



W.P.Nos.8413 to 8422 of 2017

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 23.07.2024

ORDERS PRONOUNCED ON : 29.04.2025

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.Nos.8413 to 8422 of 2017

W.P.Nos.8413 of 2017

A.M.Khan

... Petitioner

Vs.

1.The Secretary to Government,
Labour and Employment Department,
Fort St. George, Chennai – 600 009.

2.The Commissioner of Labour,
DMS Complex, Chennai – 600 006.

3.G.R.Rajaraman

(R3 impleaded as per order dated 21.12.2023
in W.M.P.No.28445/2023 in W.P.No.8413/2017) ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Ceriorarified Mandamus, calling for the records pertaining to the order of the 2nd respondent in EA/223/2008, dated 27.01.2016 and to quash the same and consequently direct the respondents



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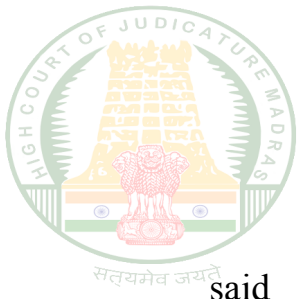
to revise the seniority list for the post of Assistant Inspectors of Labour afresh by notionally ranking the petitioner at Sl.No.172 and to grant all the consequential monetary and attendant benefits to the petitioner with retrospective effect from the date of his retirement within the time stipulated by this Court.

For Petitioner : Mr.J.Ravikumar

For Respondents : Mr.R.Neelakandan,
Addl. Advocate General VIII
Assisted by Ms.E.Ranganayaki,
Addl. Govt. Pleader

COMMON ORDER

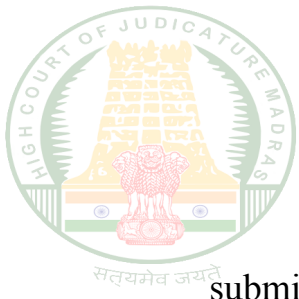
The issue that arise for consideration in this batch of Writ Petitions is with regard to the seniority among the directly recruited Assistant Inspectors of Labour and the persons who were appointed through recruitment by transfer to the post of Assistant Inspectors of Labour. All the petitioners herein are the persons, who are appointed by direct recruitment for the year 1973-74 and joined in service in the year 1974. When the seniority list of directly recruited Assistant Inspectors of Labour was prepared through proceedings bearing No.E4/7564/2004, dated 16.04.2004, the petitioners filed an appeal before the Government and on rejection of the



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said appeal through G.O.(D).No.928, Labour and Employment (E2) Department, dated 18.12.2006, the petitioners herein approached this Court by filing W.P.No.36829 of 2007. The said Writ Petition was allowed by this Court by an order dated 21.09.2011, by quashing the impugned order and directing re-fixation of seniority and to extend consequential benefits in the light of the decision of the Division Bench of this Court in W.P.No.41427 of 2002, dated 23.01.2004. It was aggrieved by the said order dated 21.09.2011, the respondents herein filed W.A.No.458 of 2012. The said Writ Appeal came to be disposed of by an order dated 06.06.2014, confirming the order passed in W.P.No.36829 of 2007, however, with a slight modification holding that the petitioners herein are not entitled to claim arrears of salary as they have already retired from service long back and allowed the benefit only for the notional fixation of seniority and other consequential and attendant benefits only for the purpose of fixation of pension. It was pursuant to the said order passed in W.A.No.458 of 2012, the respondent No.2 prepared a seniority list in proceeding No.E4/223/2008, dated 27.01.2016. The petitioners herein aggrieved by the said proceedings



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submitted a representation before the respondents 1 and 2 on 17.02.2016 and thereafter, approached this Court by filing the present batch of Writ Petitions. In the said impugned proceedings dated 27.01.2016, the petitioners herein were shown at serial Nos.201 to 220.

2. Before delving into the discussion on the claim made by the petitioners herein, it is necessary to notice the order passed by a Division Bench of this Court in W.P.No.41427 of 2002, dated 23.01.2004. Through the said decision, learned Division Bench confirmed the orders passed by the Tamil Nadu Administrative Tribunal in its common order dated 02.11.2001 in O.A.No.685, 2469 and 2470 of 1991 and 6083 of 1994. Through the said order dated 02.11.2001, the Administrative Tribunal while deciding an identical claim as being made by the petitioners herein, at the instance of persons, who were directly recruited as Assistant Inspectors of Labour during the years 1978-1979, 1989 and 1991, while setting aside the *inter-se-seniority* list impugned therein, held as under:

“Therefore, Judgment of the Supreme Court reported in (1999) 1 SCC 278 reproduced above squarely applicable to those



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cases. Therefore, the applicants are entitled to get their seniority from the date of their appointment as Assistant Inspector of Labour following the quota rule fixed in the Special Rules. This does not mean that the applicants have to be given seniority from the date when they were not in service. They are entitled for seniority, following the quota rules from the date of their joining. Therefore, the applicants are entitled for fixation of revised seniority. The impugned seniority lists have to be revised to give appropriate placement to the applicants as per the above decision. The original applications are allowed to this extend. The applicants are entitled to got the resultant consequential benefits.

3. The above said decision of the Tamil Nadu Administrative Tribunal has become final. The petitioners herein were also extended the benefit of the said order, by virtue of orders dated 21.09.2011 passed in W.P.No.36829 of 2007. From the above order passed by the learned Administrative Tribunal, it is evident that the directly recruited Assistant Inspectors of Labour were declared to be entitled for fixing of their seniority only from the date they joined in service, but not for seniority from the date when they were not in service.

4. In the light of the above, the claim of the petitioners herein has



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to be examined.

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5. According to the petitioners, as on the year 1973, there were 129 substantive post of Assistant Inspectors of Labour in Tamil Nadu Labour Subordinate Service and in addition to the same, 50 additional posts were created during the year 1973. Thus, according to the petitioners, in all, there were 179 substantive posts of Assistant Inspectors of Labour by the year 1974. If 129 substantive posts, that were available by the year 1973, were filled up by the date of appointment of the petitioners during the year 1974, 50 substantive posts that were created in the year 1973 are required to be filled up by following the ratio of 2:4, which was in force at the relevant point of time. Thus, it is the case of the petitioners that the petitioners being first batch of direct recruits during the year 1974, have to be accommodated from Serial Nos.130 and 131 against 2 point ratio and thereafter, four Assistant Inspectors of Labour appointed by recruitment by transfer have to be accommodated at Serial Nos.132 to 135 and thereafter, serial Nos.136 and 137 would be again available for petitioners, who are the



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direct recruits. By applying the said procedure, the petitioner in W.P.No.8413 of 2017 is claiming the seniority rank at 172 as against the seniority rank assigned to him at 215 in the impugned seniority list. Similarly, other petitioners are also claiming seniority. Thus in nutshell, it is the case of the petitioners that 50 substantive posts that were sanctioned in the year 1973 are required to be filled up starting with the petitioners herein and they should be accommodated accordingly.

6. A perusal of the impugned order and the seniority list annexed there too shows that the said seniority list covers the person who were appointed from 20.01.1954 till 03.01.1974. The petitioners are claiming their seniority at serial No.130 onwards on an assumption that 129 substantial vacancies, which were existing prior to the recruitment of the petitioners herein were exhausted with serial No.129 in the impugned seniority list and therefore, 130th vacancy is from out of 50 substantive posts that were sanctioned during the year 1973 and the said post is required to be filled up by a direct recruitment candidates from among the



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petitioners. This claim of the petitioners is totally based on imagination and as such un-sustainable under law.

7. In the impugned seniority list upto serial No.129, all the persons, who were appointed as Assistant Inspector of Labour, were all prior to 20.07.1966. Admittedly, the petitioners herein were appointed as Assistant Inspectors of Labour only during the year 1974. The persons who were appointed as Assistant Inspectors of Labour prior to the date of appointment of the petitioners herein were all shown upto serial No.227. None of the Assistant Inspector of Labour, who was appointed subsequent to the petitioners was shown above the Writ Petitioners in the impugned seniority list. The Serial Nos.1 to 129 cannot be treated as the persons appointed against the 129 substantive vacancies. The vacancies in the post of Assistant Inspectors of Labour would arise from year to year and the said vacancies also would be filled up by the department from time to time. Therefore, the assumption of the petitioners that 129 substantive vacancies were filled up upto Serial No.129 in the impugned seniority list, is totally

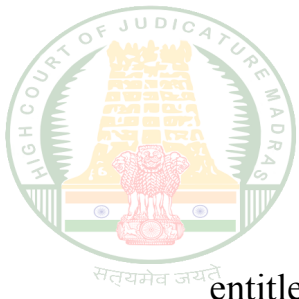


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imaginary. Depending upon the vacancies that arise from time to time from the year 1954, either due to retirement, death, resignation etc., the said vacancies would be filled up. No such factual matrix are placed before this Court. In the absence of any such factual matrix, it cannot be presumed that those persons shown at Serial Nos.1 to 129 in the impugned seniority list were appointed against 129 permanent vacancies available at that point of time. Further all the persons who are shown above the petitioners upto Serial Nos.227 in the impugned seniority list were all appointed prior to 26.10.1972 and whereas all the petitioners herein were appointed in the year 1974. Thus, the petitioners herein were not even born in the cadre by 26.10.1972. Hence, they claiming seniority over the persons shown upto serial No.227 is absurd.

8. Admittedly, none of the Assistant Inspector of Labour who were appointed subsequent to the petitioners was shown above the Writ Petitioners in the impugned seniority list. In terms of the order passed by the Administrative Tribunal as noted above, the petitioners herein, are not



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entitled to claim seniority from the date anterior to their date of entry into the service.

9. As seen from the impugned seniority list, the respondents have earmarked the vacancies for direct recruits from the year 1967 onwards ie., from the year the ratio as prescribed among the direct recruits and the persons appointed by recruitment by transfer in the ratio of 2:4. The said ratio is followed while finalising the impugned seniority and the vacancy at Serial Nos.132 and 133 were earmarked for direct recruits and similarly by following the ratio, the posts were shown as vacant against direct recruitment quota as no persons were appointed by other modes against the vacancies earmarked for direct recruits till the petitioners herein were appointed in the month of August and October 1974. Once the direct recruitment took place, all the vacancies, that were kept vacant against direct recruitment quota, were accommodated at one stretch from Serial Nos.228 to 237 in the impugned seniority list. Thus, the whole premise on which the petitioners have filed this Writ Petition claiming their seniority



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rank at Serial No.130 onwards of the impugned seniority, is totally fallacious, imaginary and based upon an un-sustainable assumption.

10. The further contention of the petitioners is that the Assistant Inspectors of Labour, who were appointed by recruitment by transfer on temporary basis, were regularised and confirmed through proceedings No.E4/31932/79, dated 25.01.1982 i.e, after the petitioners herein were appointed by direct recruitment and therefore, they cannot be given seniority over and above the petitioners is concerned, the same also does not stand for legal scrutiny, for the simple reason that there was no challenge to the said proceedings dated 25.01.1982 or the earlier proceedings that were issued granting confirmation to the Assistant Inspectors of Labour, through proceedings No.E4/19400/74, dated 10.05.1977. Admittedly, the petitioners herein and the beneficiaries of the proceedings dated 25.01.1982 have been working in the same cadre in the Labour Department of the State but for the reasons best known, the petitioners herein have not chosen to question the proceedings dated 25.01.1982, through which the promotion of the



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recruitment by transfer as the Assistant Inspectors of Labour from retrospective date was confirmed.

11. In the absence of any challenge to the confirmation of service accrued in favour of the persons, who are placed above the petitioners herein in the impugned seniority list, it is not open for the petitioners to object for the ranking assigned in favour of said persons in the impugned seniority list. At any rate, the petitioners herein cannot claim seniority from any date anterior to their entry into service and cannot march over the persons, who were already working as Assistant Inspectors of Labour as on the date of entry of the petitioners into the Tamil Nadu Labour Subordinate service. This is what exactly the Tamil Nadu Administrative Tribunal held in its order dated 02.11.2001. In this connection, it is also necessary to refer to a decision of the Hon'ble Apex Court in the case of ***A.Janardhana Vs. Union of India and others*** reported in ***(1983) 3 SCC 601***, wherein, the Hon'ble Apex Court has held as under:

“38. Before we conclude this judgment, we will have



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qualm of conscience if we do not draw attention to a very unjust, unfair and inequitable situation having a demoralising effect on public services probably ensuing from certain rules framed by the Government and the decisions of this Court. Even where the recruitment to a service is from more than one source and a quota is fixed for each service, yet more often the appointing authority to meet its exigencies of service exceeds the quota from the easily available source of promotees because the procedure for making recruitment from the market by direct recruitment is long prolix and time consuming. The Government for exigencies of service, for needs of public services and for efficient administration, promotees person easily available because in a hierarchical service one hopes to move upward. After the promotee is promoted, continuously renders service and is neither found wanting nor inefficient and is discharging his duty to the satisfaction of all, a fresh recruit from the market years after promotee was inducted in the service comes and challenges all the past recruitments made before he was born in service and some decisions especially the ratio in Jaisinghani's case as interpreted in two B. S. Gupta's cases gives him an advantage to the extent of the promotee being preceded in seniority by direct recruit who enters service long after the promotee was promoted. When the promotee was promoted and was rendering service, the direct recruit may be a schoolian or college going boy. He emerges from the educational institution, appears at a



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competitive examination and starts challenging everything that had happened during the period when he has had nothing to do with service. A mandamus issued in Jaisirlghani's case led to a situation where promotees of the year 1962 had to yield place to direct recruits of 1966 and the position worsened thereafter. In the case in hand, appellant a promotee of September 27, 1962 is put below N. K. Prinza who appeared at competitive examination in April 1976 i.e. One who came 14 years after the appellant, and it does not require an intelligent exercise to reach a conclusion that 14 years prior to 1976 Mr. Prinza who is shown to be born on July 20, 1950 must be aged about 12 years and must have been studying in a primary school. Shorn of all service jurisprudence jargon one can bluntly notice the situation that a primary school student when the promotee was a member of the service, barged in and claimed and got seniority over the promotee. If this has not a demoralising effect on service one fails to see what other inequitous approach would be more damaging. It is therefore, time to clearly initiate a proposition that a direct recruit who comes into service after the promotee was already unconditionally and without reservation promoted and whose promotion is not shown to be invalid or illegal according to relevant statutory or non-statutory rules should not be permitted by any principle of seniority to score a march over a promotee because that itself being arbitrary would be violative of Articles 14 and 16. Mr. Ramamurthi, learned counsel for some of the direct



recruits in this connection urged that if at the time when the promotee was recruited by promotion, his appointment/promotion was irregular or illegal and which is required to be regularised, any subsequent direct recruits coming in at a later date can seek relief and score a march over such irregular and illegal entrant. We find it difficult to subscribe to this view. Though we have dwelt at some length on this aspect any enunciation of general principle on the lines indicated by us would require a reconsideration of some of the decisions of this Court. We say no more save that we have solved the riddle in this case in accordance with the decisions of this Court and interpretation of relevant rules.”

12. Further, the Hon'ble Apex Court in the case of ***Bhupendra Nath Hazarika and another Vs. State of Assam and others***, reported in ***(2013) 2 SCC 516*** having reviewed the entire case law, has held as under:

“37. In Direct Recruit case, the Court observed that there was no justification to urge lack of bona fide on the part of the State. Eventually, the Bench summed up its conclusions and we proceed to reproduce some of them which are relevant for our purpose: -

“(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his



confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

(D) If it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down.

(E) Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date.”

38. In Madan Gopal Garg v. State of Punjab, the controversy related to inter se seniority of promotees and direct recruits in respect of the posts, namely, District Food and Supplies Controller and Deputy Director, Food and Supplies in the State of Punjab governed by the Punjab Food and Supplies Department (State Service Class II) Rules, 1966. After analyzing the facts and the appointments in excess of quota, the Court observed that the appointment



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of the controller was in excess of the quota and it continued to be so till the respondent No. 2 therein was appointed by direct recruitment. In that context, the Bench opined: -

“12. Once it is held that the appointment of the appellant was in excess of the quota fixed for promotees and officers appointed by transfer, the said appointment has to be treated as an invalid appointment and it can be treated as a regular appointment only when a vacancy is available against the promotion quota against which the said appointment can be regularized. In other words, any such appointment in excess of the quota has to be pushed down to a later year when it can be regularized as per the quota and such an appointment prior to regularization cannot confer any right as against a person who is directly appointed within the quota prescribed for direct recruits.”

39. In Maharashtra Vikrikar Karamchari Sangathan v. State of Maharashtra and another, a two-Judge Bench took note of the fact that when promotions are made in excess of the prescribed quota and the Government had not taken any conscious decision in accordance with law to treat the promotions of excess promotees on regular basis, it would be wrong to assert that such promotions were on regular basis. In that context, the Bench further proceeded to state thus: -

“26. Lastly, it was contended on behalf of the appellants that some of the appellants have put in more than 17 years of service when a few of the direct recruits were either schooling and/or not born in the cadre. If the appellants were to be pushed



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down, it would cause great hardship to them. We are unable to subscribe to this contention because if there is patent violation of the quota rule, the result must follow and the appellants who remained in the office for all these years cannot take the advantage of this situation. This submission is, therefore, devoid of any substance.”

13. In the light of the above, this Court does not find any substance in the contention of the petitioners.

14. The petitioners herein while challenging the impugned proceedings have also sought for fixation of seniority notionally and to grant all consequential monetary and attendant benefits with retrospective effect, from the date of their retirement. If all the petitioners herein are to be given seniority as being claimed by them, there will be several others who would be affected by such reliefs. But, for the reasons best known, the petitioners have not chosen to implead any of such affected parties in the Writ Petition. But, when a co-ordinate Bench of this Court after hearing the matter observed that in the absence of impleading any such affected parties,



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the relief cannot be granted in favour of the petitioners, the petitioners have chosen to implead only one person as third respondent. If the relief as sought is to be granted in favour of the petitioners by giving notional promotion, the original beneficiary of such promotion has to be deprived of. The question of promoting the two persons against the same post at a time does not arise. But none of such affected parties are impleaded as respondents in these Writ Petitions. For this reason alone, these Writ Petitions are liable to be dismissed.

15. In the light of the above, this Court does not find any merit in these Writ Petitions and the same are accordingly dismissed. There shall be no order as to costs.

29.04.2025

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



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MUMMINENI SUDHEER KUMAR, J.

vsm

Pre-delivery Orders made in
W.P.Nos.8413 to 8422 of 2017

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