

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 13.07.2018
Delivered on: 03.08.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.Nos.15683 & 15684 of 2011

1. J.Ganesan
2. M.Stephen Joseph Devados Pandian
3. Anne Joseph
4. E.Latha
5. V.Manivannan
6. R.Yesudoss Kennedy ... Petitioners in
WP 15683 of 2011
7. M.Senthamarai
8. M.Shyam Sundar
9. M.Arachelvi
- 10.K.S.Selvakumar
- 11.R.Rajasekaran
- 13.G.Elangovan ... Petitioners in
WP 15684 of 2011

versus

- 1 The Chief Secretary,
TamilNadu Secretariat,
Chennai-9
Government of TamilNaduR1 in WP.15683/2011
2. The Government of Tamil Nadu,
rep. by its Secretary to Government,
Personnel and Administrative Reforms Department,
Tamil Nadu Secretariat, सत्यमेव जयते
Chennai-600 009. ...2nd Respondent in WP.15683/11
1st Respondent in WP.15684/2011
3. The Secretary,
Tamil Nadu Public Service Commission,
Chennai-600 002. ... Respondents 3 in
WP.15683/2011 and R2 in
WP.15684/2011
4. V.Thiruvengkam
5. D.Martin Chelladurai
6. S.Thenmozhi
7. K.Chandran
8. M.Dharuman .. Respondents 3 to 8
in WP 15683/2011
9. L.Paneerselvam
10. K.S.Kabaleeswaran
11. P.L.Vijayal

12. A.Sivaprakasam .. Respondents 3 to 6
in WP 15684/2011

Prayer in WP 15683 of 2011 : Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for call for the records of the Second Respondent in G.O.Ms.No.277 dt.22.7.96 passed by the Secretary to the Government of Tamil Nadu Personnel & Administrative Department Chennai the second respondent herein and quash the same and to direct the second respondent to revise the Seniority of the petitioners duly applying the Quota/Rota System as per Tamil Nadu Secretariat Service Rules as applicable to the Category of Assistant Section Officers and fix their Seniority at the appropriate places with all attendant benefits with due Seniority and consequently to fix the Seniority in the Category of Under Secretary to Government.

Prayer in WP 15684 of 2011: Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records of the relating to the orders in Letter No.80730/ U/96/-2 and Letter No.80730/ U/96/-3 dt.17.2.1998 passed by the Secretary to the Government of Tamil Nadu Personnel & Administrative Department Chennai the first respondent herein and quash the same and to direct the first respondent to revise the Seniority of the petitioners duly applying the Quota/ Rota System as per Tamil Nadu Secretariat Service Rules as applicable to the Category of Assistant Section Officers and fix their Seniority at the appropriate places with all attendant benefits with due Seniority and consequently to fix the Seniority in the Category of Section Officers.

For Petitioners : Mr.L.Chandrakumar
in WP 15683/11

For Petitioners : Mr.Karthikrajan
in WP 15684/11 for Mr.R.Parthiban

For Respondents : Mr.P.H.Arvind Pandian,AAG
assisted by Mr.J.Pothiraj,
Spl.G.P.-R1&R2 in
WP 15683 of 2011 &
for R1 in WP 15684 of 2011
Mr.Devendran-R3 in
WP 15683 of 2011
Mr.C.N.G.Niraimathi-R2 in
WP 15684 of 2011
R5toR8-No appearance
M/s.A.Mohamed Ismail-R3
Mr.T.Ranganathan-R1
M/s.S.Conscious Elango-R6 &
R5-No appearance in
WP 15684 of 2011

COMMON ORDER

Since the issues that are placed for consideration before this Court in respect of both the above writ petitions are common, they are taken up together and being disposed vide this common order.

2. The brief facts as narrated in W.P.No.15683 of 2011 are stated hereunder and the conclusion to be arrived at by this Court in the said writ petition, will hold good for the other writ petition as well.

3. In September, 1989 a Notification was issued by the Tamil Nadu Public Service Commission, inviting application for appointment to the post of Assistant Section Officers in the Secretariat service. Pursuant to the said Notification, the petitioners in WP No.15683 of 2011 came to be considered for appointment as Assistant Section Officers for the year 1989-90. After conclusion of the selection process, an approved list was published by the Tamil Nadu Public Service Commission in January 1992. On the basis of the approved list, the petitioners came to be appointed as Assistant Section Officers in May 1992. The appointment of the petitioners being direct recruitment having been appointed against substantive vacancies which cannot be disputed.

4. Before the appointment of these petitioners, number of orders were issued by the Government creating temporary panels and several persons from the feeder grade came to be promoted as Assistant Section Officers temporarily. Many of them continued as such on temporary basis, but subsequently their services came to be regularized in October 1996. However, their regularization was given with retrospective effect from 1992 i.e. from the date of their first initial appointment as Assistant Section Officer on temporary basis. It is also a fact that some of the promotee Assistant Section Officers who were initially appointed, had suffered reversion in between and were reappointed in 1993 and 1994 as the case may be and continued till they were regularized in 1996.

5. The grievance of the petitioners herein was that by the impugned action of the official respondents, the petitioners were assigned seniority below the promotee Assistant Section Offices contrary to the relevant provisions of the Tamil Nadu Secretariat Services Rules (Special Rules) (in short, 'Special Rules') which were issued vide G.O.Ms.No.236 dated 12.4.1988. According to these petitioners, Rule 8 of the Special Rules provided quota-rota system, which reads as under:

"8. Pattern of Appointment of Assistant Section Officers in the Departments of Secretariat other than the Law Department and

Governor's Secretariat:- Subject to rule 8 of the General Rules, out of every seven vacancies in the category of Assistant Section Officers in the Departments of Secretariat other than the Law Department, and the Governor's Secretariat appointment shall be made in the following order of rotation:-

1.	by direct recruitment
2.	by recruitment by transfer;
3.	by promotion from Assistant;
4.	by promotion from Assistant;
5.	by promotion from Assistant;
6.	by promotion from Assistant; and
7.	by promotion from the category of Personal Clerks, Typists, non-graduate Assistants and by transfer from the category of Personal Assistants

Provided that direct recruitment or/and recruitment by transfer for filling the vacancies may be kept in abeyance by the Government and such vacancies shall be treated as lapsed.

Provided further that every Personal Clerk or Personal Assistant shall, at the time of preparation of the list of persons eligible for appointment as Assistant Section Officers exercise an option as to the line in which she/he desires to continue and that such option once exercised shall be final."

6. The ratio as prescribed above is 1:1:5 namely, first vacancy is earmarked to direct recruitment, second by transfer and 3 to 7 were earmarked for promotion from the feeder grades. The assignment of the seniority to the promotee Assistant Section Officers above the writ petitioners who were direct recruitees was in violation of quota-rota Rule as the promotees private respondents were allowed to encroach upon the quota earmarked for direct recruitment.

7. In the above circumstances, representations were made by the petitioners for refixing their seniority after following the quota-rota rule as prescribed in the Special Rules. Since there was no action forthcoming from the official concerned, an application was filed in O.A.No.3055 of 1998 before the then Tamil Nadu Administrative Tribunal seeking direction to refix the seniority of the applicants/petitioners herein, namely, the direct recruitees by duly applying quota-rota system as per the Special Rules. The said OA has been transferred to this Court after the abolition of the Tribunal and renumbered as WP No. 38111 of

2005. This Court dismissed the Writ Petition on 2.9.2009 on the ground that in the absence of necessary party being made as respondents, the petitioners were not entitled to any relief for refixation of seniority. As against the order passed by the learned single Judge, a writ appeal in W.A.No.1052 of 2010 was filed and a Division Bench of this Court dismissed the writ appeal on 22.09.2010. However, while dismissing the writ appeal, the Division Bench of this Court had observed that the dismissal of the appeals will not preclude the appellants therein, namely, the petitioners herein from approaching the proper forum in accordance with law.

8. After dismissal of the writ appeal, the present writ petitions were filed after impleading private respondents in representative capacity.

9. As stated earlier, the grievance of the petitioners is still subsisting even after a lapse of 15 years as they were aggrieved by the G.O.Ms.No.277 dated 22.7.1996 and the rejection letter of the second respondent dated 17.2.1998 wherein the seniority of the petitioners enblock placed below the promotee Assistant Section Officers and refixation of seniority requested by the petitioners was rejected.

10. The only point in issue that calls for adjudication before this Court is, whether the seniority as assigned under the above referred to G.O.Ms.No.277 dated 22.7.1996 was in consonance with quota-rota system, i.e. under Rule 8 of the Special Rules and whether such assignment was also in consonance with the settled legal principles as enunciated by the Hon'ble Supreme Court on the subject matter?

11. Shri L.Chandrakumar, learned counsel and Shri Karthik Rajan, learned counsel appearing for the petitioners in respective writ petitions, would submit that once quota-rota is prescribed in the recruitment Rules, it is incumbent upon the authority to follow the same in its letter and spirit and there cannot be even a slightest deviation in the applicability of the Rules. The Rule being mandatory in nature, the authorities, at all times, are bound to follow the same while fixing the seniority when different methods of appointment are prescribed in the Rules. By the impugned action, the promotee Assistant Section Officers were given undue advantage and granted retrospective regularization even though admittedly they were all appointed initially on temporary basis from the temporary panels prepared to meet the exigencies of service. By grant of higher seniority enblock to these promotees, the right of the direct recruitees who were appointed against substantive vacancies, stood negated and the promotee Assistant Section Officers who were admittedly promoted only on temporary basis had been given seniority by conferring higher status than the direct recruitee who were appointed admittedly against substantive

vacancies.

12. Learned counsels would straight away draw the attention of this Court to a decision of the Hon'ble Supreme Court of India reported in "2006(6) SCC 558 (K.Madalaimuthu and another versus State of T.N. and others)", wherein, the learned counsels would particularly draw the attention of this Court to paragraph 24 of the order, which is extracted herein under:

"24. On a consideration on the submissions made on behalf of the respective parties and the decisions cited on their behalf, the consistent view appears to be the one canvassed on behalf of the appellants, the decisions cited by Mr. Rao have been rendered in the context of Rule 10 (a) (i) (1) and the other relevant rules which are also applicable to the facts of the instant case. The law is well established that initial appointment to a post without recourse to the rules of recruitment, an appointment to a service as contemplated under Rule 2 (1) of the General Rules, notwithstanding the fact that such appointee is called upon to perform duties of a post borne on the cadre of such service. In fact, Rule 39 (c) of the General Rules indicate that a person temporarily promoted in terms of Rule 39 (a) is required to be replaced as soon as possible by a member of the service who is entitled to the promotion under the rules. It stands to reason that a person who is appointed temporarily to discharge the functions in a particular post without recourse to the recruitment rules, cannot be said to be in service till such time his appointment is regularized. It, therefore, follows that it is only from the date on which his services are regularised that such appointee can count his seniority in the cadre."

13. In another decision rendered by the Hon'ble Supreme Court reported in "(2006) 6 SCC 673 (Arvinder Singh Bains versus State of Punjab and others)", the Hon'ble Supreme Court has in extenso, dealt with various case laws on the subject matter and finally held in favour of the contentions put forth by the learned counsels appearing for the present petitioners. Since a detailed order passed by the Hon'ble Supreme Court is required to be extracted for appreciating the legal issue on the subject matter, the relevant portion of the said judgment from paragraphs 38 to 60 is extracted herein below:

"38. Joint reading of Rules 7 and 18 envisages that appointments are to be made

when the names have been entered in all the Registers.

39. Actual appointment is by virtue of Rule 18 only which says that first and thereafter every alternative vacancy shall be filled up by RegisterB candidates. In other words, the first officer to be appointed has to be from RegisterB. This position is also fortified by Rule 24(5)-(Un-amended), the plain reading of which reveals that reference point is once again candidate from Register-B. In para 5(1) of counter affidavit, Government has also admitted that direct recruits have precedence over others. Such precedence has to be reflected in the matter of seniority also. Even otherwise the direct recruits can never be senior to promotees if date of appointment is made the sole criterion in determining the seniority as their process of selection is always lengthier than the promotees. It is in view of this, and to rule out any discrimination/arbitrariness that the Roster under Rule 18 has been prescribed which has to be read with Rule 21 in determining the seniority. Making date of joining as the basis of determining seniority would have led to discretion in the hands of the Government and there would have been a possibility of misuse. It is to avoid this that a Roster has been prescribed in the Rules for fixing seniority. This Court held that it is mandatory to apply Rota and Quota in determining seniority where the same is provided for under the rules as held by this Court in *Mervyn Coutindo & Ors. Vs. Collector of Customs, Bombay & Ors.*, [1966] 3 SCR 600 at page 604 and 605 (5 Judges),

"This brings us back to the circular of 1959, and the main question in that connection is the meaning to be assigned to the words "seniority determined accordingly", in the explanation to principle 6 relating to relative seniority of direct recruits and promotees. As we read these words, their plain meaning is that seniority as between direct recruits and promotees should be determined in accordance with the roster, which has also been specified, namely, one promotee

followed by one direct recruit and so on. Where therefore recruitment to a cadre is from two sources, namely, direct recruits and promotees and rotational system is in force, seniority has to be fixed as provided in the explanation by alternately fixing a promotee and a direct recruit in the seniority list. We do not see any violation of the principle of equality of opportunity enshrined in Art. 16(1) by following the rotational system of fixing seniority in a cadre half of which consists of direct recruits and the other half of promotees, and the rotational system by itself working in this way cannot be said to deny equality of opportunity in government service.."

40. M. Subba Reddy and Another vs. A.P. State Road Transport Corporation and Others, (2004) 6 SCC 729 at 741 (3 Judges):

"Regulation 34 applies to posts reserved only to be filled by direct recruits. Reading Item 3 of Annexure 'A' (Section B) with Regulation 34, it is clear that filling up of the posts reserved for direct recruits by departmental promotees has to be on temporary basis under Regulation 30 and as soon as eligible candidates from direct recruits' quota become available, they are to replace the temporary promotees.

In the present case, the appellant promotees were promoted to the posts of ATMs/AMEs temporarily under Regulation 30 as there were no direct recruits available. They were promoted subject to being reverted to substantive posts on approved candidates becoming available. Regulation 34(6) states that the revertees shall subsequently be considered for repromotion against the quota of vacancies reserved for promotees. Therefore, one has to read Regulation 3 of the Service Regulations with Regulations 30 and 34 of the Recruitment Regulations. It is only when such revertees are repromoted as per Regulation 34, they can be deemed to have been appointed to the posts of ATM or AME. Therefore, when the appellants were

tentatively appointed to the post of ATMs/AMEs originally for want of direct recruits and to the posts reserved for direct recruits, it cannot be said that they were first appointed to that category within the meaning of Regulation 3 of the Service Regulations. Therefore, seniority had to be fixed between the direct recruits and the promotees strictly in accordance with the quota provided for in Item 3 of Annexure 'A' (Section B).

The appellants were promoted temporarily under Regulation 30 which provides for ad hoc promotions while Regulation 34 ensures induction of qualified direct recruits. But for Regulation 34, candidates from feeder posts would be temporarily promoted to the slots reserved for direct recruits and on their regularisation, the quota prescribed for direct recruits will be defeated. Regulation 34 has been enacted to protect quota prescribed for direct recruits.

On reading Regulation 3 of the Service Regulations with Regulations 30 and 34 of the Recruitment Regulations, it becomes clear that neither the date of promotion nor the date of selection is the criterion for fixation of seniority. The fixation of seniority under the said regulations depends upon the number of vacancies falling in a particular category. Therefore, rota rule is inbuilt in the quota prescribed for direct recruits and for promotees in terms of Item 3 of Annexure 'A' (Section B) to the Recruitment Regulations. In the present case, the said regulations prescribe a quota of 1:1, which leads to rota for confirmation. In the circumstances, there is no merit in the appellants' argument that Item 3(1) of Annexure 'A' (Section B) prescribes only quota and not rota and that the said item was not for determination of seniority. "

41. Prafulla Kumar Das and Others vs. State of Orissa and Others, (2003) 11 SCC 614 at 626 (5 Judges):

"The submission that the principle of year of allotment must be regarded as unworkable is quite apart, of course, from the argument that the principle of year of

allotment is in and of itself unreasonable and, therefore, bad in law. Ordinarily, and as a matter of course, we are of the considered opinion, in line with Roshan Lal Tandon v. Union of India, AIR 1967 SC 1889 and other decisions of this Court, that it is the length of actual service that must be the determining factor in matters of promotion and consequential seniority. However, this Court has subsequently carved out a distinct exception to this general rule by virtue of its decision in Direct Recruit Class II Engg. Officers' Assn. case (1990) 2 SCC 715 by stating that where the seniority and the vested rights of the many have through years of accustomed practice become dependent upon the existence of a rule, this rule, if injurious to the rights of a few, would not be trifled with, unless it is unworkable or manifestly arbitrary or egregious.

42. It has been admitted in the preliminary submissions made in the counter affidavit by the State Government that there is no material difference between 1930 and 1976, Punjab Civil Service (E.B.) rules and that so long as the 1930 rules remained in force the seniority of members was determined by applying ROTA rule i.e. expression "order of appointment" was always read and interpreted as rotation/order/sequence of slots enumerated for various registers. This could be seen from the Preliminary Submission No.3 in the counter affidavit filed on behalf of respondent Nos. 1 & 2 (pages 136-137)

43. That as a result of a decision by Punjab and Haryana High Court which was applicable only to the concerned parties it was decided by the Government to fix seniority of only the concerned parties keeping in view the date of appointment. However, the seniority of other officers was determined only by applying ROTA rule.

44. It has also been mentioned/admitted that in view of the above position and in view of legal advice by the Legal

Remembrancer in Dec.1982 the Government decided to deviate from the long established practice of applying ROTA rule and started determining seniority from the date of appointment and that there was no other specific reason to follow the new procedure for the determination of seniority of officers in the Service in the face of provisions of the 1930 and 1976 Rules being identical. It has been held by this Court that it is not justified for the Government to deviate from the long established without any specific reason. In this context, we may usefully refer to the decisions of this Court in Direct Recruit Class II Engineering Officers' Association vs. State of Maharashtra and Others, (1990) 2 SCC 715 (5 Judges). This Court held as under:

"23. Mr. Tarkunde is right that the rules fixing the quota of the appointees from two sources are meant to be followed. But if it becomes impracticable to act upon it, it is no use insisting that the authorities must continue to give effect to it. There is no sense in asking the performance of something which has become impossible. Of course, the Government, before departing from the rule, must make every effort to respect it, and only when it ceases to be feasible to enforce it, that it has to be ignored. Mr. Tarkunde is right when he says that in such a situation the rule should be appropriately amended, so that the scope for unnecessary controversy is eliminated. But, merely for the reason that this step is not taken promptly, the quota rule, the performance of which has been rendered impossible, cannot be treated to continue as operative and binding. The unavoidable situation brings about its natural demise, and there is no meaning in pretending that it is still vibrant with life. In such a situation if appointments from one source are made in excess of the quota, but in a regular manner and after following the prescribed procedure, there is no reason to push down the appointees below the

recruits from the other source who are inducted in the Service subsequently. The later appointees may have been young students still prosecuting their studies when the appointments from the other source takes place -- and it is claimed on behalf of the respondents that this is the position with respect to many of the direct recruits in the present case -- and, it will be highly inequitable and arbitrary to treat them as senior. Further, in cases where the rules themselves permit the Government to relax the provisions fixing the ratio, the position for the appointees is still better; and a mere deviation there from would raise a presumption in favour of the exercise of the power of relaxation. There would be still a third consideration relevant in this context: namely, what is the conclusion to be drawn from deliberate continuous refusal to follow an executive instruction fixing the quota. The inference would be that the executive instruction has ceased to remain operative. In all these cases, the matter would however be subject to the scrutiny of the Court on the ground of mala fide exercise of power. All the three circumstances mentioned above which are capable of neutralising the rigours of the quota rule are present in the cases before us, and the principle of seniority being dependent on continuous officiation cannot be held to have been defeated by reason of the ratio fixed by the 1960 Rules."

To sum up, we hold that:

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation

in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

(C) When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly.

(D) If it becomes impossible to adhere to, the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down.

(E) Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date.

(F) Where the rules permit the authorities to relax the provisions relating to the quota, ordinarily a presumption should be raised, that there was such relaxation when there is a deviation from the quota rule.

(G) The quota for recruitment from the different sources may be prescribed by executive instructions, if the rules are silent on the subject. (H) If the quota rule is prescribed by an executive instruction, and is not followed

continuously for a number of years, the inference is that the executive instruction has ceased to remain operative. (I) The posts held by the permanent Deputy Engineers as well as the officiating Deputy Engineers under the State of Maharashtra belonged to the single cadre of Deputy Engineers. (J) The decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinised for finding out any possible error. It is not in the interest of Service to unsettle a settled position".

Prafulla Kumar Das and Others vs. State of Orissa and Others, (2003) 11 SCC 614 at 626 (5 Judges) (already referred to in paragraphs supra).

45. In reply to para 5 (B&C), the Government has admitted that recruitment to the Service cannot be made from one particular Register/source in isolation by ignoring other Registers. On the same analogy, the seniority of officers from one Register cannot be finalized by ignoring other Registers. Even Rule 21 envisage a joint/composite seniority list of all the Registers. However, in the present case this has not been done. Composite seniority list of officers appointed in 1984 and those appointed in 1986 was never issued in spite of the fact that the officers were appointed as a result of requisitions sent by the Government in the year 1982 for the vacancies of years 1978, 1979, 1980, 1981 and 1982 as mentioned in para 1 above. The seniority of promotee officers was finalized vide order dated 18.03.1993 (issued on 19.03.1993) and that of Direct Recruits vide order dated 1.7.1994 (issued on 16.08.1994). These facts were admitted by the Government in para 9 of the written statement filed in CWP No. 16516 of 1995 (page 74 of the Paper Book). Surprisingly in the seniority list of Direct Recruits there is no mention of name of any of the promotee officers in spite of the fact that a joint requisition of promotees and Direct Recruits was sent in the year 1982, the break-up of which has been shown in para 5(D) of the counter affidavit of the Government (Pages 140-141

of the Paper Book) and as such a Joint/composite seniority in respect of Direct Recruits and Promotees was required to be issued. Only a small note has been given at the bottom of the seniority list dated 1.7.1994 in respect of Direct Recruits which reads as under:-

"The above officers will rank junior to one Shri Bhagwant Singh, PCS whose name figures at Sr. No. 73 in the Quarterly Gradation and Distribution List of the officers PCS (Executive Branch) corrected upto 1st July, 1994. (Copy of Seniority list is annexed herewith)."

Neither any explanation was given as to how name of Shri Bhagwant Singh find mention at Sr. No. 73 of the Gradation List nor the Direct Recruits were given any opportunity to file any objection in respect of final seniority list of promotees as there was no mention of seniority list dated 18.03.1993 in respect of promotees. The only reference that was given was with regard to Sr.No.73 of the Gradation List of 1st July, 1994 thus giving an indication that Gradation List in fact is Seniority List.

46. It is submitted in this appeal that the ambit of Rule 20 is completely different and is in no way rendered redundant. This interpretation has not been contested or denied by the Government in the written statement.

47. It may be pertinent to say that legislature has used the term "date" where there was clear intention to refer to "date". Had there been an intention of the legislature to say that the seniority shall be determined from the date of appointment/order they would have used the term "date" in Rule 21 as has been done in Rule 20. Even in Rule 21 proviso (a) the term 'date' has been used in an eventuality where the legislature has an intention to make the 'date' relevant.

48. Had the date of appointment been the sole criterion for fixing seniority there would have been no need for proviso (a) to Rule 21 as any appointment after cancellation of original appointment will always be treated as original/first appointment.

49. If the term "in accordance with the order of their appointment" in Rule 21 actually means "in accordance with the date of their appointment" there is no need for proviso (a) to Rule 21.

50. It has also been admitted by the Government in reply to para 5 (G) in the written statement that if officers from different Registers happen to be appointed on the same date there is no escape from the situation that for determining seniority the ROTA as prescribed under Rule 18 is to be applied. It has been said by the State Government in the written statement that the Rules are silent about the seniority of the officers appointed on the same day. If 'order of appointment' mentioned in Rule 21 means 'the date of appointment' and is the sole criterion for fixing seniority then why the said Rule does not provide for the determination of seniority of those appointed from different Registers on the same date. The legislature could not have left it to the discretion of the Government to use Rule 18 by default for determination of seniority i.e. to use Rule for fixing seniority in those cases when the orders of appointments of officers from different Registers are issued on the same date.

51. There is once again deviation by the Government from its stand that date of appointment is the basis for determining the seniority. The perusal of Sr. Nos. 186, 187 and 188 on page 57 of the Gradation List of 1st January, 2006, reveals that Government has once again reverted to applying Roster in the determination of seniority. Officer at Sr. No. 188 with appointment date of 9th June, 2004 has been shown junior to ones at Sr. Nos. 186 and 187 whose appointment dates are 23rd June, 2004 and 1st July, 2004 respectively. Similar situation can be seen at Sr. Nos. 189 and 191 on page 58 and at Sr. Nos. 203 and 204 on page 59.

52. That by getting appointment orders ahead of Direct Recruits the promotees had already enjoyed more perks than the Direct Recruits by way of pay etc. This became possible because the selection process of promotees was shorter as compared with that of Direct Recruits. The injustice to Direct Recruits cannot be compounded by relegating them in matter of seniority also by placing the promotees enblock above the Direct Recruits especially when both of them (promotees and Direct Recruits) were selected against same requisition sent by the Government to the Punjab Public Service Commission.

53. It is also pertinent to notice that Mr. Khushi Ram who has been impleaded as respondent in the present case had himself filed a Civil Writ Petition No. 8957 of 1993 in the Punjab and Haryana High Court in which he had himself made the following prayer:-

"(iii) issue a writ mandamus directing respondent no.1 to fix the seniority of PCS Executive Branch Officers as per Rota quota system as laid down in Rule 18 read with Rule 21 of the Rules and also to fix the seniority of respondent Nos. 4 and 5 below the name of the petitioner in view of Rule 21-C of the Rules."

54. While granting leave on 03.09.2001 this Court passed the following order:-

"Learned counsel has brought to our notice Rule 24(5) and submitted that this Rule clearly indicated that there was a quota and therefore principle of rota and quota should have applied.

Leave granted.

Any action taken will be subject to the outcome of the appeal."

55. In Gonal Bihimappa vs. State of Karnataka and Others, 1987 (Supp) SCC 207 (2 Judges) this Court held as under:

8. It is a well settled position in law that where recruitment is from two sources to a service, a quota rule can be applied fixing the limits of recruitment from the two sources.

(H.C. Sharma vs. MCD, (1983) 3 SCR 372)

10. Badami case 1976 (1) SCR 815 referred to several authorities of the court and clearly drew out the judicial consensus on the point in issue by concluding that the quota rule had to be strictly enforced and it was not open to the authorities to meddle with it on the ground of administrative exigencies.

11. The scheme in force relating to the services for fixing inter se seniority takes into account the filling up of the vacancies in the service from the two sources on the basis of the quota and, therefore, fixation of inter se seniority in the Gradation List has to be worked out on the basis of quota.

19. In a precedent-bound judicial system binding authorities have got to be respected and the procedure for developing the law has to be one of evolution. It is not necessary for disposal of these matters before us to go into that aspect except noticing the existence of distortion in the field. The rationalisation of the view in a way known to law is perhaps to be attempted some day in future. In the present batch of cases the law being clear and particularly the mandate in the rule being that when recruitment takes place the promotee has to make room for the direct recruit, every promotee in such a situation would not be entitled to claim any further benefit than the advantage of being in a promotional post not due to him but yet filled by him the absence of a direct recruit. One aspect which we consider relevant to bear in mind is that the promoted officer has got the advantage of having been promoted before it became his due and is not being made to lose his promotional position. The dispute is confined to one of seniority only. The advantage received by the promotee before his chance opened should be balanced

against his forfeiture of claim to seniority. If the matter is looked at from that angle there would be no scope for heart-burning or at any rate dissatisfaction is expected to be reduced so far as the promotees are concerned."

56. This Court in Devendra Prasad Sharma vs. State of Mizoram and Others, (1997) 4 SCC 422 (2 Judges) held as under:

"In the matter of fixation of the inter se seniority under Rule 25(iii), the relative seniority of direct recruits and of promotees has to be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quotas of vacancies reserved for direct recruitment and promotion under Rule 5. The Division Bench has pointed out in the impugned order the position as under:

"Clause (ii) of Rule 25 quoted above clearly stipulated that the seniority of the Service appointed at the initial constitution of the Service shall be determined by the Administrator in consultation with the Board. Since all the respondents have been appointed as members of the Service at the initial constitution of Service their seniority has to be determined by the Administrator in accordance with the said rules."

57. We shall now scan the three judgments cited by Mr. Ashok Panda:

1. Ajit Kumar Rath vs. State of Orissa and Others, (1999) 9 SCC 596 at 602 paras 13 & 14, (2 Judges)

"It was also contended on behalf of the respondents before the Tribunal, and is also reiterated here, that the respondents are entitled to reckon their seniority from 1970 to 1971 as they were appointed against the vacancies of those years. It is pointed out that the advertisement in 1970-71 for direct recruitment on the posts of Assistant Engineer was issued by the Public Service Commission on 6-

12-1971 and the result was thereafter published which indicated that all the respondents had been selected. They were also directed to appear before the Medical Board. The order of appointment was, however, passed on 3-1-1972. The respondents, therefore, claim seniority with effect from 1970 and 1971 on the ground that they were appointed against the vacancies of 1970 and 1971. They claim that their seniority may be ante-dated.

This plea is wholly unfounded and is liable to be rejected as without substance and merit. The law on this question has already been explained by this Court in Jagdish Ch. Patnaik v. State of Orissa (1998) 4 SCC 456 and it was categorically held that the appointment does not relate back to the date of vacancy."

2. Suraj Parkash Gupta and Others vs. State of J&K and Others, (2000) 7 SCC 561 at 599 (2 Judges) "Point 4 Direct recruits cannot claim appointment from date of vacancy in quota before their selection."

3. Dr. Chandra Prakash and Others vs. State of U.P. and Another, (2002) 10 SCC 710 at 726 (3 Judges) paras 41 & 42 "As far as the question of seniority is concerned, Rule 18 of the 1945 Rules reads as follows:

"Seniority.- Seniority in the service shall be determined by the date of the order of appointment in a substantive vacancy provided that if two or more candidates are appointed on the same date their seniority shall be determined according to the order in which their names are mentioned in the order of appointment."

Thus even under the Medical Services Rules, 1945, the determination of seniority under those Rules was from the date of appointment against a substantive vacancy. It is clear that in accordance with the Rules, and as held by the High Court in Mathur case appointment could be temporary or permanent. But where the appointment

is against a substantive vacancy, the year of appointment was determinative in fixing, seniority under the Rules. On this basis, calculations of the writ petitioners' seniority from the date of their initial appointment cannot be said to be incorrect. Furthermore, it has not been disputed that the writ petitioners have been continuing to serve and had till 1983 enjoyed all the benefits of regular service since their initial appointments like the writ petitioners in Mathur case. As held in Rudra Kumar Sain v. Union of India, 2000 (8) SCC 25 at p.45, para 20:

"20. In service jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such an appointment cannot be held to be 'stopgap or fortuitous or purely ad hoc'".

58. These judgments, in our opinion, are not only distinguishable on facts but also on law. In the above cases, issues with regard to year of vacancy and seniority in accordance with the date of appointment was in question. The argument advanced by counsel for the contesting respondents has no merits and substance. The action of the authorities is based on the mis-interpretation of the provisions of Rule 21 of 1976-Rules and is, therefore, liable to be set aside. The action of the authorities is also contrary to the Register prescribed for purpose of appointment to the PCS. The mandate of the roster is that unless his appointment in the order prescribed under Rule 18, the appointment is invalid. Consequently, the order of appointment must be deemed to be the order prescribed in Rule 18 of the 1976-Rules. The action of the respondents in determining the seniority list without reference to the order consequence of appointment is wholly unsustainable in law and is liable to be set aside. This apart, the term order of appointment is also being mis-interpreted by

the authorities and is being confined to individual order of appointments issued to individual members of service whereas the term of appointment refers only to the order/consequence prescribed under Rule 18. Further, from a perusal of Rule 21 it would be manifestly clear that if it is to be interpreted in the manner in which it is presently being done, namely, to determine the seniority on the basis of the order of appointment i.e. the date on which the order of appointment is issued, the same must necessarily relate to inter se seniority of individual sources of recruitment. This procedure was adopted in preparing the seniority list confined to Register-B. Action of the authorities in determining seniority of all the members of the PCS (EB) with reference to their date of appointment and not with reference to the order by which they were required to be appointed under Rule 18 is mis-interpretation of Rule 21 of 1976-Rules and is liable to be set aside.

59. We have also referred to the decisions rendered by this Court. This Court said rota and quota must necessarily be reflected in the seniority list and any seniority list prepared in violation of rota and quota is bound to be negated. The action of the respondents in determining the seniority is clearly in total dis-regard of rota-quota prescribed in Rule 18 of the 1976- Rules. The action is, therefore, clearly contrary to the law laid down by this Court. Thus, we hold:

1. that the action of the State is contrary to the 1976- Rules;

2. the seniority under the 1976- Rules must be based on a collective interpretation of Rule 18 and Rule 21 of the 1976-Rules;

3. the action of the authorities is negation of Rule 18 of the 1976- Rules in determining the seniority by the impugned order. Since the action is contrary to law laid down by this Court, we have no hesitation in allowing the appeal and grant the relief as prayed for by the appellant.

60. We, therefore, issue a writ of mandamus directing the respondents to prepare the seniority list of the appellants who belong to the PCS (EB) in accordance with Rule 18 and read with Rule 21 of the 1976-Rules by fixing seniority according to the roster prescribed under Rule 18 of the 1976-Rules. Fresh seniority list should be drawn within three months.

14. The learned counsels appearing for the petitioners would therefore, submit that the issue is no more res integra as the Hon'ble Supreme Court has settled the issue that there cannot be any erosion of quota meant for direct recruitment or vice versa and when the Rules prescribed for quota-rota system to any appointment to a particular cadre, the same has to be followed strictly. Any departure from such position would only render that appointment as invalid and void. Therefore, the learned counsels would pray that the seniority as fixed under the aforesaid impugned G.O.Ms.No.277 dated 22.7.1996 and the rejection of their claim dated 17.2.1998 may be set aside and the relief as prayed for may be granted to the petitioners.

15. Per contra, Mr.P.H.Arvind Pandian, learned Additional Advocate General, would contend that the petitioners cannot claim any seniority over and above promotee Assistant Sections Officers since they were originally appointed as Assistant Section Officers prior to the recruitment of the petitioners though temporarily. A temporary service is validated when regularization taken place subsequently, which can always relate back to the date of initial appointment and therefore, he would submit that there was nothing questionable about the grant of seniority of the promotee Assistant Section Officers over and above the petitioners.

16. The learned Addl. Advocate General would rely on the earlier provision of Tamil Nadu State and Subordinate Services Rules, particularly Rule 35(aa) which read as under:

"35 (aa) The seniority of a person in a service, class or category or grade shall, where the normal method of recruitment to that service, class, category or grade is by more than one method of recruitment, unless the individual has been reduced to a lower rank as a punishment, be determined with reference to the date on which he is appointed to the services, class, category or grade;

Provided that where the junior appointed by a particular method or recruitment happens to be appointed to a service, class category or grade, earlier than the senior appointed by the same method of recruitment, the senior

shall be deemed to have been appointed to the service, class, category or grade on the same day on which the junior was so appointed.

Provided further that the benefit of the above proviso shall be available to the senior only for the purpose of fixing inter-se seniority;

Provided also that where persons appointed by more than one method of recruitment are appointed or deemed to have been appointed to the service, class, category or grade on the same day, their inter-se-seniority shall be decided with reference to their age."

17. The above said rule has been superseded and new rule has been introduced in Tamil Nadu Government Servants (Conditions of Service) Act, 2016. Under the new Act, Section 40(2) would be applicable to the facts of the present case which is also extracted hereunder:

"40(2) The seniority of a person in a service, class, category or grade shall, where the normal method of recruitment to that service, class, category or grade is by more than one method of recruitment, unless the individual has been reduced to a lower rank as a punishment, be determined with reference to the date on which he is appointed to the services, class, category or grade: Provided that where the junior appointed by a particular method of recruitment happens to be appointed to a service, class, category or grade, earlier than the senior appointed by the same method of recruitment, the senior shall be deemed Appointment of full members. Appointment as full member, discharge and reappointment of member who are not probationers or approved probationers. Penalty for failure to pass prescribed test. Fixation of seniority. 32 to have been appointed to the service, class, category or grade on the same day on which the junior was so appointed: Provided further that the benefit of the above proviso shall be available to the senior only for the purpose of fixing inter-se-seniority: Provided also that where persons appointed by more than one method of recruitment are appointed or deemed to have been appointed to the service, class, category or grade on the same day, their inter-se-seniority shall be decided with reference to their age."

18. The learned Addl. Advocate General, would therefore submit that when the promotee Assistant Section Officers were

appointed albeit temporarily, they would take seniority from the date of their initial appointment, as subsequently, their services were regularized in the said cadre. However, in regard to the application of quota-rota system provided in the Special Rules, there appears to be no acceptable answer on behalf of the respondents.

19. Mr.T.Ranganathan, learned counsel appearing for the private respondents made his submission. It appears from the record that most of the private respondents who are promotee Assistant Section Officers have retired from service on attaining the age of superannuation and therefore, they are not active stake holders in the present writ petitions.

20. As stated above, the only point for consideration before this Court is whether the regularization of promotee Assistant Section Officers was in due compliance with Rule 8 of the Special Rules and whether such deviation from the Rule, can be detrimental to the right of the petitioners who were direct recruitees and appointed against substantive vacancies?

21. As contended by the learned counsels for the petitioners, the claim of the petitioners is directly covered by the ratio laid down by the Hon'ble Supreme Court in the above referred two decisions.

22. The arguments advanced on behalf of the official respondents by the learned Addl.Advocate General that the erstwhile Rule 35(aa) of the Tamil Nadu State and Subordinate Service Rules and the present Section 40(2) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, was followed in the matter of fixation of seniority, cannot be acceptable as valid piece of argument, since the Section which was relied upon by the learned Addl.Advocate General has only a general application and cannot be pressed into service where quota-rota system is made mandatory. As per Rule 8 of the Special Rules, the ratio as prescribed for direct recruitment, transfer and promotion is 1:1:5, which means whenever first vacancy arises it has to be earmarked for direct recruit and once the vacancy is earmarked for direct recruitment, the consequential benefit of seniority has to be assigned on that basis. Unfortunately, the official respondents while granting retrospective regularization to the promotee Assistant Section Officers, have allowed encroachment by the promotee Officers into quota-rota meant for the direct recruitees, thereby negated the right of the petitioners to have their due seniority fixed on the basis of their substantive appointment. In simple terms, what has to be seen is whether a substantive appointee has a better right over a temporary appointee or vice versa and the inexorable conclusion would be that a substantive appointee will have better right than the temporary appointee and the service benefits have to be fixed on that basis including seniority. The impugned action of the official respondents by granting retrospective regularization

detrimental to the interest of the direct recruitees like the petitioners herein, would only lend legitimacy to the violation of the mandatory Recruitment Rules of quota-rota system. Such action on the part of the official respondents, would completely undermine the statutory rules and its implementation. Once a statutory rule governs any appointment, such appointment to that post has to be governed by such rules. Although it is permissible to resort to temporary appointments in order to tide over the administrative exigencies, but that does not give a handle to the administration to grant higher seniority to such temporary appointments in complete negation of direct recruitees who were recruited against substantive vacancies. In fact, in this case, many of the temporary promotee Assistant Section Officers suffered reversion in between spells of appointment and therefore, this Court does not see any justification for the Government to pass orders by placing the promotee Assistant Section Officers enblock above the writ petitioners. Such exercise by the Government is not only against the mandatory recruitment rules, but also against the legal principles laid down by the Hon'ble Supreme Court. Therefore, the impugned action of the official respondents cannot be sustained in law.

23. In conclusion, the impugned Government Order in G.O.Ms.No.277 dated 22.7.1996 issued by the Secretary to the Government of Tamil Nadu, Personnel & Administrative Department Chennai/the second respondent herein, is hereby quashed.

24. This conclusion arrived at by this Court in W.P.No.15683 of 2011 will hold good in respect of other writ petition in W.P.No.15684 of 2011 though their panel year was different. Accordingly, Letter No.80730/ U/96/-2 and Letter No.80730/ U/96/-3 dated 17.2.1998 of the Secretary to the Government of Tamil Nadu Personnel & Administrative Department, Chennai/the first respondent herein, is hereby set aside.

25. In the result, both the Writ Petitions are allowed. No costs. The respondents are directed to revise the seniority of the petitioners by duly applying the quota-rota system as per Tamil Nadu Secretariat Service Rules (Special Rules) applicable to the category of Assistant Section Officers and fix their seniority at the appropriate place and grant consequential attendant benefits. The said exercise shall be initiated and completed within a period of eight weeks from the date of receipt of a copy of the order.

Sd/-

Assistant Registrar (CS-II)

// True Copy//

To

1. The Government of Tamil Nadu,
rep. by its Secretary to Government,
Personnel and Administrative Reforms Department,
Tamil Nadu Secretariat,
Chennai-600 009.

2. The Secretary,
Tamil Nadu Public Service Commission,
Chennai-600 002.

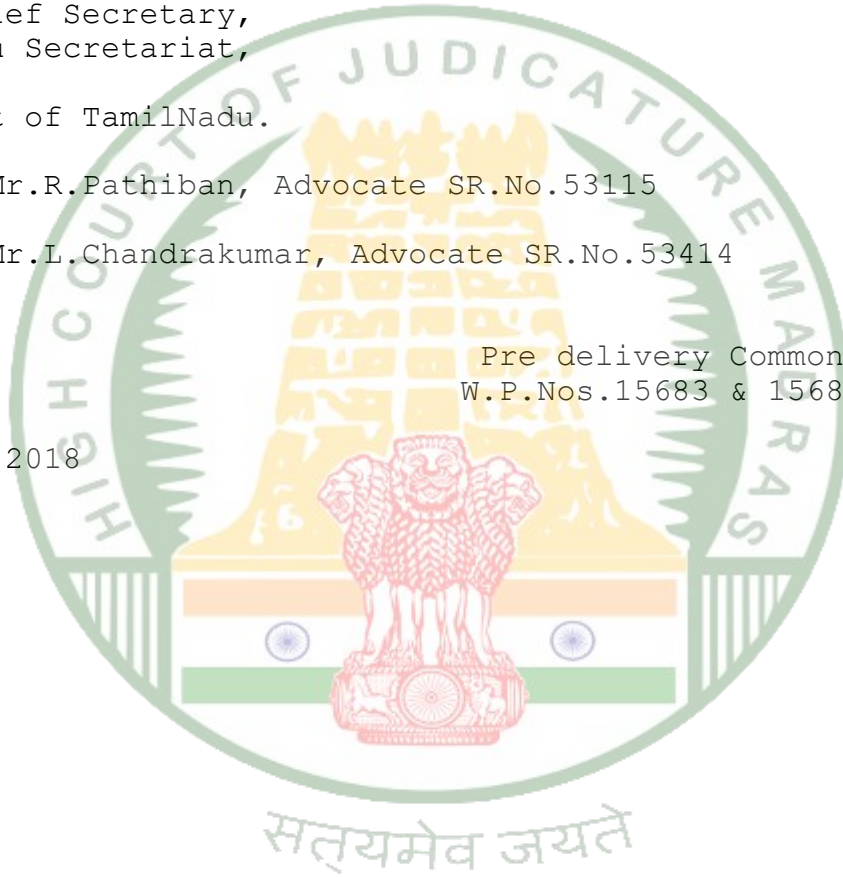
3. The Chief Secretary,
Tamil Nadu Secretariat,
Chennai-9.
Government of TamilNadu.

+1 cc to Mr.R.Pathiban, Advocate SR.No.53115

+2 cc to Mr.L.Chandrakumar, Advocate SR.No.53414

Pre delivery Common Order in
W.P.Nos.15683 & 15684 of 2011

SPD(CO)
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