



W.P.(MD)No.15059 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.15059 of 2018

and

W.M.P.(MD)Nos.13637 to 13639 of 2018

1. M.Murugan
2. S.Gnana Pandi
3. N.Masanam
4. V.Ganesan
5. S.Sathiyamoorthi
6. J.Arul Jenita

... Petitioners

VS

1. The Registrar of Co-Operative Societies,
O/o. the Registrar of Co-Operative Societies,
No.370, EVR Periyar High Road,
Kilpauk, Chennai – 10.
- 2.The Managing Director cum Joint Registrar,
Ramanathapuram District Central Co-operative Bank Ltd.,
No.370, EVR Periyar High Road,
Kilpauk,
Chennai-10.
- 3.The Joint Registrar of Co-operative Societies,
Collectorate Complex,
Ramanathapuram-623503.



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4. S.Rajan
5. Sundara Mahalingam
6. V.Ramesh
7. R.Murugan
8. K.Balakrishnan
9. G.Vishwanathan
- 10.R.Saravanan
- 11.D.Kumarakurubaran
- 12.S.Murugan
- 13.A.Boopathi
- 14.N.Sathya Bama
- 15.K.Sarala Devi
- 16.A.M.Kavitha

... 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 in Na.Ka.2599/2015/SAPA dated 14.06.2018 on the file of the respondent No.3 and quash the same as illegal and consequently direct the Respondent No.2 to refix the seniority and effect promotions to the post of Manager in accordance with rule of reservation and order of rotation within the time period stipulated by this court.

For Petitioners : Mr.T.Lajapathi Roy

For Respondents : Mr.S.Kameswaran for R1
Government Advocate (Civil side)
Mr.D.Shanmugaraj Sethupathi for R2
Mr.V.O.S.Kalali Selvam ofr R4 to R13
No appearance for R15 & R16



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ORDER

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order dated 14.06.2018 in Na.Ka.No. 2599/2015/SAPA dated 14.06.2018 and consequently direct the respondents to re-fix the seniority and effect promotions in accordance with rule of reservation and order of rotation.

2. The brief facts of the case are that the petitioners originally appointed as Assistant through the proceedings of the Special Officer, dated 06.10.2008. Subsequently promoted as Assistant Manager, vide proceedings, dated 28.12.2011. The seniority panel for the year 2009 was released vide proceedings dated 29.04.2009 and the eligible candidates were called for to submit objections. The petitioners have submitted their objections on 11.05.2009 stating that the seniority panel ought to have been drawn in accordance with rule of reservation and order of rotation, but the panel was prepared based on date of joining and date of birth. The Special Officer through his proceedings, dated 20.10.2009 had passed an order stating the seniority is drawn based on the date of joining and the



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date of birth, hence the objections cannot be considered. Thereafter, the petitioner approached the Managing Director on 13.02.2014 by way of representation to redraw the seniority list. The contention of the petitioner is that as per the Section 40(1) of the Tamil Nadu Government Servants (conditions of the service) Act 2016 provides for the fixation of seniority and the seniority of a person in a service shall be determined in the order of the placement in the list prepared by Recruiting agency in accordance with the rule of reservation and the order of rotation specified in Schedule-V. The first respondent proceedings in Na.Ka.No. 55158 /2015/MaVaPa-1 dated 21.09.2015 had clearly stated that the seniority was fixed based on the date of joining and date of birth and the same is violating the G.O.Ms.No.55, Personnel and Administrative reforms dated 08.04.2010 wherein it is directed to follow the roster in the matters of promotion as prescribed in Government Gazette No.107, dated 08.04.2010. Aggrieved over the same, the petitioners have filed this writ petition.

3. The respondents have filed a counter affidavit stating that the issue of seniority in the Co-operative Society was not under litigation for several years. Some Societies are following the seniority list based on the roster system and in



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some of the Societies the seniority list was revised based on the date of joining / marks. In the present case, the seniority is revised based on the date of joining. 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 date of joining / marks. The learned Counsel for the respondents submitted that the seniority is revised as per the merits and the candidates were promoted as Assistants. Thereafter, promoted as Assistant Manager and also Manager. However, four persons were promoted based on the seniority list under roster system. Since they have put in service for more than eight years, the said candidates ought to be reverted. Therefore, prayed to fix some date and based on the cut off, the promotions can be given effect.

4. Heard Mr.S.Kameswaran, learned Government Advocate appearing for first respondent, Mr.D.Shanmugaraja Sethupathi, learned Counsel appearing for the second respondent, Mr.V.O.S.Kalaiselvam, learned Counsel appearing for the respondent Nos.4 to 13 and there is no appearance for the respondent Nos.15 & 16.



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5. The issue of fixing seniority was dealt with by the Hon'ble Supreme Court 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 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



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has a role to play in the matter of determination of inter se seniority.”

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.

6. A plea was raised that G.O. Ms. No. 107 and the Special Bye-law of the



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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 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.

7. 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.

8. The said contention of the respondents that four candidates were granted promotion long back based on reservation and the said four persons shall be exempted from reconsideration. The contention of the official respondents that the promotion was granted long back based on reservation / roaster is accepted,



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then promotion was granted without authority of law, which means is illegal promotion. Illegality cannot be regularized by court orders. Moreover, it will affect the promotional aspects of the other contenders. Therefore, this Court cannot authorize an illegality and the claim of the official respondents regarding the said four persons cannot be entertained.

9. The official respondents should strictly follow the Bimlesh Tanwar case and redraw the seniority list based on marks and grant promotion. This shall be followed for persons who were granted illegal promotion earlier.

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

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Index : Yes / No
Internet : Yes

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9/11



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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 Registrar of Co-Operative Societies,
O/o. the Registrar of Co-Operative Societies,
No.370, EVR Periyar High Road,
Kilpauk, Chennai – 10.
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S.SRIMATHY, J

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