BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.02.2024

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THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD)Nos.556, 560 and 561 of 2021 & 18694 of 2020

W.P.(MD)No.556 of 2021

L.Soundararajan ... Petitioner

Vs.

1. The State of Tamil Nadu
Rep by its Secretary to Government,
Commercial Taxes Department, Chennai-600 009

2. The Principal Secretary/
Commissioner of Commercial Taxes, Commercial
Taxes Department, Ezhilagam, Chepauk,
Chennai-600 005. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to revise the date of effect of the Government orders dated 04.01.2010, 10.02.2014 and 31.03.2015 with retrospective effect in the light of G.O.(Ms.)No.1368, Finance Department, dated 4.11.1963 that is on completion of three years from the date on which the respective posts were created and if it is not possible to order atleast from 30.04.2003 the date on which the first proposal was submitted by the second respondent to Government in respect of 4436 temporary posts (as in para 10) that were created before the year 1998 and to promote the Commercial Tax Officers fit for promotion as Assistant Commissioner (ST) only according to their rank and date of joining as Commercial Tax Officer, by considering the petitioner's representation, dated 08.10.2020 and 30.11.2020 within the stipulated time fixed by this Court.

W.P.(MD)No.560 of 2021

V.Saravana Bava ... Petitioner

Vs.

1. The State of Tamil Nadu
Rep by its Secretary to Government,
Commercial Taxes Department, Chennai-600 009

2. The Principal Secretary/
Commissioner of Commercial Taxes,
Commercial Taxes Department,
Ezhilagam, Chepauk,
Chennai-600 005. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to revise the date of effect of the Government orders dated 04.01.2010, 10.02.2014 and 31.03.2015 with retrospective effect in the light of G.O.(Ms.)No.1368, Finance Department, dated 4.11.1963 that is on completion of three years from the date on which the respective posts were created and if it is not possible to order atleast from 30.04.2003 the date on which the first proposal was submitted by the second respondent to Government in respect of 4436 temporary posts (as in para 10) that were created before the year 1998 and to promote the Commercial Tax Officers fit for promotion as Assistant Commissioner (ST) only according to their rank and date of joining as Commercial Tax Officer, by considering the petitioner's representation, dated 08.10.2020 and 30.11.2020 within the stipulated time fixed by this Court.

W.P.(MD)No.561 of 2021

V.Rajasekaran ... Petitioner

Vs.

1. The State of Tamil Nadu
   Rep by its Secretary to Government,
   Commercial Taxes Department, Chennai-600 009

2. The Principal Secretary/
   Commissioner of Commercial Taxes,
   Commercial Taxes Department,
   Ezhilagam, Chepauk,
   Chennai-600 005. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to revise the date of effect of the Government orders dated 04.01.2010, 10.02.2014 and 31.03.2015 with retrospective effect in the light of G.O.(Ms.)No.1368, Finance Department, dated 4.11.1963 that is on completion of three years from the date on which the respective posts were created and if it is not possible to order atleast from 30.04.2003 the date on which the first proposal was submitted by the second respondent to Government in respect of 4436 temporary posts (as in para 10) that were created before the year 1998 and to promote the Commercial Tax Officers fit for promotion as Assistant Commissioner (ST) only according to their rank and date of joining as Commercial Tax Officer, by considering the petitioner's representation, dated 08.10.2020 and 30.11.2020 within the stipulated time fixed by this Court.

W.P.(MD)No.18694 of 2020

S.Balasubramanian ... Petitioner

Vs.

1. The State of Tamil Nadu
   Rep by its Secretary to Government,
   Commercial Taxes Department, Chennai-600 009

2. The Principal Secretary/
   Commissioner of Commercial Taxes,
   Commercial Taxes Department,
   Ezhilagam, Chepauk,
   Chennai-600 005. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to revise the date of effect of the Government orders dated 04.01.2010, 10.02.2014 and 31.03.2015 with retrospective effect in the light of G.O.(Ms.)No.1368, Finance Department, dated 4.11.1963 that is on completion of three years from the date on which the respective posts were created and if it is not possible to order atleast from 30.04.2003 the date on which the first proposal was submitted by the second respondent to Government in respect of 4436 temporary posts (as in para 10) that were created before the year 1998 and to promote the Commercial Tax Officers fit for promotion as Assistant Commissioner (ST) only according to their rank and date of joining as Commercial Tax Officer, by considering the petitioner's representation, dated 08.10.2020 and 30.11.2020 within the stipulated time fixed by this Court.

(in all W.Ps)

For Petitioner : Mr.B.Mahendrarajan

For Respondents : Mr.D.Sasikumar
Additional Government Pleader

COMMON ORDER

The petitioners in the Writ Petitions, who were working as State Sales Tax Officer -I, approached this Court by filing these Writ Petitions seeking a Writ of Mandamus to direct the respondents to revise the date of effect of the Government Orders issued in G.O.(Ms.) No.1, dated 04.01.2010, G.O.(Ms).No.17, dated 10.02.2014 and G.O.(Ms).No.47, dated 31.03.2015, are Commercial Tax and Registration (A2) Department, issued by the

Government of Tamil Nadu ordering for retention of temporary posts mentioned in the Annexure in the respective Government Orders to be given retrospective with effect from 04.11.1963, in the light of G.O.No.1368, Finance Department, dated 04.11.1963 etc.,.

2. From the perusal of the materials on record, it is noticed that on the request made by the petitioners and others similarly situated persons, this Court passed orders in W.P.No.6934 of 2009 and accordingly, the claim for retention of temporary posts on permanent basis was considered by the Government and issued Various Government Orders namely, G.O.(Ms.)No.1, dated 04.01.2010, G.O.(Ms).No.17, dated 10.02.2014 and G.O.(Ms).No.47, dated 31.03.2015 retaining the temporary posts covered by respective Government Orders. The petitioners herein are aggrieved by the said Government Orders to the extent of not granting retrospective date for retention of the posts on permanent basis. The claim as to whether the petitioners are entitled for retrospective effective or not was not considered by the Government, while issuing the above three Government Orders. The petitioners without challenging the said Government Orders came before this

Court seeking relief to grant retrospective effect to the said Government Orders with effect from 04.11.1963.

3. As seen from the prayer in these batch of writ petitions, the petitioners have not chosen to question the said Government Orders, the retrospective effect to the Government Orders, further, from the materials on record, it is noticed that the petitioners herein after issuance of the above Government Orders have in fact approached the respondent Government by giving various representation from time to time requesting for giving retrospective effect to the above three Government Orders. The said representations submitted by the petitioners appears to be still pending before the respondents, as the petitioners have not chosen to challenge the above Government Orders before this Court, this Court is not inclined to examine the matter on merits, especially, in the context of the fact that the representations of the petitioners are already pending before the respondent Government, it is for the respondent Government to consider the representations at the first instance as to whether the petitioners are entitled for such a benefit or not.

4. In the circumstances, this Court is not inclined to entertain the petitions at this stage. Accordingly, these Writ Petitions are dismissed, The petitioners are at liberty to submit fresh representation to the Government within a period of four weeks from the date of receipt of copy of this order, making their respective claims and in case if the petitioners submit their representations as permitted above, the respondent No.1 shall pass orders in accordance with law within a period of four months thereafter. Depending upon the said order, the petitioners are at liberty to pursue the matter further. There shall be no order as to costs.

NCC : Yes/No **28.02.2024**
Index : Yes/No
Internet : Yes
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To

1. The Secretary to Government,
   Commercial Taxes Department,
   Chennai-600 009

2. The Principal Secretary/
   Commissioner of Commercial Taxes,
   Commercial Taxes Department,
   Ezhilagam, Chepauk,
   Chennai-600 005.

MUMMINENI SUDHEER KUMAR, J.

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**W.P.(MD)Nos.556, 560 and 561 of 2021
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