



W.P.(MD)No.11270 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :20.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.11270 of 2020

and

W.M.P(MD)Nos.9843 & 9845 of 2020

S.Shanmugakumari

... Petitioner

Vs.

1.The Chairman,
V.O.Chidambaranar Port Trust,
Thoothukudi, Thoothukudi District.

2.The Secretary,
General Administration Department,
V.O.Chidambaranar Port Trust,
Thoothukudi, Thoothukudi District.

3.P.Esakkiammal
4.K.T.Rajasri
5.G.Malayammal
6.B.Mary Jaqulin
7.M.Kandasamy
8.R.Kanmani
9.E.Gerald Soris
10.M.Murugan
11.P.Karuppasamy
12.T.JessiahFdo



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13.A.Sobhana

14.A.Augusta

15.S.Palanikumarasamy

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the second respondent in No.S.29/1/2015-E.II/D.2587, dated 15.11.2019, containing the impugned seniority list, dated 15.11.2019 and the consequential impugned proceedings issued by the first respondent in No.S.29/1/2015-E.II/D.1085, dated 21.07.2020 confirming the impugned seniority list, dated 15.11.2019 and quash the same insofar as the placing the respondents 3 to 15 at Serial Nos.10, 11, 12, 13, 14, 15, 16, 17, 18, 22, 23, 28 & 35 respectively in the seniority list dated 15.11.2019 and further direct the respondents 1 and 2 herein to redrew the seniority list of Upper Division Clerk of the 1st and 2nd respondents Thoothukudi Port Trust forthwith as per the ratio 3:1 provided under the Tuticorin Port Trust Employees(Recruitment, Seniority and Promotion) Regulations, 1979 by including and placing the petitioner above the respondents 3 to 15 and



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consequently, to grant promotion to the petitioner as Upper Division Clerk, Senior Assistant, Head Clerk and Superintendent on par with the petitioner's juniors ie., respondents 3 to 15 herein in the second respondent Port.

For Petitioner : Ms.M.F.Rooshi Maas for
M/s.Isaac Chambers
For R-1 & R-2 : Mr.B.Saravanan,
Senior Counsel
For R-3 to R-15 : No Appearance

ORDER

This writ petition has been filed to quash the impugned proceedings issued by the second respondent in No.S.29/1/2015-E.II/D. 2587, dated 15.11.2019 containing the impugned seniority list, dated 15.11.2019 and the consequential impugned proceedings issued by the first respondent in No.S.29/1/2015-E.II/D.1085, dated 21.07.2020, confirming the impugned seniority list, dated 15.11.2019 insofar as the placing of the respondents 3 to 15 at Serial Nos.10, 11, 12, 13, 14, 15, 16, 17, 18, 22, 23, 28 & 35 respectively in the seniority list, dated 15.11.2019 and further, to direct the respondents 1 and 2 herein to redraw the seniority list of Upper Division Clerk of the 1st and 2nd respondents Thoothukudi Port Trust



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forthwith as per the ratio 3:1 provided under the Tuticorin Port Trust Employees(Recruitment, Seniority and Promotion) Regulations, 1979 by including and placing the petitioner above the respondents 3 to 15 and consequently, to grant promotion to the petitioner as Upper Division Clerk, Senior Assistant, Head Clerk and Superintendent on par with the petitioner's juniors ie., respondents 3 to 15 herein in the second respondent Port.

2. The case of the petitioner is that the petitioner is working as Head Clerk in the first respondent V.O. Chidambaranar Port Trust(hereinafter referred to as 'Port Trust'). The petitioner was initially appointed as a Lower Division Clerk (LDC) on 06.08.1987. The entry level post in the hierarchy of ministerial cadre in the Port Trust is the Lower Division Clerk. The next level of promotion for the post of Lower Division Clerk is Upper Division Clerk. The Lower Division Clerk is the feeder category for promotion to the post of Upper Division Clerk. The recruitment to the post of Upper Division Clerk is by two methods, that are, 75% of posts by promotion, who have rendered minimum five years of service and 25% of posts by conducting limited competitive examination.



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The requirement for promotion to the post of Upper Division Clerk is five years of experience in the Grade after appointment thereto on a regular basis and in the case of promotion, by seniority-cum-fitness and three years of experience in the case of promotion by competitive examination. While so, in the year 2002, the Port Trust proposed to conduct a limited Departmental competitive examination for promotion to the grade of Upper Division Clerk on 23.11.2002 and 24.11.2002. Accordingly, the examination was conducted and a list of selected candidates was published. However, the number of vacancies as on that date was not informed by the Port Trust. However, the Port Trust gave promotion to the respondents 3 to 15 as Upper Division Clerk on 14.03.2005, 16.09.2006, 15.12.2006 and 20.09.2008 respectively, without following 3:1 ratio and more particularly, after two years from the date of competitive examination selection list.

3. The further case of the petitioner is that the Regulations of the Port Trust, clearly specified that the competitive examination for promotion to the post of Upper Division Clerk shall be only against 25% quota and the panel would be valid for one year and the same would be prepared subject



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to number of available vacancies. When the petitioner was waiting for her turn for promotion to the post of Upper Division Clerk, she was given promotion after 20 years of service on 04.08.2010, whereas the respondents 3 to 15, who are juniors to the petitioner were promoted much earlier to the petitioner in violation of 3:1 ratio. Subsequently, in the year 2011, the Port Trust published a draft seniority list of Upper Division Clerk, dated 01.04.2011 and subsequently, the petitioner came to know that several persons who were juniors to the petitioner were given promotion up to 2008 from and out of the list which was drawn from the limited competitive examination conducted in the year 2002 and 2006. Hence, the petitioner along with similarly placed persons, filed W.P(MD)No.20264 of 2014 questioning the draft seniority list, dated 01.04.2011. The said writ petition was dismissed as withdrawn on 12.12.2014 giving liberty to the petitioners to raise objections with regard to the draft seniority list highlighting the irregularities/illegality in the draft seniority list so as to enable the Port Trust to prepare a fair seniority list without any defect. Pursuant to the said order, the petitioner along with similarly placed persons, sent a detailed objection on 31.12.2014 and requested to prepare a fair seniority list based



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on the Rules and Regulations relating to the promotion at 3:1 ratio. But, there was no response. Challenging the same, the petitioner along with others filed W.P(MD)No.2104 of 2015 before this Court and this Court vide order, dated 18.02.2015, directed the respondents 1 and 2, to consider the petitioner's objection, dated 31.12.2014 and to pass orders in accordance with law. Thereafter, the petitioner received a communication rejecting the objection, dated 31.12.2014, stating that the seniority list is in order. Challenging the same, the petitioner along with others filed W.P(MD)No. 7717 of 2015 before this Court. In the mean time, the second respondent herein promoted several persons, who are juniors to the petitioner to various posts. Aggrieved by the same, the petitioner filed W.P(MD)Nos.11457 to 11470 of 2015, wherein this Court granted liberty to the petitioner to raise objections before the competent authority within three weeks from the date of receipt of the order and on receipt of the same, the competent authority was directed to consider the same and pass orders by assigning reasons. However, the said order was not complied with and hence, the petitioner filed a contempt petition in Cont.P(MD)No.1595 of 2019. This Court closed the said contempt petition granting liberty to the petitioner to



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question the seniority list before the competent appellate authority within a period of one month and also directed the appellate authority to take the same on file without questioning the limitation and consider the same on merits. In pursuant to the said order, the petitioner filed an appeal before the first respondent, who in turn, passed the impugned order, rejecting the petitioner's appeal. Challenging the same, the petitioner has filed this writ petition

4. The learned counsel appearing for the petitioner would submit that the petitioner was promoted as Upper Division Clerk under 75% quota on 04.08.2010. However, the persons who are juniors to the petitioner were included in the seniority list, which is contrary to ratio and on that sole ground, the impugned seniority list is liable to be quashed.

5. However, the learned standing counsel appearing for the respondent Port Trust would submit that admittedly, the petitioner was given *ad hoc* promotion on 04.08.2010. However, the services were regularized only with effect from 11.04.2011 and the seniority list was prepared under



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75% and 25% quota and no juniors were included in the seniority list and hence, the claim made by the petitioner is misconceived and accordingly, prays for dismissal of this writ petition.

6. Heard the learned counsel appearing for the petitioner and the learned Senior Counsel appearing for the respondents 1 and 2 and perused the materials placed before this Court.

7. Admittedly, the petitioner entered into service in the year 1987. There are two ways of promotion available to reach the Post of Upper Division Clerk that are, 75% of posts by promotion, who have rendered minimum five years of service and 25% of posts by conducting limited competitive examination. The petitioner was promoted under 75% quota on *ad hoc* basis. However, the service was regularized only on 11.04.2011. Further, no junior persons, who were promoted after 11.04.2011 as Upper Division Clerk, were included in the seniority list and therefore, the claim of the petitioner is not maintainable.



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8. In the result, this writ petition is dismissed. No Costs.

Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
Internet : Yes / No
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