

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2009

CORAM

THE HONOURABLE MR.JUSTICE K.CHANDRU

W.P.NO.28044 OF 2006
(O.A.NO.442 OF 1996)

- 1.R.Rajarethinam
- 2.E.Swaminathan
- 3.V.Pasupathy
- 4.M.Sundaramoorthy
- 5.A.Santhana Krishnan
- 6.P.Gurusamy
- 7.S.Chandramohan
- 8.R.Narayanasamy
- 9.V.Gurumurthi
- 10.K.Somu
- 11.P.Krishnasamy
- 12.J.Stanley
- 13.V.Amirthalingam
- 14.S.Vasudevan
- 15.V.Kaliaperumal
- 16.S.Dandayuthapani
- 17.P.Dorai

... Petitioners

Vs.

- 1.The State of Tamil Nadu,
represented by its Secretary
to Government,
Health, Indian Medicine and
Homeopathy and Family
Welfare Department,
Fort St. George,
Madras-600 009.

- 2.The Director of Public Health and
Preventive Medicine,
Madras-600 006.

.. Respondents

This writ petition is preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus to call for the entire records of the second respondent comprised in his proceedings in R.No.38666/94/MP.I/SI.1, dated 10.3.1994 (Fixation of Revised Provisional Inter-se-seniority of Multipurpose Health Supervisors), set aside the said proceedings of the second respondent dated 10.3.1994 insofar as the Petitioners are concerned only and

consequently, to direct the respondents to refix the seniority placing the applicants (T.N.P.S.C. Direct Recruits) over and above the Departmental promotees in the seniority of multipurpose Health Supervisors as on 1.1.84 and further direct respondents as such accord retrospective promotion to the applicants forthwith.

For Petitioners : Mr.Venkatachalapathy, SC
for Mr.S.M.Loganathan

For Respondents : Mr.R.Neelakantan, GA

ORDER

Heard both sides.

2.This writ petition arose out of O.A.No.442 of 1996 filed by the petitioner before the Tamil Nadu Administrative Tribunal. In view of the abolition of the Tribunal, it was transferred to this court and was renumbered as W.P.No.28044 of 2006.

3.The petitioner sought for the issuance of a writ of certiorarified mandamus to call for the entire records of the second respondent comprised in his proceedings in R.No.38666/94/MP.I/SI.1, dated 10.3.1994 (Fixation of Revised Provisional Inter-se-seniority of Multipurpose Health Supervisors), set aside the said proceedings of the second respondent dated 10.3.1994 insofar as the applicants are concerned only and consequently, to direct the respondents to refix the seniority placing the applicants (T.N.P.S.C. Direct Recruits) over and above the Departmental promotees in the seniority of multipurpose Health Supervisors as on 1.1.84 and further direct respondents as such accord retrospective promotion to the applicants forthwith.

4.Though an interim relief was sought for, the Tribunal did not grant any interim order. Though the petitioners wanted a proper fixation of seniority placing the direct recruits such as the petitioners over and above the rank promotees in the seniority of multi purpose health supervisors as on 1.1.1984 and for granting of retrospective promotion, they did not choose to implead all the affected parties either in the personal capacity or in a representative capacity. In this context, the attention of the petitioners were drawn to the judgment of the Supreme Court in Prabodh Verma v. State of U.P. reported in (1984) 4 SCC 251.

5.However, Mr.Venkatachalapathy, learned Senior counsel appearing for the petitioners sought to distinguish the said judgment by stating that at the maximum, the affected persons can be proper parties, but they need not be necessary parties and their non joinder cannot be fatal to the writ petition. Reliance was placed upon the following decision in V.P. Shrivastava v. State of M.P. Reported in (1996) 7 SCC 759. Emphasis was placed upon the following passage found in paragraphs 15 to 17 of the said judgment, which are as follows:

15. In the case of A. Janardhana v. Union of India, a similar contention was also repelled by this Court in the following words: (SCC pp.625-26, para 36)

"In this case, appellant does not claim seniority over any particular individual in the background of any particular fact controverted by that person against whom the claim is made. The contention is that criteria adopted by the Union Government in drawing up the impugned seniority list are invalid and illegal and the relief is claimed against the Union Government restraining it from upsetting or quashing the already drawn up valid list and for quashing the impugned seniority list. Thus the relief is claimed against the Union Government and not against any particular individual. In this background, we consider it unnecessary to have all direct recruits to be impleaded as respondents."

16. Further in view of the finding of the Tribunal that Respondents 3 and 4 successfully safeguarded the interest of the promotees, the Tribunal erred in law in holding that non-inclusion of the affected parties is fatal to the proceeding. It has been held by this Court in the case of Prabodh Verma v. State of U.P.⁶, that: (SCC Headnote p.256)

"A High Court ought not to hear and dispose of a writ petition under Article 226 without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them being before it as respondents in a representative capacity if their number is too large to join them as respondents individually."

17. Even in Janardhana case⁵ referred to supra, this Court also rejected a similar objection on the ground that 9 of the direct recruits having been impleaded as party, the case of direct recruits has not gone unrepresented and therefore the non-inclusion of all the 400 and odd direct recruits is not fatal to the proceedings.

6. However, it must be stated that the Supreme Court subsequently had followed the Prabodh Verma's case (cited supra) in Suresh v. Yeotmal Distt. Central Coop. Bank Ltd. reported in (2008) 12 SCC 558. The relevant passage found in paragraphs 15 to 17 may be usefully extracted below:

15. Respondent 1 is a cooperative society. It has its own rules and bye-laws. The service rules framed by Respondent 1 stand approved by the Registrar. We have noticed hereinbefore that in the seniority list published in the year 1995, the position of the appellant was at Sl. No. 4. Those candidates whose names appeared at Sl. Nos. 2 and 3 were not impleaded as parties in the said proceeding. In their absence, the dispute could not have been effectively adjudicated upon.

16. This Court in *Rashmi Mishra v. M.P. Public Service Commission*¹ observed: (SCC pp.728-29, para 16)

"16. In *Prabodh Verma*² this Court held: (SCC pp.273-74, para 28)

"28. ... The first defect was that of non-joinder of necessary parties. The only respondents to the Sangh's petition were the State of Uttar Pradesh and its officers concerned. Those who were vitally concerned, namely, the reserve pool teachers, were not made parties—not even by joining some of them in a representative capacity, considering that their number was too large for all of them to be joined individually as respondents. The matter, therefore, came to be decided in their absence. A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least by some of them being before it as respondents in a representative capacity if their number is too large, and, therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least some of them being made respondents in a representative capacity, and had the petitioners refused to do so, ought to have dismissed that petition for non-joinder of necessary parties.'

(See also *All India SC & ST Employees' Assn. v. A. Arthur Jeen*³ and *Indu Shekhar Singh v. State of U.P.*)"

17. The dispute raised by the appellant before the Cooperative Appellate Court, therefore, was not maintainable. It was so held by the High Court also.

7. Very recently, the Supreme Court once again reiterated the principle laid down in Prabodh Verma's case in Tridip Kumar Dingal v. State of W.B., (2009) 1 SCC 768 and reliance can be made on the following passage found in paragraph 41, which reads as follows:

41. Regarding protection granted to 66 candidates, from the record it is clear that their names were sponsored by the employment exchange and they were selected and appointed in 1998-1999. The candidates who were unable to get themselves selected and who raised a grievance and made a complaint before the Tribunal by filing applications ought to have joined them (selected candidates) as respondents in the original application, which was not done. In any case, some of them ought to have been arrayed as respondents in a "representative capacity". That was also not done. The Tribunal was, therefore, wholly right in holding that in absence of selected and appointed candidates and without affording opportunity of hearing to them, their selection could not be set aside.

8. The learned Senior Counsel wanted to contend that he has a prima facie case to succeed and the grounds raised by the petitioners have found acceptance by the Supreme Court in identical circumstances vide judgment in M.P. Palanisamy and others Vs. A. Krishnan and others reported in 2009 (6) SCC 428.

9. However, it must be stated that the principal question about non joinder of parties had not been answered by the learned Senior Counsel. The reliance placed upon in V.P. Srivastava's case is misconceived. Even in that judgment the Supreme Court did not distinguish the Prabodh Verma's case. The same principle had been followed in two subsequent pronouncements of the Supreme Court referred to above. In Srivastava's case, the Supreme Court referred to A. Janarthana's case and quoted it with approval. In Janarthana's case, it must be stated that 9 direct recruits were impleaded as parties and therefore, it was held that the case of the direct recruits did not go unrepresented and it was not necessary to include all the 400 direct recruits as parties to the case.

10. In the light of the above legal pronouncements and in view of the fact that the affected parties were not impleaded in the manner known to law, the writ petition fails. Accordingly, the WP stands dismissed. No costs.

vvk

Sd/-
Asst. Registrar

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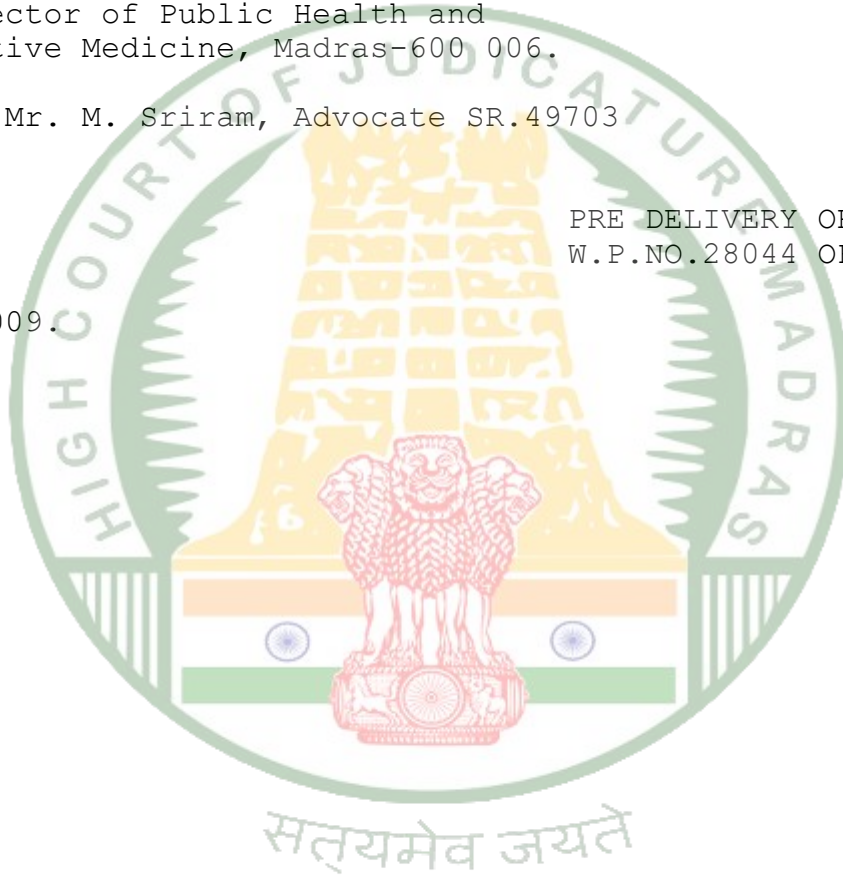
1.The Secretary to Government,
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+ 1 cc to Mr. M. Sriram, Advocate SR.49703

MRD(CO)
EU 8.10.2009.

PRE DELIVERY ORDER IN
W.P.NO.28044 OF 2006



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