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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2026

CORAM

THE HON'BLE MR.JUSTICE C.KUMARAPPAN

WP No. 31425 of 2022
CNR:{HCMA011884692022}
and
WMP No. 30869 of 2022

1. Sivaraman
2. P. Vijayalakshmi

..Petitioner(s)

Vs

1. The Chairman
   Tamil Nadu Pollution Control Board,
   No. 76, Mount Salai, Guindy,
   Chennai 600 032.

2. The Member Secretary
   Tamil Nadu Pollution Control Board,
   No. 76, Mount Salai Guindy,
   Chennai 600 032.

3. Kavita Leonard

..Respondent(s)

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to impugned order of the 1st respondent in Proc. No TNPCB / Per / P6 / 014739 / 2022 dated 07.09.2022 and the quash the same and consequently direct the 1st respondent to re-fix the seniority of the petitioners as per the original appointment in the year 1997 in accordance with Rule 22(d) of The Tamil Nadu State and Subordinate Service Regulations and promote the petitioners to the post of Chief Scientific Officer.

For Petitioner(s): Mr.K.M.Vijayan
Mr.K.M.Vijayan Associates

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For Respondent(s): Mrs.Dakshyani Reddy,
Senior Counsel
for M/s.Madhuri Donti Reddy,
Standing Counsel (for R1 & R2)
No appearance (for R3)

ORDER

The present Writ Petition has been filed challenging the impugned order dated 07.09.2022, whereby the third respondent was promoted to the post of Chief Scientific Officer.

2. The learned counsel appearing for the petitioners would submit that the petitioners were recruited against six backlog vacancies reserved for candidates belonging to the Scheduled Caste (SC) category. During the year 1997, eleven posts of Environmental Scientist, including six backlog vacancies reserved for the SC category, were filled through the Employment Exchange. However, while fixing seniority, instead of placing the candidates (petitioners) recruited against the backlog vacancies above those recruited against the regular vacancies, the respondents placed the petitioners below the candidates recruited against the regular vacancies. It is the contention of the learned counsel for the petitioners that, as per the third proviso to Section 27(f) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (hereinafter referred to as the Act, 2016 for short), selection for

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appointment against backlog vacancies shall be made first, followed by selection under the normal communal roster. According to the petitioners, the said provision indicates that candidates appointed against backlog vacancies are entitled to preferential seniority over the candidates appointed against regular vacancies.

3. To substantiate the above contention, the learned counsel for the petitioners relies upon the third proviso to the said provision and submits that, where candidates belonging to the SC community are not available against the vacancies earmarked for them, a second attempt shall be made to select candidates belonging to the SC community through direct recruitment during the same recruitment year or, as early as possible, before the next direct recruitment. According to the petitioners, the said provision indicates that candidates selected against backlog vacancies must be placed above the candidates selected against regular vacancies. In support of his contention, the learned counsel relies upon the judgment of the Hon'ble Supreme Court in ***State of Tamil Nadu v. K. Shobana***, reported in ***(2021) 4 SCC 686.*** He would further submit that, in the establishment list as on 01.10.1998, the candidates selected against backlog vacancies were placed above the other candidates, but their positions were subsequently revised without any valid basis. Hence, it is his submission that the candidates selected against backlog vacancies ought to be placed above those selected against regular vacancies.

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4. Per contra, the learned Senior Counsel appearing for the first and second respondents would stoutly oppose the above contentions and submit that the present Writ Petition is liable to be dismissed both on the ground of maintainability and on merits. It is her further contention that the seniority list was revised on 14.04.2013 and that the petitioners have approached this Court by filing the present Writ Petition after a lapse of nearly nine years. She would also contend that, under Rule 35-A of the Tamil Nadu State and Subordinate Services Rules (hereinafter referred to as 'the TNSSS Rules' for short), seniority is determined in accordance with the rank obtained by the candidates. However, the petitioners have not impleaded the other candidates recruited during the year 1997, whose seniority would be affected by the relief sought for. Therefore, the present Writ Petition is liable to be dismissed for non-joinder of necessary parties.

5. It is also the further contention of the learned Senior Counsel that the petitioners had earlier filed W.P.No.1033 of 2016 seeking refixation of their seniority in accordance with Rule 22 of the the TNSSS Rules, with reference to their original appointment during the year 1997. By an order dated 28.02.2018, the learned Single Judge directed the first respondent to consider the representation submitted by the petitioners. Pursuant thereto, the

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first respondent, by order dated 05.06.2020, rejected the claim of the petitioners. However, the petitioners have not challenged the said rejection order. Therefore, having failed to challenge the said order, the petitioners cannot now seek consequential relief. Furthermore, the present Writ Petition is liable to be dismissed on the grounds of delay, laches and acquiescence. Hence, the learned Senior Counsel would submit that, apart from the merits of the case, the present Writ Petition is liable to be dismissed on the above grounds. She would further contend that seniority has been fixed in accordance with the rank obtained by the candidates.

6. The learned Senior Counsel would further contend that, in view of the judgment of this Court in ***N. Santosh Kumar v. Tamil Nadu Public Service Commission*** in W.A.No.2705 of 2012 etc. batch, dated 31.03.2015, as well as the judgment of the Hon'ble Supreme Court in ***Bimlesh Tanwar v. State of Haryana and Others*****,** reported in ***MANU/SC/0213/2003,*** seniority ought have to be determined in accordance with the rank obtained by the candidates in the recruitment process, while the roster position is relevant for determining the vacancy against which a candidate is appointed. It is also her contention that the mere fact that the petitioners were recruited against backlog vacancies would not, by itself, confer upon them any preferential right to seniority over candidates who secured higher marks and demonstrated greater merit. She would also rely upon the judgment of the

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Division Bench of the Madurai Bench of this Court in W.A.(MD) Nos.991 and 992 of 2018, dated 21.08.2024, and Rule 20 of the Tamil Nadu Pollution Control Board Revised Service Regulations, 2010. The learned Senior Counsel would further contend that, though the petitioners were recruited against backlog vacancies, their positions were fixed by adopting a hybrid method that took into account both the communal roster and merit. Therefore, the petitioners cannot have any grievance in this regard. Hence, she prayed for dismissal of the present Writ Petition.

7. I have given my anxious consideration to the submissions made by the learned counsel appearing on either side.

8. The only point that arises for consideration in the present Writ Petition is whether a candidate recruited against a backlog vacancy is entitled to be placed above the candidates recruited against regular vacancies, for the purpose of determining seniority.

9. In this regard, the learned counsel for the petitioners relies upon the third proviso to Section 27(f) of the Act, 2016. However, since the said Act came into force only in the year 2016, whereas the recruitment in question took place during the year 1997, the relevant provisions of the TNSSS Rules, which were in force at the time of recruitment, have to be considered. The

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provision corresponding to the third proviso to Section 27(f) of the Act, 2016 is the third proviso to Rule 22(d) of the TNSSS Rules, For ready reference, this Court deems it appropriate to extract both the provisions hereunder:-

> ***"27 (f) of the Act, 2016***
>
> ***Third proviso to Section 27(f)***
>
> *Provided also that in the case of selection for appointment by direct recruitment, with effect on and from the 1st April 1989, there shall be a ban on dereservation of vacancies reserved for the candidates belonging to any of the Scheduled Castes and Scheduled Tribes, Most Backward Classes and Denotified Communities to be appointed by direct recruitment. But, the above ban on dereservation of vacancies shall not be applicable to the vacancies reserved for the Backward Classes (other than Most Backward Classes and Denotified Communities), Backward Class Muslims and, therefore, if qualified and suitable candidates belonging to any of the Backward Classes (other than Most Backward Classes and Denotified Communities), Backward Class Muslims are not available for appointment, the turn so allotted to them shall lapse and the vacancy shall be filled by the next turn in the order of rotation. If sufficient number of qualified and suitable candidates belonging to any of the Scheduled Castes and Scheduled Tribes, Most Backward Classes and Denotified Communities are not available for selection for appointment for the vacancies reserved for them by direct recruitment in the first attempt of recruitment, then, a second attempt shall be made for selection of the candidates belonging to the respective communities by direct recruitment in the same recruitment year or as early as possible before the next direct recruitment for selection of candidates against such vacancies. If the required number of candidates belonging to such communities are not available even then, the vacancies for which selection*

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could not be made shall remain unfilled until the next recruitment year treating them as "backlog" vacancies. In the subsequent year, when direct recruitment is made for the vacancies of that year, namely, the current vacancies, the "backlog" vacancies shall also be announced for direct recruitment, keeping the vacancies of the particular recruitment year, namely, the current year vacancies and the "backlog" vacancies as two distinct groups as illustrated in Schedule-IX. The selection for appointment for the next direct recruitment shall be made first for the "backlog" vacancies and then the normal rotation shall be followed:

22(d) of the TNSSS Rules

Third proviso to Rule 22 (d)

Provided also that in the case of selection for appointment by direct recruitment, with effect on and from the Ist April 1989, there shall be a ban on dereservation of vacancies reserved for the candidates belonging to any of the Schedule Castes and Schedule Tribes, Most Backward Classes and Denotified Communities to be appointed by direct recruitment. But the above ban on dereservation of vacancies shall not be applicable to the vacancies reserved for the Backward Classes (other than Most Backward Classes and Denotified Communities), Backward Class Muslims and therefore if qualified and suitable candidates belonging to any of the Backward Classes (other than Most Backward Classes and Denotified Communities), Backward Class Muslims are not available for appointment, the turn, so allotted to them shall lapse and the vacancy shall be filled by the next turn in the order of rotation. If sufficient number of qualified and suitable candidates belong to any of the Schedule Castes and Schedule Tribes Most Backward Classes and De-notified Communities are not available for selection for appointment for the vacancies reserved for them by direct recruitment in the first attempt of recruitment, then a second attempt shall be made for

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selection of the candidates belonging to the respective communities by direct recruitment in the same recruitment year or as early as possible before the next direct recruitment for selection of candidates against such vacancies. If the required number of candidates belonging to such communities are not available even then, the vacancies for which selection could not be made shall remain unfilled until the next recruitment year treating them as "backlog" vacancies. In the subsequent year, when direct recruitment is made for the vacancies of that year (called the current vacancies), the "backlog" vacancies shall also be announced for direct recruitment, keeping the vacancies of the particular recruitment year, namely, the current year vacancies and the "backlog" vacancies as two distinct groups as illustrated in Schedule V to this part. While in respect of vacancies for the year of recruitment, the normal procedure relating to the calculation of vacancies reserved for the candidates belonging to such communities as well as the instructions that not more than fifty percent of the vacancies shall be reserved for Schedule Castes and Schedule Tribes communities and physically handicapped shall apply, selection for appointment for all the "backlog" vacancies reserved for such communities shall be made by the candidates belonging to such communities without any restriction as they belong to distinct group of "backlog" vacancies. The selection for appointment in the next direct recruitment shall be made first for the "backlog" vacancies and then the normal rotation shall be followed:"

10. The main contention put forth by the learned counsel for the petitioners is that, whenever backlog vacancies arise, such vacancies must be filled first in accordance with the relevant rule. He would further submit that, where candidates belonging to the SC community are not available, steps

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must be taken to fill the vacancies during the same recruitment year or, as early as possible, before the next direct recruitment. According to the petitioners, this requirement indicates that candidates appointed against backlog vacancies are entitled to be placed above candidates appointed against regular vacancies. However, this Court is unable to accept the above submission.

11. On a close reading of the relevant rule, it is evident that, if candidates belonging to certain categories, namely, backward classes other than the most backward classes and denotified communities, and backward class Muslims, are not available, the turn allotted to them shall lapse. In respect of the other communities, the rule provides for treating the unfilled vacancies as backlog vacancies. If no candidate is available even during the second recruitment attempt, the department may seek exemption from the ban, as provided under the relevant rule. Therefore, the object of the provision is to ensure that backlog vacancies are to be filled first in accordance with the prescribed procedure and that the benefit of reservation is not defeated by the continued non-availability of candidates.

12. It is relevant to note that, though the learned counsel for the petitioners contends that, where candidates belonging to the SC community are not available, the rule requires recruitment to be undertaken during the

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same recruitment year or, as early as possible, before the next direct recruitment. A close reading of the proviso makes it clear that the requirement is not confined exclusively to the SC community but also extends to other communities covered by the provision. In this regard, it is relevant to refer to the judgment of the Hon'ble Supreme Court in ***K.Shobana's case*** (cited supra). Though the learned counsel for the petitioners would contend that the ratio laid down in the said judgment supports their claim, this Court is unable to accept the said submission, as the Hon'ble Supreme Court has categorically held that the word "first" cannot be construed so as to disregard the merit of the candidates or the rank secured by them.

13. On a perusal of the relevant rules, it is evident that Rule 22 of the TNSSS Rules deals with reservation in appointment and does not provide for determination of seniority. On the other hand, Rule 35-A of the TNSSS Rules deals with seniority. For ready reference, the relevant rule is extracted hereunder:

> ***"35. Seniority.***_*(a) 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 by the rank obtained by him in the list of approved candidates drawn up by the Tamil Nadu Public Service Commission or other Appointing Authority, as the case may be, subject to the rule of reservation where it applies. The date of commencement of his probation shall be the date on which he joins duty irrespective of his seniority."*

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According to the above rule, seniority is to be determined with reference to the rank obtained by the candidate in the list of approved candidates.

14. At this juncture, it is relevant to refer to the judgment of the Hon'ble Supreme Court in ***Bimlesh Tanwar's case*** (cited supra), wherein the principle that merit forms the basis for determining seniority was considered. However, in ***P.Madhu v. K. Nanthakumar*****,** in Contempt Petition (Civil) Diary No.6415 of 2021, dated 18.04.2023, the Hon'ble Supreme Court prescribed a cut-off date and directed that seniority be revised in accordance with merit in cases where the recruitment process was conducted after 10.03.2003. In the present case, the petitioners were recruited during the year 1997. Therefore, the question of revisiting their seniority by applying the principle laid down in ***Bimlesh Tanwar's case*** (cited supra), in the manner sought by the petitioners, does not arise. For ready reference, the relevant portion of the judgment in ***P.Madhu's case*** (cited supra) is extracted hereunder:-

> *"17. We, therefore, though are not inclined to disturb the seniority lists which are finalized prior to 10th March, 2003 wherein the benefit is granted to either of the parties i.e. as per the roster or as per the seniority list, the seniority list finalized after 10th March, 2003 will have to be re-visited in accordance with the law laid down by this Court in Bimlesh Tanwar (supra) and the first judgement of the Madras High Court."*

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15. In view of the above principles, where seniority has already been determined by the department on the basis of merit in accordance with the applicable rules, such determination does not warrant interference merely because some candidates were recruited against backlog vacancies. In the present case, the second respondent, in their communication dated 15.02.2019, have referred to the marks obtained by the individual candidates in the written examination. The petitioners have not raised any dispute regarding the marks secured by the candidates. For ready reference, the relevant portion of the said communication, is extracted hereunder:-

> "Out of the 11 candidates one candidate Thiru D.Rajkumar had resigned on 01.08.2005 and hence, the seniority of the remaining 10 Env. Scientists were prepared based on the communal rotation followed at the time of recruitment and in the order of merit as follows vide Bd.Proc.No.Per/P6/34535/2012, dated 14.04.2013:-

Sl. No.	Name	Community	Date of Birth	Marks obtained in the Written Test	Date of joining in TNPSC Board
1.	D.Rajkumar (Resigned)	BC	21.07.1973	52	21.07.1997
2.	N.Vadivu	SC	30.11.1971	46	25.07.1977
3.	Kavitha Chellappa	OC	09.10.1973	54	23.07.1997
4.	K.K.Thiruvalluvan	MBC	29.04.1967	52	01.08.1997
5.	Tamil Selvi	OC(W)	29.06.1974	46	23.07.1997
6.	S.Subramani	SC	06.05.1970	44	01.08.1997
7.	B.Helanmary	MBC(W)	20.07.1971	48	21.07.1997
8.	A.Manisekar	SC	03.05.1969	42	23.07.1997
9.	P.Vijayalakshmi	SC	17.04.1970	41	23.07.1997
10.	M.Sakthivel	SC	01.01.1972	41	07.11.1997

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11.	A.Sivaraman	SC	20.05.1973	41	03.11.1997

All of them belonging to SC Community got recruited in the year 1997 against existing vacancies. They have requested to fix their seniority ahead of other recruits of the same year and restore the seniority of all six of the above Env.Scientists fixing their seniority above Thiru.D.Rajkumar (Resigned) as published in the Establishment list during 1998."

16. On a perusal of the above list, it is evident that the candidates placed at Serial Nos.2 and 6, though selected against backlog vacancies under the communal roster, were accommodated in positions favourable to them in SC roster notwithstanding their lower marks. It appears that, in order to extend the benefit of the communal roster to those candidates, their positions were fixed by taking into account the general roster. Therefore, this Court is of the firm view that the issue relating to backlog vacancies has to be considered in the light of the principles laid down by the Hon'ble Supreme Court in ***K.Shobana's case*** (cited supra), whereas seniority has to be determined in accordance with the rank obtained by the candidates under the applicable rules. In such circumstances, this Court finds no ground to interfere with the seniority determined by the second respondent in their proceedings dated 15.02.2019. Accordingly, the challenge to the impugned order is liable to be rejected.

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17. Though this Court does not find any ground to interfere with the impugned order on merits, the petitioners' claim also suffers from certain defects relating to maintainability. As rightly contended by the learned Senior Counsel appearing for the first and second respondents, the seniority list relating to the recruitment of the year 1997 was revised on 14.04.2013. However, the petitioners have not impleaded several candidates whose seniority would be directly affected if the relief sought for by them were to be granted. Therefore, as rightly contended by the learned Senior Counsel, the present Writ Petition is also liable to be rejected for non-joinder of necessary parties.

18. Similarly, the petitioners had submitted a representation seeking revision of seniority on the grounds now raised in the present Writ Petition. The said representation was rejected by the first respondent by order dated 05.06.2020. However, the petitioners have not challenged the said order. This circumstance also operates against the petitioners. Therefore, apart from the findings on merits, the present Writ Petition is liable to be dismissed on the above ground as well.

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19. In the result, the present Writ Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Index: Yes
Speaking order
Neutral Citation: Yes

KV

To

1. The Chairman
Tamil Nadu Pollution Control Board,
No. 76, Mount Salai, Guindy,
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2. The Member Secretary
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Order QR

C.KUMARAPPAN J.

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