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**(2011) 01 MAD CK 0156**

**In the Madras High Court**

**Case No :** Writ Petition No. 40861 of 2006 and O.A. No. 7415 of 2000

S. Sankara Kumarasamy Pandian

APPELLANT

Vs

The District Collector and Others

RESPONDENT

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**Date of Decision :** 20-01-2011

**Acts Referred:**

Constitution of India, 1950 — Article 16(1), 16(4), 16(4A)

**Citation :** (2011) 01 MAD CK 0156

**Hon'ble Judges :** K. Chandru, J

**Bench :** Single Bench

**Advocate :** K. Sanjay, for P. Gurunathan, for the Appellant; R. Murali, G.A. for Respondent Nos. 1 and 2, for the Respondent

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**Judgement**

K. Chandru, J.—The Petitioner is working as an Assistant in the TalukOffice at Sangagiri, Salem District. He filed O.A. No. 7415of 2000

challenging the approved list of Deputy Tahsildarsprepared for the year 1998 issued by the 1st RespondentDistrict Collector, Salem dated

8.7.1999. The panelcomprised of 16 Assistants who are likely to be promoted asDeputy Tahsildar.

2. In the Original Application, Notice of Motion wasordered on 11.10.2000. In view of the abolition of theTribunal, the matter stood transferred

to this Court andrenumbered as W.P. No. 40861 of 2006. In the OriginalApplication, the Petitioner has impleaded the Respondents 3to 6 as

alleged juniors, whose names were included in thepanel. But, neither before the Tribunal nor before thisCourt, any efforts were taken to serve

those contestingRespondents.

3. The Writ Petition is liable to be dismissed solely on the ground that the contesting Respondents have not beenserved till date. The Supreme

Court vide its judgment in Suresh Vs. Yeotmal Dist. Central Co-op. Bank Ltd. and Another, has held that for non-joinder of parties in the matter of seniority, no dispute can be adjudicated.

4. Even otherwise, the grievance of the Petitioner as projected in the Original Application was that the District Collector proposed a panel for the post of Deputy Tahsildar dated 25.1.1999. The panel had four annexures. Annexure 1 related to general turn candidate. Annexure 2 relates to Backward Class Community. Annexure 3 relates to M.B.C. Annexure 4 relates to the Schedule Caste Community. But, however, when the impugned panel was finalised by order dated 8.7.1999, it comprised of 16 candidates. Out of 16 candidates, Serial No. 9 Thiru S. Thiruvarangan and Serial No. 13 Thiru R. Gopal belong to M.B.C. But, when the State Government had reserved 20% of the vacancies to be filled up by M.B.C. Community, the Petitioner could not make a point that the panel contained only two candidates, whose names were found in the Annexure 3 for M.B.C. Therefore, the preparation of the panel by excluding reservation of 20% of reservation M.B.C was invalid.

5. On notice from the Tribunal, the 1st Respondent District Collector filed a counter affidavit dated 3.4.2002. In the counter affidavit, it was stated that the Petitioner did not come within the zone of consideration and therefore his name was not included in the list. It was also stated that there cannot be a further immediate classification between members belong to M.B.C./ Denotified Community, as both the communities come under the same caption. Therefore, in paragraph 13, it was stated that 20% reservation is for both M.B.C as well as De-notified tribes. Hence, the Petitioner's contention that when the first turn comes for M.B.C turn, the next turn should be De-notified Tribes cannot be accepted.

6. Even otherwise, this Court vide its judgment in Registration Department S.C./ S.T. and M.B.C. Employees General Welfare Sangam Vs. S.

Chandrasekar, The Government of Tamilnadu, Backward Classes and Most Backward Classes Welfare (BCC) Department, The Inspector General of Registration and The Registrar, Tamil Nadu Administrative Tribunal, held that in the matter of promotion, there has been no reservation under Article 16(4-A) and such reservation will be invalid. In paragraph 20, it was observed as follows:

20. In the light of the above discussion, we are in agreement with the conclusion arrived at by the Tribunal. We are satisfied that Assistants belonging

to Backward class and Most Backward class cannot claim reservation in the matter of higher post of Sub-Registrar Grade

II/ACTO/Deputy Tahsildar without violating the guaranteed fundamental right of equality enshrined in Article 16(1) of the Constitution. We also hold

that since Assistants who are appointed as Sub-Registrar Grade II/ACTO/Deputy Tahsildar get the appointment to the higher post above the post of

initial requirement, such appointment is promotion, consequently reservation is not permissible in such appointments. Any provision to the extent it

applies to the rule of reservation for appointment is not valid and unconstitutional after five years from the date of judgment in *Indira Sawhney*'s case.

We also hold that the reservation of appointments or post under Article 16(4) is confined to initial appointment only and cannot extend to provide

reservation in the matter of promotion. If the Government feels that for ensuring adequate representation of Backward class of citizens in any service,

class/category, it is necessary to provide for direct recruitment therein, it shall be open to do so. But the reservation in the matter of promotion was

permitted for the period of 5 years from the date of judgment i.e., from 16.11.1992 to 15.11.1997. As rightly pointed out by the learned Counsel for

the respondents all the ingredients of the meaning of "promotion" in Rule 13 are found and only the method is by way of recruitment by transfer in

the same Department with higher scale of pay and all the norms of promotion are followed while appointments are made. Therefore, in the case on

hand, the "recruitment by transfer" in all these cases in the same Department is deemed to be the "promotion" and for which the rules of reservation

does not apply.

7. In view of the above, no case is made out. Accordingly, the Writ Petition stands dismissed. No costs.