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W.P.No.9980 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.9980 of 2024

and W.M.P.No.10997 of 2024

D.Vijayalakshmi

.. **Petitioner**

Vs.

1.The State of Tamil Nadu
Rep.by its Principal Secretary to Government
Home Department
Secretariat, Fort St.George
Chennai – 600 009.

2.The Director
Forensic Sciences Department
Mylapore, Chennai – 600 004.

3.The Member Secretary
Tamil Nadu Public Service Commission
Park Town, TNPSC Road
V.O.C.Nagar, Chennai – 600 003.

.. **Respondents**



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Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Declaration, to declare the revised seniority list issued by the 2nd respondent in Proc. No. A1/ 34252/ 2022 dated 5.05.2022 as null and void in so far as the petitioner, selected and appointed as Scientific Assistant Grade II (Re- designated as Junior Scientific Officer) through Tamil Nadu Public Service Commission 1996- 1998 prior to 10.03.2003 is concerned, based on the orders of the Honble Supreme Court of India passed in Contempt petition (C) Diary No. 6415 of 2021 in SLP(C) No. 2886 of 2016 dated 18.04.2023 in consideration of representation / objection submitted by the petitioner dated 27.07.2022 and 04.05.2023 and consequently forbearing the respondents from disturbing the petitioner holding the post of Deputy Director, Chemistry Division, Forensic Sciences Department.

For the Petitioner	: Mr.G.Sankaran Senior Counsel for Mr.S.Nedunchezhiyan
For the Respondents	: Mr.R.Neelakandan Addl. Advocate General assisted by Mr.Stalin Abimanyu, AGP for RR1 & 2 Mr.R.Bharanidharan for R3



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ORDER

This Writ Petition is filed to declare the revised seniority list issued by the 2nd respondent on 05.05.2022 as null and void in so far as the petitioner is concerned and consequently not to disturb the petitioner holding the post of Deputy Director, Chemistry Division, Forensic Sciences Department and for other orders.

2. The brief facts relevant for consideration are that on 22.11.1996, the Tamil Nadu Public Service Commission issued a notification for direct recruitment to the post of Scientific Assistant Grade – II. The petitioner participated in the process and upon being selected, he was appointed as Scientific Assistant Grade-II with effect from 18.08.1999. The petitioner was further promoted to Scientific Assistant Grade – I with effect from 17.06.2010. The petitioner was also further promoted to Assistant Director with effect from 02.12.2016. From the post of Assistant Director, the petitioner is yet again promoted to Deputy Director on 13.01.2022.



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3. At the time of selection and appointment of the petitioner, it was the policy of the Government of Tamil Nadu to fix the seniority in tune with the communal roster of the notification and recruitment. The seniority of the petitioner was fixed accordingly. The said policy of the Government of Tamil Nadu came to be challenged before this Court and ultimately this Court set aside the rule of the Government of Tamil Nadu and directed that the seniority be fixed on merits. The said order was also confirmed by the Hon'ble Supreme Court of India.

4. To overcome the said Judgment and to mitigate the hardship faced by various employees, the Government of Tamil Nadu again brought an amending act retrospectively to validate the seniority lists. Once again, the same was put to challenge before this Court and in the case of ***K. Raja and Ors. Vs. Additional Chief Secretary to Government and Ors.***¹, the said rule was set aside. However, while setting aside the said rule, the Division Bench of this Court had also held that delay, laches, acquiescence and

¹ (2019 SCC Online Mad 9129)



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accrued rights are the factors to be considered while granting the relief in the future. The said order was also appealed and on 06.07.2020, the SLP was dismissed by the Hon'ble Supreme Court of India.

5. As a matter of fact, the review petition filed in respect of the earlier SLP was also dismissed. Thereafter, a contempt petition was filed before the Supreme Court in Contempt Petition Civil No.638 of 2017. When the said matter was pending, the stand taken before the Supreme Court was that it was not possible to revise every seniority list and in multiple departments, multiple promotions had already been given. The Supreme Court considered the same, however, directed that the seniority should be revised in every department. As far as the petitioner's department is concerned, a Sub-application in Diary No.8990 of 2022 was also filed, which was also taken along with the other Sub-applications and the main contempt petition Civil Diary No.645 of 2021. When the said matters were pending, the seniority list in respect of the post of the petitioner was also revised as per merit. It is essential to extract the relevant portion of the order dated 05.05.2022,



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“The seniority of the individuals who have been recruited direct by the Tamil Nadu Public Service Commission for the year 1996-1998 and 1999-2000 and listed against Sl.No.43 to 89, vide reference 1st cited, has been revised as per the Annexure enclosed, based on merit list communicated to this Directorate by the Tamil Nadu Public Service Commission, vide reference 2nd cited.

2.The above revision of seniority is subject to the outcome of the Contempt Petition filed in Diary No.8990/2022 before the Hon'ble Supreme Court of India.

3.The receipt of this order should be acknowledged immediately.”

6. It can be seen that the revision of seniority was made subject to the outcome of the contempt petition and the sub-applications pending before the Hon'ble Supreme Court of India.

7. Subsequently, all the matters came to be disposed of by the Hon'ble Supreme Court. A further order was passed by the Supreme Court on 18.04.2023, in detail. A perusal of the order of the Hon'ble Supreme Court of India, it can be seen that the Supreme Court had considered the issue in detail and opined that in the teeth of the Judgment made in ***Indra Sawhney Vs. Union of India and Ors.***², the Government is not justified in fixing the seniority based on communal rotation roster, with effect from 16.11.1992.

² (1999 SCC Online SC 1313)



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The Hon'ble Supreme Court of India further held that re-opening the issues as early as in the year 1992 would be too harsh and since the Supreme Court considered the issue in detail subsequently in ***Bimlesh Tanwar Vs. State of Haryana and Ors.***³, the Hon'ble Supreme Court of India made the revision of seniority as per merit as applicable only from the date of the Judgment in ***Bimlesh Tanwar's case*** (cited supra) i.e., 10.03.2003. The relevant portion of the Judgment of the Hon'ble Supreme Court in paragraphs Nos.16 and 17 are extracted hereunder:-

“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.

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 the seniority list, the seniority list finalized after 10th March, 2003 will have to be revisited in accordance with the law laid down by this Court in Bimlesh Tanwar (supra) and the first judgment of the Madras High Court.”

3 (2003) 5 SCC 604



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8. After deciding so, the Supreme Court further went on to give further directions, which are contained in paragraphs Nos.21 and 22,

“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 selections 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.
”

9. In that view of the matter, the petitioner apprehending that the respondents would further proceed ahead with the altered seniority list dated 05.05.2022 has made a representation that her position should not be disturbed and has approached this Court by way of the above Writ Petition.

10. Heard, *Mr G.Sankaran*, learned Senior Counsel appearing on behalf of the petitioner; *Mr R. Neelakandan*, learned Additional Advocate General appearing on behalf of respondents 1 and 2 and *Mr R Bharanidharan*, learned counsel appearing on behalf of the 3rd respondent.



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11. *Mr G. Sankaran*, learned Senior Counsel appearing on behalf of the petitioner would submit that the basic principles relating to seniority are that if at all any person is aggrieved, the aggrieved person should promptly challenge the seniority and by efflux of time, if two or three further promotions are granted, under the seniority, the same cannot be disturbed belatedly. When the rule of the Government of Tamil Nadu was held to be *ultra vires*, the Division Bench of this Court specifically held that such a belated claim should not be entertained in future. The Supreme Court had confirmed the said order and dismissed the SLP. In the teeth of the same merely because one of the employees filed a petition in Diary No.8990 of 2022, before the Hon'ble Supreme Court the respondents ought not to have revised the seniority itself. Even though the respondents have revised and placed it before the Supreme Court, still the Supreme Court has categorically held that they are not inclined to disturb the seniority list which is before 10.03.2003. In this case, both the selection as well as the seniority are finalized before 10.03.2003. All the concerned individuals have been given two or three promotions further. Therefore, there was no



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question of revisiting the seniority at all, even as per the dictum of the Hon'ble Supreme Court in *P. Madhu Vs. K.Nanthakumar & Anr.*, (Contempt Petition (Civil) Diary No(s).6415 of 2021 dated 18.04.2023) paragraph 21 (quoted supra).

12. He would further submit that it would be clear from the impugned seniority list that it was specifically made subject to the result of the contempt petition. In the contempt petition in essence the Supreme Court has held that the seniority which is finalized in respect of the selections which are made before 10.03.2003 need not be disturbed. Automatically, the respondents should have issued a communication, dropping the said seniority list which was only made, subject to the ultimate result in the Contempt Petition.

13. According to the learned Senior Counsel, the respondents are reading paragraph No.22 cited supra erroneously. The Hon'ble Supreme Court had only held that if any revision had been done and further benefit



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had been given based on revised seniority, those persons alone need not be once again disturbed. In the instance case, respondents circulated revised seniority and the same has not been acted upon. In view thereof, he would plead that it is a fit case for this Court to interfere and allow the Writ Petition.

14. Per contra, *Mr R. Neelakandan*, the learned Additional Advocate General appearing on behalf of the respondents while accepting the facts as above, would submit that it is not as if the respondent department alone took up the issue. Neither, it is the case that the respondent department on its own carried out the exercise. There were continuous proceedings in which an application in respect of the concerned Department was also filed in Diary No.8991 of 2022. Placing reliance on the affidavit filed in the said application before the Hon'ble Supreme Court, the learned Additional Advocate General would submit that when the matters were pending before the Supreme Court and when all the departments were directed to carry out the exercise of revision of seniority, the respondent department also carried



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out the same and placed the seniority list before the Supreme Court as Annexure R1 to the affidavit filed on behalf of the respondents.

15. The learned AAG would specifically rely upon paragraph No.8 of the affidavit filed before the Supreme Court and the same is reproduced hereunder:-

“8. It is respectfully submitted that based on the orders of the Hon'ble Court and the revised merit based list received from the Tamil Nadu Public Service Commission, the alleged Contemnor/Respondent No.4 i.e., the Director(i/c), Forensic Sciences Department, Chennai who is 'the appointing authority for the post of the Scientific Assistant Grade-II Now re-designated as Junior Scientific Officer), in his proceedings No.A1/34252/2022, dated:05.05.2022, has issued the revised seniority list of Scientific Assistant Grade- II (now re-designated as Junior Scientific Officer) for the years 1996-1998 and 1999-2000, on the merit basis. A copy of Proceedings of the Director, Forensic Sciences Department, Chennai Proc. No. A1/34252/2022, dated 05.05.2022 is produced herewith as ANNEXURE RI (Page No. _ to _).”

16. Therefore, when the seniority list has been placed before the Supreme Court and the Supreme Court has saved the same, specifically by paragraph No.22 (cited supra), the same cannot now be re-agitated by the petitioner.



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17. The learned Additional Advocate General would also rely upon the Judgment of the co-ordinate Bench of this Court in W.P. (MD) No.20670 of 2021 dated 07.11.2023, where the learned Single Judge has considered the question in detail and has already held in favour of the departments and dismissed the Writ Petitions. Another co-ordinate Bench of this Court has followed the said dictum in W.P.No.2025 of 2024 by an order dated 01.02.2024. Therefore, he would pray that the writ petition be dismissed.

18. I have considered the rival submissions made on either side and perused the material records of the case.

19. The facts leading to the revision of the seniority have been narrated supra. They are not in dispute. The only question to be decided by this Court is whether the impugned seniority dated 05.05.2022 is saved by the Supreme Court or whether the respondents should drop the same as it was subject to the outcome and in the teeth of paragraphs Nos.17 and 21,



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the respondents should once again go back to the original seniority. Already the relevant portions of the Judgment of the Hon'ble Supreme Court are extracted above.

20. On a perusal of the Judgment of the Hon'ble Supreme Court, it is clear that after the pronouncement of *Indra Sawhney's case* (cited supra) with effect from 16.11.1992, the stand taken by the State that seniority can be finalized as per the roster became incorrect in law.

21. However, the Supreme Court considered the hardship that may be faced in reopening the stale matters and therefore, restricted the relief only to the seniority lists which are finalized after 10.03.2003 i.e., from the date of the pronouncement of *Bimalesh Tanwar's case* (cited supra). When final directions were issued in paragraph No.21, it was also made specifically clear that the seniority list in respect of the selection processes conducted after 10.03.2003 alone needs to be revisited and re-fixed. If one were to go as per paragraph No.21 alone then the contention of *Mr G. Sankaran*,



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learned Senior Counsel for the petitioner has to be accepted. However, the Supreme Court had further made clear in paragraph No.22 that even concerning the selections that are held before 2003, if the seniority is re-fixed as per merit, the same need not also be disturbed. As rightly contended by the learned Additional Advocate General, this can only mean that the seniority lists that were finalized and placed before the Supreme Court of India. Therefore, this Court is unable to accept the contention of the learned Senior Counsel appearing for the petitioner that the revised seniority list should be dropped. Further, the contention of the learned Senior Counsel that the words giving benefit to the persons would only mean that there should have been further actions based on the impugned seniority list cannot also be accepted by this Court. The Courts below or other authorities cannot expand, restrict or give any interpretation to the Judgment of the Hon'ble Supreme Court. The orders of the Supreme Court have to be read as such and have to be punctually obeyed and observed. No further meaning or other interpretations can be attributed to it. Therefore, when it says that if the list is finalized giving the benefit of seniority as per merit, it cannot be



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further read to mean that there must be further action which should have been taken such as giving promotion etc.. Therefore, this Court rejects the contention of the learned Senior Counsel for the petitioner, made in this regard. A co-ordinate Single Bench of this Court has also considered the issue in detail in W.P.(MD) No.20670 of 2021 (cited supra). Therefore, this Court is of the view that the petitioner's case as it stands today cannot be countenanced.

22. *Mr G. Sankaran*, learned Senior Counsel would also submit that a clarification petition has already been filed by similarly situated persons before the Supreme Court of India. Thus, the contention that the petitioner is entitled to the benefit as per paragraph No.21 of the Judgment of the Supreme Court can be made in the clarification petition that is pending before the Supreme Court of India and unless any benefit/clarification in favour of the petitioner is granted, this Court cannot countenance the case of the petitioner.



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23. In that view of the matter, keeping the rights of the parties open regarding the said clarification petition that may be moved before the Hon'ble Supreme Court of India, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

18.04.2024

Note: Issue order copy on 08.05.2024

Index : Yes
Neutral Citation : Yes
Speaking order : Yes

Jer

To

1.The Principal Secretary to Government
State of Tamil Nadu
Home Department
Secretariat, Fort St.George
Chennai – 600 009.

2.The Director
Forensic Sciences Department
Mylapore, Chennai – 600 004.

3.The Member Secretary
Tamil Nadu Public Service Commission
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D.BHARATHA CHAKRAVARTHY, J.

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