

W.P. No. 10325 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2025

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

W.P. No. 10325 of 2018

and

W.M.P. No. 12261 of 2018

1. Dr.A.Sureshkumar
2. Dr.J.Sriram
3. Dr.A.Anbumalar

... Petitioners

-VS-

1. Government of Tamil Nadu
Rep. by the Secretary to Government
Health and Family Welfare Department
Secretariat, Chennai-9.
2. The Director
Directorate of Indian Medicine and Homeopathy
Arumbakkam, Chennai-106.
3. Tamil Nadu Public Service Commission
Rep. by its Under Secretary
TNPSC Road, VOC Nagar
Park Town, Chennai, Tamil Nadu-600003.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned orders in Memorandum No.5945/OTD-A1/1996 dated 03.10.2017 and 13.04.2018 on the file of the third respondent sent to the respective petitioners and quash the same; consequently, direct the respondents to prepare the seniority list by placing the petitioners in correct



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place based on their marks correlating to their respective communities without losing their seniority to any person who secured lower marks than them, within a reasonable period, by dropping the current incorrect seniority list.

For Petitioner : Mr.R.Kannan

For Respondents : Mr.Tippusulthan, GA, R1
Mr.R.Bharanidharan, SC (TNPSC) (RR2&3)

ORDER

This petition has been filed to call for the records pertaining to the impugned orders in Memorandum No.5945/OTD-A1/1996 dated 03.10.2017 and 13.04.2018 on the file of the third respondent sent to the respective petitioners and quash the same and to consequently direct the respondents to prepare the seniority list by placing the petitioners in correct place based on their marks correlating to their respective communities without losing their seniority to any person, who secured lower marks than them, within a reasonable period, by dropping the current incorrect seniority list.

2. Heard Mr.R.Kannan, learned counsel for the petitioner, Mr.Tippusulthan, learned Government Advocate for the first respondent and Mr.R.Bharanidharan, learned Standing Counsel (TNPSC) for the second and third respondents and perused the materials placed on record, apart from the



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pleadings of the parties.

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3. The petitioners were appointed as Assistant Medical Officer (Siddha) in Tamil Nadu Medical Service on 02.08.2000. The selection process was conducted by the third respondent TNPSC. Despite the petitioners have secured higher marks, they have been brought into General Turn and placed in Serial Nos. 104, 91 and 66 respectively and one Lakshmanaraj, who has secured lesser mark than the petitioners, has been selected in Backward Class category and placed in Serial No.11.

4. The petitioners made representation to the respondents on 21.07.2017 to correct the seniority list, but that was not considered and thereafter, the petitioners have filed an appeal against the common order rejecting the petitioners' representation dated 23.12.2016, and the same was also rejected. One of the similarly placed person, by name Balamurugan, has filed a writ petition in W.P. (MD) No. 10950 of 2009 along with the batch of other writ petitions in W.P. (MD) Nos. 16819 to 16823 of 2012 by certain other persons belonging to other department claiming that their seniority should be revised as per the seniority list, which were allowed by common order passed on 23.12.2016 to the following effect:-



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WEB COPY“14. In fine, these writ petitions are allowed and the impugned selection list published in the second respondent's bulletin No.5 dated 01.03.2001 and letter dated 20.08.1998 in D.No.44129/S/98 of the proposed respondent and the impugned provisional seniority list in RC No.22021/B1/2012 dated 04.12.2012 and final seniority list in RC No.22021/B1/2012 dated 18.01.2013 of the first respondent are hereby quashed and consequently the respondents 1 to 3 are directed to prepare the seniority list based on the marks/ranks obtained by the petitioners, within a period of four weeks from the date of receipt of a copy of this order.”

5. The learned counsel for the petitioners submitted that one of the petitioners involved in the above batch of writ petitions, viz., Balamurugan, who has filed W.P. (MD) No. 10950 of 2009, is a Homeopathy Doctor and orders have been issued by the Court to prepare the seniority list based on the marks/ranks obtained by him, and the said order is applicable to the case of the petitioners.



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WEB COPY 6. It is further submitted that W.A. (MD) No. 1360 of 2014, which also involves an identical matters, has been dismissed on 17.03.2017 holding to fix seniority on the merit basis. Despite the petitioners have been recruited in the year 2000 and the seniority has been fixed in the year 2000 itself, revised seniority list has been released in the year 2017, which is subsequent to the orders of the Court directing the seniority to be re-fixed on the basis of the merit. As the seniority has not been fixed as per the direction of the Court, the petitioners have filed this Writ Petition seeking to set aside the seniority list fixed in the year 2017 and re-fix the seniority list based on merits.

7. The learned Standing counsel for the third respondent submitted that the selection and seniority list in respect of Assistant Medical Officer (Siddha) in the Tamil Nadu Medical Services in the year 1996-1998 was finalized as per the directions issued by the Government in the D.O. Letter No. 44129/S/1998, dated 20.08.1998 of the Personnel and Administrative Reforms Department.

8. It is submitted that the said letter has been issued in pursuant to the orders passed by the Hon'ble Supreme Court in ***P.S.Ghalaut -vs- State of Haryana***. Against the similar order passed in W.P.(MD) No. 10950 of 2009 by



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a Division Bench of this Court in various writ appeals relating to the recruitment to the posts included in the Combined Engineering Services Examination, 1997-1999, Special Leave Petition in S.L.P. (c) CC Nos. 22094-22098 of 2015 have been filed before the Hon'ble Supreme Court and by order dated 22.01.2016, the SLPs were dismissed. The Commission has filed six Review Petitions (C) Nos. 3531 to 3535 of 2016 before the Hon'ble Supreme Court. In the meanwhile, the Government of Tamil Nadu has passed the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 by giving retrospective effect from 01.01.1955. As per Section 40(1) of the Act, the seniority of a person in a service, class, category or grade shall, unless he has been reduced to a lower rank as a punishment, be determined in the order of his placement in the list prepared by the recruitment agency or appointing authority, as the case may be, in accordance with the rule of reservation and the order of rotation specified in Schedule-V, wherever it is applicable. Section 70 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 validates such action taken on the basis of seniority already determined on the basis of Roster specified in schedule III under clause (c) of General Rule 22 of the Tamil Nadu State and Subordinate Service Rules.

9. Therefore, it is submitted by the learned standing counsel for the third



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respondent that the prayer of the petitioners is not feasible till the disposal of

WEB the Review Petitions pending before the Hon'ble Supreme Court. But the

Review Petitions came to be dismissed subsequently and thereafter, the persons who have got the orders in their favour have filed Contempt Petitions before the Supreme Court for implementing the orders.

10. The issue has become a national issue and the persons from several parts of the State had filed different litigations before the different High Courts and the Supreme Court respectively. The lead case is ***Bimlesh Tanwar -vs- State of Haryana & Others*** reported in ***(2003) 5 SCC 604***. After having dismissed all the review petitions filed by the various recruitment agency and the department, in the contempt petitions filed by the individuals, the Hon'ble Supreme Court has settled that the selection process or the seniority list prepared prior to 10.03.2003 and the seniority as attained in the lists published by the TNPSC in those selection process /seniority lists shall also stand frozen.

11. According to the said order, only those selection process / seniority list which were conducted and prepared after 10.03.2003 alone will have to be revisited in accordance with the direction issued by the Hon'ble Supreme Court.

Having observed so, the Court has further observed that if any of the parties has



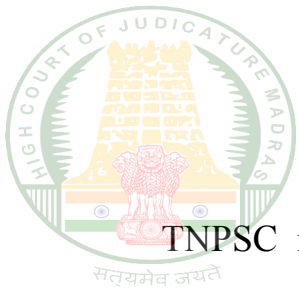
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any individual grievance with regard to his/her seniority, such persons would be entitled to take recourse to their individual remedies.

12. The learned counsel for the petitioners tried to give an interpretation to the para 6 of the orders of the Hon'ble Supreme Court in the Contempt Petition (Civil) Diary No. 6415 of 2021 in SLP (C) No. 2886 of 2016 in the case of ***P.Madhu -vs- K.Nanthakumar & Anr.*** by stating that the order will denote either the selection process or the seniority list prepared prior to 10.03.2003, but in the instant case, the seniority list has been finalized only in the year 2017 and hence, the petitioners are within the ambit of the directions issued by the Hon'ble Supreme Court of India.

13. Such an argument of the petitioners cannot be accepted for the reasons that the order of the Supreme Court does not state either seniority list or the selection process. The order is very clear even by the strict interpretation of its words that it denotes only the selection process and the seniority list which had happened prior to 10.03.2003 and obtained and published by the TNPSC in the selection process. Admittedly, the petitioners' selection process had been completed as early as in the year 2000 because they have joined the services in the year 2000. The first seniority list of the petitioners have been issued by the



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TNPSC in the year 2000 itself. Hence, the petitioners cannot construe the seniority list published in the year 2017 is the very first seniority list by ignoring the fact about the earlier seniority list and also the petitioners' recruitment has been completed as early as in the year 2000. If the interpretation as sought by the petitioners is given, the matter will once again invite another litigation that cannot be the intention of the Hon'ble Supreme Court and the various decisions rendered by the various courts in the same line. The petitioners have filed these writ petitions as wrong understanding of the orders of the Hon'ble Supreme Court. Hence, I do not find any merits.

In view of the above stated reasons, this writ petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Internet: Yes/No
Speaking /Non-speaking order

Maya

To

1. The Secretary to Government
Government of Tamil Nadu
Health and Family Welfare Department
Secretariat, Chennai-9.
2. The Director
Directorate of Indian Medicine and Homeopathy
Arumbakkam, Chennai-106.



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R.N.MANJULA, J.

Maya

3. The Under Secretary
Tamil Nadu Public Service Commission
TNPSC Road, VOC Nagar
Park Town, Chennai, Tamil Nadu-600003.

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