



Rev.Apl.W(MD)No.50 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.07.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Rev.Apl.W.(MD)No.50 of 2023

in

W.P.(MD)No.6216 of 2021

- 1.The Secretary to Government,
Planning, Development and Special Initiatives Department,
Secretariat, Chennai.
- 2.The Commissioner,
Department of Economics and Statistics,
Teynampet, Chennai. ... Review Petitioners / Respondents

Vs

- 1.R.Malavizhi
- 2.B.Ravi
- 3.V.M.Malarvizhi
- 4.S.Balasubramanian ... Respondents 1 to 4 / Writ Petitioners
- 5.S.Natarajan,
Assistant Director of Statistics,
TNHB Colony, M-96, Stage II,
V.M.Chatram, Tirunelveli 627 011.
- 6.Arthur Tennis,
Assistant Director of Statistics,
13/124, Mankulthivilai, Keezhkulam Post,
Kanyakumari District 629 193.



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7.N.Mohanraj,
Assistant Director of Statistics,
No.5, Gokul 1st Street, Brindavan Flats,
Rajaji Nagar (Extn), Villivakkam,
Chennai 600 049.

8.S.Manoharan,
Assistant Director of Statistics,
Plot No.3, Sri Saradha Nagar, 1st Street,
Korattur, Chennai 600 076.

9.M.Mohamed Nazar,
Assistant Director of Statistics,
58, Bangala Pudhur, Sithaiyankottai,
Dindigul 624 708.

10.K.Kandarajan,
Deputy Director of Statistics,
41, T.M. Nagar (Extension) East Main Road,
Uthangudi, Madurai 625 107.

11.S.Suriyakala,
Deputy Director of Statistics,
District Statistical Office,
RDO Office (Back Side),
NGO 'B' Colony,
Tirunelveli 627 007.

12.D.Meenakshi Sundaram,
Assistant Director of Statistics,
149/10, Arulperum Jothi Nagar,
Vennamalai, Karur 6.

13.K.Subramaniam,
Deputy Director of Statistics,
District Statistical Office,
6th Floor, Collectorate Campus,
Erode 628 638.

... Respondents 5 to 13 / Respondents 3 to 11



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Prayer: Review Application is filed under Order XLVII, Rules 1 and 2 of the Civil Procedure Code r/w. Section 114 of Cr.P.C. r/w. Article 226 of Constitution of India, to review the order dated 19.10.2022 made in W.P.(MD)No.6216 of 2021 on the file of this Court.

For Petitioners : Mr.Veerakathiravan,
Addl. Advocate General,
Assisted by Mr.N.Satheesh Kumar,
Addl. Government Pleader.

For Respondents : Mr.G.Prabhu Rajadurai for R1 to R4.

ORDER

Heard the learned Additional Advocate General assisted by the learned Additional Government Pleader for the review petitioners and the learned counsel for the respondents 1 to 4.

2.The respondents 1 to 4 herein filed W.P.(MD)No.6216 of 2021 questioning the order dated 28.01.2020 passed by the Commissioner, Department of Economics and Statistics, Teynampet, Chennai rejecting the their request for inclusion in the promotion panel for the post of Assistant Director of Statistics for the year 2014 – 2015.



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The said writ petition was allowed by this Court on 19.10.2022.

Contending that the order passed by this Court suffers from an error on the face of record, the present review application has been filed.

3.The learned Additional Advocate General reiterated all the contentions set out in the grounds of review application. He pointed out that this Court allowed the writ petition by recording the stand of an official who was present in person to assist the Government Counsel that the panel in question was not published. The learned Additional Advocate General took pains to emphasise that the promotion panel was very much published in the notice boards and that it was very much within the knowledge of the writ petitioners. Once it is seen that the promotion panel was properly published, then the order of the second review petitioner herein that the objections had been belatedly filed has to be sustained. He also would add that the writ petitioners got promotion in the year 2018 and that quite a few persons had been directly recruited to the very same post in the year 2017 itself. The writ petitioners would obviously be stealing march over the directly recruited group who were appointed earlier. But the recruits had not been shown as respondents in the writ petition. Therefore, the writ petition suffers



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from vice of non-joinder of necessary parties. For these twin reasons, the learned Additional Advocate General wanted this Court to review the order passed by this Court.

4.The respondents 1 to 4 have filed counter affidavit as well as rejoinder. The learned counsel for the writ petitioners took me through the averments set out therein. According to the learned counsel, this review application is not at all maintainable. He argued that a review application will lie only if there is an error apparent on the face of the record. None of the grounds now urged before this Court were pleaded before this Court when the writ petition was taken up for disposal. It could not be case of the review petitioners that the said aspect were not within their knowledge. He pressed for dismissal of the review application.

5.I carefully considered the rival contentions and went through the materials on record. The writ petitioners were originally appointed as Assistant Statistical Investigators. They were promoted as Assistant Statistical Inspectors. They became Statistical Officers in the year 2013. The next promotion is that of Assistant Director of Statistics. The crucial



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date is first of September. One of the qualifications that the candidate in the feeder grade must possess first class degree is B.A. or B.Sc with statistic, Mathematics, Economics or Mathematical Economics as main subject. This requirement will be dispensed with if one possesses experience as Statistical Officer for a period of not less than two years.

6.The grievance of the writ petitioners is that on 01.09.2013, they were very much eligible and qualified to become Assistant Directors of Statistics. The private respondents in the writ petition did not have first class degree on the crucial date. Instead of empaneling the writ petitioners, the authorities chose to defer the exercise till the private respondents in the writ petition attained the requisite experience of not less than two years in the post of Statistical Inspector. The private respondents in the writ petition became eligible only in January 2015. The private respondents in the writ petition were senior to the writ petitioners. Only much later, the writ petitioners became aware that the private respondents in the writ petition did not have the prescribed qualification on the crucial date ie., 01.09.2013. When formal appeal was made before the second petitioner herein, the second petitioner chose to negative the same as belated. It is true that Rule 37 of the Tamil Nadu



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State and Subordinate Services Rules states that an aggrieved member must lodge his objection within two months. But then, the limitation will start running only from the date on which the list is displayed in the notice board in the office of the appointing authority.

7.When the writ petition was taken up for disposal, I posed a question as to when the panel was published. Based on the instructions given by the official who was present, the learned Special Government Pleader informed the Court that the panel which included the private respondents in the writ petition was never published. Now the learned Additional Advocate General filed affidavits stating that the panel was very much published on the concerned notice boards.

8.I cannot take cognizance of these affidavits now filed before this Court. This is because they have been sworn neither on the basis of personal knowledge nor on the basis of any contemporaneous records. In matters such as this, this Court cannot go by the *ipse dixit* of the deponents. There must be contemporaneous materials in the form of certificates. No such contemporaneous material is available.



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9.The proviso to Rule 4 of the Tamil Nadu State and Subordinate Services Rules is as follows:-

"Provided that the list of approved candidates for appointment by promotion and by recruitment by transfer to all the categories of posts in the Tamil Nadu State and Subordinate Services shall be prepared annually against the estimated number of vacancies expected to arise during the course of a year. The estimate of vacancies shall be prepared taking into account the total number of permanent post in a category; the number of temporary posts in existence; the anticipated sanction of new posts in the next year; the recruitment post of leave reserves; the anticipated vacancies due to retirement and promotion, etc., in the course of the year and the number of candidates already in position in that category. The list of approved candidates, so prepared, shall be inforce for a period of one year only and shall lapse at the end of the year. The candidates whose names were included in the previous list, but were not appointed, shall be considered, if eligible for inclusion in the list of next year along with their seniors if any whose names were not included in the previous list either because they were found not suitable or because they were not technically qualified when the previous list was drawn up."



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This aspect of the matter was specifically noted by me while allowing the writ petition. While the appointing authority has no compulsion to make promotions, he is definitely obliged to prepare a panel of the candidates eligible for promotion. This must be with reference to the crucial date. No explanation is forthcoming from the respondents in the writ petition as to why with reference to crucial date ie., 01.09.2013, a panel was not prepared. If such a panel has been prepared, the writ petitioners would have definitely found place therein and the private respondents in the writ petition would not have been included. In order to avoid such an eventuality, the authorities had deliberately deferred the exercise of empaneling. The conduct of the authorities is clearly unreasonable and not in consonance with the relevant provision including Rule 4 of the Tamil Nadu State and Subordinate Services Rules.

10.The contention that the direct recruits had not been included as parties does not have any merit. The case on hand pertains to the rights of the writ petitioners that was available on 01.09.2013. The direct recruits entered the scene only in the year 2017. They were rightly not shown as parties in the writ petition.



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11.It is well settled that review application is not an appeal in disguise. The parameters for allowing the review application are well settled. Those circumstances are clearly absent in this case. The review application stands dismissed. No costs.

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NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN,J.

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