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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.06.2016

Pronounced on : 21.06.2016

CORAM

THE HON'BLE MR.JUSTICE A.SELVAM
AND
THE HON'BLE MR.JUSTICE T.MATHIVANAN

Writ Appeal No.82 of 2012
and
M.P.No.1 of 2012

- 1.State of Tamil Nadu
represented by its Secretary to Government
Commercial Taxes and Registration Department,
Chennai-9.
- 2.The Inspector General of Registration
Chennai-28. ... Appellants/Respondents

Vs.

T.Dhanraju ... Respondent/Appellant

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent, against the order dated 9.6.2010 and made in W.P.No.10323 of 2008.

W.P.No.10323 of 2008 : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in letter No. 17689/H2/2007-6 dated 24.3.2008, quash the same and consequently direct the respondents to apply the principle for determining seniority between general candidates and reserved candidates laid down by the Honourable Supreme Court in the judgment reported in AIR 1996 Supreme Court 1189 while implementing G.O.(3D) No. 2, Commercial Taxes and Registration (H2) Department dated 12.3.2007 by reworking the panels for promotion and refixing consequential seniority in the posts of Sub-Registrar Grade II, Sub Registrar Grade I and District Registrar and further antedate the date of promotion of the Petitioner as Sub Registrar Grade I and promote the Petitioner as District Registrar from the date his junior reserved candidate was promoted, with all consequential benefits.



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For appellants : Mr.R.Ravichandran
Additional Government Pleader

For respondent : Mr.Karthic Rajan

JUDGMENT
(T.MATHIVANAN, J.)

Invoking the provisions of Clause 15 of Letters Patent, this memorandum of grounds of Writ Appeal is preferred by the Government challenging the order, dated 9.6.2010 and made in the writ petition in W.P.No.10323 of 2008 on the file of this Court.

2. The respondent herein has filed a writ petition in W.P.No.10323 of 2008 under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the first appellant in Letter No.17689/H2/2007-6, dated 24.3.2008 and quash the same and consequently, directing the respondents to apply the principle for determining the seniority between general candidates and reserved candidates laid down by the Apex Court in the decision reported in AIR 1996 SC 1189 while implementing G.O.3(D) No.2 Commercial Taxes and Registration (H2) Department, dated 12.3.2007 by reworking the panels for promotion and refixing consequential seniority in the posts of Sub Registrar Grade II, Sub Registrar Grade I and District Registrar and further antedate the date of promotion of the petitioner as Sub Registrar Grade I and promote the petitioner as District Registrar with all consequential benefits from the date on which his junior reserved candidate was promoted.

3. This writ petition was resisted by the appellants/respondents by filing their counter affidavit.

4. After hearing both sides, the learned Single Judge of this Court had proceeded to allow the writ petition and the impugned Letter, dated 24.3.2008 was set aside.

5. Challenging the above order, dated 9.6.2010, the appellants being the respondents in the above writ petition stand before this Court with this writ appeal.

6. According to the respondent/petitioner, he had joined in the Registration Department as a Junior Assistant



on 1.3.1974 and subsequently, promoted to the post of Assistant. The next higher post is Sub Registrar-Grade II. The Special Rules for the said post stipulates that a person should have put in 8 years of total service including two years as Assistant. He had completed two years of service as Assistant on 18.7.1979 and completed 8 years of total service as required under Rules for promotion to the post of Sub Registrar Grade II on 28.2.1982. Therefore, he was eligible to be empanelled for promotion to the post of Sub Registrar-Grade-II for the year 1982-83 itself.

7. The appellants/respondents while effecting promotion from the post of Assistant to the post of Sub Registrar-Grade-II, had considered the persons on the basis of seniority in the grade of Assistant and not in the grade of Junior Assistant.

8. In these circumstances, a similarly placed person had filed an Original Application in O.A.No.392 of 1989 before the Tamil Nadu Administrative Tribunal seeking a direction for inclusion of his name in the list of Sub Registrar-Grade-II prepared for the years 1975-1983 on the basis of seniority in the post of Junior Assistant. This petition was allowed on 27.8.1993 and the Tribunal had directed the appellants/respondents to consider the applicant for promotion on the basis of combined seniority of Junior Assistants and other eligible categories.

9. A Special Leave Petition preferred by the Government of Tamil Nadu before the Supreme Court of India against the above said order was also dismissed and in consequence thereof, the order passed in O.A.No.392 of 1989 was implemented in respect of the applicant therein, vide, G.O.Ms.No.350, dated 31.10.1994.

10. The Respondent/Petitioner belongs to General category. When promotions are effected to the post of Sub Registrar-Grade-II, communal reservation was followed. By applying such rules of reservation, the members of the reserved community are given accelerated promotion ahead of seniors belonging to the general category. When the senior candidates belonging to general category get promoted, he automatically retains their seniority over their junior candidates belonging to reserved category, despite the fact that the latter was promoted much earlier on the basis of communal reservation. This proposition is laid down by the Apex Court in Ajit Singh Januja vs. State of Punjab (AIR 1996 Supreme Court 1189) and this principle is known as "Catch Up" rule.



11. Some of the persons, who had similarly placed like that of the respondent/petitioner had also filed Original Applications before the Tribunal and the same were allowed by a common order by relying on the earlier order, dated 27.8.1993 passed in O.A.No.392 of 1989, whereas a batch of writ petitions filed by the Government as against the said order were also dismissed by this Court on 24.2.2005.

12. The first appellant/first respondent by the Government Order in G.O. (3D) No.2, dated 12.3.2007 had decided to extend the benefit of the order in O.A.No.392 of 1989 to all similarly placed persons.

13. In this connection, the respondent/petitioner had made a detailed representation on 7.4.2007 for early implementation of G.O.(3D)No.2, dated 12.3.2007 and also to follow the law laid down by the Apex Court in Ajit Singh's case.

14. Since his representation was not considered by the appellants/respondents, the respondent/petitioner had filed the writ petition in W.P.No.24302 of 2007 seeking a direction to the first appellant/respondent to consider and pass appropriate orders on the petitioner's representation, dated 7.4.2007.

15. After hearing both sides, this Court in its order, dated 19.7.2007 had directed the first appellant/respondent to consider the above representation on merits and in accordance with law. But unfortunately, after the lapse of several days, the first appellant/respondent had passed an order on 24.3.2008 rejecting the representation made by the petitioner, dated 7.4.2007 for refixation of his seniority and consequential promotion. Hence, the respondent had approached this Court with the writ petition.

16. The appellants/respondents have contended that the Sub Registrar-Grade-II is being filled up by both direct recruitment as well as by recruitment by transfer.

17. The then existing Special Rules for Tamil Nadu Registration Subordinate Service, prescribes eight years of service including two years as Assistant as one of the qualifications to be appointed as Sub Registrar-Grade-II by recruitment by transfer. Subsequently, the said Rule was amended by the Government Order in G.O.Ms.No.33, Commercial Taxes and Religious Endowments Department, dated 24.2.1999 to the effect that one must have served as Assistant in the Religious Department for a period of not less than two years on duty. Even before the said amendment, the panels of Sub



Registrars-Grade-II were drawn taking into account the seniority in the post of Assistant only.

18. The appellants have also admitted that one Thiru. V. Narayanan had filed an original application before the Administrative Tribunal in O.A.No.392 of 1989 and the Tribunal while passing the order on 27.8.1993 had issued a direction that the applicant's case should be dealt with, with reference to his seniority in the combined cadre of Junior Assistant, Typist, Steno-Typist and Assistant based on the date of initial appointment in the category or entry into service and that his seniority should be determined with reference to his place and his promotion also be considered with reference to such seniority and his pay should be fixed as if he was promoted when his immediate junior on this basis was promoted subject to drawal of such pay from the date of appointment to the post of Sub Registrar.

19. They have also admitted that the Special Leave Petition filed by the Government before the Apex Court was also dismissed on 23.9.1994 on the ground of delay. Ultimately, the order of the Tribunal, dated 27.8.1993 and made in O.A.No.392 of 1989 was implemented in G.O.Ms.No.350, Commercial Taxes and Religious Endowments Department, dated 31.10.1994.

20. The appellants/respondents have also admitted the fact that consequent to the above said order of the Government, some of the individuals and the Tamil Nadu Registration Department Ministerial Service Association had filed writ petitions before this Court praying to extend the benefit of the order passed by the Tamil Nadu Administrative Tribunal in O.A.No.392 of 1989. While disposing the above said writ petitions, this Court had directed the appellants to consider the representation of the petitioner therein in the light of the order passed by the Tribunal in O.A.No.392 of 1989, dated 27.8.1993 and pass appropriate orders in accordance with law.

21. In pursuant to the direction of this Court, the Government had decided to extend the benefit of the order of the Administrative Tribunal, dated 27.8.1993 passed in O.A.No.392 of 1989 to the similarly placed persons and ordered accordingly in G.O.(3D) No.2 Commercial Taxes and Registration Department, dated 12.3.2007.

22. As per the direction of this Court, dated 19.7.2007 and made in W.P.No.24302 of 2007 filed by the respondent/petitioner seeking a direction to the appellants/respondents to consider his representation, dated 7.4.2007, the Government had examined the request of the respondent/



petitioner and rejected the same vide Letter No.17689/H2/2007-6, dated 24.3.2008.

23. In this connection, the appellants/respondents have contended that the request of the respondent/petitioner for revision of seniority was also examined by virtue of the orders issued in G.O(3D) No.2, Commercial Taxes and Registration Department, dated 12.3.2007 and since none of the juniors belonging to the General Category (O.C. Turn) has been appointed/promoted as Sub Registrar-Grade-II prior to the date of promotion of the petitioner, his request was turned down.

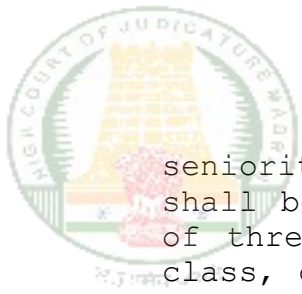
24. The appellants/respondents have also made reference to the decision of the Apex Court in Indra Sawhney vs Union of India ((1992) Supp (3) SCR 217: (1992 AIR SCV 3682).

25. In this case, the Apex Court has observed that, "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 the 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 five years from the date of judgment, i.e., from 16.11.1992 to 15.11.1997."

26. Based on Indra Sawhney, the appellants/respondents have contended that the respondent/petitioner had joined as Junior Assistant on 1.3.1974 and was promoted as Assistant on 19.3.1977. He was subsequently, appointed as Sub Registrar-Grade-II by recruitment by transfer on 1.2.1990 and was promoted as Sub Registrar-Grade-I on 11.11.1997. His name was included in the panel of Sub Registrar-Grade-II for the year 1989-90 as Sl.No.12 in O.C. turn. The persons junior to the petitioner belonging to the same community have not been promoted as Sub Registrar-Grade-II prior to the date of petitioner's promotion.

27. As the Supreme Court had upheld all the panels drawn following the rule of reservation prior to 16.11.1992 and permitted to follow the same upto 15.11.1997 and as the petitioner got promotion prior to 15.11.1997, the judgment cited by the petitioner will not apply to this case.

28. It is also the case of the appellants/respondents that as per Rule 35(1) of the General rules for Tamil Nadu State and Subordinate Service, application for the revision of



seniority of a person in a service, class, category or grade shall be submitted to the appointing authority within a period of three years from the date of appointment to such service, class, category or grade or within a period of three years from the date of order of fixing seniority, as the case may be. But the petitioner did not submit his representation within three years either from the date of his promotion or from the date in which the order of the Tamil Nadu Administrative Tribunal was implemented. Hence, his representation, dated 7.4.2007 was rejected as it did not satisfy the time limit as specified in the Tamil Nadu State and Subordinate Service Rules.

29. Besides this, the appellants/respondents have further contended that though the petitioner was eligible to be considered for promotion as Sub Registrar-Grade-II for the year 1982-83, he did not reach the zone of selection for promotion then. As per Rule 2(a)(i) of the Tamil Nadu Registration Subordinate Service Rules, appointment to the post of Sub Registrar-Grade-I shall be made from Sub Registrar-Grade-II. In the post of Sub Registrar-Grade-II, appointment is being made by direct recruitment and by recruitment by transfer from Ministerial Service. Sub Registrar-Grade-I is the promotional post and promotion is being made from the post of Sub Registrar-Grade-II, which is the feeder category, to the post of Sub Registrar-Grade-I from the same service. Hence, the petitioner's seniority could be reckoned only from this position in the seniority list of the Sub Registrar-Grade-II and not his seniority in Ministerial Service.

30. Eventually, the appellants have made stress on the point that since the respondent/petitioner has got promotion prior to 15.11.1997 and persons junior to the petitioner belonging to his community have not been promoted prior to the date of petitioner's promotion, they have urged to dismiss the writ petition.

31. The learned Single Judge of this Court placing reliance mainly upon Ajit Singh's Case has allowed the writ petition with the following observation:-

"With regard to the submission made by the learned Additional Government Pleader that the dictum laid down in AJITH SINGH's case cannot be made applicable to the facts of this case since the promotion of Sub Registrar-Grade-I was given to the petitioner prior to 15.11.1997 i.e., within the period of five years from the date of Judgment in INDRA SAWHNEY's case, I am not inclined to accept the same, because the actual issue involved in the present case is, after reaching the higher promotional post, whether any further



accelerated promotion could be given to the juniors by applying the communal roster system, so far as the Backward Class community candidates are concerned, by placing the juniors above the senior general category candidates. The dictum laid down in AJITH SINGH's case clearly says that, such a promotion, by placing the roster point promotee above the senior general category candidate, will be violative of Articles 14 and 16(1) of the Constitution of India. As contended by the learned counsel for the petitioner, there would be only accelerated promotion, but not accelerated seniority. Therefore, in my considered opinion, the relief sought for by the petitioner has to be allowed".

32. Mr.R. Ravichandran, learned Additional Government Pleader appearing for the appellants, while advancing his arguments has highlighted the following points in support of his contentions:-

a. None of the juniors belonging to General Category were neither appointed nor promoted as Sub Registrar prior to the date of promotion of the respondent/petitioner and that the request of the respondent/petitioner for revision of seniority was examined by virtue of order issued in G.O.(3D) No.2 Commercial Taxes and Registration Department, dated 12.3.2007 and rejected.

b. In Indra Sawhney vs Union of India (1992) Supp. (3) SCR 217 : (1992) AIR SCV 3682), the Supreme Court had upheld all panels drawn following the rule of reservation prior to 16.11.1992 and permitted to follow the same upto 15.11.1997 and as the respondent got promotion prior to 15.11.1997, the request of the respondent was not justified for consideration.

c. As per Rule 35(1) of the General Rules for Tamil Nadu State and Subordinate Service, the respondent had not submitted his representation within a period of three years from the date of order of fixing the seniority. Instead, he had submitted his representation only on 7.4.2007 after a period of 12 years and his representation also did not satisfy the rule regarding the time limit as specified in the Tamil Nadu State and Subordinate Service Rules and on account of this reason, the impugned Letter, dated 24.3.2008 in Lr.No.17689/H2/2007-6 was certainly in accordance with law as well as within the ambit of the decision of the Apex Court in Indra Sawhney vs Union of India, cited supra.

33. Mr.Ravichandran, learned Additional Government Pleader has also contended that as per the then existing Special Rules, for Tamil Nadu Registration Subordinate Service, eight years of service including two years as Assistant as one of the qualifications for consideration for appointment as Sub Registrar-Grade-II by recruitment by transfer



was very much essential. Thereafter, by virtue of G.O.Ms.No.33 Commercial Taxes and Religious Endowments Department, dated 24.2.1989, the said Rule was amended to the effect that one must have served as Assistant in the Registration Department, for a period not less than two years on duty.

34. He has also pointed out that even before the said amendment, the panels of Sub Registrar-Grade-II were drawn only on the basis of seniority in the post of Assistant only. However, he has fairly conceded that in view of the order of the Tamil Nadu Administrative Tribunal, dated 27.8.1993 and made in O.A.No.392 of 1989, the said order was implemented in the Government Order in G.O.Ms.No.350 Commercial Taxes and Religious Endowments Department, dated 31.10.1994, after the dismissal of the Special Leave Petition filed by the Government against the said order.

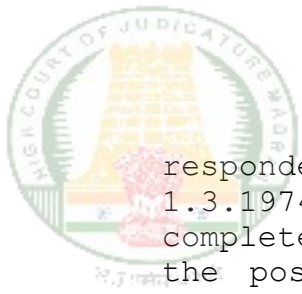
35. It is manifested from the records that the Government had decided in view of the direction of this Court as well as the order passed by the Tamil Nadu Administrative Tribunal in O.A.No.392 of 1989, dated 27.8.1993 to extend the benefit of the order of the Administrative Tribunal, to the similarly placed persons and accordingly, the Government had passed the order in G.O.(3D) No.2 Commercial Taxes and Registration (H2) Department, dated 12.3.2007.

36. The learned Additional Government Pleader has also indicated that Rule 35(f) of the General Rules for revision of seniority, which prescribes the limitation period of three years was not considered by the learned Single Judge and therefore, he has urged to set aside the impugned order.

37. It is also significant to note here that the learned Additional Government Pleader has submitted that the promotions to the reserved category had been made in accordance with the judgment of the Apex Court in Indra Sawhney vs Union of India, cited supra, and that the respondent/petitioner was not having any competency to question the act of the appellants.

38. On the other hand, Mr.Karthic Rajan, learned counsel appearing for the respondent/petitioner has submitted that the law laid down by the Apex Court in Ajit Singh's case (AIR 1996 Supreme Court 1189) still holds good in so far as the members of other backward classes are concerned, because they are the beneficiaries of accelerated promotions.

39. Mr.Karthic Rajan, has made a classic example with reference to the injustice done to the respondent/petitioner. He has adverted to that the



respondent/petitioner, who had joined as Junior Assistant on 1.3.1974, was promoted as Assistant on 19.3.1977. He had completed eight years of total service including two years in the post of Assistant on 28.2.1982 and as such he was eligible to be considered for promotion as Sub Registrar for the year 1982-83. But the petitioner was promoted as Sub Registrar-Grade-II only on 1.2.1990 and later on as Sub Registrar-Grade-I on 11.11.1997.

40. According to Mr. Karthic Rajan, one Syed Azizullah, who belonged to backward community was promoted as Sub Registrar-Grade-II in the year 1986 by applying the communal roster. In the case of the respondent/petitioner, upon his petitioner's promotion to the same grade of Sub Registrar-Grade-II in 1990, he ought to have been placed over and above the reserved candidate even though he was promoted four years earlier.

41. Secondly, Mr. Karthic Rajan has contended that one Mrs. T. Vijayalakshmi, who had joined as Junior Assistant on 11.3.1974 was promoted as Sub Registrar-Grade-II by applying the communal reservation. Thereafter, she was further promoted as Sub Registrar-Grade-I and District Registrar on 2.2.2001 itself due to her seniority position obtained due to accelerated promotion by virtue of reservation.

42. In order to fortify his contention, he has furnished a comparative chart/tabular column showing the service particulars of the respondent with that of his junior Mrs. T. Vijayalakshmi, which is shown as under:-

Name	Date of Appt. as Junior Assistant	Date of Appt. as Assistant	Date of Promotion as Sub Registrar Gr. II	Date of Promotion as Sub Registrar Gr. I	Date of Promotion as District Registrar	Date of pro-motion as Assistant Inspector General of Registration
T. Dhanaraju (Respondent)	1.3.1974	19.3.1977	1.2.1990	11.11.1997	30.12.2008	



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Name	Date of Appt. as Junior Assistant	Date of Appt. as Assistant	Date of Promotion as Sub Registrar Gr.II	Date of Promotion as Sub Registrar Gr.I	Date of Promotion as District Registrar	Date of pro-motion as Assistant Inspector General of Registration
T.Vijaya lakshmi (BC)	11.3.1974		11.6.1986 (By rule of reservation)	31.3.1997	2.2.2001 (Vide G.O.Ms.No.14, dt. 31.1.2001)	Superannuated on 31.8.2007 itself but her junior Mr.V.Karnan was promoted on 22.6.2010 for the panel year 2010-2011 vide G.O.Ms. 116, dt. 22.6.2010

43. From the above tabular column, it is explicit that the respondent/petitioner is senior to Mrs.T.Vijayalakshmi, a reserved category candidate. But she was promoted ahead of the respondent as Sub Registrar-Grade-II by applying the rule of reservation.

44. It is also made clear that the respondent/petitioner, a General Category candidate, was subsequently promoted as Sub Registrar-Grade-II in the normal course after four years from the date of promotion of the junior, who is the reserved category candidate.

45. With reference to this, Mr. Karthic Rajan has contended that the seniority in the grades of Sub Registrar-Grade-II or Grade-I were not finalised or crystallised since the issue of manner of promotion to the post of Sub Registrar-Grade-II was the subject matter of litigation and on the basis of the order passed by this Court in individual cases, the appellants took a policy decision, vide G.O.(3D) Commercial Taxes and Registration Department, dated 12.3.2007, which clearly directs that the seniority of similarly placed persons holding the post of Sub Registrar-Grade-II is to be revised in



line with the orders passed by this Court with regard to the manner of preparation of panel for the said post.

46. Obviously, till 2007, the seniority in the grade of Sub Registrar was not drawn and was in a state of flux. In fact, no seniority list was published and communicated in the manner known to law.

47. As pointed out by Mr. Karthic Rajan, the seniority of Sub Registrar-Grade-II was never finalised and was in a state of flux. The appellants/respondents vide G.O.Ms.No.(3D) No.2, dated 12.3.2007 directed the revision of seniority based on certain orders of this Court with regard to the manner of preparation of panel for promotion to the post of Sub Registrar-Grade-II, which instigated the respondent/petitioner to make a representation to the appellants, dated 7.4.2007 to apply the principle of "Catch Up" rules while recasting the seniority as directed in the Government Order in G.O.Ms.No.(3D) No.2, dated 12.3.2007.

48. Under these circumstances, the representation made by the respondent/petitioner was rejected on 24.3.2008 and immediately thereafter, on 22.4.2008, he had filed a writ petition in W.P.No.10323 of 2008 challenging the rejection of the order and hence, the contention of bar on the ground of limitation does not arise in this case.

49. Though the appellants/respondents had raised such a contention of bar of limitation in their counter affidavit, it was not at all urged before the learned Single Judge and that the learned Single Judge had also rightly rejected the contentions put forth on behalf of the appellants/respondents after upholding the principle of "Catch Up" rules as decided by the Apex Court in Ajit Singh's case.

50. With regard to the issue of limitation of three years we find that it may be appropriate to make reference to the decision in Daman Singh vs. State of Punjab (1985 (2) SCC 670).

51. In paragraph No.13 of the above decision, the Apex Court has observed that, "It is no unusual for parties and counsel to raise innumerable grounds in the petitions and memoranda of appeal etc., but, later, confine themselves, in the course of argument to a few only of those grounds, obviously because the rest of the grounds are considered even by them to be untenable. No party or counsel is thereafter entitled to make a grievance that the grounds not argued were not considered. If indeed any ground which was



argued was not considered it should be open to the party aggrieved to draw the attention of the court making the order to it by filing a proper application for review or clarification."

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52. The observation made by the Apex Court would clarify the proposition that though the appellants had raised the contention of bar of limitation in their counter statement, they had failed to urge the issue before the learned Single Judge while advancing arguments during the hearing of the writ petition and therefore, the appellants are totally dis-entitled to question the order of the learned Single Judge on the issue of limitation.

53. Similar view has also been taken by the Division Bench of this Court in the writ appeal in W.A.No.93 of 2007, dated 5.6.2007 (P. Saraswathi vs. District Elementary Educational Officer).

54. From the materials available on record, we find that the respondent/petitioner had not questioned the accelerated promotion granted to the junior reserved category candidates ahead of him. He had only questioned the grant of accelerated seniority, which is totally impermissible.

55. It is also to be pointed out that Indra Sawhney's case deals only with the issue of accelerated promotion and not on the issue of accelerated seniority.

56. On the other hand, in Ajit Singh and others (II) vs State of Punjab and others ((1999) 7 SCC 209), the Constitution Bench of the Apex Court has considered the issue as to whether the accelerated promotion could be coupled with accelerated seniority.

57. In this case, the following three issues were arisen for consideration.

a. Can the roster-point promotees (reserved category) count their seniority in the promoted category from the date of their continuous officiation vis-a-vis general candidates who were senior to them in the lower category and who were later promoted to the same level?

b. Have Union of India vs. Virpal Singh ((1995) 6 SCC 684) and Ajit Singh Januja vs. State of Punjab ((1996) 2 Scc 715) been correctly decided and has Jagdish Lal vs. State of Haryana ((1997) 6 SCC 538) been correctly decided?



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67. Learned Senior Counsel Shri K. Parasaran contended that Indra Sawhney (Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385) permitted reservations in promotions for a further period of 5 years and that during that period Article 16(4-A) was incorporated in Part III of the Constitution and, therefore, the concept of seniority attached to the roster promotion, as per certain rulings then in force, must be deemed to continue and deemed to be permissible in view of Article 16(4-A). We may point out that Indra Sawhney (Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385) did not have to go into issues relating to seniority and on the other hand it referred to the principle of balancing Article 16 (4) against the rights of the individual under Article 16(1). It is, therefore, not possible to accept that the 5-year rule and Article 16(4-A) would keep out the applicability of Article 16(1) to test the validity of any circular, order or rule which conferred seniority on the roster-point promotees."

60. With regard to the Prospectivity of Ajit Singh's case, (Ajit Singh and others (II) vs. State of Punjab and others ((1999) 7 SCC 209), the Constitution Bench in paragraph Nos. 91 and 92 has observed as under:-

91. We have accepted, while dealing with Points 1 and 2 that the reserved candidates who get promoted at two levels by roster points (say) from Level 1 to Level 2 and Level 2 to Level 3 cannot count their seniority at Level 3 as against senior general candidates who reached Level 3 before the reserved candidates moved up to Level 4. The general candidate has to be treated as senior at Level 3.

92. Where before 1-3-1996, i.e. the date of Ajit Singh judgment (Ajit Singh Januja v. State of Punjab, (1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239) at Level 3, there were reserved candidates who reached there earlier and also senior general candidates who reached there later (but before the reserved candidate was promoted to Level 4) and when in spite of the fact that the senior general candidate had to be treated as



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senior at Level 3 (in view of Ajit Singh (Ajit Singh Januja v. State of Punjab, (1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC239)), the reserved candidate is further promoted to Level 4—without considering the fact that the senior general candidate was also available at Level 3—then, after 1-3-1996, it becomes necessary to review the promotion of the reserved candidate to Level 4 and reconsider the same (without causing reversion to the reserved candidate who reached Level 4 before 1-3-1996). As and when the senior reserved candidate is later promoted to Level 4, the seniority at Level 4 has also to be refixed on the basis of when the reserved candidate at Level 3 would have got his normal promotion, treating him as junior to the senior general candidate at Level 3. Chander Pal v. State of Haryana ((1997) 10 SCC 474 : 1997 SCC (L&S) 1624) has to be understood in the manner stated above.

61. The principle laid down in Ajit Singh and others (II) vs. State of Punjab and others ((1999) 7 SCC 209) has been reiterated in the very recent judgment in S. Panneer Selvam and others vs. State of Tamil Nadu and others ((2015) 10 SCC 292).

62. In the above cited decision, the Division Bench of the Apex Court headed by Hon'ble Mr. Justice T.S. Thakur, has laid down the following proposition:-

“In the absence of a policy decision by the Government of Tamil Nadu, the accelerated promotion would not entitle to accelerated seniority.”

63. In so far as the present case on hand is concerned, though the respondent/petitioner is a senior general category candidate, the junior reserved category candidate had obtained promotion earlier to him as Sub Registrar-Grade-II and Grade I by applying the rule of reservation. The respondent/petitioner by the application of “catch-up” rule shall have to be treated as senior to the junior reserved category candidate in the promotional post of Sub Registrar-Grade-II and Grade-I. Now the respondent/petitioner has retired on account of his superannuation.

64. Under these circumstances, as submitted by Mr. Karthic Rajan, the appellants/Government may be directed to re-fix the seniority by applying the “catch-up” rule and grant notional promotion from the date of his junior had secured



promotion as detailed in the tabular column as shown above with all consequential benefits including the refixation of pension and arrears of pension.

65. We have carefully considered the submissions made by Mr.R. Ravichandran, learned Additional Government Pleader appearing for the appellants and Mr.Karthic Rajan, learned counsel appearing for the respondent.

66. Having regard to the related facts and circumstances and after having gone through the decision of the Apex Court, which includes the decision of the Constitution Bench in Ajit Singh and others (II) vs. State of Punjab and others ((1999) 7 SCC 209), we are of considered view that the impugned order does not require our interference to exercise the power of appellate jurisdiction.

67. Accordingly, the writ appeal filed by the appellants/Government is dismissed and the order impugned in this writ appeal is confirmed.

68. Since the respondent/petitioner has retired from service on account of attaining superannuation, the appellants are directed to refix the seniority by applying the principle of "catch-up" rule and grant notional promotion to the respondent/petitioner from the date of his junior reserved category candidate had secured promotion as detailed in the tabular column shown above with all consequential benefits including the refixation of pension and arrears of pension within a period of six weeks from the date of receipt of a copy of this order.

In the result, the writ appeal is dismissed. Connected M.P. is also dismissed. However, there will be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

rnb



To

1.The Secretary to Government of Tamil Nadu
Commercial Taxes and Registration Department,
Chennai-9.

2.The Inspector General of Registration
Chennai-28.

+1cc to Mr.Menon, Advocate, S.R.No.34433
+1cc to the Government Pleader, S.R.No.34390

Writ Appeal No.82 of 2012
and
M.P.No.1 of 2012

VS (CO)
CA(26/07/2016)