



W.A(MD)Nos.301, 352, 1198 & 1240 of 2020

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	30.07.2024
PRONOUNCED ON	23.09.2024

CORAM :

JUSTICE N.SESHASAYEE
and
JUSTICE P.VADAMALAI

W.A(MD)Nos.301, 352, 1198 and 1249 of 2020

W.A.(MD) No.301 of 2020:

- 1.Arthanari
- 2.K.Shanmugasundari
- 3.S.Sandanagopalan
- 4.S.S.Elangovan
- 5.Jayanthilal
- 6.K.Jeeva

...Appellants 1 to 6/Respondents 5, 9 to 13

Vs

- 1.VR Palanivelrajan
- 2.The State of Tamil Nadu
Rep., by its Additional Chief Secretary to Government,
Finance (Local Fund) Department,
Fort.St.George, chennai – 09.
- 3.The Director of Local Fund Audit,
Amma Complex,

1/40



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4th Floor, Nanthanam,
Chennai 600 035.
4.Mr.R.Sankaran
5.S.Kalavathi
6.R.Thangapandian
7.P.Santhasorubarani
8.A.Kathiresan

.... Respondents 2 to 8/
Respondents 1 to 4 and 6 to 8

PRAYER: Appeal filed under Clause 15 of Letters Patent against the order dated

30.01.2020 made in W.P.(MD) No.23740 of 2018 on the file of this Court.

For Appellants : Mr.T.Lajapathiroy
Senior Counsel
assisted by
Mr.T.Aswin Rajasimman

For R1 : Mr.V.Raghavachari
Senior Counsel
assisted by Mr.S.Louis

For R2 & R3 : Mr.R.Baskaran
Additional Advocate General
assisted by Mr.A.Baskaran
Additional Government Pleader

W.A.(MD) No.352 of 2020:

1.G.Sukhanya
2.E.Nagalakshmi
3.M.Pandiselvi
4.L.Balakumar
5.S.Krishnaveni
6.A.Jaya



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- 7.S.Selvi
- 8.K.Dhanapandian
- 9.B.Sivakumar
- 10.N.R.Nagarajan
- 11.S.Sankaranarayanan
- 12.S.Sasirekha
- 13.C.N.Janaki
- 14.R.Chitra
- 15.Vennila

... Appellants/
3rd Parties

Vs

- 1.VR Palanivelrajan ... 1st Respondent/Writ Petitioner
- 2.The State of Tamil Nadu
Rep., by its Additional Chief Secretary to Government,
Finance (Local Fund) Department,
Fort.St.George, Chennai – 09.
- 3.The Director of Local Fund Audit,
Combined Finance Department Office Complex,
4th Floor, Nanthanam,
Chennai-600 035. ... Respondents 2 & 3/
Respondents 1 & 2

PRAYER: Appeal filed under Clause 15 of Letters Patent against the order dated 30.01.2020 made in W.P.(MD) No.12649 of 2019 on the file of this Court.

For Appellants : Mr.S.Ramsundarvijayaraj
for M/s.Veera Associates

For R1 : Mr.V.Raghavachari
Senior Counsel



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W.A(MD)Nos.301, 352, 1198 & 1240 of 2020

assisted by Mr.S.Louis

For R2 & R3 : Mr.R.Baskaran, Additional Advocate General
Assisted by Mr.A.Baskaran
Additional Government Pleader

W.A.(MD) No.1198 of 2020:

1.The State of Tamil Nadu,
Rep., by its Additional Chief Secretary to Government,
Finance (Local Fund) Department,
St. George Fort, Chennai-600 009.

2.The Director of Local Fund Audit,
Amma Complex, 4th Floor,
Nanthanam, Chennai-600 035. ... Appellants/
Respondents
Vs

1.VR Palanivelrajan ... 1st Respondent/Writ Petitioner
2.R.Sankaran
3.S.Kalavathi
4.R.Arthanari
5.R.Thangapandian
6.P.Santhasorubarani
7.A.Kathiresan
8.K.Shanmugasundari
9.S.Sandanagopalan
10.S.S.Elangovan
11.D.Jayanthilal
12.K.Jeeva ... Respondents 2 to 12/
Respondents 3 to 13

PRAYER: Appeal filed under Clause 15 of Letters Patent against the order dated



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30.01.2020 made in W.P.(MD) No.23740 of 2018 on the file of this Court.

For Appellants : Mr.R.Baskaran, Additional Advocate General
Assisted by Mr.A.Baskaran
Additional Government Pleader

For R1 : Mr.V.Raghavachari, Senior Counsel
Assisted by Mr.S.Louis

For RR3 to 9 & 12 : No appearance

For RR2, 10 & 11 : Unserved

W.A.(MD) No.1240 of 2020:

1.The State of Tamil Nadu,
Rep., by its Additional Chief Secretary to Government,
Finance (Local Fund) Department,
St. George Fort, Chennai-600 009.

2.The Director of Local Fund Audit,
Amma Complex, 4th Floor,
Nanthanam, Chennai-600 035. ... Appellants/
Respondents
Vs

VR Palanivelrajan ... Respondent/Writ Petitioner

PRAYER: Appeal filed under Clause 15 of Letters Patent against the order dated
30.01.2020 made in W.P.(MD) No.12649 of 2019 on the file of this Court.

For Appellants : Mr.R.Baskaran
Additional Advocate General
Assisted by Mr.A.Baskaran
Additional Government Pleader



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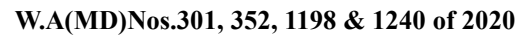
For Respondent : Mr.V.Raghavachari
Senior Counsel
Assisted by Mr.S.Louis

COMMON JUDGMENT

(Judgment was delivered by N.SESHASAYEE, J.)

1. The challenge in this batch of four appeals is to a common order passed by the learned Single Judge in W.P.(MD) No.23740 of 2018 and W.P.(MD) No.12649 of 2019, dated 30.01.2020, both of which are filed by the respondent Palanivelrajan. Of the four, two appeals are preferred by the State and the other two appeals are preferred by some of the private respondents as well as third parties who felt aggrieved by the Order of the learned Single Judge.

2. The post of Assistant Inspectors of Local Fund Audit is the lowest rung in the hierarchy and it is the feeder category for the next promotional post of Deputy Inspector of Local Fund Audit, which in turn serves as the feeder category for Inspector of Local Fund Audit and the ladder goes up. So far as appointment to the post of Assistant Inspectors is concerned, as earlier stated, it is filled up by two separate channel of appointment: (i) one is by Direct Recruitment (hereinafter



a) According to the direct-recruitees, prior to 2001, the TNPSC did not notify the vacancies to the post of Assistant Inspector, though there was an aborted attempt for the year 1994-1995. As a result, the Director of Local Fund Audit filled up the vacancies of Assistant Inspector which were required to be filled up through direct recruitment by transfer and promotion from junior cadre. According to the direct recruitees TNPSC has notified the vacancies for the year 1996-1999, and commenced the selection process and it culminated in the appointment of direct recruitees



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WEB COPY in 2001. In the meantime, appointment to the post of Assistant Inspector was made by transfer from lower cadre temporarily.

- b) Even though temporary filling up of vacancies was permitted under the Service Rules, yet such temporary appointment cannot be counted for promotion.
- c) While so, a combined seniority list dated 18.12.2007 came to be published without reference to 4:1 quota and it came to be challenged by the direct recruits in W.P.(MD) Nos.3823 of 2008 and 6508 of 2008.
- d) During the pendency of these writ petitions, the Government issued G.O. (Ms).No.261, Finance (Local Fund) Department, dated 24.06.2009 which prescribed the procedure for regularisation of the promotees retrospectively from 15.03.1994. Pursuant to G.O.261, the Director of Local Fund Audit issued a consequential order regularising Assistant Inspectors in Sl.Nos. 109 to 280 retrospectively. This *pendente lite* developments resulted in an amendment to the prayers in the writ petitions and accordingly G.O.261 too was challenged. The issue before the Court was well captured by the learned single Judge and it is worthy of reproduction of paragraph 3.3 to 3.7 of the order dated 26.02.2010 as below:



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“3.3.It is the complaint of the petitioners that due to the failure of recruitment in the earlier years, the posts of Assistant Inspectors have been filled up only by transfer of service or temporary officiation from among the holder of posts of Junior Assistants or Steno Typists or Typists in the Local Fund Audit Department and State Trading Scheme Department without following the above said ratio of 4:1. Even though under Rule 39(a)(i) of the General Rules temporary promotions could be made, the seniority has to be fixed only from the date from which such promotees are entitled to fitment in accordance with quota and rota prescribed under the Special Rules.

3.4. It is stated that as per G.O.Ms.No.1129, dated 18.12.1980 only 20% of the vacancies in each year could be reserved for recruitment by transfer or promotion and if the number of candidates qualified for transfer or promotion is more than the vacancies available, they can be considered only in the next year and why ought not to be considered for appointment in the vacancies reserved for direct recruitment. While so, the third respondent has published the impugned seniority list on 18.12.2007, fixing the seniority in the post of Assistant Inspectors in gross violation of quota and rota prescribed under the General and Special Rules.

3.5. It is stated that in the years 1991-1992, 1992-1993 and 1993-1994, when such mistake arose, the third respondent has rectified the mistake and formulated the seniority list in compliance of the Special Rules following the ratio. It is stated that under the impugned list, the candidates recruited by promotion in the year



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1991-1994 are shown en masse as S.Nos.1 to 23 and candidates by direct recruitment in the said year 1991-1994 are shown as S.Nos. 24 to 108 and after the revision of seniority as per the Rules, the excess promotees are placed after the direct recruits for the year 1991-1994 at S.Nos.109 to 120.

3.6. The direct recruits selected in the recruitment year 1996-1999 were shown in the seniority list in one bunch as S.Nos.281 to 472 below the temporary promotees for the year 1994-1995, who are placed at S.Nos.121-227, for the year 1996-1999, who are placed at S.Nos.228 to 272, and for the year 1999-2000, who are placed at S.Nos.273 to 280. If quota and rota is followed properly, the said direct recruits placed in S.Nos.281 to 472 should have been given higher seniority.

3.7. It is stated that the services of the temporary promotees were not regularised till date as they are only officiating. It is also stated that simply because in a year there was no direct recruitment, it does not mean that the quota and rota rule should be broken.”

e) These petitions were disposed of by a common order of the learned single

Judge dated 26.02.2010, in which the learned single Judge had held:

(i) That those who were transferred and posted only temporarily to the post of Assistant Inspectors cannot be regularised retrospectively, as it is contrary to the dictum in ***Madalaimuthu Vs State of Tamilnadu*** [AIR 2006 SC 2662] and proceeded to quash G.O.



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(Ms).No.261, dated 24.06.2009 and also set at naught the regularisation given to the promotees named in Sl.Nos 109 to 280.

(ii) And, during the course of hearing, the Court was appraised of the fact that parties who were aggrieved by fixation of *inter se* seniority had preferred their representations, and the learned single Judge had directed the parties to prefer fresh representations, and directed the authorities to consider their claim of *inter se* seniority. And further directed that till the Director of Local Fund Audit takes a decision on the same, the seniority list dated 18.02.2007 should not be given effect to.

- f) Aggrieved by the aforesaid order of the learned Single Judge, some of the promotees challenged the same in W.A.(MD)No.862 of 2010. And another set of promotees have separately challenged G.O.(Ms) No.261, dated 24.06.2009 in W.P.(MD)No.11382 of 2011. The Division Bench before which it was pending, chose to club it along with W.A.(MD)No.862 of 2010.
- g) After taking into consideration the representations as contemplated in the order of the learned Single Judge in W.P.(MD) Nos.3823 and 6508 of 2008,



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the Director of Local Fund Audit has issued a seniority list dated 17.12.2010. And since the direct recruits, whose grievance is now under consideration, were placed below the temporary promotees, based on the date of joining the service, they challenged the seniority list dated 17.12.2010 in W.P.(MD)No.9443 of 2011 and W.P.(MD)No.12483 of 2011. The Division Bench which entertained W.A.(MD)No.862 of 2010, also clubbed these two writ petitions with the appeal. Accordingly, the Division Bench of this Court heard W.A.(MD)No.862 of 2010 along with W.P. (MD)Nos.9443, 11382 and 12483 of 2011 and disposed of the same *vide* common judgment dated 11.07.2013. In its judgment, the Division Bench has observed that the directly recruited appointees to the post of Assistant Inspector can claim seniority only from the date of their regular appointment. In its judgment, the Division Bench has noted as follows:

“80. As stated earlier, in our considered view, the quota rule was not followed till 1995 except for an one time appointment in the year 1994. In the year 1994-1995, the estimated vacancy was not even arrived at, but all the vacancies were filled up by promotion. From 1996-2000, though there was estimated vacancy for every year and the quota rule was fixed only to fill up the post by promotion and the direct recruits were appointed as one time



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appointment, only in the year 2001 for the four year vacancy, there is a clear break down in the quota rule. Moreover, the direct recruits, who were appointed to fill up the vacancies between 1996 and 2000, cannot question the earlier promotion. Apparently, the excess promotions above the quota was restored to only between 1991 and 1994 and thereafter, there was induction of direct recruits, who have not objected to the seniority of the promotees placed above them.

81. In so far as the appointment of 105+2 of promotees for the vacancies 1994-1995 is concerned, there was a ban on recruitment, but there is no indication whether the vacancies for direct recruitment were carried over during the year 1996 to 2000.

82. Unless there is a strong indication that the above said vacancy for direct recruits post is also spread over to the estimated vacancies of the year 1996-2000, the direct recruits cannot claim anything before 1996 over and above the promotees.

83. It is also well settled that a direct recruit can claim seniority only from the date of his regular appointment. He cannot claim the seniority from the date when he was not borne in the service.

84. It is also pertinent to note that all these promotees from 1991 to 1995 were in continuous service without any interruption. Reopening the question of inter se seniority on the basis of non-



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enforcement of the rules from the very beginning may create hardship. If at all, the direct recruits can claim seniority, it is only in the estimate year 1996-2000 where 263 vacancies were estimated and 210 vacancies were allotted to direct recruits and 53 were allotted to promotees.

85. However, these promotees have joined their duty from 1996-2000, earlier to the direct recruit and they are also in continuous service. In the case of A.Janardhana Vs. Union of India reported in 1983-2-SCR-936, it is held that later direct recruit cannot claim seniority from a date before his birth in the service or when he was in school or college. In the case of A.N.Pathak Vs. Secretary to the Government reported in 1987-Suppl. Scc-763, it is held that slots cannot be kept reserved for direct recruits for retrospective appointments. Though the vacancies for direct recruit arose in the year 1996, their appointment in the year 2001 cannot date back to 1996.

86. It is well settled that the Direct Recruit can claim seniority only from the date of their regular appointment. Therefore, even considering the case of 53 promotees, appointed during the period 1996-2000, they cannot be pushed down and the direct recruit cannot claim a seniority earlier than their date of appointment.”

h) And eventually the Division Bench dismissed not only W.A.(MD)No.862 of 2010, but also all the writ petitions challenging the proceedings dated



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17.12.2010 fixing *inter se* seniority. In other words, the effect of this order is not only the confirmation of the order of the learned Single Judge in W.P. (MD)3823 and 6508 of 2008, but also appears to have approved the subsequent proceedings fixing *inter se* seniority dated 17.12.2010. As would be seen later, this has some significance in the context of this case.

- i) Thereafter, the Government came out with G.O.(Ms).No.159, Finance (Local Fund) Department, dated 10.05.2018 in which it accepted the proposal of the Director of Local Fund Audit and approved the temporary panel containing 33 Inspectors of Local Fund Audit for the post of Assistant Director of Local Fund Audit. This came to be challenged by the first respondent herein in W.P.(MD) No.11348 of 2018. A learned Single Judge of this Court has disposed of the matter *vide* order dated 11.06.2018, wherein he had *inter alia* required the writ petitioner to raise his objections before the government with regard to the panel prepared by the Government. The Court also directed the Government to invite objections from those who were placed similarly along with the writ petitioner.
- j) The Government invited objections and the writ petitioner also had presented his objections in the manner directed by this Court in W.P.(MD)



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- k) After considering the objections, the Government came out with G.O. (Ms).No.373, Finance (Local Fund) Department, dated 20.11.2018, by which vacancies to the post of Assistant Director of Local Fund Audit for 2017- 2018 were filled without disturbing the seniority earlier drafted. This Government Order became the subject matter of dispute in W.P.(MD) No.23740 of 2018 by the respondent herein.
- l) Thereafter, the Government came out with G.O.(Ms).No.160, Finance (Local Fund) Department, dated 24.05.2019, wherein it accepted and approved the promotion to the post of Assistant Director from the temporary panel of 39 Inspectors, which was recommended by the Director of Local Fund for the vacancies in 2018-2019. This was challenged by the same writ petitioner in W.P.(MD) No.12649 of 2019. the grievance of the respondent herein has been that despite the order of the learned Single Judge in W.P.3823 and 6508 of 2008, the promotions were still given without disturbing the seniority list that was wrongly prepared.
- m) *Vide a* common order dated 30.01.2020, the learned Single Judge allowed W.P.(MD) Nos.23740 of 2018 and 12649 of 2019. The line of reasoning of



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the learned Single Judge was that the Government has not considered the objections of the writ petitioner, which find a place in the typed set of papers filed by him in W.P.(MD) No.23740 of 2018.

It is this common order of the learned Single Judge, which has now become the subject matter of these appeals.

Arguments

(a) Argument for the Appellants

3. Mr.R.Baskaran, the learned Additional Advocate General for the appellants in W.A.(MD) Nos.1198 and 1240 of 2020, and Mr.T.Lajapathi Roy, learned counsel and Mr.S.Ramsundarvijayraj, the learned counsel appearing for the appellants in the other two appeals, made the following submissions:

- (a) When the order passed in W.P.(MD) Nos.3823 and 6508 of 2008 was challenged in W.A.No.862 of 2010, the challenge in essence was to the order of the learned Single Judge setting aside G.O.(Ms) No.261, dated 24.06.2009, and the effect of the judgment of the Division Bench in W.A. (MD)No.862 of 2010 is its confirmation. However, what flows out of the order of the learned Single Judge is that it only required the authorities to



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consider the representations of those who are aggrieved and then to prepare a seniority list. This seniority list was published on 17.12.2010.

(b) This seniority list became a point of challenge in W.P.(MD)Nos.9443 and 12483 of 2011 before the Division Bench and the Bench in its judgment dated 11.07.2013 dismissed them. The effect of this dismissal has to be understood as an affirmation of the correctness of the seniority list prepared on 17.12.2010. Indeed the Division Bench even had acknowledged that the vacancies which were notified between 1996 and 2000 might necessarily have to follow the quota rule of 4:1 as per the Special Rules, yet proceeded to declare that those who had not even joined in the service as on the date of arising of the vacancies cannot seek a claim to the same.

(c) G.O.(Ms) No.159, Finance (Local Fund) Department, dated 10.05.2018 thereafter came to be published notifying 33 vacancies for the post of Assistant Director for the year 2017-2018 with a proposal to promote 33 named Inspectors of Local Audit for the said post. When this came to be challenged before the learned Single Judge in W.P.(MD) No.11348 of 2018, the learned Single Judge has merely directed the respondents to allow the



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petitioner and those who were similarly placed to file their objections and to pass final order upon considering those objections. And this resulted in G.O.(Ms) No.373, Finance (Local Fund) Department, dated 20.11.2018 and subsequent G.O.(Ms) No.160, dated 24.05.2019 for the year 2018-2019. They came to be challenged before the learned Single Judge in W.P.(MD) 2370 of 2018 and 12649 of 2019, but the learned Single Judge has not adequately appreciated the true import and effect of the order of the Division Bench in W.A.No.862 of 2010 batch of cases.

- (d) When once the seniority list dated 17.12.2010 has attained finality consequent to the order passed by the Division Bench in W.A.(MD)No.862 of 2010 batch of cases, then G.O.(Ms) No.373, dated 20.11.2018 and G.O. (Ms) No.160, dated 24.05.2019 are merely consequential orders recommending promotion for filling up the vacancies of Assistant Director for the year they cover and its foundation is the seniority list dated 17.12.2010. When the seniority list dated 17.12.2010 has become final, the respondent does not have any locus to challenge G.O.(Ms) No.373, dated 20.11.2018 and G.O.(Ms) No.160, dated 24.05.2019 independently. In other words, what he could not achieve directly, he cannot be permitted to



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(b) Argument for the Respondent

4. Arguing for the respondent in all these appeals, Mr.V.Ragavachari, the learned Senior Counsel, submitted:

- (a) The controversy involved in this case is not between those who are appointed to the post of Assistant Inspector of Local Fund by transfer from other department between 1995 and 2001 and the subsequently appointed direct recruits in 2001, but between those who were appointed temporarily under Rule 10(a)(i) of the Tamil Nadu State Subordinate Service Rules between 1995 and 2001 and those who were posted by direct recruitment in 2001;
- (b) In law, those who are appointed temporarily under Rule 10(a)(i) should cease to occupy the said post once regular appointments are made. Accordingly, when the appointments were made by direct recruitment in 2001, those who were earlier appointed to the same post under 10(a)(i) shall leave the space for the regularly appointed candidates. Reliance was placed on the authorities in *K.Madalaimuthu & anoyher Vs State of*



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Tamil Nadu and others [AIR 2006 SC 2662]; *P.Perumal Vs A.V.Sureshbabu and Others* [(2007) 4 MLJ 160] and *The Government of Tamil Nadu and another Vs J.Ganesan and others* [WA Nos.2537 and 2617 of 2019 dated 23.12.2020].

(c) It is in this backdrop, a combined seniority list came to be published on 18.12.2007, where an attempt was made to fix *inter-se* seniority not between regularly appointed Assistant Inspectors by transfer and the direct recruits, but between those who were temporarily appointed between 1995 and 2001 and those who were subsequently appointed by direct recruitment. This seniority list was attempted to be given sanctity vide G.O.(Ms).No.261, Finance (Local Fund) Department, dated 24.06.2009 and it came to be challenged in W.,P.(MD) Nos.3823 and 6508 of 2008. The learned Single Judge in his order dated 26.02.2010 has found that only 53 candidates who were posted to the post of Assistant Inspectors of Local Fund prior to 2001 are qualified for regularisation before the direct-recruitees assumed office and for fixation of inter-se seniority between them and the direct recruitees of the year 2001, and as to the rest, he set aside G.O.(Ms).No.261, Finance (Local Fund) Department, dated



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(d) When this order of the learned single Judge was challenged in WA (MD) No. 862 of 2010 before the Division Bench, it passed an order staying the operation of the order of the learned single Judge. It is during the subsistence of this order, the joint Director of Local Fund Audit came out with his proceedings dated 17.12.2010, wherein he published the inter-se seniority list between those who held the post of Assistant Inspectors of Local Fund prior to 2001 and the direct recruits of the year 2001. It was made clear in this proceedings of the Director that this would be subject to the outcome of W.A(MD) No.862 of 2010, and on 11.07.2013, the Division Bench, after considering a lot on the subject finally, chose to dismiss the said appeal, which imply that the Division Bench had given its stamp of confirmation to the order of the learned Single Judge. This would now mean that when once WA(MD) No.862 of 2010 was dismissed, necessarily, anything done pursuant to the order of stay of operation of the order of the learned Single Judge, more specifically, the proceedings of the Director of Local Fund dated 17.12.2010 shall go. It might be that the respondents might have preferred W.P(MD)No.9443 of 2011 and W.P.No.12483 of 2011



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This however, may not be of any consequence since the proceedings dated 17.12.2010, at any rate, makes it clear that it was issued subject to the outcome of the order in W.A(MD) 862 of 2010, and when the order passed in W.A(MD) 862 of 2010 takes care of the sustainability of the proceedings of the Director dated 17.12.2010, there is hardly any need for a separate approval of the proceedings by the Court in W.P.(MD)No.9443 of 2011 and W.P.(MD)No.12483 of 2011.

- (e) It is in this backdrop, G.O.Ms.No.159 Finance (Local fund) Department dated 10.05.2018 must be appreciated. Here names of 33 candidates were temporarily short-listed for promotion, but it included at least 9 candidates (S.No.25 to 33), who were temporarily promoted to the post of Assistant Inspectors prior to 2001 and who will be hit by the order of the Single Judge in W.P.(MD) Nos.3823 and 6508 of 2008 and confirmed in W.A. (MD) 862 of 2010. It is hence in WP(MD) No.11348 of 2018, the learned Single Judge vide his order dated 11.06.2018, pointedly directed the respondents therein, rather the 2nd respondent to consider the objections given of the petitioner before him (the present respondent) to G.O.Ms.No.



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159. Following this the respondents had indeed given a 24 page objections narrating both the law and facts hereinabove described to in the final order.

(f) The Government in G.O.Ms.No.373 Finance (Local Fund) Department dated 20.11.2018 came out with its proceedings for the year 2017-18, which gives zero indications that all the aspects of objections raised by the respondents have been considered. Indeed it did not disclose how a temporary appointee to the post of Assistant Inspector under 10(a)(i) can be placed above the direct recruits who were regularly appointed to the post. It is in this backdrop, the Government came out with G.O.Ms.No.160 dated 24.05.2019 with the promoted list for the year 2018-19. This was also subsequently challenged by the respondents in WP(MD) No.12649 of 2019, and after considering the entire factual scenario before her, the learned Single Judge found that the objections raised by the respondents were not considered objectively and quashed G.O.Ms.Nos.160 Finance (Local Fund) Department, dated 24.05.2019 and G.O.Ms.No. 373 Finance (Local Fund) Department, dated 20.11.2018

Summarizing his argument, the learned Senior Counsel submitted that while the instructions to the Government have been candidly made by a learned Single



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Judge in WP(MD) Nos.3823 and 6508 of 2008 on 26.02.2010, which later came to be proved by a Division Bench in W.A(MD) No.862 of 2010, the appellant is keen not to get the instructions correctly. It may be relevant to mention that along with G.O.Ms.No.159 Finance (Local Fund) Department, dated 10.05.2018, the Director of Local Fund brought to light certain proceedings of the Directorate dated 12.11.2014 as if it was made in compliance to the order passed in WA (MD) No.862 of 2010. This proceedings was never brought to light at any time prior to G.O.Ms.No.373 dated 20.11.2018. Therefore, this proceedings confirms the prior seniority fixed vide proceedings dated 17.12.2010 when 17.12.2010 proceedings itself lays its sanctity after the order in W.A(MD) No.862/2010. The same cannot be legitimised by an *expost facto* proceedings which form the foundation for G.O.Ms.No.373 dated 20.11.2018. If proceedings dated 17.12.2010 goes necessarily the proceedings dated 12.11.2014 also goes, then, there is nothing to legitimise the proceedings in G.O.Ms.No.373 dated 20.11.2018 and G.O.Ms.No. 160 dated 24.05.2019 and the learned single Judge has also quashed the proceedings dated 12.11.2014 along with G.O.Ms.Nos.373 and 160.

Reply Arguments of the Appellants



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5. Replying the aforesaid arguments, the learned counsel for the appellants made the following submissions:

- (a) The challenge before the learned Single Judge in W.P(MD) Nos.3523 and 6508 of 2008 *inter alia* included the challenge to the temporary regularisation order dated 20.07.2009, and the learned Single Judge in his order has upheld the sustainability of challenge and directed that those names which find a place between Sl.Nos.109 and 280 in the seniority list dated 20.07.2009 would stand quashed. But in the seniority list dated 17.12.2010, these names were dropped. The appellants herein find a place in S.No.63, 65, 68, 69 and 72 in the seniority list dated 20.07.2009, and it was not disturbed by the learned Single Judge.
- (b) In Paragraph 82 and 83 of the order of the Division Bench in W.A(MD) No.862/2010, the Court has held that those who were appointed between 1995 and 2001 as promotees to the post of Assistant Inspector on transfer are not described as temporary promotees under Rule 10(a)(i).
- (c) The respondent, if it was aggrieved, should have challenged this part of the order, and inasmuch as he has not challenged it, he is estopped from putting forth a case contrary to the same.



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The Discussion

6.1 Rival contentions are carefully weighed for their respective merit. The genesis of the controversy dates back to the times prior to 2001, and it all commenced as an issue in fixation of inter se seniority between the directly recruited Assistant Inspectors of Local Fund in 2001 and those who were temporarily appointed to the said post prior to 2001 but were retrospectively regularised. And, the direct-recruitees initiated it. And, despite a few litigations, the issue apparently has not been settled yet.

6.2 The earliest of the litigations was when the direct-recruitees challenged the proceedings fixing inter se seniority and the retrospective regularisation referred to above in W.P(MD)Nos:3823 of 2008 and 6508 of 2008. As stated several times earlier, the contentions of the direct-recruitees carried conviction with the learned Single Judge and he held those names which figured in the seniority list in the Sl.No:109 to 280 as bad, quashed G.O.261, dated 24.06.2009 which paved way for retrospective regularisation and directed the authority to re-fix the seniority after considering the representations which from all those whose



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seniority would be affected thereby. This order later came to be confirmed in W.A.(MD) No.862 of 2010.

6.3 There are two aspects that are noticeable from the above two orders and they are: (a) that those who have been temporarily appointed to a post cannot claim seniority over the regular appointees, even though regular appointees have assumed office later in point of time; (b) that those who have been appointed to a post later in point of time cannot claim seniority over those who were appointed earlier. But the rider to (b) is that both the later and the subsequent appointments must be regularly made. The issue raised by the direct recruitees in this case, however, has been that those who were temporarily appointed were placed above the subsequently appointed direct-recruitees, but in a regular post. This falls within aspect (a) and not aspect (b).

7. This is the foundation from which every successive orders which came to be passed in the subsequent writ petitions, drew strength for their sustenance. In between, during the pendency of W.A.(MD) No.862 of 2010, the Director of Local Fund had come out with his proceedings dated 18.12.2010 which was also



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separately challenged by the direct-recruitees in couple of writ-petitions in W.P. (MD) Nos. 9443 of 2011 and 12483 of 2011, and they too were heard along with the appeal, and they also came to be dismissed. The appellants in W.A.(MD) Nos. 301 of 2020 & 352 of 2020 rely on the dismissal of these writ-petitions and claim that in so doing the Division Bench has approved the seniority list dated 17.12.2010, whereas the respondent – the lone direct-recruitee (his club has dwindled since the earlier proceedings) contend that the dismissal of W.A(MD) No. 862 of 2010 approves that the retrospective regularisation of temporary promotees and placing them above the direct-recruitees as attempted by the Department was bad in law.

8. What was in challenge before the Division Bench was the correctness of the decision of the learned Single Judge in W.P.(MD) Nos; 3823 and 6508 of 2008, and what were in challenge in W.P.(MD) 9443 of 2011 and 12483 of 2011 was to the proceedings dated 17.12.2010 which was made during the pendency of the W.A (MD) 862 of 2010, and thanks to the order of stay of the operation of the order of the learned Single Judge. Now, unless it is established that the proceedings dated 17.12.2010 is consistent with the findings and directions of the



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learned Single Judge, or to be more precise that of the Division Bench in W.A. (MD) 862 of 2010 (since the order of the Single Judge will merge with the order of the Division Bench), it cannot be said that the dismissal of W.P.(MD) 9443 of 2011 and 12483 of 2011 by the Division Bench will be of any consequence. Indeed, if the order of the Division Bench is carefully read , the Court has only discussed the issue raised in W.P (MD) Nos: 3823 of 2008 and 6508 of 2008, and nothing about the correctness of the proceedings dated 18.12.2010.

9. In the context of the cause of action involved in the two writ petitions in W.P. (MD) 23740 of 2018 and WP (MD) 12649 of 2019, all that was required of those authorities whose proceedings were challenged therein was to demonstrate that (a) no temporary appointees to the post of Assistant Inspector of Local Fund prior to 2001 have even accidentally found a place while fixing the *inter se* seniority between the promotees who were appointed to a regular post prior to 2001 and the direct-recruitees who were appointed in 2001, and (b) that subsequent promotions were made were based consistent with the seniority list so prepared. Now, this court was informed that the Director of Local Fund Audit had issued a proceedings dated 12.11.2014, but as rightly argued by the respondent this



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proceedings has never seen to have been published. An absolute statement is therefore required to be made: No proceedings, which was either challenged or not challenged, but are inconsistent with the ratio of the order passed in W.A (MD) 862 of 2010 cannot be sustained, and if it were to be held otherwise, then this Court will have the painful experience of sanctifying those proceedings which are made in defiance of the very order of this Court passed by an earlier Division Bench in W.A.(MD) 862 of 2010.

10. What is that which bothers the respondent now? He says that proceedings now under challenge were made after the disposal of the writ petition in W.P. (MD) No.11348 of 2018 but in violation to the direction given by the learned Single Judge to consider the representations of the respondent or those who are similarly placed. And what was the nature of objection has the respondent raised? His lengthy objection is only a reiteration of the entire factual and legal aspects hereinabove narrated and that promotions were given to the temporary promotees to the post of Assistant Inspectors prior to 2001 ahead of the direct recruitees in violation of the order passed in W.A (MD) 862 of 2010.



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11.1 The controversy needs to be understood in the contextual perspective.

Between 1995 and 2001 vacancies fell in the post of Assistant Inspectors of Local Fund Audit. And, these vacancies were required to be filled up both by direct recruitment and by transfer from other lower cadre in the ratio of 4:1. If these vacancies were duly filled up at the relevant time annually, then there would not have arisen any problem. But vacancies through direct recruitment could be filled up only through the TNPSC and it did not notify the vacancies to be filled by direct recruitment. In between the existing vacancies were filled up without waiting for the TNPSC to select appointees through direct recruitment, by transfer from other cadres. However, they could only be filled up in the ratio of 4:1. As this was not possible, temporary appointments to the post of Assistant Inspectors by transfer from other cadres were appeared to have been made to fill up the vacancies earmarked for direct recruitment.

11.2 Those who were regularly appointed by transfer for the vacancy earmarked for transfer-appointees, there could never be any issue. However, those who were temporarily appointed could never be regularised from the date of their appointment since that would literally amount to usurpation of the vacancies by



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the temporary appointees by transfer which is required to be filled up only through direct recruitment. Strangely, the Government came up with G.O. (Ms).No.261, Finance (Local Fund) Department, dated 24.06.2009 which prescribed the procedure for regularisation of the promotees retrospectively from 15.03.1994 without differentiating the regular appointees and temporary appointees by transfer. This G.O. came to be challenged in W.P.(MD) 3823 of 2008 and 6508 of 2008 and it was promptly struck down by P. Jothimani J. And, this has been confirmed by the Division bench in W.A.(MD) 862 of 2010.

11.3 The effect of this Order is that those who had been temporarily appointed in the vacancies intended for the direct recruits and were attempted to be regularised retrospectively can never be placed above the direct recruits appointed in 2001. To state it differently, those who were appointed to the post of Assistant Inspectors by transfer in the slot intended for transfer-appointees between 1995-2000 will retain their seniority because those posts belonged to that channel of appointment. But those who were appointed temporarily by transfer but in the slots belonging to direct recruitment, have to give up their slots to the direct recruits once they were appointed to fill up those vacancies. And these direct



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recruitees, who were appointed after the regular appointment by transfer between 1995 and 2001 cannot claim inter se seniority in the ratio of 4:1, because these direct recruitees were not even born in that cadre when the regular appointment by transfer was made to the slots that belonged to the channel of appointment by transfer. But this will in no way be applicable or available to those who were temporarily appointed by transfer as a stop-gap-arrangement.

12. Humility and fairness that ought to define any administrative action, if had been allowed its space while passing the impugned proceedings in G.O.Ms. 373, dated 20.11.2018 and G.O.Ms.160 dated 24.05.2019, the Government would have explained how not a single temporary appointee to the post of Assistant Inspectors prior to 2001 was promoted ahead of those who were regularly appointed later. This was the soul of the order in W.P.(MD) 3823 of 2008 and 6508 of 2008 which as earlier said was merged with the order in W.A.(MD) 862 of 2010. It was not seen to have been done.

13. It therefore appears, somewhere, someone in the administrative hierarchy is reluctant to abide by the directions in W.P.(MD) 3823 of 2008 and 6508 of 2008,



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or hesitant to inform the Court that there is no such violation. The authorities have created a situation for themselves, and they are now required to answer. As it has not been done, there is little that this Court can now do than to confirm the order of the learned Single Judge.

14. The learned Single Judge has set aside the G.O. Ms. 373 dated 20.11.2018 and G.O. Ms. 160 dated 24.05.2019, and if it is to be reversed by this Court, then the appellants, more particularly the appellants in W.A (MD) Nos. 1198 and 1240 of 2020 should demonstrate not one temporary appointee to the post of Assistant Inspector of Local Fund Audit by transfer from other cadres has been placed above the direct recruitees of 2001. It is not so much about whether the G.O.s under challenge actually para wise reply to the objection, but about due compliance of the orders passed in W.P.(MD) Nos. 3823 of 2008 and 6508 of 2008 and confirmed in W.A.(MD) No. 862 of 2010.

15.1 This controversy has engaged this Court since 2008 in multiple proceedings, and there is something that seems to go well. This Court cannot attach itself to a solitary issue on an early basis either. And, if no lasting solution could be found



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for fifteen years, there is either a fundamental flaw in the judicial approach to the issue, or there is a far graver flaw in the attitude of the officials in fixing the seniority as directed by this court in W.P.(MD) Nos. 3823 of 2008 and 6508 of 2008.

15.2 To strike a balance and to access the truth behind the controversy, this court chooses to modify the order of the learned single Judge, and direct the appellants in W.A (MD) Nos. 1198 and 1240 of 2020 to file a comprehensive report (unlike the customary reports with evasive and sweeping statements which the officials are habituated to file) which shall *inter alia* provide the following particulars:

- a) Who were those who were temporarily appointed to the post of Assistant Inspectors of Local Fund Audit before the direct-recruitees assumed charge in 2001.
- b) Who were the temporary appointees whose names were liable to be dropped pursuant to the orders passed in W.P.(MD) Nos. 3823 of 2008 and 6508 of 2008 and confirmed in W.A.(MD) No. 862 of 2010.
- c) Whether in the seniority list dated 17.12.2010, any of the temporary appointees between 1995 and 2001 were placed above the direct recruits of



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- d) Was any provisional seniority list preceding the proceedings dated 12.11.2014 ever published and whether any objections were invited from those who were aggrieved.
- e) Whether such seniority list dated 12.11. 2014 was consistent with the direction given by the Learned Single Judge of this Court in W.P.(MD) Nos. 3823 of 2008 and 6508 of 2008 and confirmed in W.A(MD) No. 862 of 2010 .
- f) Whether in the current Government Orders now under challenge any of the temporary appointees by transfer between 1995 and 2001 were given promotion ahead of the direct recruitees of the year 2001.

15.3 This Court further directs:

- a) A copy of the report shall be filed before this Court within two months from the date on which this Order is hosted in the official web-site.
- b) A copy of the report shall be provided to the respondent.
- c) No false statement, not even accidental errors will be tolerated.
- d) Once the copy of the report is provided, the respondent is required to go



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through it to ascertain if it answers his grievances raised in his objections.

- e) If the respondent finds that (i) any of the particulars provided in the report to be filed is either wrong or false, and (ii) that the order of this court in W.P.(MD) Nos. 3823 of 2008 and 6508 of 2008 is not duly complied with, he is at liberty to file a statement pointing out to the same, and seek for re-opening the case for further orders. Even an oral mentioning for re-opening is sufficient.

15.4 No costs.

(N.S.S. J) (P.V.M., J.)
23.09.2024

Index : Yes / No

Neutral Citation : Yes / No

PM/CM/ABR



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To

- 1.The Additional Chief Secretary to Government,
State of Tamil Nadu
Finance (Local Fund) Department,
Fort.St.George, chennai – 09.
- 2.The Director of Local Fund Audit,
Amma Complex,
4th Floor, Nanthanam,
Chennai 600 035



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N. SESHASAYEE, J.

and

P.VADAMALAI, J.

ABR/RR

Pre-delivery Judgment in
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and 1240 of 2020

23.09.2024