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**(2014) 03 MAD CK 0195**

**In the Madras High Court**

**Case No :** Writ Petition No. 2064 of 2012 and M.P. No. 2 of 2012

P. Shanmugha Priya

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

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**Date of Decision :** 11-03-2014

**Acts Referred:**

Constitution of India, 1950 — Article 14 16 16(4)

**Citation :** (2014) LabIC 3574

**Hon'ble Judges :** M. Venugopal, J

**Bench :** Single Bench

**Advocate :** R. Singaravelan for Ms. V.S. Jagadeesan and Mr. S. Bharathkumar, for the Appellant; V. Subbiah, Special Government Pleader for Respondents 1 and 2, Mr. N.S. Nandakumar, for 3rd Respondent and Mr. M. Sreedhar Associates for 6th Respondent, for the Respondent

**Final Decision :** Allowed

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## Judgement

M. Venugopal, J.—The Petitioner has preferred the instant Writ of Certiorarified Mandamus praying for passing of an order by this Court in calling for the records pertaining to the impugned proceedings of the 3rd Respondent dated 01.06.2011 made in Memo No. 2538/PSD-A1/1999 and to quash the same. Further, she has sought for a direction in directing the Respondents to re-fix the seniority in terms of marks obtained in the qualifying examination in respect of the Appointees selected under G.O.Ms. No. 98 Home (Pol. 2) Department dated 29.01.2003 to the post of Deputy Superintendent of Police Category-I.

The Summation of Facts:

(i) According to the Petitioner, the 3rd Respondent/Service Commission issued an Advertisement calling for applications for appointment under Group I category during the year 2002. She applied for the same and after examination and interview, she was selected for an appointment by direct recruitment to the post of Deputy Superintendent of Police Category I for the vacancies in respect of the year 1999-2000. An order was issued by the Home Department on 29.01.2003

notifying the selection of 24 candidates including herself. In the said Notification, her name was included in Serial No. 24 as a last person. Prior to the Notification, the 3rd Respondent, through letter dated 19.06.2002, had informed her that she had secured 1016.23 marks in the written examination out of 1800 and 187.50 in the interview out of 250 and in total, she had secured 1203.73.

(ii) As per the original Notification of selection, the vacancy for directly recruited was 9 persons in BC category including 3 women. She fall under the BC category and also under women category. After the order of Government in G.O.Ms. No. 98 Home (Pol. 2) Department dated 29.01.2003, she joined the Tamil Nadu Police Service and after joining, she came to know that several irregularities were committed by the 3rd Respondent in determining the seniority. It was found out that several persons belonging to BC category and women category who had lower marks than the Petitioner were placed above her in the seniority list sent by the 3rd Respondent/Service Commission to the Government.

(iii) Even though she secured 1203.73 marks, the following persons viz., (i) R. Kalaiselvi: 1197.84 marks; (ii) H. Jeyalakshmi: 1100.95 marks; (iii) S. Umayal P: 1193.65 marks; (iv) C. Murugan: 1185.41 marks; (v) Suganthi: 1158.88 marks; (vi) K. Bharathi Kumar: 1155.10 marks; and (vii) C. Vathsala, who secured lower marks were placed above her by the 3rd Respondent/Service Commission and following the orders of the Service Commission, the 1st Respondent issued consequential order placing her below the aforesaid persons. Immediately after coming to know about the irregularities in regard to the seniority determined by the 3rd Respondent, she sent several communications to the 3rd Respondent right from the year 2005 and ultimately, the 3rd Respondent/Service Commission, through its communication dated 01.06.2011, intimated her to the effect that the seniority for the post of Deputy Superintendent of Police was fixed in accordance with the procedure laid down by the Government through letter dated 20.08.1998 on the basis of the Judgment rendered by the Hon''ble Supreme Court of India in P.S. Ghalaut Vs. State of Haryana and Others, and negatived her request for the revision of seniority. In her letter dated 14.03.2011 addressed to the 3rd Respondent/Service Commission, she had categorically stated that the Judgment of the Hon''ble Supreme Court in Civil Appeal No. 7608 of 1995 (arising out of SLP (C) No. 13098 of 1993) dated 03.08.1995 reported in P.S. Ghalaut Vs. State of Haryana and Others, was overruled by the Judgment of the Hon''ble Supreme Court in Civil Appeal No. 879 of 2000 dated 10.03.2003 reported in Bimlesh Tanwar Vs. State of Haryana and Others, . The Petitioner had also enclosed the order passed by this Court dated 29.10.2010 in W.P. No. 3547 of 2006. Without considering all these aspects, the 3rd Respondent, through its impugned proceedings dated 01.06.2011, negatived her contention for revision of seniority.

(iv) The stand of the Petitioner is that the 3rd Respondent/Service Commission had not applied its mind by considering the later Judgment of the Hon''ble Supreme Court passed in Bimlesh Tanwar Vs. State of Haryana and Others,

whereby and whereunder, the Hon"ble Supreme Court had categorically stated that in respect of seniority the marks obtained in the qualifying examinations were to be taken into account. The well settled principle is that the reservation roster is only for appointment and it is not for fixation of seniority. The 3rd Respondent/Service Commission had committed a mistake by placing the Petitioner in the open category roster and thereby the Backward Class candidates who had secured much lesser marks than the Petitioner were placed under BC roster above her in the seniority list. If the 3rd Respondent/Service Commission had fixed the seniority on the basis of the marks obtained by the individuals, then, she would have been placed high above in the said seniority list. Out of the aforesaid persons, R. Kalaiselvi, K. Suganthi, C. Murugan and C. Vathsala had left the Department for one reason or other. The 3rd Respondent, in a casual manner, rejected her request without assigning any cogent reasons. At present, the Petitioner is serving as Additional Superintendent of Police, Vigilance and Anti Corruption, Coimbatore. Unless the seniority list is revised according to the marks, she would be put to irreparable loss and hardship. Hence, she had filed present the Writ Petition.

Counter Averments of the 3rd Respondent/Service Commission:

(i) The Writ Petition filed by the Petitioner is not maintainable either in law or on facts. The Petitioner (Register No. 905423), a candidate for Group I Service, during the year 1999 2000 recruitment was selected for appointment by direct recruitment to the post of Deputy Superintendent of Police (Category I) in the Tamil Nadu Police Service. In the said recruitment, the distribution of vacancies for the said post was as follows:

Including

Scheduled Caste

-

4 (2 Women)

Most Backward Class/DC

-

5 (1 Women)

Backward Class

-

9 (3 Women)

General Turn

-

9 (3 Women)

27 (9 Women)

The roster that applied for the aforesaid post commenced from the 16th Turn (General Turn) in the 2nd rotation up to 42nd Turn (Backward Class).

(ii) Based on the Rule of Reservation of appointments and the marks obtained by the Petitioner who was in 72nd Position in the ranking list, was selected against Backward Class (General) vacancy and she came to be fitted against the 42nd Turn reserved for Backward Class (General) Category, which happens to be the last turn for this post in the said recruitment. Thereafter, the candidates were picked up for selection against Backward Class Women vacancies by going further below in the ranking list and fitted against the turns/in which they could be fitted. Accordingly, the following 6 BC candidates and 3 BC (W) candidates were selected against the category mentioned against them and fitted in the roster in the respective turns.

Sl. No.

Rank in the List

Name

Marks

Turn under which selection is made

Selection category

1.

35

V. Baskaran 1/6

1250.38

19th Turn

BC (G)

2.

37

S. Jeyakumar 2/6

1248.64

23rd Turn

BC (G)

3.

44

G. Gandhi Nathan 3/6

1232.73

26th Turn

BC (G)

4.

46

D. Ravichandran 4/6

1231.16

32nd Turn

BC (G)

5.

53

S. Jaisankar 5/6

1224.03

36th Turn

BC (G)

6.

72

D. Shanmugapriya 6/6

1203.73

42nd Turn

BC (G)

7.

77

P. Kalaiselvi 1/3

1197.64

17th Turn

BC (W)

8.

79

S.N. Umayal 2/3

1193.65

28th Turn

BC (W)

9.

83

C. Vatchala 3/3

1189.73

38th Turn

BC (W)

(iii) In regard to the Government Letter dated 20.08.1998, the selected list is prepared for the above said 27 vacancies from the 16th Turn (GT) to 42nd Turn BC (G). In the roster BC (G) Turn comes under 19th turn, 23rd turn, 26th turn, 32nd turn, 36th turn, 42nd turn. The Petitioner was selected for 6th vacancy in the category of BC (G) and was fitted against 6th BC (G) turn in the list i.e. 42nd turn in the roster. Hence, such a situation as pointed out by the Petitioner, had arisen i.e. the candidates viz., Kalaiselvi, Umayal and Vatchala belonging to BC Women category, who secured lower marks were placed above her.

(iv) The candidate H. Jayalakshmi belonging to MBC category and for the one MBC/DC Women vacancy she was selected against MBC/DC (W) category and fitted against 25th turn in the roster meant for MBC Women turn. Likewise, the candidate C. Murugan was a SC candidate and thus selected under SC (G) category to fill up second vacancy in the SC (G) category and fitted against 33rd in the roster meant for SC category. The candidates K. Suganthi and K. Bharathi Kumar even though they belong to SC and MBC community respectively, they were selected under GT (W) category for the 2nd and 3rd vacancies and fitted against 31st and 41st turn in the roster meant for GT (W) category.

(v) The selected candidates were fitted as stated supra, in the roster for this recruitment i.e. 1999 2000 Group I which was done with reference to the procedure laid down in Government Letter dated 20.08.1998 of P & AR Department, which is based on the principles laid down in the Judgment of the Hon"ble Supreme Court in P.S. Gaulaut V. State of Haryana. In the meanwhile, the Petitioner sent a letter dated 14.03.2011 in which she had requested to revise her seniority as per the orders passed in W.P. No. 3547 of 2006 filed by N. Manivannan. Since the said selection/fitment of Group I 1999 2000 was made in accordance with the rule of reservation of appointment, existed thereon for all categories, and accordingly, a reply was given to her in Commission's Memo dated 01.06.2011 that her request could not be complied with.

(vi) The Petitioner referred to the orders of the Madurai Bench of this Court dated 25.10.2010 in W.P. No. 3547 of 2006 filed by the candidate N. Manivannan. The orders of the Madurai Bench of this Court were received to place the candidate N. Manivannan above the other three candidates who secured lower marks than the Petitioner by revising the seniority list. However, as the selection was done according to the rules in existence then, the Government was addressed to prefer an Appeal. Hence, the prayer of the Petitioner could not be complied with in as much as the selection was made with reference to the rules in existence then.

The Petitioner's Contentions:

2. The Learned Counsel for the Petitioner urges before this Court that the impugned order of the 3rd Respondent in Memo No. 2538/PSD-A1/1999 dated 01.06.2011 is an illegal one, besides the same being contrary to the directions issued by the Hon'ble Supreme Court of India.

3. It is the submission of the Learned Counsel for the Petitioner that the 3rd Respondent should have revised the Petitioner's seniority in terms of the Judgment of the Hon'ble Supreme Court in *Bimlesh Tanwar Vs. State of Haryana and Others*, whereby and whereunder, it is categorically held that the fixation of seniority is only as per merits/as per marks secured by candidates in the written examination/interview.

4. Lastly, it is contended on behalf of the Petitioner that the Petitioner would be put to irreparable loss and hardship since her future promotions would be delayed in view of non-revision of the seniority.

5. The Learned Counsel for the Petitioner cites the decision of the Hon'ble Supreme Court in *Bimlesh Tanwar Vs. State of Haryana and Others*, , wherein at paragraph 34 and 37, it is observed as follows:

*P.S. Ghalaut Vs. State of Haryana and Others*, relied upon by Dr. Chauhan, is a decision rendered by a two Judge bench. In that case Rule 13 of the Rules envisaged that the seniority inter se of members of the service shall be determined by the length of continuous service on any post in the service; provided further that in the case of two or more members appointed by direct recruitment, the order of merit determined by the Commission shall not be disturbed in fixing the seniority. Despite the said Rule, it was held:

Take for instance Vacancies Nos. 1 and 6, as pointed out in the Chief Secretary's letter have admittedly been reserved for Scheduled Castes. Suppose recruitment was made to fill up ten vacancies, three candidates from Scheduled Castes were selected on the basis of reserved quota. The question is whether the first candidate will be put in the quota allotted to the Scheduled Castes in the roster. Having been selected as a general candidate, though he is more meritorious than the second and third candidates, he will not get the placement in the roster, reserved for Scheduled Castes i.e. Nos. 1 and 6 points. Consequently candidates

Nos. 2 and 3 will get the placement at Nos. 1 and 6 and the first candidate will get the placement in the order of merit along with the general candidates according to the order of merit maintained by the Selection Committee or the Public Service Commission. He cannot complain that having been selected in the merit, he must be placed in the placement reserved for Scheduled Castes at Point No. 1 in the roster. Equally, though general candidate is more meritorious in the order of merit prepared by the Public Service Commission or the Selection Committee, when the appointments are made and the vacancies are filled up according to the roster, necessarily and inevitably the reserved candidates though less meritorious in the order of merit maintained by the Public Service Commission would occupy the respective places assigned in the roster. Thereby they steal a march over some of the general candidates and get seniority over the general candidates. This scheme is, therefore, constitutional, valid and is not arbitrary.

We have not been able to persuade ourselves to the aforesaid view.

37. An affirmative action in terms of Article 16(4) of the Constitution is meant for providing a representation of class of citizenry who are socially or economically backward. Article 16 of the Constitution of India is applicable in the case of an appointment. It does not speak of fixation of seniority. Seniority is, thus, not to be fixed in terms of the roster points. If that is done, the rule of affirmative action would be extended which would strictly not be in consonance of the constitutional schemes. We are of the opinion that the decision in P.S. Ghalaut does not lay down a good law.

6. The Learned Counsel for the Petitioner brings it to the notice of this Court that on 29.10.2010 in W.P. No. 3547 of 2006 (between N. Manivannan V. Secretary to Home Department, Chennai and 5 others), this Court, in paragraph 6, has observed and held as follows:

6. In any event since the counter also supports the case of the petitioner that the petitioner has secured higher marks than respondents 4, 5 and 6 and only on the basis of the ratio laid down by the Hon'ble Apex Court reported in P.S. Ghalaut Vs. State of Haryana and Others, , the petitioner was fitted in roster against 93rd turn, in view of subsequent judgment in Bimlesh Tanwar Vs. State of Haryana and Others, which have over ruled the P.S. Ghalaut's case, the petitioner having admittedly more meritorious than the Respondents No. 4, 5 & 6, this Court, by taking note of the fact of the said seniority having not been finalised, directs the second respondent to consider the case of the petitioner on the basis of the judgment reported in Bimlesh Tanwar Vs. State of Haryana and Others, by placing him above the Respondents 4, 5 & 6 within a period of six weeks from the date of receipt of a copy of this order.

7. Also, the Learned Counsel for the Petitioner invites the attention of this Court to the order dated 28.03.2011 in W.P. No. 17647 of 2004 (between P. Kuppusamy V. The State of Tamil Nadu, rep. By Secretary to Government,

Chennai and 20 others) wherein, this Court, in paragraph 21 to 24, has observed as follows:

21. Though the petitioner secured high marks of 681.28, being meritorious he was treated as G.T. and placed at Sl. No. 20, The petitioner, a B.C. Candidate being treated as G.T. must be allowed to exercise preference. By doing so, there will not be any change in the total number of posts filled up either by the G.T. candidates or by the reserved category candidates. By placing at Sl. No. 20, the Petitioner, who was a meritorious candidate, was disadvantaged and as held by the Supreme Court in Ramesh Ram's case, it is patently offensive to the principles outlined in Articles 14 and 16 of the Constitution.

22. The petitioner and other selected candidates joined in the post in the year 2002. The Writ Petition was filed in 2004 within two years after the selection. In Shiba Shankar Mohapatra and Others Vs. State of Orissa and Others, , it was held that as the appellant challenged the fixation of seniority within a reasonable period of 3-4 years he has to be granted the relief sought for.

23. Learned counsel for the respondent-TNPSC placed reliance upon a decision of the Supreme Court in Ashok Kumar Yadav and Others Vs. State of Haryana and Others, and contended that any interference with seniority list would upset large number of appointments already made. The contention of the learned counsel for TNPSC cannot be countenance. By re-fixing the seniority of the petitioner as per the marks secured by him, it would only affect the seniority of respondents 7 and 16, who were the B.C. Candidates. The seniority of other candidates would not in any manner be affected.

24. In the result, the writ petition is allowed and the respondents 1 to 3 are directed to re-fix the seniority of the petitioner by placing him at Serial No. 5 and issue the corrected seniority list within a period of six weeks from the date of receipt of copy of this order. The respondents 1 to 3 are also directed to grant the consequential benefits to the petitioner. However, there is no order as to costs.

The Submission of the 3rd Respondent:

8. The Learned Counsel for the 3rd Respondent submits that in the present case, the selection was made according to the then existing rules and in view of the decision of the Hon''ble Supreme Court in Bimlesh Tanwar Vs. State of Haryana and Others, which overruled the earlier decision of the Hon''ble Supreme Court in P.S. Ghalaut Vs. State of Haryana and Others, , the State Government is the concerned authority to determine the seniority as per Rule 35(a) of the Tamil Nadu State and Subordinate Service Rules.

9. Further, it is represented on behalf of the 3rd Respondent that the Government passed G.O.Ms. No. 98 Home (Pol. 2) Department dated 29.01.2003 and the 3rd Respondent had conveyed the list of selected persons to the State Government. Also, it is the stand of the 3rd Respondent that roster system is a

continuing process.

10. That apart, the Learned Counsel for the 3rd Respondent submits that in General Turn, the Petitioner comes separately and in BC category, she tops. In short, the plea of the 3rd Respondent is that the Service Commission cannot re-fix the seniority, since the same is to be done by the State Government.

11. One cannot brush aside a primordial fact that the Hon''ble Supreme Court, in the decision *Bimlesh Tanwar Vs. State of Haryana and Others*, , has specifically observed as follows:

49. In this case also, although there does not exist any statutory rule but the practice of determining inter se seniority on the basis of the merit list has been evolved on interpretation of the Rules. A select list is prepared keeping in view the respective merit of the candidates. Not only appointments are required to be made on the basis of such merit list, seniority is also to be determined on that basis as it expected that the candidates should be joining their respective posts almost at the same time. Yet again in *Chairman, Puri Gramya Bank and Another Vs. Ananda Chandra Das and Others*, this Court held:

It is settled law that if more than one are selected, the 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.

12. It is to be noted that "Seniority" is normally determined among those in the same cadre. Further, the list must also be confined to those who belong to that cadre i.e. if the cadre consists of direct recruits only, then the list must reflect the direct recruits only and not others as per decision of the Hon''ble Supreme Court in *Dr. Rashmi Srivastava and Dr. B.D. Srivastava Vs. Vikram University and others*, .

13. That apart, an Employee must know his exact position vis-?-vis other Employees. As a matter of fact, it is pivotal for an Employer to easily and readily to locate the exact/precise seniority position of an Employee at a given point of time. One of the prime features in an Employee's service carrier is promotion which is either fully dependant on seniority or seniority place a significant role in the consideration of promotional process. As in other fields of administration a mistake in a gradation list can be rectified as per decision *P. Kalavathi Vs. The Director, Nizam's Institute of Medical Sciences and Another*, .

14. It is to be remembered that re-drawing of a seniority or gradation list without any reason was an arbitrary one in *Sushma Mutreja Vs. Union of India and Others*, . Added further, a "Gradation List" is prepared in accordance with the

principle of seniority laid down either statutorily or by executive instructions or rules and normally, the validity of such a list is required to be judged with reference to such principles of seniority as per decision of the Hon''ble Supreme Court in Union of India (UOI) Vs. H.R. Patankar and Others, .

#### Conclusion and Direction:

15. In view of the fact that the impugned order of the 3rd Respondent in Memo No. 2538/PSD-A1/1999 dated 01.06.2011 specifically refers to the fact that the Petitioner's seniority in the post of District Superintendent of Police (really speaking, it should be Deputy Superintendent of Police) in the Tamil Nadu Police Force included in Group I Services 1999 2000, was fixed in accordance with the procedure laid down by the Government in their letter dated 20.08.1998 of the Personnel and Administrative Department which was based on the Judgment of the Hon''ble Supreme Court of India in P.S. Ghalaut Vs. State of Haryana and Others, and as such, her request for seniority in the post of District Superintendent of Police (really speaking, it is Deputy Superintendent of Police) in the Tamil Nadu Police Service included in Group I 1999 2000 recruitment was inadmissible and could not be complied with, inasmuch as the selection was made with the Rules in existence then and this Court, taking note of a very vital fact of the decision of the Hon''ble Supreme Court in Bimlesh Tanwar Vs. State of Haryana and Others, which overruled the earlier decision of the Hon''ble Supreme Court in P.S. Ghalaut Vs. State of Haryana and Others, , comes to an inevitable and resultant conclusion that the impugned proceedings of the 3rd Respondent dated 01.06.2011 are clearly an invalid and illegal one, in the eye of law. Consequently, this Court interferes with the said impugned order dated 01.06.2011 passed by the 3rd Respondent and sets aside the same. Resultantly, the Writ Petition succeeds. In the result, the Writ Petition is allowed, leaving the parties bear their own costs. The order passed by the 3rd Respondent dated 01.06.2011 is hereby set aside by this Court for the reasons assigned in this Writ Petition. Further, the Respondents 1 and 2 are directed to re-fix the seniority of the Petitioner at the appropriate place (in consultation with the 3rd Respondent/ Service Commission) pursuant to the marks obtained by her in the qualifying examination in respect of the Appointees selected in G.O.Ms. No. 98 Home (Pol. 2) Department dated 29.01.2003 to the post of Deputy Superintendent of Police category I, by passing a reasoned, speaking order in a fair, just and dispassionate manner by specifying the outline of process of reasoning within a period of eight weeks from the date of receipt of copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.