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W.P.No.25665 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.03.2024

Pronounced on : 26.03.2024

CORAM:

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

W.P.No.25665 of 2023

B.Muthuramalingam

... Petitioner

Vs.

- 1.The Secretary,
The Government of India,
Ministry of Personnel,
Public Grievance and Pension,
Department of Personnel and Training,
New Delhi
- 2.The Chief Secretary to Government,
Government of Tamilnadu,
Fort St.George, Secretariat,
Chennai 600 009,
Tamilnadu

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Mandamus directing the respondents to treat GSR.929(E) Department of Personnel and Training dated 30.12.2022, with retrospective effect from 06.06.2019 and directing the respondents to consider the petitioner for the promotion to the IAS Cadre for the State of Tamilnadu in accordance with law.

For Petitioner

: Mr.K.Venkataramani,
Senior Counsel
for Mrs.S.R.Sumathy



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For Respondents

For R1

: Mrs.V.Sudha,
Central Government Standing Counsel

For R2

: Mr.R.Neelakandan,
Additional Advocate General
Assisted by
Mr.V.Veluchamy,
Additional Government Pleader

ORDER

This writ petition has been filed for direction to the respondents to treat GSR. 929E Department of Personnel and Training dated 30.12.2022 of the first respondent with retrospective effect from 06.06.2019.

2. The petitioner joined as Assistant in Group-II Services in the Revenue Department of the State of Tamilnadu on 04.11.1989. He was included in the panel of District Revenue Officers for the year 2012 with effect from 22.02.2013. Thereafter, he was promoted to the post of District Revenue Officer and now he is working as District Revenue Officer. The Post of District Revenue officer is one of the feeder category for promotion to the Tamilnadu Cadre(State Service) to the



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Indian Administrative Services. Further, the criteria is that the candidate must not have completed 56 years of age at the time of year of review of cadre. The first respondent carries out cadre strength review of States with retrospective effect and ensures that any person who otherwise eligible, misses out on promotion due crossing the age on the date of notification, will still be considered eligible for promotion to IAS, IPS or IFS cadre. Insofar as the State of Tamilnadu is concerned, the first respondent notified GSR 383E dated 06.06.2004, issued the Tamilnadu Indian Administrative Services (fixation of cadre strength). In accordance with the mandate of Rule 4(2) of the Indian Administrative (Cadre) Rules, 1954, the composition of cadre strength for the State of Tamilnadu was to be re-examined. It ordinarily mandatory for the first respondent to re-examine the strength of each such cadre in consultation with the second respondent at intervals of every five years. However it was not carried out at the interval of every five years. Therefore, the petitioner would be materially affected for promotion to the post of IAS cadre.



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2.1 Though he is eligible for promotion to IAS cadre in the year 2019, there were no vacancies. If the cadre re-examination was carried out once in five years, the total number of posts would be increased and the petitioner would be promoted to the IAS cadre, Tamilnadu. Therefore, the petitioner submitted representation to the respondents seeking to carryout mandatory re-examination of cadre strength. However, it was not considered and as such, the petitioner was constrained to approach the Madurai Bench of this Court in WP(MD).No.11534 of 2021 seeking direction to consider his representation to carry out cadre review at the earliest. By an order dated 15.03.2022, the writ petition was dismissed and the petitioner filed writ appeal in WA.(MD)No.399 of 2022. The Hon'ble Division Bench of this Court, by an order dated 28.04.2022, dismissed the writ appeal. Therefore, the petitioner challenged the said order before the Hon'ble Supreme Court of India in SLP(Civil) No.13163 of 2022 and by an order dated 10.11.2022, disposed of the petition with observation that 'with hope and trust that the respondents would finalise the cadre strength for the panel year 2019'. The first respondent conducted re-examination of



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the cadre composition for IAS cadre for the State of Tamilnadu and issued GSR. 929(E) Department of Personnel and Training dated 30.12.2022. Accordingly the posts were increased from 376 to 394 with effect from the date of notification. However, the first respondent failed to give its effect with retrospective effect for the panel year 2019 to the review. As such, the petitioner is not eligible to be promoted on the ground that he is now age barred. Therefore, the petitioner also filed application in MA.No.403 of 2023 in SLP(Civil).No.13163 of 2023 for direction directing the first respondent to consider that the posts have increased retrospectively. The Hon'ble Supreme Court of India by an order dated 17.07.2023 gave permission to withdraw the said application with liberty to avail all remedies in accordance with law. Hence, the petitioner filed this writ petition for direction directing the respondents to treat GSR.929(E), Department of Personnel and Training dated 30.12.2022 with retrospective effect from 06.06.2019.

3. Mr.K.Venkataramani, the learned Senior Counsel appearing for the petitioner submitted that in the rare and rarest case, the petitioner



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is eligible for promotion to the cadre of IAS in the year 2019 itself since the petitioner was originally inducted as Assistant in the Revenue Department and reached the stage of District Revenue Officer which is feeder category for promotion to the cadre of IAS. Unfortunately, the first respondent failed to review the cadre strength once in five years and as such, the petitioner had lost his opportunity for promotion to the cadre of IAS. In fact, only on filing the writ petition for review of cadre strength of the year 2019, the first respondent now reviewed the cadre strength and passed order thereby increased the strength of IAS cadre for State of Tamilnadu. However, it was given effect prospectively i.e. from the date of its notification instead of the year 2019. In fact, in other States, the cadre strength review was done only retrospectively. However, insofar as the State of Tamilnadu is concerned, the first respondent reviewed the cadre strength and was given effect from the date of notification. The delay caused by the respondents directly affected the promotional avenues of the petitioner and he is put to work under his juniors for no fault on his part. In accordance with the Rule 14(2) of the IAS Service Cadre Rules, it is mandatory for the first



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respondent to conduct re-examination of cadre composition in each state with consultation with the second respondent every five years. The last cadre review was carried out on 06.06.2014 and therefore, the notification in GSR.929(E) dated 30.12.2022 ought to have been issued with effect from 06.06.2019. He further submitted that the legitimate expectation of the petitioner to be considered for promotion has been defeated because of the undue delay in carrying out the cadre composition re-examination in the State of Tamilnadu. If review of 2019 is not given retrospective effect, it will not no longer be a cadre review of 2019, but instead be a cadre review of the year 2022. The demitting fiction of creating the additional post must necessarily also date back to the year of review.

4. The first respondent filed counter and stated that the cadre review of any cadre is done as per Rule 4(2) of the Indian Administrative Service (Cadre) Rules, 1954 at the interval of five years keeping in view the functional jurisdiction of the State concerned in order to meet the administrative requirement on any cadre. Rule 4 sub-clause (2) of IAS



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(Cadre) Rules provides that the cadre review would be carried out ordinarily at the interval of five years i.e. it is not necessary for the Government to carry out the cadre review exactly on completion of five years. It may be before or after five years. It also empowers the first respondent to alter the strength and composition of any cadre at any other time. Therefore, it should not be linked with provisions of promotional avenues to the eligible officers. Further, the provision of 4(2) IAS (Cadre) Rules, cannot be construed retrospectively and it will operate prospectively. Therefore, no retrospective effect can be given to cadre review of IAS cadre of Tamilnadu.

4.1 That apart, while pending the writ petition, in order to further clarify that the cadre review shall be applied prospectively only and the first respondent made amendments to IAS (Cadre) Rules, 1954 corresponding provisions for IAS and IFS. Accordingly, in the Indian Administrative Service (Cadre) Rules, 1954 in Rule 4 in Sub Rule (2), after the second proviso, the following proviso shall be inserted: “Provided also that the redetermined strength and composition of each



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such cadre shall be applicable only prospectively from the date of notification in the official Gazettee”. The amendment was issued by the notification dated 17.10.2023.

5. The second respondent filed counter stating that though the second respondent had sent several proposals for increase in the cadre strength of the Tamilnadu to the first respondent, it was returned with certain queries. Finally, the first respondent requested the second respondent to issue notification to increase 5.39% of Senior Duty Posts in Tamilnadu cadre after getting approval from the Office of the Prime Minister. Accordingly, meeting was convened and accepted the proposal to increase the Senior Duty Post of Tamilnadu cadre as 4.91%. Thereafter, the first respondent had issued Indian Administrative Service(Fixation of Cadre Strength) the Fourth Amendment Regulations, 2022, wherein the cadre strength of IAS for the State of Tamilnadu was reviewed and came into force on 30.12.2022.

6. Heard the learned counsel appearing on either side.



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7. The petitioner is one of the senior most District Revenue Officer of Tamilnadu Cadre. The District Revenue Officer cadre is one of the feeder category for promotion to the Tamilnadu cadre(State Service to Indian Administrative Service) on condition that the candidate must not have completed 56 years of age at the time of year of review of cadre. The first respondent carries out cadre strength review with cadre strength review of State with retrospective effect. In fact, the first respondent, insofar as other States are concerned, while reviewing the cadre strength, it was given effect to retrospectively. The first respondent in its notification GSR 383E, Department of Personnel and Training dated 06.06.2014, issued Indian Administrative Service(Fixation of Cadre Strength) the Fourth Amendment Regulations. In accordance with the Rule 4 (2) of the Indian Administrative Service (Cadre) Rules, 1954, the composition of Cadre Strength of the Tamilnadu State has to be re-examined in consultation with the second respondent at intervals of every five years. Therefore, the first respondent ought to have carried out the cadre strength review in the year 2019. The specific case of the petitioner is that if the cadre strength was not reviewed, he would not be eligible



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for promotion to the IAS cadre after 2019. Therefore, the petitioner submitted representation and the same was not considered. Hence, the petitioner was constrained to approach this Court in WP(MD).No.19680 of 2020 and the same was disposed of by order dated 23.12.2020 thereby directed the respondents to prepare the promotion list and act on the representation submitted by the petitioner. Even then, the said order was not complied with and as such, once again, the petitioner filed writ petition in WP(MD).No.11534 of 2021. This Court by order dated 15.03.2022, dismissed the writ petition on the ground that the petitioner has no legal right to direct the respondents to consider his representation.

8. Aggrieved by the same, the petitioner preferred writ appeal in WA(MD).No.399 of 2022 and the Hon'ble Division Bench of this Court by order dated 28.04.2022, dismissed the writ appeal on the ground of non joinder of necessary party as well since the petitioner did not add State of Tamilnadu as well. Once again, the petitioner filed appeal before the Hon'ble Supreme Court of India. When the matter was taken up, the respondents reported that on 02.11.2022 for the purpose of



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review of the cadre strength for the year 2019, meeting was taken place between the State of Tamilnadu and the Central Government and informed that the matter is still under consideration. Therefore, the Hon'ble Supreme Court of India disposed of the appeal with observation that the respondents shall take a decision in this regard as expeditiously as possible but not later than eight weeks from today i.e. 10.11.2022. Further, the petitioner was given liberty to seek appropriate relief under Article 226 of the Constitution of India. Thereafter, the first respondent issued GSR. 929(E) dated 30.12.2022, and it was given effect from the date of its publication in the official Gazette i.e. from 30.12.2022. It is relevant to extract Rule 4 of the Indian Administrative Service (Cadre) Rules, 1954:

"4. Strength of Cadres (1) The strength and composition of each of the cadres constituted under rule 3 shall be determined by regulations made by the Central Government in consultation with the State Governments in this behalf and until such regulations are made, shall be as in force immediately before the commencement of these rules.



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(2) The Central Government shall (ordinarily) at the interval of every (five) years, re-examine the strength and composition of each such cadre in consultation with the State Government or the State Governments concerned and may make such alterations therein as it deems fit:

Provided that nothing in this sub-rule shall be deemed to affect the power of the Central Government to alter the strength and composition of any cadre at any other time".

9. Thus, it is clear that it is mandate that the Central Government shall at the interval of five years, re-examine the strength of composition of each such cadre in consultation with the State Government. The last cadre review was notified by the first respondent on 06.06.2014 with the increase of 5.6%. The next cadre review to be issued in the year 2019. Therefore, the second respondent had sent its proposal for revision of cadre strength to the first respondent to increase 9.83% of cadre strength by proposal dated 24.10.2018. On the said proposal, the cadre review meeting was conducted on 31.12.2018 by the first respondent. However, the second respondent was directed to send a proposal for 5% of increase of cadre strength. Accordingly, the revised proposal was sent on 07.06.2019. On receipt of the same, the first



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respondent conducted meeting on 25.06.2019.

10. Once again, the first respondent directed the second respondent to send revised proposal on the ground that the cadre review proposal should be submitted in such a manner that the increase in Senior Duty Post is limited ordinarily to 5%. If the cadre review proposal is sent for seeking increase of more than 5% of Senior Duty Post for any reason, it needs to be sent to the Prime Minister's Office for approval. In response, the second respondent had sent revised proposal to increase in Senior Duty Post by 5.39%. Once again, the first respondent requested the second respondent to re-examine the proposal and to furnish revised cadre review proposal by its communication dated 01.01.2021. The revised proposal with 5.39 % increase in the Seniority Duty Post of Tamilnadu cadre has been sent to the first respondent with a request to approve the above cadre review proposal and also to notify the same by communication dated 22.02.2001. Since the second respondent had formed 6 new Districts in Tamilnadu and requested to create 6 new District Collector Posts in senior scale. However, it was not accepted and



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once again requested to re-examine the proposal by the first respondent so as to enable the first respondent to take further action in the matter. As instructed by the first respondent, the second respondent requested to increase the Senior Duty Post of Tamilnadu cadre as 4.91%. Accordingly, review meeting was held and notified the revised cadre strength by the notification dated 30.12.2022. In fact, it was notified the assurance given before the Hon'ble Supreme Court of India and fixed time for notifying the reviewed cadre strength. Therefore, it cannot be said that the delay occurred due to administrative reasons.

11. After completion of cadre review in the year 1998, the next cadre review was due in the year 2003. However, cadre review was completed only in the year 2008. The next cadre review was due in the year 2013. After completion of the cadre review in the year 2012, it was notified only in the month of June 2014. Therefore, the next cadre review was due in the month of June, 2019. However, the review meeting was completed in the year 2022 and issued notification. Though the cadre strength was reviewed and notified in the year 2022, where it is given



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effect to retrospectively or prospectively is the issue to be decided in this writ petition.

12. Further, the cadre review of IAS of Tamilnadu was previously notified on 06.06.2014. Though due for cadre review in the year 2019, the second respondent had submitted mid term cadre review proposal thereby proposed to increase 22 senior duty post from 204 to 226. In the preliminary midterm suggested that to send a revised proposal thereby the second respondent had submitted revised cadre review proposal thereby proposed to increase 12 senior duty post from 204 to 216. Once again, few discrepancies were noticed and directed the second respondent to send a revised proposal. As per the revised proposal sent by the second respondent, there was increase of 11 senior duty post. Once again observed some discrepancies by the first respondent and requested the second respondent to re-examine the proposal and furnish a revised cadre review proposal. Finally, a revised cadre review proposal was sent and the same was considered by the first respondent and it was approved. Accordingly, the first respondent issued the Indian



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Administrative Service(Fixation of Cadre Strength) Fourth Amendment
Regulations on 30.12.2022.

13. Though the second respondent had sent proposal on several occasions, it was returned by noting some discrepancies. Finally the proposal sent by the second respondent was approved by the Cadre Review Committee and the first respondent issued the Indian Administrative Service (Fixation of Cadre Strength) Fourth Amendment Regulations on 30.12.2022.

14. While pending the writ petition, the first respondent amended the Indian Administrative Service (Cadre) Rules, 1954 in Rule 4 in Sub Rule (2) by adding proviso that “provided also that the re-determined strength and composition of each such cadre shall be applicable only prospectively from the date of notification in the official Gazette”. The said amendment was given effect from the notification dated 17.10.2023. Whereas notification GSR.929(E) Department of Personnel and Training was issued on 30.12.2022. Therefore, the said



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amendment in the Rule is given effect only from 17.10.2023 and not applicable to the notification dated 30.12.2022.

15. The learned Senior Counsel appearing for the petitioner relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Union of India Vs. Hemraj Singh Chauhan*** reported in (2010) 4 **SCC 290**, wherein it is held as follows:

"36. It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution. The guarantee of a fair consideration in matters of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution.

37. In Govt. Branch Press v. D.B. Belliappa a three-Judge Bench of this Court in relation to service dispute, may be in a different context, held that the essence of guarantee epitomized under Articles 14 and 16 is "fairness founded on reason"

38. It is, therefore, clear that legitimate expectations of the respondents of being considered for promotion have been defeated by the acts of the Government and if not of



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the Central Government, certainly the unreasonable inaction on the part of the Government of State of Uttar Pradesh stood in the way of the respondents' chances of promotion from being fairly considered when it is due for such consideration and delay has made them ineligible for such consideration. Now the question which is weighing on the conscience of this Court is how to fairly resolve this controversy.

42. Concurring with the aforesaid interpretative exercise, we hold that the statutory duty which is cast on the State Government and the Central Government to undertake the cadre review exercise every five years is ordinarily mandatory subject to exceptions which may be justified in the facts of a given case. Surely lethargy, inaction, an absence of a sense of responsibility cannot fall within the category of just exceptions.

43. In the facts of this case neither the appellants nor the State of Uttar Pradesh has justified its action of not undertaking the exercise within the statutory time-frame on any acceptable ground. Therefore, the delayed exercise cannot be justified within the meaning of "ordinarily" in the facts of this case. In the facts of the case, therefore, the Court holds that there was failure on the part of the



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authorities in carrying out the timely exercise of cadre review.

47. Therefore, this Court accepts the arguments of the learned counsel for the appellants that Rule 4(2) cannot be construed to have any retrospective operation and it will operate prospectively. But in the facts and circumstances of the case, the Court can, especially having regard to its power under Article 142 of the Constitution, give suitable directions in order to mitigate the hardship and denial of legitimate rights of the employees.

48. The Court is satisfied that in this case, for the delayed exercise of statutory function the Government has not offered any plausible explanation. The respondents cannot be made in any way responsible for the delay. In such a situation, as in the instant case, the directions given by the High Court cannot be said to be unreasonable. In any event, this Court reiterates those very directions in exercise of its power under Article 142 of the Constitution of India subject to the only rider that in normal cases the provision of Rule 4(2) of the said Cadre Rules cannot be construed retrospectively.

16. Thus it is clear that the cadre review must be carried out within the period of 5 years and ordinarily there must not be any delay in



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doing so as the same can affect the legitimate expectation of employees.

Further in the delayed exercise of statutory function of the respondents, no explanation was offered by them. Hence, the petitioner cannot be made in any way responsible for the delay. If the cadre strength review was done within a period of five years i.e. in the year 2019, the petitioner would have got the opportunity of being considered for promotion to the cadre of Indian Administrative Service. As a result of notification issued on 30.12.2022, the petitioner became age barred to consider his name.

17. The preparation of the selection list is the foundation for promotion and its omission impinges upon the legitimate expectation of promotee officers for consideration of their claim for promotion as IPS Officers, the preparation of the selection list must be construed to be mandatory. Therefore, the Committee should meet every year and prepare the selection list and be reviewed and revised from time to time as exigencies demand.



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18. In view of the above facts, the cadre strength notification has to be given effect retrospectively from the year June 2019 insofar as the petitioner is concerned as a special case. Accordingly, the respondents are directed to consider the case of the petitioner for promotion to the cadre of IAS for the State of Tamilnadu on merits and in accordance with law forthwith.

19. With the above direction, this writ petition is disposed of.

There shall be no order as to costs.

26.03.2024

Neutral citation: Yes/No

Index: Yes/No

Speaking/Non-speaking order

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To

- 1.The Secretary,
The Government of India,
Ministry of Personnel,
Public Grievance and Pension,
Department of Personnel and Training,
New Delhi
- 2.The Chief Secretary to Government,
Government of Tamilnadu,
Fort St.George, Secretariat,
Chennai 600 009,
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