

In the High Court of Judicature at Madras

Reserved on	23.04.2019
Pronounced on	29.04.2019

Coram:

The Hon'ble Mr.Justice M.VENUGOPAL
and
The Hon'ble Mr.Justice SENTHILKUMAR RAMAMOORTHY

W.P.Nos.1124 and 4090 of 2019 and
W.M.P.Nos.1344 and 4572 of 2019

1. S.Malar
2. M.Rajagopal
3. V.Geetha
4. R.Tharagalakshmi
5. R.Jagadeesan
6. H.Narayanan
7. T.Mageshwaran
8. V.Durgalakshmi
9. A.Anbuselvi
10. C.Usha
11. D.Shobana
12. E.Balasundaram
13. J.Prabavathy
14. T.Nirmala
15. C.Padmanaban
16. G.Padmini
17. T.Sujatha
18. P.Vasanthi

..Petitioners in W.P.No.1124 of 2019

1. N.Sivakumar
2. S.Sumathi
3. S.Sujatha
4. T.Logamani

..Petitioners in W.P.No.4090 of 2019

Vs.

1. The Registrar General
High Court of Madras,
Madras - 104

2. K.Ezhili

...1st and 2nd Respondents in
W.P.Nos.1124 and 4090 of 2019

3. The Government of Tamil Nadu,
rep. By its Secretary,
Personnel and Administrative Reforms Department,
Fort St.George,
Chennai -9

...3rd Respondent in W.P.No.1124 of 2019

(Impleaded as per order
made in WMP.No.4420 of 2019
dated 12.2.2019)

Prayer in W.P.No.1124 of 2019: Writ Petition filed under Article 226 Constitution of India to issue a Writ of Certiorarified Mandamus by calling for the records of the 1st Respondent in ROC.No.33077/2017-Estt.I dated 15.10.2018 and quash the same and direct the 1st Respondent to refix the seniority.

Prayer in W.P.No.4090 of 2019: Writ Petition filed under Article 226 Constitution of India to issue a Writ of Certiorarified Mandamus by calling for the records on the file of the 1st Respondent with regard to the Order passed in ROC.No.33077/2017-Estt.I dated 15.10.2018 and quash the same and direct the 1st Respondent to refix the seniority of the 2nd Respondent below the Petitioners.

For Petitioners
in W.P No.1124 of 2019 : Mr.K.Doraisamy, Sr.Counsel
for Mr.N.Kolandaivelu

For Petitioners
in W.P.No.4090 of 2019 : Mr.R.Singaravelu, Sr.Counsel
for Mr.V.S.Jagadeesan

For Respondents : Mr.B.Vijay for R1 in both W.Ps.
Mr.Karthik Rajan for
M/s Menon, Karthik, Mukandan
and Neelakandan for R2 in both
the W.Ps.

Mr.A.Ansar
Government Advocate
for R3 in W.P.No.1124 of 2019

C O M M O N O R D E R

M.VENUGOPAL, J., and
SENTHILKUMAR RAMAMOORTHY, J.,

The Petitioners have filed the present Writ Petitions praying for passing of an order by this Court in calling for the records of the 1st Respondent / High Court, Madras represented by the Registrar General in ROC.No.33077/2017-Estt.I dated 15.10.2018 and further, they have sought for passing of an order by this Court in directing the 1st Respondent to refix their seniority.

2. Summary of Facts in W.P.No.1124 of 2019 :

2.1 The 6th Petitioner was appointed as a Copyist on 26.05.1997 in the Madras High Court Service and later was promoted as Typist on 01.09.1998, as Assistant on 01.07.1999, as Assistant Section Officer on 06.01.2000 and as Court Officer / Section Officer / Appeal Examiner on 18.04.2009. The other Petitioners were also similarly appointed in various Entry Level Posts, viz., Reader /Examiner, Copyist and Typist during the year 1991-1997. In fact, the dates of appointment and the service details of the Petitioners [Including the respective promotions to various posts] during their continuous service of more than 22 years in the Madras High Court Service are as follows:

S l	Name	Date of 1 st Appt.	Appointe d as	Date of Promotio n as Typist	Date of Promotio n as Assistan t	Date of Promoti on as A.S.O.	Date of Promotio n as CO/SO/AE
1	S.Malar	02.07.93	Copyist	-	15.06.98	06.01.2000	27.04.2009
2	M.Rajagopal	04.07.96	Copyist	09.01.98	15.06.98	06.01.2000	20.04.2009
3	V.Geetha	09.07.96	Copyist	-	15.06.98	06.01.2000	27.04.2009
4	R.Taragalak- shmi	03.03.97	Reader/ Examiner	-	11.09.98	06.01.2000	27.04.2009
5	R.Jagadeesan	26.05.97	Copyist	01.09.98	01.05.99	06.01.2000	27.04.2009
6	H.Narayanan	26.05.97	Copyist	01.09.98	01.07.99	06.01.2000	20.04.2009
7	T.Mageshwaran	21.02.97	Reader Examiner	-	16.09.99	06.01.2000	20.04.2009
8	V.Durgalakshmi	28.05.97	Copyist	-	16.09.99	06.01.2000	24.04.2009
9	A.Anbuselvi	02.06.97	Copyist	01.09.98	16.09.99	06.01.2000	20.04.2009
10	C.Usha	23.05.97	Copyist	01.09.98	16.09.99	06.01.2000	23.07.2009
11	D.Shobana	19.06.97	Copyist	01.04.99	16.09.99	12.01.2000	23.07.2009
12	R.Balasundaram	06.02.89	Jr.Asst.	-	10.08.98	09.08.2000	23.07.2009
13	J.Prabavathy	03.05.95	Reader Examiner	-	15.06.98	15.11.2000	23.07.2009
14	T.Nirmala	10.07.96	Reader Examiner	-	15.06.98	06.01.2001	23.07.2009
15	C.Padmanaban	20.03.97	Copyist	01.09.98	17.02.99	04.07.2001	23.07.2009
16	G.Padmini	23.05.97	Copyist	01.09.98	16.09.99	27.08.2001	23.07.2009

S l	Name	Date of 1 st Appt.	Appointe d as	Date of Promotio n as Typist	Date of Promotio n as Assistan t	Date of Promoti on as A.S.O.	Date of Promotio n as CO/SO/AE
1 7	T.Sujatha	07.07.97	Copyist	-	16.09.99	27.08.2001	23.07.2009
1 8	P.Vasanthi	07.07.97	Copyist	-	16.09.99	05.09.2001	23.07.2009

2.2 It is the stand of the Petitioners that the 2nd Respondent was appointed as Reader on 07.12.1998 in the Madras High Court Service and Promoted as Assistant on 16.09.1999, as Assistant Section Officer on 18.08.2003, as Technical Assistant 18.03.2004 and as Court Officer / Section Officer / Appeal Examiner on 28.03.2013. Furthermore, her initial appointment and subsequent promotions in the cadre of Assistant and Assistant Section Officer in the Madras High Court Service was and has always been Junior to the Petitioners in the approved seniority list as on 01.12.2014 in the cadre of Court Officer / Section Officer / Appeal Examiner, the Petitioners and the 2nd Respondent were placed as under:

Sl. no.	Name	Approved Seniority List Number as on 01.12.2014	Revised Seniority List furnished by the 1 st Respondent along with the Impugned Order
1	S.Malar	120	37
2	M.Rajagopal	121	38
3	V.Geetha	122	39
4	R.Tharagalakshmi	124	41
5	R.Jagadeesan	125	42
6	H.Narayanan	126	43
7	T.Mageshwaran	127	44
8	V.Durgalakshmi	128	45
9	A.Anbuselvi	129	46
10	C.Usha	130	47
11	D.Shobana	132	49
12	R.Balasundaram	133	50
13	J.Prabavathy	144	59
14	T.Nirmala	148	63
15	C.Padmanaban	158	71
16	G.Padmini	160	72

Sl. no.	Name	Approved Seniority List Number as on 01.12.2014	Revised Seniority List furnished by the 1 st Respondent along with the Impugned Order
17	T.Sujatha	161	73
18	P.Vasanthi	162	74
19	K.Ezhili (2 nd Respondent)	215	36

2.3. The grievance of the Petitioners is that the 1st Respondent / Registrar General of High Court, Madras unilaterally had issued proceedings dated 15.10.2018 in ROC.No.33077/2017-Estt.I and refixed the seniority of the 2nd Respondent in the cadre of Court Officer / Section Officer / Appeal Examiner below P.Eswaramoorthy [Sl.No.35] and above S.Malar (Sl.No.36). Indeed, in the approved service seniority list as on 01.12.2014 in the cadre of Court Officer / Section Officer / Appeal Examiner, P.Eswaramoorthy was placed in Sl.No.119 and S.Malar was placed in Sl.No.120. The 1st Respondent, all of a sudden, had refixed the seniority of the 2nd Respondent and published the revised seniority list, wherein the 2nd Respondent is placed at Sl.No.36 above S.Malar, who is now placed at Sl.No.37.

2.4 It is the version of the Petitioners that the 1st Respondent / Registrar General, High Court, Madras had bypassed the seniority of around 88 persons to place the 2nd Respondent in Sl.No.36 of the revised seniority list in the post of Court Officer / Section Officer / Appeal Examiner without providing any opportunity of hearing, which vitiates the basic Principles of Natural Justice. In fact, the 2nd Respondent previously made similar request to refix seniority in the cadre of Court Officer / Section Officer / Appeal Examiner and her request was considered after providing opportunity and the same was rejected by the 1st Respondent through proceedings dated 15.12.2014 in R.O.C.No.24/14Con.B2/Estt.I on the ground that such a request is in direct violation of Rule 36(c) of the Tamil Nadu State Subordinate Service Rules. The 2nd Respondent had not assailed the said order of rejection and in short, the said order had attained finality.

2.5 The stand of the Petitioners is that the 1st Respondent contrary to its order dated 15.12.2014 had refixed the seniority of the 2nd Respondent without any substance and notice to the Petitioners. Even after the Petitioners' representation dated 12.11.2018 to the 1st Respondent requesting to reconsider the order dated 15.10.2018 and another representation dated 24.12.2018 seeking for the service particulars of the 2nd Respondent, viz., the representations made by her and the order

passed thereon etc., the same were not furnished to them till date.

2.6 A Joint objection was submitted by the Petitioners to the 1st Respondent as against the proviso clause included under Rule 14 of the Madras High Court Service Rules and pending consideration of the Petitioners' objection, the said proviso sought to be introduced was kept in abeyance. Further, the said proviso came to be restored from the year May 2010 because of the reason that the 2nd Respondent was on continuous leave for about 3 years to visit abroad her immediate junior in Technical Assistant Cadre R.Suresh Kumar was promoted to the post of Court Officer / Section Officer / Appeal examiner on 20.05.2010. Since the 2nd Respondent was on continuous leave and did not complete her one year of service in the same cadre pursuant to her rejoining, she was not considered for promotion to the post of Court Officer / Section Officer / Appeal Examiner during 2010 when her immediate Junior R.Suresh Kumar was promoted. That apart, the 2nd Respondent's request to include her name in the Panel for promotion as Court Officer / Section Officer / Appeal Examiner was also considered and rejected during May, 2012.

2.7. After completion of mandatory one year period, the 2nd Respondent pursuant to her rejoining duty on 22.08.2011 was promoted to the post of Court Officer / Section Officer / Appeal Examiner on 28.03.2013 only. In any event, she can claim seniority only on par with her junior, namely, R.Suresh Kumar, whose seniority was fixed on Sl.No.177 in the approved seniority list as on 01.12.2014 and placed at Sl.No.88 in the revised seniority list without any justification whatsoever, the 1st Respondent had placed the 2nd Respondent above S.Malar in the seniority list.

2.8 Being aggrieved over the 'Refixation of Seniority' of the 2nd Respondent in the cadre of Court Officer / Section Officer / Appeal Examiner through proceedings dated 15.10.2018 of the 1st Respondent, joint representation was submitted to the 1st Respondent on 12.11.2018 seeking to recall the said order and no action is taken till date. Furthermore, the next avenue for promotion to the post of Sub Assistant Registrar / Librarian is likely to be filled and in such an event, the Petitioners will be severely prejudiced, as the 2nd Respondent, who was all along their Juniors from their initial date of appointment will be considered in the next avenue of promotion. Hence the Petitioners have approached this Court by filing the instant Writ Petition.

3. Germane Facts in W.P.4090 of 2019 :

3.1. The 1st Petitioner was appointed to the post of Copyist on 27.03.1997 in the Madras High Court Service and later was promoted as Typist on 01.09.1998, as Assistant on 08.03.1999, as Assistant Section Officer on 12.01.2001 and as Court Officer /

Section Officer / Appeal Examiner on 23.07.2009 and serving as such, till date. The other Petitioners were appointed in various Entry Level Posts between the Years 1991 and 1997 and promotional posts on numerous dates as mentioned in the Tabular Form:

S l	Name	First Appointment to the post of/Date	Date of Promotion as	Date of Promotion as Assistant	Date of Promotion as ASO	Date of Promotion as Technical Assistant (Applicable exclusively to Serial No.5)	Date of Promotion as CO/SO/AE
1.	N.Sivakumar	Copyist 27.03.1997	Typist 01.09.1998	08.03.99	12.01.01		23.07.09
2.	S.Sumathi	Copyist 28.10.1991	LD Steno 02.01.1997	...	29.08.00		23.07.09
3.	S.Sujatha	Steno Typist 19.06.1997	Personal Assistant 06.01.2000	...	29.08.00	...	23.07.09
4.	T.Logamani	Copyist 10.07.1996	Typist 09.01.1998	15.06.98	15.11.00		23.07.09
5.	K.Ezhili	Reader/ Examiner 07.12.1998	...	16.09.99	13.08.03	18.03.04	28.03.13

3.2. The 2nd Respondent was far below the Petitioners in the order of seniority right from Entry Level Post. The 1st Respondent published the provisional seniority list in the post of Court Officer / Section Officer / Appeal Examiner during August, 2014 calling for objections thereto. As a matter of fact, the 2nd Respondent preferred a representation seeking restoration of seniority based on her promotion to the post of Court Officer / Section Officer / Appeal Examiner. The 2nd Respondent's request was turned down on the ground that Rule 36 (c) of Tamil Nadu State Subordinate Service Rules does not provide for such restoration of seniority. The aforesaid provisional seniority was approved by the Competent Authority as on 01.12.2014 after considering all the objections received from various top members.

3.3. The Revised seniority as on 15.10.2018 and the pre-revised approved seniority as on 01.12.2014 is furnished as under for the purpose of comparison.

Sl. No.	Name	Seniority Number in the approved List as on 01.12.2014	Revised Seniority of the Petitioners vide impugned order dated 15.10.2018
1.	N.SIVAKUMAR	151	66
2.	S.SUMATHI	137	54
3.	S.SUJATHA	141	56
4.	T.LOGAMANI	145	60
5.	K.EZHILI	215	36

In the Approved Seniority List published on 01.12.2014, P.Eswaramoorthy was placed at Sl.No.119 and S.Malar was placed at Sl.No.120 and that the Petitioners' seniority finds place between Sl.Nos.137 and 151 and the seniority of the 2nd Respondent was placed at Sl.No.215. The revision of seniority in respect of the 2nd Respondent had affected the service prospects of the Petitioners putting them to a great shock and surprise.

3.4. The Impugned Order was passed without calling for objections from the Petitioners. The Petitioners are seniors to the 2nd Respondent in all aspects and in fact, 89 persons were over looked resulting in impugned order dated 15.10.2018 being passed by the 1st Respondent much to the detriment of Petitioners. Furthermore, the Petitioners have put in continuous service for about 21 ½ years with an unblemished record. However, the 2nd Respondent had availed an Extraordinary Leave without Pay and Allowances for a period of three years to visit abroad between the years 2007 and 2010. The 2nd Respondent was given the benefit of promotions subsequently compared to the Petitioners, who are seniors. Without taking into account of the illegal aspects, the 1st Respondent / the Registrar General, High Court, Madras had revised the seniority of 2nd Respondent retrospectively with effect from the year 2009. In fact, the 2nd Respondent was promoted to the post of Court Officer / Section Officer / Appeal Examiner only on 28.03.2013.

3.5 Pursuant to the passing of the Impugned Order of the 1st Respondent dated 15.10.2018, the 2nd Respondent being most junior in all aspects may get double benefits, as she is likely to come within the zone of consideration for upgradation to the pay applicable to the post of Assistant Registrar, without being upgraded to the pay applicable to the post of Sub Assistant Registrar and also for regular promotion as Sub Assistant Registrar, hence the Petitioners have filed the present Writ Petition questioning the Impugned Order dated 15.10.2018 passed by the 1st Respondent.

4. Gist of 1st Respondent's Counter Averments (In W.P.Nos.1124 and 4090 of 2019):

4.1 The 2nd Respondent after being promoted as Court Officer / Section Officer / Appeal Examiner on 28.03.2013 made another representation on 11.09.2014 seeking refixation of her seniority in the post of Court Officer / Section Officer / Appeal Examiner between G.Rajamannar [presently working as Librarian] and Mr.R.Suresh Kumar [presently working as Court Officer / Section Officer / Appeal examiner] and the said representation of the 2nd Respondent was rejected by the Promotion Committee, as per ROC.No.24/2014-Con.B2/Estt.I dated 15.12.2014 by quoting Rule 36 (c) of the Tamil Nadu State Subordinate Service Rules. The 2nd Respondent in her representation dated 18.04.2017 sought for restoration of her seniority in the cadre of Technical Assistant to Librarian in view of the continuity of service and her plea is that her immediate juniors were promoted to the post of Court Officer / Section Officer / Appeal Examiner by overlooking her seniority, which is contrary to Rule 14 of Old Madras High Court Service Rules, 1955. The representation of the 2nd Respondent dated 18.04.2017 was placed before the Promotion Committee for consideration and the said Committee had minuted that the claim of the 2nd Respondent for promotion and refixation of the seniority was rejected earlier by taking recourse mainly under Rule 36(c) of the Tamil Nadu State Subordinate Service Rules and that the Leave availed by her after obtaining permission from the Registry would no way affect her seniority in the feeder category post, unless she was reduced to lower rank as punishment, and that the Appointing Authority was also given power to determine the Seniority of the individual.

4.2 Added further, the Committee found that the 2nd Respondent would become eligible for promotion subsequent to her immediate senior got promoted. The Committee had also opined that Rule 26 of Old Madras High Court Service Rules would apply to the case of 2nd Respondent for having obtained long leave by obtaining permission from the Registry etc., In deference to the decision of Promotion Committee, the 1st Respondent had refixed the seniority of the 2nd Respondent in the cadre of Court Officer / Section Officer / Appeal Examiner by issuing impugned order dated 15.10.2018.

4.3. According to the 1st Respondent, Rule 5(b) of the Old Madras High Court Service Rules enjoins that Seniority of a member of Service would not be affected if a person goes on leave, unless she was reduced to a Lower rank as 'Punishment'. In fact, seniority of the member of service would be altered upon imposition of any punishment on the outcome of Disciplinary

Proceedings. Furthermore, Rule 26 specifies that the absence of a member from duty [Leave] in such service, whether on leave or on foreign service or on deputation or for any other reason and whether his Lien in post, borne on the cadre of such service is suspended or not, does not make such person ineligible for promotion / appointment etc., In reality, the said Rule applies to only a person, who is a member of service irrespective of whether his lien is suspended or not.

4.4. The 2nd Respondent has not suffered any punishment of reduction to lower post, affecting her seniority under the Service Rule. The Appointing Authority has power to determine the seniority of the member of service who was on long permitted leave under Rule 26 of Old Madras High Court Service Rules. The long leave availed by the 2nd Respondent and her continuity in service is to be governed under Rule 5(b), 26 and 1(h) of the Old Madras High Court Service Rules. Indeed, the 2nd Respondent has 'Lien' in the permanent post as it is neither terminated nor suspended. As such, the plea of the Petitioners that the the 2nd Respondent's claim for promotion of Court Officer / Section Officer / Appeal Examiner ought to be considered from the date on which she joins duty on returning from leave in view of Rule 36(c) of Tamilnadu State Subordinate Service Rules cannot be countenanced.

4.5 The Old Madras High Court Service Rules are in the nature of Special Service Rules and the said Special Rules will prevail over the General Rules framed by the State Government. Moreover, Rule 2 of General Rules of Tamilnadu General Subordinate Service Rules envisages that General Rules framed by the State Government would not apply where service conditions of employees were governed by Special Rules. The promotion in the feeder category of 'Technical Assistant to Librarian' is fixed as 5% under Old Madras High Court Service Rules and remaining promotional posts are to be filled up only from the 'Feeder category' of Assistant Section Officer. Further, providing an opportunity of hearing as prayed for by the Petitioners would result in application of useless 'Formality', which is an exception to the 'Principles of Natural Justice. The impugned order of refixation of seniority does not suffer from any infirmity or any illegality. The 2nd Respondent's earlier representations were rejected by wrongly taking recourse to ingredients of Rule 36(c) of Tamilnadu State Subordinate Service Rules.

5. Resume of 2nd Respondent's Counter in W.P.No.1124 of 2018 :

5.1 The Impugned proceedings of the 1st Respondent is not against the Principles of Natural Justice. It is a settled Law that a wrong will not create a right which is otherwise not available. During pendency of the Writ Petition, the 2nd Respondent was promoted as Sub Assistant Registrar, which is

subject to the result of the present Writ Petition. The 1st Respondent had not bypassed the orders of rejection on the 2nd Respondent's representations. The 1st Respondent had only set right the mistake, which had crept in by application of wrong Rules and not applying Rule 26 of the then Madras High Court Service Rules. The leave availed by the 2nd Respondent would not make her ineligible to be considered for promotion in her turn, as per Rule 26 of the then Madras High Court Service Rules. Though the 2nd Respondent was on leave, she was entitled to be considered for promotion under 5% quota meant for Technical Assistants. The requirement of one year of service as alleged by the Petitioners is based on Rule 36(c) of the Tamil Nadu General Subordinate Service Rules, which has no application whatsoever in the present case. The fact that the 2nd Respondent was availing continuous leave [including extraordinary leave for three years) beginning from August, 2007 to August 2010 cannot be placed as a bar under the then Madras High Court Service Rules.

6. Petitioners' submissions in W.P.No.1124 of 2019 :

6.1 The Learned Senior Counsel for the Petitioners contends that the Impugned Proceedings of the 1st Respondent dated 15.10.2018 suffers from serious legal and factual infirmities because of the reason that similar request of the 2nd Respondent claiming refixation of a seniority was rejected, as per proceedings dated 15.12.2014.

6.2 The Learned Senior Counsel for the Petitioners projects an argument that the 1st Respondent had failed to appreciate the fact that the 2nd Respondent had not assailed the order of rejection reducing the refixation of her seniority and therefore, the same has attained finality due to efflux of time.

6.3. It is represented by the Learned Senior Counsel for the Petitioners that the Petitioners have put in more than 9 ½ years of service in the post of Court Officer / Section Officer / Appeal Examiner and they have been enjoying the 'Seniority' and 'Perks' associated with the post.

6.4 The Learned Senior Counsel for the Petitioners comes out with the plea that the 1st Respondent had deliberately bypassed the earlier orders of rejection, negating the claim of 2nd Respondent to accommodate her name in the panel for promotion in the year 2011 and to refix her seniority in the impugned proceedings.

6.5 The Learned Senior Counsel for the Petitioners refers to the Impugned Proceedings of the 1st Respondent dated 15.10.2018 and submits that the 1st Respondent had invoked Rules 5(b) and 26 of the Madras High Court Service Rules and without even referring to the earlier proceedings.

6.6. The Learned Senior Counsel for the Petitioners emphatically points out that in the event of there being no specific leave Rules in the High Court Service Rules, then, the Fundamental Rules will come into play and as such, the subsequent proceedings of the incumbent during her rejoining shall be covered by the 'Fundamental Rules' only and not the 'High Court Service Rules, which is silent on those aspects.

6.7. The Learned Senior Counsel for the Petitioners takes a stand that the 1st Respondent having passed 'Plurality of Orders' rejecting the request of the 2nd Respondent seeking refixation of 'Seniority' and 'Promotion', cannot 'Suo-Moto' bypass its earlier orders alleging the same as an erroneous one, since the Committee had exercised only administrative duties / functions and not a judicial one.

7. Petitioners' Citation:

7.1 The Learned Senior Counsel for the Petitioners relies on the decision of Hon'ble Supreme Court between Mohamad Kavi Mohamad Amin V. Fatmabai Ibrahim reported in (1997) 6 Supreme Court Cases at page 71 wherein at Paragraph No.2 it is observed and held that 'Where no time-limit prescribed for exercise of power under a statute, it should be exercised within a reasonable time'.

8. Petitioners' Pleas in W.P.No.4090 of 2019:

8.1 The Learned Senior Counsel for the Petitioners contends that the seniority of the 2nd Respondent cannot be altered by the 1st Respondent after the acceptance of promotion given to her on 28.03.2013. Furthermore, it is the clear cut stand of the Petitioners that the 2nd Respondent cannot be given seniority with effect from 2008 when she was actually promoted on 28.03.2013 and that the Impugned Order in fact, runs contrary to the Promotion Order dated 28.03.2013.

8.2 The Learned Counsel for the Petitioners strenuously submits that the 2nd Respondent by her own conduct took Leave for three years to be with her husband in Sultanate of Oman and hence she is estopped from staking a claim for counting the said period for 'Seniority'.

8.3 The Learned Senior Counsel for the Petitioners brings it to the notice of this Court that the 2nd Respondent was on Earned Leave from 23.08.2007 to 20.11.2007 and later on Unearned Leave from 21.11.2007 to 18.02.2008 and finally on Extraordinary Leave from 19.02.2008 to 21.08.2010 for nearly 2 ½ years. The said leave was granted to the 2nd Respondent at a request to be with her husband, who was employed at that point of time in Sultanate of Oman.

8.4 It is the contention of the Learned Senior Counsel for the Petitioners that as per FR 18(1) of the Fundamental Rules of the Government of Tamilnadu read with 85(1) of the same, the Extraordinary Leave cannot be granted for more than a year that too subject to the conditions specified under Rule 18(1) to 18 (4) of the Fundamental Rules of the Government of Tamil Nadu. Besides that, it is the plea of the Petitioners that the grant of Extraordinary Leave for 2 ½ years at a stretch to the 2nd Respondent warrants disciplinary proceedings being initiated against the 2nd Respondent after imposing major punishment.

8.5 The Learned Counsel for the Petitioners points out that the 2nd Respondent submitted a 1st Representation to the 1st Respondent, which was rejected on 25.05.2012. As a matter of fact, the 2nd Respondent's 2nd Representation dated 30.08.2011 was rejected by the 1st Respondent. The 3rd Representation of the 2nd Respondent dated 11.09.2014 was rejected by the 1st Respondent on 15.12.2014 and in fact, there rejection orders were not questioned by the 2nd Respondent and in fact, she had accepted the same.

8.6 The Learned Senior Counsel for the Petitioners contends that when promotion given to the 2nd Respondent on 28.03.2013 was not assailed by her, then, she can claim for seniority only with effect from 28.03.2013 and not with retrospective effect. Further, it is the stand of the Petitioners that the 2nd Respondent had kept quiet for nearly 4 years accepting the two Rejection Orders, 07.02.2011 and 11.09.2014 that her representation dated 18.04.2017 is a verbatim of the representation dated 30.08.2011.

8.7 Yet another contention of the Petitioners is that the impugned order of the 1st Respondent dated 15.10.2018 refixing the 2nd Respondent's seniority traverse beyond the seniority of her claim and that repeated representations of the Petitioners cannot save limitation. Furthermore, the repeated representations of the 2nd Respondent are not valid in Law, since the 2nd Respondent had not challenged the rejection order made on earlier representations.

8.8 The Learned Senior Counsel for the Petitioners contends that 'Seniority' settled cannot be unsettled and Rules 1(h), 5 (b) combined with Rule 14 of the Old Madras High Court Service Rules are to be read with in consonance with Fundamental Rule 9 (6)(b), 18(1) to (4) and 85(1) and (2) therein. In short, it is projected on the side of the Petitioners that combined reading of the aforesaid Rules makes it quite clear that the leave availed by the 2nd Respondent is not a valid one and that the 2nd Respondent is to be dealt with severely.

8.9 The Learned Counsel for the Petitioners draws the attention of this Court that the 'Leave', 'Retirement Benefits', 'Regularisation of various service periods' are to be dealt with only under Fundamental Rules of the Government of Tamilnadu, as no other Rule is available for the employees of the High Court dealing with the same.

8.10. While summing up it is the plea of the Petitioners that the 2nd Respondent's Earned Leave, Unearned Leave and Extraordinary Leave period cannot be termed to be duty for three years, as per FR 9 (6)(b) read with 5 (b) of Old Madras High Court Service Rules, 1955 and if the said period is deducted, then, she will become 'Far junior' to all the persons in service.

9. Petitioners' Decisions:

9.1 The Learned Senior Counsel for the Petitioners refers to the decision of Hon'ble Supreme Court in K.A.Nagamani V. Indian Airlines and Others reported in (2009) 5 Supreme Court Cases at page 515 at Special Pages, 523 at Paragraph No.31 and at Special Page 527 wherein at Paragraph Nos.53 to 55, it is observed as under :

"31.Be it noted, the appellant did not question the merger of cadres in the writ petition filed by her except contending the decision of the authorities of merger of two cadres into one was in violation of the Recruitment and Promotion Rules. No doubt an attempt was made by the appellant to contend before us that the merger of the two cadres into one is violative of Articles 14 and 16 of the Constitution of India. This belated attempt on the part of the appellant cannot be countenanced and we cannot entertain any such plea at this stage without there being any pleadings in that regard in the writ petition filed in the High Court."

53.Yet another aspect of the matter: That the appellant admittedly had participated in the similar selection process for erstwhile grade 15 and 16, Manager (Maintenance/Systems) and Senior Manager (Maintenance/Systems) respectively. The Corporation had given adequate opportunity to the appellant to compete with all other eligible candidates at the selection for consideration of the case of all eligible candidates to the post in question.

54.The Corporation did not violate the right to equality guaranteed under Articles 14 and 16 of the Constitution. The appellant having participated in the selection process along with the contesting respondents without any demur or protest cannot be allowed to turn round and question the very same process having failed to qualify for the promotion.

55. In Madan Lal Vs. State of J & K [(1995) 3 SCC 486], this Court observed: (SCC p.493, paras 9-10)

"9..... It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair....."

10. Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful."

Reference may also be made to the decision of this Court in Chandra Prakash Tiwari Vs. Shakuntala Shukla [(2002) 6 SCC 127]."

9.2 The Learned Senior Counsel for the Petitioners seeks in aid of the decision of Hon'ble Supreme Court Union of India and Others V. Chaman Rana reported in (2018) 5 Supreme Court Cases 798 at Special Page 802 and 803 at Paragraph Nos.9 to 11 it is observed as under:

"9. As far back as in P.S. Sadasivaswamy v. State of T.N., (1975) 1 SCC 152, considering a claim for promotion belated by 14 years, this Court had observed that a period of six months or at the utmost a year would be reasonable time to approach a court against denial of promotion and that it would be a sound and wise exercise of discretion not to entertain such claims by persons who tried to unsettle the settled matters, which only clog the work of the court impeding it in considering genuine grievances within time in the following words: (SCC p. 154, para 2)

"2.A person aggrieved by an order of promoting a junior over his head should approach the court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the courts to exercise their powers under Article 226 nor is it that there can never be a case where the courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the court to put forward stale claims and try to unsettle settled matters. The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the court. It clogs the work of the court and impedes the work of the court in considering legitimate grievances as also its normal work. We

consider that the High Court was right in dismissing the appellant's petition as well as the appeal."

10. Mere repeated filing of representations could not be sufficient explanation for delay in approaching the Court for grant of relief, was considered in *Gandhinagar Motor Transport Society v. Kasbekar*, 1953 SCC OnLine Bom 64, by Chagla, C.J. observing as follows: (SCC OnLine Bom : AIR p. 203, para 2)

"2. ... Now, we have had occasion to point out that the only delay which this Court will excuse in presenting a petition is the delay which is caused by the petitioner pursuing a legal remedy which is given to him. In this particular case the petitioner did not pursue a legal remedy. The remedy he pursued was extra-legal or extra-judicial. Once the final decision of the Government is given, a representation is merely an appeal for mercy or indulgence, but it is not pursuing a remedy which the law gave to the petitioner....."

11. The appellant, in its counter-affidavit before the High Court, had specifically taken the objection that the claim was highly belated, and that any direction for a retrospective consideration would have a destabilising effect in unsettling the settled position which would lead to complete chaos apart from other administrative consequences. The High Court failed to consider the objection. In *Union of India v. M.K.Sarkar* (2010) 2 SCC 509, this Court observed as follows:

"16. A court or tribunal, before directing "consideration" of a claim or representation should examine whether the claim or representation is with reference to a "live" issue or whether it is with reference to a "dead" or "stale" issue. If it is with reference to a "dead" or "stale" issue or dispute, the court/tribunal should put an end to the matter and should not direct consideration or reconsideration."

9.3. Apart from the above, the Learned Senior Counsel for the Petitioners adverts to the decision of Hon'ble Supreme Court between

State of Bihar and Others V. Bateshwar Sharma reported in (1997) 4 Supreme Court Cases 424 at Special page 425 wherein at Paragraph No.4, it is observed as under:

"4. In view of the above finding of fact by the competent Committee, the question arises: whether the High Court could record finding that the respondent could be deemed to have been promoted from January 17,

1989 with all consequential benefits. The view taken by the High Court is palpably illegal for the reason that once the DPC had found that the respondent was unfit for promotion upto that date, the only course that requires to be adopted by the High Court was to remit the matter to the Government for constitution of the DPC to consider his fitment for promotion in later period. In that event, the DPC would go into the merits afresh and find out whether the respondent would be fit for promotion. If he would be found fit and recommendation is made in that behalf, the Government would appoint him on regular basis and he would get seniority only from the date of his promotion; and not from the earlier date when he was working on ad hoc basis. we are not inclined to express any opinion on merits either way. The D.P.C. is the only competent authority to decide on merits."

9.4.The Learned Counsel for the Petitioners places reliance on the decision of Hon'ble Supreme Court between Amarjeet Singh and Others V. Devi Ratan and Others reported in (2010) 1 Supreme Court Cases 417 at Special Pages 425 and 426 wherein at Paragraph Nos.24 and 27, it is observed as follows:

"24.In Committee of Management, Arya Nagar Inter College & Anr. Vs. Sree Kumar Tiwari & Anr., AIR 1997 SC 3071, the services of the respondent therein were terminated, however, he continued to be in service on the basis of interim order passed by the High Court in the writ petition filed by him. During the pendency of the writ petition, the rules for regularization of ad hoc appointees were amended and in pursuance thereof his services also stood regularized. Ultimately, the writ petition filed by the respondent was dismissed. This Court held that his continuity in service and regularization had to be understood as it was subject to the result of the writ petition. As the writ petition was dismissed the order of regularising of his services, passed during the pendency of the writ petition, became inoperative.

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 officer who had been appointed prior to him. "The late comers to the regular stream cannot steal a march over the early arrivals in the regular queue" [vide Dr. S.P. Kapoor vs. State of Himachal Pradesh, AIR 1981 SC 2181; Shitala Prasad Shukla vs. State of U.P. & Ors., AIR 1986 SC 1859 (SCC p.190, para 10);

and Uttaranchal Forest Rangers' Assn. (Direct Recruit) & Ors. vs. State of U.P. & Ors., (2006) 10 SCC 346)]."

9.5 The Learned Senior Counsel for the Petitioners banks on the order of the Division Bench of this Court dated 12.09.2016 in W.A.(MD) Nos.1182 and 541 of 2016 between District Elementary Educational Officer, Karur District, Karur and another V. M.Balasubramani and another wherein at Paragraph Nos.18 to 22 it is observed as under:

"18. In the considered opinion of this Court, the civil right of the petitioner in the form of seniority cannot be altered to his detriment without affording him any opportunity in any event cannot be termed as useless formality and before revising the same, the writ petitioner ought to have put on notice and admittedly, it was not done so.

19. This Court has also posed a question to the learned Government Advocate who is appearing for the appellant in W.A.(MD)No.1182 of 2016 and on instructions, he would submit that before passing the impugned proceedings, dated 09.11.2015, the writ petitioner was not put on notice.

20. Insofar as the order of reversion is concerned, the learned Senior Counsel appearing for the appellant in W.A.(MD) No.541 of 2016, is right in saying that as per Rule 8(a) of the Tamil Nadu State and Subordinate Service Rules, the writ petitioner need not be put on notice and even in the order of promotion also, it was specifically made clear that in the event of reversion for want of vacancy, he need not be put on notice. However, the seniority list is revised and the petitioner is placed above the third respondent by virtue of the impugned proceedings and without putting him on notice and as such cannot be sustained. The learned Judge, though observed that the order of reversion visits the petitioner with grave consequences, have not taken into account the said material fact.

21. In any event, the impugned proceedings were interfered with on technical ground and hence, the learned Judge ought to have remanded the matter to the District Elementary Educational Officer, Karur District, for fresh consideration after putting the concerned parties on notice. However, allowed the writ petition and therefore, to that extent, the impugned order passed in the writ petition, warrants interference.

22. In the result, both the Writ Appeals are partly allowed and the impugned order allowing the writ petition insofar as in not remanding the matter

for fresh adjudication to the District Elementary Educational Officer, Karur District, is set aside and the matter is once again remitted to the District Elementary Educational Officer for fresh consideration and adjudication and the said Officer is directed to put the writ petitioner viz., M.Balasubramani and the third respondent viz., S.Senthilkumar on notice and after affording reasonable opportunity of personal hearing, shall pass orders on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this judgment and communicate the decision taken to them."

10. Contentions of the 1st Respondent in both the Writ Petitions:

10.1. It is contended on behalf of the 1st Respondent that the long leave availed by the 2nd Respondent to visit abroad with the permission of the Registry under continuity of service and seniority in the post is governed by Rule 26 and 5(b) of Old Madras High Court Service Rules and not under Rule 36(c) of Tamil Nadu General Subordinate Service Rules.

10.2 The Learned Counsel for the 1st Respondent submits that the appointing authority has power to decide the seniority of the Member of Service who was on 'Permitted Long Leave', as per Rule 26 of the Old Madras High Court Service Rules. Also it is the plea of the 1st Respondent that the 2nd Respondent specifies conditions prescribed in the definition of Rule 1(h) and Rule 26 of the Old Madras High Court Service Rules. That apart, the 'Lien' of the 2nd Respondent in the present post is neither suspended nor terminated. Further more, by applying the relevant old Madras High Court Service Rules, the Promotion Committee of the High Court had considered eligible claim of the 2nd Respondent and ordered restoration of seniority.

10.3 The Learned Counsel for the 1st Respondent comes out with the stand that the Petitioners cannot march over the seniority as against the Technical Assistant to Librarian quota and that the 2nd Respondent seniority was placed at the appropriate place in regard to 5% quota provided to Technical Assistant to Librarian category and not against Assistant Section Officer Category.

10.4. The Learned Counsel for the 1st Respondent brings it to the notice of this Court that Rule 31 of the New Madras High Court Service Rules, 2015 is in pari materia with the Rule 26 of the Old Madras High Court Service Rules, which deals with Member of Service absent from duty on leave or deputation or foreign service or any other reason. Apart from the above, it is the version of the 1st Respondent that the 2nd Respondent had not suppressed any fact in her representation as averred by the Writ Petitioners.

10.5 Finally, it is the stand of the 1st Respondent that wrong application of Service Rules had resulted in rejection of 2nd Respondent's Representation without considering the merits of the matter.

11. Case Laws cited on the side of the 1st Respondent:

11.1 The Learned Counsel for the 1st Respondent cites the decision of Hon'ble Supreme Court between Indira Bai V. Nand Kishore reported in (1990) 4 Supreme Court Cases 668 at Special Page 671 and 672 wherein at Paragraph No.5, among other things, it is observed as under:

"5.....Reliance was placed on Shalimar Tar Products v. H.C. Sharma, AIR 1988 SC 145, a decision on waiver, and Equitable Life Assurance Society of the United States v. Reed, 1914 Appeal Cases 587, which laid down that there could be no estoppel against statute. Equity, usually, follows law. Therefore that which is statutorily illegal and void cannot be enforced by resorting to the rule of estoppel. Such extension of rule may be against public policy. What then is the nature of right conferred by Section 9 of the Act? In Bishen Singh v. Khazan Singh, AIR 1958 SC 838 this Court while approving the classic judgment of Mahmood, J. in Gobind Dayal v. Inayatullah, ILR 7 All 775 (FB). 'that the right of pre-emption was simply a right of substitution' observed that, 'courts have not looked upon this right with great favour, presumably, for the reason that it operated as a clog on the right of the owner to alienate his property. In Radha Kishan v. Shridhar, AIR 1960 SC 1369 this Court again while repelling the claim that the vendor and vendee by accepting price and transferring possession without registration of sale deed adopted subterfuge to defeat the right of pre-emption observed that, 'there were no equities in favour of a pre-emptor, whose sole object is to disturb a valid transaction by virtue of the rights created in him by statute. To defeat the law of pre-emption by any legitimate means is not fraud on the part of either the vendor or the vendee and a person is entitled to steer clear of the law of pre-emption by all lawful means'. Such being the nature of right it is harsh to claim that its extinction by conduct would amount to statutory illegality or would be opposed to public policy. The distinction between validity and illegality or the transaction being void is clear and well known. The former can be waived by express or implied agreement or conduct. But not the latter. The provision in the Act requiring a vendor to serve the notice on persons having right of pre-emption is condition of validity of transfer, and therefore a pre-emptor could waive it. Failure to serve notice as

required under the Act does not render the sale made by vendor in favour of vendee ultra vires. The test to determine the nature of interest, namely, private or public is whether the right which is renounced is the right of party alone or of the public also in the sense that the general welfare of the society is involved. If the answer is latter then it may be difficult to put estoppel as a defence. But if it is right of party alone then it is capable of being abnegated either in writing or by conduct. The Act does not provide that in case no notice is given the transaction shall be void. The objective is to intimate the pre-emptor who may be interested in getting himself substituted. The Act does not debar the pre-emptor from giving up this right. Rather in case of its non-exercise within two months, may be for the financial reasons. the right stands extinguished. It does not pass on to anyone. No social disturbance is caused. It settles in purchaser. Giving up such right. expressly or impliedly cannot therefore be said to involve any interest of community or public welfare so as to be in mischief of public policy."

11.2 The Learned Counsel for the 1st Respondent relies on the decision of Hon'ble Supreme Court between Union of India and Others V. Rakesh Kumar reported in (2001) 4 Supreme Court Cases at page 309 at special page 311 it is held as under:

"If by an erroneous interpretation of statutory rules pensionary benefits are granted to someone it would not mean that the said mistake should be perpetuated by direction of the Court. It would be unjustifiable to submit that by appropriate writ, the Court should direct something which is contrary to the statutory rules. In such cases, there is no question of application Article 14 of the Constitution. No person can claim any right on the basis of decision which is de hors the statutory rules nor can there be any estoppel. Further, in such cases there cannot be any consideration on the ground of hardship. If the Rules are not providing for grant of pensionary benefits it is for the authority to decide and frame appropriate rules but the Court cannot direct payment of pension on the ground of so-called hardship likely to be caused to a person who has resigned without completing qualifying service for getting pensionary benefits. (Para 21)"

11.3 The Learned Counsel for the 1st Respondent refers to the decision of Hon'ble Supreme Court between P.Dharni and Others V. Government of Tamilnadu and Others reported in (2013) 7 Supreme Court Cases 289 at Special Page 310, wherein at

Paragraph No.35 it is held as follows:

"35.We have given out thoughtful consideration to the second legal proposition canvassed at the hands of the learned counsel for the appellants. We find merit therein as well. The question to be considered is: whether the Special Rule prescribing the minimum period of eligibility for appointment to the post of Regional Transport Officer, can be overlooked while allowing out of turn/accelerated appointment to Respondent 5, to the post of Regional Transport Officer? We are satisfied in answering the aforesaid query in the negative."

11.4 The Learned Counsel for the 1st Respondent adverts to the decision of Hon'ble Supreme Court between R.S.Raghunath V. State of Karnataka and Another at page 335 wherein it is observed and held that 'Special Law being already in force application of the subsequent general Law is excluded to the extent the field is occupied by special Law.'

11.5 The Learned Counsel for the 1st Respondent in addition to the aforesaid decisions, cites the following decisions:

(i) In the decision of Hon'ble Supreme Court between Sarat Kumar Dash and Others V. Biswajit Patnaik and Others reported in 1995 Suppl. (1) Supreme Court Cases at page 434 at Special Page 439 and 440 wherein at Paragraph No.11, it is observed as under:

"11. The next question is whether omission to record reasons amounts to violation of the principles of natural justice. The principle of audi alterim partem is a basic concept of the principle of natural justice. The omnipotency inherent in the doctrine is that no one should be condemned without being heard or given an opportunity to the person effected to present his case before taking the decision or action. In the field of administrative action, this principle has been applied to ensure fair play and justice to the effected person. However, the doctrine is not a cure to all the ills in the process. Its application depends upon the factual matrix to improve administrative efficiency and expediency and to meet out justice. The procedure adopted would be just and fair The reasons are links between maker of the order or the author of the decision and the order itself The record is called to consider whether he has given due consideration to the facts placed before him before he arrives at the decision. Therefore, the reasons in the order or found from the record bridges the link between the maker of the order and the order itself or decision. Therefore the natural justice is not a rigid nor an inflexible rule. It should be applied to a given fact situation,

depending upon the background of the statutory provisions, nature of the right which may be effected and the consequences that may entail. It is already seen that the tribunal evolved the objective criteria in awarding marks to the given grading of the candidates and on its basis recommended their cases for promotion. In R.S. Dass case, this Court held that the grading itself is a reason and no separate reasons in that behalf in arranging the order of merit need be given. The grading is to obviate the need to record reasons. The finding of the Tribunal that the selection by PSC without recording reasons or need to record separately the reasons for evolving the criteria for selection is also clearly illegal."

(ii) In the decision of Hon'ble Supreme Court between M.Venkateswarlu and Others V. Government of A.P. And Others reported in (1996) 5 Supreme Court Cases at Page 167 at Special Page 172 and 173 wherein at Paragraph Nos.8 to 11, it is observed as under:

"8.Thus it could be seen that the Governor is empowered to relax the rigor of the General Rules in such manner as may appear to him to be just and equitable in the interest of justice and equity. Justice can be done only by exercising the power retrospectively. Otherwise, the object and purpose of the Rule 47 will be largely frustrated. The finding of the Full Bench of the Tribunal that Rule 47 cannot be exercised retrospectively is, therefore, clearly illegal.

9.The next question is: whether the Government had addressed to itself the real issue of justice or inequality? It is true that from a reading of the order the Government do not appear to have been angulated from that perspective. But the conclusion can be supported by the facts available in the case. It is seen that under Rule 22(ii)(g), the carry forward of the reserved backlog vacancies could be for a period of three years and when the vacancies could not be filled up at the end of the third year, the Government is required to consider whether the vacancies would be thrown open to the general candidates dereserving the backlog vacancies. Due to the non-availability of the qualified candidates the Government instead of resorting to dereservation of the vacancies, appears to have relaxed the rigor of Rule 8 (a)(ii) of the Special Rules which envisages that the candidate has to put in minimum of total service of eight years and a minimum service of two years as a Senior Assistant. The

annexure referred to in Rule 8(a)(ii) of the Special Rules is to the following effect:

"Must have served for a period of not less than eight years (including services as Revenue Inspector prescribed in clause (iii) below in a post not lower in rank than the category of Lower Division Clerk, two years of which should have been in the post of an Upper Division Clerk:

Provided that the Upper Division Service rendered by a member of the District Revenue Establishment or any other Department, office or special duty, shall be counted to the extent to which he should have counted as Upper Division Clerk in the regular line but for his appointment as Upper Division Clerk elsewhere."

10. In this case, the appellant fell short of five months service for purpose of period of two years as a Senior Assistant and of one year and five months for purpose of total service of eight years in the Revenue Department. In view of the huge backlog of reserved vacancies on account of non-availability of Scheduled Castes/Scheduled Tribes candidates, the Government appears to have intended to relieve the injustice to the appellant by relaxing the prescribed period of service under Rule 8(ii) read with the annexure. It is not in dispute that the appellant had passed all the prescribed tests well within time. The only ineligibility was as regards completion of the required period of service. It is settled law that the Government cannot relax the basic qualifications but in an individual case they can relax, in an appropriate case, the conditions of service. It is seen that the appellant having passed all the tests, he was required to fulfil the condition of total service of eight years and minimum service of two years as Senior Assistant. Therefore, with a view of fill up the backlog vacancies which, as rightly pointed out by Shri P.P. Rao, undisputably is a constitutional obligation, the Government appears to have exercised the power under Rule 47 by condoning the deficiency of requisite length of service though no specific finding in that behalf was recorded. The test of justice and equity envisaged in Rule 47 is to be understood in this background. Relaxation may be given to a class of persons or an individual.

11. The question then is: whether notice to all the persons who are likely to be affected is required before exercising the power under Rule 47? The rule ex

facie does not contemplate any notice being given. It is not a case of considering inter se claim of any particular individuals. It is a case of relaxing the eligibility of a single individual as against many. Under these circumstances, we do not think that the rule envisages notice to all the affected persons. It is true that in the cadre of Senior Assistant, the respondents were seniors to the appellant. But by operation of Rule 22 read with Articles 16(1), 16(4) and 16(4A), the appellant by promotion as reserved candidate would steal a march over his seniors in the lower cadre and would become senior as Deputy Tahsildar."

12. 2nd Respondent's Submissions:

12.1 The Writ Petitioners have no locus standi to question the rectification of the mistake and granting promotion to the 2nd Respondent from earlier date. In this regard, it is the stand of the 2nd Respondent that the Writ Petitioners belong to a different feeder category and no right of theirs is infringed by granting promotion to the 2nd Respondent from earlier date from another feeder category and they cannot be termed as 'Aggrieved persons'.

12.2 The Learned Counsel for the 2nd Respondent comes out with a plea that the Impugned Order of the restoration of 2nd Respondent's seniority alone is assailed in the Writ Petitions and sanction of leave is not been challenged, no averment was made in the Writ Petitions that sanction of leave was an illegal or arbitrary one. Besides these, Rules 18 and 85 of the Fundamental Rules are dealing with sanction of leave and they are not relevant to restoration of seniority, which is questioned in the Writ Petitions.

12.3 The Learned Counsel for the 2nd Respondent contends that the power to rectify the mistake of an error is inherent in any administrative authority and that the same can be exercised for any reasons at any time to rectify the error and to prevent perpetuation of such mistake.

12.4 Yet another submission of the Learned Counsel for the 2nd Respondent is that in general, proceeding 'On leave without Pay' will not be counted for pensionary benefits, periodical increments and other pay related aspects. Infact, no third party interest has arisen on the basis of earlier seniority position as none were granted career progression to the Higher post.

12.5 The Learned Counsel for the 2nd Respondent takes a plea that seniority is dependent on the date of promotion and the Petitioners belong to different feeder category and they do not have locus standi to question such promotion. Moreover,

legitimate expectation cannot be elevated to a accrued / vested service right. It is clear from the Rule 26 of the Madras High Court Service Rules that the 2nd Respondent is eligible for promotion in her duty in her due turn and it gives protection for promotion and seniority.

12.6 It is the version of the 2nd Respondent that her immediate senior G.Rajamannar in the post of Technical Assistant was promoted on 15.06.2007 and afterwards quota was not followed and only Assistant Section Officers were promoted to the post of CO/SO/AE, in violation of Rule 14.

12.7 The Learned Counsel for the 2nd Respondent points out that as per Rule 23 of the then Madras High Court Service Rules, nothing in these Rules shall be construed to limit or abridge the power of Hon'ble Chief Justice to deal with the case of any member of the service or any person to be appointed to the service in such manner as may appear to him to be just or equitable; Provided that where any such Rule is applicable to the case of any person the case shall not to be dealt with in any manner, less favourable to him than that provided by that Rule.

12.8 The Learned Counsel for the 2nd Respondent cites the decision of Hon'ble Supreme Court between Srikant Roy and Others V. State of Jharkhand and Others reported in [2017] 1 Supreme Court Cases at Page 457 at Special Page 475 wherein at Paragraph Nos.23 and 24, it is observed as under:

"23. Considering the fact that no vacancy existed in the quota of direct recruit as on 30th August 2008, the writ petitioners (respondents 4 to 11 in the leading appeal), who could participate in the selection process for direct recruit alone and not by way of promotion through Limited Competitive Examination, had no locus to challenge the selection process of 2008.

24. The High Court has overlooked the distinction between "post" and "vacancy". If the requisite posts were already exhausted by the direct recruits against the earmarked quota for direct recruitment, merely because some vacancies occur, it would not be open to the aspiring candidates against the direct recruit quota to challenge the selection process commenced for the in service judicial officers by promotion through Limited Competitive Examination. The cadre strength is always measured by the number of posts comprising the cadre. The right to be considered for appointment can only be claimed in respect of a post in the given cadre. The percentage of quota has to be worked out in relation to number of posts which form the cadre and has no relevance to the vacancy that would occur. This aspect has been glossed over by the High Court in the

impugned judgment. Suffice it to observe that as no post for direct recruits existed as on 30th April, 2008, the challenge to the selection process to fill up the vacancy by promotion through Limited Competitive Examination, at the instance of aspiring candidates by direct recruitment cannot be countenanced. The Writ Petition filed by such aspiring candidates (WP(S) No. 4159/2008), therefore, ought to have been dismissed by the High Court."

13. Analysis :

13.1. At the outset, this Court points out that the 2nd Respondent was appointed as 'Reader' / 'Examiner' on 07.12.1998 and on 16.09.1999, she was promoted as 'Assistant'. The 2nd Respondent was promoted as 'Assistant Section Officer' on 13.08.2003 and on 18.03.2004, she was promoted and posted to the post of 'Technical Assistant to Librarian'.

13.2. It comes to be known that the 2nd Respondent was granted a continuous period of 365 days of leave as per Rule 18 (2) of the Fundamental Rules of the Government of Tamilnadu by availing Earned Leave for a period of 90 days from 23.08.2007 to 20.11.2007, UnEarned Leave on Private Affairs for the period of 90 days from 21.11.2007 to 18.02.2008 and Extraordinary Leave without Pay and Allowances for the period of 185 days from 19.02.2008 to 21.08.2008, as per proceedings of Registrar [Administration] of this Court in R.O.C.No.3223/2007-Estt.III dated 22.08.2007.

13.3. The 2nd Respondent was granted an Extension of Extraordinary Leave for a period of two years from 22.08.2008 to 21.08.2010 so as to enable her to accompany her husband, viz., D.Arun Rajen, working as Senior Planning Engineer in Dodsai & Co., LLC, Muscat, for the purpose of availing the allowances, perks etc., as requested by her in Letter dated 13.06.2008 and further that she was informed that the conditions prescribed in the proceedings of the 1st Respondent in R.O.C.No.3223/2007-Estt.III dated 22.08.2007 remained unchanged.

13.4. In this connection, it is not out of place for this Court to make a pertinent mention that Rule 18(1) of the Fundamental Rule of the Government of Tamil Nadu reads as under:

"(1) Except leave on medical certificate or study leave under rule 84, no Government Servant (Permanent or Approved Probationer), who has not completed five years of service, shall be granted leave of any kind for a continuous period exceeding six months at any one time."

13.5 Also, the Rule 18(2) of the Fundamental Rule of Government of Tamilnadu enjoins as follows:

“(2) Except on medical certificate or study leave under rule 84 no Government servant (Permanent or Approved Probationer), who has completed five years of service, shall be granted leave of any kind for a continuous period exceeding one year at any one time.”

13.6 Even though Rules 18(1) and 18(2) of the Fundamental Rules of Government of Tamil Nadu speak of 'Government Servant [Permanent or Approved Probationer]', it is to be borne in mind that all the matters, other than the matters covered under High Court Service Rules, are governed by the 'Fundamental Rules'. To put it precisely, Leave, Retirement Benefits, the Regularisation of various service periods are to be dealt with only in terms of the Fundamental Rules and no other Rule is available for the Employees of the High Court dealing with the same.

13.7 It cannot be brushed aside that the Rule 26 of the Madras High Court Service Rules, 2015 [coming into force on 01.12.2015] speaks of 'Application of other Rules regarding Pay, Allowances, Leave, Leave Salary, Pension and other conditions of Service'. Further, subject to the Madras High Court Service Rules, 2015, the Tamil Nadu State Subordinate Service Rules, the Fundamental Rules and the subsidiary Rules etc., shall govern members of service in the matter of their Pay, Allowances, Leave, Leave Salary, Pension and other conditions of Service. Even the Rule 21 of the Old Madras High Court Service Rules, 1955 under the caption 'Pay, Allowances, Leave, Leave Salary, Pension and other conditions of Service' speaks of 'The Fundamental Rules, the Subsidiary Rules thereunder, the Tamil Nadu Leave Rules' etc., shall govern the members of service [employees] in the matter of their Pay, Allowances, Leave, Leave Salary, Pensions and other conditions of service. As such, it cannot be said that Fundamental Rules of the Government of Tamil Nadu will not apply in the present case. Moreover, if the Special Rule is silent in respect of a particular field, then, the General Rules alone are to be permitted to govern the field. Since the 2nd Respondent's Earned Leave, Unearned Leave, Extraordinary Leave for nearly three years was granted by this Court, as per FR 18(2) of the Fundamental Rules and when the grant of said leave by the 1st Respondent / High Court was not assailed on behalf of the Petitioners, in an appropriate proceedings, this Court refrains from delving deep into the same at this distance point of time. Also, one has to bear in mind that as per Rule 23 of then Madras High Court Service Rules 'Nothing in the Rules' shall be construed to limit or abridge the power of the Hon'ble Chief Justice to deal with the case of any member of the service etc.,

13.8. In regard to the plea of the 1st Respondent that Rule 36(c) of the Tamil Nadu State Subordinate Service Rules will not apply to the case of the 2nd Respondent and the long leave

availed by her under continuity of service is to be governed under Rule 5(b), 26 and 1(h) of the Madras High Court Service Rules, 1955, it is to be relevantly pointed out by this Court that the 1st Respondent / Registrar General, High Court, Madras in ROC.No.33/2011-Con.Estt.I, while putting an Office Note before the Hon'ble Chief Justice pertaining to the representation submitted by certain staff members for promotion to the next higher posts [including the 2nd Respondent's Letter dated 30.08.2011] and three other Individuals coupled with the joint representation submitted in the category of Junior Bailiff dated 11.08.2011, a reference is made to Rule 36(c) of the Tamilnadu State and Subordinate Service Rules, in respect of the 2nd Respondent and also a reference was made to Rules 37 and 38 of the Tamil Nadu State and Subordinate Service Rules. Moreover, in the said Note, a mention was made to Rule 4 Explanation-I of the General Rules of the Tamil Nadu State and Subordinate Service Rules, which speaks of Validity Period and Panel etc., As a matter of fact, the representations of the 2nd Respondent and Others were directed to be placed before the 'Promotion Committee' by the Hon'ble Chief Justice.

13.9 In fact, the Promotion Committee on 09.01.2012 in ROC.No.33/ 2011-Con.Estt.I had rejected the representations of the 2nd Respondent and one Mrs S.Umaiya [Typist] and Mrs.P.Vetriselvi [Xerox Operator] on the ground that their cases were already considered in earlier minutes dated 12.07.2011 and 04.08.2011 respectively and the said minutes were held to be good and therefore, it was opined that their Representations need not be considered once again etc.

13.10. Though a plea is taken on behalf of the 1st Respondent that Rule 36(c) of the Tamilnadu State and Subordinate Service Rules, is not to be applied in respect of the claim made by the 2nd Respondent for restoration of seniority, the 1st Respondent / High Court had pressed into service, the Tamilnadu Subordinate Service Rules in its earlier Office notes and also in the recent Office Note in R.O.C.No.33077 / 2017-Estt.I dated 28.06.2017 wherein the Minutes of the Committee dated 18.10.2014 was referred to and wherein Rule 36(c) of the Tamil Nadu State Subordinate Service Rules was stated and based on that, the request of the 2nd Respondent was rejected, since it was not feasible of compliance.

13.11. Continuing further, in the said office note dated 28.06.2017 of the 1st Respondent a specific mention was made that the 2nd Respondent was entitled for promotion only after completion of duty period i.e., 23.8.2011, as per Rule 42 of the Tamil Nadu Government Servants [Conditions of Service] Act, 2016 [formerly known as Rule 36(c) of the Tamil Nadu State and Subordinate Rules], which reads that 'a member of a service who had been on leave for a period of three years continuously for

any reason except higher studies or for a period of four years continuously for higher studies, shall not be considered for an appointment to a higher category either by promotion or by recruitment by transfer unless he has completed service for a period of one year from the date on which he joins duty on return from leave'. Ultimately, the Office Note based on seeking orders in regard to the request of the 2nd Respondent to fix the Seniority between T.Rajamannar and R.Suresh Kumar, CO/SO/AE, High Court, Madras who had availed leave for a continuous period of three years from 23.08.2007 to 21.08.2010 afternoon to visit Muscat to stay there during the aforesaid period and permitted to join duty on 23.08.2010 afternoon and was entitled for promotion only after completion of duty period i.e. 23.08.2011, one year service after joining duty on return from leave as per Rule 42 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. When placed before the Hon'ble Committee on 21.08.2017, the Committee ultimately passed a Minutes by directing the Registry to arrive at the vacancies in CO/SO/AE during the relevant period, i.e., after the promotion of G.Rajamannar to the post of CO/SO/AE and also to carry forward the fraction of vacancies that arose during the said period and fix the Seniority of 2nd Respondent in accordance with the ratio stipulated under Rule 14 of the Madras High Court Service Rules etc.,

13.12. In fact, when the matter was placed before the Hon'ble Committee, the Committee in ROC.No.33077/2017-ESTT.I on 29.08.2018 had observed, at Paragraph No.2, as under:

"2.In view of the earlier minutes dated 21.08.2017, the seniority of Tmt.K.Ezhili, Section Officer, Madras High Court in the cadre of CO/SO/AE may be arrived between Tmt.R.Tharagalakshmi (Sl.No.40) and Thiru.R.Jagadeesan (Sl.No.41) in the seniority list."

and directed the Registry of the 1st Respondent to issue proceedings immediately. In fact, the Third Member of the Committee in ROC.No.33077/2017-ESTT.I dated 29.08.2018 had observed as under:

"Indicate as to any other persons will affect because of this course of action."

13.13. Based on the observation of the Third Member of the Hon'ble Committee, an Office Note was put up in ROC.No.33077/2017-ESTT.I, on 04.09.2018 and that the Hon'ble Committee had withdrew earlier Minutes passed on 29.08.2018 fixing the seniority of the 2nd Respondent based on the Office Note of the Registry that they have wrongly fixed the seniority of the 2nd Respondent fixing a seniority between R.Tharagalakshmi (Sl.No.40) and R.Jagadeesan (Sl.No.41) and directed the Registry of the 1st Respondent to fix the seniority of the 2nd Respondent in the cadre of CO/SO/AE between P.Eswaramoorthy (Sl.No.35) and S.Malar (Sl.No.36) in the seniority list. Further, the Office

of the Registry was directed to issue the proceedings immediately. Also, the Hon'ble Committee on 04.09.2018 went on to observe that if the similarly placed CO/SO/AE's mentioned in the Office Note viz., Tmt.C.Mohana, CO/SO/AE and Tmt.S.Anandhi, Assistant submit their representations for considering their respective cases and the same may be considered and suitable orders may be passed in accordance with the provisions of the Madras High Court Service Rules.

13.14 In regard to the plea of the 1st Respondent that Rule 2 of the General Rules of the State and Subordinate Service Rules visualises that General Rules framed by the State Government would not apply where service condition of employees are governed by Special Rules and in fact, the Special Rules of the Madras High Court applicable to any particular service shall prevail over the provision of General Rules, it is to be pointed out that in respect of the field unoccupied by the Special Rules, then, the General Rules pressed into service to govern the field.

13.15. In effect, the crystalline plea taken on behalf of the 1st Respondent that Rule 36(c) of the Tamil Nadu State Subordinate Service Rules cannot be pressed into service in respect of 2nd Respondent case, is unsustainable one because of the fact that when the Special Rules viz., the Old Madras High Court Service Rules, 1955 are silent in regard to the applicability of the same, then, the General Rules will have an overriding effect. As such, the contra plea taken on behalf of the 1st Respondent is not accepted by this Court.

13.16. In the instant case, when the 2nd Respondent's earlier three representations were rejected by the 1st Respondent and when those orders had attained finality and they stare at the face of the 2nd Respondent, the passing of the Impugned Order dated 15.10.2018 by the 1st Respondent based on the 2nd Respondent's fresh representation (4th representation) dated 13.04.2017 (received by the Office of the 1st Respondent on 18.04.2017) is certainly not a valid one, especially when the claim of the 2nd Respondent was allowed after eight years from the date of cause of action and five years from the date of accepting her promotion and Seven years and four months from the date of rejection of her earlier representations. In fact, the 1st Respondent in ROC.No.3223/2007-ESTT-III dated 22.08.2007 while imposing conditions had observed that the 2nd Respondent was entitled to draw the House Rent Allowance for the eligible leave period i.e., Earned Leave for a period of 90 days from 23.08.2007 to 20.11.2007 and Un Earned Leave on Private Affairs for a period of 90 days from 21.11.2007 to 18.02.2008, on her return from leave. Further, the 2nd Respondent was permitted to accept the balance amount (out of the total outstanding amount of Rs.1,56,000/- as on 13.08.2007) which would be outstanding

after the three months deduction from her salary for the Earned Leave period from 23.08.2007 to 20.11.2007 to be availed by her, from her father A.Kasinathan, retired Deputy Registrar, High Court, Madras, who intended to repay the outstanding of the loan amount availed by his daughter from the Madras High Court Co-operative Society Limited, on her behalf, in her absence, from and out of his retirement benefits etc.,

13.18. Further, the settled legal position that 'Seniority List' once settled cannot be unsettled after a long lapse of time was reiterated by the Hon'ble Supreme Court in Union of India and another V. S.K.Goel and others reported in (2007) 14 SCC 641, whereby and whereunder, it is mentioned as under:

"28. Since the matter of seniority has been well settled and this Court in a plethora of cases has held that the seniority/promotion granted on the strength of DPC selection should not be unsettled after a lapse of time."

13.19. At this stage, this Court aptly points out the Order dated 02.12.2016 in W.P.No.28847 of 2016 and batch (Andhra High Court) [S.P.Abdulla Saheb and 15 others V. K.Krishna Murthy and 7 others] wherein at Paragraph Nos.49 and 50, it is observed as under:

"49.To put it differently, the seniority list dated 31.07.2007 gave a cause of action only for those appointed after 01.04.1996 up to 31.03.2005. For those appointed before 31.03.1996, the seniority list attained finality on 14.02.2000. Therefore, it is clear that by the present proceedings, the original applicants were attempting to reopen the issue seniority that was settled at least 10 years earlier. In service jurisprudence, it is not possible to reopen a long settled seniority. Therefore, the 5th contention of the petitioners is also to be upheld.

50.In the light of the above, we are of the considered view that the Tribunal faulted in granting a benefit to a set of applicants, who were guilty of suppression of facts, who were guilty of long delay and laches in approaching the Tribunal, to reopen an issue of seniority that had attained finality 10 years earlier. Hence, the order of the Tribunal is liable to be set aside."

13.20. At this juncture, this Court worth recollects and recalls the decision of the Hon'ble Supreme Court in Malcom Lawrence Cecil D'Souza V. Union of India, (1976) 1 SCC 599 at Special Pages 601 & 602, wherein at Paragraph Nos.8 & 9, it is observed and held as under:

"8.The matter can also be looked at from another angle. The seniority of the petitioner qua respondents 4 to 26 was determined as long ago as 1956 in

accordance with 1952 Rules. The said seniority was reiterated in the seniority list issued in 1958. The present writ petition was filed in 1971. The petitioner, in our opinion, cannot be allowed to challenge the seniority list after lapse of so many years. The fact that a seniority list was issued in 1971 in pursuance of the decision of this Court in Karnik's case (supra) would not clothe the petitioner with a fresh right to challenge, the fixation of his seniority qua respondents 4 to 26 as the seniority list of 1971 merely reflected the seniority of the petitioner qua those respondents as already determined in 1956. Satisfactory service conditions postulate that there should be no sense of uncertainty amongst public servants because of stale claims made after lapse of 14 or 15 years. It is essential that any one who feels aggrieved with an administrative decision affecting one's seniority should act with due diligence and promptitude and not sleep over the matter. No satisfactory explanation has been furnished by the petitioner before us for the inordinate delay in approaching the court. It is no doubt true that he made a representation against the seniority list issued in 1956 and 1958 but that representation was rejected in 1961. No cogent ground has been shown as to why the petitioner became quiescent and took no diligent steps to obtain redress.

9. Although security of service cannot be used as a shield against administrative action for lapses of a public servant by and large one of the essential requirements of contentment and efficiency in public services is a feeling of security. It is difficult no doubt to guarantee such security in all its varied aspects, it should at least be possible to ensure that matters like one's position in the seniority list after having been settled for once should not be liable to be reopened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet. Baking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time."

13.21. Also, in the decision of the Hon'ble Supreme Court in H.S.Vankani and others V. State of Gujarat and others, (2010) 4 Supreme Court Cases 301 at special pages 313 & 314, wherein at Paragraph Nos.38 & 39, it is observed as under:

"38. Seniority is a civil right which has an important and vital role to play in one's service career. Future promotion of a government servant

depends either on strict seniority or on the basis of seniority-cum-merit or merit-cum-seniority, etc. Seniority once settled is decisive in the upward march in one's chosen work or calling and gives certainty and assurance and boosts the morale to do quality work. It instils confidence, spreads harmony and commands respect among colleagues which is a paramount factor for good and sound administration. If the settled seniority at the instance of one's junior in service is unsettled, it may generate bitterness, resentment, hostility among the government servants and the enthusiasm to do quality work might be lost. Such a situation may drive the parties to approach the administration for resolution of that acrimonious and poignant situation, which may consume a lot of time and energy. The decision either way may drive the parties to litigative wilderness to the advantage of legal professionals both private and government, driving the parties to acute penury. It is well known that the salary they earn, may not match the litigation expenses and professional fees and may at times drive the parties to other sources of money-making, including corruption. Public money is also being spent by the Government to defend their otherwise untenable stand. Further, it also consumes a lot of judicial time from the lowest court to the highest resulting in constant bitterness among the parties at the cost of sound administration affecting public interest.

39. Courts are repeating the ratio that the seniority once settled, shall not be unsettled but the men in power often violate that ratio for extraneous reasons, which, at times calls for departmental action. Legal principles have been reiterated by this Court in Union of India V. S.K.Goel [(2007) 14 SCC 641], T.K.Kapoor v. State of Haryana, [(1989) 4 SCC 71] and Bimlesh Tanwar V. State of Haryana [(2003) 5 SCC 604]. In view of the settled law the decisions cited by the appellants in G.P.Doval V. Government of U.P., (1984) 4 SCC 329, Prabhakar V. State of Maharashtra, (1976) 2 SCC 890, G.Deenadayalan Ambedkar V. Union of India, (1997) 2 SCC 638 and R.S.Ajara V. State of Gujarat, (1997) 3 SCC 641 are not applicable to the facts of the case."

13.22. In the decision G.T.Ramaswamy and Others V. State of Karnataka and Others [Vol.44] reported in 1986 [4] Service Law Reporter at Page 721 it is held that the 'Preparation of Seniority Lists in every cadre of every department of Government by the designated authority every year in terms of Rule 10 of the Karnataka Government Servants Seniority Rules, 1957 does not empower the Government to review all earlier seniority lists

which have become final and make a fresh determination in conformity with Law declared by the Courts as on the date of preparation of the fresh list. Further in the said decision it is observed that the Official Memorandum dated 10.02.1984 directed to review all earlier concluded seniority list is in violation of Law, and as such, the same is an illegal one.

13.23. Also in the decision of Hon'ble Supreme Court between State of Uttar Pradesh & Others V. Ashok Kumar Srivastava and Another reported in 2013 (10) SCALE at page 505 wherein at Special Pages 512 at Paragraph Nos.11, 15 and 16 it is observed as under:

'11. The thrust of the matter is how the seniority is to be determined in such circumstances. In Union of India V. S.S.Uppal and Another [1996] 2 SCC 168, it has been opined that the seniority of a person is to be determined according to the seniority rule applicable on the date of appointment. It has also been observed that weightage in seniority cannot be given retrospective effect unless it is specifically provided in the rule in force at the material time.

15. Learned senior counsel for the appellants has drawn inspiration from the recent authority in Pawan Pratap Singh and others V. Reevan Singh and others [2011] 3 SCC 267, where the Court after referring to earlier authorities in the field has culled out certain principles out of which the following being the relevant are reproduced below:

(ii) Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

(iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime."

16. In view of the aforesaid enunciation of law, the irresistible conclusion is that the claim of the first respondent for conferment of retrospective seniority is absolutely untenable and the High Court

has fallen into error by granting him the said benefit and accordingly the impugned order deserves to be lanced and we so do.

13.24. Suffice it for this Court to point out that the 'Issue of Seniority' is to be determined based on consonance of 'Principles of Equality and Fairness' and should conform to Articles 14 and 16 of the Constitution of India.

13.25. It is to be noted that Rule 9(6) of the Fundamental Rules under the head of 'Duty' reads as under:

"9(6) Duty -

(a) Duty includes -

(i) Service as a probationer or apprentice, provided that such service is followed by confirmation.

(ii) Joining time.

(iii) Extra leave on average pay granted to a Government servant, undergoing treatment at a Pasteur Institute.

(b) Government may issue orders, declaring that in the circumstances similar to those mentioned below, a Government servant may be treated as on duty -

(i) During a course of instruction or training.

(ii) In the case of any particular class of Government stipendiary students during the period of training as a stipendiary before substantive appointment as a Government servant, for the purpose of counting for leave and increment subject to any conditions imposed by Government.

(iii) During the period of any examination (optional or obligatory) which a Government servant is permitted to attend including the number of days actually required for proceeding to and returning from the station at which the examination is held."

14. Writ of Mandamus:

14.1 It is a well settled legal plea that an affected person can apply for 'Mandamus'. A Writ of Mandamus can be issued against any person. Under Section 2(42) of the General Clauses Act, 1897, 'Person' includes any Company or Association or body of individuals whether incorporating or not.

14.2. Apart from that, all parties whose presence is necessary or against whom the Writ has to be issued, ought to be in the array of parties. In case the dispute relates to right, interest or title in respect of a property, all the parties who have claimed or who stake a claim to have an interest must be added as parties.

14.3 Where a person's fundamental right is violated or where the matter is kept unnecessarily without there being any order passed thereto, then, a Writ of Mandamus can be filed. 'Mandamus' is utilised as an adjunct to Certiorari. The relief of 'Mandamus' is not prohibited when there is an availability of Certiorari. In particular circumstances, a Court of Law by means of 'Certiorari' declared the act to be an illegal or unlawful one and further, it may direct an Authority to perform an act what it ought to have done.

15. Plea of Estoppel:

15.1 Insofar as the principle of 'Estoppel' is concerned, the same is based on 'Equity' and 'Good conscience'. Of course, 'Estoppel' is a complex legal notion pertaining to combination of numerous essential elements viz., statement to be acted or acting on the faith of it, resulting detriment to the actor. No wonder, 'Estoppel' deals with 'Questions of Fact' and not on 'Rights'. The settled legal principle is that no one can be estopped from asserting his right, which he might have stated that he will not assert. There cannot be an Estoppel against a statute.

15.2 It is to be pointed out that Rule of 'Estoppel' is purely a personal and cannot create any substantive right in rem against the person estopped or his representative. The term 'Estoppel' can be defined as a disability whereby a party is precluded from establishing or alleging any legal proceedings that a fact is otherwise than, it has been made to appear by the matter giving rise to that disability. The 'Doctrine of Estoppel' is rested on 'Right of Evidence'.

15.3 As a matter of fact, where one has either by conduct or by words made to another a representation of fact, either with knowledge of its falsehood or with the intention that it should be acted upon or has so conducted himself that another would, as a reasonable man, understand that a certain representation of fact was intended to be acted on, and the other has acted on the representation and thereby altered his position to his prejudice, an estoppel against the party, who made representation and further, he is not permitted to aver that the fact is otherwise than he represented to be [Hals 3rd Ed Vol.15 Para 338]

15.4 Further, 'Estoppel' may be brought about by acquiescence. 'Silence' may also amount to conduct where there is a clear duty to speak. The 'Representation' must relate to existing facts, not to promise de futuro or intention, or to matters of law and it must be clear and unambiguous. The burden of proving the fact and circumstances, from which estoppel arises falls upon the person pleading it. 'Estoppel' will arise

from a clear definite statement and a statement in order to be an 'Estoppel' should be clear and an unambiguous one and not necessarily susceptible of only one interpretation, but such as will reasonably be approved in the senses contended for and for this object, the entire gamut of representation is to be looked into.

15.5. The term 'Estoppel' is not only a rule of pleading and evidence in view of the fact that it extends to things which are matters of pleading and not proof, as per decision Darbari v. Raneeganj Coal Association, AIR 1994 at page 30.

15.6 It is useful for this Court to quote the observations of Lord CHELMSFORD in the decision Shah Mukhun Lall V. Baboo Sree Kishen Singh, (1867-69) 12 Moo Ind APP 157, wherein it is observed as under:

"A man cannot both affirm and disaffirm the same transaction, show its true nature for his own relief, and insist on its apparent character to prejudice his adversary. This principle, so just and reasonable in itself, and often expressed in the terms, that you cannot both approbate and reprobate the same transaction has been applied by their Lordship in this committee to the consideration of Indian Appeals, as one applicable in the courts of that country, which are to administer justice according to equity and good conscience. The maxim is founded, not so much on any positive law, as on the broad and universally applicable principles of justice."

16. Legitimate Expectation:

16.1 Coming to the aspect of a Reasonable or Legitimate Expectation of a person, it is just and necessary for this Court to cite the decision of the Hon'ble Supreme Court in Food Corporation of India V. M/s.Kamdhenu Cattle Feed Industries, (1993) 1 Supreme Court Cases 71, at Special Page 72, wherein it is observed as under:

"The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question, arises, it is to be determined not according to the claimant's perception

but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent. (Para 8)"

16.2 The term 'Legitimate Expectation' is an integral part of the 'Principles of Natural Justice'. Natural Justice unbound is as unfair as it is being kept 'out of bounds', in the considered opinion of this Court.

17. Reasonable Opportunity:

17.1. The words 'Reasonable Opportunity' are to be construed according to the Rules of Justice which are already established, extended and expounded by 'Judicial Decisions'.

17.2. In the decision of the Hon'ble Supreme Court in Vinod Kumar Sharma V. State of U.P. And Another, (2001) 4 Supreme Court Cases 675 at Special page 682 wherein at Paragraph No.12 it is interalia observed as follows:

'12..... While refixing seniority, if any person is affected, it shall fix the seniority after giving an opportunity to the person concerned. Consequent promotions and benefits flowing thereunder will also be granted to the appellants, if they are otherwise eligible.'

17.3. In the decision M.S.Usmani and others V. Union of India, (1995) 2 Supreme Court Cases 377, at Special Page 378, wherein it is observed as under:

'Although appointment in the first promotional post was not challenged, the department, after the lapse of a long period (six years from the date of selection, five years from the date of appointment and two years from the date of promotion in higher scale), reverting such appointees to their original posts with bottom seniority without affording any opportunity and in such circumstances, the order of reversion, is held to be unjust and illegal one.'

17.4. In the decision of Hon'ble Supreme Court between R.K.Mobisana Singh V. KH.Temba Singh and Others at page 747 and at Special Page 769 at Paragraph No.41 interalia it is observed as follows:

'41....Seniority although is not a fundamental right but a civil right. Such a right of the direct

recruits could not have been taken away without affording an opportunity of hearing to them.'

18. Natural Justice:

18.1 It is to be relevantly pointed out that 'Law' cannot be divorced from Life and the 'Life of Law is experience and not logic'. Ordinarily, 'Natural Justice' pertains to the irritating inconvenience for Men in authority, of having to hear the respective sides in as much as notice and opportunity are its very marrow. According to Lord Denning, 'Justice must be rooted in confidence; and confidence is destroyed when right-minded people go away thinking that the Judge was biased'. Further, 'Justice must be felt to be just by the community if democratic legality is to animate the Rule of Law. If the invisible audience sees a man's case disposed of unheard, a chorus of no objection will be heard to say.'that man had no chance to defend his case'.

18.2 At this stage, this Court to prevent an aberration of justice, cites the decision of Russell V. Duke of Norfolk ((1949) 1 All England Reporter Page 109 to 118 E) wherein it is observed that 'Whatever standard of natural justice is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case'. What is reasonable in given circumstances is in the domain of practicability; not formalised rigidity. Also that, Lord Upjohn in Fernando in (1967) 2 AC 337 opined that 'While great urgency may rightly limit such opportunity timeously, perhaps severely, there can never be a denial of that opportunity if the principles of natural justice are applicable'.

18.3. It is to be remembered that 'Fairness' involves reasonableness. Fairness of procedure in all executive / administrative actions of the concerned authorities is the touch stone of Legality in an Administrative function which is termed as 'Quasi Judicial'. There is an obligation to adopt a judicial approach and to satisfy with the requirements of justice. Where an administrative order / execution order pertains to civil consequences, the Maxim 'Audi Alteram Partem' is necessarily to be applied, in the considered opinion of this Court.

18.4. In the decision Lekhu Singh V. The Punjab SC Land and Development and Finance Corp., Chandigarh, 1994 (1) S.C.T. 748 wherein it is observed as under:

'One of the basic principles of natural justice is hear the other side'. Initially judicial opinion was that grant of an opportunity was required only while passing a judicial order or quasi-judicial order and that in a purely administrative function / order

opportunity had no role to play. However, with the efflux of time, the grant of an opportunity has become a requirement of law even for a purely administrative act. Still further the concept of opportunity being a basic requirement has been extended to every action which has adverse civil consequences 4 of 5 and consequently, alter-action of seniority or reversion from a given rank without the grant of an opportunity have been held to be vitiated, being violative of basic principles of natural justice.'

18.5. Moreover, the 'Principles of Natural Justice' are not meant for rigid application irrespective of the real demands of fairness in a given case. What particular Rule of Justice ought to apply in a given case is to depend on a great extent on the facts and circumstances of the case, which float on the surface. A pragmatic approach is to be adopted by the concerned authorities in applying the 'Principles of Natural Justice' and the same cannot be imprisoned in a strait-jacket cast iron formula.

18.6. The acid test to determine whether 'Principles of Natural Justice' are violated is such a manifest/gross failure of Justice has to shock the subjective conscience of a reasonable prudent man. Further, in the decision in Lala Shri Bhagwan v. Ram Chand, AIR 1965 Supreme Court 1767 at Special Page 1768, wherein it is observed as follows:

"Authorities or bodies which are given jurisdiction by statutory provisions to deal with the rights of citizens, may be required by the relevant statute to act judicially in dealing with matters entrusted to them. An obligation to act judicially may also in some cases, be inferred from the scheme of the relevant statute and its material provisions. In such a case, the authority or body must act in accordance with the principles of natural justice before exercising its jurisdiction and its powers; the obligation to follow the principles of natural justice need not be expressly imposed. Power to determine questions affecting the rights of citizens, would impose the limitation that the power should be exercised in conformity with the principles of natural justice. Whether or not such an authority or body is a tribunal, depends upon the nature of the power conferred on it, the nature of the rights of citizens, the decision of which falls within the jurisdiction of the said authority or body, and other relevant circumstances. 1964 AC 40 and AIR 1965 SC 1595, Rel.on."

18.7 The 'Rules of Natural Justice' do not supplant the enacted Law, but they only supplement the Law. The basic

concept of Natural Justice is that (i) No person is to be condemned without hearing (ii) No person shall be a Judge of his own case. The concept of Natural Justice is an ever expanding concept and it is not a static one. The aim of the Rule of Natural Justice is to 'Secure Justice' and also to prevent 'Miscarriage of Justice'. To put it succinctly, these Rules do operate in an arena not covered by any Law validly made. The 'Natural Justice is no 'Unruly Horse, no lurking Land-mine, nor a Judicial cure-all. No man shall be hit below the waist, as opined by this Court and a fairness must be shown by a decision Maker in respect of a Human being proceeded against. In the Book on Natural Justice by Flick: (1979 Edition at Page 112), it is observed as under:

"It is a requirement of both the judicial and the administrative processes that the opportunity to be heard includes not merely an allocation of time in which to present evidence and argument in support of one's claim, but also the opportunity to be heard by an independent and impartial decision-maker"

18.8. Also that, an obligation to follow the 'Principles of Natural Justice' need not be super added by a statute and in a given situation, the concept of Natural Justice is to be read into the relevant Service Rules and Regulations, as per decision of Hon'ble Supreme Court State Bank of India V. K.P.Narayana Kutty AIR 2003 SCC 1100.

18.9 Apart from that, a pre-decisional hearing having regard to the circumstances of the given case is an essential requisite in Law and that a post-decisional opportunity of hearing may not be a substitute or a valid one to fill the vacuum or void. In this regard, it is useful for this Court to quote the illuminating observations of Lord Wilberforce, which runs as under:

"The system, intended to be fair, might be or might not be made to appear fairer still, but the roughness in justice does not, in my view, reach the point where the courts ought to intervene."

19. Locus Standi:

19.1 The term 'Locus standi', means a right to bring the action and to be Heard. The meaning of the term 'Locus standi' for the purpose of maintaining the Writ Petition is a very wide one and in an Extraordinary exceptional case, a person who has been prejudicially affected by an Act or an omission by an Authority can file a Writ Petition although he has no proprietary or fiduciary interest in the subject matter thereof, as per decision of Hon'ble Supreme Court in AIR 1982 Calcutta at page 19 [Barun K. Sinha and Another V. District Magistrate, Murshidabad and others] at Special Pages 23 and 24, wherein at Paragraph No.11 it is observed as under:

"11. The preliminary objection that has been raised in this case by Mr. Dutt, Advocate for respondent No. 6 that this writ application is not maintainable as no

legal right of the petitioner has been infringed requires to be decided first. It has also been submitted that the District Diet Committee consisting of the respondents Nos. 1 to 5 has the absolute discretion to accept one tender and reject another tender and its decision is final and even if its decision is wrong such a decision cannot be challenged in a writ petition as no legal right of the petitioner has been impaired or infringed by such decision of the public authority. This preliminary rejection, in my opinion, is liable to be rejected in limine. The meaning of the word "locus standi" for the purpose of maintaining a writ application has now been widened very much by the pronouncements of the Supreme Court as well as of our court. Ordinarily the petitioner who seeks to file an application under Article 226 of the Constn. should be one who has a personal or individual right in the subject matter of his petition. This personal right need not be in respect of proprietary interest, it can also relate to an interest of a trustee. That apart, in exceptional cases as the expression 'ordinarily' indicates a person who has been prejudicially affected by an act or an omission by an authority can file a writ petition even though he has no proprietary or fiduciary interest in subject-matter thereof. The above observation has been made in the case of Venkateswar Rao v. State of Andhra Pradesh, . This view has been further elaborated in a latter case in , Jasbhai Motibhai v. Basir Ahmed. It has been observed by Sar-karia. J. who spoke for the Supreme Court that the expression "aggrieved person" denotes an elastic, and to an extent an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition, Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of petitioner's interest, and the nature and extent of the prejudice or injury suffered by him. It is flexible enough to take in those cases where the applicant has been prejudicially affected by an act or omission of an authority even though he has no proprietary or even a fiduciary interest in the subject-matter. In the case of In Re : Monoran-jan Maity v. District School Board. Midnapore decided on 31-3-1981* I have held that in order to maintain an application for a writ in the nature of mandamus or in the nature of certiorari Or for any other appropriate order or directions under Art, 226 of the Constn. it is not the sole test to be specified that the person making the application must show that any of his

individual or personal rights either conferred by Part III of the Constn. or by any statute has been infringed illegally by the purported action or inaction on the part of the statutory authority. If a person has been shown to have a genuine grievance by an action or inaction on the part of the authority to discharge his public duties enjoined upon him by the Act. in that case such person will be an aggrieved person having locus standi to maintain an application for a writ in the nature of Mandamus and/or Certiorari against the purported action or inaction on the part of such public authority."

Sufficiency of Interest:

19.2 Also that, a person must have a sufficiency of interest to sustain his standing to sue, as per decision of Hon'ble Supreme Court between B.V.Narayana Reddy and others V. State of Karnataka and others reported in AIR 1985 Karnataka at Page 99. Further, in the aforesaid decision at Pages 105 and 106, it is observed as under:

'13.Re: Point (a) - This concerns the locus standi of the petitioners. In yester-years, and perhaps even in the not too distant a past, the one recurring theme that bedevilled administrative-law and judicial review most was the vexed question of locus standi. But there is a much wider concept of locus standi now. It now takes in any one who is not a mere "busy-body" or a "meddle-some interloper" and all that need be shown is a sufficiency of interest in the matter to which the petition relates. We have, "actio popularis" by which any citizen can enforce law for the benefit of all, against public authorities touching their statutory duties.

Petitioners are undoubtedly litigating a matter of public interest. Though they have no personal interest, they have a special interest as part of a group. Their concern is deeper than that of a mere busy-body. To say that they have no enforceable rights and that therefore they have no locus standi is to beg the question; and to confuse between locus standi on the one hand and justiciability and merits on the other. Both aspects, no doubt, are in overlapping areas and sufficiency of interest must, of course, be seen against the subject-matter of the proceeding, the nature of the duty sought to be enforced and the nature of the breach. The words of a learned author on the subject may be recalled 'Administrative Law' by Craig, 1983 edn. Pp.442, 443:

"The approach of the House of Lords to the question of how one determines whether an applicant has sufficient interest or not is one of the most interesting in the whole case."

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"The one matter on which their Lordships agree, albeit with differing degrees of emphasis, is that standing and the merits often cannot be separated in this way. While it may be possible to do so in relatively straightforward cases, in those which are more complex it will be necessary to consider the whole legal and factual context to determine whether an applicant possesses a sufficient interest in the matter. This will include the nature of the power or duties involved and the breach of those allegedly committed. The term merits here is not being used in the sense of a value judgment as to whether the applicant's claim is meritorious or good. It means that the court will look to the substance of the allegation in order to determine whether the applicant has standing."

Even if a person has locus standi the issue raised by him may, yet be non-justiciable. There may be degrees of justiciability."

20. Assigning of Reasons:

20.1 To quote ROSALIND FERGUSON, 'Law governs Man, Reason the Law'. Undoubtedly, an 'Inadequacy of Reason' in an order is an 'Error Apparent on the Face of Record'. In fact, 'Reasons' exhibit a rational nexus between the facts considered and the conclusions reached vide decision in Uma Charan V. State of M.P., AIR 1981 SC 1915.

20.2 Further, the Reasoned Orders / Decisions are very vital to show that a person is receiving justice. The well known words of FRANZ SCHUBERT, 'Reason is nothing but analysis of belief'.

21. In the present case, the 2nd Respondent's three representations on different dates were rejected by the 1st Respondent and as against the rejection order of three Representations passed by the 1st Respondent, the 2nd Respondent had not questioned the same in a legal proceedings before this Court and in fact, this conduct of the 2nd Respondent certainly acts as an unfavourable circumstance in her favour, in the considered opinion of this Court. Also, the Fundamental Rules of the Government of Tamil Nadu are quite applicable to the 2nd Respondent and other employees of the High Court and the same were being adhered to by the 1st Respondent / High Court in the discharge of its Administrative / Executive functions pertaining to the staff.

22. As regards the plea taken on behalf of the 2nd Respondent that the Writ Petitioners have no 'Locus standi' to

file the present Writ Petitions to assail the rectification of the mistake and granting promotion to the 2nd Respondent from earlier date because of the reason that the Writ Petitioners belong to a different feeder category and no right of theirs is infringed upon and further that they cannot be characterised as 'Aggrieved Persons', this Court is of the considered view that the Petitioners in both the Writ Petitions are 'Aggrieved persons' because of the reason that they do have a 'Sufficiency of Interest' to initiate the Writ Legal Proceedings inasmuch as their joint Representations dated 12.11.2018 and 24.12.2018 etc., in both the Writ Petitions have not been considered by the 1st Respondent.

23. Also that, when the Petitioners seniority was disturbed / displaced by means of a Impugned Order dated 15.10.2018 passed by the 1st Respondent and that too after a long number of years, then, in reality, they are the 'Affected persons' and their plea cannot be thrown out on the ground that they belong to a different feeder category. Moreover, it is the forceful plea of the Petitioners that the Impugned Order dated 15.10.2018 affecting their seniority by way of alteration after too long a period from the date of their promotion in the post of CO/SO/AE would lead to serious 'circumstances' and 'Anamolies' and open the 'Pandora box' is a thought provoking one, requiring rumination by this Court in the present Writ Petitions.

24. Notwithstanding the fact that the 1st Respondent / High Court comes out with a plea in the Counter that 'Providing an opportunity to the Writ Petitioners is only a useless formality theory' because of the reason that the 2nd Respondent's seniority was refixed based on legitimate claim for promotion, which was rejected by the Registry of the 1st Respondent wrongly by applying the service Rules, contrary to the Rule of Seniority under the Old Madras High Court Service Rules, this Court is of the earnest opinion that by virtue of the impugned order passed by the 1st Respondent without providing an opportunity to the Petitioners to hear their grievances, the interest of the Petitioners are seriously affected and much prejudice has been caused to them [since they were enjoying the upgradation benefits earlier].

25. By virtue of the Impugned Order dated 15.10.2018 that the seniority of the 2nd Respondent was assigned in a position over and above the Writ Petitioners. It cannot be brushed aside that only 22 affected persons in two Writ Petitions have approached this Court seeking necessary relief and like the Petitioners there are many staff members, who are affected because they were not provided with an opportunity to hear their grievances; For not providing an opportunity to the Writ

Petitioners and also other similarly affected staff members, who had not approached this Court seeking necessary relief before passing the Impugned Order by the 1st Respondent, this Court comes to a resultant conclusion that the 'Principles of Natural Justice' have been negated in the present case. Also that, Article 14 of the Constitution of India has been violated. Viewed in that perspective, the Impugned Order dated 15.10.2018 of the 1st Respondent / the Registrar General, High Court, Madras suffers from an illegality in the eye of Law.

26. When the 2nd Respondent in her representation dated 13.04.2018 [received by the 1st Respondent on 18.04.2018] had made a request to the effect that her seniority in the post of CO/SO/AE may be placed after G.Rajamannar at Sl.No.108 and before R.Suresh Kumar at Sl.No.179, as per seniority in the cadre of Technical Assistant to Librarian, in accordance with Rule 14 of Madras High Court Service Rules and when the 1st Respondent issued an Official Memorandum in ROC.No.33077/2017-Estt.I stating that the 2nd Respondent's request to refix her seniority was considered and that she was fixed between P.Eswaramoorthy [Sl.No.35] and S.Malar [Sl.No.36] [1st Writ Petitioner in 1124 of 2019] in the seniority list as per Rule 5 (b) and 26 of the then Madras High Court Service Rules all the more, this Court is of the view that the Writ Petitioners in both the Writ Petitions as 'Affected Persons' should have been provided with an opportunity to put forth their grievances before the 1st Respondent. Unfortunately, the 1st Respondent / High Court had not provided an opportunity to the Petitioners to represent their case prior to the passing of the Impugned Order dated 15.10.2018, which, in the considered opinion of this Court, has resulted in serious miscarriage of Justice. By no stretch of imagination, the Petitioners cannot be termed 'As persons having no Locus Standi' to file the present Writ Petitions.

27. Be that as it may, in the light of foregoing detailed qualitative and quantitative discussions and also this Court, taking note of the attendant facts and circumstances of the present case in a conspectus fashion, comes to an inescapable conclusion that the Impugned Order dated 15.10.2018 passed by the High Court is in negation of the 'Principles of the Natural justice' warranting interference in the hands of this Court sitting under Judicial Review Jurisdiction. Viewed in that perspective, this Court in furtherance of substantial cause of Justice, in the interest of Fair Play, Equity, Good Conscience and even as a matter of prudent course of action, interferes with the impugned order dated 15.10.2018, since the same bristles with legal infirmities and accordingly, sets aside the same to secure the ends of Justice. Consequently, the Writ Petitions succeed.

Result :

In fine, the Writ Petitions are allowed. The Impugned Order dated 15.10.2018 is hereby set aside by this Court for the reasons assigned in the present Writ Petitions. The matter is remitted back to the 1st Respondent for 'De novo' consideration in a fair, just, valid, unbiased and dispassionate manner, of course, by providing an adequate opportunity of hearing to the Petitioners by following the 'Principles of Natural Justice'. Furthermore, the 1st Respondent is to consider the representation of the 2nd Respondent dated 13.04.2017 and the Joint Representations of the Petitioners dated 12.11.2018 and 24.12.2018 in an objective manner, uninfluenced and untrammelled with any of the observations made in the present Writ Petitions. The Registrar General of the 1st Respondent / Madras High Court is directed to place the copy of this Order before the Hon'ble Chief Justice, Madras High Court for the purpose of constituting 'Hon'ble Committee' [Other than the Hon'ble Promotion Committee, which recorded the Minutes dated 04.09.2018 earlier] for considering the subject matter in issue in a threadbare fashion. Soon after placing the matter before the Hon'ble Chief Justice by the Registrar General of this Court and after the Constitution of the Hon'ble Committee, the said Committee is required to decide the 2nd Respondent's Representation dated 13.04.2017 and the joint representations / Objections of the Petitioners dated 12.11.2018 and 24.12.2018 and to pass a reasoned order in a qualitative and quantitative terms, in accordance with Law, within a period of six weeks thereafter. At the time of consideration of the representation of the 2nd Respondent dated 13.04.2017 and the Petitioners joint representation dated 12.11.2018 and 24.12.2018, the Hon'ble Committee is also to take into consideration of the fact when the 2nd Respondent had not challenged the promotion given to her on 28.03.2013, then, whether she is entitled to claim seniority in a Retrospective or Retroactive manner or whether she is only entitled to restrict her claim for 'Seniority with effect from 28.03.2013' and to render a necessary finding in this regard. Furthermore, it cannot be lost sight of that the Representation of the 2nd Respondent dated 13.04.2017 [received on 18.04.2017 by the Office of the Registry] is nothing but a verbatim of the earlier Representation dated 30.08.2011 addressed to the 1st Respondent and this primordial aspect can be borne in mind, as a relevant material / factor, as the case may be, by the said Hon'ble Committee, when it passes a fresh / final order. If the Hon'ble Committee dealing with the subject matter in issue subjectively opines that the Petitioners as well as the 2nd Respondent are to be provided with an opportunity of hearing in redressal of their grievances, then, they may be provided with such an opportunity and the Petitioners are to make use of the same to their aid without fail. Before parting with the case,

this Court directs the respective parties to abide by the orders passed by this Court in the present Writ Petition, of course, in true letter and spirit. Consequently, the connected Miscellaneous Petitions are closed. No costs.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

ssd / sgl

To

1. The Registrar General
High Court of Madras,
Madras - 104
 2. The Secretary, Government of Tamil Nadu,
Personnel and Administrative Reforms Department,
Fort St. George,
Chennai -9
 3. The Section officer
Legal Cell, High Court, Madras 104.
 4. The Sub Assistant Registrar (AD)
B Section, High Court, Madras 104.
 5. The Sub Assistant Registrar (Estt)
High Court, Madras 104.
- +1 CC to Mr.N.Kolanthavelu, Advocate sr 41692.
+1 cc to Mr.V.S.Jagadeesan, advocate sr 41848.
+1 CC to M/s.Menon Karthick Mukundan, Advocate sr 41716.

W.P.Nos.1124 and 4090 of 2019 and
W.M.P.Nos.1344 and 4572 of 2019

NRJK (CO)
SP (07/05/2019)

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