



W.A.(MD)No.19 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.12.2023

PRONOUNCED ON : 02.02.2024

CORAM:

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**
and
THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

W.A(MD)No.19 of 2022
and
C,M.P.(MD)Nos.482 and 483 of 2022

K.Karpagam,
Deputy Director (Admission and Trade Test),
Central Office,
Department of Employment and Training,
Guindy, Chennai – 600 032.

... Appellant

Vs.

1.J.Amala Rexaline,
Deputy Director/Principal,
Government Industrial Training Institute,
K.Pudur, Madurai – 625 007.

2.The Additional Chief Secretary,
Labour and Employment Department,
Secretariat, Chennai – 600 009.



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3.The Director,
Department of Employment and Training,
Guindy, Chennai – 600 032.

4.The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road, VOC Nagar,
Park Town, Chennai – 600 003.

5.Parameswari,
Deputy Director (Purchase),
Department of Employment and Training,
Guindy, Chennai – 600 032.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.666 of 2021, dated 19.01.2021.

For Appellant	: Mr.N.G.R.Prasad Senior Advocate for Mr.M.P.Senthil
For R1	: Mr.N.Dilip Kumar for Dr.D.Gnanasekaran
For R2 and R3	: Mr.S.P.Maharajan Special Government Pleader
For R4	: Mr.J.Anand Kumar



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JUDGMENT

(Judgment of the Court was delivered by **S.SRIMATHY, J.**)

This Writ Appeal is filed challenging the order passed in W.P. (MD)No. 666 of 2021, dated 19.01.2021. The 4th respondent in writ petition namely K.Karpagam is the appellant herein.

2. The writ petitioner namely Amala Rexaline had filed the W.P. (MD)No.666 of 2021 for issuance of a Writ of Mandamus, to direct the first respondent to consider the petitioner's representation, dated 30.11.2020 and to fix the petitioner's seniority in the post of Deputy Director of Training in the second respondent's Department for the purpose of preparation of panel for promotion to the post of Joint Director (Training) and Regional Joint Director of Training for the year 2019-2020 in the light of the judgment dated 15.11.2019 passed by the Division Bench of this Court in K.Raja and others Vs. The Additional Chief Secretary to Government and others (W.P.No.998 of 2017) and Batch of Writ Petitions and to include her name in the panel for



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promotion, within a stipulated period of time as this Court may fix, and to consider her name for promotion to the above post, in the light of "Tamil Nadu Employment and Training Service Rules".

3. The Learned Single Judge had taken up the writ petition for final disposal at the stage of admission itself for the reason that no adverse order would be passed against the respondents 4 and 5 in the writ petition and hence, notice was dispensed. Further held that a duty is cast upon the statutory authority whenever a representation is submitted to consider the same. In the present case since the petitioner's representation dated 30.11.2020 was not considered, the authorities were directed to consider the representation on merits and pass orders. The relevant portion of the order is extracted hereunder:

"5. Accordingly there shall be a direction to the first respondent to consider the petitioner's representation dated 30.11.2020, after giving due opportunity of hearing to the petitioner, as well as K.Karpagam and P.Parameswari and considering their objections, if any and pass appropriate orders on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order."



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Aggrieved over the said order, the fourth respondent in the writ petition has preferred this writ appeal.

4. The learned Single Judge has only directed the first respondent to consider the petitioner's representation, dated 30.11.2020 after giving due opportunity to the writ petitioner Amala Rexaline as well as to the appellant K.Karpagam and one another person, namely P.Parameswari. And after considering their objections, orders may be passed on merits and in accordance with law. Hence this Court was not inclined to entertain the writ appeal. But the Learned Senior Counsel submitted that even though the relief granted by the Learned Single Judge appears to be simple, the authorities cannot exercise such powers since the same would affect the appellant and the seniority that has been settled while recruiting the appellant and the individual respondents. Now, based on this order, the settled issue would be unsettled. Hence, the appellant had vehemently contested the case before this Court. Therefore, this Court had elaborately heard the submissions and gave its anxious consideration.



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5. Heard Mr.N.G.R.Prasad, learned Senior Advocate appearing for the appellant / 4th respondent in the writ petition, Mr.N.Dilip Kumar, learned Counsel appearing for the first respondent / writ petitioner, Mr.S.P.Maharajan, learned Special Government Pleader appearing for the second and third respondents, the official respondents herein and Mr.J.Anand Kumar, learned Counsel appearing for the fourth respondent / TNPSC.

6. For the sake of convenience the ranking in the writ petition is followed in the order.

7. The brief facts as stated in the writ petition are that the writ petitioner Amala Rexaline was selected by Tamil Nadu Public Service Commission for appointment by direct recruitment to the post of Principal, Industrial Training Institute / Assistant Director of Training in the Tamil Nadu Employment and Training Service for the year 2005-2006. The 4th and 5th respondents in the writ petition namely K. Karpagam and P.Parameswari were also selected to the said post along with the petitioner. In the examination



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conducted by the 3rd respondent TNPSC, the petitioner's number is 00101003 whereas the numbers of the 4th and 5th respondents are 00102012 and 00101082 respectively. The petitioner secured a total of 171 marks in both written examination and oral test, whereas the 4th and 5th respondents secured 132 and 148.50 respectively. Since the petitioner's marks are higher than that of the 4th and 5th respondents, the contention of the petitioner is that she should be kept senior to them on the basis of marks secured in the examination conducted by TNPSC. Further vide, G. O. (4D) No. 4, Labour and Employment (P1) Department, dated 07.07.2010, the petitioner's selection and the selection of the 4th and 5th respondents and 4 others were approved for appointment to the said post. In the said G.O., it has been shown that the selected candidates would be appointed in the order of seniority fixed by the 3rd respondent. In this approval order, the name of the 4th respondent has been placed at Serial No. 4, and the name of the 5th respondent has been placed at Serial No. 5, and the petitioner's name has been placed at Serial No. 6. Although the petitioner has scored higher marks, her name has been placed below the names of the 4th and 5th respondents. The reason being the petitioner belongs to BC (OBCH), the 4th



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respondent belongs to SCH, and the 5th respondent belongs to MBC/DC, and the seniority has been prepared on the basis of reservation and not merits. Thereafter based on G.O.(D)No. 671, Labour and Employment (P1) Department dated 30.11.2018, the petitioner was temporarily promoted, along with 17 other employees including the 4th and the 5th respondents, as Deputy Director. In this promotion order, the petitioner's name has been placed in Serial No. 13, and the names of the 4th and 5th respondents have been placed at Serial Nos.11 and 12 respectively. This promotion was given without drawing seniority and without preparing any panel for promotion.

8. The further contention of the writ petitioner is that the post of Principal in Government Industrial Training Institute is filled up through two methods, one by way of promotion and other by direct recruitment. Since 1994-1995, there was no fixation of seniority among the promoted Principals and directly appointed Principals. Hence vide, G.O.(Standing)No. 48, Labour and Employment (P1) Department, 09.03.2020, seniority among Principals appointed by promotion was fixed for the period from 1994-1995 to 2017 and



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regularized. But, inter se seniority between promoted Principals and directly appointed Principals has not been fixed so far. Without fixing the seniority between the promoted Principals and directly appointed Principals, promotion was given to the post of Deputy Director, vide, the G.O.(D)No. 671 dated 30.11.2018. In the meanwhile, the 2nd respondent issued a memo, dated 08.09.2020, directing the petitioner to send a Self-Assessment Report for the purpose of preparation of panel for promotion to the post of Joint Director (Training) and Regional Joint Director of Training for 2019-2020 from the holders of Deputy Director which is feeder category. In this memo, the petitioner's name is placed at Serial No.6, and the names of the 4th and 5th respondents are at Serial Nos. 4 and 5 respectively and there are totally 8 names stated in the memo, and these names includes both promoted Principals and directly appointed Principals. In the Annexure of the said memo, dated 08.09.2020, the crucial date is mentioned as 15.05.2019 and the qualification for promotion to the post of Joint Director of Training is a degree in Mechanical, Electrical, Automobile, or Civil Engineering, etc. and experience is for 7 years. The Tamil Nadu Employment and Training Service Rules shows



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that the method of appointment is by way of promotion from the holders of the post in the grade of Deputy Director of Training or by transfer from any other service for special reasons. According to Rule 3, promotion shall be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal. Thus, it is clear that promotion should be made on merit and ability and seniority is considered only where merit and ability are equal.

9. The further contention of the petitioner is that the petitioner has secured higher marks than the 4th and 5th respondents. Further, the Rule does not contemplate any test, either in the form of interview or by way of written examination, to find out the merit. Therefore, 'merit' means the merit secured at the test conducted by the 3rd respondent at the time of initial entry into the Department. The petitioner relied on the judgment, dated 15.11.2019, rendered by the Division Bench of Madras High Court in '**K. Raja and others vs. The Additional Chief Secretary to Government and others (W. P. No. 998 / 2017) and Batch** of Writ Petitions, wherein it has been held that reservation on the



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basis of roster point system is only for the purpose of appointment and not for fixation of seniority. Therefore, on the basis of marks secured at the examination conducted by the 3rd respondent, the petitioner's name should be placed above the names of the 4th and 5th respondents. Since the respondents have not fixed the seniority from the date of initial appointment dated 07.07.2010 either in the post of Principal or in the post of Deputy Director, the question of delay or laches does not arise in this case. Further the petitioner and the 4th and 5th respondents were appointed on the same day and were promoted to the post of Deputy Director on the same day, therefore, the question of acquiescence and accrued right also does not arise. Since there are only 4 vacancies available and the petitioner's seniority is in Serial No.6 and the names of 4th and the 5th respondents are at Serial Nos.4 and 5, the petitioner would not get promotion because of the wrong fixation of the seniority/non-fixation of seniority. Therefore, aggrieved over the same, the petitioner has submitted representations, dated 07.08.2020, 12.11.2020, and 30.11.2020. Since the non-fixation of seniority is violation of fundamental rights guaranteed under Articles 14 and 16 of the Constitution of India, the writ petitioner had



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invoked Article 226 to redress her grievance.

10. The first contention of the 4th respondent / appellant herein is that if the order of the Learned Single Judge is implemented then the seniority will be disturbed and hence, the 4th respondent in the writ petition has preferred this writ appeal. The 4th respondent / appellant further submitted that at the time of appointment the Government has passed appointment orders in G.O.(4D)No.4, Labour and Employment (P1) Department, dated 07.07.2010, whereby the 4th respondent's name is shown in Serial No.4 and the said Parameswari is shown in Serial No.5 and the writ petitioner is shown in Serial No.6. Under Clause 2 of the said G.O., it has been stated as under:

“2. The Government direct that under rule 2(a) of the Special Rules for the Tamil Nadu Employment and Training Service, the candidates mentioned above be appointed as Principal, Industrial Training Institute / Assistant Director of Training in the Tamil Nadu Employment and Training Service in the order of seniority fixed by the Tamil Nadu Public Service Commission and their appointment is purely provisional subject to the final outcome of any Cases WPs pending on the files of High Court, Chennai Madurai relating to this recruitment.”



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The Learned Senior Advocate appearing for the 4th respondent / appellant heavily relied on this clause wherein it has been stated that the candidates mentioned above appointed as Principal, Industrial Training Institute / Assistant Director of Training in the Tamil Nadu Employment and Training Service in the order of **seniority** fixed by the Tamil Nadu Public Service Commission. Therefore, the 4th respondent / appellant raised a plea that the seniority has already been fixed in the appointment order itself and therefore, the writ petitioner cannot make a plea that she was not aware of fixing seniority.

11. But the Learned Counsel appearing for the writ petitioner submitted that the official respondents had not clarified whether the seniority has been drawn based on merits or roaster. Further the writ petitioner relied on Rule 3 of the Tamil Nadu Employment and Training Service Rules and submitted that the promotion ought to be considered based on merit and ability. The relevant rule is extracted hereunder:

“3. Selection Category – Promotion to the posts in Categories I and II shall be made on grounds of merit and ability, seniority being considered only where merit and ability are



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approximately equal;”

It is seen that the rule categorically states that the promotion should be based on merits and ability only. The 1st and 2nd respondents submitted that the list forwarded by the TNPSC is followed for all purposes. The TNPSC submitted that the list is based on reservation only. From this it is clear that the official respondents are following the list prepared based on reservation / roaster only. After appointment, the respondents are bound to draw the list based on merits for which the marks obtained by the candidates ought to be taken. Since the marks of the candidates would be available with the TNPSC, then it is incumbent on the TNPSC to prepare a list based on marks and provide the list to the employer. In the present case the TNPSC had failed to draw the seniority list based on merits. Even though the appointment order in G.O. (4D)No.4 dated 07.07.2010 states “in the order of **seniority** fixed by the Tamil Nadu Public Service Commission” but the TNPSC had not fixed the seniority based on merits, which is statutorily mandated. Hence relying on the said G.O. the 4th respondent cannot claim any right.



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12. The next contention raised by the Learned Senior Counsel appearing for the 4th respondent / appellant is that under 35 F of Tamil Nadu Subordinate Service Rules, it has been stated that all appointments shall be made based on reservation policy and hence all the promotions should also be based on the reservation only. It is seen that Rule 35 F of the Tamil Nadu State Subordinate Service Rules only states that the reservation should be followed for appointments. Whether the word “appointment” is applicable for “promotion” was considered by the Honourable Supreme Court in ***Bimlesh Tanwar Vs. State of Haryana & others*** in ***Appeal (Civil) No.879 of 2000*** judgment dated 10.03.2003 reported in ***(2003) 5 SCC 604*** and it was held that for appointments will not include promotion and for promotion reservation cannot be followed. But the effect of the judgment was nullified by the enactment of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, wherein under Section 40 it is stated that the appointments should be based on reservation and also stated that even promotion should be based on reservation. The Sections 1(2), 40 and 70 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 was challenged in W.P.No.998 of



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2017 and batch. The Hon'ble Division Bench vide judgment, dated 15.11.2019, has declared the Sections 1(2), 40 and 70 of Tamil Nadu Government Servants (Conditions of Service) Act, 2016 as ultra vires and unconstitutional. Consequently, the Government was directed to redo the exercise of fixation of seniority within a period of 12 weeks.

13. Further the Hon'ble Division Bench in in W.P.No.998 of 2017 and batch had held that the delay, laches and acquiescence and accrued right are the factors to be considered by the Court when similar reliefs are sought for in future. In the present case the delay, laches and acquiescence and accrued right would not arise since the respondents had not disclosed whether the list is based on merits or reservation. Moreover, from the initial date of appointment i.e. from 07.07.2010 the respondents had not published the seniority list based on merits and failed in their statutory duty. And for not performing the statutory duty the Government and TNPSC are facing contempt before Hon'ble Supreme Court, which is discussed on the later part of this judgment.



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14. The issue of whether reservation should be followed in promotion was considered by the Honourable Supreme Court in ***Bimlesh Tanwar case*** wherein it has been categorically held that the decisions rendered in ***P.S.Ghalaut Vs. State of Haryana and others*** is no longer a good law and has held for appointment roster system has to be followed. Thereafter the seniority ought to be drawn based on merits for which the marks obtained by the candidates in the selection process would be taken. The relevant portion is extracted hereunder:

"40. An affirmative action in terms of Article 16(4) of the Constitution is meant for providing a representation of a class of citizenry who are socially or economically backward. Article 16 of the Constitution of India is applicable in the case of an appointment. It does not speak of fixation of seniority. Seniority is, thus, not to be fixed in terms of the roster points. If that is done, the rule of affirmative action would be extended which would strictly not be in consonance of the constitutional schemes. We are of the opinion that the decision in W.P.Nos.20449, 20451 and 20452 of 2015 P.S. Ghalaut does not lay down a good law."

Therefore, the issue was settled as early as 10.03.2003 in ***Bimlesh Tanwar case*** that appointment is based on reservation and once appointed, then the



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recruiting agency, in the present case the TNPSC, is bound to drawn the seniority based on merits for which the marks obtained by the candidates in the selection process would be taken.

15. In spite of the judgment in ***Bimlesh Tanwar case*** rendered as early as 10.03.2003, the Tamil Nadu Government thereafter has not revised the seniority in any of the department, which is evident from the observation of the Hon'ble First Bench of Madras High Court in W.P.No.36614 of 2016. While passing an interim order the Hon'ble Division Bench had observed as under:

“2. The State says that the subsisting interim order prohibits any further promotion to be given by resorting to Section 47(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. It is further submitted on behalf of the State that upon Section 40 of the Act being declared ultra vires by Division Bench of this Court by an order dated 15.11.2019, a colossal exercise has been undertaken by the State to re-work the position of seniority among its employees at various levels and across departments. The State says that such exercise will require time and the seniority list at the first level has been completed. The State also informs the Court that contempt proceedings have been initiated before the Supreme Court for non-compliance with the Supreme



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Court orders that required the merit system to be followed rather than the roster system in determining the seniority. The State says that only in cases of dire necessity, the emergency provision under Section 47(1) of the said Act had been resorted to; but even that can no longer be done in view of the order of status quo passed in the present proceedings. Prima facie, it appears that the State has to accept the merit-based seniority at the initial level, since any other basis is precluded by the previous judgments of this Court as affirmed or, at any rate, not interfered with, by the Supreme Court.

3. Since the contempt proceedings are pending before the Supreme Court and the matter last appeared on March 16, 2021 and is likely to appear in the next couple of weeks according to the State, let this petition stand over a fortnight after the summer vacation. It is hoped that the entire seniority list at all levels is worked out before the matter appears next.

4. It is made clear that those who have enjoyed the benefit of the emergency provision of temporary promotion can claim no equity by reason of the long occupancy of the promoted post and may have to revert to the erstwhile feeder post, if the initial seniority list is prepared according to merit.”

In the order the Hon'ble Division Bench has also held that any promotion without drawing seniority based on merits, then the promotees cannot claim any equity. In such circumstances the 4th respondent / appellant namely



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K.Karpagam cannot claim equity.

16. The Tamil Nadu Government as well as the TNPSC are facing contempt before the Honourable Supreme Court for not re-fixing the seniority based on merits. In the said contempt proceeding a plea was raised that prior to the judgment of ***Bimlesh Tanwar*** the promotion ought not to be disturbed. Therefore, the Hon'ble Supreme Court had fixed the cut-off date as 10.03.2003 i.e. the date of passing of judgment in ***Bimlesh Tanwar***. While hearing the Contempt Petition (Civil) Diary No(s). 6415 of 2021 in the case of ***P.Madhu Vs. Nanthakumar and another*** the Hon'ble Supreme Court vide order dated 18.04.2023 had held as under:

“1. The present matters have arisen on account of the State of Tamil Nadu not giving effect to the judgments and orders passed by the Division Bench of the Madras High Court. Not only that, it appears that even after this Court had found various Officers of the State Government to be guilty of contempt of this Court and convicted them, the State Government has not taken the issue seriously. It appears that since this Court was lenient and left the Officers who were convicted for contempt, only with a warning, the State thought that it could deal with the matter at leisure.



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2. *The first judgment of the Division Bench of the Madras High Court dated 31st March, 2015 is very much clear which has been reproduced in para 17 of our order dated 1st October, 2021. The Division Bench has clearly observed that the cases on hand were not individualistic in nature depending upon individual cases facts, and sequences of events. It has further been observed that the case arose out of the most fundamental question as to the principle of law to be applied in the matter of fixation of seniority. The Court observed that the question was on the principle as to whether the seniority of the candidates selected was to be fixed on the basis of merit as determined by Tamil Nadu Public Service Commission [hereinafter as 'TNPSC'] or as per the roster provided under Rule 35(f) of the General Rules for Tamil Nadu State and Subordinate Services.*

3. *The Division Bench in its first order directed the State Government to take the rank assigned by the TNPSC to the selectees as the basis for fixation of seniority and issue appropriate orders within a period of four weeks from the date of the said order. The first order of Division Bench came to be challenged before this Court. This Court vide order dated 22nd January, 2016 dismissed the same.*

4. *The basis on which the Madras High Court decided the first petition was the judgment of this Court in the case of Bimlesh Tanwar v. State of Haryana & Ors. reported in (2003) 5 SCC 604.*



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5. *To overcome the judgment of the Madras High Court, the State of Tamil Nadu came out with Tamil Nadu Government Servants (Conditions of Service) Act, 2016. The said enactment was challenged before the Madras High Court. The Division Bench vide judgment dated 15th November, 2019 allowed the petitions and held certain provisions of the said Act to be unconstitutional.*

6. *Alleging non-compliance of the judgment and order of the Madras High Court in the first judgment, which was affirmed by this Court, various contempt petitions came to be filed before this Court.*

7. *This Court vide order dated 1st October, 2021 held that this Court while dismissing the Special Leave Petition against the first judgment had observed that after the emergence of judgment in Bimlesh Tanwar(supra), the fundamental principle governing the determination of seniority was that it should be based on merit list of selection and that the list made on the basis of the roster points would not be permissible in law.*

8. *We were, therefore, of the considered view that the respondent State was bound to follow the law as laid down by this Court and determine the inter se seniority on the basis of selection by TNPSC and not on the basis of roster point. We had, therefore, found various officers of the State Government to be guilty of contempt and convicted them. However;*



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we had granted them a period of 12 weeks for completing the exercise as directed by the Division Bench in the first judgment. However, we had postponed the issue of punishment

9. When the matter was listed before us subsequently on 19th January, 2022, the affidavits of compliance were filed which persuaded us to end the Contempt Petitions only with a warning.

10. However, subsequently various Petitions have been filed and in some Petitions allegation is that the directions issued by the High Court in first judgment were not complied with in its true spirit. In other set of Contempt Petitions, the petitioners have alleged that though in certain Departments exercise has been carried out, in other departments the said exercise is not being carried out.

11. We have extensively heard Mr. S. Nagamuthu, Mr. R. Balasubramaniam, Mr. Dama Seshadri Naidu, Mr. Kapil Sibal, Mr. M. Sathyanarayanan, Mr. V. Raghavachari, Mr. V. K. Shukla, learned senior counsels and Mr. Amit Anand Tiwari, learned AAG for the State of Tamil Nadu, Mr. Prashant Bhushan, Ms. Shantha Devi Raman, Mr. Pranav Sachdeva, Mr. N. Subramaniyan, learned counsels.

12. Learned counsel for the petitioners submitted that once a law was



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laid down by the Constitution Bench of this Court consisting of nine Judges in the case of Indira Sawhney v. Union of India - 1992 Suppl. (3) SCC 217 there could not have been reservations in promotions and the appointments ought to have been on the basis of seniority as determined by the TNPSC according to merit. It is further submitted that in any case, after the judgment of this Court was delivered on 10th March, 2003, the respondent State could not have given the seniority on the basis of roster points. It is submitted by learned counsel for the petitioners that if individuals are asked to agitate their individual grievances, it would be in contravention of the view taken by the Madras High Court in the first judgment which is affirmed by this Court.

13. Learned counsels for petitioners in unison argue that they are not interested in any pecuniary benefits but however, they are only interested in removal of the injustice done to them by placing a less meritorious candidate above them in the seniority list.

14. Shri Amit Anand Tiwari, learned AAG, on the contrary, submitted that by efflux of time, much water has flown. He submitted that the rights have been accrued between the parties for decades and upsetting the same at this stage would have serious repercussions. In the alternative, Shri Tiwari submitted that it will be appropriate that this Court determines the cut-off date and that cut-off date should be the first judgment of the Madras High Court. He further submitted that for



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carrying out the exercise, this Court should appoint a Committee inasmuch as 10.76 lakh cases will have to be considered. It is submitted that the State is not equipped with the machinery to complete such a herculean task.

*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 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*



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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 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 (Santhosh Kumar's case).

18. We are unable to accept the contention of the learned AAG that the State is not equipped to complete the exercise. He submitted that this exercise has to be conducted in about 54 Departments.

19. If the State has 54 Departments, at least there would be 54 Secretaries/Principal Secretaries/ Additional Chief Secretaries heading those Departments. Under such Secretaries, there will be at least half a dozen Joint Secretaries and more than a dozen Deputy Secretaries and about two dozen Under Secretaries working in each of the Department. Further, at the divisional levels also, there would be Heads who would be heading the Department insofar as the Divisions are concerned. We are therefore, not inclined to accept the argument.

20. If the State has the will to do, it can very well comply with the orders



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passed by the Division Bench of the Madras High Court and affirmed by this Court.

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 13 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.

23. Needless to state that if this exercise is not completed within a period of three months from today, we will consider re-opening of the contempt proceedings.

24. List on 18th July, 2023 for compliance.”

17. In the present case the appointment of the writ petitioner and the 4th and 5th respondents was on 07.07.2010 and it is after the cut-off date and then the Government is bound to follow seniority based on merits. In the



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present case the respondents are bound to follow the direction of the Hon'ble Supreme Court given in ***Bimlesh Tanwar case*** and thereafter, consider the promotion to the said posts. Therefore, the respondents are bound to consider the writ petitioner's representation dated 30.11.2020 in the light of ***Bimlesh Tanwar's case, K.Rajs's case (W.P.No.998 of 2017)*** and the order dated 18.04.2023 of the Hon'ble Supreme Court in Contempt Petition (Civil) Diary No(s). 6415 of 2021 in the case of ***P.Madhu Vs. Nanthakumar and another*** and accordingly directed to consider within a period of four weeks from the date of receipt of the copy of the order.

18. Therefore, the writ appeal is devoid of merits and hence, the writ appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

[S.S.S.R., J.] [S.S.Y., J.]
02.02.2024

Index : Yes / No

Tmg



W.A.(MD)No.19 of 2022

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To

- 1.The Additional Chief Secretary,
Labour and Employment Department,
Secretariat, Chennai – 600 009.
- 2.The Director,
Department of Employment and Training,
Guindy, Chennai – 600 032



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W.A.(MD)No.19 of 2022

S.S.SUNDAR, J.

and

S.SRIMATHY, J.

Tmg

W.A(MD)No.19 of 2022

02.02.2024