



W.P.(MD).No.24373 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 24.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

**W.P.(MD).No.24373 of 2018
and
W.M.P.(MD).No.22061 of 2018**

V.Vijayaragavan

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by its Secretary,
Public Works Department,
Secretariat,
Chennai.
- 2.The Chief Engineer,
Water Resource Organization,
Public Works Department,
SG & SWR DC,
Chennai – 113.
- 3.The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
VOC Nagar,
Park Town,
Chennai – 600 003.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to publish the seniority list of Assistant Geologist taking into consideration of the marks secured by the respective candidates in the examination conducted in pursuant to the notification No.2 of 2012 dated 02.04.2012 issued by the third respondent after getting the objection from the respective candidates in regard to seniority list if any and then proceed with the promotion within the period that may be stipulated by this Court.

For Petitioner : Mr.H.Mohammed Imran,
for M/s.Ajmal Associates

For R-1 and R-2 : Mr.M.Lingadurai,
Special Government Pleader.

For R-3 : Mr.J.Anand Kumar,
Standing Counsel.

ORDER

This Writ Petition is filed for Mandamus directing the respondents to prepare the seniority list of Assistant Geologist based on the marks secured by the candidates in the examination conducted in pursuant to the Notification No.2 of 2012 dated 02.12.2012.



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2. The contention of the petitioner is that the respondents have prepared the seniority based on the communal roaster. The Department has to follow communal roaster for appointment and for preparing the seniority, the Department ought to follow the merit based on the marks secured in the selection process. The said proposition is settled by the Hon'ble Supreme Court in the case of *Bimlesh Tanwar Vs. State of Haryana and others* reported in 2003 5 SCC 604. In the latest order dated 18.04.2023 passed by the Hon'ble Supreme Court in Contempt Petition (Civil) Diary No(s). 6415/2021 in the case of *P.Madhu Vs K.Nanthakumar & another*, the Hon'ble Supreme Court has considered the implementation of the direction issued in the Bimlesh Tanwar case and has held as under:

17. We, therefore, though are not inclined to disturb the seniority lists which are finalized prior to 10th March, 2003 wherein the benefit is granted to either of the parties i.e. as per the roster or as per the seniority list, the seniority list finalized after 10th March, 2003 will have to be re-visited in accordance with the law laid down by this Court in *Bimlesh Tanwar* (supra) and the first judgment of the Madras High Court (Santhosh Kumar's case).

18. We are unable to accept the contention of the learned AAG that the State is not equipped to complete the exercise. He submitted that this exercise has to be conducted in about 54 Departments.

19. If the State has 54 Departments, at least there would be 54 Secretaries/Principal Secretaries/ Additional Chief Secretaries heading those Departments. Under such Secretaries, there will be at least half a dozen Joint Secretaries and more than a dozen Deputy Secretaries and about two dozen Under Secretaries working in each of the Department. Further, at the divisional levels also, there would be Heads who would be heading the Department insofar as the Divisions are concerned. We are therefore, not inclined to accept the argument.



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20. If the State has the will to do, it can very well comply with the orders passed by the Division Bench of the Madras High Court and affirmed by this Court.

21. We therefore, direct the State Government to complete the exercise of finalizing the seniority lists of selection processes conducted after 10th March, 2003 on the basis of the principle that the seniority list shall be reckoned only on the basis of the merit as determined by the TNPSC in the selection process.

22. It is further made clear that if any list is finalized in case of selections held prior to 2003 giving benefit to the persons selected as per their seniority or as per merit, the same shall also not to be disturbed.

23. Needless to state that if this exercise is not completed within a period of three months from today, we will consider re-opening of the contempt proceedings.

24. List on 18th July, 2023 for compliance.

3. Therefore, the respondents are directed to strictly follow the seniority list based on the marks obtained in the selection process. The said exercise shall be completed within a period of six (6) weeks from the date of receipt of a copy of this order.

4. In view of the above, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

24.04.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr



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S.SRIMATHY, J.

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