

ORDER RESERVED ON :11.12.2016
ORDER DELIVERED ON:.13.09.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2017

CORAM :

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.14327 of 2010 and
WMP.Nos.25627, 25628, 22835/2016

1. V.Selvanathan
2. J.Devaraju
3. K.G.Sathyaprakash
4. S.P.Bethelraj
5. P.Marimuthurajan .. Petitioners

Vs.

1.The Government of Tamilnadu,
Rep. by its Secretary,
Highways Department,
Fort St.George, Chennai-600 002.
2. The Chief Engineer (General),
Highways Department,
Chepauk, Chennai-600 005.
3. The Tamilnadu Public Service Commission,
Rep. by its Secretary,
Government Estate. Chennai-2.

4. R.Gothandaraman

5. B.R.Kumar

6. M.K.Selvan

7. A.Sumathi

8. R.Soundarapandian

9. A.Kaliaperumal

10. N.Shanthi

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11. N.Balamurugan

12. R.Geetha

13. M.Vijaya

14.R.Chandrasekaran

15.M.Alaguraj

16.C.Krishnamurthy

17. M.Murugesan

18. S.Ramakrishnan

19. S.Satish

20. T.Ilango

21. R.Selva Durai

22. S.Jawahar Muthuraj

23. V.Krishnaswamy

24.P.Tamizharasi

25. R.Arulmozhi

26. S.Usha Devi

27.J.Kannan

28. N.Poovanandam

29.Mekala Ponmalar

30. G.Manuneedhi

31.S.Suresh

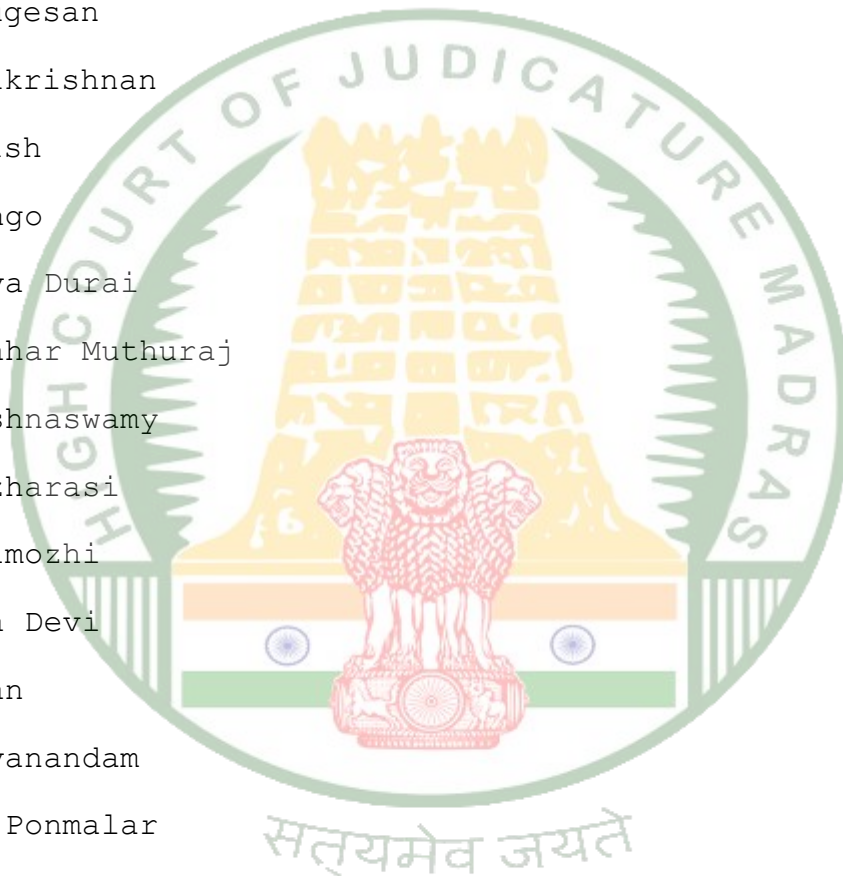
32.R.Vimala

33.P.Valarmathi

34. D.Jabaselvin Gladson

35. M.Paneerselvam

36. S.Palani



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37. S.Palanivel

38. K.Premalatha

39. V.Sreenivasa Raghavan

40. K.Sekar ... Respondents
(R-19 to R-40 are impleaded as per Order dated
11/08/2016 in WMP.Nos.23480/16 and 24029/2016)

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus, calling for the records pertaining to the impugned seniority list of Assistant Divisional Engineers as on 1.4.2008 and on 1.04.2004 published by 2nd respondent respectively in Special Memo No.13501/Nir.1(2)/2008-3 dated 12.11.2008 and in Special Memo No.Nirvagam 1(3)/197876/2004-1, dated 29.04.04 and the seniority list of Assistant Engineers as on 01.01.2004 and on 01.01.1993 published by 2nd respondent respectively in his Memo No.22369 Nir 3(4)/2004 dated 15.06.2004 and Memo No.960/N4-91 dated 18.04.1994 and quash the same and consequently direct the respondents to issue revised seniority lists of Assistant Engineers and Assistant Divisional Engineers and accordingly to pass all consequential orders including reversion of promotion of respondents 4 to 18 as Assistant Divisional Engineers.

For Petitioner : Mr.N.Subramaniyan
For R1 & R2 : Mr.S.T.S. Moorthy AAG V assisted
by Mr.S.Gunasekaran AGP
For R3 : Ms.C.N.G. Niraimathi
For R4 to R18 : Mr.M.Venkatachalapathy senior
counsel assisted by
Mr.G.Elanchezhiyan
For R19 to R39 : Mr.R.Thiagarajan SC for
Mr. M.Muthappan
For R40 : Mr.P.Wilson SC for
Mrs.Seethalakshmi

ORDER

In this writ petition, though merely the impugned seniority lists are under challenge, the issue raised in this writ petition has a history of atleast quarter century and hence, the factual matrix as has been averred in the affidavit filed in support of the writ petition on behalf of the writ petitioners are culled out and given in nutshell as follows:

(i) The writ petitioners were eligible to be appointed as Assistant Engineers in the Highways Department in the year 1989-90. Based on the request made by the State Government, the Tamil Nadu Public Service Commission (hereinafter referred to as, 'Service Commission') has conducted a competitive examination. These writ petitioners, since had qualified to become Assistant Engineers, had applied and participated in the said competitive examination, and through which, they had been selected and appointed.

(ii) In this regard, the further facts leading to the said recruitment is that a notification was issued on 12.09.1989 by the Service Commission to fill up 60 vacancies for selecting candidates for appointment to the post of Assistant Engineers in the Highways Department for the year 1989-90.

(iii) These writ petitioners after having passed through three stages of the competitive examination became successful and accordingly, these petitioners were selected to the post of Assistant Engineers, by the Service Commission, and based on such selection, these petitioners had been appointed. Pursuant to the said appointment, they joined services from 12.8.1991 onwards.

(iv) Thereafter, these petitioners on the basis of seniority had been promoted as Assistant Divisional Engineers during January 2004. The second respondent has published a provisional seniority list of Assistant Divisional Engineers as on 01.04.2004 vide his proceedings dated 29.4.2004.

(v) Here it is pertinent to state that the private respondents 4 to 18 of this writ petition, had been selected to the post of Assistant Engineers to be appointed in Public Works Department, of course, after going through the competitive examination and selection process conducted by the Service Commission for appointment as Assistant Engineers in the Public Works Department in the year 1985-86. Though these private respondents 4 to 18 had been selected by Service Commission to be appointed as Assistant Engineers in the Public Works Department, for want of vacancies, the Government could not give postings immediately to those respondents, and therefore, after a decision said to have been taken by the Government, after getting necessary concurrence from the Service Commission, all these private respondents from 4 to 18 had been appointed as Assistant Engineers in the Highways Department by order dated 6.9.1989 and infact, the said private respondents had joined in service as Assistant Engineers from 15.9.1989 to 10.8.1990.

(vi) It is also to be noted that since these private respondents though had been selected to the post of Assistant Engineers in the Public Works Department through the competitive

examination conducted by the Service Commission, as stated supra, they have been appointed by the second respondent after due decision taken by the Government with a concurrence of the Service Commission as Assistant Engineers at Highways Department by order dated 06.09.1989. Accordingly, they all joined in service.

(vii) It is further to be noted, therefore, these private respondents 4 to 18 claimed to be seniors merely because they entered into service between 9/89 to 8/90 whereas the writ petitioners had entered into service only on 22.01.1992, 14.08.1991, 28.8.1991, 13.11.1991 and 30.6.1993 respectively. Thus, before these writ petitioners came into services, the said private respondents 4 to 18 had entered into services. On that basis seniority had been fixed between these two set of incumbents and accordingly, the second respondent published the seniority list of Assistant Divisional Engineers as on 01.04.2004 dated 29.4.2004 where these writ petitioners were placed at serial No. 467 onwards whereas the respondents 4 to 18 were placed in between the serial Nos. from 450 to 463. In short, the private respondents 4 to 18 have been placed above the writ petitioners in the said seniority list.

(viii) According to the petitioners, inspite of the fixation of the said seniority between the petitioners and the private respondents 4 to 18, the petitioners did not feel aggrieved as the respondents 4 to 18 were enlisted as seniors to the petitioners in the seniority list of Assistant Engineers as on 01.01.1993 published by the second respondent vide his proceedings dated 18.9.1994 where these private respondents 4 to 18 had been shown as, "redesignated Assistant Engineers of the year 1988".

(ix) Thereafter, by proceedings dated 15.6.2004, the second respondent published a provisional seniority list of the Assistant Engineers as on 01.01.2004 wherein the petitioners and other like Assistant Engineers were listed at serial number starting from 115 and the respondents 4 to 18 are listed at serial numbers from 79 to 94. However, in the said list, the respondents 4 to 18 had been shown under the heading, "PWD Selected Assistant Engineers, TNPSC".

(x) Therefore, in this context, the petitioners since had come to know that these respondents 4 to 18 were originally shown at the enlistment at serial Nos.1543 to 1582 under the heading, "Redesignated Assistant Engineers of the year 1988" instead of "PWD selected Assistant Engineers TNPSC". Only thereafter, according to the petitioners, as claimed by them in their affidavit, they started enquiring about the appointments of respondents 4 to 18. Thereafter, they came to know that the respondents 4 to 18 were selected by the Service Commission by

direct recruitment for appointment to the post of Assistant Engineers in Tamilnadu Engineering Service of Tamilnadu Public Works Department for the year 1985-86 and the said list of selection was published in the year 1986. It was further revealed that as a number of Assistant Engineers were selected in excess of the vacancies which were actually available in the Public Works Department, these respondents 4 to 18 could not be accommodated in Public Works Department. Therefore, after a lapse of one year, as the selection list would be valid for a period of one year and after having come to know the fact that further notification for selection to the post of Assistant Engineers in Highways Department for the year 1989-90 dated 12.09.1989 were to be issued, these private respondents 4 to 18, as alleged by the petitioners in the affidavit, had influenced the State Government and the second respondent and got a temporary appointment under Rule 10(a)(i) of the Tamilnadu State and Subordinate Service Rules (hereinafter referred to as, 'State Rules').

(xi) Therefore, according to the petitioners, since the respondents 4 to 18 had not been selected along with the petitioners for the recruitment to the post of Assistant Engineers in Highways Department through a competitive examination conducted by the Service Commission for the year 1989-90, pursuant to the notification issued by the Service Commission dated 12.09.1989, their appointment to the post of Assistant Engineers in the Highways Department, merely because their names were found available in the list of selected candidates of the Service Commission for the earlier year recruitment that too for PWD Department, is nothing but a back door entry into service as they have not been selected by the Service Commission through a competitive examination meant for selection and appointment to the post of Assistant Engineers, Highways Department.

(xii) The further case of the petitioners is that the seniority list of Assistant Engineers as on 01.01.2004 published on 15.6.2004 and that of the Assistant Divisional Engineers as on 01.04.2004 published on 29.4.2004 were provisional seniority list and therefore, based on which those aggrieved were permitted to make their representations with regard to the grievances of fixation of seniority.

(xiii) Feeling aggrieved over the placement of respondents 4 to 18 above the writ petitioners, some of the petitioners and other similarly placed Assistant Engineers had sent representation to the second respondent to rectify the anomaly in both the lists and requested the second respondent to fix the seniority of respondents 4 to 18 below the petitioners in both category. i.e., Assistant Engineers and the Assistant Divisional Engineers as well.

(xiv) It is the further case of the petitioners that they were able to collect the afore referred details only during October 2004 ie., after the publication of the seniority list of Assistant Engineers as on 01.01.2004 on 15.6.2004. Only thereafter, they made representation to the official respondents and waited for their action for sometime. Thereafter, since the official respondents had published the seniority list of Divisional Engineers as on 01.04.2008 without considering the objection and without releasing the final list as on 01.04.2004, the petitioners with the other like Assistant Engineers had sent a representation on 27.2.2010 to the first respondent through the second respondent and even for the said representation, no immediate action was taken by the official respondents.

(xv) Therefore, aggrieved by the inaction or an arbitrary action as alleged by the petitioners in their affidavit, they having found that no other alternative remedy, have come out with the present writ petition, whereby, they challenge both the seniority lists i.e., the seniority list of Assistant Divisional Engineers as on 01.04.2008 and 01.04.2004 published by the second respondent in his proceedings dated 12.11.2008 and 29.4.2004 and also the seniority list of Assistant Engineers as on 01.01.2004 and 01.01.1993 published by the second respondent vide their memo dated 15.6.2004 and 18.4.1994 respectively and consequently, seek for the relief of placing the petitioners in correct position at the seniority list and also other consequential prayer of promotion and other service benefits.

2. Opposing the averments contained in the affidavit of the petitioners and the case projected by them, the Additional Secretary to Government, Highways Department has filed a counter affidavit on behalf of the first and second respondents.

3. The following have been given in the said counter affidavit which are given in short:

(i) The writ petitioners were appointed as Assistant Engineers in the Highways Department after they were duly selected by the Service Commission for the year 1989-90. Accordingly, they joined in service during the period between 8/1991 and 1/1992. Subsequently, they have been promoted as Assistant Divisional Engineers when their due of promotion came. It is further averred in the counter of the official respondents that, the 4th to 18th respondents herein were initially selected by the Service Commission to the post of Assistant Engineers, Public Works Department for the year 1985-86. However, they could not be appointed as such in the Public Works Department for a long time, for want of vacancies, and the Chief Engineer, Public Works Department, since had felt that there was no possibility that vacancies in the post of Assistant Engineers in Public Works Department would arise in the near future, he had

requested the Government to take a decision to accommodate these selectees for the Public Works Department at the Highways Department.

(ii) The counter would further state that the Government therefore, after getting concurrence from the Service Commission had reallocated 4th to 18th respondents to the Highways Department and accordingly, they were appointed as Assistant Engineers in Highways Department and these respondents had joined in service as Assistant Engineers during the period between 9/1989 and 8/1990.

(iii) Since the private respondents 4 to 18 had been originally selected by the Service Commission to the post of Assistant Engineers PWD for the year 1985-86, they had been given postings at Highways Department where, they have joined in service between 9/1989 and 8/1990 and after reallocation by the Service Commission, these private respondents were assigned seniority above the petitioners as the writ petitioners have been selected in 1989-90 and joined as Assistant Engineers between 8/1991 and 01/1992.

(iv) The counter of the official respondents would further state that though these private respondents 4 to 18 had been selected by the Service Commission, after proper competitive examination to the post of Assistant Engineers, Public Works Department, they could not be accommodated in the said Department for want of adequate vacancies, therefore, the possibility of reallocating them to any other department was considered by the Government and accordingly, they were reallocated to the Highways Department after obtaining concurrence from the Service Commission. Only based on such reallocation the respondents 4 to 18 have been appointed as Assistant Engineers in Highways Department and accordingly, they joined between 09/1989 and 8/1990. It is also averred in the said counter by respondents 1 and 2 that, these private respondents 4 to 18 also had appeared for the competitive examination conducted by the Service Commission for the post of Assistant Engineers, Public Works Department and they got selected by following the rule of reservation but only reallocated to Highways Department for want of vacancies in the Public Works Department.

(v) It is further stated in the said counter affidavit that, while preparing the seniority list of Assistant Engineers as on 01.01.1993, the names of respondents 4 to 18 were inadvertently printed under the caption, "Redesignated Assistant Engineers", but without any change in their reallocation assigned to them. It is further averred in the counter affidavit that the said error was rectified by publishing the next seniority list as on 01.01.2004 and the names of 4th to 18th respondents were

correctly brought under the category of "Public Works Department selected Assistant Engineers, Tamil Nadu Public Service Commission". It is also averred in the said counter that, the services of the respondents 4 to 18 have also been regularised in the post of Assistant Engineers. By stating all these averments in the counter affidavit, the official respondents have therefore, stated that appointment made to the respondents 4 to 18 had become final as their services had been regularised and no one had challenged the said appointment and therefore, the present challenge made by the petitioners, only with regard to the seniority list published at the level of Assistant Engineers as well as Assistant Divisional Engineers between the writ petitioners and the respondents 4 to 18, cannot stand.

(vi) The counter would also proceed to say that the petitioners since have not approached this Court to challenge the said appointment, the present challenge is nothing but an attempt to unsettle the settled matter therefore, the present challenge is belated and it cannot be considered. By giving all these averments, the official respondents have stated that appointment by way of reallotment to the Highways Department to the respondents 4 to 18 and subsequent regularisation of their service as well as the consequential fixation of seniority are all not only justifiable, but also sustainable and therefore, the same need not be assailed at this stage that too by way of making a challenge only in the consequential seniority list.

(vii) During the pendency of the writ petition, some of the similarly placed Engineers, who had been selected and appointed along with the writ petitioners had filed an impleading petition in WMP.Nos.23480/16 and 24029/2016 on the ground that they have also aggrieved against the issuance of the impugned seniority list where respondents 4 to 18 had been placed not only above the writ petitioners, but also above these impleading parties and therefore, their grievances also to be heard in the writ petition.

(viii) The said petitions to implead them were allowed by this Court by order dated 11.8.2016. Accordingly, respondents 19 to 40 were impleaded as party respondents in this writ petition.

(ix) These respondents i.e., R19 to R40 since are similarly placed as that of the writ petitioners, in all respects, they support the case of the writ petitioners and similar averments as that of the writ petitioners have been made by these respondents 19 to 40 in the affidavit filed in support of their impleading petition.

4. Arguments:

Mr.N.Subramanian, the learned counsel for the writ petitioners has made the following submissions:

(i) The respondents 4 to 18 had not been selected pursuant to the competitive examination conducted for selection and

appointment to the post of Assistant Engineers, Highways Department.

(ii) Since the said private respondents 4 to 18 were not selected for Assistant Engineer post of Highways Department and they had been selected only for the post of Assistant Engineer, Public Works Department for the year 1985-86 and the said selection list would have lapsed on expiry of one year from the date of publication of selected list by Service Commission, subsequently, those selectees and their names found in the selection list after the lapse of the list after one year could not have been revived. Therefore, the decision said to have been taken by the official respondents to reallocate them, for want of vacancies, to the Highways Department is an unjustifiable and unlawful decision. Therefore, based on such decision, the respondents 4 to 18 should not have been appointed as Assistant Engineers, Highways Department. Assuming that the decision had been taken by the official respondents at Government level, there is no proof to show that such a decision had been taken by the Government by way of a policy decision as there is no record to show that such a policy decision had been taken after getting concurrence from the concerned Minister in the cabinet and in the absence of such policy decision taken by the Government headed by the Minister concerned, as has been contemplated under the business Rule of the State Government framed under Article 166 of the Constitution of India, the very appointment of respondents 4 to 18 itself is unlawful and therefore, based on which they cannot claim any right including seniority and other service benefits.

(iii) In view of the declaration made by the official respondents in the list of seniority published originally, where it was shown that these private respondents 4 to 18 were 'Redesignated Assistant Engineers', these writ petitioners, even though had the knowledge about the said seniority list, where these respondents 4 to 18 had been placed above the writ petitioners, the same was not challenged. However, in the subsequent seniority list, since it has been specifically stated that these respondents 4 to 18 were brought under 'Public Works Department selected Assistant Engineers of Tamil Nadu Public Service Commission', then only the petitioners started probing the issue and only thereafter, they came to know that these respondents 4 to 18 had been wrongly included in the seniority list as they have never been selected for the post of Assistant Engineers, Highways Department. Therefore, it cannot be said that the petitioners have belatedly challenged the impugned seniority list by approaching this Court.

(iv) The learned counsel for the petitioners would also submit that even though there is a limitation under Section 35 (f) of the State Rules that the seniority if any, shall be questioned within the period of three years from the date of

appointment or date of publication of seniority list, the said limitation would not be applicable to the present case, as purposely, the official respondents in the seniority list issued earlier, had stated that these respondents 4 to 18 had been redesignated as Assistant Engineers. If had been shown in the very first seniority list itself that, these respondents 4 to 18 had been brought under 'Public Works Department selected Assistant Engineers under Tamil Nadu Public Service Commission', certainly, the challenge would have been made immediately. Therefore, neither 35(f) nor any other service Rule would take away the right of the petitioners to challenge the impugned seniority list, in order to rectify the anomaly, which is a creation of the official respondents alone.

(v) In support of his submissions, the learned counsel appearing for the petitioners would rely upon the following decisions:

- (i) State of Karnataka Vs. Uma Devi [(2006) 4 SCC 1]
- (ii) Bhupendranath Hazarika and another Vs. State of Assam and others [2013(2) SCC 516]
- (iii) A.V. Pappayya Sastry and others Vs. Govt. of A.P and others [2007(4) SCC 221]
- (iv) N.Santhosh Kumar and others Vs. Tamil Nadu Public Service Commission and others [2015(4) MLJ 281]

5. Per contra, Mr.S.T.S.Moorthy, the learned Additional Advocate General assisted by Mr.S.Gunasekaran, learned Additional Government Pleader appearing for the official respondents/ State Government has made the following submissions:

(i) The notification for recruitment to the post of Assistant Engineers, Public Works Department was issued by the Service Commission in the year 1986. Pursuant to the said notification, the Service Commission completed selection and sent a list of candidates to be appointed as Assistant Engineers, Public Works Department. Though more than 300 candidates had been accommodated and appointments were given to the post of Assistant Engineers, Public Works Department, some of them including the respondents 4 to 18 could not be appointed for the reason of want of vacancies. Therefore, those who had not been able to be accommodated were waiting for sometime to get postings, but since, no vacancy was readily available to accommodate them, a decision was taken to reallocate those candidates to some other departments, which are similarly placed and accordingly, it was decided to allot those candidates including the respondents 4 to 18 to Highways Department. Once the decision was taken by the Government, the willingness of individual candidates, to go over to the Highways Department, had been called for. Out of 30 candidates, only 17 candidates had given their willingness for re-allotment to Highways and Rural Works Department. Out of the 17 candidates, the 15

candidates, who are the respondents 4 to 18 had been referred to the Service Commission for their consent.

(ii) The learned Additional Advocate General would further submit that, the Service Commission also on considering the said request of the Government, had accorded its concurrence under the later part of Regulation 16 (b) of the Tamil Nadu Public Service Commission Regulations, 1954, for regular absorption of the said 15 candidates in the order of seniority mentioned in their letter dated 22.7.1989.

(iii) The learned Additional Advocate General would further submit that, on getting such a concurrence from Service Commission, the Government through letter dated 01.08.1989 had directed the Chief Engineer, Public Works Department to send the complete details of the 15 candidates to the Secretary to the Government, Transport Department for further action.

(iv) Pursuant to the said request, the Chief Engineer, Public Works Department had sent complete details of the 15 candidates by letter dated 08.08.1989 to the Government. On getting those details, the Government had forwarded a letter, dated 11.8.1989 to the second respondent with a request to take further necessary action to give appointment orders to those 15 candidates, as Assistant Engineers at Highways Department.

(v) The learned Additional Advocate General would further add that, pursuant to the said decisions and communications the second respondent by order dated 06.09.1989 had given appointments to the 15 candidates i.e., respondents 4 to 18. Accordingly, respondents 4 to 18 had joined in service as Assistant Engineers of Highways Department between 8/91 and 1/92. After they joined in service, the second respondent by letter dated 14.5.1990, in accordance with Rule 23(a) of the General Rules of the Tamil Nadu Highways Engineering Subordinate Services, had declared that the probation of the said candidates as category-I Assistant Engineers of the Tamil Nadu Highways Engineering Subordinate Services have commenced. Subsequently, these private respondents 4 to 18 have completed successfully, their probation and accordingly, their appointment had got regularised.

(vi) The learned Additional Advocate General would also submit that though these private respondents 4 to 18 had been selected to the post of Assistant Engineer in Public Works Department, for want of vacancies, the same could not be materialized as even though more than 300 candidates had been appointed, some of the candidates like these respondents 4 to 18 could not be accommodated and appointed as Assistant Engineers, Public Works Department for want of vacancies. Therefore, the said situation was discussed between the Head of the Department

and the Secretary to Government. In this regard, the learned Additional Advocate General has relied upon the letter dated 27.1.1988 from Secretary to Chief Engineer (General), Public Works Department, the Chief Engineer (General), Public Works Department to Secretary, Service Commission, dated 03.06.1988, the letter from Chief Engineer (General), Public Works Department to Secretary to Government dated 12.8.1988, the correspondences between the Chief Engineer (General), Public Works Department to Secretary to Government, Public Works Department, dated 04.11.1988 and also further communications such as letter dated 24.1.1989 from Secretary, Tamil Nadu Public Service Commission to Chief Engineer, Public Works Department and letter, dated 19.4.1989 from Chief Engineer, Public Works Department to Secretary, Public Works Department.

(vii) By relying upon these communications, the learned Additional Advocate General would further submit that, in view of the position that no vacancies were available to accommodate all the candidates selected for the 1986 recruitment to the post of Assistant Engineer, Public Works Department, after so much of deliberations and discussions, it was decided at the Government level to reallocate some of the candidates to the Highways Department, of course, after getting concurrence from the Service Commission. Accordingly, the willingness of the individual candidates were also obtained, where the 15 candidates, who are the respondents 4 to 18 herein had given such willingness to re-allot their candidature to be appointed as Assistant Engineers, Highways Department and based on the said individual willingness, the concurrence of the Service Commission was sought for. The Service Commission also under the latter part of Regulation 16(b) of the Tamil Nadu Public Service Commission regulations, had given such concurrence to these respondents to be re-allotted to the Highways Department and only thereafter, the Government decided to give re-allotment / appointment to them and accordingly, these respondents 4 to 18 have been given appointment as Assistant Engineers at Highways Department.

(viii) Therefore, the learned Additional Advocate General would submit that all these private respondents 4 to 18 have been appointed only from the list of candidates, who had been selected by the Tamil Nadu Public Service Commission, after undergoing the competitive examination conducted by it for the 1986 recruitment. Therefore, it cannot be said that these private respondents had been appointed beyond the recruitment method nor these respondents had been appointed by back door entry.

(ix) The learned Additional Advocate General would also state that before these writ petitioners came into service in the year 1991 or 1992, all these private respondents 4 to 18 had very well been in service and in fact their probation also was

commenced as per the declaration made by the Chief Engineer, Highways and Rural Works Department, i.e., the second respondent herein by letter dated 14.5.1990. Only after the probation of the respondents 4 to 18 had been started, these writ petitioners were selected and appointed as they had been appointed only in the year 1991 or 1992. Therefore, at no stretch of imagination, these petitioners can be equated or claim seniority over the private respondents 4 to 18.

(x) The learned Additional Advocate General would submit that the very basis of filing the present writ petition itself is not on sound legal position nor based on a strong factual matrix.

(xi) The learned Additional Advocate General would also submit that apart, after the respondents 4 to 18 having successfully completed their probation, their appointment got regularised and thereafter, on attaining seniority, they had been given further promotions. And in the category of Assistant Engineer as well as in the category of Assistant Divisional Engineer, seniority list, giving details of inter se seniority of the respondents 4 to 18 and alike persons as well as the petitioners and alike persons had been given. When the petitioners, admittedly, came into service only after few years of service rendered by the respondents 4 to 18, the petitioners cannot claim any seniority over the respondents 4 to 18.

(xii) The learned Additional Advocate General would also submit that, moreover, two seniority lists had been issued and thereafter, several years have gone by. The petitioners have not raised any issue either on the method of appointment or on the seniority fixed on them in respect of respondents 4 to 18, and after several years, the present writ petition has been filed only in the year 2010 i.e., almost after 20 years of the appointment of respondents 4 to 18. Therefore, the learned Additional Advocate General would submit that there is a clear case of laches on the part of the petitioners to agitate the present issue and therefore, on that ground also, the writ petition is liable to be dismissed.

(xiii) The learned Additional Advocate General would also submit that under Rule 35(f) of the State Rules, the seniority list, if it is infringing the right of any incumbent, it should have been assailed within a period of three years from the date of appointment or publication of seniority list. Here in the case in hand, though the list was published in the year 2004, the same had been questioned only in the year 2010 and therefore, the said challenge cannot stand in the legal scrutiny, in view of the Rule position. Therefore, on that ground also, the writ petition is liable to be rejected, the learned Additional Advocate General submitted.

(xiv) The learned Additional Advocate General in support of his submissions has relied upon the following decisions:

(1) Amarjeet Singh and others Vs. Devi Ratan and Ors.

[2010 (1) SCC 417]

(2) District Elementary Educational Officer, Pudukottai and others Vs. M. Kamala and others [2016 (2) MLJ 558]

(3) R.Balakrishnan and others Vs. Tamil Nadu Public Service Commission and others [2012 (8) MLJ 393]

(4) S.Sumnyan and others Vs. Limi Niri and Ors.

[2010 (6) SCC 791]

6. Mr. M. Venkatachalapathy, the learned senior counsel assisted by Mr.G.Elanchezhiyan has made submissions on behalf of the contesting respondents, i.e., respondents 4 to 18. The learned senior counsel has made submissions in the line of submissions already been made by the learned Additional Advocate General. The learned senior counsel would submit that admittedly, the contesting respondents had entered into services atleast two years prior to the writ petitioners.

7. He would also submit that the contesting respondents, have pursuant to the notification issued by the Service Commission for selection and appointment to the post of Assistant Engineer in Public Works Department for the year 1986, participated in the competitive examination and selection process. Only, thereafter on the performance of these contesting respondents, Service Commission had selected them. Though they had been selected and a list of selected candidates had been sent to the Government for appointment, the Government could not make appointment to some of the candidates for want of vacancy. Since the said position was continued for sometime and still there were no vacancies in the Public Works Department during that relevant point of time, a conscious decision was taken by the State Government and in this regard, he very much relied upon various correspondences between the Secretary to Government of Public Works Department and other authorities like Service Commission and Chief Engineer (General), Public Works Department and also other correspondences between Secretary to Government, Highways Department and Service Commission.

8. By relying upon these communications, the learned senior counsel would submit that it was a policy decision taken at the Government level to reallocate some of the candidates, who could not be accommodated, by giving them appointment as Assistant Engineers, Public Works Department, though they had been duly selected by the Service Commission and accordingly, after getting their individual willingness i.e., from these contesting respondents and ofcourse after getting necessary concurrence from the Service Commission, these contesting respondents had been re-allotted to the Highways Department.

9. It is also the submission of the learned senior counsel that the method of entry into services as Assistant Engineers in both Public Works Department as well as Highways Department is one and the same as both appointments can be made by way of direct recruitment through the competitive examination and selection method adopted by the Service Commission. Here, both the contesting respondents as well as the writ petitioners had been selected at two different points of time by the Service Commission through competitive selection method. The selection made in respect of the candidatures of the contesting respondents was admittedly, even prior to the notification issued in respect of the selection made by the Service Commission pertaining to the post of Assistant Engineers in Highways Department. Though the selection in respect of the private respondents has been made for appointment to the post of Assistant Engineers in Public Works Department and for want of vacancy, if they got reallocated pursuant to the decision taken by the Government, after getting concurrence from the Service Commission, such selection made cannot be termed as a faulty one, as has been projected by the petitioners' side.

10. He also submits that it is not the back door entry nor a temporary appointment without being subjected to the selection procedure as contemplated under the Rule and therefore, the selection and appointment insofar as the private respondents are concerned were made only by way of proper method and only based on such selection and appointment since they had completed successfully the probation period, their services have been regularised. Therefore, after having regularised their services, once they get the promotion based on the seniority, as the seniority had to be reckoned with from the date of entry into service, the same cannot be questioned by the petitioners that too at such a distance of time. Therefore, the learned senior counsel would submit that the petitioners' challenge itself is without any basis and therefore, the same is to be rejected.

11. The learned senior counsel would also submit that the very appointment of the private respondents since has never been questioned and even if the same is questioned, it can be fully sustained, the belated challenge of the seniority list as has been done in the present writ petition by the petitioners, certainly, have no legs to stand and therefore, the said challenge fails. Therefore, the learned senior counsel would submit that the contesting respondents having been selected properly by Service Commission had been subsequently, re-allotted to the department of Highways by a decision taken by the Government, of course, after concurrence from the Service Commission and after getting appointment, their probation had been duly declared and their services also got regularised,

therefore, got over the candidature of the writ petitioners, because admittedly, the writ petitioners came into service only after few years of service entered by the contesting respondents, the present challenge is nothing but a vexatious litigation and the same is liable to be rejected.

12. I have also heard Mr.P.Wilson, learned senior counsel assisted by Mrs.Seethalakshmi, who is appearing for one of the respondents i.e., respondent No.40, who along with other respondents i.e., 19 to 39 has supported the case of the writ petitioners.

13. I have also heard Mr.R.Thiagarajan, the learned senior counsel assisted by Mr.M.Muthappan appearing for respondents 19 to 39.

14. Both the senior counsels, who appeared for the newly impleaded respondents, supported the case of the writ petitioners. They also submitted that these respondents i.e., respondents 19 to 40 also had been duly selected after competitive examination and selection process of the Service Commission, to the post of Assistant Engineer, Highways Department for the year 1989-1990 and accordingly, they had been appointed along with the writ petitioners. They submitted that these respondents also had claimed that they came to know that the contesting respondents 4 to 18 had been initially shown in the seniority list that they had been redesignated as Assistant Engineers. Only based on the said premises, where, a wrong information had been given by the official respondents, these respondents 19 to 40 did not raise the issue. However, subsequently in the impugned seniority list, since it has been in the first time, stated that they had been selected as Assistant Engineers, Public Works Department by the Tamil Nadu Public Service Commission, then only these respondents also came to know that the contesting respondents 4 to 18 had not been selected through a proper competitive examination and selection process for the purpose of appointment to the post of Assistant Engineers in the Highways Department. Therefore, they also after having agitated the issue had been aggrieved, as nothing had come fruitfully from the official respondents, had joined by way of getting impleaded in this writ petition and are projecting the similar case as that has been projected by the writ petitioners and therefore, the grievances of the writ petitioners as well as the respondents 19 to 40 are one and the same.

15. Therefore, the learned senior counsel submitted that the impugned seniority list should be quashed and the correct inter se seniority among the petitioners and all the respondents herein have to be re-issued and accordingly, all promotion and service benefits have to be extended to these candidates.

Discussion on factual matrix:

16. Before adverting to the rival claim made by the parties as well as the detailed submissions made in support of their respective claim by the learned counsel appearing for the parties, it would be appropriate to deal with the factual matrix as what actually happened in this issue. In fact, during the hearing, it was directed to produce the relevant file, pursuant to which, the learned Additional Advocate General has produced relevant file for perusal before this Court.

17. On a perusal of the said file, the basic facts which are required to be considered in this case for arriving at a just and equitable conclusion are be noted to.

18. Firstly, pursuant to the recruitment drive of selection to the post of Assistant Engineers in Public Works Department for 1985-86 vacancies, the Service Commission, after having conducted competitive examination and completed the selection process, has sent a final selection list to the Government through their letter dated 19.9.1986.

19. According to the said letter, the said selection was conducted for the recruitment of 428 candidates for appointment to the post of Assistant Engineer(Civil) in the Tamil Nadu Public Works Department. 1573 candidates were admitted to the oral test, out of them 248 were absent. Based on the selections, 428 candidates had been selected to fill up 428 vacancies. Along with the said letter dated 19.9.1986, the Service Commission had forwarded a list of 428 selectees. The relevant portion of the said letter is extracted hereunder for easy reference:

"2. 1573 candidates were admitted to the oral test. Out of them, 248 were absent. Candidates have been selected to fill up all the 428 vacancies.

3. A list containing the names and other particulars of the candidates selected for appointment to the post of Assistant Engineer (Civil) in the Public Works Department is enclosed. The names in the list are arranged in the order in which appointments should be made in accordance with the rule of reservation of appointments. 65 candidates belonging to Backward Classes get selected against 'Open Competition' turns on the basis of merit."

20. From the above letter of the Service Commission, it becomes quite clear that the selection process went on perfectly as done by the Service Commission, where 428 candidates had been

selected to fill up the vacancies of 428 available at the Public Works Department and while making the selection, the Service Commission had followed the Rule of Reservation.

21. Though such a selection had been made by the Service Commission to fill up 428 vacancies in PWD department, appointments were given to a number of candidates as per the order of merits as supplied by the Service Commission and in this regard, more than 300 candidates had been given appointment. After giving appointment of more than 300 candidates, the Public Works Department could not give appointment to the remaining candidates, and the reason, according to the Public Works Department, was that some of the posts had been occupied by emergency Assistant Engineers, who had already been appointed to tide over the situation urgently and with that capacity those incumbents had been in the Department for some years and some of them also had participated in the 1986 selection process conducted by the Service Commission and out of which some of them also been selected and whose name also found in the list of 428 candidates forwarded by the Service Commission. The candidates, whose names were found in the list wanted to continue in the Department till their turn comes for getting appointment, based on the rankings given by the Service Commission.

22. Therefore, the Public Works Department seems to have expressed their difficulty to dislodge those emergency Assistant Engineers from the Public Works Department, with the result, the selected candidates of the Service Commission list from S.No.328 could not be accommodated. By expressing this difficulty, the Chief Engineer (General), Public Works Department seems to have requested the Government to permit the Department to continue with that emergency Assistant Engineers. In response to the said request, the Government, i.e., the Commissioner and Secretary to Government, Public Works Department by letter dated 06.7.1988 has written to the Chief Engineer (General), Public Works Department by directing the Chief Engineer to oust the 20 emergency Assistant Engineers working in Public Works Department immediately, enabling to issue posting orders for 20 candidates commencing from the Sl.No.328 to 347 as per the seniority fixed by the Tamil Nadu Public Service Commission.

23. It may be relevant to point out here that all the contesting respondents 4 to 17 herein found place in the said selection list of the Service Commission beyond S.No.338. In other words, the fourth respondent was at Sl.No.339 and the 17th respondent was at S.No.363 and in between these two, other contesting private respondents found their place in the list. In spite of the afore referred letter dated 06.07.1988 issued by the Secretary to Government, Public Works Department, the Chief Engineer (General), Public Works Department by his communication

dated 12.8.1988 had written to the Secretary to Government, Public Works Department expressing the difficulty in ousting the emergency Assistant Engineers, instead, the Chief Engineer, Public Works Department had requested the Government to re-allot the outside candidates (fresh candidates selected either from open market or working in other departments other than Public Works Department) to the Highways and other Departments. The relevant portion of the said letter dated 12.8.1988 is reproduced hereunder for better appreciation:

"2. With regard to ousting of the emergency Assistant Engineers on juniority grounds, I have to state that these Assistant Engineers have put in a service ranging from 4 years to 6 years. I am of the view that in as much as they have been selected by Tamil Nadu Public Service Commission, they may be allowed to continue in service considering the lengths of their service. The Association of Engineers have also represented to Government, P.W.D, in their letter No.601/GS/88, dated 18.7.88, that the services of the inservice candidates who have been selected by T.N.P.S.C may be regularised retrospectively, otherwise they will lose the services so far rendered if they are ousted for want of vacancy. I therefore request that the Government may be pleased to permit the emergency Assistant Engineers who have been selected by the Tamil Nadu Public Service Commission to continue in the Department and the T.N.P.S.C may be requested to reallocate only the outside candidates to the Highways and other Departments. The regularisation of the services of the Department candidates will be done after the outside candidates are absorbed in Highways and Other Departments. I request reconsideration of the issue."

24. Subsequently, the further development has been taken place by which, pursuant to the continuous directives issued by the Government, the CE, Public Works Department seems to have taken steps to oust the emergency Assistant Engineers 20 in number as directed by the Government. However, though such an order of ousting was passed, some of the said ousted persons seems to have approached this Court by filing writ petition (W.P.No.12644 of 1988) wherein this Court had given interim order restraining CE, Public Works Department, by way of an injunction, from ousting the said incumbents.

25. In view of the said order having been passed by this

Court, the CE, Public Works Department by letter dated 26.10.1988 had written to the Secretary to Government, Public Works Department stating that, in view of the order passed by the High Court Madras though ousting order was prepared and signed, the same has not been given effect to.

26. Therefore, there had been communications between the Head of the Department of Public Works Department and Highways Department and in response to the letter dated 12.8.1988 of the CE, Public Works Department, as he claimed, the Chief Engineer, Highways and Rural Works Department/ the second respondent herein had agreed that the future vacancies in the Highways and Rural Works Department should be filled up with the candidates selected by Service Commission for the post of Assistant Engineers (Civil), Public Works Department, without ousting the temporary personnel working in that Department. Therefore, quoting the said decision as conveyed by CE, Highways Department, the CE, Public Works Department had written a letter to the Secretary to Government, Public Works Department on 04.11.1988, to take up the matter at Government level and the candidates selected by the Service Commission for the post of AE(civil) in Public Works Department, who are yet to be given postings in the Department, may be re-allotted to Highways and Rural Works Department at an early date. In this regard, the relevant portion of the said letter dated 04.11.1988 is extracted hereunder for easy reference :

" I therefore request that the matter may please be taken up at Government level and the candidates selected by Tamil Nadu Public Service Commission for the post of Assistant Engineer (Civil) in PWD who are yet to be given postings in the Department may please be arranged to be reallocated to Highways and Rural Works Department at an early date.

It is also ascertained that two circles with Ten Divisions have recently been sanctioned in Highways and Rural Works Department for executing World Bank Schemes. If that be the case all the remaining candidates (ie) from serial No.333 to 428 can be accommodated in those vacancies to arise."

27. Therefore, the issue was discussed at Government level where the concerned Secretaries to Government had deliberated the issue and ultimately, found that the Department of Highways had in principle agreed to take atleast 15 candidates (selectees of Service Commission for 1986 recruitment of AE, Public Works Department). The said decision is reflected in the letter of Government to the CE, Public Works Department dated 27.12.1988

which is extracted hereunder:

" I am directed to state that the question of absorbing the Assistant Engineers (Civil) recruited by the T.N.P.S.C. during the year 1986, who have not been provided employment in P.W.D. in the Highways and Rural Works Department was discussed by the Commr. & Secretary, P.W.D with the Commr. and Secy. Transport Dept. The Commr. & Secy. to Govt. Transport Dept. has agreed to accommodate 15 A.Es., selected by T.N.P.S.C in Highways Department after getting the concurrence of T.N.P.S.C. The Commr. & Secy. P & A.R. Dept. has also agreed to the above arrangement. Hence I am to request you pursue the matter with C.E.(H.R.W.) and the T.N.P.S.C. accordingly."

28. Subsequent to the said decision / agreement between the Departments at Government level, it seems that, the issue had been brought to the notice of the Service Commission for their concurrence. In response to the same, the Service Commission through the Secretary, Tamil Nadu Public Service Commission by letter dated 24.1.1989 writes to the Government in principal agreeing the said move of the Government to re-allot candidates selected for Public Works Department to the department of Highways. The said letter of Service Commission dated 24.1.1989 is entirely extracted herein for better appreciation:

" I am directed to invite attention to the references cited and to say that the candidates selected for appointment as Assistant Engineers in the Public Works Department cannot be reallocated to the Highways and Rural Works department as Assistant Engineers as the two posts are on different services and as the rule of reservation of appointments applies separately for the two posts. However, as it has been stated that the candidates could not be appointed in the near future in your department, the Commission has decided to examine the question of according its concurrence under the latter part of Regulation 16(b) of the Tamil Nadu Public Service Commission Regulations, 1954 for the absorption of the 96 candidates in the Highways and Rural Works Department in the peculiar circumstances of the case. For the purpose of examining the question of according the concurrence under the latter part of regulation 16 (b) of the Tamil Nadu

Public Service Commission Regulations, 1954 the willingness of the candidates concerned may have to be ascertained for absorption as the Assistant Engineer (Civil) in the Highways and Rural Works Department. I am, therefore, to request you to ascertain the willingness of those candidates and send a list of names of the willing persons to the Government so that the Government may send their proposals to the Commission for its concurrence under the latter part of Regulations 16(b) of the Tamil Nadu Public Service Commission, Regulations, 1954."

29. Since the Service Commission sought for the willingness of individual candidates for such re-allotment from Public Works Department to Highways, the CE, Public Works Department seems to have sought for willingness from individual candidates. In response to the same, atleast 15 candidates had expressed their willingness to be re-allotted to Highways Department. The list of 15 candidates along with the serial number in the selection list of candidates had been forwarded by the CE, Public Works Department to the Secretary to Government, Public Works Department by his letter dated 19.4.1989.

30. The relevant portion of the said letter along with the list of candidates are extracted hereunder for easy reference:

Sl.No.	Name	Sl.No. in the list
1.	R.Gothandaraman	339
2.	B.R.Kumar	340
3.	M.K.Selvan	341
4.	Selvi A.Sumathi	344
5.	R.Soundarapandian	345
6.	A. Kaliyaperumal	347
7.	Selvi N. Shanthi	352
8.	V.Mohanraj	353
9.	N.Balamurugan	354
10.	Selvi R.Geetha	356
11.	" M.Vijaya	357
12.	R.Chandrasekar	358
13.	N.Alaguraj	359
14.	G.Krishnamurthy	360
15.	M.Murugesan	363

I request that the above 15 candidates may please be arranged to be reallotted to the Highways & Rural Works Department by obtaining the concurrence of the Commission."

31. After getting the list of candidates with their

willingness from the CE, Public Works Department, the Government through the Secretary, Public Works Department has written to the Secretary of the Service Commission by letter dated 12.6.1989. In the said letter, the Government has stated that out of the candidates selected and allotted to Public Works Department for the post of AE (Civil) under direct recruitment during 1986, posting orders were issued up to Sl.No.338.

32. The issue of re-allotting 15 candidates from P.W.D and HW & R has already been referred to the Commission and the Commission has requested to ascertain the willingness of the individual candidates, accordingly, willingness of the candidates from Sl.Nos.339 to 368 in the list had been called for. Out of 30 candidates, only 17 had given their willingness for re-allotment to Highways Department and the list of 15 candidates has been given. After stating this, the Government has requested the Service Commission in the following terms:

" 2. I am therefore, to request that the concurrence of the Commission under the latter part of Regulation 16(b) of the T.N.P.S.C. Regulations, 1954 for the reallotment of the above mentioned 15 candidates to H & R.W. Department, may be obtained and communicated to the Government at an early date."

33. In response to the said letter of the Government as referred to above, the Service Commission after having taken a decision, had conveyed its concurrence through their letter dated 22.7.1989 addressed to the Secretary to Government, Public Works Department.

The contention of the said letter is extracted hereunder:

" I am directed to say that, in the circumstances stated in the references cited the Commission agrees to the Government's proposal and accords its concurrence under the latter part of Regulations 16(b) of the Tamil Nadu Public Service Commission Regulations 1954, for regular absorption of 15 candidates in the order of seniority as mentioned in the Annexure to this letter as Assistant Engineer (Civil) in the Highways and Rural Works Department."

34. Along with the said letter of the Service Commission an annexure has been given, wherein the list of candidates absorbed in Highways and Rural Works Department as Assistant Engineers (Civil) consisting of 15 persons, who are none other than the private respondents 4 to 17, is given.

35. Thereafter, the CE, Public Works Department has forwarded the complete details of the 15 candidates, whose candidature had been concurred by the Service Commission for re-allotment to the Highways Department, along with the letter dated 08.08.1989, addressed to the Secretary to Government, Transport Department. The contents of the said letter reads thus:

" I invite kind reference to the correspondences resting with the subject cited. As directed by the Government in Public Works Department, I enclose the details of the candidates to be re-allotted to Highways and Rural Works Department as per the concurrence of the Tamil Nadu Public Service Commission, Madras. I request that 15 candidates may please be arranged to be appointed in the Highways and Rural Works Department at a very early date. I also request that the possibility of further absorbing candidates in Highways and Rural Works Department in the existing vacancies may also be examined as requested in the Government U.O. Note second cited."

36. In pursuance of the said details furnished by the CE, Public Works Department to the Transport Department, the Transport Department has directed the Chief Engineer, Highways and Rural Works, by letter dated 11.8.1989, to take further necessary action in this regard. The exact content of the said letter dated 11.8.1989 is reproduced hereunder:

" I am directed to enclose copies of each in the references cited and to state that the Government in Public Works Department have proposed to reallocate about 15 candidates who were selected by Tamil Nadu Public Service Commission for the posts of Assistant Engineers in the Public Works Department, during the year 1986, to Highways and Rural Works Department, and addressed the Commission for its concurrence in this regard. Now, the Tamil Nadu Public Service Commission has given concurrence in their letter first cited for regular absorption of 15 candidates from Public Works Department as Assistant Engineers in Highways Department. I am to request you to take necessary action in the matter urgently."

37. After all these correspondences, proposals, deliberations, decisions, concurrences as well as re-allotment,

ultimately, the second respondent by order dated 06.09.1989 has given appointment to the respondents 4 to 17 as Assistant Engineers at Highways and Rural Works Departments and only pursuant to the said appointment orders, they had joined in service in between September 1989 and August 1990. It may be relevant to point out here that out of the 15 candidates, re-allotted, as per the concurrence given by the Service Commission, one candidate by name V.Mohanraj in Sl.No.353 in the selection list of Service Commission for 1986 recruitment to the post of AE, Public Works Department seems to have not joined and therefore, his name is not available in the writ petition where except the said Mohanraj other 14 candidates' seniority had been questioned.

38. The 18th respondent by name S.Ramakrishnan is not one among the 15 candidates, who had been selected for AE, Public Works Department and had been re-allotted to the Highways Department after the concurrence of the Service Commission. Instead, the candidate, i.e. R.18 - S.Ramakrishnan had already been appointed in the Highways Department, however, with the overall inter se seniority list which are impugned herein, the said Ramakrishnan stood next to M.Murugesan, i.e, R.17 herein. Therefore, it seems that the petitioners have challenged the position of R.18 also. Therefore, all the aforesaid facts and circumstances would be available only to the respondents R4 to R17 and not to R18.

39. On consideration of the aforesaid factual matrix, the following indisputable facts emerge:

(i) that the respondents 4 to 17 had been duly selected after proper selection process undertaken by Service Commission for the year 1986 for appointment to the post of AE(Civil), Public Works Department.

(ii) Out of 1573 candidates participated in the said selection process / competitive examination, 428 candidates had been selected or become successful to be considered for appointment to the 428 vacancies of the said post.

(iii) During the said selection process, it is asserted by the Service Commission that, the Rule of Reservation has been strictly followed.

(iv) It is a fact that as per the order of seniority on the basis of merit list prepared by the Service Commission, appointments had been given for those selectees in Public Works Department for atleast 300 plus candidates.

(v) It is also a fact that when a turn of some of the candidates which include respondents 4 to 17 had come up for consideration of appointment, the difficulty, as experienced by Public Works Department, was that already some candidates, who had been appointed as emergency Assistant Engineers to tide over the emergency situation, had already been working and instead of ousting them, it was suggested by the Department to re-allot the

selected candidates, who are most probably placed at serial number beyond 300 which includes respondents 4 to 17.

(vi) Though a directive was issued by the Government to oust the temporary candidates in order to accommodate the Service Commission selectees and such attempt was also made by the Head of the Department by issuing ousting orders, it seems that the same has been interfered with by the orders of this Court.

(vii) Thereafter, since no vacancies were readily available to accommodate the selectees beyond the Sl.No.326 which includes respondents 4 to 17, a suggestion was made by the Head of the Department to the Government to explore the possibilities of re-allotting, some of the candidates to the Department of Highways.

(viii) The said proposal was considered by the Government and concerned Department Secretaries of the Government deliberated and decided to refer the matter to the Service Commission for its concurrence. On receipt of such proposal from the Government, the Service Commission after having discussed the issue, though had expressed an opinion that normally, this kind of re-allotment would not be permitted, however, in view of the peculiar circumstances, the Service Commission had accepted the proposal of re-allotment and ultimately, after getting individual willingness of the candidates for re-allotment, had conveyed its concurrence under latter part of Regulation 16 (b) of the Tamil Nadu Public Service Commission Regulations, 1954.

(ix) After getting such concurrence from Service Commission, candidates had been sponsored or their particulars had been forwarded by the Head of the Department, Public Works Department to the Highways Department, i.e., Secretary to Government, Transport Department, who in turn directed the second respondent to take necessary steps to give appointment orders to these re-allotted candidates.

(x) Only thereafter, the final appointment order was given on 06.09.1989 to the respondents 4 to 17. Pursuant to the said order of appointment, they joined services as AE(Civil), Highways Department, i.e., second respondent department.

(xi) After their joining in services in the year 1989-90, their probation also has been declared and thereafter, on completion of their probation, their services also had been regularised as AE (Civil) Highways Department.

(xii) In a parallel development, immediately, after the date of appointment of these contesting private respondents 4 to 17, the Service Commission issued notification on 12.9.1989 for selection to the post of AE, Highways Department. In the said recruitment, these petitioners and other respondents, i.e., R 19 to R 40, who sail with the writ petitioners, had participated

and ultimately, these petitioners had been appointed as AE, Highways Department by order dated 14.8.1991 pursuant to which the petitioners had joined services during 1991, 1992 and 1993.

40. Therefore, this factual matrix would clearly establish a case that the respondents 4 to 17 had been selected by a duly conducted selection process by the Service Commission and after selection instead of accommodating them, they had been re-allotted by the Government to Highways Department after getting individual willingness of the candidates, of course, with the agreement of the Highways Department and concurrence given by the Service Commission.

41. Thereafter, on re-allotment and order of appointment, they joined in service in 1989-90 itself, whereas, these petitioners, whose selection process itself was set in motion only by issuance of notification by Service Commission on 12.9.1989 and ultimately, after completion of selection process, they had been given appointment only on 14.8.1991 based on which they joined either in the year 1991 or 1992 or even in the year 1993.

42. Therefore, the contesting respondents 4 to 17 had been in service atleast two years prior to the appointment and entering of service of these petitioners.

43. In the present case, ultimately, the petitioners have not assailed the order of appointment given to respondents 4 to 17. Though belatedly, the petitioners have only challenged the seniority list issued on two occasions at the level of Assistant Engineers and also at the level of Assistant Divisional Engineers, it is also the case of the petitioners that atleast for the purpose of challenge, they are not concerned with the appointment of respondents 4 to 17. However, they are concerned with regard to the fixation of seniority by which the respondents 4 to 17 had been placed ahead of the writ petitioners.

44. With these factual matrices, the legal principle as projected by both sides can also be looked into.

Legal Position:

45. On the side of the petitioners, State of Karnataka Vs. Uma Devi reported in 2006(4) SCC(1) has been heavily relied upon. In respect of the principle, as has been quoted by the learned counsel for the petitioner by citing paragraphs 15, 16 and 43 of the Judgment, we have absolutely no quarrel. The sound principle as enunciated in the said case is focussing on, dehors of the rule, there can be no method of recruitment or appointment by way of back door entry and dehors of the rule, no such appointment through back door entry which is otherwise

called as illegal appointment, can be permitted to be regularised or perpetuated.

46. Here in the case in hand as has been stated earlier, the respondents 4 to 17 had not entered into service through back door method. Instead, they had undergone the process of selection by way of competitive examination and oral test conducted by the Service Commission and after having proved their merit in such fullfledged process of selection, they had been selected by the Service Commission. Though vacancies were estimated, based on which selection had been given to 428 persons including these respondents 4 to 17, for the reasons as has been detailed above, the Department could not give appointment to these respondents and therefore, it was a conscious decision taken by the Government after so much of discussions and such decision also was accepted by the clear concurrence given by the Service Commission, by exercising their power under regulation and based on which only these contesting respondents had been given appointment in the Highways Department.

47. Moreover, while conducting the competitive examination and completing the selection process, the Service Commission has scrupulously followed the reservation policy of this State which is reflected in the very letter dated 19.9.1996 of the Service Commission which has already been extracted herein above. Once, the selection process has been duly performed by the Service Commission, where the Rule of Reservation also having been followed, pursuant to which, based on merits, selection had been made only to the estimated vacancies, it is the duty of the employer to provide appointment to those selectees. It is not the case of the petitioners that these respondents had been put under waiting list. Instead these respondents 4 to 17 had been the selectees for clear vacancies estimated by the concerned Department and therefore, it is the duty of the Government to accommodate these candidates based on the seniority and merit position as has been determined by the Service Commission.

48. However, the Government could not make such appointment to these respondents 4 to 17 immediately and therefore, only in such circumstances, a conscious decision was taken by the Government to re-allot them to Highways Department, since the Government departments either Public Works Department or Highways Department are all functioning under the sovereign entity called State. Though arguments were advanced by the petitioners' side that once selection had been made to a particular Department, the candidates cannot be allotted to yet another Department, such issue had been taken care of in this case, by the Service Commission itself, and this has been reflected in the concurrence letter issued by the Service Commission where the Service Commission has clearly stated that

taking into consideration of the peculiar circumstances, Service Commission in exercise of their power under the regulation have come forward to give such concurrence.

49. Therefore, the arguments advanced by the learned counsel appearing for the petitioners that the very appointment made to the respondents 4 to 17 is illegal or unlawful and therefore, applying the principle of Uma Devi's case of the Hon'ble Apex Court, their appointment itself since is considered to be an illegal one, the subsequent seniority assigned to them ahead of the petitioners are also equally illegal, in the opinion of this Court, cannot be accepted and therefore, it is rejected.

50. The learned counsel appearing for the petitioners has also relied upon a Judgment of the Hon'ble Apex Court reported in 2013(2) SCC 516 in the matter of Bhupendranath Hazarika and another Vs. State of Assam and others.

51. This Court has given its anxious consideration to the facts as well as the law laid down in the said case.

52. On seeing the factual matrix, this Court feels that the facts of the said case is totally different from the present one. For instance, in the said case, the following short details of the facts had been given by the Hon'ble Apex Court at paragraphs 2, 3 and 4 of the said Judgment, which are extracted hereunder for better appreciation of the issue:

"2. Shorn of unnecessary details, the facts which are requisite to be stated are that the Assam Public Service Commission (for short "the Commission") issued an Advertisement No. 9/92 dated 23-6-1992 inviting applications for preliminary examination for the Combined Competitive Examination, 1992-1993 for selecting candidates for various posts and services including thirty vacancies in the Assam Police Service (Junior Grade) (for short "the APS") as requisitioned by the Commissioner-cum-Secretary to the Government of Assam in the Department of Personnel on 5-9-1992. On 29-8-1992, the Commission published another Advertisement No. 12/92 inviting applications for filling up of 20 posts in the APS under Rule 5(1)(c) of the 1966 Rules.

3. There is no dispute that the initial 30 vacancies were put in the compartment of "regular batch" or "direct recruitment" and the other 20 vacancies, which were sought to be filled up by way of special drive, were kept in the category of "special batch" or

"promotional recruits". The main examination for the regular batch was held on 15-11-1992 for total marks of 1400. The examination for the special batch was held on 22-11-1992 for 650 marks. The Commission declared the result in respect of regular batch on 23-4-1993 and, vide letter dated 24-4-1993, recommended 30 candidates for appointment in order of merit. Despite the recommendation by the Commission, no appointment was made till 13-8-1993. At this juncture, the Commissioner-cum-Secretary to the Government of Assam in the Department of Home requested the Commission to furnish the select list of the special recruits at the earliest.

4. On the basis of the aforesaid letter of request, the Commission sent its recommendations in respect of the candidates belonging to the special batch and on the basis of the said recommendation, vide Notification No. HMA.478/86/Pt-I/17 dated 3-7-1993, Respondents 6 to 24 before the Tribunal were appointed. Respondent 25 was appointed on 31-8-1994. Thereafter, the competent authority, vide Notification No. HMA.110/93/43 dated 13-8-1993, appointed 28 persons from the regular batch. As the recruits of the special batch were appointed earlier, they were treated senior to the recruits belonging to the regular batch."

53. Based on the said factual matrix though initially the Tribunal interfered with the seniority fixed between the two groups, subsequently, the said Judgments had got reversed by the High Court, ultimately, the Hon'ble Apex Court has confirmed the said view expressed by the High Court.

54. However, the fact remains that in the said case as extracted above, though recruitment was made for a regular batch and a list of 30 candidates had been recommended by the Service Commission on 24.4.1993, appointment was not made till 13.8.1993 and only thereafter, the Government seems to have requested the Service Commission to send selection list for a special batch and only pursuant to which, the Service Commission sent recommendation for special batch on 03.7.1993 and they were appointed. Only thereafter, the regular batch selectees were appointed on 13.8.1993 and only based on this factual matrix, the entire issue had been scanned by the High Court and ultimately, it was found that the very appointment given to the special batch without giving appointment to the regular batch as whose selection had already been forwarded by the Service

Commission, illegal. Though it was found to be illegal, because of the length of period, those appointees had been in office, the High Court also was pleased to lay off their hands in setting aside their seniority fixed towards the special batch ahead of the regular batch. Only in that context, the Hon'ble Apex Court in the said Judgment having analysed the issue in depth, by citing its earlier decisions, ultimately, confirmed the decision of the High Court.

55. Here in the case in hand, the respondents 4 to 17 had infact been selected by the Service Commission well ahead of the notification issued in respect of the selection taken place for writ petitioners and other allied persons including the other respondents, who support the case of the writ petitioners. Therefore, in the opinion of this Court, this Judgment though quoted by the learned counsel for the petitioner, would infact be construed only in favour of the respondents 4 to 17 as it is not in favour of the petitioners, in view of the present facts and circumstances of this case.

56. The learned counsel appearing for the petitioner has also relied upon yet another Judgment of the Hon'ble Apex Court reported in 2007(4)SCC 221 in A.V.Pappaya Sastry and others Vs. Govt. of A.P. and others. By citing the said decision, the learned counsel was trying to project a case that the appointment made to respondents 4 to 17 by way of re-allotment to the Highways Department is not only illegal but also it is a fraud. When such an entry on the part of the respondents 4 to 17 is to be treated as fraudulent entry, then their appointment and consequential service benefits conferred of them including seniority can very well be challenged collaterally at any point of time. Inorder to support this proposition, the learned counsel relied upon the following passages of the aforesaid Judgment which are extracted here under:

"21. Now, it is well-settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed:

"Fraud avoids all judicial acts, ecclesiastical or temporal."

22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a judgment, decree or order—by the first court or by the final court—has to be treated as nullity by every court, superior or inferior. It can be

challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings."

57. But the fact remains in this case is that the respondents 4 to 17 had been duly selected by the Service Commission after competitive examination and selection process, that too only for the estimated vacancy as projected by the Department concerned. Thereafter, appointment had been given to all the selectees numbering more than 300 based on the merit and seniority as fixed by the Service Commission. When the turn of the respondents 4 to 17 and other similarly placed candidates came in for getting appointment, difficulty was expressed by the Department that because of want of vacancy as the Department wanted to retain some emergency appointed Assistant Engineers, who had been in service in the Department for quite sometime and who had also been selected subsequently, by Service Commission, the Government had taken a decision to re-allot these candidates to the Highways Department and such move was accepted and concurred by the Service Commission. Therefore, re-allotment as well as appointment made to respondents 4 to 17 cannot be termed as a fraudulent method of appointment and therefore, the principle as quoted by the learned counsel from the aforesaid Judgment cannot be made applicable to the present facts of the case.

58. The learned counsel for the petitioner has also relied upon the Division Bench Judgment of this Court reported in 2015 (4) MLJ 281 in N.Santhosh Kumar and others Vs. Tamil Nadu Public Service Commission and others. This Judgment was mainly cited by the learned counsel for the petitioner for the purpose of proposition that Rule 35(a) would not stand in the way for the petitioners to challenge the seniority list which are impugned in this writ petition. However, on analysing the said Judgment, this Court finds that the issue which was posed for consideration and decision before the Division Bench in the said case was as to whether the 200 point router given in Schedule 3 of the general rules for Tamil Nadu State and Service Rules (State Rules) for reservation of vacancies would be determinative of the seniority.

59. Only in order to answer to the said question posed before the Division Bench, it has been observed in paragraph 38 of the said Judgment that the starting point for the period of limitation would be the date of knowledge. In this regard, paragraph 38 of the said Judgment is also reproduced here under for easy reference:

" It is too late in the day to doubt the proposition that the starting point for the period of limitation would be the date of

knowledge. Unless it was pleaded and proved by the contesting respondents that the writ petitioners had knowledge of the fixation of seniority and that they slept over for more than three years from the date of the order fixing seniority, the question of delay cannot be held against the writ petitioners. There is nothing on record to show that the writ petitioners were ever made aware of their seniority position at any time before 29.4.2004. Therefore, it was this date that should be taken as the starting point for the period of limitation. If so done, it is clear that the writ petitioners were neither guilty of delay nor guilty of laches. Hence, the dismissal of their writ petitions by the learned Judge solely on the ground of delay and laches, cannot be sustained."

60. However, here in the case in hand, the petitioner admittedly, had the knowledge about the appointment and seniority of respondents 4 to 18, even at the time of first seniority list as on 01.01.1993 was released. Even when the second seniority list was released in the year 2004, the petitioners though had the knowledge about the fixation of seniority inter se between the petitioners and the contesting respondents, the petitioners had not chosen to either challenge the appointment and consequential fixation of seniority. Therefore, insofar as the case in hand and the facts of the present case is concerned, the aforesaid Judgment cited by the learned counsel appearing for the petitioner, in the opinion of this Court cannot be made applicable and hence, on that basis the petitioner cannot take shelter that they can challenge the seniority impugned herein at any point of time de hors or in violation of Rule 35(a) of the State Rules.

61. Though some other Judgments also had been quoted by the learned counsel appearing for the petitioners, if the ratio fixed in those cases and the fact situation of the said cases are taken into account, it cannot be applied to the facts and circumstances of the present case as its factual matrix is entirely different. Also, as has been stated by the Service Commission, only in the peculiar facts and circumstances, such a decision for re-allotment of the Government was taken and concurrence to such re-allotment was given by the Service Commission. Therefore, all these arguments advanced on behalf of the petitioners are not impressing this Court.

62. The learned counsel for the petitioners has also raised a ground that a decision, if at all to be taken for re-allotment of candidates from one Department to another Department, the

same should have been taken only at the Government level. In this regard, the learned counsel would vehemently contend that as per the business Rule of the Government of Tamil Nadu framed under Article 166 of the Constitution, every Department is headed by a Minister in charge and no decision as the one taken in this case, such as re-allotment of candidates from Public Works Department to Highways Department, could have been taken at the Secretary level and in this regard, he would submit that unless such a decision is taken or approved by the Minister in-charge of both the Transferee Department as well as the Transferor Department, it cannot be stated to be a decision within the meaning of the business Rule.

63. In this regard, the learned counsel has also relied upon Rule 4 and 5 of the business rule which reads thus:

"4. The business of the Government shall be transacted in the Departments specified in the first schedule, and shall be classified and distributed between those Departments as laid down therein".

"5, the Governor shall, on the advise of the Chief Minister, allot the business of the Government among the ministers by assigning one or more Departments to the charge of a minister. Pursuant to the said rule, the first schedule has been made where distribution of business among departments of the Secretariat has been enumerated".

64. Merely because of these business rules, it cannot be said that a decision of allotment of candidates from one Department to another Department cannot be taken by the Government at the Secretary level.

65. Since these businesses are routine in nature and each Department of the Government is headed by an Executive, namely, the Secretary to Government and except policy decisions other decisions are taken by the Government at the Secretary level, it cannot be said that, the decision taken by the Government at Secretary level for re-allotment of candidates from one Department to another Department in the peculiar circumstances, where, the selectees of Service Commission could not be accommodated in the Department for which selection has been made for want of the vacancies, is flawed. Therefore, the said arguments advanced on behalf of the petitioners by quoting the said business rules of the Government would not be much of help to the case projected by the petitioner.

66. With regard to the delay and latches on the part of the petitioners to challenge the impugned order of seniority list,

which were, admittedly issued in the year 1994 and subsequently, 2004 as these writ petitions have been filed only in the year 2010, the answer of the petitioners, as projected by the learned counsel for the petitioner is that, in the original seniority list, it was only mentioned, 'Redesignated Assistant Engineers'. Only subsequently in the seniority list, it has been correctly mentioned as 'Public Works Department selected Assistant Engineers of Tamil Nadu Public Service Commission'. Only on coming to know this fact, that these respondents 4 to 17 had been brought under Public Works Department AEs of Tamil Nadu Public Service Commission, the petitioners started probing the very appointment of these respondents and thereafter, only after coming to know the fact that they had been selected for Public Works Department in the year 1986 and had been re-allotted to the present Department i.e., Highways Department, and in the meanwhile since subsequent seniority list had been issued where the anomaly had been continuing, the petitioners have made representations questioning the said anomalies and since nothing was forthcoming from the official respondents admittedly, they approached this Court by filing this writ petition.

67. This defence taken by the petitioners to overcome the delay and laches on the part of the petitioners, cannot be accepted by this Court in view of the Rule position in this regard.

68. As per Rule 35(f) of the State rules, application for revision of seniority should have been made within a period of 3 years from the date of fixing of seniority. The said rule i.e. 35(f) is extracted hereunder for easy reference:

"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 fixing the seniority, as the case may be. Any application received after the said period of three years shall be summarily rejected. This shall not, however, be applicable to cases of rectifying orders, resulting from mistake of facts."

69. The words mandated at the aforesaid Section 35(f), i.e., 'any application received after the said period of 3 years shall be summarily rejected', has given no room that a belated request or application to revise the seniority beyond the 3 years period can be entertained.

70. In this regard, the latest Judgment of a Division Bench

of this Court, exactly on the point, can be usefully referred to.

71. In the Judgment in 2016(2) MLJ 558, in the matter of District Elementary Educational Officer, Pudukottai and others Vs. M. Kamala and others, a Division Bench of this Court has held in unequivocal terms that Rule 35(f) is a clear bar for making any representation as against the wrong fixation of seniority after the expiry of 3 years.

72. The Division Bench further states that this Rule itself was introduced for the purpose of preserving settled things. The relevant portion of the aforesaid Judgment are also extracted hereunder for better appreciation:

14. Rule 35(f) of the General Rules for Tamil Nadu State and Subordinate Services is a clear bar for making any representation as against the wrong fixation of seniority after the expiry of three years. This Rule itself was introduced for the purpose of preserving settled things.

15. The Honourable Supreme Court has repeatedly held that the Court cannot unsettle settled things and cannot unscramble a scrambled egg. Therefore, the order of the learned Judge overlooking Section 35(f) cannot be sustained.

16. The learned Counsel appearing for the respondents relied upon the decision of the Honourable Division Bench of this Court in A.Mani -vs- Director of Elementary Education and Others /Manu/TN/7788/2007 : LNIND 2007 BMM 172, for the proposition that the period of limitation fixed under Rule 35 (f) will not be applicable to cases where a mistake is committed in fixing the seniority. But, we do not think that it is the correct interpretation of Rule 35(f). Rule 35(f) reads as follows:-

.....
.....

17. There are two types of expressions used in Rule 35(f). The first expression used in the Rule is "Revision of Seniority". The second expression used in the Rule is "cases of rectifying orders, resulting from mistake of fact". The observations contained in paragraph '19' of the decision of the Honourable Division Bench of this Court in A.Mani -vs- Director of Elementary Education and Others (supra) goes completely contrary to the expression in Rule 35. Therefore, with

great respect, we have to point out that the statement of law in paragraph '19' of the decision in A.Mani -vs- Director of Elementary Education and Others (supra) is not in accordance with the language of the rule."

73. In these contexts, the learned Additional Advocate General as well as the senior counsel appearing for the contesting respondents 4 to 18 have relied upon the following Judgments:

(1) 2010 (1) SCC 417 in the matter of Amarjeet Singh and others Vs. Devi Ratan and Ors.

(2) 2010(6) SCC 791 in the matter of S.Sumnyan and others Vs. Limi Niri and Ors.

74. If we analyse the first Judgment i.e., 2010(1)SCC 417 (cited supra) wherein the Hon'ble Apex Court has held that an employee cannot be granted seniority prior to his birth in cadre adversely affecting the seniority of other employees appointed prior to him. In this regard, the following passages of the said Judgment can be usefully referred to hereunder:

"27.The law permits promotion with retrospective effect only in exceptional circumstances when there has been some legal impediment in making the promotions, like an intervention by the court. An officer cannot be granted seniority prior to his birth in the cadre adversely affecting the seniority of other officers who had been appointed prior to him. "The latecomers to the regular stream cannot steal a march over the early arrivals in the regular queue." [Vide S.P. Kapoor (Dr.) v.State of H.P. [(1981) 4 SCC 716 : 1982 SCC (L&S) 14 : AIR 1981 SC 2181] ; Shitla Prasad Shukla v.State of U.P. [1986 Supp SCC 185 : 1986 SCC (L&S) 584 : (1986) 1 ATC 236 : AIR 1986 SC 1859] (SCC p. 190, para 10) and Uttaranchal Forest Rangers' Assn. (Direct Recruit) v.State of U.P. [(2006) 10 SCC 346 : (2007) 1 SCC (L&S) 116]]

28. In the instant case, promotions had been made by two different DPCs held on 19-12-1998 and 22-1-1999. Both DPCs had made promotions under different Rules on different criterion and their promotions had been made with retrospective effect with different dates notionally. In the writ petition before the High Court, the promotion of the appellants had not been under challenge. The seniority which is consequential to the

promotions could not be challenged without challenging the promotions. Challenging the consequential order without challenging the basic order is not permissible. (Vide P. Chitharanja Menon v. A. Balakrishnan [(1977) 3 SCC 255 : 1977 SCC (L&S) 378 : AIR 1977 SC 1720] .)

29. In Roshan Lal v. International Airport Authority of India [1980 Supp SCC 449 : 1981 SCC (L&S) 303 : AIR 1981 SC 597] the petitions were primarily confined to the seniority list and this Court held that challenge to appointment orders could not be entertained because of inordinate delay and in absence of the same, validity of consequential seniority could not be examined. In such a case, a party is under a legal obligation to challenge the basic order and if and only if the same is found to be wrong, consequential orders may be examined."

75. Like that in the second Judgment 2010(6)SCC 791(cited supra), almost a similar situation had been handled. The following passages of the said Judgment would reveal that in a factual situation like the present one what shall be the possible legal position:

27.The respondents in their writ petition had neither challenged the initial appointment order of the appellants appointing them as Assistant Engineers (Civil) on temporary and ad hoc basis under the 1983 Rules, nor had they challenged the subsequent order passed by the Government of Arunachal Pradesh on the recommendation of the Arunachal Pradesh Public Service Commission regularising the services of the appellants as Assistant Engineers from the date of their initial appointment.

28.Not only were these orders not challenged by Respondent 1 in the writ petition filed by him but the subsequent orders of promotion of these appellants to the post of Executive Engineers and their confirmation in the said post, on the basis of their seniority positions counting the ad hoc period of service, were also not challenged. These orders are therefore final and binding on all concerned.

29.As noted earlier by us, several seniority lists, although provisional in nature, were published in the meantime, showing that the benefit of ad hoc period had been given to the appellants. But these were never challenged by Respondent 1 and it was only in the year 2001 when some of them were promoted to the post of Superintending Engineer and one of them to the post of the Chief Engineer that Respondent 1 filed the aforesaid writ petition.

30.The High Court without considering those facts has only dealt with one aspect which is that the initial appointment of the appellants to the post of Assistant Engineer was dehors the Rules. The said findings recorded by both the Single Judge as also the Division Bench were uncalled for and unjustified for the simple reason that the appointment order itself indicated that their appointment would be governed by the Service Rules then existing i.e. the 1983 Rules.

31.The fact that their services were regularised from the date of their initial appointment on the recommendation of the Arunachal Pradesh Public Service Commission was also totally ignored by the High Court. Thus, these facts coupled with the fact that none of the aforesaid orders were challenged by Respondent 1, would indicate that the said orders are final and binding on all the persons concerned. The High Court ignored the fact that Respondent 1 himself was bound by the aforesaid orders. Respondent 1 was bound by his own appointment orders.

32.The appellants had rendered two years of service as Assistant Engineers and at least some of the appellants including Appellant 1 had successfully completed their probation period on 1-4-1988 whereas Respondent 1 was appointed as Assistant Engineer on regular basis and put on probation for two years on 2-5-1989. Therefore, when Respondent 1 was put on probation, Appellant 1 and some others had successfully completed their probation. Thus, for all purposes at all times, the appellants

were senior to Respondent 1.

33. Considering the said fact and also considering the precedents in the Department that all such employees were regularised from the date of their initial appointment, the Government of Arunachal Pradesh also regularised the services of the appellants in the post of Assistant Engineer from the date of their initial appointment and that was done on the recommendation of the Arunachal Pradesh Public Service Commission. The order of regularisation having become final and binding on all concerned could not have been ignored and implicitly set aside by the High Court on the ground that the initial appointment of the appellants was dehors the Rules, which is totally a non-existent ground.

.....
37. It is, thus, clearly established that Respondent 1 was inducted into government service by a separate mode of recruitment than that of the appellants and therefore, their cases cannot be equated. The statement of the Government of Arunachal Pradesh that the provisional seniority lists were regularly published by the Public Works Department Secretariat from time to time since 1990 to 1999, with ample time being given to the incumbents to reply against any anomaly in the seniority list and that Respondent 1 never submitted any representation in that regard is not disputed. Respondent 1, therefore, had challenged the established seniority position after about 10 years and that too without challenging the basic and the fundamental orders of giving the appellants the benefit of regularised service from their initial date of appointment as Assistant Engineers. "

76. In this Judgment cited above, the Hon'ble Apex Court has relied upon its earlier order in 1984(4) SCC 329 in the matter of G.P. Doval and others Vs. Chief Secretary, Govt. of UP and others. The following passages extracted hereunder would be useful in the present context:

"13.....If the

first appointment is made by not following the prescribed procedure but later on the appointee is approved making his appointment regular, it is obvious commonsense that in the absence of a contrary rule, the approval which means confirmation by the authority which had the authority, power and jurisdiction to make appointment or recommend for appointment, will relate back to the date on which first appointment is made and the entire service will have to be computed in reckoning the seniority according to the length of continuous officiation. That has not been done in this case.

.....
15.....We find it difficult to accept this bald and wide submission. Each case will depend upon its facts and circumstances. If a stopgap appointment is made and the appointee appears before the Public Service Commission when the latter proceeds to select the candidates and is selected, we see no justification for ignoring his past service. At any rate, there is no justification for two persons selected in the same manner being differently treated.....
.....It is thus well-settled that where officiating appointment is followed by confirmation unless a contrary rule is shown, the service rendered as officiating appointment cannot be ignored for reckoning length of continuous officiation for determining the place in the seniority list."

77. In yet another Judgment reported in 1980 Supp SCC 449, in the matter of Roshan Lal V. International. Airport Authority of India, the Supreme Court has held that even the delay of 3 years, for challenging the appointment alleged to be illegal, had not been accepted and in this regard, paragraph 4 of the said Judgment can be usefully referred to hereunder:

"4. One of the principal submissions made by Smt Shyamla Pappu, learned counsel for the petitioners was that the appointment of the respondents as Airport Officers (Operations) was made at a time when there was no sanction for such posts and therefore their appointment was illegal. Other reasons were

also advanced in support of the claim that the respondents were irregularly appointed as Airport Officers. We are afraid that it is rather late in the day for the petitioners to question the appointment of the respondents as Airport Officers (Operations). The respondents were appointed as Airport Officers in 1975 and the present writ petitions were filed in 1978. We do not think we will be justified in reopening the question of the legality of the appointment of respondents as Airport Officers several years after their appointment. We also notice that the prayer in the writ petitions also is confined primarily to the seniority list and the consequences flowing from the seniority list."

78. These Judgments as has been quoted by the official respondents as well as the private respondents 4 to 18 through their respective learned counsel and the learned Additional Advocate General would clearly establish that, the delay in assailing the appointment as well as seniority list in most of the cases would be fatal to the challenge itself. The challenge made to the subsequent seniority or service benefits without challenging the basic order of appointment cannot be countenanced, in the eye of law. Even a short delay of 3 years in challenging the alleged illegal appointment itself was negated by the Hon'ble Supreme Court in the given case cited supra. Here in the case in hand, the petitioners themselves have come forward to state, through their counsels, that the petitioners did not have any grievance over the appointment of these respondents 4 to 17. However, they hasten to add that their appointment are either unlawful or through the back door entry. Though they repeatedly make a plea that the appointment made to respondents 4 to 17 are either illegal or by way of back door entry, this Court finds it hard to accept such a plea, in view of the factual matrices which have been elaborated herein above.

79. No one can dispute the fact that these respondents 4 to 17 had been subjected to a fullfledged selection process conducted by the Service Commission. These respondents 4 to 17 having been qualified to be selected to the post of AE (Civil), Public Works Department, had been duly selected and a list to that effect was forwarded to the Service Commission. It is also the fact that during the selection process, the Service Commission followed the Rule of Reservation policy of the State. It is also a fact that the Service Commission had selected some candidates including these respondents only for the estimated vacancies as projected by the Department.

80. Therefore, it cannot be said that these respondents 4 to 17, at no stretch of imagination, had been given appointment by unlawful method or by way of back door entry. The reason being that, the selection made for selecting these respondents 4 to 17 cannot be found fault with as it cannot be termed to be a flawed one. When that being so, it is obligatory on the part of the State Government to give them appointment.

81. However, for want of vacancy because of the situation as projected by the Head of the Department, Government had to take a decision to re-allot these candidates to the Highways Department.

82. The Government has a sovereign power to choose candidates to employ, of course, in consonance with the Rules and only through the recruitment method as contemplated under the Rule.

83. In this regard, since these candidates (R4 to R17) had been selected only by proper selection method adopted by the Service Commission, at the risk of repetition, it cannot be said that these candidates had been selected and appointed dehors of the Rule.

84. It is also a fact that these respondents 4 to 17 though had been selected and a selection list was forwarded by the Service Commission as early as on 19.9.1986, they had been made to wait till 6.9.1989, almost 3 years. This delay in giving them appointment to the respondents 4 to 17, is because of the delay being caused at the hands of the concerned Department and for the said delay, the reason as well as the peculiarity was projected by the Department. The said peculiar circumstances was duly considered by the Service Commission, and in exercise of the power conferred under the latter part of regulation 16 (b) of the Tamil Nadu Public Service Commission regulations, the Service Commission has duly endorsed the said decision taken by the Government and given its concurrence for re-allotment of the candidates to the Highways Department.

85. However, these petitioners even though had been selected by a due method of selection process adopted by the Service Commission, their selection admittedly, were made after 2 years of the appointment made in respect of the respondents 4 to 18. The ultimate appointment to respondents 4 to 17 was dated 6.9.1989 whereas the notification of the recruitment, where the petitioners had been selected, was issued only on 12.9.1989. Moreover, when these petitioners had been selected to be appointed as AEs at Highways Department, these respondents 4 to 18 had been in the office as AE (Civil) at Highways Department and their probation had already been declared to be commenced.

86. Thereafter, on successful completion of the probation that was also declared and based on which, on attaining due seniority, these respondents 4 to 18 had been considered for further promotion. Only based on these aspects, seniority list has been published.

87. If the principles enunciated in the aforesaid Judgments are applied to the present case, insofar as the case of the petitioners is concerned, they cannot seek seniority over the respondents 4 to 18 because, the persons, who come to the service earlier through a proper selection would naturally march over the persons, who had subsequently been selected and entered into service.

88. Also, the petitioners, admittedly did not come forward to question the selection and appointment of respondents 4 to 18 at any point of time. Even in the present writ petition though they raised issues pertaining to the appointment of R4 to R18, no challenge has been made to that effect. In this regard, if the principles of aforesaid Judgments are applied, certainly, the present challenge made by the petitioners assailing only the seniority list and the seniority inter se fixed between the petitioners and contesting respondents, cannot stand in the legal scrutiny.

89. Also as per Section 35(f) of the State Rule, if a belated challenge is made against the impugned seniority, the same has to be summarily rejected. The said mandate as given in the said Rule 35(f) has been interpreted and infact reiterated by the aforesaid Judgment of the Division Bench of this Court (stated supra).

90. These factors would comprehensively go to show,

(i) that the petitioners cannot claim seniority over the respondents 4 to 18 as in respect of respondents 4 to 17, they had been selected by the Service Commission in 1986 recruitment and after having waited for three years, the Government had decided to re-allot them and give appointment to them and accordingly, they entered into service well ahead of the petitioners.

(ii) Since the very appointment in respect of respondents 4 to 18 admittedly had not been questioned at any point of time, even in this writ petition, whatever be the justification on the part of the petitioners, the subsequent challenge only in respect of fixation of seniority cannot stand in the legal scrutiny.

(iii) Even the present challenge assailing the impugned seniority list at the level of Assistant Engineers as well as the Divisional Engineers are concerned, such a challenge is to be construed only as a belated challenge within the meaning of

Section 35(f) of the Rule as quoted above.

(iv) Even 3 years delay to challenge the appointment since has been negated by the Hon'ble Supreme Court as early as in the year 1980 (cited supra) which has been followed in other decisions by the Apex Court, the present challenge though has not been expressly made in respect of the appointment of the respondents 4 to 18, after 20 years, certainly is a delayed one, and by thus, it is fatal to the very case of the petitioners. Since it is also a settled proposition of law that in Service matters, settled position for a longer period cannot be unsettled even for plausible reasons, the present challenge, since admittedly a belated one, cannot be permitted to go on or accepted as it will lead to unsettling the settled things.

(v) Moreover, since the petitioners expressed the view that their grievance is only in respect of seniority and therefore, they had not questioned the very appointment made to respondents 4 to 18, that declaration on the part of the petitioners itself, make the very challenge of the petitioners in this writ petition otiose.

(vi) Since the petitioners' case, looking from any angle, lead to a utter flop and failure, naturally, the case of the other respondents i.e respondents 19 to 40 would also fail, as both petitioners and respondents 19 to 40 are sailing together.

91. In view of the aforesaid facts and circumstances and for the foregoing reasons, this court finds no plausible reason to interfere with the impugned seniority list and accordingly, this court has no hesitation to hold that the challenge made in this writ petition assailing the impugned seniority lists, is liable to be rejected.

92. In the result, this writ petition is liable to be rejected. Accordingly it is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kua

To

1.The Secretary, Government of Tamilnadu,
Highways Department,
Fort St.George, Chennai-600 002.

2. The Chief Engineer (General),
Highways Department,
Chepauk, Chennai-600 005.

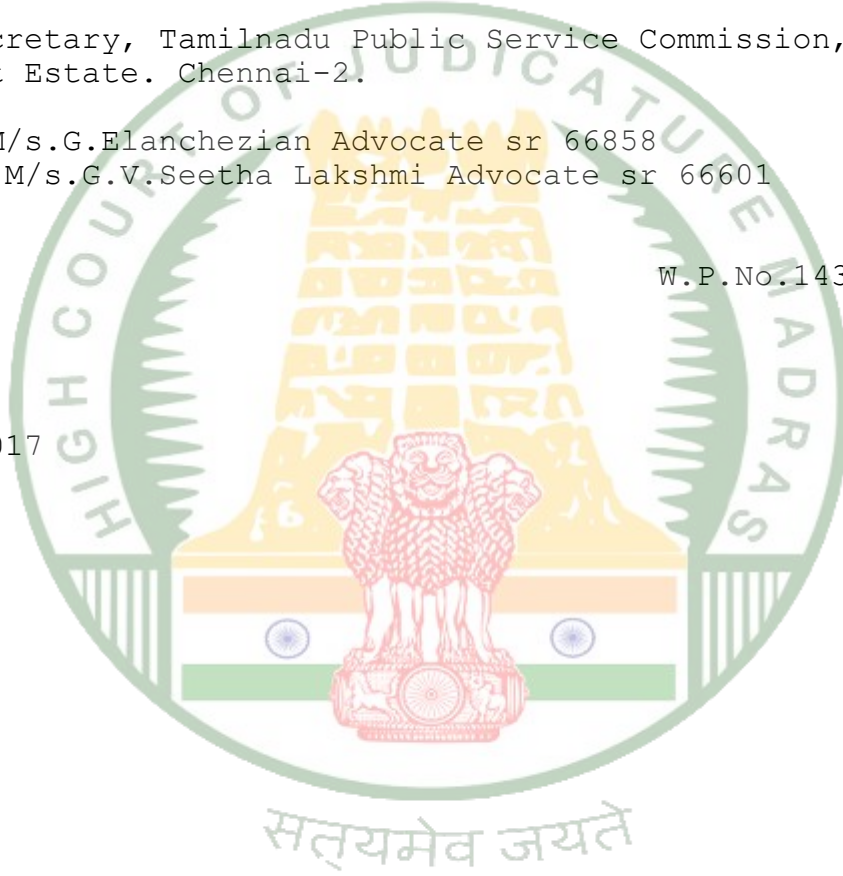
3. The Secretary, Tamilnadu Public Service Commission,
Government Estate. Chennai-2.

+1 cc to M/s.G.Elanchezian Advocate sr 66858

+2 ccs to M/s.G.V.Seetha Lakshmi Advocate sr 66601

W.P.No.14327 of 2010

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