

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.(MD) No.961 of 2020

1.S.Sivaram
2.R.P.Kayalselvi
3.L.Muthupandian
4.M.Thirunavukkarasu
5.A.Dhanalakshmi

.. Appellants

-VS-

1.The Secretary to Government,
Department of Revenue and Disastrous Management,
Secretariat, Fort St. George,
Chennai – 600 009.

2.The Principal Secretary/Commissioner of
Revenue Administration,
Office of the Commissioner of Revenue Administration,
Ezhilagam, Chepauk,
Chennai – 600 005.

3.Banumathy
4.T.Bagyalakshmi
5.S.Jothi
6.K.Vijayan

.. Respondents

PRAYER: Appeal filed under Clause 15 of the Letters Patent against the order dated 29.9.2020 made in W.M.P.(MD) No.1725 of 2020 in W.P.(MD) No.2054 of 2020.

For Appellants : Mr.Veerakathiravan
Senior Counsel
for M/s.Veera Associates

For Respondents : Mr.V.Jayaprakash Narayanan
State Government Pleader
for respondent Nos.1 and 2

Mrs.Nalini Chidamaram
Senior Counsel

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

Heard Mr.Veerakathiravan, learned Senior Counsel for the appellants and Mr.V.Jayaprakash Narayanan, learned State Government Pleader, as well as Mrs.Nalini Chidambaram, learned Senior Counsel, who contends that her clients had been heard in the writ petition that was filed at Madurai.

2. The learned Single Judge by the order dated 29.9.2020 has vacated the earlier interim order, and in further modification has arrived at the conclusion that since the panels which are to be drawn up in terms of the directions issued by the Apex Court on 11.9.2018 [*Government of Tamil Nadu v. Registration Department SC/ST and MBC Employees General Welfare Sangam and another, etc. (Civil Appeal No.9334 of 2018)*] is likely to take a lot of time and would be a herculean task, temporary promotions should be permitted to be made and the same shall be subject to the final decision of the writ petition. The learned Single Judge has, however, adjourned all the writ petitions *sine die*.

3. On the other hand, we find that the same learned Single Judge in the matter pertaining to the Registration Department passed an order on 10.9.2020 in W.P. (MD) Nos.12395, 11557, 14853, 14869 of 2019 and 2239 of 2020, where he took notice of almost the same set of facts, but did not allow any temporary promotions to go on, on the ground that it will complicate matters and, therefore, no precipitative action was to be taken by the Government prejudicial to the interest of any section of employees or Officers.

4. Having heard learned counsel for the parties, we find that the learned Single Judge himself has indicated two different opinions on an issue arising out of a common adjudication by the Apex Court on 11.9.2018, but the learned State Government Pleader contends that in the case of Registration Department since the involvement is of a very few employees, the undertaking given therein was to finalize the panel within a short period of three months, whereas in the Revenue Department, which concerns the present appeal, the task would be herculean keeping in view the long years of service records which have to be scanned for the purpose of reviewing the exercise as directed by the Apex Court.

5. Mrs.Nalini Chidambaram, learned Senior Counsel submits that G.O.(Ms.) No.87, Revenue and Disaster Management Department, Services Wing, [Ser.3(2)] Section, dated 6.3.2019, which was issued to purportedly implement the judgment dated 11.9.2018 is erroneous, in as much as under the garb of the judgment of the Apex Court and the said Government Order, the State Government is proceeding to reopen and

review all matters almost 14 years hence. Her contention is that the Supreme Court by the judgment dated 11.9.2018 did not allow any retrospective operation of the said exercise, and rather it directed only a prospective operation. She relies on the ratio of the judgment in the case of *A.Rajagopalan and others v. The District Collector, Thiruchirapalli District and others*, (2019) 5 SCC 560, to urge that the said judgment categorically indicates that in such matters a prospective operation of the judgment is envisaged and, therefore, reopening of the entire review exercise prior to that would be contrary to the ratio of the said decision.

6. The above argument of the learned Senior Counsel has been rebutted by the learned Senior Counsel for the appellants contending that the said judgment in *A.Rajagopalan and others* (supra) is in a different context with regard to *inter se* seniority between promotees and direct recruits of the Revenue Department and the ratio thereof is nowhere concerned with the judgment delivered on 11.9.2018, which is directly applicable to this controversy. He, therefore, submits that the contention that the judgment dated 11.9.2018 cannot be applied retrospectively does not hold water, as it is a declaration of the legal position after

expressly reversing the High Court judgment.

7. We have considered the submissions raised and we find that the entire exercise and the dispute in a challenge raised to G.O.(Ms.) No.87, Revenue and Disaster Management Department, Services Wing, [Ser.3(2)] Section, dated 6.3.2019, and the nature of the interim order which was passed, is dependent upon the impact of the judgment of the Apex Court dated 11.9.2018.

8. The Apex Court had issued a declaration which was against a judgment of the High Court and the High Court judgment was reversed by categorically recording in paragraphs (10) to (13) as follows:

"10. In the present case, from the provisions of the Rules, namely, Tamil Nadu Revenue Subordinate Service Rules, Tamil Nadu Commercial Taxes Subordinate Service Rules and the Tamil Nadu Registration Subordinate Service Rules governing the three posts in question, namely, Deputy Tahsildar, ACTO and Sub-Registrar Grade-II it is clear that so far as the post of Deputy Tahsildar is concerned recruitment is purely and only by transfer from members of other services whereas in the case of other two posts, namely, ACTO and

Sub-Registrar Grade II, recruitment is both by way of transfer and through direct recruitment. Appointment by promotion is clearly not contemplated to any of the said three posts in question by the Rules governing the same.

11. If that is so, the rule of reservation set out in Rule 22 of the Rules read with the specific provisions of the Tamil Nadu Commercial Taxes Subordinate Service Rules, Tamil Nadu Registration Subordinate Service Rules and the Tamil Nadu Revenue Subordinate Service Rules would govern the matter and benefit of reservation would be available in posts of Deputy Registrar, ACTO and Sub-Registrar Grade II for Backward Class category also following recruitment by transfer to the said posts.

12. The view taken by the High Court that such appointment by transfer amounts to promotion being without any consideration of the provisions of the Rules, we are of the view that the High Court has committed an error in overlooking the definition of the terms "Promotion" and "Transfer" as contained in the said Rules and in applying the principles of general application that would be applicable to determine whether recruitment to a higher post is by way of promotion.

13. For the aforesaid reasons, we are of the view that the

order(s) of the High Court impugned in the appeal(s) would require to be interfered with which we accordingly do."

9. The question, therefore, is as to whether G.O.(Ms.) No.87, Revenue and Disaster Management Department, Services Wing, [Ser.3(2)] Section, dated 6.3.2019, is in conformity with the said judgment or not, to which a challenge is said to have been raised before the learned Single Judge. In our considered opinion, the learned Single Judge ought to have decided this issue instead of delving into the request of any interim arrangement at this stage, in as much as once the correct position of law is declared, the Government would be bound by it. The impact of the judgment of the Apex Court dated 11.9.2018 would therefore be binding, but the challenge raised to G.O.(Ms.) No.87, Revenue and Disaster Management Department, Services Wing, [Ser.3(2)] Section, dated 6.3.2019 has to be resolved without waiting any further.

10. We, therefore, do not find any justification for the writ petitions to have been adjourned *sine die* after vacating the interim order in the

matter of Revenue Department, when the interim order passed in respect of the Registration Department indicates otherwise. It is evident from the judgment of the Apex Court that promotion to the post of Deputy Tahsildar (Revenue Department), Assistant Commercial Tax Officer (Commercial Tax Department) and the Sub Registrar Grade II (Registration Department) are all to be governed by the said decision. This conflict, therefore, can be in our opinion resolved with a request to the learned Single judge to decide both the matters simultaneously keeping in view the legal issues pertaining to the challenge raised to G.O.(Ms.) No.87, Revenue and Disaster Management Department, Services Wing, [Ser.3(2)] Section, dated 6.3.2019, and we therefore dispose of this writ appeal with a request to the learned Single Judge to dispose of all the matters simultaneously.

11. The writ petition and other connected matters may be placed before the Hon'ble Chief Justice for nominating the Bench to hear the matter and all the cases may be listed before the learned Single Judge on 18.11.2020 for proceeding appropriately at the earliest.

12. Learned counsel for the parties are requested not to seek any adjournments in the matter, unless very imperative.

13. In view of the aforesaid observations and directions issued, we direct the State Government not to implement any promotion orders till final disposal of the writ petitions.

In the result, this appeal is disposed of with the above directions. No costs. Consequently, C.M.P.(MD) Nos.5236 and 5237 of 2020 are closed.

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(A.P.S., CJ.) (S.K.R., J.)
29.10.2020

सत्यमेव जयते
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To:

- 1.The Secretary to Government,
Department of Revenue and Disastrous Management,
Secretariat, Fort St. George,
Chennai – 600 009.
- 2.The Principal Secretary/Commissioner of
Revenue Administration,
Office of the Commissioner of Revenue Administration,
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THE HON'BLE CHIEF JUSTICE
AND
SENTHILKUMAR RAMAMOORTHY, J.

(sasi)



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