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W.P.Nos.22411 of 2023 and 747 & 1858 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.02.2024

PRONOUNCED ON : 05.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.22411 of 2023 and 747 & 1858 of 2024

W.M.P.Nos.21815 to 21817 of 2023 and 762, 1930, 1931 & 1934 of 2024

G.Sathiyarayan

...Petitioner in
all W.Ps.

-Vs-

1. The Government of Tamil Nadu,
Department of Home (Police-XVII),
Rep. by its Principal Secretary,
Fort St. George, Chennai-9.

2. The Director,
Fire & Rescue Services,
Egmore, Chennai -8.

3. The Director,
Commission for Schedule Caste,
2nd Floor, Block No.5,
Shastri Bhavan,
Chennai – 6.

... Respondents 1 to 3
in all W.Ps.

4. P. Saravana Kumar,
Joint Director, Western Region,
Fire & Rescue Service,
Coimbatore – 18.

... 4th Respondent in
W.P.1858/2024

Prayer in W.P.No.22411 of 2023 :- Writ Petition filed under Article 226



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of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, call for the records from the first respondent pertaining to the impugned G.O.(Ms)No.349 dated 10.07.2023 and quash the same and reiterate the petitioner as Joint Director of Fire & Rescue Services or alternatively to direct the respondents to depute the petitioner permanently to some other department in the same rank in view of the judgment of Arul Kumar & Ors Vs. Union of India & Ors, 2007 (5) SCC Page No.580.

Prayer in W.P.No.747 of 2024 :- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, call for the records from the first respondent pertaining to the impugned G.O.(3D)No.08 dated 05.01.2024 passed by the first respondent and quash the same and reiterate the petitioner as Joint Director of Fire & Rescue Services or alternatively to direct the respondents to depute the petitioner permanently to some other department in the same rank in view of the judgment of Arul Kumar & Ors Vs. Union of India & Ors, 2007 (5) SCC Page No.580.

Prayer in W.P.No.1858 of 2024 :- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, call for the records from the first respondent pertaining to the impugned G.O.(3D)No.09 dated 05.01.2024 passed by the first respondent and quash the same and consequently to direct the first respondent to restore the petitioner post as Joint Director.



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In all W.Ps.

For Petitioner : Mr.P.Vijendran

For Respondents : Mr.R.Neelakandan
Additional Advocate General
Assisted by Dr.T.Seenivasan
Special Government Pleader

COMMON ORDER

The writ petition in W.P.No.22411 of 2023 has been filed challenging the government order in G.O.(Ms)No.349 Home (Police-XVII) Department, dated 10.07.2023, thereby issuing order in compliance of the order passed by the Hon'ble Supreme Court of India in Contempt Petition (C) Diary No.6415 of 2021 dated 18.04.2023 for fixation/re-fixation of seniority list on merit basis of the District Officers, Tamil Nadu Fire and Rescue Services appointed by direct recruitment through Tamil Nadu Public Service Commission from the year 2006-2007 batch to 2019-2020 batch.

2. The writ petition in W.P.No.747 of 2024 has been filed challenging the Government order in G.O.(3D)No.08 Home (Police-XVII) Department, dated 05.01.2021 passed by the first respondent thereby reverted the petitioner as Deputy Director from the post of Joint



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Director as per the seniority list issued in G.O.(Ms).No.349 Home (Police-XVII) Department, dated 10.07.2023.

3. The writ petition in W.P.No.1858 of 2024 has been filed challenging the government order in G.O.(3D).No.09 Home (Police-XVII) Department, dated 05.01.2024, thereby ordered temporary promotion for the post of Joint Director on consequent to revision of seniority based in G.O.(Ms)No.349 Home (Police-XVII) Department, dated 10.07.2023, as per the order passed by the Hon'ble Supreme Court of India in Contempt Petition (C) Diary No.6415 of 2021 dated 18.04.2023.

4. The issues involved in all the writ petitions are one and the same and therefore, this Court is inclined to pass common order.

5. The petitioner was appointed as Project Assistant Level-II in the Central Electro Chemical Research Institute. While he was in service, he had written examination for the Group-I service conducted by the Tamil Nadu Public Service Commission in the year 2008. He got selected as Divisional Fire Officer, Category-2 in class II and issued appointment



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order on 21.12.2009 as per G.O.(Ms) No.1027 dated 02.12.2009.

Thereafter, he was promoted to the post of Deputy Director Central Region, Trichy on 12.04.2017. Subsequently, he was promoted to the post of Joint Director and transferred to Western Region, Coimbatore.

6. While being so, the G.O.(Ms)No.349 dated 10.07.2023 was passed and accordingly ordered for re-fixation of seniority on merit. In pursuant to the said order, by another government order in G.O.(3D).No.8 dated 05.01.2024, the petitioner was reverted from the post of Joint Director of Fire and Rescue Services to the post of Deputy Director. Thereafter on the same day, by the G.O.(3D)No.9, the first respondent appointed one P.Saravana Kumar, as Joint Director, Fire and Rescue Services. Therefore, the petitioner challenged all the government orders by way of these writ petitions.

7. The learned counsel appearing for the petitioner submitted that the impugned government order in G.O.(Ms).No.349 dated 10.07.2023, is violating the very object of the Constitution. The first amendment of the Constitution was made in the year 1951 and inserted in



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Article 16(4) for making reservation in appointments in favour of any backward class of the citizens which in the opinion of the State is not adequately represented in the services under the State. The petitioner was not given any opportunity before reverting him from the post of Joint Director to the post of Deputy Director. The scheduled caste and scheduled tribes government employees are concerned they are not properly given promotion due to the caste barrier. Even after amendment of Article 16(4) Constitution of India, no proper reservation was given to the backward communities and more particularly scheduled caste and scheduled tribes.

7.1. He further submitted that, the Constitution 77th Amendment Act came into force in the year 1995 and inserted Article 16(4-A) as nothing in this Article shall prevent the State from making any provision for reservation in the matters of promotion with consequential seniority, to any classes of the services under the State in favour of the scheduled castes and the scheduled tribes which in the opinion of the State are not adequately represented in the services under the State.

7.2. In support of his contention, he relied upon the judgment



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reported in (2015) 10 SCC 292 in the case of **S. Panneer Selvam and**

Ors. vs. Government of Tamil Nadu and Ors., in which the Hon'ble

Supreme Court of India held as follows :-

“20. While considering the validity of Section 3(7) of Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994, and Rule 8A of U.P. Government Servants Seniority Rules, 1991 which provided for consequential seniority in promotions given to SCs/STs by virtue of rule of reservation/roster and holding that Section 3(7) of the 1994 Act and Rule 8A of 1991 Rules are ultra vires as they run counter to the dictum in M. Nagaraj's case in Uttar Pradesh Power Corporation Limited v. Rajesh Kumar and Ors. (2012) 7 SCC 1, in paragraph (81), this Court summarized the principles as under:

(i) Vesting of the power by an enabling provision may be constitutionally valid and yet "exercise of power" by the State in a given case may be arbitrary, particularly, if the State fails to identify and measure the backwardness and inadequacy keeping in mind the efficiency of service as required Under Article 335.

(ii) Article 16(4) which protects the interests of certain sections of the society has to be balanced against Article 16(1) which protects the interests of every citizen



of the entire society. They should be harmonized because they are restatements of the principle of equality Under Article 14.

(iii) Each post gets marked for the particular category of candidates to be appointed against it and any subsequent vacancy has to be filled by that category candidate.

(iv) The appropriate Government has to apply the cadre strength as a unit in the operation of the roster in order to ascertain whether a given class/group is adequately represented in the service. The cadre strength as a unit also ensures that the upper ceiling limit of 50% is not violated. Further, roster has to be post-specific and not vacancy based.

(v) The State has to form its opinion on the quantifiable data regarding adequacy of representation. Clause (4-A) of Article 16 is an enabling provision. It gives freedom to the State to provide for reservation in matters of promotion. Clause (4-A) of Article 16 applies only to SCs and STs. The said clause is carved out of Article 16(4-A). Therefore, Clause (4-A) will be governed by the two compelling reasons-"backwardness" and "inadequacy of representation", as mentioned in Article 16(4). If the said two reasons do not exist, then the enabling provision cannot be enforced.

(vi) If the ceiling limit on the carry over of unfilled



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vacancies is removed, the other alternative time factor comes in and in that event, the timescale has to be imposed in the interest of efficiency in administration as mandated by Article 335. If the timescale is not kept, then posts will continue to remain vacant for years which would be detrimental to the administration. Therefore, in each case, the appropriate Government will now have to introduce the duration depending upon the fact situation.

(vii) If the appropriate Government enacts a law providing for reservation without keeping in mind the parameters in Article 16(4) and Article 335, then this Court will certainly set aside and strike down such legislation.

(viii) The constitutional limitation Under Article 335 is relaxed and not obliterated. As stated above, be it reservation or evaluation, excessiveness in either would result in violation of the constitutional mandate. This exercise, however, will depend on the facts of each case.

(ix) The concepts of efficiency, backwardness and inadequacy of representation are required to be identified and measured. That exercise depends on the availability of data. That exercise depends on numerous factors. It is for this reason that the enabling provisions are required to be made because each competing claim seeks to achieve certain goals. How best one should optimize these conflicting claims can only be done by the



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administration in the context of local prevailing conditions in public employment.

(x) Article 16(4), therefore, creates a field which enables a State to provide for reservation provided there exists backwardness of a class and inadequacy of representation in employment. These are compelling reasons. They do not exist in Article 16(1). It is only when these reasons are satisfied that a State gets the power to provide for reservation in the matter of employment.”

7.3. He also relied upon the judgment reported in **(2022) 10 SCC 595** in the case of ***Jarnail Singh and Ors. vs. Lachhmi Narain Gupta and Ors.***, as follows :-

“7. The State should justify reservation in promotions with respect to the cadre to which promotion is made. Taking into account the data pertaining to a 'group', which would be an amalgamation of certain cadres in a service, would not give the correct picture of the inadequacy of representation of SCs and STs in the cadre in relation to which reservation in promotions is sought to be made. Rosters are prepared cadre-wise and not group-wise. Sampling method which was adopted by the Ratna Prabha Committee might be a statistical



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formula appropriate for collection of data. However, for the purpose of collection of quantifiable data to assess representation of SCs and STs for the purpose of providing reservation in promotions, cadre, which is a part of a 'group', is the unit and the data has to be collected with respect to each cadre. Therefore, we hold that the conclusion of this Court in B.K. Pavitra II (supra) approving the collection of data on the basis of 'groups' and not cadres is contrary to the law laid down by this Court in M. Nagaraj (supra) and Jarnail Singh (supra).

Hence, he prayed to allow all the writ petitions.

8. Heard the learned counsel appearing on either side and perused the material placed before this Court.



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On perusal of counter affidavit filed by the respondents revealed that as per the government order in G.O.(Ms)No.1027 Home (Police-17) Department, dated 02.12.2009, the petitioner and one P.Saravanakumar were appointed to the post of Divisional Officer, Category-2, Class-II in Tamil Nadu Fire and Rescue Services for the year 2006-2007. By G.O.(3D).No.17, Home (Police-XVII) Department, dated 13.03.2017, the government have approved the panel of District Officers fit for promotion to the post of Deputy Director, Fire and Rescue Services for the year 2015-16. Accordingly both the petitioner and the said P.Saravanakumar were promoted and posted as Deputy Director, Central Region, Trichy and Deputy Director, Southern Region, Madurai respectively. They were joined in the said post of Deputy Director on 12.04.2017.

10. The Tamil Nadu Public Service Commission fixed seniority as per the roaster method in the direct recruitment. Accordingly, the petitioner was placed at Sl.No.1 and as per the roaster method seniority, he was promoted to the post of Joint Director, Fire and Rescue Services Department under Section 47(1) of the Tamil Nadu Government Servants



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(Conditions of Service) Act, 2016 vide G.O.(2D).No.200, Home (Police-XVII) Department, dated 07.06.2022, as temporarily.

11. In the year 2003, the Hon'ble Supreme Court of India has passed the judgment in the case of *Bimlesh Tanwar Vs. State of Haryana* reported in (2003) 5 SCC 604, thereby laying down law that seniority would be on the basis of merit and not on the basis of roster. The Hon'ble Division Bench of this Court also in the case of *Santosh Kumar & ors Vs Tamil Nadu Public Service Commission & ors* reported in 2015 SCC Online Mad 362, held that fixation of seniority based on roster points is not correct and directed the official respondents to take the rank assigned by the Tamil Nadu Public Service Commission to the selectees. Aggrieved by the same the Tamil Nadu Public Service Commission preferred Special Leave Petition and the same was dismissed.

12. Further the Hon'ble Division Bench of this Court by an order dated 15.11.2019 in W.P.No.998 of 2017 etc. batch, has ordered that Section 1(2), 40 and 70 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 are declared as ultra vires and



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unconstitutional and directed to redo the exercise of fixation of seniority.

Aggrieved by the same an appeal filed before the Hon'ble Supreme Court of India in S.L.A(C)Nos. 2861-2876 of 2020 and the same was also dismissed. Thereafter, contempt petition was filed before the Hon'ble Supreme Court of India in Contempt Petition (C) Diary No.6415 of 2021 and the Hon'ble Supreme Court of India by an order dated 18.04.2023 directed the State government to complete the exercise of finalizing the seniority list selection processes conducted after 10.03.2003, on the basis of the merit as determined by the Tamil Nadu Public Service Commission in the selection process. It is further made clear that if any list is finalized in the case of selection 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.

13. It is relevant to extract the order dated 18.04.2023 passed by the Hon'ble Supreme Court of India in Contempt Petition (C) Diary No.6415 of 2021, as follows :-

“15. As already discussed hereinabove, the Division Bench in the first judgment has clearly held that the cases before it were not individualistic in nature to be decided on the basis of facts arising in each case. The



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cases arose only on one principle i.e. As to whether seniority should be as per the merit reckoned by the TNPSC or as per roster point. The Division Bench clearly held that the seniority should be on the basis of the merit reckoned by the TNPSC and not as per the roster point. This Court while dismissing the Special Leave Petition affirmed the view of the High Court holding that after the judgment of this Court was pronounced in Bimlesh Tanwar (supra), the principle governing the determination of seniority was only on the basis of merit list of selection and not as per the basis of roster point.

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



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

14. In adherence to the order passed by the Hon'ble Supreme Court of India, the revised seniority list was furnished by the Tamil Nadu Public Service Commission in respect of the District Officers, Fire and Rescue Services by direct recruitment by the Tamil Nadu Public Service Commission from the year 2006-2007 on merit basis. Accordingly, the government passed order in G.O.(Ms)No.349, Home (Police-XVII) Department, dated 10.07.2023, and refixed the seniority of the District Officers in Fire and Rescue Department, who were appointed by direct recruitment through Tamil Nadu Public Service Commission from 2006-2007 batch to 2019-2020 batch.

15. As per the revised seniority list on merit basis, in panel for the year 2006-07, the said P.Saravanakumar was placed at Sl.No.1 and the petitioner was placed at Sl.No.2 in the seniority list. Consequent to the said revision of seniority, by the government order in



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G.O.(3D).No.128, Home (Police-XVII) Department, dated 18.10.2023, the government have redrawn the regular panel of Deputy Director, Fire and Rescue Services for the year 2015-2016.

16. Accordingly, the petitioner was placed at Sl.No.2 and the said Saravanakumar was placed at Sl.No.1. Therefore, the petitioner's temporary promotion to the post of Joint Director was reverted to the post of Deputy Director under Section 47(5) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 vide G.O.(3D).No.08, Home (Police-XVII) Department, dated 05.01.2024. The said Saravanakumar, who was placed above the petitioner, was temporarily promoted to the post of Joint Director under Section 47(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, vide G.O.(3D)No.09, Home (Police-XVII) Department, dated 05.01.2024.

17. Therefore, the first respondent rightly revised the seniority list as ordered by the Hon'ble Supreme Court of India as per the merit list published by the Tamil Nadu Public Service Commission. Consequent to the revised seniority list, the petitioner was rightly reverted to the post Deputy Director and the senior person Saravanakumar was rightly



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promoted to the post of Joint Director. Therefore the judgments cited by the learned counsel appearing for the petitioner are not applicable to the case on hand. Hence, this Court finds no infirmity or illegality in the orders impugned in these writ petitions.

18. Accordingly, all the Writ Petitions stand dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

05.03.2024

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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To

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1. The Principal Secretary,
Government of Tamil Nadu,
Department of Home (Police-XVII),
Fort St. George, Chennai-9.
2. The Director,
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Egmore, Chennai -8.
3. The Director,
Commission for Schedule Caste,
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COMMON ORDER IN
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and 762, 1930, 1931 & 1934 of 2024

05.03.2024