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W.P.No.410 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

and

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

W.P.No.410 of 2024

and

W.M.P.Nos.445, 446, 449 of 2024

K.S.Arun Sabhapathy

... Petitioner

Vs.

1. The Registrar General,
Honble High Court, Madras,
Chennai-600 104.

2. The Home Secretary,
Government Of Tamil Nadu,
Fort St George, Chennai- 600 009.

3. The Secretary,
Tamil Nadu Public Service Commission,
Park Town, Chennai- 600 003.

... 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 relating to the impugned G.O. (D) No. 1063 Home (Courts -I) Department dated 08.09.2023 issued by the Second respondent authority and to quash the same in so far as fixing the petitioner's seniority as SI.No.194 and re- fix the Petitioner's seniority as SI.No.72 by consider the



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257 marks / merit ranking of the Petitioner in the recruitment examination 2009 for the recruitment of Civil Judge (Junior Division) (2004- 2008) and direct the second respondent authority to publish the revised seniority list by granting due weightage to the petitioner's merit in the recruitment examination within the time frame to be fixed by this Hon'ble Court.

For Petitioner : Mr.S.Thanka Sivan

For Respondents : Mr.Karthik Ranganathan (for R1);

Mrs.P.Raja Rajeswari,
Government Advocate (for R2);

Ms.C.N.G.Niraimathi,
Standing Counsel for TNPSC (for R3)

ORDER

(Order of the Court was delivered by S.M.Subramaniam J.)

The revision of seniority made pursuant to the orders of the high Court of Madras dated 20.07.2021 in W.P. Nos. 20449, 20451 & 20452 of 2015, issued in G.O.(D) No.1063 Home (Courts-I) Department dated 08.09.2023 is under challenge in the present writ proceedings.

2. The petitioner was appointed as a Civil Judge (Junior division) pursuant to the selection process notified in the year 2009. The petitioner belongs to backward class community. He scored 257 marks and out of 5



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candidates 3 candidates were selected and included in the original selection list. Consequently, those 3 candidates were appointed and joined service as Civil Judge (Junior Division) in the year 2009 itself. Admittedly the name of the petitioner was included in the reserve panel in Serial No.195/A. The reserve panel was not immediately released on account of the fact that the selected candidates have joined in the year 2009. Subsequently, one candidate had not joined in the post. Thus, the reserved list was decided to be released and consequently, the petitioner was appointed in G.O.(4D) No.87 Home (Courts-1) Department dated 1.12.2011. Thereafter, the petitioner joined as Civil Judge (Junior Division).

3. The learned counsel for the writ petitioner Mr.Thanka Sivan would contend that the petitioner is entitled for seniority in the cadre of Civil Judge along with the candidates who were selected and appointed in the original select list of the year 2009. Since the petitioner scored 257 marks, his name ought to have been placed in Sl.No.72 in the revised seniority list. Contrarily his name was erroneously included in Sl.No.195 A in the seniority list. Thus, the present writ petition came to be instituted.



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4. The learned counsel for the petitioner Mr.S.Thanka Sivan would submit that the provisions of the Tamil Nadu Government Servants (Conditions of service) Act 2016 is inapplicable since the selection process was completed in the year 2009. Rule 35 of the erstwhile Tamil Nadu States and Subordinate Service Rules stipulates the methods of fixing seniority of a person in service. Accordingly, the marks/rank obtained by the candidate is to be taken into consideration for fixation of seniority. Thus, the petitioner is entitled for the relief.

5. In this context Mr.S.Thanka Sivan would rely on the judgement of the Supreme Court in the case of ***Bimlesh Tanwar vs. State of Haryana and others, reported in (2003) 5 SCC 604***, paragraph No. 52 of the judgement relied upon, stands extracted hereunder:

“52. In this case also, although there does not exist any statutory rule but the practice of determining inter se seniority on the basis of the merit list has been evolved on interpretation of the rules. A select list is prepared keeping in view the respective merit of the candidates. Not only appointments are required to be made on the basis of such merit list, seniority is also to be determined on that basis as it is expected that the candidates should be joining their



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respective posts almost at the same time. Yet again, in Chairman, Puri Gramya Bank v. Ananda Chandra Das [(1994) 6 SCC 301 : 1994 SCC (L&S) 1384 : (1994) 28 ATC 293] this Court held: (SCC p. 301, para 2)

“It is settled law that if more than one are selected, the seniority is as per ranking of the direct recruits subject to the adjustment of the candidates selected on applying the rule of reservation and the roster. By mere fortuitous chance of reporting to duty earlier would not alter the ranking given by the Selection Board and the arranged one as per roster. The High Court is, therefore, wholly wrong in its conclusion that the seniority shall be determined on the basis of the joining reports given by the candidates selected for appointment by direct recruitment and length of service on its basis.””

6. In the case of ***N.Vasudevan vs. Registrar General and others, reported in (2021) 5 Mad LJ 513***, the Division Bench of this Court ruled as follows:

“41. Accordingly, W.P. Nos. 20449, 20451 and 20452 of 2021 are disposed of with the following directions:



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(i) *The revised seniority lists as prepared in accordance with the marks obtained by the candidates recruited to the post of Civil Judge (Junior Division) would prevail irrespective of the order in which they may have been shown by the Public Service Commission or their roster positions. If two or more appointees obtain identical marks, the older or oldest in age, as the case may be, will occupy the higher or highest position between such candidates in the seniority list.*

(ii) *The above direction will apply only to appointees recruited to the post of Civil Judge (Junior Division) 2009 onwards.*

(iii) *It is needless to say that the dates of appointment are of crucial importance when preparing the seniority list, but when a common recruitment process is undertaken, all new recruits must be deemed to have been appointed on the same date and their order of seniority will be in accordance with the marks obtained in the recruitment examination, irrespective of the date of joining and regardless of the positions they occupied as per the roster.*

(iv) *The promotions obtained till today by candidates who have been recruited as Civil Judge (Junior Division) in or after the year 2009 will remain unaffected by this order, in the sense that no one already promoted should be*



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demoted to a lower post.

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(v) Even if the revision results in a higher ranked officer remaining in a lower post than a lower ranked officer, promotion will be on the basis of the prospective vacancy in the promotional post.

(vi) For Civil Judges (Senior Division) who may be eligible to take the limited competitive examination in future, all judges ranked higher than the last-placed Civil Judge (Senior Division) who is entitled to take the examination on the basis of the time spent in the post, will be eligible irrespective of not having spent the requisite time in the post.

(vii) As far as the 2020 recruitment process is concerned, since the appointments have not yet been made, the seniority list must be prepared in terms of this order and on the basis of the descending order of marks obtained by the appointees at the recruitment examination. To clarify for all purposes, the person with the highest marks must be placed first in the seniority list and so on till the person with the lowest marks in the last position, irrespective of what slots they may have occupied as per the roster.

(viii) Any fixation or re-fixation of seniority made in



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accordance with law for judges recruited prior to 2009 will remain unaffected by this order."

7. Placing reliance on the above judgements, Mr.S.Thanka Sivan would state that the seniority of the petitioner has been erroneously fixed in the revised seniority list and it ought to be fixed taking into consideration the marks scored by the petitioner in the selection of the year 2009.

8. The learned counsel Smt.Niraimathi, appearing on behalf of the T.N.P.S.C. would strenuously oppose the contention of the petitioner by stating that the case of the petitioner is directly hit by Rule 22(d) proviso clause of the erstwhile Tamil Nadu State and Subordinate Services Rules. Since the selection was conducted in the year 2009, the earstwhile Tamil Nadu state and Subordinate Service Rules would be applicable in the present case. Proviso to Rule 22(d) stipulates that "*provided also that the candidates appointed from the reserve panel shall be placed below all the candidates appointed from the regular list in the same order in which the vacancies have arisen.*"



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9. Relying on this above Rule Smt.Niraimathi would contend that the petitioner is not entitled to claim seniority on par with the selected candidates in the original select list. The petitioner was not selected and included in the original select list but was included in the reserve panel. The reserve panel was released in the year 2011, on account of the fact that one candidate had not joined in the post of Civil Judge. Thus, the claim of the petitioner is untenable.

10. The learned counsel Mr.Karthik Ranganathan for the High Court would also support the arguments of Smt.Niraimathi and states that the petitioner is not entitled to claim seniority on par with the candidates whose names were originally included in the select list of the year 2009. The petitioner was not even selected but his name was included in the reserve panel and therefore, claiming seniority from the year 2009, on par with the selected candidates is unsustainable.

11. We have considered arguments as advanced between the respective learned counsel appearing on behalf of the lis on hand.



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12. The judgements relied on by the petitioner is all about fixation of seniority amongst the selected candidates. None of the judgements relied on by the petitioner would speak about the candidates whose names were included in the reserve panel and got appointed on account of non-joining of selected candidates in the post. Therefore, the petitioner cannot claim benefits on par with the selected candidates since the petitioner was not selected nor included in the original selected list of the 2009.

13. Mere inclusion of a person in the reserved list would not confer any absolute right for appointment. It is needless to state, even the selection per se will not confer a right to the candidates. But the case of the candidate whose name has been included in the reserve panel is unconnected with the original select list. As per the rules, if any selected candidates has not joined in the post, then the reserve panel may be released. Therefore, inclusion of the names of a person in the reserve panel would provide no right.

14. The reserve panel remains in force untill the drawal of the next select list by the Tamil Nadu Public Service Commission. In the present case, the select list was published in the year 2009 and the name of the



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petitioner was released from the reserve panel in the year 2011 and consequently, the Government issued the appointment order in G.O.(4D) No.87 dated 1.12.2011. Therefore, the petitioner entered into judicial service only in the year 2011 and therefore, he cannot claim seniority in respect of the selected candidates who joined in service in the 2009 and working for a period of 2 years before the appointment of the petitioner in the year 2011.

15. The learned counsel for T.N.P.S.C. relied on the judgement of the High Court of Delhi, in the case of Union of India and another vs. Pallavi Gupta and others in W.P.(C)No.14908 of 2022 dated 12.07.2023. The High Court of Delhi has dealt with exactly similar case wherein a candidate was appointed from the reserve panel because of non joining of the selected candidates. The relevant portion of the judgement reads as under:

“33. ... So, the controversy is whether the candidates appointed from the Reserve List, because of non-joining of the candidates initially recommended by the UPSC, would rank senior to the candidates initially recommended/appointed in terms of the first recommendation of the UPSC, as they possess higher marks and/or had joined the service prior to such initially



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the year 2009. Thus, the seniority of the petitioner has been rightly placed below the name of the selected candidates of the year 2009 and there is no infirmity as such.

17. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(S.M.S.J.,)

(K.R.S.J.,)

20.02.2024

Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

(sha)

To

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Honble High Court, Madras,
Chennai-600 104.

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Fort St George, Chennai- 600 009.

3. The Secretary,
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S.M.SUBRAMANIAM, J.

and

K.RAJASEKAR, J.

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