



WP No.12886 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

WP No.12886 of 2010

R.Magudapathy

... Petitioner

versus

1.The Chennai Metropolitan Development Authority,
Represented by its Member Secretary,
No.1 Gandhi Irwin Road,
Egmore, Chennai-8.

2.Tmt.Kanchanamala
Assistant Planner,
Chennai Metropolitan Development Authority,
No.1 Gandhi Irwin Road,
Egmore, Chennai -8.

3.R.Anusuya

4.R.Meena

5.V.Kumar

6.C.Mohanraj

... Respondents

R3 to R6 impleaded as per court order
dated 07.09.2011 by NKKJ in
MPs.3 to 6/2011 in WP No.12886 of 2010.



WP No.12886 of 2010

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorarified Mandamus, calling for the records of the first respondent in connection with the impugned proceedings issued by him in Memo.No.E2/5195/2009 dated 18.08.2009 and Proc No.E2/5195/2009 dated 28.06.2010 and quash the same and issue consequential direction to the first respondent herein to maintain the finalized seniority position as issued in the proceedings of the first respondent in Proc.No.E1/18236/2001 dated 25.04.2002 by placing the petitioner above the second respondent herein in the category of Assistant Planner for all purpose, and to grant such other relief.

For the Petitioner :Mr.M.Ravi

For the Respondents :Mr.P.Veena Suresh
Standing Counsel for CMDA
for first respondent
Mr.C.Ravichandran
for second respondent
respondents 3 to 6- No appearance

ORDER

The writ petition is filed challenging the proceeding dated 18.08.2009 of the first respondent whereby there was revision of seniority list on the basis of the representation / request made by the second respondent, pursuant to which the second respondent was placed above the petitioner.



WP No.12886 of 2010

2. The petitioner was initially appointed as Planning Assistant Grade III in the office of Madras Metropolitan Development Authority (renamed as Chennai Metropolitan Development Authority) vide proceeding of the first respondent dated 10.12.1991. The first respondent initiated Selection proceedings for appointment to the post of Assistant Planner in the respondent organization vide notification dated 14.06.2000. The petitioner was enlisted in the panel of candidates selected for the post of Assistant Planner. The petitioner was regularly appointed as Assistant Planner by the first respondent vide proceeding dated 13.03.2001. It may be relevant to note that the second respondent was also appointed as Planning Assistant Grade III on 10.12.1991 and thereafter appointed as Assistant Planner on 13.03.2001 i.e., on the very same date as the petitioner. It was clarified that the appointments were made on the basis of merit following communal rotation.

3. It was submitted by the learned counsel for the petitioner that placing reliance upon the decision of the Hon'ble Supreme Court in the case of **Bimlesh Tanwar v. State of Haryana and Others**, reported in (2003) 5



WP No.12886 of 2010

SCC 604, whereby, the decision in *P.S. Ghalaut Vs. State of Haryana*, reported in **(1995) 5 SCC 625**, which held that roster point was to be followed not only for appointment but also in fixing seniority, was overturned. It was held that seniority is not a fundamental right but a civil right. Article 16 of the Constitution of India is applicable to a case of appointment but not for fixation of seniority. Any attempt to apply the communal rotation in fixing seniority was held, would not be in consonance with the constitutional scheme. It was further held that it is beyond any cavil that merit has a role to play in the matter of determination of *inter se* seniority. The relevant portion of the judgment in *Bimlesh Tanwar's* case is extracted hereunder:

“40. An affirmative action in terms of Article 16(4) of the Constitution is meant for providing a representation of a 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.



WP No.12886 of 2010

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Ghalaut [(1995) 5 SCC 625 : 1995 SCC (L&S) 1270 : (1995) 31 ATC 183] does not lay down a good law.

...

49. Seniority is not a fundamental right. It is merely a civil right. Inter se seniority of the candidates who are appointed on the same day would be dependent on the rules governing the same. Only in absence of any statutory rules, the general principles may be held to be applicable.

50. ..It is beyond any cavil that merit has a role to play in the matter of determination of inter se seniority.”

4. Importantly, in Contempt Petition (Civil) Diary No.(s) 6415 of 2021 dated 09.05.2024, the Hon'ble Supreme Court had made it clear that seniority list published prior to 10.03.2003 shall stand frozen and that it is only the seniority list published after 10.03.2003 that would have to be revisited in accordance with judgment of the Hon'ble Supreme Court in the case of ***Bimlesh Tanwar v. State of Haryana and Others***, reported in ***(2003) 5 SCC 604***. The relevant portion of the order is extracted hereunder:

“5. We do not find that any clarification of the order passed by this Court is required. that all such seniority The



WP No.12886 of 2010

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*order is very clear 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.”

5. In the present case, the respondents have prepared the seniority list on the basis of merit and not communal rotation/roster, i.e., in accordance with the law laid down in the case of **Bimlesh Tanwar v. State of Haryana and others**, reported in (2003) 5 SCC 604, though unwittingly. In any view as was submitted by the learned counsel for the petitioner, seniority list was published on 25.04.2002 that is prior to 10.03.2003, thus the seniority list



WP No.12886 of 2010

cannot be touched/alterd by this Court in view of the order of the Apex Court in contempt proceedings dated 09.05.2024, wherein, it was observed that seniority list published prior to 10.03.2003 would remain frozen.

6. In view thereof, the submissions of the respondent are liable to be rejected and impugned proceedings are set aside. It may also be relevant to note that the respondent cannot have any legitimate grievance inasmuch as along with the petitioner the respondents 3 to 6 have also since been promoted to the post of Deputy Planner and there is neither any monetary or any loss of any other benefit. The writ petition stands disposed of. M.P.Nos.1 and 2/2010 and 3/2010 and 2/2011 are closed.

29.07.2024

Index : Yes/No
Neutral Citation : Yes/No
mrn



WP No.12886 of 2010

To

- 1.The Principal Secretary to the Government,
Finance (Pay Cell) Department,
Fort St.George,
Chennai 600 009.
- 2.The Secretary to the Government,
Government of Tamil Nadu,
School Education Department,
Fort. St.George, Chennai-600 009.
- 3.The Director of School Education,
College Road, Chennai-600 006.
- 4.The Chief Educational Officer,
Dhamapurai District,
Dharmapurai.



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WP No.12886 of 2010

MOHAMMED SHAFFIQ, J.
(mrn)

WP No.12886 of 2010

29.07.2024