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W.P. Nos.31751 of 2015 and 22964 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. Nos.31751 of 2015 and
22964 of 2014 and
M.P.Nos.1 and 2 of 2015 and 1,2,3 and 4 of 2014

W.P.No.31751 of 2015:

V.Sivakumar

... Petitioner

Vs

1.The Tamilnadu Public Service Commission,
Rep. by its Secretary,
Government Estate, Chennai 2.

2.The Government of Tamilnadu,
Rep. by its Secretary to Government,
Public Works Department,
Fort St.George, Chennai 600 009.

3.The Engineer-in-Chief (WRO) &
Chief Engineer (General)
Public Works Department,
Chepauk, Chennai 600 005.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records from 1st respondent pertaining to the two impugned orders, both having same Memo No.5935/OTD/C2/2011 dated 16.10.2014 and 04.09.2015 sent to the petitioner and to quash the same and to direct the



W.P. Nos.31751 of 2015 and 22964 of 2014

1st respondent to forward the name of the petitioner to 3rd respondent for to be appointed as Assistant Engineer for the year 2009-13 and to direct the respondents 1 and 2 to appoint the petitioner as Assistant Engineer from the date on which his junior in the select list of Assistant Engineers for the year 2004-13 joined the service with all service and pay fixation and monetary benefits along with arrears therefore from the date.

For Petitioner : Mr.N.Subramaniyan

For Respondents : Mr.I.Abrar Mohammed Abdullah,
Standing Counsel for R1

Mr.Abishek Murthy,
Government Advocate for R2 and R3

W.P.No.22964 of 2014:

S.Jayapal

... Petitioner

Vs

1.The Secretary to Government,
Personnel and Administrative Department,
Fort St.George,
Secretariat, Chennai 600 009.

2. The Secretary,
Tamil Nadu Public Service Commission,
Chennai 600 003.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the order passed by the 2nd respondent dated



W.P. Nos.31751 of 2015 and 22964 of 2014

12.08.2014, quash the same as illegal and further directing the respondents to include the name of the petitioner in the selected list and to publish the list of selected candidates.

For Petitioner : Mr.I.Sathish

For Respondents : Mr.Abishek Murthy,
Government Advocate for R1

Mr.I.Abrar Mohammed Abdullah,
Standing Counsel for R2

COMMON ORDER

There are two writ petitions, one filed by S.Jayapal viz., writ petition in W.P.No.22964 of 2014, praying for writ of Certiorarified Mandamus challenging the order of the 2nd respondent dated 12.08.2014 insofar as the name of the petitioner viz., Mr.S.Jayabal was left out in the provisional list of selected candidates while also praying to direct the respondents to include the name of the petitioner viz., Mr.S.Jayabal in the selected list and to publish the list of selected candidates.

2. The other writ petition in W.P.No.31751 of 2015 is filed by V.Sivakumar praying for Writ of Certiorarified Mandamus calling for the records from 1st respondent pertaining to the two impugned orders, both having same Memo No.5935/OTD/C2/2011 dated 16.10.2014 and



W.P. Nos.31751 of 2015 and 22964 of 2014

04.09.2015 sent to the petitioner and to quash the same and to direct the 1st respondent to forward the name of the petitioner to 3rd respondent to be appointed as Assistant Engineer for the year 2009-13 and to direct the respondents 1 and 2 to appoint the petitioner as Assistant Engineer from the date on which his junior in the select list of Assistant Engineers for the year 2004-13 joined the service with all service and pay fixation and monetary benefits along with arrears therefore from the date.

3. Today, the writ petition in W.P.No.22964 of 2014 was withdrawn and an endorsement has been made to that effect by the learned counsel for the petitioner.

4. This Court, during the pendency of the writ petition in W.P.No.22964 of 2014, was pleased to pass the following interim order which reads as under:

“It is submitted by the learned counsel appearing for the petitioner that as per G.O.Ms.241 (Personnel and Administrative Reforms (K) Department, dated 29.10.2007, candidates belonging to Scheduled Tribe are entitled to get appointment as per roster. He further submitted that as per ranking position, 3 persons belonging to Scheduled Tribe community were included for counselling as per the aforesaid G.O., and two Scheduled Tribe candidates, are to be given posts and candidate included in



W.P. Nos.31751 of 2015 and 22964 of 2014

Serial No.309 Regd.No.13801372 belonging to ST community was given appointment and the petitioner was ranked as 310 and Regd. No.01708030 and therefore, he has to be given appointment and without giving appointment to the second ST candidate, the respondents are giving appointment to a candidate in Serial No.168 belonging to MBC/DC and at any time, they may issue appointment order to such person. Hence, the respondents may be directed to keep one post vacant meant for ST candidate.

2. The name of the second respondents' counsel was printed in the cause list and time was sought for on behalf of the respondents.

3. Considering the submission of the learned counsel for the petitioner, there shall be an order of interim direction directing the respondents to keep one post vacant to be filled with ST candidate.”

5. It was submitted by Mr.I.Abrar Mohammed Abdullah, learned Standing counsel for Tamil Nadu Public Service Commission that the above interim order was understood by the second respondent as requiring the Tamil Nadu Public Service Commission (in short “TNPSC”) to keep one post vacant which has to be filled with SC candidates. Bound by the above interim order of this Court, TNPSC had not forwarded the name of the petitioner in W.P.No.31751 of 2015 viz., Mr.V.Sivakumar to the appointing Authority.



W.P. Nos.31751 of 2015 and 22964 of 2014

6. It was submitted by the learned counsel for the petitioner that the respondent authorities have proceeded on gross misconception as far as the nature and scope of interim order passed in W.P.No.22964 of 2014 inasmuch as the writ petition itself does not question the entitlement of the petitioner viz., Mr.Sivakumar in W.P.No.31751 of 2015, to being appointed in the category of ST. The writ petition itself was filed on the premise that two vacancies must be reserved for ST candidates, that the second post reserved for ST candidates ought to be filled by the petitioner therein viz., Mr.Jayabal. It was thus submitted that there was never any impediment either for the TNPSC or the State to have appointed the petitioner herein viz., Mr.Sivakumar, who admittedly was ranked 1st in ST category.

7. As stated earlier, the learned counsel for the petitioner in W.P.No.22964 of 2014 had withdrawn that writ petition. Thus, any assumed hurdle to the appointment of the petitioner viz., Mr.Sivakumar would no longer exist, which was not disputed by the respondents. However, the learned counsel for the petitioner would proceed to submit that because of the delay in appointment, the petitioner viz., Mr.Sivakumar has lost his seniority and placed reliance upon the judgment of the Hon'ble Supreme Court in the case of *Sadhana Singh*



W.P. Nos.31751 of 2015 and 22964 of 2014

Dangi v. Pinki Asati reported in (2022) 12 SCC 401 wherein while dealing with the case where more meritorious candidates were not appointed and instead candidates with lesser merit were appointed proceeded to *inter alia* direct that the candidates at higher position in merit shall be deemed to have been appointed on the earliest of the dates when their juniors or candidates at lower levels were appointed and they shall be entitled to their salaries and emoluments for the period for which they were deprived of service. The relevant portion of the judgment is extracted hereunder:

Sadhana Singh Dangi v. Pinki Asati, (2022) 12 SCC 401 :

“26.1. All candidates who were at higher positions in merit but were appointed later shall be deemed to have been appointed on the earliest of the dates when their juniors or candidates at lower levels were appointed.

26.2. Their seniority shall be reckoned from such deemed date of appointment and not from their actual date of appointments.

26.3. The issue of probation for all categories of candidates shall be considered together as one single batch and the issue of probation shall not be segregated amongst the members of the batch.

26.4. All such candidates who were at higher levels of the revised list shall be entitled to their salaries and emoluments for the period of about seven months for which they were deprived of service.”

8. To the contrary, learned standing counsel for the TNPSC would



W.P. Nos.31751 of 2015 and 22964 of 2014

submit that on a plain reading of the interim order, there was an embargo against the appointment to the post of Assistant Engineer in Public Works Department, while filling up the ST category and it was only in view of the interim order, the name of the petitioner was not forwarded to the appointing authority, thus, reliance on the decision in *Sadhana Singh Dangi's* case is misplaced.

9. Mr.Abishek Murthy, learned Government Advocate would submit that unless the TNPSC forwards the names to the appointing authority, they would not be in a position to proceed with the appointment.

10. On a careful consideration, I find that there was no doubt as to the eligibility and entitlement of the petitioner. There was some misunderstanding, if at all, with regard to the scope and nature of the interim order granted by this Court. Be that as it may, that cannot in my view result in denying the petitioner's seniority, who is entitled to be appointed on the earliest of the dates when less meritorious candidates were appointed.

11. Keeping in view the judgment of the Apex Court in *Sadhana Singh Dangi* referred supra, I am inclined to direct the respondent authority to issue order of appointment to the petitioner viz., Mr.Sivakumar within



W.P. Nos.31751 of 2015 and 22964 of 2014

a period of four (4) weeks from the date of receipt of a copy of this order and his seniority shall be reckoned from the earliest of the dates when their juniors or candidates at lower levels were appointed under the said notification. Further, the pay will also be fixed notionally, however, no arrears shall be paid.

12. With the above direction, the writ petition in W.P.No.31751 of 2015 stands disposed of and the writ petition in W.P.No.22964 of 2014 stands dismissed as withdrawn. No costs. Consequently connected miscellaneous petitions are closed.

01.08.2024

Speaking (or) Non Speaking Order
Index : Yes/ No
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To



W.P. Nos.31751 of 2015 and 22964 of 2014

MOHAMMED SHAFFIQ, J.

shk

- 1.The Secretary,
Government Estate, Chennai 2.
- 2.The Government of Tamilnadu,
Rep. by its Secretary to Government,
Public Works Department,
Fort St.George, Chennai 600 009.
- 3.The Engineer-in-Chief (WRO) &
Chief Engineer (General)
Public Works Department,
Chepauk, Chennai 600 005.
- 4.The Secretary to Government,
Personnel and Administrative Department,
Fort St.George,
Secretariat, Chennai 600 009.
5. The Secretary,
Tamil Nadu Public Service Commission,
Chennai 600 003.

**W.P. Nos.31751 of 2015 and
22964 of 2014 and**

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