



Writ Appeal No.540 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:03.10.2023

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**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Appeal No.540 of 2019
and C.M.P.No.4687 of 2019**

1. C.Balan
2. N.Manivanan
3. S.Uthayasooriyan

... Appellants

Vs

1. The Principal Secretary,
Finance Department,
Government of Tamil Nadu,
Secretariat, Chennai – 600 09.
2. The Director of Local Fund Audit,
Kuralagam, Chennai – 600 018.
3. A.Jayakaran Aruliah,
4. V.Vimala
5. K.Murugesan
6. Ka. Vezhavendhan
7. G.Murthy
8. G.Baskaran

.. Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order passed in W.P.No.2871 of 2009 dated 30.11.2018.



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For Appellants : Mr. R.Viduthalai
Senior Counsel for
Mr.L.N.Pragasam

For Respondent : Mr.K.V.Sajeev Kumar
Special Government Pleader

JUDGMENT

(Judgment of the Court was delivered by R.SURESH KUMAR,J.)

This Writ Appeal had been directed against the order passed by the Writ Court dated 30.11.2018 made in W.P.No.2871 of 2009.

2. The appellants are the writ petitioners, who approached the Writ Court seeking for a writ of mandamus directing the respondents therein to place the petitioners therein above the private respondents 3 to 5 in the relevant seniority list and grant the consequential benefits.

3. The grievance of the appellants/petitioners was that, every year there may be a promotion and direct recruitments for the post of Assistant Inspector of Local Fund Audit in the respondent Department. The post must be filled up by two methods. One is by promotion and another is by direct recruitment. When the source of filling up the post is more than one normally the quota-rota system would be followed.



4. Here the quota-rota system to be followed to the post of Assistant Inspector of Local Fund Audit is 4:1 that means there may be (4) four direct recruits and one promotee.

5. In this context, it is to be noted that for the year 1981 – 1982 depending upon the vacancies 23 persons ought to have been given promotions and 23 such persons were given promotions. Therefore, there was no excess promotion.

6. However, for the year 1982 – 1983 though the vacancy was only 13 for giving promotion, excess promotion had been given to the extent of 28 persons that means there was an excess promotion of 15.

7. In this context, it is to be taken note of the fact that, for the year 1982-1983, the number of promotions ought to have been given since only 13, where 28 such people were given promotions, hence, there was an excess promotion of 15. However, it is the stand of the respondent Department that even though the excess promotion had been given for the year 1982-1983, only 13 promotions were regularized from the date of they joined in the promoted post i.e., from 01.03.1983, the remaining



15 people though were given promotion with effect from 01.03.1983 and they joined on the date, they were not regularized in the promoted post with effect from 01.03.1983, instead they were given regularization only from 24.09.1983.

8. It is the further stand of the respondent Department that, in the meanwhile, large number of direct recruits after selection had come and joined in the Department and they all joined on 23.06.1983. Therefore, the 13 people, who earned promotion for the year 1982-1983 with effect from 01.03.1983 would naturally be senior and they can march over the direct recruits, who joined on 23.06.1983.

9. However, insofar as the 15 excess promotions are concerned, as their date of regularization was effective only on 24.09.1983 they cannot march over the direct recruits and they should be placed below to the direct recruits. In this context, it was the contention before the Writ Court by the petitioners/appellants that even though there were an excess promotion of 15 were given, they were also to be permitted to march over the direct recruits, which include the petitioners/appellants. The learned Judge, who heard the matter has found out that, there has been no excess



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promotion to march over the direct recruits and the ratio of 4:1 was followed. Therefore, the Rule 35(aa) of the Tamil Nadu State and Subordinate service rules would apply to prepare the seniority list among the Assistant Inspector of Local Fund Audit, the seniority list prepared by them was in consonance with the G.O.Ms.No.1129, Finance Department, dated 18.12.1980. Therefore, these petitioners/appellants would not be entitled to seek for any seniority over the 13 persons, who were already been promoted with effect from 01.03.1983 under the promotion quota. Therefore, the plea raised by the petitioners who are all among the direct recruits were rejected by the learned Judge through the impugned order, as against which, this appeal had been directed.

10. Heard Mr.R.Viduthalai, learned Senior Counsel appearing for the appellants and Mr.K.V.Sajeev Kumar, learned Special Government Pleader appearing for the respondents 1 and 2.

11. On hearing the learned counsel appearing for both sides on 13.09.2023, we have passed the following interim order:

*“Heard Mr.R.Viduthalai, learned Senior Counsel
appearing for the appellants and Mr.K.V.Sajeev Kumar,*



learned Special Government Pleader appearing for respondents 1 and 2.

2. It is the definite case of the respondents/State and Department that, during the year 1982 - 1983 number of persons ought to have been promoted was 13, however 28 people were promoted, therefore there was an excess promotion of 15.

3. In view of the same, when regularisation was made only first 13 people have been regularised with effect from 01.03.1983 and the remaining 15 people were given promotion/regularisation only from 24.09.1983.

4. In between, the direct recruits including the appellants had joined in service on 23.06.1983, therefore the first 13 people i.e., promotees from 01.03.1983 were placed above the direct recruits and the remaining 15 who were regularised from 24.09.1983 were placed below the direct recruits.

5. Though this stand has been taken even in the counter affidavit filed in this appeal, factually it is disputed by the learned Senior Counsel appearing for the appellants who would submit that, insofar as the contesting respondents are concerned who were given promotion marching over the direct recruits i.e., the appellants and they belong to the group of 15 and not the group of 13.

6. In order to clarify this position, the learned Special Government Pleader is hereby directed to produce



the Combined Seniority list issued in Proceedings Rc.No.A5/2978/86, dated 27.10.1999, Promotion Order dated 01.03.1983 given to 28 people as well as the regularisation order given to first 13 people with effect from 01.03.1983 and the next 15 people from 24.09.1983.

7. For the aforesaid compliance, post the matter on 27.09.2023.”

12. Pursuant to the said order, the learned Special Government Pleader has produced the copy of the combined seniority list vide proceedings dated 27.10.1999, where we found that, from serial no.729 viz., N.Karuppian up to serial no.741 viz., one V.Nagarajan, the promotees of the year 1982 – 1983 with effect from 01.03.1983 have been placed.

13. From serial No.742 viz., one V.Ravichandran, the direct recruit, whose date of joining was taken into account as 23.06.1983 were placed up to serial no.1241 viz., one L.Dwarakanath.

14. Thereafter, from serial no.1242 viz., one K.Krishnamurthy up to serial no.1275 viz., one S.Kathirvelu, those who had been given



promotion or the promotion date regularized with effect from 24.09.1983 have been placed. Therefore, between serial nos.1242 to 1275, the 15 excess promotees of the year 1982-1983 have been placed. They are certainly below the direct recruits and found place from 742 to 1241. Among them, the appellants find their place in the following serial numbers:

C.Balan - Serial No.1156

N.Manivannan - Serial No.905

S.Uthayasooriyan - Serial No.895

15. The serial numbers from 742 to 1241 are the direct recruits and all of them since joined from 23.06.1983 like the appellants, among them *inter se* seniority had been fixed based on the performance they made before the recruiting agency and accordingly, their *inter se* seniority has been fixed.

16. Insofar as fixing the *inter se* seniority between the said direct recruits and the promotees as has been averred by the respondent Department in the counter affidavit, which stand in fact had been taken by the respondent Department before the Writ Court that the 13



promotees are ought to have been promoted for the year 1982 – 1983 had alone been placed before the direct recruits with the regularization date of 01.03.1983 that falls from serial nos.729 to 741. Therefore, except the 13 people none of the promotees of the year 1982 – 1983 had been permitted to march over the direct recruits like the appellants. Therefore, the very basis of their apprehension as well as the grievance has no legs to stand.

17. But at the same time, it is to be noted that, when the method to follow is quota-rota system, the quota is followed at the rate of 1:4 or 4:1, the ratio whether has been followed or not is the question. The reason being that, suppose for the year 1982-1983 as per the quota-rota system 13 posts have to go to the promotees, 13 has to be distributed with 4:1 ratio, not put all the 13 in one block and permit them to march over the direct recruits, by virtue of these, at least few direct recruits might have been affected with their seniority. However, insofar as the appellants are concerned, as their seniority numbers starts only from 895, 905 and 1156, they might not have been affected even because of non following of the quota-rota system properly for the preparation of the seniority list and therefore, that kind of grievance, the appellants may not have.



WEB COPY 18. If the combined seniority list dated 27.10.1999 is a final document, which is being followed all along, the same shall be followed strictly, where the service benefits among the incumbents like the appellants as well as the other people shall be extended to them and in this case, if at all any such benefits are to be provided to the appellants that shall be examined and decided. If the appellants already correctly placed in the combined seniority list, based on which, promotion and other service benefits have already been extended to them, in that case, no further exercise need to be undertaken by the respondent Department.

19. Before parting with the case, we feel that a direction can be given to the respondent Department to verify atleast in future whether the quota-rota system as per the Government Order referred to above is strictly followed, where if the 4:1 ratio is followed, the rota system also to be strictly followed as 4:1, accordingly, the fitment in the seniority list must be undertaken. This must be borne in mind by the concerned authorities of the respondent Department in preparation of combined seniority list in all future recruitments and promotions.



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With these observations and directions, this writ appeal stands
dismissed. No costs. Connected miscellaneous petition is closed.

(R.S.K.,J.)

(K.B., J.)

03.10.2023

Index: Yes
Speaking Order
Neutral Citation: Yes

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To

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Finance Department,
Government of Tamil Nadu,
Secretariat, Chennai – 600 09.
2. The Director of Local Fund Audit,
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