IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.633 of 2024 and
WMP.Nos.641 & 642 of 2024

L.Meenakshi ... Petitioner

Vs.

1.The Government of Tamilnadu,
Represented by its Secretary,
Commercial Taxes Department,
Fort St.George,
Chennai-9
2.The Commissioner of Commercial Taxes,
Commercial Taxes Department,
Ezhilagam Chepauk,
Chennai-5
3.M.Paramarthalingam ... Respondents

PRAYER: Writ petition is filed under Article 226 of the Constitution of India to issue a writ of mandamus directing the respondents to promote the petitioner temporarily as Deputy Commissioner in one of the vacancies lying vacant as was done in the case of her junior, namely the third respondent herein.

For Petitioner : Mr.V.Prakash,
Senior Counsel
for Mr.S.Viswanathan

For Respondents
For R1 & 2 : Mrs.E.Ranganayaki,
Additional Government Pleader

ORDER

This writ petition has been filed for direction to the respondents to promote the petitioner temporarily to the post of Deputy Commissioner in any of the vacancies lying vacant.

2. Mr.V.Prakash, the learned Senior Counsel appearing for the petitioner submitted that the petitioner was recruited directly through Tamilnadu Public Service Commission(TNPSC) to the post of Assistant Commercial Tax Officer in the year 2008 for the vacancies of the years 2001 to 2007. She joined in the year 2008. Her probation was declared satisfactorily only in the year 2011. The second respondent never published the seniority in the post of Deputy Commercial Tax Officer(formerly known as Assistant Commercial Tax Officer) in accordance with the judgment rendered by the Hon'ble Supreme Court of India. Therefore, the Assistant Commercial Tax Officers filed a contempt petition before the Hon'ble Supreme Court of India, which resulted in publishing the *inter se* seniority. The petitioner's seniority is lower than the third respondent. Due to availing of maternity leave and earned leave, her probation was declared after the third respondent's declaration of probation. The petitioner is not questioning her non inclusion in the panel drawn for Commercial Tax Officer of the year 2011, though the third

respondent who is junior to the petitioner, was empanelled as Commercial Tax Officer for the panel year 2011, as his probation was declared earlier to the petitioner. Once the petitioner was promoted to the cadre of Commercial Tax Officer and joined, her immediate junior in the same cadre, who was promoted in the panel year of 2011, though not on an earlier date, the issue is the effect on the petitioner's *inter se* seniority. Now 57 posts of Deputy Commissioner were filled up by way of temporary promotion on 28.12.2023. However, the petitioner was not considered for the *ad hoc* promotion for inclusion in the temporary panel. Though the petitioner is not challenging the panel for non inclusion of the petitioner for the year 2011, she seeks her inclusion in the said panel in view of the fact that there are 23 posts of Deputy Commissioner now vacant and the respondents are not taking steps to fill up those posts by promotion.

3. Mrs.E.Ranganayaki, the learned Additional Government Pleader appearing for the respondents submitted that now the seniority list has been empanelled as per the order passed by the Hon'ble Supreme Court of India in CP.No.(C) Diary No.9663 of 2023 with C.P(C) Diary No.6415 of 2021 in SLP.(C)No.2886 of 2016 by the seniority list dated 27.12.2023. The said

seniority conferred on the individuals is purely provisional subject to confirmation of their eligibility for inclusion in the respective year's panel and does not confer on them any consequential right to be automatically considered for further promotion or appointment to the next higher category. Therefore, objections, if any, called for to the provisional panels redrawn now may be filed individually in writing within 15 days from the date of the seniority list dated 27.12.2023.

4. Heard, the learned counsel appearing on either side.

5. The petitioner and others made representations dated 30.12.2023 to include their names under GO.Ms.No.143 Commercial Taxes and Registration (E2) Department dated 28.12.2023. Whereas on perusal of the above said G.O. is clear that any person who wishes to make representation against non-inclusion of his/her name in the temporary list shall do so within a period of two months from the date of issuance of the order. However, the petitioner did not submit any objection for the revised seniority list dated 27.12.2023.

6. Therefore, the petitioner is directed to submit her objection for the

seniority list dated 27.12.2023 within a period of one week from today. On receipt of the same, the second respondent is directed to consider the representation for regaining the petitioner's position in the seniority list on merits and in accordance with law within a period of four weeks from the date of receipt of the representation. Till then, the first respondent is directed to keep one post of Deputy Commissioner in any of the vacancies as 'vacant'. It is also made clear that while considering the objections raised by the petitioner, the second respondent is directed to consider the same without being influenced by any of the observations made by this Court in this order.

7. With the above directions, this writ petition is disposed of. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

08.01.2024

Index :Yes/No
Internet : Yes/No
Speaking order/non-speaking order
lok
(Note: Issue order copy on 09.01.2024)

G.K.ILANTHIRAIYAN, J.

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To

1.Secretary,
The Government of Tamilnadu,
Commercial Taxes Department,
Fort St.George,
Chennai-9

2.The Commissioner of Commercial Taxes,
Commercial Taxes Department,
Ezhilagam Chepauk,
Chennai-5

W.P.No.633 of 2024

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