



W.P.Nos.10330, 11266 and 11267 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.08.2024

PRONOUNCED ON : 24.10.2024

CORAM

THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.Nos.10330, 11266 and 11267 of 2015

and

M.P.Nos.1, 1, 2, 2 and 2 of 2015

W.P.No.10330 of 2015:

S.Jeyakumar,
Deputy Commissioner of Police,
Central Crime Branch – I,
Chennai Police, Vepery,
Chennai – 600 007.

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by its Principal
Secretary to Government,
Home Department,
Government of Tamil Nadu,
Fort St.George,
Chennai – 600 009.
- 2.The Director General of Police,
Mylapore,
Chennai – 600 004.
- 3.Tamil Nadu Public Service Commission,
Represented by its Secretary,
Frazer Bridge Road,
V.O.C. Nagar, Park Town,



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Chennai – 600 003.

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4.P.Shanmugapriya,
Superintendent of Police,
Presently at,
O/o Directorate of Vigilance and Anticorruption,
No.22, P.S.Kumarasamy Raja Salai,
Chennai – 600 028.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent dated 08.09.2014 in G.O.Ms.No.658 Home (Police-II) Department, quash the same as arbitrary, illegal and consequently restore the seniority of the petitioner by taking into account the marks obtained by him in the qualifying examination for selection conducted by third respondent and order passed by the first respondent in G.O.Ms.No.98 Home (Police-II) Department dated 29.01.2003.

For Petitioner	: Mr.S.Ramesh
For R-1 & R-2	: Mr.Abishek Murthy Government Advocate
For R-3	: M/s.CNG Niraimathi
For R-4	: Mr.V.Ajoy Khose

W.P.No.11266 of 2015:

S.Saravanan,
Superintendent of Police,
OCIU, Intelligence Branch,
DGP Office, Mylapore, Chennai - 4.

... Petitioner



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Vs.

- 1.The State of Tamil Nadu,
Represented by its Principal
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Home Department,
Government of Tamil Nadu,
Fort St.George,
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- 2.The Director General of Police,
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Represented by its Secretary,
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V.O.C. Nagar, Park Town,
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- 4.D.Shanmugapriya,
Superintendent of Police,
Presently at,
O/o Directorate of Vigilance and Anticorruption,
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marks obtained by him in the qualifying examination for selection conducted by the third respondent and order passed by the first respondent in G.O.Ms.No.98 Home (Police-II) Department dated 29.01.2003.

For Petitioner	: Mr.S.Ramesh
For R-1 & R-2	: Mr.Abishek Murthy Government Advocate
For R-3	: M/s.CNG Niraimathi
For R-4	: Mr.V.Ajoy Khose

W.P.No.11267 of 2015:

T.Senthilkumar,
Deputy Commissioner of Police,
Flower Bazaar,
Chennai – 600 001.

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by its Principal
Secretary to Government,
Home Department,
Government of Tamil Nadu,
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Chennai – 600 009.
- 2.The Director General of Police,
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For Petitioner	: Mr.S.Ramesh
For R-1 & R-2	: Mr.Abishek Murthy Government Advocate
For R-3	: M/s.CNG Niraimathi
For R-4	: Mr.V.Ajay Khose

COMMON ORDER

The issues raised in these petitions are one and the same, the Writ Petitions are thus disposed of by a common order.

2. There are three Writ Petitions relating to seniority of the candidates



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appointed in the rank of Deputy Superintendent of Police, pursuant to Group-I selection process, for the recruitment year 1999-2000.

3. The petitioners in W.P.No.11266 of 2015, W.P.No.11267 of 2015 and W.P.No.10330 of 2015 are S.Saravanan, T.Senthilkumar and S.Jeyakumar respectively. The common grievance of all the writ petitioners is that the fourth respondent in these Writ Petitions, viz., D.Shanmugapriya, has been placed above the petitioners in the seniority list vide G.O.(Ms).No.658, Home (Police-2) Department, dated 08.09.2014. The Writ Petitions are thus filed challenging G.O.(Ms).No.658 dated 08.09.2014 issued by the State of Tamil Nadu and further direct to refix the seniority and to correct the service records.

4. Brief facts:

(i) The petitioners herein and the fourth respondent participated in Group-I selection process for the recruitment year 1999-2000. They were selected to the post of Deputy Superintendent of Police, Category-I. The petitioners herein and the fourth respondent were appointed as Deputy Superintendent of Police on 29.01.2003. After necessary training, the petitioners were promoted and are serving as Superintendent of Police at Mylapore, Flower Bazaar Branch, Thirukoilur respectively, when the Writ



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Petitions came to be filed some time in 2015.

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(ii) The fourth respondent herein also appeared in the same recruitment process. She had earlier filed a Writ Petition in W.P.No.2064 of 2012 challenging the proceedings dated 01.06.2011 issued by the Tamil Nadu Public Service Commission, i.e., the third respondent herein and to direct the respondents to refix the seniority in terms of the marks obtained in the qualifying examination with regard to the appointees selected vide G.O.Ms.No.98, Home (Pol.2) Department, dated 29.01.2003 to the post of Deputy Superintendent of Police.

5. It appears that the above Writ Petition may have a bearing and I shall thus examine it closely. In the said Writ Petition, the case of the fourth respondent herein was that she had secured 1203.73 marks but was placed below few other candidates, who had secured lesser marks. It was the specific case of the fourth respondent that the seniority list was prepared on the basis of roster and not on the basis of merit and thus contrary to the decision of the Hon'ble Supreme Court in the case of ***Bimlesh Tanwar Vs. State of Haryana and others*** reported in ***(2003) 5 SCC 604***. It may be relevant to note that the Supreme Court in ***P.S.Ghalaut Vs. State of Haryana and others*** reported in ***(1995) 5 SCC 625*** held that roster position would be the basis for fixation of



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seniority as well. However, the Supreme Court in the case of *Bimlesh Tanwar* cited supra, overruled the judgment in *P.S.Ghalaut* and held that roster is only for the purpose of appointment, while seniority must be based on merit. This decision of the Supreme Court was rendered on 10.03.2003. The entire case of the fourth respondent before this Court in W.P.No.2064 of 2012 was that three other women candidates, viz., H.Jeyalakshmi, S.Umayal and G.Subbulakshmi were placed higher in seniority, vis-a-vis the fourth respondent, though they had secured lesser marks than the fourth respondent. Only the above three candidates were arrayed as parties in the said Writ Petition. This Court on 11.03.2014 disposed of the above Writ Petition finding that the impugned order of the third respondent in Memo No.2538/PSD-A1/1999 dated 01.06.2011 was based on the judgment of the Supreme Court in the case of *P.S.Ghalaut* cited supra, which was subsequently overruled in the case of *Bimlesh Tanwar* and thus, the impugned proceedings passed by the third respondent was found to be invalid, illegal and was set aside while directing the first and second respondents therein, viz., the Secretary, Home Department and the Director General of Police to refix the seniority of the fourth respondent at the appropriate place in consultation with the third respondent Commission. The relevant portion of the order is extracted hereunder:

“18. In the result, the Writ Petition is allowed, leaving the



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parties bear their own costs. The order passed by the 3rd respondent dated 01.06.2011 is hereby set aside by this Court for the reasons assigned in this Writ Petition. Further, the Respondents 1 and 2 are directed to re-fix the seniority of the Petitioner at the appropriate place (in consultation with the 3rd respondent/Service Commission) pursuant to the marks obtained by her in the qualifying examination in respect of the Appointees selected in G.O.Ms.No.98 Home (Pol.2) Department dated 29.01.2003 to the post of Deputy Superintendent of Police category I, by passing a reasoned, speaking order in a fair, just and dispassionate manner by specifying the outline of process of reasoning within a period of eight weeks from the date of receipt of a copy of this order. No costs."

6. Pursuant to the above directions of this Court, the first respondent herein passed the impugned order in G.O.(Ms)No.658, Home (Police-2) Department, dated 08.09.2014, refixing the seniority of the fourth respondent. However, while refixing the seniority, the fourth respondent herein was placed above the petitioners, who secured higher marks than the fourth respondent, thereby acting contrary to the judgment of the Supreme Court in *Bimlesh Tanwar*, which made it clear that roster will be relevant only for the purpose of appointment, while seniority would be based on merit. It is against the above order dated 08.09.2014, the present Writ Petitions have been filed primarily on the premise that the same is contrary to the decision of the Supreme Court in



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7. Before proceeding further, it may be relevant to set out the seniority list for the selected candidates originally prepared on the basis of the roster method vide G.O.Ms.No.98, Home (Pol.2) Department dated 29.01.2003, which was as under:

"Tvl/Selvi/Tmt.

Sl.No.	Name	Total
1.	T.P.Sureshkumar	1312.03
2.	R.Kalaiselvi	1197.64
3.	S.Inbasekar	1298.63
4.	V.Baskaran	1250.38
5.	S.Meenalochani	1103.02
6.	S.Subathra	1206.49
7.	S.Jeyakumar	1248.64
8.	A.Mayilvaganan	1280.09
9.	H.Jayalakshmi	1100.95
10.	P.Sundaravadivel	1230.5
11.	S.N.Umayal	1193.65
12.	S.Saravanan	1259.29
13.	K.Balasubramaniam	1278.29
14.	K.Suganthi	1158.88
15.	D.Ravichandran	1231.16
16.	C.Murugan	1184.41
17.	T.Senthilkumar	1252.83
18.	D.Kannan	1254.28
19.	S.Jaisankar	1224.03
20.	P.Mahendran	1254.24



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21.	<i>C.Vatchala</i>	1189.73
22.	<i>G.Subulakshmi</i>	1063.33
23.	<i>C.Vijayakumar</i>	1235.97
24.	<i>D.Shanmuga Priya</i>	1203.73

A perusal of the above Table would show that the fourth respondent, D.Shanmugapriya had secured 1203.73 marks, while the petitioners, viz., S.Jeyakumar, S.Saravanan and T.Senthilkumar had secured 1248.64, 1259.29 and 1252.83 marks respectively, i.e., higher than that secured by the fourth respondent. It is the case of the petitioners that the impugned order made, pursuant to the directions of this Court in W.P.No.2064 of 2012, on the basis of law laid down in *Bimlesh Tanwar* holding that seniority would be fixed on the basis of merit, has not been complied with as evident from the fact that the fourth respondent, who had secured lesser marks than the petitioners, viz., S.Jeyakumar, S.Saravanan and T.Senthilkumar, is now placed above the petitioners vide the impugned proceedings.

8. At this juncture, it may be relevant to note that subsequent developments have taken place, which has a material bearing on the prayer sought for by the petitioners. Before proceeding any further, it may be relevant to set out the same. The Division Bench of this Court while dealing with the question as to the basis which ought to be followed while fixing the seniority,



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namely, whether roster or merit, in the case of ***N.Santosh Kumar vs. The Tamil***

Nadu Public Service Commission reported in (2015) 4 MLJ 281 held that seniority ought to be fixed on the basis of merit as held by the Supreme Court in the case of *Bimlesh Tanwar*. This was challenged by way of a Special Leave Petition and the same was dismissed by the Supreme Court in S.L.P.(C)Nos.2890 to 2894 of 2016 dated 22.01.2016.

9. After the decision of the Supreme Court, the State of Tamil Nadu passed the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. Importantly, Section 40 of the said Act provides that fixation of seniority would be based on roster and not on merit. The validity of the above provision was the subject matter of challenge in a batch of cases and a Division Bench of this Court in the case of ***K.Raja and others Vs. Additional Chief Secretary to Government and others*** reported in ***2019 (6) CTC 750*** held Section 1(2), 40 and 70 to be ultra vires and unconstitutional. This was challenged by way of Special Leave Petitions before the Supreme Court in S.L.P.(C)Nos.2861 to 2876 of 2020. The above Special Leave Petitions came to be dismissed on 06.07.2020. However, the directions of the Supreme Court were apparently not complied with and contempt applications were filed in Contempt Petition (Civil)No.638 of 2017. The Supreme Court directed the respondents to comply



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with the order within a period of twelve weeks vide order dated 01.10.2021 reported in **2021 SCC Online SC 846**.

10. Subsequently, there was another contempt petition filed by P.Madhu with regard to the violation of the directions in the contempt proceedings dated 22.01.2016. The Supreme Court, vide order dated 09.05.2024, directed that seniority list prepared prior to 10.03.2003 shall stand frozen. It is only the seniority list published after 10.03.2003 that will have to be revisited in accordance with the judgment of the Supreme Court in *Bimlesh Tanwar Vs. State of Haryana and others* reported in **(2003) 5 SCC 604**. The relevant portion is extracted hereunder:

“3. I.A. No 134752/2023 has been filed for clarification/modification of the order passed by this Court on 18.04.2023. Shri Gaurav Agarwal, learned senior counsel, submits that the seniority list in the case of the department in which the applicants are working was published in the year 2006. It is, however, submitted that since their appointments have been made prior to 10.03.2003, the State Government is refusing to revise the seniority list, thereby causing prejudice to the applicants.

4. Shri Amit Anand Tiwari, learned Additional Advocate General, submits that the applicants were appointed in the year 2001 as per the seniority list published by the Tamil Nadu Public Service Commission (TNPSC). It is submitted that, however, in some of the cases those seniority lists have been published prior to 10.03.2003



and they could not be given effect to on account of judicial intervention.

5. We do not find that any clarification of the order passed by this Court is required. The order is very clear that all such seniority lists which have been published prior to 10.03.2003 shall stand frozen. It is only the seniority lists published after 10.03.2003 that will have to be revisited in accordance with the judgment of this Court in *Bimlesh Tanwar v. State of Haryana and Others*, reported in (2003) 5 SCC 604.

6. The order is also clear that the seniority lists/selection processes conducted prior to 10.03.2003 and the seniority as attained in the lists published by the TNPSC in those selection processes/seniority lists shall also stand frozen. It is only the selection processes/seniority lists which were conducted after 10.03.2003 which will have to be revisited in accordance with the directions issued by this Court vide order dated 18.04.2023.

7. With these clarifications, all these petitions and applications pending before this Court shall stand disposed of.

8. We clarify that if any of the parties has any individual grievance with regard to his/her seniority, such persons would be entitled to take recourse to their individual remedies, as are available in law.

9. It is further clarified that since the revisions in the seniority lists have been effected by the State of Tamil Nadu in pursuance of the directions issued by this Court, such revisions will not enure any pecuniary benefits to such persons.”



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11. It may also be relevant to refer to the earlier order of the Supreme Court dated 18.04.2023, wherein, the following observations were made.

“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.

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.”

12. If one applies the above directions of the Supreme Court (contempt jurisdiction) that seniority list published or finalized prior to 10.03.2003 shall stand frozen, then, in the present case, the seniority list was published on 29.01.2003 in respect of Group-I selection for the recruitment year 1999-2000 to the post of Deputy Superintendent of Police, Category-I. That being the case, it may not be permissible for this Court to now re-visit the seniority list published on 29.01.2003 in view of the orders of the Supreme Court in



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contempt proceedings dated 09.05.2024. Though the learned counsel appearing for the petitioners filed detailed note of submissions to point out that applying *Bimlesh Tanwar's* case, the fourth respondent would have to be placed below the petitioners, this Court is not inclined to examine the same, inasmuch as this Court is of the view that the seniority list published prior to 10.03.2003 shall remain frozen.

13. The Writ Petitions stand disposed of on the basis of the above observations. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

24.10.2024

Index : Yes / No
Internet : Yes/ No
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MOHAMMED SHAFFIQ, J.

Lm/mka

To

1. The Principal Secretary to Government,
State of Tamil Nadu,
Home Department,
Government of Tamil Nadu,
Fort St. George,
Chennai – 600 009.

2. The Director General of Police,
Mylapore,
Chennai – 600 004.

3. The Secretary,
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