



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.03.2018

DELIVERED ON : 04.06.2018

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CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P. (MD) .No.11678 of 2017 and
W.M.P. (MD) Nos.8989 to 8992 of 2017

1. K.Shanmuga Vijayan,
Assistant (RWO Grade-I),
Panchayat Union, Santhankulam,
Thoothukudi District.
2. P.Jayakarthigai Deepan,
Assistant (RWO Grade-I),
Panchayat Union, Udankudi,
Thoothukudi District.
3. M.Periyadurai,
Assistant (RWO Grade-I),
Panchayat Union,
Santhankulam,
Thoothukudi District.
4. E.Ganesan,
Assistant (RWO Grade-I),
Panchayat Union,
Alwar Thirunagari,
Thoothukudi District.
5. Malathi,
Assistant (RWO Grade-I),
Panchayat Union,
Alwar Thirunagari,
Thoothukudi District.
6. R.Sudhakar,
Assistant (RWO Grade-I),
Panchayat Union,
Srivaigundam,
Thoothukudi District.
7. N.Parvatha Ramalakshmi,
Assistant (RWO Grade -I),
Panchayat Union,
Srivaigundam,
Thoothukudi District.



8. R.Ramthilaka,
Assistant (RWO Grade-I),
Panchayat Union,
Srivaigundam,
Thoothukudi District.
9. V.Mala,
Assistant (RWO Grade-I),
Panchayat Union, Karunkulam,
Thoothukudi District.
10. S.Pattathi,
RWO Grade-I,
Panchayat Union,
Karunkulam,
Thoothukudi District.
11. S.Babu,
Assistant(RWO Grade-I),
Panchayat Union,
Thiruchendur,
Thoothukudi District.
12. M.Ariyanayagam,
Assistant(RWO Grade-I),
Panchayat Union,
Pudur, Thoothukudi District.
13. A.Kalaiselvaraja,
Assistant (RWO Grade-I),
Panchayat Union, Pudur,
Thoothukudi District.
14. R.Balamurugan,
Assistant(RWO Grade-I),
Panchayat Union, Pudur,
Thoothukudi District.
15. M.Velmurugan,
Assistant (RWO Grade-I),
Panchayat Union, Vilathikulam,
Thoothukudi District.
16. R.Thangavelswamy,
Assistant (RWO Grade - I),
Panchayat Union, Vilathikulam,
Thoothukudi District.
17. A.Paramasivan,
Assistant (RWO Grade-I),
Panchayat Union, Vilathikulam,
Thoothukudi District.



18. A.Sivasundaram,
Assistant (RWO Grade-I),
Panchayat Union, Vilathikulam,
Thoothukudi District.

19. J.Sumitha,
Assistant (RWO Grade-I),
Panchayat Union, Vilathikulam,
Thoothukudi District.

20. K.Marimuthu,
Assistant (RWO Grade-I),
Panchayat Union, Kovilpatti,
Thoothukudi District.

21. M.Diwan,
Assistant (RWO Grade-I),
Panchayat Union, Kovilpatti,
Thoothukudi District.

22. M.Sujatha,
Assistant (RWO Grade-I),
Panchayat Union, Ottapidaram,
Thoothukudi District.

23. M.Muthamil Selvan,
Assistant (RWO Grade-I),
Panchayat Union, Ottapidaram,
Thoothukudi District.

24. T.Jeyamithra,
Assistant (RWO Grade-I),
Panchayat Union, Ottapidaram,
Thoothukudi District.

25. V.Ponnuswamy,
Assistant (RWO Grade-I),
Panchayat Union, Thoothukudi,
Thoothukudi District.

26. E.Chandra,
Assistant (RWO Grade-I),
Panchayat Union, Thoothukudi,
Thoothukudi District.

27. K.Maharaja,
Assistant (RWO Grade-I),
Panchayat Union, Kayatharu,
Thoothukudi District.

... Petitioners

**Vs.**

1. The State of Tamil Nadu,
Rep. by its Secretary,
Department of Rural Development and Panchayat Raj,
Fort St. George, Chennai - 600 009.

2. The Director of Rural Development,
Panagal Building, Saidapet,
Chennai - 19.

3. The District Collector,
Collectorate,
Thoothukudi,
Thoothukudi District.

4. A.Chellapandian,
Assistant,
Collectorate, Thoothukudi,
Thoothukudi District.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for records pertaining to the impugned order in Na.Ka.Va3/3183/2016, dated 08.05.2017 on the file of the third respondent and quash the same as illegal and consequently to direct the respondents to publish the final seniority in the post of Assistant in the Department of Rural Development and Panchayat Raj in Thoothukudi District by placing the petitioners above the Promotees within the time stipulated by this Court.

For Petitioners : Mr.T.Lajapathi Roy
For R-1 : M/s.S.Srimathy,
Special Government Pleader.
For R-4 : M/s.Mohamed Imram,
for M/s.Ajmal Associates.

ORDER

Heard the learned counsel on either side.

2. The petitioners were directly recruited as Assistants through Tamil Nadu Public Service Commission. The petitioners were issued with orders of appointment in November/December 2012. According to the petitioners, in the same year few other candidates were promoted to the post of Assistants from the post of Junior Assistants and Typists in Thoothukudi District. Combined inter-se seniority list in the post of Assistants in Thoothukudi District for the years 2013-2016 was prepared. The Writ petitioners who are directly recruited Assistants were placed below the promotee Assistants. Hence, the petitioners lodged their objections. The



objections of the petitioners were rejected by the third respondent by order dated 08.05.2017. The same is assailed in this Writ petition. The request of the petitioners is that they should be placed above the promotees.

3. The learned counsel appearing for the petitioners contended that a mere look at the orders of promotion granted in favour of the promotees would show that it was only a case of temporary promotion. As per Rule 39(A)(1) of Tamil Nadu State and Subordinate Service Rules, the appointing Authority is empowered to grant temporary promotion. But then, service put in by way of temporary promotion cannot be counted for the purpose of reckoning one's seniority in the said post. The contention of the petitioners is that if this is to be accepted, then they will have to be posted above the promotee Assistants.

4. This Court is unable to agree with the submissions advanced by the learned counsel appearing for the petitioners. It is true that as many as 35 persons were promoted as Assistants vide Order dated 21.05.2012. Their services were also duly regularised later. The petitioners have arrayed one A.Chellapandiyan in representative capacity. The said Chellapandiyan is ranking as serial No.2 in order dated 21.05.2012. His service was regularised along with that of others vide order dated 16.06.2014. He is figuring at serial No.9 in the proceedings dated 16.06.2014. A mere look at the said proceedings would show that the services of the temporarily promoted candidates were regularised with effect from the date when they were originally so promoted. Therefore, there is no substance in the stand of the petitioners that the services put in by the promotee Assistants should not be taken into account for the purpose of reckoning their seniority. The petitioners herein have admittedly not challenged the orders of the promotion or the orders retrospectively regularising their services. The third respondent, in the impugned order has clearly mentioned that they have only gone by Rule 35(aa) of Tamil Nadu State and Subordinate Service Rules. The said provision is to the effect that the seniority of a person in service will be determined with reference to the date on which he was appointed in service. In the light of the order of regularization passed in favour of the promotee Assistants, this Court has to necessarily come to the conclusion that they were appointed into the service prior in point of time compared to the Writ petitioners. Admittedly, the Writ petitioners joined service as Assistants only in November/December 2012. The promotee Assistants in question had already joined as Assistants in May 2012 itself. Therefore, their entry in the post of Assistant is earlier in point of time. Hence, the third respondent is absolutely justified in rejecting the objections lodged by the Writ petitioners.

5. In this regard, this Court may refer to the decision of the Hon'ble Supreme Court reported in **(2010) 6 SCC 791 in the case of S. Sumnyan and others Vs. Limi Niri and others**. The Honourable Supreme Court held that the initial appointment of the candidates in



question cannot be said to be *de-hors* the rules. Regularization of the services of a person, whose initial appointment although not in accordance with the prescribed procedure but later on approved by an authority having power and jurisdiction to do so would always relate back to the date of their initial appointment.

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6. In the present case also, the promotion granted to the persons like the fourth respondent cannot be said to be *de-hors* the rules. Their services were regularised from the date of their original appointment. Therefore, the seniority also will have to be necessarily reckoned from the said date. The reason assigned in the impugned order is absolutely justified. There is no merit in the Writ petition.

7. The Writ petition stands dismissed, accordingly. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government
Department of Rural Development and Panchayat Raj,
Fort St. George, Chennai - 600 009.
2. The Director of Rural Development,
Panagal Building, Saidapet,
Chennai - 19.
3. The District Collector,
Collectorate,
Thoothukudi,
Thoothukudi District.

+ 1 CC TO M/s.AJMAL ASSOCIATES, IN SR No. 66720
+ 1 CC TO Mr.T.LAJAPATHI ROY, ADVOCATE IN SR No. 66703
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 66960

PMU

TE/SV-MMS/SAR-3 : 14/06/2018 : 6P/7C

ORDER MADE IN
W.P. (MD) .No.11678 of 2017 and
W.M.P. (MD) Nos.8989 to 8992 of 2017
04.06.2018