



W.P.No.8451 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.8451 of 2016

and

W.M.P.Nos.31300, 7520 & 7521 of 2016

1. T.S.Selvaraj
S/o.Subramani

2. N.Chandrasekaran
S/o.R.P.Narayanan

3. V.Azhagappan
S/o.A.Vaithilingam

4. K.Dinakaran
S/o.S.Kuppusamy

5. P.Parthiban
S/o.A.Poovalingam

....

Petitioners

Vs

1. The Government of Tamil Nadu
Represented by its Secretary,
Department of Employment & Training,
Fort St. George, Chennai – 600 009.

2. The Director,
Directorate of Employment & Training,
Guindy, Chennai – 600 032.

3. The Joint Director,



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Directorate of Employment & Training,
Guindy, Chennai – 600 032.

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4. R.Chinnakaruppan,
Assistant Training Officer,
Government I.T.I.,
Virudhunagar.

5. D.K.Sivakumar,
Assistant Training Officer,
Government I.T.I.,
Dharmapuri.

.... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the respondent-2 in connection with the proceedings bearing Ref.Na.Ka.No.TP1/44072/2015, dated 29.02.2016 confirming the proceedings of the second respondent bearing SEMU No.TP1/44072/2015 dated 14.12.2015 and quash the same and direct the 2nd respondent herein to prepare the seniority list of Junior Training Officer now called as Assistant Training Officer in accordance with the rules and based on the date of regularization of the service of the concerned officer.

For Petitioner	:	Mr.T.R.Sundaramurthy
For R1 to R3	:	Mr.T.Chezhan Additional Government Pleader
For R4 & R5	:	Mr.L.Chandra Kumar

ORDER



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This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus calling for the records of the respondent-2 in connection with the proceedings bearing Ref.Na.Ka.No.TP1/44072/2015, dated 29.02.2016, confirming the proceedings of the second respondent bearing SEMU No.TP1/44072/2015 dated 14.12.2015 and quash the same and direct the 2nd respondent herein to prepare the seniority list of Junior Training Officer, now called as Assistant Training Officer, in accordance with the Rules and based on the date of regularization of the service of the concerned officer.

2. The case of the petitioners is that they joined service of the Directorate of Employment and Training on 04.02.1995, 06.02.1995, 07.02.1995, 10.02.1995 and 09.02.1995 by order of the appointment issued on 31.01.1995 by the Employment Exchange under Rule10(a)(i) of the General Rules framed under the Tamil Nadu State and Subordinate Service Rules. The private respondents 4 and 5 were impleaded in the representative capacity, who were also appointed on 31.01.1995 in the same manner as Junior Training Officers. The service of the petitioners, was regularised, as also the private respondents, with effect from the date of joining. Thereafter, a seniority list was published. On 14.12.2015,



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the second respondent finalized the seniority list for the Assistant Training Officer/Junior training Officer, wherein it is stated that the first petitioner was regularised on 04.02.1995 and the private respondents were regularised later.

3. The second respondent had prepared a seniority list on 14.12.2015, viz., the impugned seniority list and the same was issued to the petitioners on 04.01.2016. Immediately, they gave their objections to the seniority list as soon as the list was served on them viz., on 04.01.2016. By the order dated 29.02.2016 served on the petitioners on 02.03.2016, it is stated that the objections have been rejected and the seniority list dated 14.12.2015 was confirmed and the respondents 1 to 3 are proposing to act upon the seniority list dated 29.02.2016 bearing Ref.Proc.No.TP.1/44072/2015 by issuing promotion orders to the petitioners' juniors. Therefore, the petitioners filed the present writ petition as against the impugned seniority list to quash the same and to prepare fresh list.

4. The learned counsel for the petitioners submitted that the private respondents were appointed on the same day by Employment Exchange under Rule 10(a)(i) of the General Rules framed under the



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Tamil Nadu State and Subordinate Service Rules. The petitioners as well as the private respondents were regularised in service in terms of Rule 23(a)(i) of the Tamil Nadu State and Subordinate Service Rules and the petitioners herein were regularised earlier to the respondents 4 and 5. In the above circumstances, the petitioners are to be placed above 4th and 5th respondents, instead they have been placed below the 4th and 5th respondents.

5. As per the Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules, service of the employee cannot be regulated for the purpose of seniority and only it can be reckoned only after the service has been regularised. The petitioners' service was regularised earlier to the respondents 4 and 5. The petitioners 1 to 3 cannot be treated in the same lines as that of as the private respondents and they have to be placed above the respondents. Further no opportunity was given to the petitioners before rejection of the said objections and the same is in violation of Natural Justice. Therefore, the petitioners were constrained to file this writ petition before this Court for setting aside the said impugned seniority list and to prepare a fresh list.

6. A counter affidavit has been filed by the respondents 2 and 3



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stating that the post of Junior Training Officer is the feeder category for promotion to the post of Training Officer. The petitioners and the respondents 4 and 5 were enlisted in the order of seniority in the post of Junior Training Officer in a panel for promotion to the post of Training Officer in the second respondent's proceedings No.TP1/44072/2015 dated 14.12.2015 under Diploma Holder category. The petitioners' appointment made by Rule 10(a)(i) may not be reckoned for the purpose of seniority and hence they made a representation to the second respondent and requested to revise their seniority in accordance with the date of regularisation of service and re-issue the panel. As the claim of the petitioners, was barred by the Rules, their objections were rejected and the seniority list was confirmed.

7. The petitioners and the respondents 4 and 5 were directly recruited to the post of Junior Training Officer in various trades during the year 1995. The Joint Director (Craftsmen Training Scheme) is the appointing authority to the said posts. According to Category 3 under Rule 2(a) of Section 7B of the Tamil Nadu Employment and Training Subordinate Services Rules under the Tamil Nadu Services Manual Volume III, the appointment criteria to the post of Junior Training



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Officer, is extracted as below :

WEB COPY “ 2(a) *Appointment : - Appointment to the several classes and categories shall be as follows :*

<i>Category</i>	<i>Method of Appointment</i>
3. Junior Training Officer in various trades including Drawing and Mathematics in the Industrial Training Institutes/Centres	(i) By promotion ; or (ii) By Direct recruitment ; or (iii) By recruitment by transfer from any other class or category of the same service ; or (iv) Recruitment by transfer from any other service

8. As per the said category, the qualifications fixed as per Annexure [Referred to in Rule 5(b)] for direct recruitment to the post of Junior Training Officer is “*Craftsmen Training Diploma in the appropriate trade issued by the Government of India and practical experience for a period not less than 3 years in a recognized Engineering concern*”. The petitioners and the respondents 4 and 5 have been recruited directly as Junior training Officer in the Department of Employment and Training from the list of candidates sponsored by the Employment Exchanges under Rule 10(a)(i) of the General Rules framed under the Tamil Nadu State and Subordinate Service Rules following the Rules of Reservation (Roster System) in accordance with General Rule 22 during the year 1995. The date of issue of appointment orders and the



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date of entry into service of the petitioners and the respondents 4 & 5 are as follows :

S. No	Name	Ref.No and date of appointment order	Trade	Date of entry into service as JTO	Sl.No in the Seniority list
1	T.S.Selvaraj	66444/TP2/94 31.01.95	Fitter	04.02.1995	83
2	N.Chandrasekaran	66444/TP2/94 31.01.95	Drawing	06.02.1995	82
3	V.Azhagappan	66444/TP2/94 31.01.95	Machinist	08.02.1995	97
4	K.Dinakaran	66444/TP2/94 31.01.95	Allied Trade	10.02.1995	86
5	P.Parthiban	66444/TP2/94 31.01.95	Fitter	09.02.1995	61
6	R.Chinnakaruppan	66444/TP2/94 31.01.95	Machinist	10.02.1995	19
7	D.K.Sivakumar	66444/TP2/94 31.01.95	Allied Trade	06.02.1995	25

9. The petitioners and respondents 4 and 5 have been regularised by the third respondent from their date of joining and probation was declared as per the Rules in force. As per G.O.Ms.No.292, Labour and Employment Department, dated 13.12.2013, promotion to the post of Training Officer in Industrial Training Institute/Centre has to be made in the ratio of 1 : 1 between the Degree/Diploma Holders and Certificate Holders with S.S.L.C and five years service as Assistant Training Officers, provided, if no Degree/Diploma Holder or Certificate Holder is



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available for promotion as per the terms in the cyclical order, the vacancy shall be filled by a person having the qualifications mentioned in the next turn in the cycle.

10. Accordingly, the second respondent initiated action for filling up the post of vacant Training Officers by promotion and a seniority list of Diploma Holders was prepared, enlisting the name of 136 officials including the petitioners, 4th and 5th respondents in the Order No.TP1/44072/2015, dated 14.12.2015. The main contention is that the date of joining, date of completion of probation and the date of regularisation of the petitioners and the respondents were not considered for determination of seniority among the Diploma Holders recruited directly in the year 1995 for the post of Junior Training Officers, the said objections were duly examined and the same was rejected and the seniority list issued earlier was confirmed.

11. It is seen that Rule 10(a)(i)(1) of the said Rules provides for making up of temporary appointment, when it is necessary in the public interest to do so owing to an emergency which has arisen for filling up a vacancy immediately. Such appointments are made in accordance with



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the procedures prescribed under the relevant Rules. The petitioners and the private respondents have been discharging their duties as Junior Training Officer uninterruptedly from the date of their first appointment. Their probation period was also completed as per Rule 23(a) of the Tamil Nadu State and Subordinate Service Rules. Wherein, the appointing authority may, in his discretion, allow such person to commence his probation if any, from the date of his first temporary appointment or from such subsequent date, as the appointing authority may determine, provided the date so determined by the appointing authority to commence probation, shall not be earlier than the date of commencement of probation of the junior most person already in service. Though the petitioners and the respondents were initially appointed under Rule 10(a)(i) subsequently by order dated 14.07.1997 they were regularised with effect from the date of joining.

12. Accordingly, if the person, who had been appointed thereto either under General Rule 10(a) or 10(d) and included in the list of approved candidates, the appointing authority may, in his discretion, allow such person to commence his probation if any, from the date of his first temporary appointment from such subsequent date, as the appointing



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authority may determine. The mode of direct recruitment to the post of Junior Training Officer is only by one method where the Diploma Holders are sponsored by Employment Exchanges and appointment is made after a selection process. Therefore, seniority in the post of Junior Training Officer is fixed as per Rule 35(a) of Tamil Nadu State and Subordinate Service Rules, which reads as follows :

“35(a) The seniority of a person in a service, class or category or grade shall unless he has been reduced to a lower rank as a punishment be determined by the rank obtained by him in the list of approved candidates drawn up by the Tamil Nadu Public Service Commission or other Appointing Authority, as the case may be, subject to the rule of reservation where it applies. The date of commencement of his probation shall be the date on which he joins duty irrespective of his seniority”

13. Accordingly, the petitioners and respondents 4 and 5 were appointed under Rule 10(a)(i) and they were enlisted for seniority as per Rule 35(a) of the Tamil Nadu State and Subordinate Service Rules. The Government was requested to clarify the methodology to be adopted for fixing the inter-se seniority of Diploma Holders, who were directly recruited to the post of Junior Training Officer and Certificate Holders in



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Letter No.44072/TP1/2015, dated 16.03.2016. The Government, by letter

dated 05.04.2016, had stated that the Labour and Employment (P2)

Department has clarified that the seniority among them has to be fixed as per Rule 35(a) . The seniority list was prepared only as per Rule 35(a).

The claim of the petitioners is that their seniority has to be reckoned only from the date on which services are regularised. In the Judgment

reported in *AIR 1990 SC 1607*, in a case of ***Direct Recruit Class II***

Engineering Officers Association Vs. The State of Maharashtra, in

which the Hon'ble Supreme Court of India held that “*if the appointment*

is made after considering the claims of all eligible candidates and the

appointee continues in the post uninterruptedly till the regularisation of

his service in accordance with the rules made for regular substantive

appointments, there is no reason to exclude the officiating service for

purpose of seniority”.

14. The respondents filed additional counter affidavit stating that the Junior Training Officers are appointed based on two different qualifications, viz., Diploma Holders and Certificate Holders. The Diploma Holders are recruited only through direct recruitment by



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following Roster system. As per the Roaster system only, the seniority was fixed based on Rule 35(a) of Tamil Nadu State and Subordinate Service Rules. The inter-se seniority is fixed between Diploma Holders and Certificate Holders by fixing their seniority as per the date of appointment. In the case of Diploma Holders, large number of Diploma Holders were appointed on the same date and their seniority is fixed on the basis of Roster system and inserted on the date of appointment in the combined seniority list. The seniority of all the Junior Training Officers is fixed and published, vide Joint Director (Craftsmen Training) Proceedings No.4880/Tho.Nu.Pa.3/1999, dated 10.06.1999 with Annexures 1 to 36. They were promoted to the post of Assistant Training Officer by following the above seniority in Junior Training Officer post in the already existing Roster seniority. They have also accepted the seniority and joined in the promoted place as per the order without any objection.

15. As per G.O.(Ms) No.291 & 292, Labour and Employment Department, dated 13.12.2013, 1:1 ratio is to be followed for promotion to the post of Training Officer and accordingly, a separate seniority list was prepared for Diploma Holders and Certificate Holders. The seniority



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list of all trade Junior Training Officers were merged and split into qualification by seniority i.e., Diploma Holders and Certificate Holders.

Likewise, a separate seniority list is prepared for Diploma Holders and Certificate Holders respectively. The panel for promotion to Training Officer post is prepared by allotting one vacancy to Diploma Holder and one vacancy to Certificate Holders alternatively. As per the estimate of vacancy approved by the appointing authority, the Diploma Holders and Certificate Holders were substituted alternatively to prepare the Training Officer panel and promotion.

16. As per G.O.(Ms) No.291 & 292, Labour and Employment Department, dated 13.12.2013, the available vacancies for Training Officer promotion is divided into 50% each for Diploma Holders and Certificate Holders. The Diploma Holders are appointed by direct recruitment in the entry level. Based on the Roster system, for fixing seniority for direct recruitment, Rule 35(a) is applicable. Since the petitioners and the respondents are Diploma Holder and are recruited in single method through Employment Exchange, Rule 35(aa) is not applicable. For the direct recruitment, Roster system is followed and the petitioner is in Sl.No.83 of the Roster. All the petitioners and



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respondents 4 and 5 are Diploma holders and hence there is no violation of seniority. Accordingly, the said seniority list was published only in accordance with existing Rules and G.Os.

17. As per the said G.O.(Ms) Nos.291 and 292, dated 13.12.2013, the implementation of the revised staffing pattern in the Industrial Training Institutes/Industrial Training Centre of Tamil Nadu, fixing the ratio between the Diploma/Degree Holders and Certificate Holders as 1:1:1, is as follows :

“Promotion in the ration of 1:1:1 as between

a) Degree/Diploma Holders ;

b) Certificate holders with SSLC and five years service as Assistant Training Officers ;

c) Certificate holders with ESLC or III Form, or VIII Standard a d 10 years as Assistant Training Officers, in the above cyclical order ;”

18. This was also amended vide G.O.Ms.No.292, Labour and Employment Department, dated 13.12.2013, wherein the said Special Rules, in Rule 2, in the Tabular Column under Sub-rule(a) under the heading Class-I in Column (2) against the Category “(1) Training Officers in the Industrial Training Institutes/Centres”. In Column (1)



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thereof, for item (ii) and the entries relating thereto the following shall be substituted, namely :-

“(ii) Promotion in the ration of 1:1 as between

(a) Degree/Diploma Holders ; and

*(b) Certificate Holders with S.S.L.C and five
years service as Assistant Training
Officers;”*

19. Accordingly, the seniority list has been prepared by following the above said G.O.(Ms) No.291, and later as per amended G.O.(Ms) No.292. As per Rule 35(a), the Roster rank and seniority have been fixed. There is no error in following Rule 35(a) Roster rank and accordingly, the petitioners are placed below respondents 4 and 5. Thereafter, there are two more selection lists released and the petitioners have also accepted the same and they are serving in the said post. Hence, this Court finds that there is no such error committed in fixing the seniority, as only Roster system has been followed under Rule 35(a) and this Court is not inclined to accept the case of the petitioners and does not want to interfere with the settled proposition of seniority.

20. In the result, this Writ Petition stands dismissed.



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Consequently, connected miscellaneous petitions are closed. No costs.

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19.04.2023

Index : Yes/No
Neutral citation : Yes/No
Speaking/Non Speaking order

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To

1. The Government of Tamil Nadu
Represented by its Secretary,
Department of Employment & Training,
Fort St. George, Chennai – 600 009.

2. The Director,
Directorate of Employment & Training,
Guindy, Chennai – 600 032.

3. The Joint Director,
Directorate of Employment & Training,
Guindy, Chennai – 600 032.



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V.BHAVANI SUBBAROYAN,J

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