



W.P.(MD)No.1734 of 2016

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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.1734 of 2016

and

W.M.P.(MDNos.1582 & 1499 of 2016

1. S.Kadalkannan
2. S.Muthuvel
3. P.Kasilingam
4. G.Shanmuga Sundaram
5. A.Manickkaraj
6. D.Arunkumar
7. V.Kanimozhi
8. P.Velmurugan
9. G.Jeyabalan

... Petitioners

VS

1. The Registrar of Co-operative Societies,
170,E.V.R. Periyar Salai
Co-operative Bank Ltd.,
Kooturavu Nagar,
Trichy Road,
Dindigul-624 005.
2. The Managing Director/Joint Registrar of
Co-operative Societies,



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Dindigul District Central,
Co-operative Bank Ltd.,
Kooturavu Nagar, Trichy Road,
Dindigul-624 005.

3. The President,
Dindigul District Central Co-operative Bank Ltd.,
Kooturavu Nagar,
Tirunelveli Road,
Dindigul-624 005.

... 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 1st respondent circular in Na.Ka.No.55158/2015/Mavapa1 dated 21.09.2015 and the seniority list fixed by 2nd respondent in Na.Ka.No.87/2009-10/pa1 dated 11.3.2014 and quash the same and direct the 2nd respondent to fix the seniority list based on the merits and prepare the seniority list based on the marks obtained in their appointments.

For Petitioner : Mr.V.O.S.Kalaiselvam

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

Mr.D.Shanmugaraj Sethupathi for R2 & R3



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ORDER

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to challenge the impugned order dated 21.09.2015 and the impugned seniority list dated 11.03.2014 and the consequential relief to prepare the seniority list based on the marks obtained during their appointments.

2. The petitioner worked as Assistant in the second respondent Bank on 29.11.2010. The written examinations were held for such recruitment. The appointments were made both on merits based on the marks obtained in the written examination as well as the roster system. Thereafter, vide order, dated 11.03.2014, seniority list was published and the respondents called for objections. All the petitioners aggrieved over the seniority list and submitted their objections on 19.03.2014. The contention of the petitioner is that the seniority list is prepared based on the roster system as per the serial number as per the appointment order dated 29.11.2010. Thereafter, the petitioner obtained information under Right to Information Act and it came to the knowledge of the petitioner that the Official respondents are following the seniority list based on



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the roster. The respondents through their reply dated 27.11.2015 have admitted that the seniority list is prepared as per the circular of the Registrar of Co-operative Societies in Na.Ka.No.111439/2013/MaVaPa1 dated 17.11.20155 as well as the Tamil Nadu Government (Nilai) G.O.No.107 dated 08.04.2010, the roster system was followed in preparing the seniority list.

3. The contention of the petitioner is that G.O.No.107 states that roster system should be followed for appointments and no where it is referred that roster should be followed for promotion. However, only in the circular date 17.11.2015 referring the G.O.No.107 has stated that the promotion shall be based on the roster system. Therefore, the claim of the petitioner is that the circular is erroneous which is passed without considering the Government Order in its proper perspective. The contention of the respondents is that based on the said circular roster system is followed for preparing seniority list and promotion. In Tamil Nadu the entire Co-operative Society is following the same system for very many years. Therefore, at this point, the same cannot be changed, since it will unsettle the settled issues. This Court has already granted the Interim Order dated 28.01.2016 whereby the seniority list drawn based on roster was stayed. The



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respondents have filed a Vacate Stay petition.

4. Heard Mr.V.O.S.Kalaiselvam, learned Counsel appearing for the petitioner, Mr.S.Kameswaran, learned Government Advocate appearing for first respondent and Mr.D.Shanmugaraja Sethupathi, learned Counsel appearing for the second and third respondent.

5. The issue of fixing seniority was dealt with 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 Consitution 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.



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

6. 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



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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.

7. 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 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.

8. Since the issue is settled in Bimlesh Tanwar's case, the impugned order passed by following reservation / roaster is illegal and the same is liable to be set aside. 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,



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thereafter, issue promotion. The official respondents should strictly follow the Bimlesh Tanwar case and redraw the seniority list based on marks and the said exercise shall be completed within a period of eight weeks from the date of receipt of the copy of the order.

9. With the above direction, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

04.04.2022

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.



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S.SRIMATHY, J

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