



WP(MD)No.21566 of 2022 etc.,

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.12.2022

Pronounced on : 06.12.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)Nos.21566, 21601, 21602 & 22503 of 2022

and

**WMP(MD)Nos.16694, 16695, 15710, 15711, 15746, 15747,
15748, 15749 & 20953 of 2022**

WP(MD)No.21566 of 2022 : -

M.Sasikala

...Petitioner

v.

1.The Secretary to Government,
Commissioner of Revenue Administration,
Chepauk, Chennai – 5.

2.The District Collector, Virudhunagar.

3.The District Revenue Officer,
Virudhunagar.

4.The Secretary,
Tamilnadu Public Service Commission,
TNPSC Road, Broadway,
Chennai – 600003.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records pertaining to the order passed in Na.Ka.A1/31115/2019 passed by



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2nd respondent dated 01.09.2022 and consequential order in Na.Ka.A1/31115/2019 dated 05.09.2022 by the 2nd respondent and quash the same.

WP(MD)No.21601 of 2022 : -

C.Banumathi

...Petitioner

v.

1.The Secretary to Government,
Commissioner of Revenue Administration,
Chepauk, Chennai – 5.

2.The District Collector, Virudhunagar.

3.The District Revenue Officer,
Virudhunagar.

4.The Secretary,
Tamilnadu Public Service Commission,
TNPSC Road, Broadway,
Chennai – 600003.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records pertaining to the order passed in Na.Ka.A1/31115/2019 passed by 2nd respondent dated 01.09.2022 and consequential order in Na.Ka.A1/31115/2019 dated 05.09.2022 by the 2nd respondent and quash the same.



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WP(MD)No.21602 of 2022 : -

K.Muthulakshmi

...Petitioner

v.

1.The Secretary to Government,
Commissioner of Revenue Administration,
Chepauk, Chennai – 5.

2.The District Collector,
Virudhunagar.

3.The District Revenue Officer,
Virudhunagar.

4.The Secretary,
Tamilnadu Public Service Commission,
TNPSC Road, Broadway,
Chennai – 600003.

5.R.Sivaperumal

... Respondents

(5th respondent was impleaded vide
court order dated 02.12.2022
in WMP(MD)No.20953 of 2022)

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records pertaining to the order passed in Na.Ka.A1/31115/2019 passed by 2nd respondent dated 01.09.2022 and consequential order in Na.Ka.A1/31115/2019 dated 05.09.2022 by the 2nd respondent and quash the same.

in WP(MD)No.22503 of 2022 -

1.R.Thirukannamuniyandi

2.T.Muniyandi

... Petitioners



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VS.

- 1.The State of Tamil Nadu,
Rep.by its Principal Secretary to Government,
Revenue and Disaster Management,
Department Service Wing (Ser.3(2)) Section,
Fort.St.George, Chennai – 600 009.
- 2.The Principal Secretary/Commissioner of
Revenue Administration,
Chepauk, Chennai – 600 005.
- 3.The District Collector,
Virudhunagar District, Virudhunagar.
- 4.The District Revenue Officer,
Virudhunagar District,
Virudhunagar.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the notification of the third respondent in Na.Ka.A1/31115/2019 dated 28.02.2022, 09.05.2022 and 01.09.2022 and consequential proceedings of the third respondent in Na.Ka.No.A2/1892/2022 dated 05.09.2022 and directing the respondent to re-post the petitioners to their original posts as Deputy Tahsildars and thus render justice.

For Petitioners
in WP(MD)Nos.21566, 21601,
21602 of 2022 : Mr.T.S.Mohamed Mohideen

For Petitioner in
WP(MD)No.22503 of 2022 : Mr.M.Ravi
for Mr.Aayiram K.Selvakumar



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For Respondents
in WP(MD)Nos.21566, 21601 & 21602 of 2022

: Mr.R.Baskaran,
Additional Advocate General
assisted by Mr.A.K.Manikkam
Special Government Pleader
for R1 to R3
Mr.J.Anand Kumar for R4

Mr.S.Ramsundarvijayaraj for R5
in WP(MD)No.21602 of 2022

For Respondents
in WP(MD)No.22503 of 2022

: Mr.R.Baskaran,
Additional Advocate General
assisted by Mr.A.K.Manikkam
Special Government Pleader

COMMON ORDER

The petitioners herein are working in Virudhunagar District as Deputy Tahsildars. While the petitioners in W.P.(MD)No.22503 of 2022 were promoted as Assistants, the other three petitioners were directly recruited as Assistants. All of them subsequently became Deputy Tahsildars. By the impugned proceedings dated 01.09.2022 and 05.09.2022 issued by the District Collector, Virudhunagar and the consequential proceedings dated 05.09.2022, the petitioners have been



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reverted.

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2.The learned counsel appearing for the writ petitioners reiterated all the contentions set out in the affidavits filed in support of the writ petitions and called upon this Court to quash the impugned proceedings and allow the writ petitions as prayed for.

3.The District Collector, Virudhunagar has filed a detailed counter affidavit and also typed set of papers. The learned Additional Advocate General took me through its contents. The core submission of the respondents is that the impugned proceedings are direct outcome of the various decisions rendered by the Hon'ble Supreme Court of India. It is not as if the respondents have chosen to issue the impugned proceedings on their own. When the respondents have acted only pursuant to the directions of the Hon'ble Apex Court, the impugned proceedings cannot be questioned. The learned Additional Advocate General submitted that the writ petitions deserve summary dismissal.

4.I carefully considered the rival contentions and went through the materials on record. The impugned proceedings



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refer to two decisions of the Hon'ble Supreme Court. The first is dated 11.09.2018 and the second is dated 12.03.2019. The first decision namely Civil Appeal No.9334 of 2018 (Government of Tamil Nadu and Another Vs. Registration Department, SC/ST and M.B.C Employees General Welfare Sangam and Another) arose out of the decision of the Hon'ble Division Bench of Madras High Court rendered in W.P.Nos.11296 of 2003 etc batch dated 28.02.2005. The said decision in turn arose out of the decision of the Tamil Nadu Administrative Tribunal, Chennai in O.A.No.9044 of 1997 etc batch rendered on 22.10.2002. The issue *inter alia* pertained to reservation in the matter of appointment to the post of Deputy Tahsildar in Tamilnadu Revenue Subordinate Services. Since 1977, the Government of Tamilnadu was applying the principle of reservation not only for Scheduled Castes and Scheduled Tribes but also for Backward Classes. In ***Indra Sawhney and Others Vs. Union of India and Others (AIR 1993 SC 477)***, it was held that the principle of reservation cannot be applied at the stage of promotion. The Hon'ble Apex Court however gave a window period of five more years. The five years period expired in 1996-1997. The Government issued orders to continue the reservation system. It was contended by



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the non-reserved category candidates that the post of Deputy Tahsildar is a promotion post and therefore reservation cannot be applied. This argument found favour with the Tribunal as well as the Hon'ble High Court. But the Hon'ble Supreme Court took a different view and held that the appointment of Deputy Tahsildar by way of recruitment by transfer will not amount to promotion. In that view of the matter, the order of the High Court was set aside and the appeal came to be allowed. In order to give effect to the aforesaid decision, the Government issued G.O.(Ms)No.87, Revenue and Disaster Management Department, dated 06.03.2019. When the said Government Order as well as the consequential Government Letters were put to challenge in W.P.Nos.14853 of 2019 etch batch, a learned Judge of this Court vide order dated 23.12.2020 repelled the challenge. The learned Judge also allowed the writ petitions seeking implementation of the Government Order with the following directions :-

"25. It is necessary to issue certain directions before winding up this batch of writ petitions to ensure proper implementation of the Government Order and the Government Letter :-

a. The Government Order in G.O. MS No 87, Revenue and Disaster Management Department, Service Wing [Ser.3 (2)] Section dated 06.03.2019 shall be implemented across the State of Tamil Nadu by



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redrawing the panel as per the Government Order, within a period of six months from the date of receipt of a copy of this Order.

b. The entire process of implementation of the Government Letter in Letter (MS) No. 17, dated 30.01.2019, shall be completed and kept ready within a period of three months and the actual implementation shall be kept in abeyance till the disposal of WP No. 23342 of 2019, wherein, a larger issue has been raised regarding the inter-se rights between the direct recruits and promotees to the post of Sub-Registrar Grade-II and an interim order has also been passed by this Court.

c. Considering the request made by the Learned Advocate General, in order to meet any exigencies, the Government is permitted to fill up the vacancies in those posts whose services are urgently required, by preparing a temporary panel. This should be only a stopgap arrangement to ensure that the administrative work of the Government is not paralyzed during the interregnum period till the impugned Government Order and the Government Letter are finally implemented in letter and spirit. While preparing the temporary panel, it should be made very clear that it is temporary in nature and it will be in effect only up to the final implementation of the Government Order and the Government Letter. It should also be made clear that persons whose names are included in the temporary panel list will not derive any superior rights and they cannot claim any preference on



that basis.

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d. The effect of re-drawl of the panel as per the Government Order and the Government Letter should not have any impact on those persons, who have already retired or have left the services for any other reason.

e. The effect of re-drawl of the panel as per the Government Order and the Government Letter should not result in any recovery proceedings due to the consequential change in the grade or status of those employees who got the benefits during the interregnum period till the judgement was passed by the Hon'ble Supreme Court in the year 2018. This is due to the fact that they actually performed the duties that came along with the concerned posts. and

f. It goes without saying that the rule of reservation will apply only for the purpose of enforcing the same at the point of time of recruitment by transfer from other services while re-drawing the panel and it cannot be extended while considering the promotion and such promotion as a consequence of the re-drawl of the panel will have to satisfy the requirements of the service rules governing the parties.”

5.This order dated 23.12.2020 has been put to challenge



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both before the Hon'ble Division Bench of the Madras High Court as well as the Hon'ble Supreme Court of India in S.L.P.(C) No.3792 of 2021. The Hon'ble Division Bench vide order dated 17.10.2022 in W.A.Nos.1037 and 1036 of 2021 ordered as follows:-

"1. Challenge in these appeals is made to the common judgment and order dated 23.12.2020 recorded on group of writ petitions being W.P.No. 14853 of 2019 and connected petitions. Notice was issued by this Court on 06.07.2021. Appeals are heard from time to time thereafter. As noted in the order of this Court dated 13.10.2022, arguments were already concluded and the matter was kept pending, at the request of the State Authorities, since they wanted to place certain documents on record, which are taken on record today.

2. We note that, as recorded in order dated 13.10.2022, the impugned order of learned single Judge (dated 23.12.2020) is challenged by one of the parties before Hon'ble the Supreme Court in Special Leave Petition (C) No.3792 of 2021. In view of this, propriety demands that, we may not express any opinion qua the sustainability of the impugned order of learned single Judge, however the following aspects need to be noted.

3. Para 25-b of the impugned order of



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learned single Judge reads as under:-

“25-b. The entire process of implementation of the Government Letter in Letter (MS) No. 17, dated 30.01.2019, shall be completed and kept ready within a period of three months and the actual implementation shall be kept in abeyance till the disposal of WP No. 23342 of 2019, wherein, a larger issue has been raised regarding the inter-se rights between the direct recruits and promotees to the post of Sub-Registrar Grade-II and an interim order has also been passed by this Court.”

4. It is noted that the above referred W.P.No.23342 of 2019 was subsequently decided by learned single Judge vide judgment and order dated 03.03.2022. The said order is the subject matter of W.A.No.2308 of 2022 and W.A.No.1027 of 2022. The said judgment dated 03.03.2022 is stayed by this Court by an order recorded on C.M.P.No.17641 of 2022 in W.A.No.2308 of 2022. Appropriate order is also recorded on W.A.No.1027 of 2022 taking note of the stay ordered on W.A.No.2308 of 2022.

5. Since the order arising from the said writ petition (W.P.No.23342 of 2019) is stayed by this Court as noted above, going by the stipulation provided by learned single Judge in para 25-b (as quoted above), the actual implementation of the order dated 23.12.2020 needs to be and is ordered to be



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kept in abeyance till disposal of W.A.Nos.2308 of 2022 and 1027 of 2022. We also note that, since the State has accepted the impugned order dated 23.12.2020, in due compliance of the directions issued by learned single judge vide para 25-b, the State can not implement the said order and therefore is restrained from implementing the said order, for the reasons and circumstances noted above.

6. Liberty is reserved to the parties for early listing of these appeals. In view of pendency of the proceedings before Hon'ble the Supreme Court (arising from the very same order), appropriate call may be taken by the Bench of this Court, about hearing of these appeals, at appropriate time."

6. *Indra Sawhney and Others Vs. Union of India and Others (AIR 1993 SC 477)* was decided by a Bench comprising Nine Hon'ble Judges. There was plurality of opinion. Justice B.P.Jeevan Reddy (For himself and on behalf of M.H.Kania, C.J. and M.N.Venkatachaliah, A.M.Ahmadi, JJ.) authored the lead judgment reflecting the majority view. On the issue of reservation in promotion, Justice Ahmadi did not associate himself with the discussion. As regards reservation in promotion, His Lordship Mr.Justice B.P.Jeevan Reddy held as follows :

"Reservation of appointments or posts under



Article 16(4) is confined to initial appointments only and cannot extend to providing reservation in the matter of promotion.”

Justice Ratnavel Pandian also answered the question on the same lines.

“In [Mohan Kumar Singhania v. Union of India](#) [1992] Supp. 1 SCC 594, a three-Judges Bench of this Court to which I was a party has taken a view that once candidates even from reserved communities are allocated and appointed to a Service based on their ranks and performance and brought under the one and same stream of category, then they too have to be treated on par with all other selected candidates and there cannot be any question of preferential treatment at that stage on the ground that they belong to reserved community though they may be entitled for all other statutory benefits such as the relaxation of age, the reservation etc. Reservation referred to in that context is referable to the reservation at the initial stage or the entry point as could be gathered from that judgment.

...

As regards the reservation in the matter of promotion under [Article 16\(4\)](#), I am in agreement with conclusion No. (7) made in paragraph 121 in Part VII of the judgment of my learned brother B.P.Jeevan Reddy, J..”

Justice P.Sawant took the view that the question regarding reservations in promotion did not fall for consideration at all and



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any opinion expressed by this Court on the said point would be obiter. Justice T.K.Thommen held that reservation is confined to initial appointment to a post and has no application to promotion. Justice Kuldeep Singh in his opinion categorically holds that Article 16(4) permits reservation of appointments or posts in favour of any Backward Class of citizens only at the initial stage of entry into the State services and it does not permit reservation in any other manner in the process of promotion. Justice R.M.Sahai also held that reservation in promotion is constitutionally impermissible as, once the advantaged and disadvantaged are made equal and are brought in one class or group then any further benefit extended for promotion on the inequality existing for promotion on the inequality existing prior to be brought in the group would be treating equals unequally.

To overcome the effect of ***Indra Sawhney's*** case, Article 16(4A) of the Constitution of India was brought. Article 16(4A) pertains only to making provisions in favour of Scheduled Castes and Scheduled Tribes.

7.Where there are several opinions by different Judges in a Bench, the opinion which embodies the greatest common



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measure of agreement among the Bench is to be accepted (vide

Jaishri Laxmanrao Patil v. State of Maharashtra (2021) 8

SCC 1). There cannot be any doubt that the ratio laid down by the Nine Judges bench in Indra Sawhney was not only to the effect that reservation in promotion is impermissible but also that reservation must be confined to initial appointment.

8.In Civil Appeal No.9334 of 2018, the issue was formulated by the Apex Court as follows :

“Whether recruitment to posts, which carry a higher pay and higher responsibilities, by way of transfer would amount to promotion?”

It was held that appointment to the post of Dy.Tahsildar is by way of recruitment by transfer from members of other services and that it was not promotion. Only if it was promotion, then, reservation is not allowed. If it is not promotion, the policy of reservation for Backward Classes can be applied. It was in that view of the matter, the order of the High Court was set aside and the Government's appeal was allowed. The learned Senior Counsel and the learned counsel appearing for the writ petitioners wondered that if the issue had been formulated as to whether the appointment to the post of Dy.Tahsildar is “initial



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appointment”, then, the answer could have been different.

According to them, some of the appointees were first appointed as Junior Assistant/Typist and then promoted as Assistants and then became Dy.Tahsildars. In some of the cases, the appointees originally entered service as directly recruited Assistants. The great jurist H.M.Seervai would remark that asking the right question alone will yield the right answer. In any event, these are only loud musings and they will have to be answered only in SLP (C) No.3792 of 2021.

9. Another comment made by the learned counsel is that if the petitioners had not been promoted as Dy.Tahsildars in the real sense of the term, the question of reversion will not arise at all. While the Hon'ble Division Bench rendered its decision on 28.02.2005, the Civil Appeal came to be allowed by the Hon'ble Apex Court only on 11.09.2018. In the intervening period, no interim order was in operation. When the petitioners herein were appointed as Deputy Tahsildars by way of recruitment by transfer, it was not a conditional order.

10. The resultant situation would not have arisen at all, if it had been declared that the decision is to be enforced only



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prospectively. When the directly recruited Assistants and promotee Assistants were at loggerheads, the issue attained finality in ***M.Rathinsawami Vs. State of Tamil Nadu (2009) 5 SCC 625***. The Hon'ble Supreme Court in ***A.Rajagopalan Vs. District Collector, Thirchirappalli District (2019) 5 SCC 560*** held that the promotions of the directly recruited Assistants effected between 07.02.1995 and 08.04.2009 and their seniority in the respective positions shall not be disturbed and that ***Rathinsawami*** decision will be given effect to prospectively. But such a declaration is yet to be obtained in the present case. Judicial discipline demands that this Court does not even make a whisper in that regard. It is for the aggrieved parties to obtain such a declaration in the pending S.L.P.(C)No.3792 of 2021.

11.The issue can be approached from yet another angle. There cannot be any doubt that the order of the Hon'ble Apex Court rendered on 11.09.2018 has to be implemented by the Administration. Failure to do so will amount to contempt. However, while enforcing the decision, the respondents cannot give a go-bye to due process. The learned Senior counsel and the learned counsel for the petitioners pointed out several *lacunae*.



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The first defect is that the petitioners were not put on notice in the first instance. The settled departmental practice is that only a draft panel is first prepared and after receiving objections, it is finalized. I can usefully invoke the analogy of constructing a building. While the mythical vishvakarma can magically create a palace in a moment, we mortals will have to go step by step. The foundation has to be laid, then, the first floor has to be constructed and then storey after storey can be built. Likewise, the draft panel for the earliest year will have to be first prepared. After putting the stakeholders on notice and receiving their response, it has to be finalized. Then, the panel for the succeeding years will have to be prepared in the same manner. The year-wise panels will issue forth one after another. Even twin babies are born one after another. But in the case on hand, panels have been revised, re-drawn and prepared afresh at one go for 15 years at a stretch from 2004 to 2019. Such simultaneous preparation is clearly impermissible.

12. There is a reason as to why such a process has to be adopted. In the cases on hand, it is seen that backlog vacancies have been carried forward even beyond four years. During some years, some of the empaneled persons were not eligible for inclusion. Counsel have given specific instances in their written



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notes as to how the empaneled persons were suffering from punishment on the crucial date.

13. Some of the writ petitioners came before this Court earlier. They were permitted to lodge their objections. It is seen that the authority has not even considered the objections. A standard order had been passed that the objections are liable to be rejected since the authority is only implementing the orders of the Hon'ble Apex Court.

14. Yet another aspect is that of proportionality. The doctrine of proportionality requires the reviewing court to assess the balance which the decision maker has struck, not merely whether it is within the range of rational or reasonable decisions (2001) 1 WLR 2002). Whenever a decision has to be enforced or implemented, if it is possible to implement the same without causing injury, effort must be taken to do so. For instance, if vacancies are available, then the petitioners can as well be accommodated against them instead of edging them out. It appears that such a thought did not even enter the minds of the authorities. The impugned orders fail to pass muster when tested on the anvil of proportionality.



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G.O.(Ms)No.87, dated 06.03.2019.

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17.For the aforesaid reasons, the impugned orders are set aside. If in the meanwhile they have been given effect to, the results shall be undone. The writ petitions are allowed. The respondents are directed to adopt due process and prepare fresh proceedings in the light of the observations made above. However, final orders shall not be issued and the authorities have to await the outcome of SLP(C) No.3792 of 2021. Connected miscellaneous petitions are closed.

06.12.2022

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

- 1.The Principal Secretary to Government,
Revenue and Disaster Management,
Department Service Wing (Ser.3(2)) Section,
Fort.St.George, Chennai – 600 009.
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Revenue Administration, Chepauk, Chennai – 600 005.
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