IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.02.2023

DELIVERED ON : 10.03.2023

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P.Nos.5458 & 8290 of 2020
and
W.M.P.Nos.6387 & 9933 of 2020

W.P.No.5458 of 2020 :

1.The Union Territory of Puducherry,
Rep. by its Chief Secretary,
Government of Puducherry,
Puducherrry.

2.The Secretary to Government (Finance),
Department of Finance,
Government of Puducherry,
Puducherrry. ...Petitioners

Vs.

1.M.Raje-Saker
Deputy Director (Enforcement), (on deputation),
Chennai Zonal Office,
Directorate of Enforcement,
Greams Road, Chennai.
2.The Union of India, Rep. by its

Secretary,
M/o.Home Affairs,
Government of India,
New Delhi - 110 001.

3.A.Mohanthy
Officer on Wait,
Commercial Taxes Department,
Government of Puducherry,
Puducherrry.

4.K.Sridhar,
Deputy Commissioner (CT),
Commercial Taxes Department,
Puducherry.

5.G.Srinivas,
Deputy Commissioner (CT),
Government of Puducherry,
Puducherry.

6.The Registrar,
The Central Administrative Tribunal,
Madras Bench, Chennai. ... Respondents

W.P.No.8290 of 2020 :

M.Raja-Saker
Deputy Director (Enforcement), (on deputation),
Chennai Zonal Office,
Directorate of Enforcement,
Greams Road, Chennai. ...Petitioner

Vs.

1.The Union of India,
Rep. by its Secretary,
Ministry of Home Affairs,
Government of India,
New Delhi - 110 001.

2.The Union Territory of Puducherry,
Rep. by its Chief Secretary,
Government of Puducherry,
Puducherry.

3.The Secretary to Government (Finance),
Department of Finance,
Government of Puducherry,
Puducherry.

4.A.Mohanthy
Now working as Officer on Wait,
Commercial Taxes Department,
Government of Puducherry,
Puducherrry.

5.K.Sridhar,
Now working as Deputy Commissioner (CT),
Commercial Taxes Department,
Government of Puducherry,
Puducherry.

6.G.Srinivas,
Now working as Deputy Commissioner (CT),
Commercial Taxes Department,
Government of Puducherry,
Puducherry.

7.The Registrar,
Central Administrative Tribunal,
Chennai Bench,
Additional City Civil Court Building,
Chennai - 600 102. ... Respondents

Prayer in W.P.No.5458 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari or any other writ or order or direction to call for the records of the 6th respondent (Central Administrative Tribunal, Madras Bench) relating to the order dated 13.11.2019 made in O.A.No.1449/2016 and quash the same and dismiss the original application in O.A.No.1449/2016.

Prayer in W.P.No.8290 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of Central Administrative Tribunal, Chennai, in connection with its order passed in O.A.No.310/01449/2016 dated 13.11.2019 and quash the same to the limited extent that it did not consider the prayer (b) in the said Original Application against the proceedings of R2 regarding the creation of 13 additional posts; up-gradation of the post of Deputy Commissioner to the post of Commissioner (State Tax) and diverting the same to be operated by an officer from Pondicherry Civil Service (PCS) and consequently direct R2 to consider the Petitioner for promotion to the post of Deputy Commissioner (CT) with effect from 18.04.2007 in accordance with

Government of Puducherry Commercial Taxes Department, Group 'A' Posts Recruitment Rules 1980 dated 22.10.1980 as amended by Government of Puducherry, Commercial Taxes Department Group 'A' Post of Deputy Commissioner (Commercial Taxes) Recruitment (Amendment) Rules, 1982 and also to consider the claim of the incumbent to the post as and when it is up-graded, in accordance with instructions of the Government of India contained in the Department of Personnel & Training OM No.22011/10/84-Estt. (D) dated 04.02.1992.

In W.P.No.5458 of 2020 :

For Petitioners	:	Mr.R.Syed Mustafa, Special Government Pleader (Pondy)
For R1	:	Mr.Satish Parasaran, Sr. Counsel for M/s.Rahul Balaji
For R2	:	No appearance
R6	:	Tribunal
For R4	:	Mr.V.Vijay Shankar

In W.P.No.8290 of 2020 :

For Petitioners	:	Mr.Satish Parasaran, Sr. Counsel for M/s.Rahul Balaji
For R1	:	Mr.K.Srinivasamurthy, SPCCG
For R2 & R3	:	Mr.R.Syed Mustafa, Special Government Pleader (Pondy)
For R5	:	Mr.V.Vijay Shankar
R7	:	Tribunal

COMMON ORDER

(R.HEMALATHA, J.)

The petitioners in W.P.No.5458 of 2020 are Union Territory of Puducherry represented by its Chief Secretary, Government of Puducherry and the Secretary to Government (Finance), Government of Puducherry. They have challenged the orders of the Central Administrative Tribunal, Madras Bench, in O.A.No.310/01449/2016 dated 13.11.2019.

2.Briefly into the facts of the case:

i. The first respondent M.Raje Saker joined as Commercial Tax Officer on 22.02.1994 in the Commercial Tax Department of Union Territory of Puducherry. Subsequently, he was promoted as Assistant Commissioner (CT) on 26.06.2001.

ii. On 18.04.2007, he was appointed to hold full additional charge of the post of Commissioner (CT) until further orders or till the post is filled up, whichever is earlier as intimated in G.O.Ms.No.15/F2/2007 dated 18.04.2007.

iii. On 29.04.2012, he was posted as Managing Director of Puducherry Co-operative Sugar Mills Limited on deputation for a period of three years.

iv. On 28.01.2016, he was appointed as Deputy Director of Enforcement in Government of Puducherry again on deputation for a period of three years or until further intimation, whichever is earlier.

v. The grievance of the first respondent is that when he was deputed to the Puducherry Co-operative Sugar Mills Limited as Managing Director, one L.Kumar, a Puducherry Civil Services Officer who was Director Information Technology, Government of Puducherry was posted as the Commissioner (CT) as Additional Charge vide orders dated 01.02.2012 and subsequently on 20.08.2014 the fifth respondent G.Srinivas, another Puducherry Civil Services Officer who was the Labour Commissioner, Government of Puducherry was posted as Commissioner (CT). Both these officials were not holding analogous posts.

vi. The first respondent was aggrieved over these orders of deputation as they were in violation of the Recruitment Rules prescribed for the post of Deputy Commissioner (CT).

vii. The petitioners instead of filling up the vacancy by way of promotion from amongst the available Assistant Commissioners (CT), had filled up the only vacancy of Deputy Commissioner (CT) by way of a mere transfer and posting that too with ineligible officers of Puducherry Civil Service. The transfer/deputation of these officers of Puducherry Civil Service was not approved by Civil Services Board as mandated.

viii. The first respondent approached the Central Administrative Tribunal, Madras Bench, in O.A.No.1449/2016 against this unfair treatment meted out to him. In the order dated 13.11.2019 by the Central Administrative Tribunal, Madras Bench, the petitioners were directed to consider the name of the first respondent for the post of Deputy Commissioner (CT) as per the existing Recruitment Rules by treating the appointment to the post of Assistant

Commissioner (CT) as regular and pass orders. This order has been challenged in the present petition.

3. The other W.P.No.8290 of 2020 has been filed by the first respondent in W.P.No.5458 of 2020 against the same order of the Central Administrative Tribunal, Madras Bench, in O.A.No.1449/2016 to the limited extent for not considering the additional prayer to quash the G.O.Ms.No.14/CT/17-18 dated 07.07.2017 and G.O.Ms.No.6 dated 16.01.2018 along with a letter bearing No.1807/CT/A1/2017/1822 dated 29.11.2017 about the creation of 13 new posts and upgradation of the post of Deputy Commissioner (CT) to be filled up only with a Puducherry Civil Services Officer. The order of the Central Administrative Tribunal, Madras Bench, did not delve on this aspect and hence the Writ Petition.

4. Heard Mr.R.Syed Mustafa, learned Special Government Pleader (Pondy) appearing for the petitioners in W.P. No.5458/2020 and for respondents 2 and 3 in W.P. No.8290/2020, Mr.Satish Parasaran, learned Senior Counsel assisted by Mr. R. Parthasarathy, learned

counsel appearing for the petitioners in W.P. No.8290/2020 and for 1st respondent in W.P. No.5458/2020, Mr.V.Vijay Shankar, learned counsel appearing for the 4th respondent in W.P. No.5458 of 2020 and for 5th respondent in W.P. No.8290/2020 and Mr.K.Srinivasamurthy, learned Senior Panel Counsel Central Government appearing for the 1st respondent in W.P. 8290 of 2020.

5. The learned counsel for the petitioners (in W.P.No.5458/2020) would contend that the first respondent was never eligible for the promotion to the post of Deputy Commissioner (CT) and his first promotion to the post of Assistant Commissioner (CT) with effect from 25.06.2001 itself was purely on adhoc basis. The requirement of promotion to Deputy Commissioner (CT) was eight years combined regular service as Commercial Tax Officer and Assistant Commissioner (CT). As he had not fulfilled this criterion, he was ineligible, it was contended. Further more, it was also contended that the Recruitment Rules had categorically stated that the post of Deputy Commissioner can be filled up by 'promotion failing which by transfer on deputation' and it

was the prerogative of the petitioners to adopt a method and find a suitable officer. The first respondent was also junior to other Assistant Commissioners. It was also contended that since a Puducherry Civil Service Officer was posted as Deputy Commissioner (CT), Union Public Service Commission (UPSC) need not be consulted. He also further contended that the UPSC had initially not accorded approval for regulation of the existing Assistant Commissioner (CT) and later agreed to it only in 2016. Moreover, it was contended that the first respondent and similarly placed officers had no scope for any grievance as they were drawing higher pay scales without getting regularised and therefore, according to the counsel, the plea of the first respondent had no merit in it.

6. Per contra, the learned counsel for the first respondent (in W.P.No.5458/2020) had highlighted the following aspects :

a) Both Kumar and Srinivas were posted as Deputy Commissioners (CT) one after another by way of a simple administrative order of transfer though there were other eligible Assistant Commissioners

(CT) in waiting.

b) The act of the petitioners was clearly a discriminating one violating the fundamental rights of the first respondent as enshrined in Articles 14 & 16 of the Constitution of India.

c) Both Kumar and Srinivas did not hold analogous posts in the Puducherry Government and therefore, were ineligible to be considered right away for the post of Deputy Commissioner (CT).

d) No consultation was made with the UPSC while posting them in the Deputy Commissioner (CT) post.

e) The G.O.Ms.No.14/CT/17-18 dated 07.07.2017 and G.O.Ms.No.6 dated 16.01.2018 were issued only to circumvent the rules and the Lieutenant Governor was not empowered to create a new level in the pay matrix as defined by the Fifth Central Pay Commission.

f) The newly created post of Commissioner of State Tax requires rules to be framed under Article 309 of the Constitution of India and without any rules it cannot be operated upon. Neither the concurrence of the UPSC nor the approval of the Council of Ministers was obtained for creation of posts and therefore, the two

G.O.Ms fail.

According to him in such circumstances, the order of the Central Administrative Tribunal, Madras Bench, has to be upheld and besides that, the impugned G.O.Ms also need to be set aside, it was argued.

7. After careful analysis of all the relevant papers and documents in this case the following observations are made.

a) The promotion of the first respondent, namely M. Raje Saker, vide Office Memorandum dated 26.06.2001 clearly stipulates that the promotion from Commercial Tax Officer - II to Assistant Commissioner (CT) is on adhoc basis only.

b) The order dated 18.04.2007 by which the first respondent was appointed to hold full additional charge of the post of Commissioner (CT) was clear that no seniority can be claimed on the grounds of holding full additional charge of the post.

c) In MA/213/2018 in O.A.No.1449/2016, the Central Administrative Tribunal had categorically concluded that the upgradation and diversion of the post by G.O. dated 07.07.2017 will not hurt the interests of the appellant should he succeed in the OA and thus no interim order was called for.

d) The Puducherry Goods and Services Act, 2017 was introduced and implemented. Section 3 of the Act empowered the Government to appoint officer and consequently 13 new temporary posts were created out of which the post of Deputy Commissioner (CT) was upgraded as Commissioner State Tax and was categorised as a gazetted post to be headed by a Puducherry Civil Service Officer.

e) The creation of 13 new posts and also the upgradation of one Deputy Commissioner post as Commissioner of State Tax was approved by the Lieutenant Governor of Government of Puducherry on 16.01.2018.

8. The first respondent, namely M. Raje Saker, claims that only a Commercial Tax Officer cadre person can deliver and live up to the expectations of the Department. Ironically, the first respondent himself has functioned as Managing Director of Puducherry Co-operative Sugar Mills and subsequently as Deputy Director of Enforcement. All the three assignments require different skills. Therefore, this contention of the first

respondent does not hold water. As regards the equivalence of posts which Kumar and Srinivas were holding when they were asked to take charge as Deputy Commissioner (CT), nothing has been provided by the first respondent to substantiate his contentions. Consultation with UPSC, according to the petitioners, is not required as both Kumar and Srinivas belong to Puducherry Civil Services cadre. This contention of the petitioners appears reasonable. It has also been clarified by the petitioners that there was nothing against the first respondent to exclude him from the promotion process except that he had not completed the required service period as a regular Assistant Commissioner (CT). But for the advent of the GST it appears that no structural changes would have got effected. There appears to be no discrimination against the first respondent. Such policy decisions taken by the Government cannot be questioned if it does not find support amongst a section of employees. Government policies are made keeping the welfare of the people at large in mind. If one starts pointing out holes in such policy decisions there would be no end to it.

9. We do not find any merit in the reasoning made out in the

Central Administrative Tribunal's order. The order of the Central Administrative Tribunal, Madras Bench, has not taken a holistic view of the subject and instead has harped on certain Court decisions questioning the prolonged status of the employees in adhoc cadre. These decisions cannot be directly applied to the facts of the present case.

10. In the result, W.P.No.5458/2020 is allowed and W.P.No.8290/2020 is dismissed. No costs. Consequently connected miscellaneous petitions are closed. The orders of the Central Administrative Tribunal, Madras Bench dated, 13.11.2019 made in O.A.No.1449/2016 is set aside.

(V.M.V.,J.) **(R.H.,J.)**

10.03.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga/mtl

To

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Deputy Director (Enforcement), (on deputation),
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Directorate of Enforcement,
Greams Road, Chennai.

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V.M.VELUMANI, J.

and
R. HEMALATHA, J.
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Pre-delivery order in

W.P.Nos.5458 & 8290 of 2020
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10.03.2023