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WP.No.32407 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.09.2024

PRONOUNCED ON : . 09.2024

CORAM

THE HON'BLE Mr.JUSTICE C.KUMARAPPAN

WP.No.32407 of 2012
and
MP.Nos.1 of 2012 & 1 of 2013

Mrs.Vanitha

... Petitioner

- Vs -

1. The Chairman,
Tamil Nadu Pollution Control Board,
76, Anna Salai, Guindy,
Chennai-600 032.
2. The Member Secretary,
Tamil Nadu Pollution Control Board,
76, Anna Salai, Guindy,
Chennai-600 032.
3. T.Rathi, AEE
Tamil Nadu Pollution Control Board,
76, Anna Salai, Guindy,
Chennai-600 032.
4. V.Gopalakrishnan,
5. V.Rohitkumar
6. L.Mohan
7. P.Ravichandran
8. S.Vijayarajan
9. T.Palanisamy @ Viswanathan
- 10.R.Chandrasekaran
- 11.M.Muralidharan
- 12.G.Udayakumar



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13.S.Vasuki
14.G.Ravichandran
15.D.Raghupathi
16.R.Venkatesan
17.R.Gunasekaran

... Respondents

Writ petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records of the respondents, particularly, that of the 2nd respondent dated 10.10.2012 in proceedings No.TNPCB/PER/P1/29151/2012, and quash the same as illegal, colorable, and ultra vires to general rule 35aa and consequently, direct the respondents 1 & 2 to prepare proper and correct seniority list of Assistant Engineers to be considered for the post of Assistant Environmental Engineers and thereafter, pass orders of promotion.

For petitioner : Mr.R.Sankarasubbu

For Respondents : Ms.Vijayakumari Natarajan
Standing Counsel for R1 & R2
Ms.Rita Chandrasekar
for Ms.R.Gouri for R3 to R17

ORDER

The instant writ petition has been filed with a prayer to quash the order of the 2nd respondent dated 10.10.2012 vide proceedings No.TNPCB/PER/P1/29151/2012.



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2. The learned counsel for the petitioner would vehemently contend that, the impugned order considering 15 persons for promotion to the post of Assistant Environmental Engineers is colorable exercise, and ultra vires, as the same contravenes to the Rule 35(aa) of The Tamil Nadu State and Subordinate Service Rules. The learned counsel would further contend that those 15 persons were recruited during 1997, and that their seniority has been wrongly fixed notwithstanding the factum of their date of joining. It was further contended that the respondents issued the revised seniority, without even considering their objection. It is the further contention of the learned counsel for the petitioner that if the respondents considered the seniority according to the date of joining, the petitioner would have been placed in the 8th place, but contrary to the Rules, the respondents have placed many of her juniors above the petitioner. Hence, prayed to issue a writ of certiorari by quashing the impugned order.

3. Per contra, the learned Standing Counsel appearing on behalf of the respondents 1 and 2 would submit that the seniority is based upon the marks and ranks obtained by the candidates at the time of recruitment, and that for all these years, the petitioner did not challenge the seniority. Therefore,



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contended that the present challenge is hit by latches. It was also contended by the learned counsel for the respondents that the contention of the petitioner that the applicability of Rule 35(aa) of The Tamil Nadu State and Subordinate Service Rules is contrary to the provision. It is the contention of the learned Standing Counsel that on account of no challenge to the proceedings dated 05.11.2012 in and by which, the seniority list was prepared, the present writ petition is not maintainable and the same is liable to be dismissed.

4. I have given my anxious consideration to either side submissions.

5. The main focus of the argument is that, while issuing the revised seniority, the petitioner raised an objection stating that the seniority list dated 31.08.2012 is contrary to the Rules and prayed to determine the seniority by taking into consideration of the date of joining. It is an admitted fact that the petitioner and other respondents were recruited by Direct Recruitment. Though they have joined on different dates, according to the Rule 35(a), the list of approved candidates drawn by the Tamil Nadu Public Service Commission or other appointing authority are relevant to consider the seniority of a person.



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6. In the present case, the learned counsel for the petitioner would submit that the “joining date” is to be considered, while determining the seniority. But, according to me, such preposition is contrary to Section 35(a) of the Tamil Nadu State and Subordinate Service Rules. For ready reference, Rule 35(a) is extracted hereunder:-

“35 (a) The seniority of a person in a service, class or category or grade shall unless he has been reduced to a lower rank as a punishment be determined by the rank obtained by him in the list of approved candidates drawn up by the Tamil Nadu Public Service Commission or other Appointing Authority, as the case may be, subject to the rule of reservation where it applies. The date of commencement of his probation shall be the date on which he joins duty irrespective of his seniority.”

7. According to the above provision, the list drawn by the appointing authority or Tamil Nadu Public Service Commission are relevant while considering the seniority of an employee. In the case on hand, the petitioner did not state the present seniority list is contrary to the list drawn by the Tamil Nadu Public Service Commission or the list of the appointing authority. Whereas, they took a defence that the seniority must be with



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reference to the date of joining, which contention runs counter to the Rule 35(a) of the above Rules. Therefore, such an argument cannot be accepted at all.

8. It was also contended by the learned counsel for the petitioner that the impugned panel for promotional post is contrary to Rule 35(aa) of Tamil Nadu State and Subordinate Service Rules. But while reading the above Rule carefully, this Rule can be put in service only if there are more than one method of recruitment. Admittedly, in the case on hand, it was the direct recruitment. Therefore, the contention of the petitioner cannot be countenanced.

9. The learned Senior Counsel appearing for the petitioner has also made a feeble attempt to direct the respondents to consider her objection dated 07.09.2012. However, at this length of time, this Court do not want to issue such direction as the petitioner had not challenged her original seniority list, but only challenged the panel for the subsequent promotional post. Therefore, in such a view of the matter, this Court do not find any merits in this writ petition.



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10. In the result, this writ petition stands dismissed. No costs.

Consequently, connected MPs are also closed.

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Index : Yes/No

Speaking Order/Non Speaking Order

NCC : Yes/No

To

1. The Chairman,
Tamil Nadu Pollution Control Board,
76, Anna Salai, Guindy,
Chennai-600 032.

2. The Member Secretary,
Tamil Nadu Pollution Control Board,
76, Anna Salai, Guindy,
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C.KUMARAPPAN, J

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Pre-Delivery order in
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