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W.P.(MD)Nos.5305 and 5306 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.10.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

**W.P.(MD)Nos.5305 and 5306 of 2017**

**and**

**W.M.P.(MD)Nos.4257 to 4260 of 2017**

**W.P.(MD)No.5305 of 2017:**

K.P.Gurusamy

... Petitioner

vs.

1.Director of Rural Development,  
Panagal Building, Saidapet,  
Chennai-600 015.

2.The District Collector,  
Virudhunagar District,  
Virudhunagar.

... 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 on the file of the 1<sup>st</sup> respondent in connection with the impugned order passed by him in his Proceedings [Na.Ka.No.40260/2014/EE3](#), dated 09.02.2017 and to quash the same as illegal and arbitrary and consequently, to direct the respondents to fix the



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seniority on par with the petitioner's batch mates namely P.Muthukumar and P.Sivaprakasam, whose seniority Rank No. 1056 and 1057 respectively with effect from 25.04.2008 in the light of the order passed by this Court in W.P. (MD) No.1019 of 2008, dated 15.02.2008 and thereby, to include the petitioner in the provisional inter-se seniority list as on 01.01.2009 drawn by the 1<sup>st</sup> respondent in his proceedings in Rc.No.40260/2014/EE3, dated 31.10.2016, within the time limit that may be stipulated by this Court.

**W.P.(MD)No.5306 of 2017:**

M.Ganesan

... Petitioner

vs.

1. Director of Rural Development,  
Panagal Building, Saidapet,  
Chennai-600 015.

2. The District Collector,  
Virudhunagar District,  
Virudhunagar.

... 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 on the file of the 1<sup>st</sup> respondent in connection with the impugned order passed by him in his Proceedings [Na.Ka.No.40260/2014/EE3](#), dated 09.02.2017 and to quash the same



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as illegal and arbitrary and consequently, to direct the respondents to fix the seniority on par with the petitioner's batch mates namely P.Muthukumar and P.Sivaprakasam, whose seniority Rank No. 1056 and 1057 respectively with effect from 25.04.2008 in the light of the order passed by this Court in W.P. (MD) No.1019 of 2008, dated 15.02.2008 and thereby, to include the petitioner in the provisional inter-se seniority list as on 01.01.2009 drawn by the 1<sup>st</sup> respondent in his proceedings in Rc.No.40260/2014/EE3, dated 31.10.2016, within the time limit that may be stipulated by this Court.

In both cases:

For Petitioners : Mr.G.Thalaimutharasu  
Respondents : Mr.Veera Kathiravan  
Additional Advocate General  
assisted by M/s.D.Farjana Ghoushia  
Special Government Pleader  
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### **COMMON ORDER**

The writ petition in W.P.(MD)No.5305 of 2017 is filed for issuance of a writ of Certiorarified Mandamus, to quash the impugned order dated 09.02.2017 passed by the 1<sup>st</sup> respondent and consequently, to direct the respondents to fix the seniority on par with the petitioner's batch mates namely P.Muthukumar and



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P.Sivaprakasam, whose seniority Rank No. 1056 and 1057 respectively with effect from 25.04.2008 in the light of the order passed by this Court in W.P. (MD) No.1019 of 2008, dated 15.02.2008 and thereby, to include the petitioner in the provisional inter-se seniority list as on 01.01.2009 drawn by the 1<sup>st</sup> respondent in his proceedings, dated 31.10.2016, within the time limit that may be stipulated by this Court.

2. The brief facts of case as stated in W.P.(MD)No.5305 of 2017 are that the petitioner was appointed as Overseer as per the order of this Court in W.P. (MD)No.1019 of 2008, vide order, dated 15.02.2008. In the year 2007, the 1<sup>st</sup> respondent issued notification for recruitment to the post of Overseer in all District Panchayat Unions, Virudhunagar through District Employment seniority. The petitioner had Diploma in Civil Engineering and had seniority in the District Employment Exchange. The contention of the petitioner is that his name was not sponsored for the said post. Therefore, the petitioner approached the 2<sup>nd</sup> respondent with a representation requesting to consider the petitioner for



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appointment to the post of Overseer. The 2<sup>nd</sup> respondent without considering the G.O.Ms.No.98, Personnel and Administrative Reform (P) Department, dated 17.07.2006 and Rule 4 of the Tamil Nadu Panchayat Development Engineering Subordinate Service Rules, rejected the petitioner's case on the ground that the names have been considered on ratio of 1:1 and by following communal rotation only. Aggrieved over the same, the petitioner filed a writ petition in W.P.(MD) No.1019 of 2008 to quash the same and consequently, to direct the respondents to appoint the petitioner in the post of Overseer by considering the employment seniority of 1986-1987 batch. After hearing both sides, this Court was pleased to allow the writ petition, vide common order, dated 15.02.2008, with a specific direction to the respondents to consider the petitioners' case for appointment to the post of Overseer.

3. The 2<sup>nd</sup> respondent had issued appointment order to two persons namely, M.Sivaprakasam and P.Muthukumar, vide his proceedings, dated 17.04.2008 and they joined the service on 25.04.2008. But in the petitioner's case and in the case



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of one M.Ganesan, the 2<sup>nd</sup> respondent without any valid reasons stated that there is no vacancy in Aruppukkottai Panchayat Union and Sivakasi Panchayat Union and rejected the claim of the petitioner and the said M.Ganesan. Since the 2<sup>nd</sup> respondent had not taken any steps to accommodate the petitioner in the said post, the petitioner had filed Contempt Petition (MD) Nos.79 and 80 of 2009. When the matter came up for final hearing on 02.07.2012, the 2<sup>nd</sup> respondent, vide his communication, dated 22.06.2012, made his assurance and submitted that the petitioners therein will be appointed within three months. However, the 2<sup>nd</sup> respondent filed a Sub Application (MD) No.71 of 2012 and sought for further extension of time. On 05.10.2012, this Court expressed its displeasure over the act of the 2<sup>nd</sup> respondent in making inordinate delay in implementing the order. Further, this Court expressed that the act would amount to contempt and directed the 2<sup>nd</sup> respondent to implement the order within 29.10.2012. Pursuant to the final chance, the then 2<sup>nd</sup> respondent came forward to issue an appointment order, vide his proceedings, dated 26.10.2012, appointing the petitioner as Overseer and posted him at Narikudi Panchayat Union. The inordinate delay caused by the



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respondents are illegal, arbitrary and against the principles of natural justice.

4. On perusal of the orders passed by this Court in the writ petition, contempt petition and sub application, it is clear that the respondents without any valid reasons made the petitioner to run from pillar to post since 2008 and the petitioner was forced to lose his service and monetary benefits. Though the petitioner's appointment pertains to the year 2008 batch, the 2<sup>nd</sup> respondent has not sent any proposal to the 1<sup>st</sup> respondent to fix the petitioner's seniority in the cadre of Overseer on par with his batchmates namely, P.Muthukumar and M.Sivaprakasam. In the meanwhile, the petitioner's service was regularized and probation was declared. The petitioner passed all departmental tests, but the 2<sup>nd</sup> respondent has not fixed the petitioner's seniority on par with his batchmates. Hence, the petitioner submitted a representation, dated 05.07.2016, requesting to send the proposal to the 1<sup>st</sup> respondent to fix the petitioner's seniority. In the meantime, the 1<sup>st</sup> respondent has issued provisional seniority list as on 01.01.2009, vide proceedings, dated 31.10.2016, wherein the petitioner's batchmates namely, P.Muthukumar and M.Sivaprakasam have been placed at



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Seniority No.1056 and 1057 respectively, but the petitioner's name was not included in the said list, though the petitioner belong to 2008 batch, in pursuant to the order, passed by this Court in W.P. (MD)No.1019 of 2008, dated 15.02.2008. Unless the petitioner's seniority is fixed on par with his batchmates, the petitioner would be put to great hardships.

5. Therefore, the petitioner filed a writ petition in W.P.(MD)No. 22435 of 2016 for issuance of writ of Mandamus, directing the 2<sup>nd</sup> respondent to send proposal to the 1<sup>st</sup> respondent for inclusion of the petitioner's name in the provisional seniority list, dated 31.10.2016, in the cadre of Overseer/Junior Draughting Officer on par with his batchmates namely P.Muthukumar and P.Sivaprakasam, whose seniority Rank No. 1056 and 1057 respectively with effect from 25.04.2008 in the light of the order passed by this Court in W.P. (MD) No. 1019 of 2008 dated 15.02.2008 and based on the petitioner's representation dated 05.07.2016.



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6. This Court disposed of the above said writ petition on 23.11.2016 directing the 1<sup>st</sup> respondent to consider the representation and pass orders within a period of 4 weeks. The 1<sup>st</sup> respondent, vide order, dated 09.02.2017, rejected the plea on the ground that only due to the filing of the contempt petition, the petitioner was accommodated inspite of the fact that the petitioner had obtained lower mark. For the year 2008 recruitment, there was no written examination for anyone and only based on employment seniority all were accommodated. Thereafter the mode of recruitment was changed and the candidates ought to attend written examination from the year 2009. However the contention of the petitioner is that admittedly, when the recruitment is for the year 2008 and order pronounced by this Court pertaining to that recruitment, denying the benefit of 2008 batch is highly unjust and arbitrary and moreover, even in the Contempt Petition, it is nowhere stated that the petitioner has not secured higher mark for the year 2008 batch. Aggrieved over the denial, the present writ petition is filed.



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7. The 1<sup>st</sup> respondent has filed a counter affidavit in W.P.(MD)No.5305 of 2017 stating that the petitioner has been appointed as Overseer, vide the Collector order, dated 26.10.2012, based on the orders passed by this Court in W.P. (MD) No.1019 of 2008. As per the G.O.(D).No.561, Rural Development and Panchayat Raj (E3) Department, dated 26.10.2012, the petitioner had joined as Overseer at Narikudi Panchayat Union on 29.10.2012. As per the Director of Rural Development and Panchayat Raj's letter, dated 21.11.2007, guidelines were issued to the District Collectors to fill the 50% of the vacancies in the cadre of Overseers/Junior Draughting Officers by following employment seniority-cum-roaster by calling for a panel of names in the ratio of 1:1 from the Employment Exchange and only persons who had not completed 40 years as on first July of the year in which the appointment is made are eligible for appointment. In G.O.Ms.No.98, Personnel and Administrative Reforms Department, dated 17.07.2006, the upper age limit of 35 years has been relaxed by 5 years. Following the above orders, the District Collector, Virudhunagar called for list from the Employment Exchange for 6 posts of Overseers and 1 post of Junior





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seniority.

8. The counter affidavit also states that when list was called for to fill up 2 posts of Overseers on 05.03.2008, list of 10 candidates in 1:5 ratio, in addition to that the list of petitioners of the above 4 writ petitions were received from Employment Exchange including the petitioner herein. Since only 2 vacancies are available, as per the employment seniority only two persons namely M. Sivaprakasam and P. Muthukumar were appointed on 25.04.2008. The petitioner was not appointed. Then as per the Commissioner of Rural Development and Panchayat Raj's letter, dated 05.01.2009, again orders were given with revised guidelines to fill up the vacancies caused due to retirement / death / promotion. Subsequently, list was called for 4 posts in 1:5 ratio from Employment Exchange. Though the petitioner was not sponsored by the Employment Exchange, the District Collector got special permission for the petitioner for the written exam conducted for the recruitment of Overseer and the petitioner was allowed to write the exam. But the petitioner got lower mark and was not appointed. Aggrieved by this, the petitioner filed Contempt Petition (MD)No.79 of 2009. The 2<sup>nd</sup>



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respondent made his assurance and submission that the petitioner will be appointed within three months. As per the G.O.(D).No.561, Rural Development and Panchayat Raj (E3) Department, dated 26.10.2012, relaxation for age and employment seniority was got from the Government and the petitioner was appointed and joined on 29.10.2012.

9.The counter affidavit also states that the respondents have not caused any delay in appointing the petitioner. In every year, there was recruitment for the post of Overseer from 2007, 2008 and 2009. Every year the procedure for recruitment varied. Eligible list of candidates was obtained from the Employment Exchange and appointments were made. As the petitioner's name was not included by the Employment Exchange in the eligible list, he was not appointed. Since only 2 vacancies was available, the said M.Sivaprakasam and P.Muthukumar were appointed based on the employment seniority. Based on the date of joining into service, the seniority list of Overseers was prepared. Since the petitioner entered into service only from 29.10.2012, the petitioner was not in service as on



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01.01.2009, so, he was not included in the seniority list. The petitioner's service was regularized only from 29.10.2012, i.e., the date of joining into service. Thereafter, the petitioner passed all departmental tests and his probation was declared from 29.10.2014. Every year, the inter-se seniority of Overseers / Junior Draughting Officers in State level is fixed by the Director of Rural Development and Panchayat Raj based only on the date of their joining the post as mentioned in para 8 (f) of G.O.(Ms.)No.96, Rural Development and Panchayat Raj (E3) Department, dated 06.06.2008. P.Muthukumar and M.Sivaprakasam have been included in 01.01.2009 seniority list along with those who have joined duty between 01.01.2008 to 31.12.2008 and fixed in seniority Nos.1056 and 1057. The petitioner was not in service during this period, hence, he was not included in the seniority list.

10. The counter affidavit further states that based on the judgment delivered on 23.11.2016, petitioner's representation was rejected vide proceedings, dated 09.02.2017. During 2008, there were only two vacancies and two persons were



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appointed from 2008 Employment Seniority list. All the persons including the petitioner in 2008 Employment Seniority list could not be appointed. During 2009, the petitioner was also given special permission for the written test and he was not selected because of lower mark. Based on the directions in the Contempt Petition, the petitioner was appointed on 26.10.2012 through the G.O.(D).No.561, Rural Development and Panchayat Raj (E3) Department, dated 26.10.2012. Therefore, the claim of the petitioner was rejected. Hence, the 1<sup>st</sup> respondent prayed to dismiss the writ petition.

11. Heard Mr.G.Thalaimutharasu, learned Counsel appearing for the petitioner and Mr.Veera Kathiravan, learned Additional Advocate General appearing for the respondents.

12. The learned Counsel appearing for the petitioner submitted that in the recruitment process in the Police Department, several orders were passed granting seniority on par with the batch mates. Even though they were appointed on a



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subsequent date and the Government has also implemented it based on the order of the Court and granted appointments to some of the Police persons. Even as per the petitioner the seniority was granted on Court's orders. This Court is of the considered opinion that the petitioner ought to independently substantiate based on any rules or regulations.

13. The claim of the petitioner is that the petitioner was considered for recruitment during the year 2008. In spite of vacancy, the respondents have not appointed the petitioner. Thereafter, in the contempt proceedings, the respondents granted appointment. In such circumstances, there was a delay in appointing the petitioner. Hence, the petitioner is entitled to seniority on par with the persons who were considered for recruitment in the year 2008.

14. The respondents submitted that for the post of Junior Draughting Officers / Overseers in the year 2007, the petitioner's name was not sponsored by the employment exchange. Aggrieved over the same, the petitioner has preferred



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a writ petition. Pending that writ petition, the 2008 recruitment process was started and the petitioner's name was sponsored along with 3 other persons in the year 2008. The available vacancies were only two. The petitioner submitted that the available vacancy was three. But this plea was refuted by the respondents by stating that the Government has granted permission to fill up only two posts and has relied on the communication of the District Collector, dated 21.03.2008, wherein the District Collector has called for list of names from the District Employment Exchange by showing only two posts. For this communication, the District Employment Exchange has given a list containing four names based on the employment exchange seniority. The first two names were appointed and the petitioners in W.P.(MD)Nos.5305 and 5306 of 2017 were not considered, because they were juniors in employment exchange seniority.

15. In the subsequent recruitment in the year 2009, the method of recruitment was completely changed. The Commissioner, vide circular, dated 05.01.2009, under Clause 7 has directed the recruiting authorities to conduct



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examination and the marks in written examination is 60 and marks for employment exchange seniority is 40.

16. The contention of the respondents is that the employment exchange has not sponsored the petitioner's name in both the writ petitions for the recruitment process in the year 2009. In spite of the same, the petitioners were allowed to write the written examination. However, the petitioners had scored lower marks. Therefore, the petitioners' name was not considered. In the meanwhile, the petitioners had preferred contempt petitions for non-compliance of the orders of this Court. In the contempt proceedings the Learned Advocate appearing for the contemnors submitted that the same would be complied.

17. However, the learned Additional Advocate General appearing for the respondents submitted that there is no contempt at all and referred the order, dated 15.02.2006, passed by this Court and the relevant portion of the order is extracted here under:



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*“4. In view of the above position, the writ petitions are allowed and the second respondent is directed to sponsor the names of the petitioners to the first respondent and in turn, the first respondent is directed to consider the names of the petitioners and appoint them, if they satisfy the other basic qualifications including employment seniority. No costs. Consequently, connected miscellaneous petitions are closed.”*

18. This Court has specifically directed the 2<sup>nd</sup> respondent to sponsor the petitioner's name and direct the 1<sup>st</sup> respondent to consider the names of the petitioners and appoint them, **if they satisfy the basic qualifications including the employment seniority.** On verification it was found that the employment exchange has not sponsored the petitioners' name because they were over-age. They have crossed the age of 35 years. For this fact only the petitioners preferred writ petitions and this Court directed the employment exchange to sponsor the name of the petitioners. However, this Court has not issued any positive direction to appoint the petitioners in the said post. This Court has specifically held that if the petitioners satisfy the other basic qualifications including employment seniority, When the petitioner was over aged the employment exchange has not



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sponsored the petitioners. Therefore, the learned Additional Advocate General is absolutely right in stating that there is no contempt at all.

19. However, during the contempt proceedings, the respondent submitted before this Court that the petitioners will be appointed within three months. Based on such submission, this Court directed the respondents to grant appointment and the relevant portion of the order is extracted here under:

*"2. Today, learned Government Advocate has produced a communication, In No.01/179/2009. dated 22.06.2012 from the District Collector, Virudhunagar District to the effect that the petitioners will be appointed within three months. The id communication, dated 22.06.2012 is extracted hereunder:*

*"In your letter cited, it has been stated that the contempt petitions filed to implement the orders passed in W.P.(MD)Nos. 1019 and 1021 of 2008 dated 15.02.2008 came up before the Hon'ble Madurai Bench of Madras High Court for hearing on 18.06.2012 and the last chance to comply the Court order is posted on 26.06.2012 in the Hon'ble Court. In this connection. I am to state that as per the orders passed W.P.(MD)Nos. 1019 and 1021 of 2008, dated 15.02.2008, the Petitioners will be appointed within three months. This fact may kindly be appraised to the Hon'ble Court and arrange for the disposal of the contempt petitions accordingly".*



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20. The learned Additional Advocate General appearing for the respondents submitted that it is unknown how the District Collector has submitted the communication, dated 22.06.2012 and granted a concession that the petitioners would be appointed within three months. The learned Additional Advocate General appearing for the respondents submitted that any concession given by the Advocate cannot be binding on the Government. The petitioner has received the appointment order based on the concession granted by the District Collector before this Court in the contempt proceedings and subsequently, he was appointed.

21. Now, the petitioner claims seniority on par with the said P.Muthukumar and M.Sivaprakasam. The service benefits, monetary benefits and other benefits will accrue to any employee from the date of issuance of the appointment order. Prior to that, there may be any issue in the recruitment process and that will not give right to the petitioner to claim any seniority.



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22. Since the employment exchange has not sponsored the petitioners' name, the litigation was started simply to sponsor their names and it will not give any right to the petitioners for appointment. The Government being the recruiting agency has every right to fill up the necessary vacancy. In the present case, the Government has taken a policy decision to fill up 50% of the existing vacancy.

23. The learned Counsel for the petitioner submitted that there are two Overseer posts and one Junior Draughting Officer post. However, the District Collector based on the direction to fill up 50% of the vacancies, has decided to fill up only two Overseer posts and not the other Junior Draughting Officer post. In such circumstances, the respondents have rightly appointed the first two names who are senior in the employment exchange seniority list.



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24. In the year 2009, the respondents have changed the recruitment process. In the written examination, the petitioners have miserably failed but has obtained the appointment order under the contempt proceedings by arm twisting the respondents. Now, the petitioners are claiming seniority on par with the said P.Muthukumar and M.Sivaprakasam that too from 2008. When the petitioners were not even in service in the year 2008, when the petitioners were unemployed during 2008, hence claim seniority for the period is totally illegal. If this plea is allowed then the petitioner would claim to pay salary for that period. In other words, the petitioners are claiming that the petitioners are deemed to be in service and grant the benefits of seniority, which is impermissible.

25. Therefore, by claiming merely employment seniority, the petitioners are seeking to fix the seniority in the post of Overseer which is not legally sustainable. As stated supra, any right will prevail from the date of appointment and not prior to the date of appointment. Therefore, this illegal claim is not sustainable. Hence, the claim of the petitioners is rejected and the writ petitions



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are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No  
Internet : Yes

**13.10.2022**

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To

1. Director of Rural Development,  
Panagal Building, Saidapet,  
Chennai-600 015.
2. The District Collector,  
Virudhunagar District,  
Virudhunagar.



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