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W.P.No.14389 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.02.2024

Pronounced on : 29.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.14389 of 2022 and
WMP.No.13609 of 2022

- 1.V.Thennarasu
- 2.V.Sangeetha
- 3.M.Malathi
- 4.S.Naveenkumar

... Petitioners

Vs.

- 1.The Secretary to Government,
Revenue Department,
Fort St.George,
Chennai-09
- 2.The Director,
Land Survey & Settlement,
Survey House,
Chepauk, Chennai-05
- 3.M.Ganesh
- 4.E.Shanavas
- 5.E.Arunkumar

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the second respondent in connection with the impugned seniority list published by him in Na.Ka.A1/667/2019 dated 31.05.2022 and quash the same and further direct the respondents to fix the seniority of the petitioners over and above the promotee Assistants.



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For Petitioners : Mr.S.Sivakumar
For Respondents
For R1 & 2 : Mr.V.Veluchamy,
Additional Government Pleader
For R3 & 4 : Mr.R.Bharath Kumar

ORDER

This writ petition has been filed challenging the seniority list published by the second respondent dated 31.05.2022 thereby fixed seniority of the petitioners lower than respondents 3 to 5.

2. The petitioners were recruited as Assistant in the Land Survey and Settlement Department through Tamilnadu Public Service Commission(TNPSC) - Combined Civil Service Examination-IIA (2014-2015 and 2015-2016). They had joined in the year 2017 as Assistant. There are two methods with regards to appointment to the post of Assistant i.e. by direct recruitment and by way of promotion/transfer of service. Initially, it was filled up by direct recruitment. According to the petitioners, if there are more than two methods of appointment, it is bounden duty of the Department to fix the *inter se* seniority between the



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directly recruited Assistants and promotee Assistants and to publish a seniority list in the manner known to law. On the basis of such seniority, they should be recommended for further training such as Land Survey and Settlement Training and two years of Revenue Inspectors Training, etc. These trainings are mandatory for Assistants for the next level of promotion as Superintendent / Deputy Tahsildar. However, respondents 1 & 2 did not prepare any *inter se* seniority list. Therefore, the petitioners submitted representations to fix *inter se* seniority.

2.1 While pending consideration of their representations, respondents 3 to 5 were promoted as Assistant and they joined duty on 07.09.2016. Their promotion is against the Rule 30(c) of the Tamilnadu Ministerial Service Rules and connected Government Orders. Out of way, they were promoted to the post of Assistant. Therefore, the petitioners approached this Court in WP.Nos.34573 of 2019 and 811 of 2020 and this Court directed, by an order dated 12.12.2019, respondents 1 and 2 not to proceed further with promotion to the post of Superintendent without preparing *inter se* seniority list for directly



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recruited Assistants and the promotee Assistants. Now, the second respondent prepared an *inter se* seniority list and published on 31.05.2022.

3. The learned counsel for the petitioners would submit that the impugned seniority list is not in accordance with law. It is against the order of the Hon'ble Supreme Court of India and this Court. The candidates were recruited by the Tamilnadu Public Service Commission. The date of joining cannot be a criteria and the date of merit / ranking list must be taken into account for the purpose of determination of seniority. Therefore, the names of the petitioners should be placed first in the seniority list. Thereafter, the promotees to be placed in the seniority list. He further submitted that the compassionate appointees are also holding the post of Assistant. Aggrieved by the seniority list, the petitioners also submitted their appeal before the first respondent and it is pending. However, while pending appeal, the second respondent has now proceeded to fill up the post of Superintendent in a hurried manner



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4. Heard, the learned counsel appearing on either side.

5. On perusal of counter filed by the second respondent, the petitioners had joined in the service in the year 2017 only in 50% of the vacancies in the sanctioned Assistant posts which has been specifically mentioned in the amendment in the Tamilnadu Ministerial Service Rules vide notification published in GO.Ms.No.118 Personnel and Administrative Reforms Department dated 15.12.2015. Respondents 3 to 5 herein were promoted in the year 2016 to the post of Assistant. The crucial date was 15.03.2016 and they had been promoted in the balance 50% Assistant Posts allocated for promotees and transferees. Therefore, well before the appointment of the petitioners, respondents 3 to 5 were promoted to the post of Assistant. The Tamilnadu Public Service Commission had been requested to fill up 10 Direct Assistant posts. However, they had selected only 9 persons, in which 7 persons had joined duty as Assistant. The remaining three posts were not filled up. All the Assistants had undergone requisite trainings such as Fundamental Training at Civil Services Training Institute, Bavanisagar, Survey and Settlement Training at Survey Training Institute, Oorathanadu or in



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Special batches and the Firka Revenue Inspectors' training, etc. based on their probable seniority only. Therefore, the present seniority has been published after getting clarification from Tamilnadu Public Service Commission based on Section 40(2) of the Tamilnadu Government Servants (Condition of Service) Act, 2016. Accordingly, the training provided to the Assistants is in the correct order of seniority.

6. Further, as per the guidelines issued by the Government in GO.(Ms).No.417 Personnel and Administrative Reforms Department dated 01.02.1993, for the purpose of appointment to the post of Assistant, a combined seniority list of Junior Assistants and Typists shall be drawn. The *inter se* seniority of the holders of the two categories of posts recruited in the same year, shall be fixed with reference to the date of their regular appointments. However, the seniority among the Junior Assistants or the seniority among the Typists as fixed by the Tamilnadu Public Service Commission shall not be altered while fixing their *inter se* seniority. All the seniors in the category of Typists who are likely to get their promotion as Assistants in the course of next one year or two years



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shall be asked to undergo training as Junior Assistants for a period of one year and they shall be allowed to dispose of the files without detrimental to their typing work.

7. The promotion to the post of Assistants shall be made in accordance with the common seniority list after fixing the *inter se* seniority of candidates appointed as Junior Assistants-Typists by recruitment by transfer from lower posts such as Record Clerk, etc along with recruitees under direct recruitees under Rule 35(a) of the General Rules for Tamilnadu State and Subordinate Rules. The qualification for promotion as Assistants from the Combined Seniority List of Junior Assistants and Typists is passing Revenue Test Part-I, Part-II and Part-III as per rule 30(b) of Tamilnadu Ministerial Service Rules. Accordingly, in the year 2016, Assistants Panel was drawn with respondents 3 to 5 herein from the combined seniority list of Junior Assistants and Typists. The panel was drawn when there were large number of vacancies existing as to 17 out of 20 sanctioned Assistant posts. There was administrative delay for commencement of training. Therefore, respondents 3 to 5



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cannot be denied or passed over their promotional opportunity.

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Therefore, by relaxing Rule 30(c) of the Tamilnadu Ministerial Service Rules which prescribes for one year Junior Assistant Training to Typist, respondents 3 to 5 were promoted to 50% of posts allocated for promotees and transferees. They were promoted even before the petitioners' appointment. Therefore, respondents 3 to 5 have been promoted based on their qualification prescribed in Rule 30(b) of the Tamilnadu Ministerial Service Rules and the guidelines prescribed in the GO.(Ms).No.417 Personnel and Administrative Reforms Department dated 01.02.1993.

8. In view of the above, this court finds no infirmity or illegality in the impugned seniority list. As such, this writ petition is liable to be dismissed. Accordingly, this writ petition is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

29.02.2024

Internet: Yes
Index: Yes/No



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Speaking/Non-speaking order
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To

- 1.The Secretary to Government,
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Fort St.George,
Chennai-09
- 2.The Director,
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Chepauk, Chennai-05



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G.K.ILANTHIRAIYAN, J.

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