IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2024

CORAM:

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

**W.P.No.25013& 25017 of 2022**
**and**
**W.M.P.Nos.23948, 23950, 23951, 23955 to 23957 of 2022**

**W.P.No.25013 of 2022**

1. M.Umabharathy
2. M. Natrayan .... Petitioners

Vs

1. The Secretary to Government,
Revenue and Disaster Management Department,
Fort. St. George, Chennai – 600 009.

2. The Additional Chief Secretary/
Commissioner of Revenue Administration,
Ezhilagam, Chepauk,
Chennai – 600 005.

3. The District Collector,
Coimbatore District,
Coimbatore – 641 018.

4. The District Revenue Officer,
Office of the District Revenue Office,
Coimbatore District.

5. N. Krishnaveni
6. R.Kanageshwari

7. S.Umamaheswari
8. A.Padmavathy
9. S.Mallika
10. M.Mohammed Suyabhu .... Respondents

**Prayer :** Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the third respondent in Na.Ka.20/2022/A2 dated 06.09.2022 and also impugned circular No.02/2022 in Rc.No.Ser.3(3)/42324/2019 dated 02.06.2022 issued by the second respondent and quash the same as illegal and unconstitutional and consequently directing the respondents to continue me to work as a Tahsildar with all attendant benefits by strictly adhering to the Section 27(f) of Tamil Nadu Government Servants (Conditions of Services) Act, 2016.

**W.P.No.25017 of 2022**

1. D.Karunanithi
2. G.Ramalakshmi .... Petitioners

Vs

1. The Secretary to Government,
Revenue and Disaster Management Department,
Fort. St. George, Chennai – 600 009.

2. The Additional Chief Secretary/
Commissioner of Revenue Administration,
Ezhilagam, Chepauk,
Chennai – 600 005.

3. The District Collector,
Coimbatore District,
Coimbatore – 641 018.

4. The District Revenue Officer,
Office of the District Revenue Office,
Coimbatore District.

5. T.Lawrence
6. A.Balaji
7. R.Ramesh
8. S.Ramaraj
9. A.Akashkumar
10. P.Sankarlal
11. S.Sundarraj
12. P.Kathiresan
13. T.Raja Keerthiga
14. S.Premalatha .... Respondents

**Prayer :** Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the third respondent in Na.Ka.20/2022/A2 dated 06.09.2022 and also impugned circular No.02/2022 in Rc.No.Ser.3(3)/42324/2019 dated 02.06.2022 issued by the second respondent and quash the same as illegal and unconstitutional and consequently directing the respondents to continue me to work as a Deputy Tahsildar with all attendant benefits by strictly adhering to the Section 27(f) of Tamil Nadu Government Servants (Conditions of Services) Act, 2016.

**In both W.Ps**

For Petitioners : Mr.R.Sivakumar
for Mr.C.Gangai Amaran

For R1 to R4 : Mr.S.Arumugam
Government Advocate

**COMMON ORDER**

These Writ Petitions have been filed challenging the Circular dated 02.06.2022 in Circular No.02/2022 on the file of the second respondent and consequential order dated 06.09.2022 issued by the third respondent, thereby reverted the petitioners to the earlier post.

2. Heard the learned counsel appearing for the petitioners and the learned Government Advocate appearing for the respondents 1 to 4 and perused the materials available on record.

3. The petitioners in both writ petitions were recruited as Revenue Assistants through Tamil Nadu Public Service Commission Group-II (Combined Subordinate Services Examination – I) for the year 2009-2011. They were appointed as Revenue Assistants in the Coimbatore District Revenue Unit on 08.12.2012. They had undergone basic training at Bhavani Sagar and also completed the same on 03.01.2015, 27.04.2015, 15.04.2015, 07.05.2015 & 15.10.2015. They had passed departmental examinations, thereby they had fulfilled all the qualifications prescribed under Rule 38(b) (ii) of Annexure – IX of

Special Rules of Tamil Nadu Ministerial Service Rules. For the post of Revenue Assistants, the next promotional post is Deputy Tahsildar for them.

4. Rule 7 of the Tamil Nadu Revenue Subordinate Service Rules and also Rule 6 clearly states that the Rules of Reservation shall be applicable to the post of Deputy Tahsildar. The petitioners names were included in the panel of Deputy Tahsildar for the year 2018 and they were appointed as Deputy Tahsildar on 28.09.2018. Thereafter, the third respondent had drawn a promotional panel to the post of Tahsildar for the year 2021 as on 01.02.2022. The first petitioner was given promotion as Tahsildar in the office of the District Collector, Coimbatore, and the second petitioner was appointed as Special Deputy Tahsildar, Shiva Distilleries at Coimbatore. Thereafter, they were given promotion to the post of Special Tahsildars in the office of the Special District Revenue Officer, National Highways (Land Acquisition and Land Administration), Coimbatore and the Special Tahsildar (Civil Supplies), Annur Taluk, Coimbatore Taluk.

5. While being so, for implementation of the order passed by the Hon'ble Supeme Court of India in various Civil Appeals as well as Contempt Proceedings, the Combined Senior List to the post of Senior Revenue Assistant was re-drawn from the year 2008-2014 and it was published by the fourth respondent based on the marks obtained in the competitive examinations by the proceedings dated 31.03.2022. Accordingly, the third respondent prepared a revised panel of Deputy Tahsildar by the proceedings dated 29.04.2022. While being so, the second respondent issued an impugned Circular No.2/2022 dated 02.06.2022, wherein it was stated that number of reserved vacancies for SC/ST exceeds 50% of estimated vacancy in a particular year in violation of the second provisions of Section 27(f) of Tamil Nadu Government Servants (Conditions of Services) Act, 2016 and also the restricting limit of 50% in the carry forward vacancies. Pursuant to the said circular, the third respondent, by its communication dated 06.09.2022, refixed the petitioners' seniority, thereby reverted the petitioners in W.P.No.25013 of 2022 from the post of Tahsildar to Deputy Tahsildar and the petitioners in W.P.No.25017 of 2022 were reverted from the post of Deputy Tahsildar to Senior Revenue Inspector.

6. Pending Writ Petition, the impugned Circular dated 02.06.2022 has been withdrawn by the second respondent in the Joint Sitting meeting conducted by the first respondent on 12.12.2022. The minutes of the said meeting is as follows :-

> "*The Principal Secretary to Govt., Rev & D.M.Department welcomed the participants.*
>
> *In order to implement the orders of the Supreme Court of India, on implementation of Reservation in Recruitment By Transfer by revising the existing panels since 2004, the Principal Secretary (Revenue & D.M.) and the P.S./C.R.A. Held a brief consultation with the HRM, Law Departments and the P.S./C.S.R. Has issued circular (Circular No.02/2022/Rc.No.Ser.3(3)/42324/2013, dated 02.06.2022), wherein he has directed all the District Collectors to ensure that where SC/St vacancies in excess of 50% of the Total vacancies are carried forward to next year under the second proviso to said Section 27(f) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. The P.S./C.R.A. Has also stated in the circular that these surplus vacancies should be kept unnumbered and marked as carried forward surplus vacancies and that many additional vacancies and that many additional vacancies of other categories as per the roster should be added as*

*numbered vacancies at the end of the list / panel to bring the total number of vacancies bear to original total number of estimated vacancies and also to ensure that 50% of current year vacancies are earmarked for categories other than SC/ST.*

*In the above meeting the HRM Secretary has informed that it is unacceptable to accommodate candidates of other communities in the posts earmarked for SC/ST.*

*The Secretary (Legal Affairs) and the Secretary (HRM) informed that the implementation of the above circular was against the prevailing rules and violation of Constitutional Provisions. Therefore, they opined that the above circular is unacceptable.*

*The ACS, AD & TW Department has stated that the issuance of the above circular is against the Constitution and if the above Circular is implemented, it will give rise to the number of litigations as the interest of SC/ST candidates are affected by the above circular and the same should be cancelled.*

*Finally, it was unanimously decided that the Circular issued by the PS/CRA on 02.06.2022 may be rescinded by Revenue & D.M. Department.*

*The meeting ended with the vot of thanks to the Chair."*

7. That apart, the Hon'ble Madurai Bench of this Court in similar writ petition, by an order dated 06.12.2022, held as follows :

> *7.Where there are several opinions by different Judges in a Bench, the opinion which embodies the greatest common measure of agreement among the Bench is to be accepted (vide Jaishri Laxmanrao Patil v. State of Maharashtra (2021) 8 SCC 1). There cannot be any doubt that the ratio laid down by the Nine Judges bench in Indra Sawhney was not only to the effect that reservation in promotion is impermissible but also that reservation must be confined to initial appointment.*
>
> *8.In Civil Appeal No.9334 of 2018, the issue was formulated by the Apex Court as follows :*
>
> *"Whether recruitment to posts, which carry a higher pay and higher responsibilities, by way of transfer would amount to promotion?"*
>
> *It was held that appointment to the post of Dy.Tahsildar is by way of recruitment by transfer from members of other services and that it was not promotion. Only if it was promotion, then, reservation is not allowed. If it is not promotion, the policy of reservation for Backward Classes can be applied. It was in that view of the matter, the order of the High Court was set aside and the Government's appeal was allowed. The learned Senior Counsel and the learned counsel appearing for the writ petitioners wondered that if the issue had been formulated as to whether the appointment to the post of Dy.Tahsildar is "initial appointment", then, the answer could have been different. According to them, some of the appointees were first appointed as Junior Assistant/Typist and then promoted as Assistants and then became Dy.Tahsildars. In some of the cases, the appointees originally entered service as directly recruited*

*Assistants. The great jurist H.M.Seervai would remark that asking the right question alone will yield the right answer. In any event, these are only loud musings and they will have to be answered only in SLP (C) No.3792 of 2021.*

*9.Another comment made by the learned counsel is that if the petitioners had not been promoted as Dy.Tahsildars in the real sense of the term, the question of reversion will not arise at all. While the Hon'ble Division Bench rendered its decision on 28.02.2005, the Civil Appeal came to be allowed by the Hon'ble Apex Court only on 11.09.2018. In the intervening period, no interim order was in operation. When the petitioners herein were appointed as Deputy Tahsildars by way of recruitment by transfer, it was not a conditional order.*

*10.The resultant situation would not have arisen at all, if it had been declared that the decision is to be enforced only prospectively. When the directly recruited Assistants and promotee Assistants were at loggerheads, the issue attained finality in M.Rathinsawami Vs. State of Tamil Nadu (2009) 5 SCC 625. The Hon'ble Supreme Court in A.Rajagopalan Vs. District Collector, Thirchirappalli District (2019) 5 SCC 560 held that the promotions of the directly recruited Assistants effected between 07.02.1995 and 08.04.2009 and their seniority in the respective positions shall not be disturbed and that Rathinsawami decision will be given effect to prospectively. But such a declaration is yet to be obtained in the present case. Judicial discipline demands that this Court does not even make a whisper in that regard. It is for the aggrieved parties to obtain such a declaration in the pending S.L.P.(C)No.3792 of 2021.*

> *11.The issue can be approached from yet another angle. There cannot be any doubt that the order of the Hon'ble Apex Court rendered on 11.09.2018 has to be implemented by the Administration. Failure to do so will amount to contempt. However, while enforcing the decision, the respondents cannot give a go-bye to due process. The learned Senior counsel and the learned counsel for the petitioners pointed out several lacunae. The first defect is that the petitioners were not put on notice in the first instance. The settled departmental practice is that only a draft panel is first prepared and after receiving objections, it is finalized. I can usefully invoke the analogy of constructing a building. While the mythical vishvakarma can magically create a palace in a moment, we mortals will have to go step by step. The foundation has to be laid, then, the first floor has to be constructed and then storey after storey can be built. Likewise, the draft panel for the earliest year will have to be first prepared. After putting the stakeholders on notice and receiving their response, it has to be finalized. Then, the panel for the succeeding years will have to be prepared in the same manner. The year-wise panels will issue forth one after another. Even twin babies are born one after another. But in the case on hand, panels have been revised, re-drawn and prepared afresh at one go for 15 years at a stretch from 2004 to 2019. Such simultaneous preparation is clearly impermissible."*

8. Pursuant to the withdrawal of the Circular dated 02.06.2022 and the consequential order passed by the third respondent, reverting the petitioners from their original post to the next lower post cannot be sustained.

9. In view of the above, the order dated 06.09.2022 in Na.Ka.No.20/2022/A2 passed by the third respondent, is hereby quashed. Accordingly, these Writ Petitions stand allowed. Consequently, connected miscellaneous petitions are closed. No costs.

19.01.2024

Internet: Yes
Index : Yes/No
Lpp

To

1. The Secretary to Government,
Revenue and Disaster Management Department,
Fort. St. George, Chennai – 600 009.

2. The Additional Chief Secretary/
Commissioner of Revenue Administration,
Ezhilagam, Chepauk,
Chennai – 600 005.

3. The District Collector,
Coimbatore District,
Coimbatore – 641 018.

4. The District Revenue Officer,
Office of the District Revenue Office,
Coimbatore District.

**G.K.ILANTHIRAIYAN. J,**

Lpp

**W.P.No.25013& 25017 of 2022**
**and**
**W.M.P.Nos.23948, 23950, 23951,**
**23955 to 23957 of 2022**

19.01.2024