



W.P.No.2025 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.2025 of 2024 and
W.M.P.Nos.2157, 2161 and 2164 of 2024

M.Kavitha

...Petitioner

-Vs-

1. The State of Tamilnadu,
Rep. by its Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat, Fort. St., George,
Chennai-600 009.

2. The Director of Rural Development and Panchayat Raj,
Panagal Maaligai, Saidapet,
Chennai-600 015.

3. S.Sadaiappan

4. T.Balasubramanian

5. V.Venkatesan

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned revised seniority list issued by the 2nd Respondent vide proceedings in Proc.No.56857/2021/EE1.2 dated 20.10.2021 and



W.P.No.2025 of 2024

2. The Madurai Bench of this Court already passed an order in a similar case in W.P.(MD).No.20670 of 2021 on 07.11.2023. The relevant portion of the order is extracted hereunder:

"6.The writ petitioner was appointed as an Assistant Engineer in Rural Development and Panchayat Raj Department in the year 1998. It is an admitted fact that a seniority list of the Assistant Engineer was published in the year 1998 on the basis of roster point by the Tamil Nadu Public Service Commission and the said seniority was prevailing till passing of the order impugned in the writ petition on 20.10.2021.

7. The Hon'ble Supreme Court in a judgment reported in (2003) 5 SCC 604 (Bimlesh Tanwar Vs.State of Haryana and others) dated 10.03.2003 in Paragraph No.40 has held as follows: "40.An affirmative action in terms of Article 16(4) of the Constitution is meant for providing a representation of class of citizenry who are socially or economically backward. Article 16 of the Constitution of India is applicable in the case of an appointment. It does not speak of fixation of seniority. Seniority is, thus, not to be fixed in terms of the roster points. If that is done, the rule of affirmative action would be extended which would strictly not be in consonance of the constitutional schemes. We are of the opinion that the decision in P.S. Ghalaut does not lay down a good law."



W.P.No.2025 of 2024

WEB COPY

8. In the above said judgment, the Hon'ble Supreme Court has made it clear that the seniority list of a selected candidate would only be on the basis of merit rank published by the Tamil Nadu Public Service Commission and not on the basis of roster point. Relying upon the said judgment of the Hon'ble Supreme Court, a batch of writ petitions came to be filed by the Assistant Engineer of Highways Department and Public Works Department seeking to revise their seniority list on the basis of their marks obtained in the T.N.P.S.C selection. A learned Single Judge was pleased to dismiss the same on 18.10.2012. However, on appeal, the Division Bench of this Court in a judgment reported in (2015) 4 MLJ 281 (N.Santhosh Kumar and others Vs. The Tamil Nadu Public Service Commission and others) was pleased to allow the writ appeals with a direction to the official respondents to take the rank assigned by the Service Commission to the selectees, as the basis for fixation of seniority. This order was confirmed by the Hon'ble Supreme Court by its order dated 22.01.2016 in SLP(Civil) Nos.23070 to 23071 of 2015. Alleging violation of the orders of the Hon'ble Supreme Court, Contempt Petition (Civil).No.638 of 2017 was filed by one V.Senthur and another in which a detailed order was passed by the Hon'ble Supreme Court on 01.10.2021 warning the official respondents to comply with the orders of the Hon'ble Supreme Court dated 22.01.2016.



W.P.No.2025 of 2024

9.The Tamil Nadu Public Service Commission has revised the seniority list of the Assistant Engineers of the Rural Development and Panchayat Raj Department and published a seniority list on 12.10.2021 on the basis of merit rank secured by the candidates. A consequential order was passed by the Department on 20.10.2021 implementing the order of the T.N.P.S.C and in consonance with the order of the Hon'ble Supreme Court. This consequential order of the second department has been challenged in the present writ petition mainly relying upon the order of the Hon'ble Supreme Court dated 18.04.2023 in the subsequent contempt proceedings.

10.According to the learned Senior Counsel appearing for the writ petitioner, the revised seniority list which is impugned in the writ petition has been issued in compliance of the order of the Hon'ble Supreme Court dated 01.10.2021 whereas the said order has been modified by the Hon'ble Supreme Court by its order dated 18.04.2023. In the order dated 18.04.2023, for the first time, a cut-off date was fixed by the Hon'ble Supreme Court to the effect that the seniority list that were finalised prior to 10.03.2003 shall not be disturbed and all other seniority list which were finalised after 10.03.2003 shall be revised on the basis of the merit as determined by T.N.P.S.C.



W.P.No.2025 of 2024

11.It is further contended that in Paragraph No.22 of the said order, it has been clarified that in case of selection held prior to 2003, if seniority list has been published giving benefit to the persons selected as per their seniority or as per merit, the same shall not to be disturbed. Therefore, according to the learned counsel for the writ petitioner, the seniority list having been prepared in the year 1998 on the basis of roster point, it shall not to be disturbed even as per the order of the Hon'ble Supreme Court. According to him, in the present case, the respondent authorities are not considering the subsequent order of the Hon'ble Supreme court dated 18.04.2023 and they are still relying upon the order passed in contempt proceedings dated 01.10.2021. In view of modified order of the Hon'ble Supreme Court, the revised seniority list impugned in the writ petition should be set aside.

12.For the purpose of clarity, the order of the Hon'ble Supreme Court in Contempt Petition (Civil) Diary No.6415 of 2021 dated 18.04.2023 Paragraph Nos.16 to 22 is extracted as follows:

“16.We are of the view that though it can be said that even after the judgment of the Indira Sawhney(supra) on 16th November, 1992, the State could not have prepared the merit list on the basis of roster point, we find that it will not be appropriate to reopen the issues from as early as 1992. We find that in any case, once the law was pronounced by this Court specifically in the case of Bimlesh Tanwar(supra), the State was bound to follow the same.



W.P.No.2025 of 2024

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 (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.

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.



W.P.No.2025 of 2024

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 selection 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.”

13.As rightly contended by the learned Senior Counsel appearing for the fourth respondent, the Principal Secretary to the Rural Development Department had filed a compliance affidavit before the Hon'ble Supreme Court on 15.12.2021 in which, paragraph Nos.7 to 9 of the said affidavit are extracted as follows:

“7.I humbly submit that having received the above said revised seniority list drawn on the basis of merit on 12.10.2021, as explained supra, the Director of Rural Development and Panchayat Raj had communicated and circulated the above said revised seniority list, drawn on the basis of merit to the batchmates concerned vide the Director of Rural Development and Panchayat Raj proceedings No.56857/2024/EE 1.2, dated 20.10.2021 (Annexure-III)



W.P.No.2025 of 2024

8.I humbly submit that in order to put into effect the revised seniority list (based on merit) in its letter and spirit, the revision of seniority for the category of Assistant Engineers has been effected.

9.I humbly submit that, the orders of the Hon'ble Supreme Court of India, dated 01.10.2021 has been fully complied with in its true letter and spirit, by revising the seniority of all selectees covered in the Tamil Nadu Public Service Commission's Notification dated 26.09.1997 (Annexure-I) for Recruitment (Direct) for the post Assistant Engineer (Rural Development) in Panchayat Unions for the year 1997, on merit basis.”

14.Recording the averments in the compliance affidavit, the Hon'ble Supreme Court was pleased to close the contempt proceedings.

15.In view of the above said facts, it is clear that the revised seniority list published by T.N.P.S.C on 12.10.2021 with regard to the Assistant Engineer of Rural Development Department and the consequential order passed by the concerned Department (impugned order) on 20.10.2021 have been placed on record before the Hon'ble Supreme Court and on the basis of the said compliance affidavit, the Hon'ble Supreme Court was pleased to close the contempt proceedings. Therefore, the petitioner cannot be heard to contend that the revised seniority list published by the second respondent Department under the impugned order dated



W.P.No.2025 of 2024

20.10.2021 is not in consonance with the order of the Hon'ble Supreme Court.

16.The learned Senior Counsel appearing for the writ petitioner made an emphasis over the clarification issued by the Hon'ble Supreme Court in Paragraph No.22 of the order dated 18.04.2023. According to him, the seniority list for the selection held prior to 10.03.2003, giving benefit to the persons selected as per their seniority or as per their merit shall not be disturbed.

17.The Hon'ble Supreme Court was pleased to fix the cut-off date as 10.03.2003 based upon the date of judgment of the Hon'ble Supreme Court in Bimlesh Tanwar's case. As per Paragraph No.21 of the said judgment of the Hon'ble Supreme Court dated 18.04.2023, all the seniority lists that were finalized after 10.03.2003 have to be revisited and a revised seniority list has to be prepared on the basis of the merit list prepared by T.N.P.S.C. This cut-off date was introduced by the Hon'ble Supreme Court for the first time in their order dated 18.04.2023. Therefore, in Paragraph No.22, the Hon'ble Supreme Court was pleased to clarify that in case if any seniority list for the selections prior to 10.03.2003 has already been revised (from roster to merit based) on the basis of the judgment of the Hon'ble Supreme Court in Bimlesh Tanwar's case, the same shall not be disturbed. In other words, any revision of seniority for the selections prior to 10.03.2003 which have been effected before 18.04.2023 from roster to merit shall not



W.P.No.2025 of 2024

be revised for the second time in view of the introduction of cut-off date in the order of the Hon'ble Supreme Court, dated 18.04.2023.

18.In the present case, the order of the Hon'ble Supreme Court dated 10.01.2021 has already been complied with by the second respondent Department by way of filing compliance affidavit on 15.12.2021 before the Hon'ble Supreme Court. Therefore, seniority list has already been revised (from roster to merit based) prior to 18.04.2023 itself. Hence, the contention of the writ petitioner that his communal roster seniority should be restored is not legally sustainable.

19.In view of the above said deliberations, there are no merits in the writ petition. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed."

3. In view of the above, this writ petition is also dismissed.

Consequently, connected miscellaneous petitions are closed. No costs.

01.02.2024

Index : Yes/No
Internet: Yes/No
gvn

11/12



WEB COPY



W.P.No.2025 of 2024

G.K.ILANTHIRAIYAN,J.
gvn

To

1. The State of Tamilnadu,
Rep. by its Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat, Fort. St., George,
Chennai-600 009.
2. The Director of Rural Development and Panchayat Raj,
Panagal Maaligai, Saidapet,
Chennai-600 015.

W.P.No.2025 of 2024 and
W.M.P.Nos.2157, 2161 and 2164 of 2024

01.02.2024