

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON 09.12.2019

PRONOUNCING ORDERS ON :12.12.2019

CORAM

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

WP No.14442 of 2019 and
WMP Nos.31637 and 18643 of 2019

K.Sundaram

...Petitioner

Vs.

1. Tamil Nadu Generation and Distribution Corporation,
Rep.by its Chairman & Managing Director,
No.144, NPKRR Maaligai, Anna Salai,
Chennai 600 002.
 2. The Chief Engineer (Personnel),
Tamil nadu Generation and Distribution Corporation,
No.144, NPKRR Maaligai, Anna Salai,
Chennai 600 002.
 3. C.Senthil Kumar
 4. Tmt.P.Annie Juliana
 5. V.Vijayamohan
- ..Respondents

R4- Impleaded vide ct. order dt.28/6/19. Made in WMP.16592/19
R5-Impleaded vide ct.order dt.4/11/19 made in WMP.29378/19

Prayer : Writ petition has been filed under Article 226 of the Constitution of India prays to issue a Writ of certiorarified Mandamus to call for the records in connection with fixation of seniority of petitioner vide Letter No.031842/182/G30/G301/2018 - 1 dated 12.11.2018 issued by the 2nd respondent and quash the same and direct the 1st and 2nd respondent to fix the seniority of the petitioner above the 3rd respondent in the post of Assistant (Accounts) and in the consequent posts viz., Accounts Supervisor, Assistant Accounts Officer, Accounts Officer with all consequential benefits including monetary benefits.

For Petitioner

: Mr.V.Prakash
Senior Counsel
for Mr.K.Krishnamoorthy

For Respondents : Mr. Karthik Rajan
Standing Counsel for R1 to R3
Mr.S.N.Ravichandran for R4

ORDER

This writ petition has been filed challenging the rejection of the representation made by the petitioner seeking to re-fix the seniority of the petitioner, above the 3rd respondent in the post of Assistant (Accounts), Accounts Supervisor, Assistant Accounts Supervisor and Accounts Officer, with all consequential benefits.

2. The case of the petitioner is that he joined the service of Tamil Nadu Electricity Board as a Junior Assistant on 04.11.1985. He was promoted to the post of Assistant (Accounts) on 31.12.1997. He was thereafter promoted to the post of Accounts Supervisor on 06.01.2007 and as Assistant Accounts Officer on 12.08.2012. Finally, the petitioner was promoted to the post of Accounts Officer on 18.01.2019 and the petitioner is left with three more years of service. It is the further case of the petitioner that the 3rd respondent joined the service of Coimbatore City Municipal Corporation as Junior Assistant on 04.04.1991. He was promoted as Assistant Accounts on 14.12.1998 and as Accounts Supervisor on 06.01.2007. The 3rd respondent was subsequently promoted to the post of Assistant Accounts Officer on 05.11.2011 and to the post of Accounts Officer on 25.08.2015.

3. The grievance of the petitioner is that the 3rd respondent is admittedly junior to the petitioner and he was absorbed in to the service of the Tamil Nadu Electricity Board on 01.11.1994 and the 3rd respondent has been illegally made senior above the petitioner and there is an anomaly in the fixation of inter-se seniority. The further grievance of the petitioner is that the Tamil Nadu Generation and Distribution Corporation (TANGEDCO) did not publish any provisional seniority list in the feeder category namely Accounts Supervisor and thereby, the petitioner was not aware as to why he was shown below the 3rd respondent. In the year 2010, the petitioner made a representation to the TANGEDCO and sought for the reason as to why the 3rd respondent was placed above the petitioner and requested for the re-fixation of the seniority. This representation, according to the petitioner was not considered by TANGEDCO. Therefore, the anomaly in the inter-se seniority continued and the 3rd respondent was promoted much before the petitioner in every promotional post.

4. The petitioner again made a representation in the year 2018 to the respondents 1 and 2, pointing out the anomaly in fixing the seniority and requested for setting

right the defect in seniority. Since this representation was not considered, the petitioner approached this Court and filed WP No.4823 of 2018 and this Court by an order dated 05.03.2018, directed the respondents 1 and 2 to consider the representation made by the petitioner and pass appropriate orders within four weeks. Pursuant to the orders passed by this Court, the impugned order dated 12.11.2018 came to be passed by the 2nd respondent and that has been made a subject matter of challenge in the present writ petition.

5. Mr.V.Prakash, learned Senior Counsel appearing on behalf of the petitioner submitted that the petitioner was not aware about the reason as to why the 3rd respondent was placed above the petitioner in the seniority list and he came to know about it only after the 2nd respondent passed the impugned order. The learned Senior counsel submitted that the 2nd respondent has stated in the impugned order that the 3rd respondent who was absorbed from Coimbatore City Municipality Corporation in the year 1994, was given promotion to the post of Accounts Assistant notionally w.e.f. 31.12.1995. The learned Senior counsel submitted that this notional promotion was granted by placing reliance upon B.P (FB) No.30 dated 18.08.1997. The learned Senior Counsel further submitted that apart from the 3rd respondent, this notional promotion was given to nearly 62 persons by proceedings dated 06.10.1998.

6. The learned Senior Counsel developed his arguments by submitting that the Board proceedings that has been relied upon by the respondent does not vest such an authority to the respondents to notionally promote persons, who are admittedly juniors to the petitioner. The learned counsel submitted that clause 4 of the Board proceedings clearly stated that the inter-se seniority of the employees of the Coimbatore City Municipal Corporation will be arrived among the Board employees of the corresponding posts, by taking into account the date of joining in the post they were holding on the vesting date. The learned Senior Counsel submitted that on the vesting date, the 3rd respondent was holding the post of Junior Assistant to which he was appointed on 04.04.1991. This crucial date is much later than the date on which the petitioner became the Junior Assistant (Accounts) i.e on 04.11.1985. Therefore, by no stretch, the 3rd respondent can be permitted to take a march over the petitioner by granting notional promotion.

7. The learned Senior Counsel further submitted that the delay in approaching this Court cannot be put against the petitioner, since the petitioner had made a representation in the year 2010 and the respondents 1 and 2, who were duty bound to consider the representation and re-fix the seniority list, failed to perform their duty. The learned Senior Counsel further submitted that the Seniority list was never published

and the petitioner did not have an occasion to know why the 3rd respondent was placed above him and the petitioner came to know about it for the first time only after the impugned order was passed by the 2nd respondent. The learned Senior Counsel further submitted that the 2nd respondent while rejecting the claim of the petitioner did not raise the ground of delay and therefore, the 2nd respondent cannot be permitted to raise it as a ground in the writ petition.

8. In order to substantiate his submissions, the learned Senior Counsel relied upon the judgement of the Hon'ble Supreme Court in [Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and others] reported in 1978 (1) SCC 405.

9. The learned Senior Counsel further submitted that both the petitioner and the 3rd respondent had passed the Accountancy test on 21.11.1995 and it was an apparent mistake that was committed by the respondent in preparing the Seniority list and under Regulation 97(d) of Service Regulations of Tamil Nadu Electricity Board, even if the objections are made beyond three years, it can be entertained where the candidate is able to point out an apparent mistake. In the present case, placing the 3rd respondent above the petitioner is an apparent mistake and therefore, the three year limitation provided under the Service Regulations will not apply to the facts of the present case.

10. The learned Senior Counsel concluded his arguments by submitting that the petitioner was not aware that this notional promotion was given to 63 persons and the petitioner came to know about the same only after the Counter affidavit was filed by the TANGEDCO and steps were taken to give notice to the other employees similarly placed like the 3rd respondent under 2(a) of Appendix V of Appellate Side Rules. The learned Senior Counsel therefore submitted that the impugned order requires interference and the petitioner must be placed above the 3rd respondent and others, who are juniors to him and the petitioner must be given all the consequential monetary benefits.

11. Per contra, Mr. Karthik rajan, learned Standing Counsel appearing on behalf of respondents 1 and 2 submitted that the claim made by the petitioner is liable to be rejected on the sole ground that the petitioner had approached the Court after a very long delay and the petitioner is trying to upset at least four promotions and if the same is permitted, it will unsettle the entire seniority list. The learned counsel submitted that the Hon'ble Supreme Court has categorically held that Seniority once settled should not be unsettled where a person approaches a Court with a considerable delay. In order to substantiate his submissions,

the learned counsel relied upon the judgement of the Hon'ble Supreme Court in (i) [H.S.Vankani and others Vs. State of Gujarat and others] reported in 2010 4 SCC 301 and in [State of Uttaranchal and another Vs. Shiv Charan Singh Bhandari and others] reported in 2013 12 SCC 179.

12. The learned Standing Counsel further submitted that the orders passed by this Court in WP No.4823 of 2018 cannot be taken as a cause of action in this case and it will not in any way justify the considerable delay that has been caused by the petitioner in approaching this Court and by issuing a writ of mandamus, the earlier order passed by this Court did not revive the stale claim, which is clearly barred under Service Regulation 97. The learned Standing Counsel submitted that the petitioner was aware about the 3rd respondent being placed above the petitioner in the year 2010 itself and the petitioner did not question the seniority till 2018 and therefore, the petitioner should not be permitted to unsettle the Seniority at this length of time. The learned Standing Counsel submitted that if the claim of the petitioner is considered positively, it will unsettle the seniority of nearly 63 persons and therefore, this writ petition is liable to be dismissed on the ground of laches. The learned Standing Counsel also placed heavy reliance on the counter affidavit filed by the 2nd respondent.

13. Mr.S.N.Ravichandran, learned counsel appearing on behalf of the impleaded respondent submitted that the petitioner has obtained interim orders in this writ petition and has effectively stalled the promotion of the candidates, who are qualified to the post of Deputy Financial Controller. The learned counsel submitted that the petitioner is not even in the zone of consideration for being considered for this promotion and by virtue of the said order, the petitioner has prevented promotion to the post of Deputy Financial Controller and therefore, the interim order passed by this Court must be vacated.

14. The learned counsel further submitted that the Service regulations provided for a limitation of three years to challenge any revision of seniority from the date of the order fixing the seniority. The claim made by the petitioner is clearly barred by limitation and this limitation cannot be got over by giving a representation beyond limitation and such representations will not extend the period of limitation. In order to substantiate his submission, the learned counsel relied upon the judgment of the Hon'ble Supreme Court in [State of Tripura and others Vs. Arabinda Chakraborty and others] in 2014 (6) SCC 460.

15. This Court has carefully considered the submissions made on either side and the materials available on

record.

16. The following Tabular Column will explain the manner in which the inter-se seniority has been fixed as between the petitioner and the 3rd respondent :-

Sl.No.	Particulars of the petitioner	Particulars of the 3rd respondent
1.	Junior Assistant/Accounts : 04.11.1985 F.N	Junior Assistant / Accounts : 04.04.1991 F.N
2.	Completion of Probation : 03.11.1986	Completion of Probation : 06.04.1993 (He was absorbed into the service of the 1st respondent on 01.11.1994)
2.	Accounts Assistant : 31.12.1997	Accounts Assistant with effect from 30.12.1995 in accordance with B.P.No.30 dated 18.08.1997 and CE/P Memo No.124418/782/MDC/A2/97-5, dated 06.10.1998 (This notional promotion was granted to 63 candidates and the 3rd respondent was placed at Sl.No.58)
3.	Accounts Supervisor: 06.01.2007	Accounts Supervisor: 06.01.2007
4.	Assistant Accounts Officer: 13.08.2012	Assistant Accounts Officer: 05.11.2011
5.	Accounts Officer: 18.01.2019	Accounts Officer : 19.08.2016

17. The above tabular column gives a bird's-eye view with regard to the promotion that took place between the petitioner and the 3rd respondent.

18. The important issues that arises for consideration in the present writ petition are :-

(a) Whether the 3rd respondent can be placed above the petitioner in the seniority list by relying upon B.P.No.30 dated 18.08.1997?

(b) Whether the claim made by the petitioner for revision of the seniority list is barred under the Service Regulations of Tamil Nadu Electricity Board?

19. The 3rd respondent was appointed as a Junior Assistant on 04.04.1991 in Coimbatore City Municipal Corporation and he was later absorbed into the Tamil Nadu Electricity Board along with 62 Junior Assistants with effect from 01.11.1994. The inter-se seniority of the employees of the Coimbatore City Municipal Corporation and the employees of the Tamil Nadu Electricity Board is governed by B.P.No.30 dated 18.08.1997. It will be relevant to extract clause 3 and 4 of the said proceedings as follows :-

3. It is hereby ordered that necessary relaxation of the provisions relating to educational qualification / passing of Department Test mentioned in the Tamil Nadu Electricity Board Service Regulations to hold the respective posts in Board, be granted as a Special case to such of those Coimbatore Corporation Electrical undertaking workmen/ employees / Officers who do not satisfy such requirement. It is further ordered that for further promotion from the category in which the employee of Coimbatore Corporation Electrical undertaking is now absorbed, they should further qualify themselves as required in the Tamil Nadu Electricity Board Service Regulation to hold the said promoted post by acquiring the qualification or by passing of Department Test etc., as prescribed herein.

4. The inter-se seniority of the employees of the Coimbatore Corporation Electricity undertaking will be arrived among the Board employees of the corresponding posts, by taking account the date of joining the post they were holding on the vesting date. Thereafter, they will be eligible for notional promotion from the date on which their junior was promoted, if so, but this will be subject to the condition that they qualified to hold that promoted post as per the provisions of Tamil Nadu Electricity Board Service Regulations. If their junior was promoted prior to vesting date, the seniority of the such undertaking employee will be fixed on the vesting date (viz) 01.11.1994 at the top of the existing Board employees of the corresponding absorbed post. If their Junior was not promoted, the seniority of the undertaking employee will be fixed on the vesting date among the Board employee of the Corresponding absorbed category, with reference to the date of their joining in the post they were holding on vesting date. The pay of the promotees will be fixed on promotion under Tamil Nadu Electricity Board Service Regulations without any entitlement for arrears of pay, monetary benefits

will be given only from the date of actual joining in the promoted post".

20. The 3rd respondent was placed in the post of Assistant notionally with effect from 30.12.1995 by placing reliance upon clause 4, which has been extracted supra. The 3rd respondent was holding the post of Junior Engineer, when he was working at Coimbatore City Municipal Corporation. While undertaking this exercise, the Tamil Nadu Electricity Board had taken into consideration the inter-se seniority of his Juniors by placing him at Sl.No.1681-A below Tmt. S.V.Vasuki and above Thiru. S.Adaikalasamy. The petitioner was placed at Sl.No.58 in the Memo dated 06.10.1998, wherein 63 Junior Assistants were notionally promoted as Assistant (Accounts). The petitioner is questioning this notional promotion with effect from 30.12.1995 and he has raised an objection saying that the particulars of Tmt.S.V.Vasuki and S.Adaikalasamy have not been provided by the Department and therefore, he is not in a position to state whether this exercise carried out by the respondent is correct or not. It must be borne in mind that apart from the 3rd respondent, 62 others were also notionally promoted from various dates and persons mentioned in Sl.No.12 to 40 in the seniority list of Accounts Officer are placed above the petitioner and they are not even before this Court. The Memo dated 06.10.1998 has not been put to challenge and this has become final and it has been prepared in accordance with B.P.No.30 dated 18.08.1997. This Court is not able to find any apparent illegality in the preparation of the inter-se Seniority in the year 1998 and it cannot be held to be illegal at this length of time only on the ground that the date of appointment of the petitioner to the post of Junior Assistant was on 04.11.1985 and based on this date, he is senior to all the other persons who were notionally given promotion in the year 1998. insofar as the 1st issue is concerned, this Court does not find any illegality in the proceedings dated 06.10.1998 and the Department has fixed the inter-se seniority list only based on B.P.No.30 dated 18.08.1997.

21. The next issue is with regard to the delay in questioning the seniority list by the petitioner. It will be relevant to extract Regulation 97 (d) of the Tamil Nadu Electricity Board (Service Regulations):-

97. SENIORITY:-

(d) Application for the revision of seniority of a person in a service, class, category or grade shall be submitted to the appointing authority within a period of three years from the date of appointment to such service, class, category or grade or within a period of three years from the date of order fixing the Seniority, as the case may be. Any application received after the said period

of three years shall be summarily rejected. This shall not, however, be applicable to cases of rectifying orders, resulting from mistake of facts.

22. It is clear from the above Regulation that the application for revision of seniority of a person in a service, category or grade should be submitted to the appointing authority within a period of three years from the date of order fixing the seniority. In the present case, admittedly the petitioner was aware about the alleged anomaly in the Seniority, as early as in the year 2010. The representation made by the petitioner on 16.09.2010, makes it clear that the petitioner was aware of the fact that the 3rd respondent was placed above him in the seniority list. The petitioner merely gave a representation and kept quiet. The next representation that was made by the petitioner was only in the year 2018. During this interregnum period, the petitioner never took any steps to challenge the seniority list. The petitioner wants to throw the blame on the respondents 1 and 2 on the ground that they kept the representation pending. By virtue of this writ petition, the petitioner is seeking for revision of seniority, right from the post of Assistant (Accounts) which happened in 2006 up to the post of Accounts Officer which happened at the end of 2018. It must also be borne in mind that the claim made by the petitioner will disturb the inter-se seniority of nearly 63 employees. The pertinent question would be whether this exercise can be done at this stage after a considerable delay, even assuming without admitting that 63 persons have been wrongfully placed above the petitioner in the seniority list.

23. At this juncture, it will be relevant to rely upon the judgements cited by the learned Standing Counsel appearing on behalf of the respondents 1 and 2. In [H.S.Vankani and others Vs. State of Gujarat and others] referred supra, the Hon'ble Supreme Court has held as follows :-

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 instills 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 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 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 lot of judicial time from the lowest court to the highest resulting in constant bitterness among 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 and Another v. S.K. Goel and Others* (2007) 14 SCC 641, *T.R. Kapoor v. State of Haryana* (1989) 4 SCC 71, *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's case* (supra), *Prabhakar and Others case*, *G. Deendayalan*, *R.S. Ajara* are not applicable to the facts of the case.

24. In [State of Uttaranchal and another Vs. Shiv Charan Singh Bhandari and others] referred supra, the Hon'ble Supreme Court has held as follows :-

16. We have no trace of doubt that the respondents could have challenged the ad hoc promotion conferred on the junior employee at the relevant time. They chose not to do so for six years and the junior employee held the promotional post for six years till regular promotion took place. The submission of the learned counsel for the respondents is that they had given representations at the relevant time but the same fell in deaf ears. It is interesting to note that when the regular selection took place, they accepted the position solely because the seniority was maintained and, thereafter, they knocked at the doors of the tribunal only in 2003. It is clear as noon day that the cause of action had arisen for assailing the order when the junior employee was promoted on ad hoc basis on 15.11.1983.

17. In *C. Jacob v. Director of Geology and Mining*

and another[1], a two-Judge Bench was dealing with the concept of representations and the directions issued by the court or tribunal to consider the representations and the challenge to the said rejection thereafter. In that context, the court has expressed thus: -

"Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim."

18. In Union of India and others v. M.K. Sarkar[2], this Court, after referring to C. Jacob (supra) has ruled that when a belated representation in regard to a "stale" or "dead" issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the "dead" issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

19. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time.

20. In Karnataka Power Corpn. Ltd. through its Chairman & Managing Director v. K. Thangappan and another[3], the Court took note of the factual position and laid down that when nearly for two decades the respondent-workmen therein had remained silent mere making of representations could not justify a belated approach.

21. In State of Orissa v. Pyarimohan Samantaray[4] it has been opined that making of repeated representations is not a satisfactory explanation of delay. The said principle was reiterated in State of Orissa v. Arun Kumar Patnaik[5].

22. In Bharat Sanchar Nigam Limited v. Ghanshyam Dass (2) and others[6], a three-Judge Bench of this Court reiterated the principle stated in Jagdish Lal v. State of Haryana[7] and proceeded to observe that as the respondents therein preferred to sleep over their rights and approached the tribunal in 1997, they would not get the benefit of the order dated 7.7.1992.

23. In State of T.N. v. Seshachalam[8], this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus: -

"....filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant."

24. There can be no cavil over the fact that the claim of promotion is based on the concept of equality and equitability, but the said relief has to be claimed within a reasonable time. The said principle has been stated in Ghulam Rasool Lone v. State of Jammu and Kashmir and another[9].

25. In New Delhi Municipal Council v. Pan Singh and others[10], the Court has opined that though there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, yet ordinarily a writ petition should be filed within a reasonable time. In the said case the respondents had filed the writ petition after seventeen years and the court, as stated earlier, took note of the delay and laches as relevant factors and set aside the order passed by the High Court which had exercised the discretionary jurisdiction.

26. Presently, sitting in a time machine, we may refer to a two-Judge Bench decision in P.S. Sadasivasway v. State of Tamil Nadu[11], wherein it

has been laid down that 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.

27. We are absolutely conscious that in the case at hand the seniority has not been disturbed in the promotional cadre and no promotions may be unsettled. There may not be unsettlement of the settled position but, a pregnant one, the respondents chose to sleep like Rip Van Winkle and got up from their slumber at their own leisure, for some reason which is fathomable to them only. But such fathoming of reasons by oneself is not countenanced in law. Any one who sleeps over his right is bound to suffer. As we perceive neither the tribunal nor the High Court has appreciated these aspects in proper perspective and proceeded on the base that a junior was promoted and, therefore, the seniors cannot be denied the promotion.

28. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been entertained by the tribunal and accepted by the High Court.

25. It is clear from the above judgments that Seniority once settled is decisive in the upward march in one's chosen work and it gives a certainty and assurance and it also instills confidence of an employee. Such settled seniority should not be unsettled after a considerable length of time, since it causes bitterness and resentment among the employees. This position of law has been reiterated and settled and it is no longer res-integra. It is also clear from

the above judgments that by merely giving representation during the relevant point of time, an employee cannot sleep over a right and approach the Court at a belated stage. The claim of promotion is based on the concept of equality and equitability. But the said relief has to be claimed within a reasonable time. The extra ordinary powers conferred to this Court under Article 226 of Constitution of India must be exercised judiciously and this Court should not exercise such a discretion, where it amounts to reopening a stale or a dead issue and it will unsettle, the settled matters. If this Court interferes in the inter-se seniority list at this stage, it will certainly unsettle the Seniority list which has been maintained from the year 1998 onwards. The Service Regulation itself provides for a limitation to seek for the revision of the Seniority list and the petitioner having raised an objection in the year 2010 waited for 8 long years and made a representation in the year 2018 and approached this Court in the year 2018 and a Mandamus was also issued by this Court directing the respondents 1 and 2 to consider the representation made by the petitioner.

26. The Mandamus issued by this Court cannot extend the period of limitation prescribed under the Service regulations and it is a settled law that a representation made in the year 2018, pursuant to which, the petitioner approached this Court, cannot extend the period of limitation and the petitioner cannot be permitted to create a cause of action, which was not available in the year 2018. Therefore, nothing really flows from the order passed by this Court in the writ petition in the year 2018. In short, this Court does not want to exercise its jurisdiction under Article 226 of Constitution of India and unsettle the settled seniority list at this length of time.

27. This Court does not find any merits in the above writ petition and accordingly, this writ petition is dismissed. Consequently, all connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rka

To

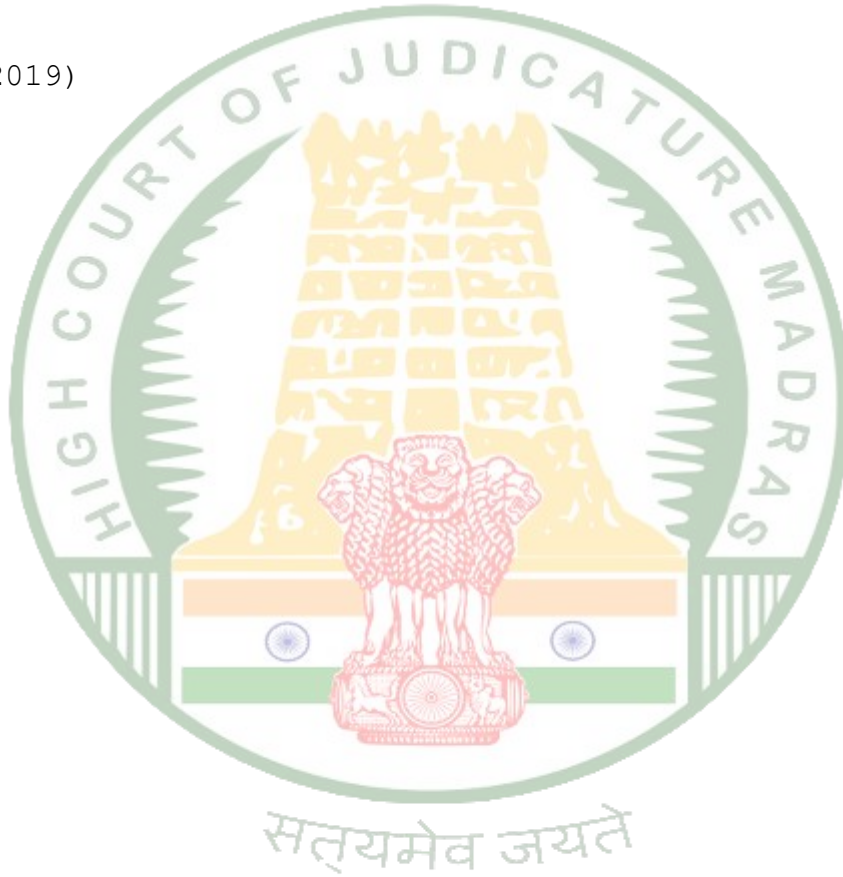
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+1cc to Mr.Karthick Rajan, Advocate SR.103429
+1cc to Mr.K.Krishnamoorthy, Advocate SR.103430
+1cc to Mr.S.N.Ravichandran, Advocate SR.103529

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WMP Nos.31637 and 18643 of 2019

CA (CO)
CB (19/12/2019)



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