IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:26.06.2023	Delivered on: 21.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.12708 of 2018
&
W.M.P.Nos.14878 of 2016, 16649 and 19946 of 2019

1.N.S.Manivannan

2.R.Selvaraj

3.M.Suganya

4.K.SuganyaDevi

5.K.Jothimani

6.K.Sivakami

7.K.Santhan

8.P.Dinesh

9.K.Raguuram

10.V.Ranjitham

11.P.Karthikeyan

12.M.Sasikala Devi

13.K.Sathiyamoorthy

14.M.Muthulakshmi

15.R.Prabakaran

16.P.Eswari

17.S.Elamparithi

18.A.Karthikeyan

19.S.Ashokkumar

20.D.Senthil

21.V.DivyaPriya

22.N.PradeepSakthi

23.P.KasthuriBai

24.G.Maheswaran

25.J.Shobhana

26.J.Purushothaman

27.S.MohammedAzharuddin

28.M.Selvam

29.A.Ashak Ali

30.Y.Ruban Das

31.K.Manikandan

32.M.Shanmugapriya

33.S.Kanagaraj

34.M.Karthick

35.V.Maheswari

36.S.Maniselvam

37.D.Manojkumar

38.B.Ananthababu

39.R.S.Vijayabaskar

40.M.Karthikeyan

41.K.Saravanakumar

42.K.Baskar

43.V.Padmagreesan

44.S.Balaji

45.R.Muthuraj

46.K.Anuradha

47.J.Rajeswari

48.M.Pazhanivelu

49.T.Prabu

50.M.Ashokkumar

51.V.M.Chitra

52.K.Lakshmikandhan

53.P.Dhurkadevi

54.M.Suvetha

55.L.Rajivgandhi

56.G.Munirathinam

57.N.Praveena

58.R.Indrani

59.M.Suganya

60.S.Durgadevi

61.N.Poovizhi Selvi

62.K.Balaji

Vs

1 The State of Tamil Nadu
Rep. by its Secretary commercial Taxes and
Registration Department Fort St. George
Chepauk Chennai - 9

2 The Commissioner of Commercial Taxes
O/o The Commissioner of Commercial Taxes
Ezhilgam Chepauk Chennai -5

3 Tamil Nadu Public Service Commission
rep. by its secretary. TNPSC road
V.O.C. Nagar Park Town Chennai - 3

4 The Additional Commissioner (Administration)
O/o The Commissioner of Commercial Taxes
Ezhilgam Chepauk Chennai - 5

5 The Joint Commissioner (ST)
O/O Joint Commissioner Combined Commercial
Taxes Building No.6 Pichards Road
Hasthampatti salem

6 The Joint Commissioner (ST)
O/O Joint Commissioner Chennai (South)
PAPJM Buildings Commercial Taxes Department
Egmore Chennai - 5

7 The Joint Commissioner(ST)
O/O Joint commissioner Chennai (North)
PAPJM Buildings Commercial Taxes Department
Egmore Chennai - 5

8 The Joint Commissioner (ST)
O/O Joint Commissioner Commercial Taxes
Department Coimbatore Division

9 Mr.E.Prathap

10 Mr.G.Ananthakrishnan

11 Mr.A.Shahul Hameed

12 Mr.R.Sivaguru

13 Mr.M.Manoj

14 Mr.M.P.Akilandeswari ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records in connection with G.O (D) No. 24 CT & R(A2) department dated 09.02.2018 issued by the 1st respondent and the consequent impugned Proc. No. P2/2133/2016 dated 22.02.2018 and proceedings viz. Proc. No. P2/1233/2016 dated 02.03.2018 of 2nd respondent and quash the same and direct the respondents 1 2 and 4 to prepare the unit wise / state wise inter-se seniority in the post of Assistant / DCTO respectively in accordance with the guidelines already issued by the Court in W.P.No. 12786 of 1985 dated 19.06.1986 and in accordance with section 40 of T.N. Government servants (conditions of service) Act 2016 and Rule 35 of T.N. State and subordinate service Rules and then effect any appointments by transfer to post of

DCTO/DSTO in accordance with law.

For Petitioners : Mr.V.Prakash, Senior Counsel
for
Mr.K.Krishnamoorthy

For Respondents : Mr.Haja Nazirudeen, AAG-I, Assisted by

Mr.M.Venkateswaran, Spl.G.P (T) for R1 to 8

Mrs.R.Tamilselvi for R9 to 14.

ORDER

The challenge in this Writ Petition is to the Proc.No.P2./2133/2016 dated 22.02.2018 and proceedings Proc.No.P2/2133/2016 dated 02.03.2018 on the file of the 2nd respondent and for consequent direction to the respondents 1,2 and 4 to prepare a fresh interse seniority list to the post of Assistant/DCTO in accordance with Sec.40 of the Tamil Nadu Government Servants (Conditions of Service)Act , 2016 r/w R.35 of Tamil Nadu State and Sub-Ordinate Service Rules and in line with guidelines issued by this Court in W.P.No.12786 of 1985 dated 19.06.1986.

2. Learned Senior Counsel for the petitioner at the very outset placed reliance on the order passed by a learned single Judge of this Court sitting in Madurai Bench in W.P.(MD)No.4963 of 2018 dated 03.03.2023 which dealt with the very same issue and the learned single Judge has allowed the Writ Petition. The learned Senior counsel would therefore request this Court to pass orders in the above Writ Petition in line with the order dated 03.03.2023.

3. However, learned Additional Advocate General-I would submit that certain crucial aspect have not been dealt with in the said order and therefore he should be permitted to put forth his contentions and submissions.

4. Similarly, learned counsel for the respondents 9 to 14 would state that the order dated 03.03.2023 has been challenged in W.A.(MD)No.372 of 2023 and in and by an order dated 29.03.2023, an interim order has also been granted and therefore would contend that hearing of the Writ Petition may be deferred or alternatively, the Writ Petition may be posted along with the Writ Appeal.

5. In view of the above submissions, this Court proceeded to hear the learned Additional Advocate General- I to ascertain as to whether any new fact or issue needs to be considered afresh or as to whether the order of the learned single Judge in W.P.(MD)No.4963 of 2018 dated 03.03.2023 has to be followed, as contended by the learned Senior Counsel for the petitioner.

6. The subject matter of the Writ Petition pertains to relaxation of minimum requirement for certain class of candidates and consequential inclusion of their names in the panel for promotion without fixing interse seniority between directly recruited candidates and in service candidates.

7. Learned single Judge in W.P.(MD)No.4963 of 2018, has set aside the impugned proceedings and consequently directed the respondents 1,2 and 4 to to prepare a interse seniority in accordance with Sec.40 of the Tamil Nadu State and Subordinate Service Rules and thereafter effect appointment by transfer to the post of DCTO/DSTO.

8. The learned Additional Advocate General-I would place reliance on the following judgments:

> *i) Bishambhar Dayal Chandra Mohan and Ors Vs. State of Uttar Pradesh and Ors, (1982) 1 SCC 39*
>
> *ii) State of Haryana and Ors Vs. Piara Singh and Ors, (1992) 4 SCC 118*
>
> *iii) Bharat Coking Coal Ltd., Vs. State of Bihar and Ors, (1990) 4 SCC 557*
>
> *iv) Meghalaya State Electricity Board and another Vs. Jagadindra Arjun, (2001) 6 SCC 446*
>
> *v) Badrinath Vs. Government of Tamil Nadu and Ors, (2000) 8 SCC 395"*

9. Learned Additional Advocate General would emphasise on the fact that the respondents have exercised power available to them under Article 309 of the Constitution of India and the same coupled with Article 162 of Constitution of India only justifies the impugned proceedings. He would cite

i) ***Bharat Coking Coal Ltd., Vs. State of Bihar and Ors***, reported in ***(1990) 4 SCC 557,*** for the proposition that in the absence of law being made by the State legislature, the State's action relating to exercise of executive powers cannot be faulted. Reliance was placed on Article 162 laying down the executive powers of State shall extend to matters with respect to which the legislature of the State has power to make laws and that it is co-extensive with the legislative power of the State Legislature.

ii) ***Meghalaya State Electricity Board and another Vs. Jagadindra Arjun***, ***(2001) 6 SCC 446***, for the proposition that in the absence of statutory regulations, the authorities have power to lay down service conditions in exercise of administrative power by passing resolutions.

iii) ***Badrinath Vs. Government of Tamil Nadu and Ors***, reported in ***(2000) 8 SCC 395,*** for the proposition that Courts have to be extremely careful in exercising power of judicial review in dealing with the assessment made by the departmental promotion committees. Though the judicial power remains, its use is restricted to rare and exceptional situations and Courts and Tribunals cannot sit as appellate authorities and substitute their own views to the views of departmental promotion committees.

iv) ***Bishambhar Dayal Chandra Mohan and Ors Vs. State of Uttar Pradesh and Ors***, reported in ***(1982) 1 SCC 399*** for the proposition that executive power of the State is coextensive with the legislative power and subject to limitation contained in provision to Article 162 and direct that any matter with respect to which the legislation of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly confirmed by the Constitution or by any law made by Parliament upon the Union or authorities thereof.

10. Relying on the above decisions the learned Additional Advocate General would contend that the order passed in W.P.No.4963 of 2018 did not transfer all the issues raised by the State and the above other issues which has been highlighted in the various judgments referred herein above were not considered by the learned single Judge and therefore the learned Additional Advocate General would pray for the dismissal of the Writ Petition.

11. Learned counsel for the respondents 9 to 14 would rely on the interim order passed by the Division Bench of the Madurai Bench of this Court dated 29.03.2023, wherein the interim order granted while admitting

the Writ Appeal was limited to stay of reversion alone considering the fact that the appellants therein have served as Deputy Commissioner Tax Officers for a considerable period. This Court finds that there is no stay of the impugned proceedings in the said Writ Appeal.

12. This Court has perused the order dated 03.03.2023 in W.P(MD).No.4963 of 2018 carefully. The learned single Judge has answered all the points that have been now canvassed by the learned Additional Advocate General. The power of the authority to relax the rules was never negated or questioned. Infact, the learned single Judge has categorically observed that Court is not questioning the powers conferred on the authority granting relaxation of rules relating to period of probation. However, what was discussed in detail by learned single Judge was that the discrimination adopted to one class of persons alone, while another class of persons viz., direct recruits have not been granted same benefits. The learned single Judge has held that all direct recruits have been selected on the basis of competitive exams conducted by the Tamil Nadu Public Service Commission and without

approval from the Tamil Nadu Public Service Commission giving retrospective effect to the in service candidates and placing them above the petitioners was an exercise in over reach. The learned single Judge also held that interse seniority between the direct recruits and promotee recruits has to be in terms of Sec.40 of the Tamil Nadu State and Sub-ordinate Service Rules. All the contentions that have been raised by the respondents in their counter affidavits have all been discussed at great length in the order passed in W.P.(MD).No.4963 of 2018 where also identical submissions have been made by the respondents. This Court also gone through the affidavits, counter affidavits and rejoinders filed to understand the challenge to the impugned proceedings and also the defence of the State in order to have the Writ Petition dismissed. Almost same or similar contentions have been taken before the learned single Judge in W.P.(MD).No.4963 of 2018 and a reasoned and well considered order has already been passed, quashing the impugned proceedings, which are also sought to be quashed in the present Writ Petition.

16. Therefore, this Court is of the view that the issue is no longer res integra. There is no new or additional factor that needs to be considered by this Court in order to differ with the findings of the learned single Judge in W.P.(MD)No.4963 of 2018, in order to come to a different conclusion.

For all the above reasons, the Writ Petition is allowed. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

21.07.2023.

Internet:Yes
Index:Yes/No
Neutral Citation:Yes/No
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Commercial Taxes and Registration Department
Fort St. George
Chepauk Chennai - 9

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O/o The Commissioner of Commercial Taxes
Ezhilgam Chepauk Chennai -5

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P.B.BALAJI, J.,
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Pre-delivery order in
W.P.No.12708 of 2018

21.07.2023