

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2017

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.14275 to 14283 of 2015

W.P.No.14275 of 2015:

M.Karthik .. Petitioner

-vs-

1. The State of Tamil Nadu
Rep. by its Secretary to Government
Tamil Development, Religious Endowments
and Information Department
(now) Tourism Culture and Religious
Endowments Department
Fort St. George
Chennai 600 009
2. Tamil Nadu Public Service Commission
Rep. by its Secretary
Broadway
Chennai 600 001
3. The Commissioner
Hindu Religious and Charitable
Endowment Department
Uthamar Gandhi Road
Nungambakkam
Chennai 600 034
4. Tmt.P.Kavitha Priyadharshini
5. Thiru.K.Chelladurai
6. J.Mullai
(R-6 impleaded as per order
dated 30.08.2016 in WMP No.21911
of 2016 in WP No.14275 of 2015)
7. M.Jothilakshmi
(R-7 impleaded as per order
dated 30.08.2016 in WMP No.20880
of 2016 in WP No.14275/2015) .. Respondents

Petition under Article 226 of the Constitution of India,
praying for the issue of a Writ of Certiorarified Mandamus,
calling for the entire records connected with the impugned
letter of the 1st respondent vide No.2793/R.E/2-2/2014-1 dated
08.04.2014 and quash the same in so far as the petitioner is
concerned and consequentially direct the respondents to restore

the seniority of the petitioner in Serial No.5 as fixed in the order of appointment vide G.O.Ms.No.80 dated 26.02.2011 and order of allotment vide G.O.Ms.No.150 dated 07.07.2011 respectively passed by the 1st respondent as per rule 35(a) of the Tamil Nadu State Subordinate Service Rule.

For Petitioner :: Mr.AR.L.Sundaresan for
Mr.S.N.Ravichandran

For Respondents:: Mr.K.Venkataramani
Additional Advocate General
assisted by Mr.M.Maharaja
Special Government Pleader for R1 & 3
Ms.C.N.G.Niraimathi for R2
Mr.K.Srinivasan, Senior Counsel
for Mr.B.Sivaraman for R5
Mr.R.Thiagarajan for R6
Mr.R.Saseetharan for R7
No appearance for R4

W.P.No.14276 of 2015:

S.Mohanasundaram ... Petitioner
-vs-

1. The State of Tamil Nadu
Rep. by its Secretary to Government
Tamil Development, Religious Endowments
and Information Department
(now) Tourism Culture and Religious
Endowments Department
Fort St. George
Chennai 600 009

2. Tamil Nadu Public Service Commission
Rep. by its Secretary
Broadway, Chennai 600 001

3. The Commissioner
Hindu Religious and Charitable
Endowment Department
Uthamar Gandhi Road
Nungambakkam
Chennai 600 034

4. Tmt. P.Kavitha Priyadharshini
5. Thiru.K.Chelladurai
6. Tmt.P.K.Kavinitha
7. J.Mullai

(R-7 impleaded as per order
dated 30.08.2016 in WMP No.21912
of 2016 in WP No.14276 of 2015) .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the entire records connected with the impugned letter of the 1st respondent vide No. 2793/R.E/2-2/2014-1 dated 08.04.2014 and quash the same in so far as the petitioner is concerned and consequentially direct the respondents to restore the seniority of the petitioner in Serial No.6 as fixed in the order of appointment vide G.O.Ms.No.80 dated 26.02.2011 and order of allotment vide G.O.Ms.No.150 dated 07.07.2011 respectively passed by the 1st respondent as per rule 35(a) of the Tamil Nadu State Subordinate Service Rule.

For Petitioner :: Mr.AR.L.Sundaresan for
Mr.S.N.Ravichandran

For Respondents:: Mr.K.Venkataramani
Additional Advocate General
assisted by Mr.M.Maharaja
Special Government Pleader for R1 & 3
Ms.C.N.G.Niraimathi for R2
Mr.K.Srinivasan, Senior Counsel
for Mr.B.Sivaraman for R5
Mr.R.Thiagarajan for R7
No appearance for R4 & R6

W.P.No.14277 of 2015:

M.Kannadasan

.. Petitioner

-vs-

1. The State of Tamil Nadu
Rep. by its Secretary to Government
Tamil Development, Religious Endowments
and Information Department
(now) Tourism Culture and Religious
Endowments Department
Fort St. George
Chennai 600 009

2. Tamil Nadu Public Service Commission
Rep. by its Secretary
Broadway
Chennai 600 001

3. The Commissioner
Hindu Religious and Charitable
Endowment Department
Uthamar Gandhi Road
Nungambakkam
Chennai 600 034

4. Tmt. P.Kavitha Priyadharshini
5. Thiru.K.Chelladurai
6. J.Mullai

(R-6 impleaded as per order dated
30.08.2016 in WMP No.21913
of 2016 in WP No.14277 of 2015)

.. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the entire records connected with the impugned letter of the 1st respondent vide No. 2793/R.E/2-2/2014-1 dated 08.04.2014 and quash the same in so far as the petitioner is concerned and consequentially direct the respondents to restore the seniority of the petitioner in Serial No.8 as fixed in the order of appointment vide G.O.Ms.No.80 dated 26.02.2011 and order of allotment vide G.O.Ms.No.150 dated 07.07.2011 respectively passed by the 1st respondent as per rule 35(a) of the Tamil Nadu State Subordinate Service Rule.

For Petitioner :: Mr.AR.L.Sundaresan for
Mr.S.N.Ravichandran

For Respondents:: Mr.K.Venkataramani
Additional Advocate General
assisted by Mr.M.Maharaja
Special Government Pleader for R1 & 3
Ms.C.N.G.Niraimathi for R2
Mr.K.Srinivasan, Senior Counsel
for Mr.B.Sivaraman for R5
Mr.R.Thiagarajan for R6
No appearance for R4

W.P.No.14278 of 2015:

S.Gnanasekaran

.. Petitioner

सत्यमेव जयते
-vs-

1. The State of Tamil Nadu
Rep. by its Secretary to Government
Tamil Development, Religious Endowments
and Information Department
(now) Tourism Culture and Religious
Endowments Department
Fort St. George
Chennai 600 009
2. Tamil Nadu Public Service Commission
Rep. by its Secretary
Broadway
Chennai 600 001

3. The Commissioner
Hindu Religious and Charitable
Endowment Department
Uthamar Gandhi Road
Nungambakkam
Chennai 600 034

4. Tmt.P.Kavitha Priyadharshini
5. Thiru.K.Chelladurai
6. J.Mullai

(R-6 impleaded as per order dated
30.08.2016 in WMP No.21914
of 2016 in WP No.14278 of 2015)

.. Respondents

Petition under Article 226 of the Constitution of India,
praying for the issue of a Writ of Certiorarified Mandamus,
calling for the entire records connected with the impugned
letter of the 1st respondent vide No. 2793/R.E/2-2/2014-1 dated
08.04.2014 and quash the same in so far as the petitioner is
concerned and consequentially direct the respondents to restore
the seniority of the petitioner in Serial No.9 as fixed in the
order of appointment vide G.O.Ms.No.80 dated 26.02.2011 and
order of allotment vide G.O.Ms.No.150 dated 07.07.2011
respectively passed by the 1st respondent as per rule 35(a) of
the Tamil Nadu State Subordinate Service Rule.

For Petitioner :: Mr.AR.L.Sundaresan for
Mr.S.N.Ravichandran

For Respondents:: Mr.K.Venkataramani
Additional Advocate General
assisted by Mr.M.Maharaja
Special Government Pleader for R1 & 3
Ms.C.N.G.Niraimathi for R2
Mr.K.Srinivasan, Senior Counsel
for Mr.B.Sivaraman for R5
Mr.R.Thiagarajan for R6
No appearance for R4

W.P.No.14279 of 2015:

V.Kumaresan

-vs-

.. Petitioner

1. The State of Tamil Nadu
Rep. by its Secretary to Government
Tamil Development, Religious Endowments
and Information Department
(now) Tourism Culture and Religious
Endowments Department
Fort St. George
Chennai 600 009

2. Tamil Nadu Public Service Commission
Rep. by its Secretary
Broadway
Chennai 600 001

3. The Commissioner
Hindu Religious and Charitable
Endowment Department
Uthamar Gandhi Road
Nungambakkam
Chennai 600 034

4. Tmt.P.Kavitha Priyadharshini

5. Thiru.K.Chelladurai

6. J.Mullai

(R-6 impleaded as per order
dated 30.08.2016 in WMP No.21915
of 2016 in WP No.14279 of 2015)

... Respondents

Petition under Article 226 of the Constitution of India,
praying for the issue of a Writ of Certiorarified Mandamus,
calling for the entire records connected with the impugned
letter of the 1st respondent vide No. 2793/R.E/2-2/2014-1 dated
08.04.2014 and quash the same in so far as the petitioner is
concerned and consequentially direct the respondents to restore
the seniority of the petitioner in Serial No.10 as fixed in the
order of appointment vide G.O.Ms.No.80 dated 26.02.2011 and
order of allotment vide G.O.Ms.No.150 dated 07.07.2011
respectively passed by the 1st respondent as per rule 35(a) of
the Tamil Nadu State Subordinate Service Rule.

For Petitioner :: Mr.AR.L.Sundaresan for
Mr.S.N.Ravichandran

For Respondents:: Mr.K.Venkataramani
Additional Advocate General
assisted by Mr.M.Maharaja
Special Government Pleader for R1 & 3
Ms.C.N.G.Niraimathi for R2
Mr.K.Srinivasan, Senior Counsel
for Mr.B.Sivaraman for R5
Mr.R.Thiagarajan for R6
No appearance for R4

W.P.No.14280 of 2015:

S.Sivaramkumar

.. Petitioner

-vs-

1. The State of Tamil Nadu
Rep. by its Secretary to Government
Tamil Development, Religious Endowments
and Information Department
(now) Tourism Culture and Religious
Endowments Department
Fort St. George
Chennai 600 009
2. Tamil Nadu Public Service Commission
Rep. by its Secretary
Broadway, Chennai 600 001
3. The Commissioner
Hindu Religious and Charitable
Endowment Department
Uthamar Gandhi Road
Nungambakkam
Chennai 600 034
4. Tmt.P.Kavitha Priyadharshini
5. Thiru.K.Chelladurai
6. J.Mullai
(R-6 impleaded as per order
dated 30.08.2016 in WMP No.21916
of 2016 in WP No.14280 of 2015) ... Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the entire records connected with the impugned letter of the 1st respondent vide No. 2793/R.E/2-2/2014-1 dated 08.04.2014 and quash the same in so far as the petitioner is concerned and consequentially direct the respondents to restore the seniority of the petitioner in Serial No.11 as fixed in the order of appointment vide G.O.Ms.No.80 dated 26.02.2011 and order of allotment vide G.O.Ms.No.150 dated 07.07.2011 respectively passed by the 1st respondent as per rule 35(a) of the Tamil Nadu State Subordinate Service Rule.

For Petitioner :: Mr.AR.L.Sundaresan for
Mr.S.N.Ravichandran

For Respondents :: Mr.K.Venkataramani
Additional Advocate General
assisted by Mr.M.Maharaja
Special Government Pleader for R1 & 3
Ms.C.N.G.Niraimathi for R2
Mr.K.Srinivasan, Senior Counsel
for Mr.B.Sivaraman for R5
Mr.R.Thiagarajan for R6
No appearance for R4

W.P.No.14281 of 2015:

J.Bharanidharan

.. Petitioner

-vs-

1. The State of Tamil Nadu
Rep. by its Secretary to Government
Tamil Development, Religious Endowments
and Information Department
(now) Tourism Culture and Religious
Endowments Department
Fort St. George, Chennai 600 009
 2. Tamil Nadu Public Service Commission
Rep. by its Secretary
Broadway, Chennai 600 001
 3. The Commissioner
Hindu Religious and Charitable
Endowment Department
Uthamar Gandhi Road
Nungambakkam
Chennai 600 034
 4. Tmt.P.Kavitha Priyadharshini
 5. Thiru.K.Chelladurai
 6. Tmt. P.K.Kavinitha
 7. J.Mullai
(R-7 impleaded as per order
dated 30.08.2016 in WMP No.21917
of 2016 in WP No.14281 of 2015)
- .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the entire records connected with the impugned letter of the 1st respondent vide No. 2793/R.E/2-2/2014-1 dated 08.04.2014 and quash the same in so far as the petitioner is concerned and consequentially direct the respondents to restore the seniority of the petitioner in Serial No.12 as fixed in the order of appointment vide G.O.Ms.No.80 dated 26.02.2011 and order of allotment vide G.O.Ms.No.150 dated 07.07.2011 respectively passed by the 1st respondent as per rule 35(a) of the Tamil Nadu State Subordinate Service Rule.

For Petitioner :: Mr.AR.L.Sundaresan for
Mr.S.N.Ravichandran

For Respondents:: Mr.K.Venkataramani
Additional Advocate General
assisted by Mr.M.Maharaja
Special Government Pleader for R1 & 3

Ms.C.N.G.Niraimathi for R2
Mr.K.Srinivasan, Senior Counsel
for Mr.B.Sivaraman for R5
Mr.R.Thiagarajan for R7
No appearance for R4 & R6

W.P.No.14282 of 2015:

P.Ramesh

.. Petitioner

-vs-

1. The State of Tamil Nadu
Rep. by its Secretary to Government
Tamil Development, Religious Endowments
and Information Department
(now) Tourism Culture and Religious
Endowments Department
Fort St. George
Chennai 600 009
2. Tamil Nadu Public Service Commission
Rep. by its Secretary
Broadway
Chennai 600 001
3. The Commissioner
Hindu Religious and Charitable
Endowment Department
Uthamar Gandhi Road
Nungambakkam
Chennai 600 034
4. Tmt.P.Kavitha Priyadharshini
5. Thiru.K.Chelladurai
6. J.Mullai
(R-6 impleaded as per order dated
30.08.2016 in WMP No.21918
of 2016 in WP No.14282 of 2015)

Petition under Article 226 of the Constitution of India,
praying for the issue of a Writ of Certiorarified Mandamus,
calling for the entire records connected with the impugned
letter of the 1st respondent vide No. 2793/R.E/2-2/2014-1 dated
08.04.2014 and quash the same in so far as the petitioner is
concerned and consequentially direct the respondents to restore
the seniority of the petitioner in Serial No.14 as fixed in the
order of appointment vide G.O.Ms.No.80 dated 26.02.2011 and
order of allotment vide G.O.Ms.No.150 dated 07.07.2011
respectively passed by the 1st respondent as per rule 35(a) of
the Tamil Nadu State Subordinate Service Rule.

For Petitioner :: Mr.AR.L.Sundaresan for
Mr.S.N.Ravichandran

For Respondents:: Mr.K.Venkataramani
Additional Advocate General
assisted by Mr.M.Maharaja
Special Government Pleader for R1 & 3
Ms.C.N.G.Niraimathi for R2
Mr.K.Srinivasan, Senior Counsel
for Mr.B.Sivaraman for R5
Mr.R.Thiagarajan for R6

W.P.No.14283 of 2015:

V.Ananth ... Petitioner

-vs-

1. The State of Tamil Nadu
Rep. by its Secretary to Government
Tamil Development, Religious Endowments
and Information Department
(now) Tourism Culture and Religious
Endowments Department
Fort St. George
Chennai 600 009
2. Tamil Nadu Public Service Commission
Rep. by its Secretary
Broadway, Chennai 600 001
3. The Commissioner
Hindu Religious and Charitable
Endowment Department
Uthamar Gandhi Road
Nungambakkam
Chennai 600 034

4. Tmt.P.Kavitha Priyadharshini
5. Thiru.K.Chelladurai
6. J.Mullai

(R-6 impleaded as per order dated
30.08.2016 in WMP No.21919
of 2016 in WP No.14283 of 2015)

.. Respondents

Petition under Article 226 of the Constitution of India,
praying for the issue of a Writ of Certiorarified Mandamus,
calling for the entire records connected with the impugned
letter of the 1st respondent vide No. 2793/R.E/2-2/2014-1 dated
08.04.2014 and quash the same in so far as the petitioner is
concerned and consequentially direct the respondents to restore
the seniority of the petitioner in Serial No.13 as fixed in the

order of appointment vide G.O.Ms.No.80 dated 26.02.2011 and order of allotment vide G.O.Ms.No.150 dated 07.07.2011 respectively passed by the 1st respondent as per rule 35(a) of the Tamil Nadu State Subordinate Service Rule.

For Petitioner :: Mr.AR.L.Sundaresan for
Mr.S.N.Ravichandran

For Respondents:: Mr.K.Venkataramani
Additional Advocate General
assisted by Mr.M.Maharaja
Special Government Pleader for R1 & 3
Ms.C.N.G.Niraimathi for R2
Mr.K.Srinivasan, Senior Counsel
for Mr.B.Sivaraman for R5
Mr.R.Thiagarajan for R6
No appearance for R4

ORDER

All the petitioners were selected by the Tamil Nadu Public Service Commission for the post of Assistant Commissioner of Hindu Religious and Charitable Endowments Department, a Group-I B service post and appointed vide G.O.Ms.No.80, Tamil Development, Religious Endowments and Information (R.E.2.2) Department dated 26.2.2011. The common grievance of the petitioners shows that when the Tamil Nadu Public Service Commission, the second respondent herein issued a notification/advertisement dated 20.12.2009 for filling up of 25 Group I B service post of Assistant Commissioner by direct recruitment for the years 2005-06 and 2008-09 respectively, all of them, being eligible for the said post, applied for, participated in the written examination and successfully passed the written examination. Therefore, they were called for the oral test and again after appearing in the oral test, they were declared successful. Thereafter, based on the merit list, the second respondent published a selection list on 22.10.2010 for 24 vacancies out of 25 vacancies and a reserve list was also published based on communal roster. When the second respondent-Tamil Nadu Public Service Commission had published the selection list based on the marks obtained in the written as well as oral examination by following the communal roster, the first respondent issued the orders of appointment in G.O.Ms.No.80 dated 26.2.2011 and also the orders of posting in G.O.Ms.No.150 dated 07.07.2011. In the said orders of appointment and posting, the petitioners names figured in the selection list issued by the second respondent. After a lapse of three years, the first respondent issued a seniority list for directly recruited candidates of the year 2005-06 and 2008-09 on the basis of communal roster, in which Mr.M.Karthik figured in Serial No.9. Therefore his grievance is when his original seniority in the appointment order being No.5, the same should

be followed for promotion to the higher post of Deputy Commissioner. Similarly, the case of Mr.S.Mohanasundaram also shows that when he was found in Serial No.6 in the order of appointment, he cannot be pushed down to 11th turn in the seniority list prepared by the first respondent. Similarly, the case of Mr.M.Kannadasan also shows that when he was shown at Serial No.8 in the order of appointment, he cannot be pushed down to 10th turn in the subsequent seniority list prepared by the first respondent dated 8.4.2014 on the basis of the communal roster.

2. Arguing the case on behalf of all the petitioners, Mr.AR.L.Sundaresan, learned senior counsel submitted that when all the petitioners participated in the written examination for Group I B service post of Assistant Commissioner of Hindu Religious and Charitable Endowments Department and selected based on the marks obtained in the written and oral examination conducted by the Tamil Nadu Public Service Commission, after the merit list dated 31.1.2011 published by the second respondent, the first respondent issued orders of appointment in G.O.Ms.No.80 dated 26.2.2011 and after successful completion of training, one more G.O.Ms.No.150 dated 7.7.2011 was issued for postings. In the said orders of appointment and posting, the names of the petitioners, namely, Mr.M.Karthik was shown in Serial No.5, Mr.S.Mohanasundaram was shown in Serial No.6, Mr.M.Kannadasan was shown in Serial No.8, Mr.S.Gnanasekaran was shown in Serial No.9, Mr.V.Kumaresan was shown in Serial No.10, Mr.S.Sivaramkumar was shown in Serial No.11, Mr.J.Bharanidaran was shown in Serial No.12, Mr.P.Ramesh was shown in Serial No.14 and Mr.V.Ananth was shown in Serial No.13. Now after a lapse of three years, the first respondent has disturbed the merit list prepared by the Tamil Nadu Public Service Commission and issued another seniority list re-allotting the seniority rankings, namely, Mr.M.Karthik, who was ranked 5th in the merit list, has been pushed down to 9th rank; Mr.S.Mohanasundaram, who was ranked 6th in the merit list, has been pushed down to 11th rank; Mr.M.Kannadasan, who was ranked 8th in the merit list, has been pushed down to 10th rank, etc. In the guise of applying rule of reservation, the first respondent, by the impugned letter dated 8.4.2014, cannot re-fix the seniority on the basis of the communal roster and cannot alter the seniority of the petitioners, as per rule 35(a) of the Tamil Nadu State and Subordinate Service Rules, which is unsustainable in law.

3. Continuing his arguments, Mr.AR.L.Sundaresan submitted that when the selection of Assistant Commissioner was made by the second respondent in the year 2000, it was based on the marks obtained in the written and oral examinations. Based on the selection list prepared by the Tamil Nadu Public Service Commission in 2000, the seniority of the selected candidates was fixed and followed as on today. While so, the first respondent, by the impugned letter, has wrongly altered the seniority of the petitioners, contrary to the merit list prepared by the second

respondent. Therefore, the impugned order passed by the first respondent is liable to be set aside. Adding further, it was stated that when the communal reservation is applicable only to appointment and the same will have no say in the matters relating to fixation of seniority, as per rule 35(a) of the Tamil Nadu State and Subordinate Service Rules, the seniority should be reckoned only on the basis of the ranking list published by the Tamil Nadu Public Service Commission and not otherwise. It is for this reason, he pleaded, based on the marks obtained by the candidates in the examination, when the second respondent had furnished the list, any alteration of seniority on the basis of communal roster subsequently by the Government is clearly violative of Articles 14 & 16 of the Constitution of India. Hence the impugned order is liable to be set aside.

4. Again referring to rule 35(a) of the Tamil Nadu State and Subordinate Service Rules, the learned senior counsel submitted that this rule clearly indicates that it would apply only if and when the selection made was more than one method of recruitment. While so, when it is evident from the records that the selection and appointment to the post of Assistant Commissioner were made by way of direct recruitment based on the examination conducted by the Tamil Nadu Public Service Commission, the process of selection is not more than one method, which does not invite application of the proviso (a) of rule 35 of the Tamil Nadu State and Subordinate Service Rules, the misapplication of the said rule definitely invites interference from this Court with the impugned order. On this basis, the learned senior counsel submitted that the very fixation of seniority by the impugned letter issued by the first respondent is contrary to rule 35(a) of the Tamil Nadu State and Subordinate Service Rules and also against the binding precedents of the Hon'ble Supreme Court in *Bimlesh Tanwar v. State of Haryana*, AIR 2003 SC 2000 and in *Suresh Chandra Jha v. State of Bihar*, (2007) 1 SCC 405 as well by the Division Bench of this Court in *The Secretary to Government of Tamil Nadu v. Sriramachandran*, 1987 W.L.R. 222 and in *N.Santhosh Kumar and others v. Tamil Nadu Public Service Commission represented by its Secretary, Chennai and others*, (2015) 4 MLJ 281.

5. Again taking support from the Hon'ble Division Bench judgment in *N.Santhosh Kumar's case*, the learned senior counsel submitted that now the law has been settled that the proper way of implementing the seniority by the Tamil Nadu Public Service Commission is to (i) prepare a list of selectees in the order of merit and (ii) fit them against the 200 point roster in the Schedule III. Once such fitment is done and the process of appointment is over, with the selected candidates joining duty, then the roster will lose its significance and will have nothing to do with the determination of seniority, because the seniority will be decided only by the rank secured by the candidates. If this is done, the second limb of rule 35(a) of the Tamil Nadu

State and Subordinate Service Rules will also stand satisfied by this process, since the rule of reservation would have been observed, due to the fitment against roster.

6. The learned Additional Advocate General for the third respondent Hindu Religious and Charitable Endowment Department submitted that since the present writ petitions have been filed to fix the seniority in the cadre of Assistant Commissioner of Hindu Religious and Charitable Endowment Department based on the seniority number given by the Tamil Nadu Public Service Commission and the order of allotment made by the first respondent relates to the policy decision of the Government, a decision has to be taken in this regard, pursuant to sub-section (1) of Section 40 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, which shall be deemed to have come into force on 1.1.1955. Adding further, it is stated that when 25 posts of Assistant Commissioners in the Tamil Nadu Hindu Religious and Charitable Endowment Administration Services were identified, the same was intimated to the recruitment agency, the Tamil Nadu Public Service Commission herein to select the qualifying persons to fill up the said vacancies for the year 2005-06 and 2008-09. Although a notification was issued calling for applications to fill up all the 25 vacancies, however, in view of the pendency of the writ petitions on the file of the Principal Seat and the Madurai Bench, only 24 persons were selected and the list of candidates was furnished by the second respondent to the first respondent and the remaining one selected candidate was not notified, as the writ petitions were pending. The initial list of 24 candidates was shown on the basis of the ranking obtained by them in the selection process and the seniority also was not fixed at that time. Without doing so, the 24 selected candidates were appointed in the respective post vide G.O.Ms.No.150, Tamil Development, Religious Endowment and Information Department dated 7.7.2011. Only after the disposal of the pending writ petitions, the selection list was prepared by the Tamil Nadu Public Service Commission and the same was forwarded to the Government in the communication dated 27.2.2014. Now the seniority list has been published in the impugned order dated 8.4.2014 by the Tamil Nadu Public Service Commission. Since no seniority was fixed at the time of the initial selection, the impugned selection list published by the second respondent is neither concerned with the seniority nor could be construed as selection in accordance with the roster point. Therefore the writ petitions should fail, it is pleaded.

7. Ms.C.N.G.Niraimathi, learned standing counsel for the second respondent-Tamil Nadu Public Service Commission, reiterating the stand taken in the counter affidavit, submitted that after the selection to the post of Assistant Commissioner was over, the Tamil Nadu Public Service Commission, arranging the names of the selected candidates in the preferential order of turns and rotations fixed under the rules for making selection for appointment prescribed under Rule 22(c) of the

Tamil Nadu State and Subordinate Service Rules, has forwarded the same to the Government for approving the selected candidates. Mr.M.Karthick, the petitioner in W.P.No.14275 of 2015, who was assigned Serial No.5 in the order of appointment, has been fitted in 9th turn in the roster. Similarly, Mr.S.Mohanasundaram, the petitioner in W.P.No.14276 of 2015, shown in Serial No.6 in the appointment order has been fitted in 11th turn in the roster. Mr.M.Kannadasan, the petitioner in W.P.No.14277 of 2015 found in Serial No.8 in the order of appointment has been fitted in 10th turn in the roster. Mr.S.Gnanasekaran, the petitioner in W.P.No.14278 of 2015 shown in Serial No.9 in the order of appointment has been fitted in 14th turn in the roster. In the same way, Mr.V.Kumaresan, Mr.S.Sivaramkumar, Mr.J.Bharanidaran, Mr.P.Ramesh and Mr.V.Ananth and Mrs.M.Jothilakshmi, who were shown in Serial Nos.10,11,12,23,20 & 25, were fitted in 20th, 13th, 16th, 24th, 21st and 2nd turns. Since Section 40(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 speaks about the fixation of seniority of the persons on the basis of merit cum roster point by referring to the rule of reservation and the order of appointment, the impugned seniority list has been prepared. Therefore, no interference is called for, she pleaded.

8. Mr.R.Saseetharan, learned counsel for the seventh respondent in W.P.No.14275 of 2015 also submitted that the judgment of the Hon'ble Division Bench in Santhosh Kumar's case, cannot be applied in the present cases, in view of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, which came into force introducing Section 40(1), which clearly speaks about the fixation of seniority of the persons on the basis of the merit cum roster point.

9. Heard the learned counsel for the parties.

10. 25 posts of Assistant Commissioners in the Tamil Nadu Hindu Religious and Charitable Endowments, having been identified, was intimated to the Tamil Nadu Public Service Commission, which is the recruiting agency to select the qualified persons and thereupon to fill up the said vacancies for the years 2005-06 and 2008-09. Although initially a notification was issued calling for applications to fill up all the 25 vacancies, in view of the pendency of the writ petitions on the file of this Court, only 24 persons were selected and the list of selected candidates was furnished by the Commission to the Government. The remaining one selected candidate was not notified, as the writ petitions were pending before this Court at the relevant point of time. As the 25th post was not finalized due to the pendency of the writ petition, it was the case of the respondents that the seniority was not fixed and the 24 selected candidates were appointed in the respective posts, as per G.O.Ms.No.150, Tamil Development, Religious Endowments and Information Department dated 7.7.2011, without fixation of

seniority. Only after the disposal of the writ petition, the remaining one candidate selection list was prepared and thereupon considering all the 25 selected candidates, fitment of the selected candidates on the basis of roster has been made by the Commission and the same was forwarded to the first respondent Government in communication dated 27.2.2014. While doing so, it is their case that when Mr.M.Karthik, the petitioner in W.P.No.14275 of 2015 was shown at Serial No.5 in the order of appointment prepared by the Commission, as he belongs to MBC/DC category, he is fitted in 9th turn in the roster. Similarly, it was pleaded that Mr.S.Mohanasundaram, the petitioner in W.P.No.14276 of 2015, who was selected as 6th candidate in the order of appointment, has been fitted in 11th turn, as he belongs to MBC/DC category. In the same way, Mr.M.Kannadasan, the petitioner in W.P.No.14277 of 2015 selected in Serial No.8 in the order of appointment has been fitted in the 10th turn, as he belongs to BC(OBCM) category in the roster. Mr.S.Gnanasekaran, the petitioner in W.P.No.14278 of 2015 selected and shown in Serial No.9 in the order of appointment has been fitted in 14th turn, as he belongs to BC(OBCM) category. Likewise Mr.V.Kumaresan, Mr.S.Sivaramkumar, Mr.J.Baranidharan, Mr.P.Ramesh, Mr.V.Ananth, the petitioners in W.P.Nos.14279 to 14283 of 2015 and Mrs.M.Jothilakshmi, the seventh respondent in W.P.No.14275 of 2015 were shown in Serial Nos.10,11,12,14,20 and 25 have been fitted in 20th, 13th, 16th, 24th, 21st and 2nd turns. The most striking fact is that Mrs.M.Jothilakshmi, who was shown in order of appointment at Serial No.25, has been brought to the top of the seniority list at No.2. One Mr.V.Kumaresan, who was shown in Serial No.10 in the order of appointment has been pushed down to 20th turn in the guise of fitment in the roster.

11. The justification given before me shows that in view of the pendency of the writ petitions, after selecting 25 candidates, G.O.Ms.No.150, Tamil Development, Religious Endowment and Information Department dated 7.7.2011 was issued notifying the 24 selected candidates, who were appointed in the respective posts. Only after the disposal of the writ petitions, the remaining one candidate's selection list was also prepared and now considering all the 25 selected candidates, the fitment of the candidates in the communal roster has been made and the selection list has been prepared by the Commission and the same was forwarded by the first respondent. Secondly, following the communication of the Commission, the seniority list has been published on 8.4.2014 applying the rule of reservation and roster point. But the Division Bench of this Court in N.Santhosh Kumar and others case (2015) 4 MLJ 281, has held as follows:-

"81. If we understand the above mechanism, it will be clear that the interpretation sought to be given to the second limb of Rule 35(a) by the learned senior counsel for the contesting respondents is wholly misconceived. Rule 35(a) does not, to say the least, mandate

that the 200 point roster would be determinative of the seniority of the selectees. It is merely determinative of the percentage of reservation. The second limb of rule 35(a) merely dictates that while according seniority on the basis of merit, the appointing authority is to ensure that the percentage of reservation was not sacrificed. Therefore, the proper way of interpreting and implementing rule 35(a) for the Service Commission is to (i) prepare a list of selectees in the order of merit and (ii) fit them against the 200 point roster in the Schedule III. Once such fitment is done and the process of appointment is over, with the selected candidates joining duty, the roster will lose its significance and will have nothing to do with the determination of seniority. Seniority will then be decided only by the rank secured by the candidates. The second limb of rule 35(a) will also stand satisfied by this process since the rule of reservation would have been observed, due to the fitment against roster. Therefore, the second contention of the respondents as though rule 35(a) mandates the roster to be the seniority is only a myth." (emphasis supplied)

This judgment also has been confirmed by the Supreme Court, hence, it is binding on the official respondents. However, it is also an admitted fact that the Commission has also filed review petitions in R.P.(C)Nos.3531-3535 of 2016 and the same have been posted for open Court hearing, but not till date listed. However, after the aforementioned Division Bench judgment, the Government of Tamil Nadu have passed the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. As per sub-section (1) of Section 40 of the said Act, the seniority of a person in a service, class, category or grade shall be determined in the order of his placement in the list prepared by the recruitment agency or appointment agency in accordance with the rule of reservation and the order of reservation in Schedule V, where it applies. Therefore, the fixation of seniority of a person on the basis of merit cum roster point has to be upheld, since the judgment of the Division Bench has been removed by Section 40 (1). It is also submitted that two writ petitions have been filed challenging the validity of Section 40(1), which are pending before the Hon'ble Division Bench for consideration.

12. In view of the above, when all the petitioners were appointed to the post of Assistant Commissioner in Hindu Religious and Endowment Department as per the merit list prepared by the Commission, on the ground that the respondents

have tampered with the seniority list according to the communal roster, the writ petitions were filed. Obviously Mr.M.Karthik who was selected and shown at Serial No.5 in the order of appointment as Assistant Commissioner, after some time, while preparing the seniority list, has been fitted in 9th turn in the roster. Similarly, Mr.S.Mohanasundaram who was shown in Serial No.6 has been fitted in 11th turn. Mr.V.Kumaresan who was shown in Serial No.10 has been fitted in 20th turn and Mrs.M.Jothilakshmi who was shown at Serial No.25 in the order of appointment has been fitted in 2nd turn in the roster. Since the judgment of the Hon'ble Division Bench of this Court in Santhosh Kumar and others case (supra) holding that the appropriate way of interpreting and implementing rule 35(a) for the Service Commission is to (i) prepare a list of selectees in the order of merit and (ii) fit them against the 200 point roster as per Schedule III and once such fitment is done and the process of appointment is over, with the selected candidates joining duty, the roster will lose its significance and will have nothing to do with the determination of seniority, has been confirmed by the Supreme Court by judgment dated 6.5.2016 in Civil Appeal Nos.4954 of 2016 etc., the ranking given by the Tamil Nadu Public Service Commission at the time of appointment, applying the rule of reservation and roster point, is in order, as per the Division Bench order, for, the initial appointment with rule of reservation and roster point are inseparable twins.

13. Turning to Mr.AR.L.Sundaresan, learned senior counsel, who strenuously asserted that it will be a painful reality for a meritorious person after getting highest rank i.e., placed in 2nd rank by the Tamil Nadu Public Service Commission, to go down to the 25th place, giving way for the 25th rank holder in the merit list to climb the ladder in the name of applying the roster. This is the law of reservation, for, once the merit list is prepared by the Tamil Nadu Public Service Commission after identifying the number of posts earmarked for various categories under the horizontal and vertical reservations, after applying the rule of reservation, the same cannot be disturbed in the guise of applying the roster, which will have no further role to play.

14. Besides, this issue has been considered by the Apex Court in R.K.Sabharwal v. State of Punjab, (1995) 2 SCC 745. Following the same, a learned single Judge of our High Court in K.R.Shanthi v. The Secretary to Government, Education Department and another, 2012 (5) LLN 367 (Mad.) has also explained further how the rule of reservation and roster are to be followed.

15. In Indra Sawhney v. Union of India, 1992 Supp. (3) SCC 217, the majority held that the overall reservation should not exceed 50% and the said 50% rule should be applied to each other, otherwise it may happen that the competition channel getting choked for some years and in the meanwhile, the general category candidates may become overaged and thereby become ineligible.

16. The Supreme Court in R.K.Sabharwal's case, (1995) 2 SCC 745, which was a case mainly on promotion and the issue regarding the operation of roster system, has stated that the entire cadre strength should be taken into account to determine whether reservation upto the limit had been reached. At the risk of repetition, I may mention that Indra Sawhney's case rules that the reservation should not exceed 50%, whereas the Supreme Court in R.K.Sabharwal's case has held that the reservation applied only to initial appointments and this view was confirmed by the subsequent Constitution Bench of the Supreme Court in M.Nagaraj v. Union of India, (2006) 8 SCC 212.

17. Under this background, while examining the aforementioned cases, the learned single Judge of this Court in K.R.Shanthi's case, 2012 (5) LLN 367 (Mad.), dealing with an identical case that selection has not been done strictly adhering to the rule of reservation, has held as follows:-

"13. Indra Sawhney v. Union of India, 1992 Supp.(3) SCC 217; and R.K.Sabharwal v. State of Punjab, 1995 (2) SCC 745, came to be followed subsequently in Union of India Vs. Virpal Singh Chauhan, (1995) 6 SCC 684 and in Ritesh R.Sah Vs. Dr.Y.L.Yamul, (1996) 3 SCC 253. Eventually, a Bench of Coram of Three Hon'ble Judges in Rajesh Kumar Daria Vs. Rajasthan Public Service Commission, (2007) 8 SCC 785, considered the same issue, wherein, the judgments in Indra Sawhney case, R.K.Sabharwal case, Virpal Singh Chauhan case, Rajesh R.Sah case and Anil Kumar Gupta v. State of U.P., 1995 (5) SCC 173, have been extensively quoted. This judgment is a class by itself which clearly makes a demonstration as to how selection has to be made as against the open quota and the reserved quota for various reserved classes by applying the vertical reservation and special reservation for women, physically handicapped etc., by following horizontal reservation.

14. A perusal of the above judgments would keep at least two things beyond any pale of doubt. Firstly, the roster is not vacancy based, but the same is only post based. It identifies the number of posts earmarked for various categories under the vertical reservations and posts left behind for open quota as well as special reservations. Secondly, after so identifying the posts, it should be calculated as to how many vacancies are to be filled up under various categories in the current selection. If once the number

of vacancies earmarked for each category in the current selection is identified by using the Roster, thereafter the Roster will have no further role to play in the matter of selection. After identifying the number of vacancies earmarked for various categories, the selection for each category has to be made purely based on merit following the method detailed below:

First Step:

(i) As against the number of vacancies identified for open quota, irrespective of caste, sex, physically challenged, etc., everyone should be allowed to compete based on merits.

(ii) The meritorious candidates should be first selected as against the above vacancies under open quota.

Second Step:

(iii) After completing the first step, moving on to the vertical reservation categories, selection has to be made for each category from amongst the remaining candidates belonging to the particular reserved category (vertical) based on merits.

Third Step:

(iv) After completing the second step, horizontal reservation which cuts across the vertical reservation has to be verified as to whether the required number of candidates who are otherwise entitled to be appointed under the horizontal reservation have been selected under the vertical reservation.

(v) On such verification, if it is found that sufficient number of candidates to satisfy the special reservation (horizontal reservation) have not been selected, then required corresponding number of special reservation candidates shall have to be taken and adjusted/accommodated as against social reservation categories by deleting the corresponding number of candidates therefrom.

(vi) Even while filling up the vacancies in the vertical reservation, if, sufficient number of candidates falling under the

horizontal reservation have been appointed, then, there will be no more appointment exclusively under the horizontal reservation.

Caution:

(vii) At any rate, the candidates who were selected as against a post under open quota shall not be adjusted against the reserved quota under vertical reservations."

18.1. The aforesaid cases clearly show that the crux of the issue as to how the rule of reservation and roster point to be applied has been settled by this Court as well as the Apex Court as mentioned in Indra Sawhney, R.K.Sabharwal and M.Nagaraj cases.

18.2. Firstly, the roster is not vacancy based but the same is only post based, because it identifies the number of posts earmarked for various categories in the vertical reservation and the post left behind for open quota as well as special reservations.

18.3. Secondly, it should be calculated as to how many vacancies are to be filled up under various categories in the current selection, making it clear that if once the number of vacancies earmarked for each category in the current selection is identified by using the roster, thereafter the roster will have no further role to play in the matter of selection.

18.4. Thirdly, as highlighted above, the impugned order clearly shows that after preparing the list of selectees in the order of merit by the Tamil Nadu Public Service Commission, applying the rule of reservation, fitted them against the 200 point roster in the Schedule III for the first time and thereafter the roster will lose its significance. This is in tune with the ratio laid down by the Hon'ble Division Bench of this Court in N.Santhosh Kumar and others case (supra) holding in paragraph-81 that the proper way of interpreting and implementing rule 35(a) for the Service Commission is to (i) prepare a list of selectees in the order of merit and (ii) fit them against the 200 point roster in the Schedule III. Once such fitment is done and the process of appointment is over, with the selected candidates joining duty, the roster will lose its significance and will have nothing to do with the determination of seniority.

18.5. Fourthly, the Tamil Nadu Government has brought in the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 with retrospective effect from 1.1.1955. As per sub-section (1) of Section 40, which is given as under,

"40(1) The seniority of a person in a service, class, category or grade shall, unless he has been reduced to a lower rank as a punishment, be determined in the order of his placement in the list prepared by the recruitment agency or appointing authority, as the case may be, in accordance with the rule of reservation and the order of rotation specified in Schedule-V, where

it applies. The date of commencement of his probation shall be the date on which he joins duty irrespective of his seniority.",
the seniority of a person in a service shall be determined in the order of his/her placement in the list prepared by the appointment authority or recruitment agency, as the case may be, in accordance with the rule of reservation and the order of rotation specified in Schedule-V, where it applies. In the light of the above provision, in the cases on hand, when the Tamil Nadu Public Service Commission has prepared the selection list based on merit and the marks obtained by the candidates, it has to place the candidates on the basis of merit applying the rule of reservation and the roster point. In the cases on hand, the learned standing counsel for the Tamil Nadu Public Service Commission stated that after the selection of the eligible candidates through direct recruitment, for the first time, the roster point has been applied. Therefore, this Court is unable to find any infirmity with the impugned order.

19. For all the aforementioned reasons, the writ petitions fail and they are dismissed. Consequently, M.P.Nos.1 & 2 of 2015 and W.M.P.Nos.30920 to 30926 of 2016 are also dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

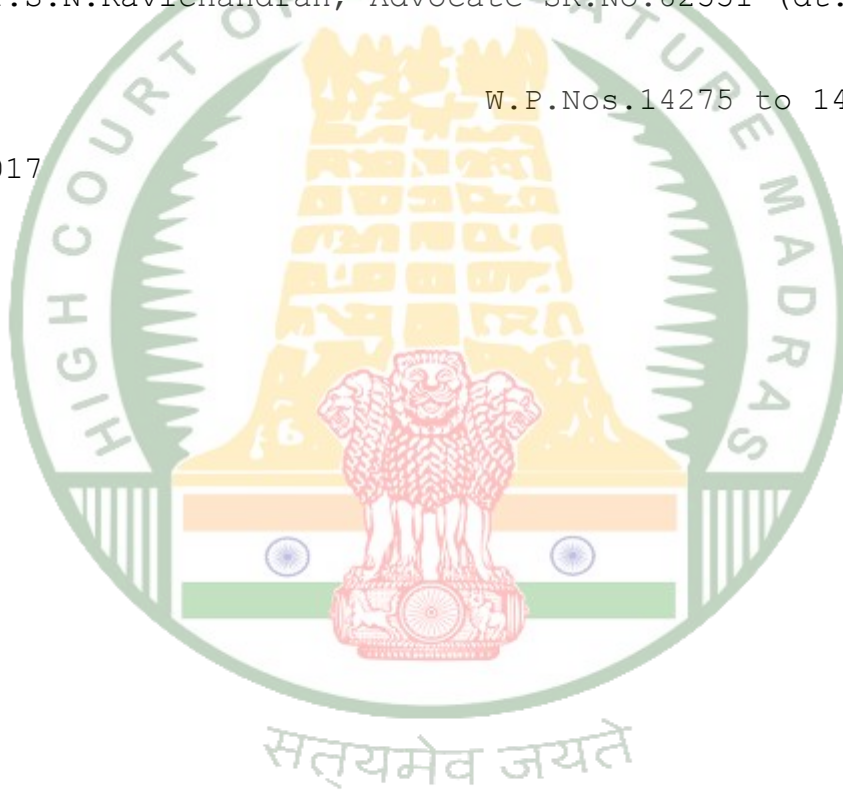
1. The Secretary to Government
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2. The Secretary
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+1cc to Mr.S.N.Ravichandran, Advocate SR.No.82551
+1cc to Mr.B.Sivaran, Advocate SR.No.82500
+1cc to Mr.R.Thiagarajan, Advocate SR.No.82200
+8cc to Mr.S.N.Ravichandran, Advocate SR.No.82551 (dt.8.12.2017)

W.P.Nos.14275 to 14283 of 2015

RV(CO)
sm:4.12.2017



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