claim to revise the main seniority panel based on the supplementary panel. On considering the rival submissions it is seen that there is no provision under the Act or Rules or guidelines to issue a supplementary list and it is not known how the respondents have issued supplementary panel when there is no such provision to issue supplementary panel. If the petitioners' claim is based on the fact that the respondents have issued only “supplementary list” and so the individual respondents are not eligible to consider for promotion in the year 2000, then this Court is of the considered opinion that it is the mistake of the official respondents, which cannot be foisted on the individuals. The official respondents ought to have followed the correct procedure while



W.P.(MD)No.12565 of 2014

drawing the panel. If there is any omission of names while preparing a panel, then the official respondents ought to have issued a revised panel instead of supplementary panel. The mistake of the official respondents ought to be rectified and the individual respondents right ought to be protected. It is pertinent to note that the supplementary panel was issued wherein it is stated that the supplementary panel is issued for the year 2000 seniority panel. Therefore this Court is of the considered opinion that the respondents 4 to 6 are eligible to be included in the panel dated 30.05.2000 by revising the panel and the names of the respondents 4 to 6 ought to be fixed in the appropriate seniority by including in the main seniority panel of the year 2000 which was drawn on 30.05.2000.

8. The next contention raised by the petitioners is that the issue was already decided by this Court in W.P.(MD)No.1937 of 2009, which was filed by the respondents 4 to 6 and the Learned Judge had held that the respondents (petitioners therein) had raised the issue belatedly and based on latches had dismissed the writ petition. However, it is seen that the respondents 4 to 6 were aggrieved since their names were omitted while fixing the seniority in the year 2000, they had submitted objection, then only the supplementary panel was drawn in the year 2001. The



W.P.(MD)No.12565 of 2014

respondents 4 to 6 have objected to the drawing of supplementary panel in the year 2002 and requested to include their name in the first list and the official respondents have not passed any order in the said request. Thereafter the petitioners were promoted in the year 2008 and the respondents have challenged the same in the 2009 by filing the W.P.(MD) No. 1937 of 2009. Infact the aforesaid facts are recorded in the judgement rendered in W.P.(MD) No. 1937 of 2009. With great respect to the earlier judgment, this Court is of the considered opinion that the individual respondents 4 to 6 were fighting for their rights from 1999 onwards, firstly to regularisation, then to declare probation, then to include their names in the main panel of seniority. The official respondents have committed a series of mistakes as far as the individual respondents 4 to 6 is concerned, firstly the regularisation was delayed, consequently the probation was delayed, then the non inclusion of names in the main panel of seniority. Therefore this Court, with great respect to the earlier judgment is of the considered opinion that there is no delay or latches in claiming the seniority, but it is purely the mistake of the official respondents. Now the official respondents have realized the series of mistakes committed against the respondents 4 to 6 and has rectified through the impugned order. Therefore, this Court is of the



W.P(MD)No.12565 of 2014

considered opinion that there is no delay and laches as alleged by the petitioners and the plea of the petitioners is rejected.

9.The learned Senior Counsel appearing for the petitioners had submitted that the seniority is a civil right which has an important and vital role to play in one's service career and relied on the judgment rendered in ***H.S.Vankani and others Vs. State of Gujarat and others*** reported in ***AIR 2010, Supreme Court 1714***, wherein the Hon'ble Supreme Court held as follows:

'25. Seniority is a civil right which has an important and vital role to play in one's service career. Future promotion of a Government servant depends either on strict seniority or on the basis of seniority-cum-merit or merit-cum-seniority etc. Seniority once settled is decisive in the upward march in one's chosen work or calling and gives certainty and assurance and boosts the morale to do quality work. It instils confidence, spreads harmony and commands respect among colleagues which is a paramount factor for good and sound administration. If the settled seniority at the instance of one's junior in service is unsettled, it may generate bitterness, resentment, hostility among the Government servants and the enthusiasm to do quality work might be lost. Such a situation may drive the parties to approach the administration for resolution of that acrimonious and poignant situation, which may consume lot of time and energy. The decision either way may drive the parties to litigative wilderness to the advantage of legal professionals both private and Government, driving the parties to acute penury. It is well known that salary they earn, may not match the litigation expenses and professional fees and may at times drive the parties to other sources of money making, including corruption. Public money is also being spent by the Government to defend their otherwise untenable stand. Further it also consumes lot of judicial time from the lowest court to the highest resulting in constant bitterness among parties at the cost of sound administration affecting



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W.P(MD)No.12565 of 2014

*public interest. Courts are repeating the ratio that the seniority once settled, shall not be unsettled but the men in power often violate that ratio for extraneous reasons, which, at times calls for departmental action. Legal principles have been reiterated by this Court in [Union of India and Another v. S.K. Goel and Others](#) (2007) 14 SCC 641, [T.R. Kapoor v. State of Haryana](#) (1989) 4 SCC 71, [Bimlesh Tanwar v. State of Haryana](#), (2003) 5 SCC 604. In view of the settled law the decisions cited by the appellants in *G.P. Doval's case* (supra), *Prabhakar and Others case*, *G. Deendayalan*, *R.S. Ajara* are not applicable to the facts of the case. '*

On a perusal of this judgment, this Court is of the considered opinion that the said judgment favouring more to the respondents than the petitioners. In the present case serious injustice was done to the petitioners by drawing a supplementary panel when provisions do not permit to draw supplementary panel and has affected the civil rights of the respondents 4 to 6.

10. At the cost of repetition this Court is of the considered opinion that the official respondents have committed a series of mistakes as far as the individual respondents 4 to 6 are concerned, firstly the regularisation was delayed, consequently the probation was delayed, then the non-inclusion of names in the main panel of seniority and now the official respondents have realized the series of mistakes committed against the



W.P(MD)No.12565 of 2014

respondents 4 to 6 and has rectified through the impugned order.

Therefore, the petitioners have not made out any case and the writ petition is liable to be dismissed and hence the writ petition is dismissed.

11. Hence, the Writ Petition stands dismissed. No costs.
Consequently, connected miscellaneous petitions are closed.

01.09.2022

Index :Yes/No

Internet : Yes/No

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To

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Revenue Department,
Secretariat,
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W.P(MD)No.12565 of 2014

S.SRIMATHY, J.

lr

Pre-Delivery Order made in

W.P(MD)No.12565 of 2014

01.09.2022