



W.P.No.29586 of 2013

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 05.11.2024

ORDERS PRONOUNCED ON : 03.03.2025

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.29586 of 2013

and

M.P.No.2 of 2013

N.Ezhiliraiyan

Vs.

... Petitioner

1.The Principal Secretary & Agricultural
Production Commissioner,
Department of Agriculture,
Fort St. George, Chennai-600 009.

2.The Director/Commissioner,
Department of Agricultural Marketing
and Agri Business,
Guindy, Chennai-600 032.

3.The Secretary,
Kancheepuram Market Committee,
Kancheepuram-631 502.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus, to call for the entire records of the second respondent pertaining his proceedings No.MCE1/16695/2012, dated



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26.04.2013 with revised panel dated 29.05.2013, quash the same and direct the second respondent to prepare the panel list afresh as per Section 35(a) of the State and Subordinate Service Rules.

For Petitioner : Mr.V.Manoharan
For Respondents : Mr.T.Chezhiyan
Additional Government Pleader

ORDER

This writ petition has been filed seeking a Writ of Certiorarified Mandamus calling for the records relating to the proceedings No.MCE1/16695/2012, dated 26.04.2013. Through the said proceedings, the entire State of Tamil Nadu was treated as one unit for the purpose of seniority and promotion in the Department of Agricultural Marketing in terms of judgment of this Bench made in W.A.(MD) No.387 of 2008 dated 16.06.2008. The petitioner has no grievance insofar as preparing statewide seniority list, but is aggrieved by the manner in which the same was prepared.

2. The main ground of attack is that the impugned proceedings was issued fixing seniority taking into consideration the date of joining of the



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candidates in the post of Junior Assistant instead of considering their ranking in the select list drawn by the Tamil Nadu Public Service Commission (TNPSC). It would be appropriate to take note of the preamble of the impugned proceedings, for better appreciation of the matter, which reads as under:

“In the reference 1st cited, the Government have amended the Special Rules for Tamil Nadu Agricultural Marketing Subordinate Service Rules of the Market Committee employees treating the State as a 'Unit' for the purpose of appointment promotion etc.

The Hon'ble Madurai Bench of Madras High Court in its order second cited, have directed the Commissioner of Agricultural Marketing and Agri Business to prepare the common seniority list in terms of the amendment to the special rules made in G.O.Ms.No.449 Agricultural (AM-1) Department dated 16.08.1995.

Further the Madurai Bench of Madras High Court in its orders 3rd and 4th cited have confirmed its earlier order dated 19.07.2007 in W.P.No.2622/2004. Consequently in the reference 5th cited, it was proposed to pursue action as per the order of the Hon'ble Madurai Bench of Madras High Court.

In the reference 6th cited, the Government have



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concurred with the above views of the Director of Agricultural Marketing and Agri Business.

Based on the above High Court orders and the concurrence given by the Government, the common seniority list as on 16.08.1995 and for the period from 16.08.1995 to 31.03.2011 were prepared in respect of Superintendents / Supervisors /Junior Assistants and the same were communicated vide this office letter 7th cited.

Based on the above High Court orders, the promotions already given asper the District wise seniority lists are hereby deemed cancelled. Further based on state wide seniority list, notional promotions and promotions in respect of the panel years from 1996-97 to 2012-13 as the case may be are hereby ordered to be given to the qualified persons as Supervisor to Superintendents and Junior Assistant to Supervisors vide Annexure-I and II of this proceedings respectively. The details of non qualified persons are also given in the Annexure of this order.

The services of the incumbents in respect of the posts of Supervisors and Superintendents are hereby ordered to be deemed to have been regularized from the date of their notional promotions. The promotions given in these orders shall be subject to modification/cancellation if



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any discrepancy is found at a later date and therefore the incumbents cannot claim for any restoration / revision or otherwise in seniority or promotion in future.”

3. A perusal of Annexures-I and II attached to the impugned proceedings would disclose that, for the purpose of assigning date of promotion to the post of Supervisor from the post of Junior Assistant, the date of joining in the post of Junior Assistant was taken into consideration and accordingly, arranged them in the seniority list. The petitioner herein is the one, who was selected in Group-IV Service Examination conducted by the TNPSC during the year 1999-2000 and was allotted to the Agricultural Marketing Department through memo dated 28.06.2001. Along with the petitioner, several others were also selected and allotted to the Agricultural Marketing Department and obviously there would be a select list of the candidates, who were selected for the post of Junior Assistant and allotted to the Agricultural Marketing Department. The petitioner, after having been appointed as Junior Assistant cum Typist in the Marketing Department was transferred from time to time and he was also promoted to the post of Supervisor on 28.03.2008. By the date of



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filing of the present writ petition, the petitioner has been working as Supervisor.

By virtue of the impugned proceedings, the date of promotion of the petitioner to the post of Supervisor was altered to 01.04.2007 as against the original date of promotion being 28.08.2008. To that extent, the petitioner is not aggrieved. However, according to the learned counsel for the petitioner, if the seniority of the petitioner is taken into consideration by virtue of his ranking in the select list drawn by the TNPSC, he would have got promotion to the post of Supervisor much ahead of 01.04.2007.

4. From the perusal of Annexure-I, it is evident that the date of joining in the post of Junior Assistant alone was taken into consideration for all the candidates irrespective of their mode of recruitment. Some of the candidates, whose names are shown in the Annexure-I were appointed by Direct Recruitment through TNPSC and some of them were appointed through other modes such as compassionate appointment etc. The fixation of seniority among the candidate selected through TNPSC shall always be by virtue of their ranking in the select list as is provided under Rule 35(a) of the Tamil Nadu



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State and Subordinate Services Rules. So also, in the matter of fixation of seniority among the candidates recruited through different modes of recruitment is also equally governed by the Services Rules viz., Rule 35(aa) of the Tamil Nadu State and Subordinate Services Rules. But, in the impugned proceedings, Respondent No.2 while preparing the Statewide seniority of all the employees treating the entire State as one unit, has taken into consideration the date of joining in the post of Junior Assistant instead of preparing the same by following Rule 35(a) and Rule 35(aa) of the Tamil Nadu State and Subordinate Services Rules.

5. It is settled law that the date of joining is totally an irrelevant factor when the candidates were selected by different modes of recruitment including through Public Service Commission. Date of joining is only a fortuitous circumstance, as the person, who was communicated with the order of appointment early would join in the post at an early date and whereas the person who was communicated with the order of appointment little latter would join on a latter date. By virtue of such fortuitous circumstance, a person, who is



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below in the select list drawn by TNPSC, was given seniority solely on the ground of joining duty earlier than others, who are above him in the select list. If such a situation is allowed, the same would result in grave prejudice and confer undue benefit upon such candidates. This aspect of the matter has fallen for consideration before the Hon'ble Apex Court in the case of ***Chairman, Puri Gramya Bank v. Ananda Chandra Das*** reported in ***(1994) 6 SCC 301***, wherein the Hon'ble Apex Court held as under at paragraph No.2:

“2. This appeal arises from the judgment of the High Court of Orissa in OJC No. 1007 of 1988, dated 4-3-1992. The respondent and others were selected by direct recruitment as managers of Rural Bank. His rank was No. 9 in the merit list. He was directed to be given seniority on the basis of the date of his reporting to duty. It is reported that the first respondent is dead. The only question in this case is that what shall be the ranking among the direct recruits? Is it the date on which they joined duty or according to the ranking given by the Selection Board? On comparative evaluation of the respective merits of the candidates for direct recruitment, the Board has prepared the merit list on the basis of the ranking secured at the time of the selection. It is settled law that if more than one are selected, the



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seniority is as per ranking of the direct recruits subject to the adjustment of the candidates selected on applying the rule of reservation and the roster. By mere fortuitous chance of reporting to duty earlier would not alter the ranking given by the Selection Board and the arranged one as per roster. The High Court, is, therefore, wholly wrong in its conclusion that the seniority shall be determined on the basis of the joining reports given by the candidates selected for appointment by direct recruitment and length of service on its basis. The view, therefore, is wrong. However, we need not interfere with the order, since the first respondent has died."

6. The abovesaid decision was again followed subsequently by the Hon'ble Apex Court in the case of ***Suresh Chandra JHA v. State of Bihar and others*** reported in ***(2007) 1 SCC 405***.

7. In the light of the above, the impugned proceedings issued by Respondent No.2 basing upon the date of joining in the post of Junior Assistant cannot be said to be the one issued in accordance with law. No doubt, the impugned proceedings came to be issued by virtue of the orders passed by a



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learned Division Bench of this Court as already noted above. This Court only directed the respondents to prepare the seniority list treating the entire State as one unit for all practical purposes such as preparation of seniority list, promotion etc. But, this would not mean that the respondent can prepare the seniority list and effect promotion as they like without following the relevant rules. Though the petitioner has challenged the entire impugned proceedings, failed to implead any of the affected parties. For this reason, this Court is not inclined to grant the relief as sought for by the petitioner.

8. Further, as seen from the impugned proceedings, no doubt, the seniority list was shown to have been prepared pursuant to an order passed by the Division Bench of this Court, but appears to have been issued unilaterally without putting on notice any of the persons affected by the said proceedings. If at all Respondent No.2 intends to draw any such Statewide seniority list, in all fairness, Respondent No.2 ought to have prepared a provisional list and afforded an opportunity to all the affected candidates and then after considering the objections, if any received, ought to have issued the impugned proceedings.



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But none of the said procedure appears to have been adopted by Respondent No.2 while issuing the impugned proceedings. Had there been any such opportunity, the petitioner would have been in a position to object the proceedings before Respondent No.2 himself, but no such opportunity was afforded to the petitioner and other similarly situated persons.

9. In the light of the above, this Court though not convinced with the manner in which the impugned proceedings was issued fixing the seniority and effecting promotion notionally, is not inclined to quash the impugned proceedings in its entirety. However, Respondent No.2 is directed to review the impugned proceedings by duly fixing seniority taking into consideration the ranking assigned to the candidates selected by TNPSC to the post of Junior Assistant and then fix *inter se* seniority with the persons who were appointed to the post of Junior Assistant by other modes by following the relevant rules including Rule 35(a) and Rule 35(aa) of the Tamil Nadu State and Subordinate Services Rules and other relevant provisions by duly putting all the persons who are likely to be affected by the said process on notice. The abovesaid



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exercise shall be completed as expeditiously as possible, at any rate, within a period of four months from the date of receipt of a copy of this order.

10. Accordingly, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

03.03.2025

NCC : Yes/No

Index : Yes/No

Internet : Yes

ABR

To

1.The Principal Secretary & Agricultural
Production Commissioner,
Department of Agriculture,
Fort St. George, Chennai-600 009.

2.The Director/Commissioner,
Department of Agricultural Marketing
and Agri Business,
Guindy, Chennai-600 032.

3.The Secretary,



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MUMMINENI SUDHEER KUMAR, J.

ABR

Pre-delivery Order made in
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