



W.P. No.23442 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.06.2023

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.23442 of 2011

1.A.Amirtham (deceased)

2.K.Shanmugasundaram

3.Gohul Saranya

4.S.Ramesh

5.C.S.Rajesh

... Petitioners

(P2 to P5 substituted as legal heirs in place of the deceased petitioner (P1) as per order dated 10.12.2014 by MMSJ in M.P.No.1 of 2014 in W.P.No.23442 of 2011)

v.

1.State of Tamil Nadu

Rep. by Principal Secretary/ Commissioner of
Commercial Tax, Chepauk,
Chennai-600 005.

2.The Joint Commissioner of Commercial Taxes,
Coimbatore Division, Coimbatore.

3.The Deputy Commissioner of Commercial Taxes,
O/o Deputy Commissioner of Commercial Taxes,
Coimbatore.

4.The Assistant Commissioner of Commercial Taxes,
O/o Assistant Commissioner (Commercial Taxes),
Avinashi Road Circle, Coimbatore.

... Respondents



W.P. No.23442 of 2011

Prayer: The writ petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the respondents 1 to 3 herein to re-fix the petitioner's seniority in the cadre of Assistant, place the petitioner in 1992 Assistants List over and above the petitioner's immediate junior as per the Combined Seniority List of Junior Assistants/Typists/Steno-Typists dated 01.09.2006, consequently effect all further promotion including Commercial Tax Officer promotion with all consequential and attendant benefits.

For Petitioner : Mr.V.Babu

For Respondents : M/s.K.Vasanthamala
Government Advocate

ORDER

The writ petition is filed praying for a writ of mandamus directing the Respondents 1 to 3 herein to re-fix the petitioner's seniority in the cadre of Assistant and to place the petitioner in 1992 Assistants list over and above the petitioner's immediate junior as per the Combined Seniority List of Junior Assistants/Typists/Steno-Typists dated 01.09.2006 and to consequently effect all further promotion including Commercial Tax Officer promotion with all consequential and attendant benefits.

2. The petitioner was sponsored by the District Employment Exchange to the post of Steno Typist and was appointed in the Department of Commercial Tax on 04.10.1982. There was a prohibition for promotion of Steno-Typist



W.P. No.23442 of 2011

Grade-III employees to the next cadre of Assistants from 01.08.1992. The

above ban was lifted pursuant to repeated representations by the Ministerial Staff of the Commercial Tax Department vide G.O.Ms.No.34 dated 21.02.2001 from 05.08.2000. Pursuant thereto, the State Government issued a clarification letter dated 12.12.2003 in respect of seniority of Steno-Typist Grade-III and clarified that a combined seniority list of the TNPSC as on 01.08.1992 may be maintained and appointment of eligible Steno-Typist Grade-III as Assistant by transfer and seniority of such persons may be fixed in terms of Rule 35(a) of the General Rules for Tamil Nadu Subordinate Service Rules (hereinafter referred to as "TNS&S").

3. Pursuant to the above Government Order and the clarification letter, the 3rd respondent published a provisional list dated 29.05.2006 comprising of Junior Assistants/ Typists/ Steno-Typist as on 01.08.1992 who were working in Coimbatore Commercial Tax Division. It is stated that the petitioner's name finds place at Serial No.67 in the said list and was placed immediately below her senior P.Chandra, Typist, while some of her juniors namely S.Padmanabhan Junior Assistant and C.Parimalam, Typist, were placed at



W.P. No.23442 of 2011

Serial Nos.72 and 81 respectively. The above provisional list was to be finalised. The 1st Respondent while drawing the panel for the temporary list of Assistant Commercial Tax Officer for the year 2004 included the name of the petitioner's senior Mrs.P.Chandra. However, the petitioner's name was not included. The petitioner believed that her name would be included in the panel for the year 2005. However, the petitioner's name was excluded in the 2005 panel of temporary list of Assistant Commercial Tax Officers while her juniors namely Kannamal and Padmanabhan were included.

4. Aggrieved, the petitioner submitted a representation for re-fixing the seniority in the cadre of Assistant and the 3rd Respondent pursuant thereto vide proceedings dated 03.07.2007 re-fixed the petitioner's seniority in the cadre of Assistant at Serial No.12A and placed the petitioner in the 1993 Assistants lists eligible to be promoted as Assistant Commercial Tax Officer. The petitioner was still aggrieved as she was of the view that she ought to have been included in the Assistant list for the year 1992 inasmuch as the name of her junior viz., C.Parimalam, Typist, was included that year. Thus, the petitioner filed a revision before the 2nd Respondent to place her in the 1992 Assistant list by



W.P. No.23442 of 2011

treating her on par with her junior viz., Parimalam, Typist. While so, the 1st

Respondent by the proceeding dated 31.07.2007 had prepared / drawn a panel for the year 2006 to the post of Assistant Commercial Tax Officers and the petitioner's name was included in the said list along with her juniors. The revision filed by the petitioner requesting re-fixation of seniority in the Assistant list for the year 1992, was rejected. Aggrieved, the petitioner preferred an appeal before the 1st respondent. In the meanwhile, the 1st respondent called for objections in drawing of the Assistant Commercial Tax Officer's panel. The petitioner submitted her objection stating that her seniority in the cadre of Assistant Commercial Tax Officer should be re-fixed by refixing her seniority in the cadre of Assistant. While the objections were pending consideration, the 1st respondent vide proceeding dated 20.05.2010 prepared another panel for promotion to the post of Commercial Tax Officer from the Assistant Commercial Tax Officers for the year 2010. The petitioner's immediate senior in the combined seniority list viz., Mrs.P.Chandra was placed at Sl.No.85 in the said panel dated 20.05.2010 but the petitioner's name was not included. The petitioner had made representations dated 27.05.2010 and 09.08.2010 to the 1st respondent herein to include her name in the Assistant Commercial Tax



W.P. No.23442 of 2011

Officer's panel for the year 2010 after re-fixing her seniority in the cadre of Assistant and consequently, in the cadre of Assistant Commercial Tax Officer.

There is no response yet to the above representation thus compelling the petitioners to approach this Court by way of the present writ petition.

5. During the pendency of the present writ petition, the petitioner had passed away and the legal representatives of the petitioner have been brought on record. To a pointed question to the respondents as to why the representation has not been considered and orders passed. It was submitted by the learned counsel for the respondents that they would consider the representation and pass orders.

6. Recording the same, the writ petition is closed with a direction to the Respondents to dispose of the representation and re-fix the seniority while also considering granting notional promotion, if the petitioner was entitled to and in the event it is found by the Respondents that there has been discrepancy in drawing the Panel commencing with the Panel for Assistant, Assistant Commercial Tax Officer and Commercial Tax Officer after fixing the



W.P. No.23442 of 2011

petitioner's seniority in the appropriate place in the above Panels. The consequential benefits, if any shall be granted to the legal heirs in accordance with law. It is made clear that this Court has not expressed any views with regard to the merits of the representations and it is open to the Respondents to consider the representation on its own merits.

7. The writ petition stands disposed of with the above directions. No costs.

30.06.2023

Speaking (or) Non-Speaking Order
Index: Yes/No
Neutral Citation: Yes/No
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MOHAMMED SHAFFIQ, J.

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W.P. No.23442 of 2011

To:

- 1.The Principal Secretary/ Commissioner of
Commercial Tax, Chepauk, Chennai-600 005.
- 2.The Joint Commissioner of Commercial Taxes,
Coimbatore Division, Coimbatore.
- 3.The Deputy Commissioner of Commercial Taxes,
O/o Deputy Commissioner of Commercial Taxes,
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W.P. No.23442 of 2011

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