



WEB COPY



W.P.No.10204 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2023

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.10204 of 2020
and W.M.P. Nos.12402, 12404, 12405 of 2020
and W.M.P. Nos.11214 of 2022 and 10190 of 2023

Tamilnadu Diploma Engineers Association -
(Department of Employment and Training)
Rep. by its President S.Vijayamurugam
12E, Seelavari Housing Board
Puthumariamankoil Post
Salem – 636 003

... Petitioner

/vs/

1.The Secretary to Government,
Department of Labour and Employment,
Government of Tamil Nadu,
Secretariat,
Chennai – 600 009.

2.The Director,
Department of Employment and Training,
Head Office, Guindy,
Chennai – 600 032.

3.D.K.Sivakumar

... Respondents

[R3 impleaded vide order dated 03.08.2022 made in W.M.P.No.261 of 2021
in W.P.No.10204 of 2020]



W.P.No.10204 of 2020

WEB COPY

Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the Memo in Na.Ka.No.39658/PaA1/2019 dated 07.07.2020 issued by the 2nd Respondent and quash the same and consequently directing the 2nd Respondent to prepare a seniority list for the purpose of promotion to the post Principal from the Training Officers Working in the Government Industrial Training Institutes in the State of Tamil Nadu without following the rules of reservations in view of the Judgement made in 'K.Raja and other -Vs- The Additional Chief Secretary to Government, Highways and Minor Ports Department and others' in W.P.No.998 of 2017 dated 15.11.2019 by the Division Bench of the High Court.

For Petitioner ... Mr.G.Balan Haridas for
Mr.G.Pugazhenth

For Respondents ... Mr.R.Neelakandan
Additional Advocate General

assisted by
Mr.P.Sanjai Gandhi
Government Advocate for R1&R2

Mr.P.Kannan Kumar for R3



W.P.No.10204 of 2020

WEB COPY

ORDER

This writ petition has been filed to quash the Memo in Na.Ka.No.39658/PaA1/2019 dated 07.07.2020 issued by the 2nd respondent and consequently directing the 2nd respondent to prepare a seniority list for the purpose of promotion to the post of Principal from the Training Officers working in the Government Industrial Training Institutes in the State of Tamil Nadu without following the rules of reservation in view of the judgment made in K.Raja and other vs. The Additional Chief Secretary to Government, Highways and Minor Ports Department and others in W.P.No.998 of 2017 dated 15.11.2019 by the Division Bench of this Court.

2.The preliminary objection raised by the learned Additional Advocate General is that the petitioner Association cannot be considered as an aggrieved person and hence, the petitioner has got *locus standi* to file this application. However, the learned counsel for the petitioner tried to convince this Court by placing reliance on the judgment of a Division Bench of this Court in W.A.Nos.313 and batch wherein, it is held that a border individuals



W.P.No.10204 of 2020

who have a common grievance and a reason of some disability and capacity and who are not in a position to approach this Court individually, can maintain a writ petition through an Association. Reliance was placed on several judgements of the Hon'ble Supreme Court and also the judgement of this Court in ***State of Bikaner and Jaipur vs. Employee Association and Others*** (MANU/TN/0293/1991). On perusal of the subsequent discussions on the above point, it is seen that the petitioner Association has represented several aspirants who are waiting for their appointment order to be issued. As against those aggrieved persons, only if they get an appointment and join service, the relationship of the employer and employee will arise between the aspirants and Government. In the case in hand, the aggrieved persons are already in service and with whom the Government has already established a relationship of employee-employer. When the contractual relationship is established, the person aggrieved can at the best be the individual and not their Association. The position has been already crystallized in the judgment of the Hon'ble Supreme Court in the case of ***Vinoy Kumar vs. State of Uttarpradesh*** reported in ***AIR 2001 SC 1739*** is extracted is hereunder:

2. Generally speaking, a person shall have no



locus standi to file a writ petition if he is not personally affected by the impugned order or his fundamental rights have neither been directly or substantially invaded nor is there any imminent danger of such rights being invaded or his acquired interests have been violated ignoring the applicable rules. The relief under Article 226 of the constitution is based on the existence of a right in favour of the person invoking the jurisdiction. The exception to the general rule is only in cases where the writ applied for is a writ of habeas- corpus or quo warranto or filed in public interest. It is a matter of prudence, that the court confines the exercise of writ jurisdiction to cases where legal wrong or legal injuries caused to a particular person or his fundamental rights are violated, and not to entertain cases of individual wrong or injury at the instance of third party where there is an effective legal aid organisation which can take care of such cases. Even in cases filed in public interest, the court can exercise the writ jurisdiction at the instance of a third party only when it is shown that the legal wrong or legal injury or illegal burden is threatened and such person or determined class of persons is, by reason or poverty, helplessness or



disability or socially or economically disadvantaged position, unable to approach the court for relief.

3.However, the issue pertains to fixation of seniority on the basis of merits and not on the basis of the roster which has been prepared at the time of selection for the limited purpose of accommodating and confirming the rules of reservation in appointments. Insofar as the legal position of this issue is concerned, it has been well settled in the judgement held by the Division Bench of this Court in W.P.No.998 of 2017 and other batch of cases. The following directions have been given in the said writ petition:

38. CONCLUSION:-

In the light of the discussion and the findings hereinabove, the following conclusion is arrived at.

- (i) Sections 1(2), 40 and 70 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, are declared as ultra vires and unconstitutional;*
- (ii) The respondents are directed to redo the exercise of fixation of seniority within a period of 12 weeks from the date of receipt of a copy of this order;*



W.P.No.10204 of 2020

(iii) Delay, laches, acquiescence and accrued right are the factors to be considered by the Court when similar reliefs are sought for in future;

(iv) W.P.Nos.1147, 5735, 22852, 34311, 34312 of 2017, 7511, 8718 to 8720, 18725, 26442 and 31156 of 2018 are allowed;

(v) W.A.No.2610 of 2019 is also allowed;

*(vi) W.P.Nos.998 of 2017 and 10021 of 2018 stands disposed of with a direction that the petitioners are entitled to the benefit conferred under the order of the Division Bench in **Santhosh Kumar's case**;*

(vii) W.P.No.6649 of 2017 stands allowed with respect to the consequential relief sought for;

(viii) Consequently, the respondents are directed to refix the seniority within a period of twelve weeks from the date of receipt of a copy of this order; and

(ix) W.P.Nos.11150, 11151 and 22136 of 2018 are dismissed.

No costs. Consequently, all connected miscellaneous petitions stand closed.

4. Even according to the learned Additional Advocate General, there is no disagreement in accepting the dictum of this Court which has been



W.P.No.10204 of 2020

subsequently confirmed by the Hon'ble Supreme Court in SLP (c) Nos.2861-2876 of 2020 vide order dated 06.07.2020. The 2nd respondent has issued a memo dated 07.07.2020, which is the provisional list of 24 Training Officer in the order of seniority for the purpose of promoting them to the post of Principal and called for some details. Since the list was prepared based on the communal roster, it created an unrest between the aggrieved persons and that has resulted in this writ petition, through the Association. But the matter gets easier in view of the undertaking given by the 2nd respondent himself by stating that the orders of the Court already passed in W.P.No.998 of 2017 will be implemented and the seniority list will be prepared based on merits and not on the basis of the community. For the sake of clarity Paragraph No.6 of the counter affidavit is extracted hereunder:

6. It is submitted that, the post of Principal is being filled by the way of direct recruitment through Tamil Nadu Public Service Commission and by promotion from the feeder category of Training Officer working in Government Industrial Training Institutes based on the seniority. The alleged representations dated 07.02.2019 and 21.11.2019 of the Petitioner to



W.P.No.10204 of 2020

revise the seniority list without following communal roster method cannot be considered as against the Act / Rules in vogue. Consequent to the dismissal of SLP(C) Nos.2861- 2876/2020 by the Hon'ble Supreme Court of India on 06.07.2020, 16 Review Applications had been filed before this Hon'ble High Court against the common order dated 15.11.2019 made in W.P.No.998/2017 and other batch cases. The said Review Applications were also dismissed by this Hon'ble Court vide order dated 26.03.2021. Based on the Hon'ble court order the 1st Respondent to issue orders therein and the same will be implemented by this Respondent.

5.If the seniority is recast in accordance with the directions already given by this Court that will have an the impact of recalling the memo dated 07.07.2020 and result in issuance of a fresh memo. Since the grievance of the affected parties will be settled in view of the above move, no further order is required to be passed in this writ petition except to record the above undertaking.

6.With the above observation, this writ petition is disposed of.



W.P.No.10204 of 2020

However, there is a direction to the respondents to complete the exercise of recasting the seniority in accordance with the merits and in compliance of the earlier judgement of this Court rendered in W.P.No.998 of 2017, within a period of six weeks from the date of receipt of a copy of this order. No Costs. Consequently, connected miscellaneous petitions are closed.

17.11.2023

Index: Yes / No

Speaking order / Non-speaking order

ssr



W.P.No.10204 of 2020

To
WEB COPY

- 1.The Secretary to Government,
Department of Labour and Employment,
Government of Tamil Nadu,
Secretariat,
Chennai – 600 009.
- 2.The Director,
Department of Employment and Training,
Head Office, Guindy,
Chennai – 600 032.



WEB COPY



W.P.No.10204 of 2020

R.N.MANJULA ,J.

SSR

W.P. No.10204 of 2020
and W.M.P. Nos.12402, 12404, 12405 of 2020
and W.M.P. Nos.11214 of 2022 and 10190 of 2023

17.11.2023