IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 21.02.2020	Delivered on 27. 02 .2020

CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

WP.Nos.9257,9258,9326 of 2018 & WP(MD).No.5254 of 2018
and
WMP(MD).No.7114 of 2018

D.Soundararajapandian
Joint Commissioner (ST), Chennai(south),
Commercial Taxes Department,
PAPJM Building,
Egmore, Chennai-6.

.. Petitioner
in WP.No.9257 of 2018

S.Vijayakumar
Joint Commissioner (ST),
Interstate Investigation Cell,
PAPJM Building,
Chennai-6.

.. Petitioner
in WP.No.9258 of 2018

C.Arumugam,
Deputy Commissioner,
Commercial Taxes Building,
Integrated master plan complex,
(near RTO Office),
Villupuram-605602.

.. Petitioner
in WP.No.9326 of 2018

P.Sakthivel,
Joint Commissioner (ST),
Enforcement, Tirunelveli,
Reserve Line, Palayamkottai,
Tirunelveli District.

.. Petitioner
in WP.(MD).No.5254/2018

.Vs.

1.The State of Tamil Nadu,
Rep.by its Secretary,
Commercial Taxes and Registration
Department,
Fort St.George, Chennai-9.

2.The Principal Secretary/
Commissioner of Commercial Taxes,
O/o the Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai-5.

3.The Additional Chief Secretary,
(Chairman High Level Committee constituted under G.O(D).No.132 dated 31.03.2015)
Finance Department, Fort St.George,
Chennai-9.

4. The Secretary,
(Member in High Level Committee constituted under G.O.(D).No.132 dated 31.03.2015)
Department of Personnel and Administration Department, Fort St.George,
Chennai-9.

5. M.Ravi
[Impleaded as per order dt.03.08.2018, by SPJ in WMP.No.16581/2018 in WP.No.9257/2018]

.. Respondents in W.P.No.9257/2018

1. The State of Tamil Nadu,
Rep.by its Secretary,
Commercial Taxes and Registration Department,
Fort St.George, Chennai-9.

2. The Principal Secretary/
Commissioner of Commercial Taxes,
O/o the Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai-5.

3. The Additional Chief Secretary,
(Chairman High Level Committee constituted under G.O(D).No.132 dated 31.03.2015)
Finance Department, Fort St.George,
Chennai-9.

4. The Secretary,
(Member in High Level Committee constituted under G.O.(D).No.132 dated 31.03.2015)
Department of Personnel and Administration Department, Fort St.George,
Chennai-9.

5. K.Latha
[Impleaded as per order dt.03.08.2018, by SPJ in WMP.No.16582/2018 in WP.No.9258/2018]

.. Respondents in W.P.No.9258/2018

1.The State of Tamil Nadu,
Rep.by its Secretary,
Commercial Taxes and Registration Department,
Fort St.George, Chennai-9.

2. The Principal Secretary/
Commissioner of Commercial Taxes,
O/o the Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai-5.

3. The Additional Chief Secretary,
(Chairman High Level Committee constituted under G.O(D).No.132 dated 31.03.2015)
Finance Department, Fort St.George,
Chennai-9.

4. The Secretary,
(Member in High Level Committee constituted under G.O.(D).No.132 dated 31.03.2015)
Department of Personnel and Administration Department, Fort St.George,
Chennai-9.

5. A.N.Veeresalingam

6. A.Lakshmipathi
[Impleaded as per order dt.27.08.2019, by PDAJ in WMP.No.23242/2019]

.. Respondents in W.P.No.9326/2018

1.The State of Tamil Nadu,
Rep.by its Secretary,
Commercial Taxes and Registration Department,
Fort St.George, Chennai-9.

2.The Principal Secretary/
Commissioner of Commercial Taxes,
O/o the Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai-5.

3. The Additional Chief Secretary,
(Chairman High Level Committee constituted under G.O(D).No.132 dated 31.03.2015)
Finance Department, Fort St.George,
Chennai-9.

4. The Secretary,
(Member in High Level Committee constituted under G.O.(D).No.132 dated 31.03.2015)
Department of Personnel and Administration Department, Fort St.George,
Chennai-9. ..Respondents in W.P(MD).No.5254/2018

PRAYER in W.P.No.9257 of 2018: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the respondents from in any manner lowering the seniority of the petitioner or disturbing the seniority positions published upto the post of Joint Commissioner in various G.Os including G.O.Ms.No.139 issued by CT & R(E2) Department dated 02.11.2012, G.O.(Ms).No.005 issued by CT & R (E2) Department dated 12.01.2015 or to effect any panels for promotion ignoring such seniority, and issue such further or other appropriate orders or directions as this Court may deem fit and proper in the facts and circumstances of the case.

PRAYER in W.P.No.9258 of 2018: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the respondents from in any manner lowering the seniority of the petitioner or disturbing the seniority positions published upto the post of Joint Commissioner in various G.Os including G.O.Ms.No.16 issued by CT & R(E2) Department dated 27.02.2013, or to effect any panels for promotion ignoring such seniority, and further direct the 1st respondent to issue the necessary Government Order for promoting the petitioner as Additional Commissioner of the year 2015 which was already approved by the then Chief Minister of Tamil Nadu and such further or other appropriate orders or directions as this Court may deem fit and proper in the facts and circumstances of the case.

PRAYER in W.P.No.9326 of 2018: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the respondents from in any manner lowering the seniority of the petitioner or disturbing the seniority positions published upto the post of Deputy Commissioner in various G.Os including G.O.Ms.No.116 issued by CT & R(E2) Department dated 24.08.2012, G.O.(Ms).No.132 issued by CT & R (E2) Department dated 18.10.2013, or to effect any panels for promotion ignoring such seniority, and issue such further or other appropriate orders or directions as this Court may deem fit and proper in the facts and circumstances of the case.

PRAYER in W.P.(MD).No.5254 of 2018: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the respondents from in any manner lowering the seniority of the petitioner or disturbing the seniority positions published upto the post of Joint Commissioner in various G.Os including G.O.Ms.No.16 issued by CT & R(E2) Department dated 27.022013, or to effect any panels for promotion ignoring such seniority, and further direct the 1st respondent to issue the necessary Government Order for promoting the petitioner as Additional Commissioner and issue such further or other appropriate orders or directions as this Court may deem fit and proper in the facts and circumstances of the case.

For Petitioner : Mr.V.Prakash, Senior Cousnel
(All WPs) for M/s.K.Krishnamoorthy

For Respondents: Mr.P.H.Aravind Pandian,
Additional Advocate General
Asst.by Mr.M.Hariharan
Additional Government Pleader (T)
[for R 1 to R 4 in all WPs]

Mr.N.L.Raja, Senior Counsel
for M/s.Dakshayani Reddy
[For R 5 in W.P.Nos.9257/9258
& 9326 of 2018]

Mr.L.Chandrakumar
Ms.N.R.Jasmine Padma
[For R 6 in W.P.No.9326 of 2018

COMMON ORDER

There are cases which are not destined to end and these batch of Writ Petitions are falling into such a category. The tussle between the direct recruits/transfer recruits/promotees started in the year 1985, in the Commercial Tax Department and this is the third time the issue has again come up before this Court.

2.The first round of litigation started in the year 1985, when the directly recruited Assistant Commercial Tax Officers [hereinafter referred as "ACTO"] came before this Court and challenged the validity of the inter se seniority list published by the department. The issue that was raised before this Court was that the post of ACTO can be filled up under the

Rules both through direct recruitment and by transfer from among the Assistants working in the Commercial Tax Department or in the Sales Tax Appellate Tribunal or in the Commercial Tax Branch of the Board of Revenue or the Revenue Department of he Secretariat. The Rules provided that 40% of the vacancies must be filled up by direct recruitment through TNPSC and 60% must be filled up by transfer. This post fell under the Subordinate Service and the next avenue of promotion is to the Post of Deputy Commercial Tax Officer. In the process of recruitment, the percentage of recruitment by way of transfer went beyond the percentage stipulated under the Rules and the candidates, who were brought in beyond the stipulated percentage were kept on a temporary/ad hoc basis. Simultaneously, the direct recruits also started coming in. The inter se seniority list was prepared and in the said list, even the temporary/ad hoc candidates, who were brought in through transfer, were also added and there was an anomaly in the entire seniority list.

3.The issue was considered in detail by a Division Bench of this Court in Sundarajan and Others .v. The Government of Tamil Nadu and Others in W.P.No.12786/1985, and a final judgment was passed on 19.06.1986. The Division Bench allowed the Writ Petition and the impugned provisional inter se seniority list and the four selected lists of DCTOS for the years 1982 to 1985 prepared by the Commercial Tax Department was quashed. The relevant portions of the Division Bench judgment is extracted hereunder:

> This writ petition is filed by five petitioners who were all directly recruited as Assistant Commercial Tax Officers (Hereinafter referred to as A.C.T.Os) by the Tamil Nadu Public Service Commission for the year 1972-73. The petitioners have challenged the legality and validity of the State inter se seniority of A.C.T.Os. List dated 17.9.1985 and the Select Lists of D.C.T.Os. for the years 1982 to 1984 dated 30.10.1985 and Select List for the year 1985 dated 31.10.1985, all the lists prepared by the 2nd respondent. The petitioners also pray for the consequential direction placing the petitioners from Serial Nos.103 onwards in the Provisional seniority List of A.C.T.O.s. up to the Year 1981.
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> 3.The facts leading to the filing of this petition may now be noted. As noticed earlier, the petitioners were directly recruited through Public Service Commission as A.C.T.Os. for the year 1972-73. The recruitment to the post of A.C.T.Os. is governed by Tamil Nadu Commercial Taxes Subordinate Service Rules

(hereinafter called the special Rules). The recruitment is (a) by transfer from among the Assistants and Gujarathi knowing Assistants employed in the Commercial Taxes Department or Assistants and Superintendents in the office of the Sales-tax appellate Tribunal, Madras or Assistants and Superintendents working in the Commercial Tax Branch of the Board of Revenue or Assistants in the Revenue Department of Secretariat coming under one unit and (b) by direct recruitment. The next higher category in this subordinate Service is, Deputy Commercial Tax Officer. In recruitment to this category is by promotion from A.C.T.Os. and by transfer. For promotion of A.C.T.Os. as D.C.T.Os., a list of approved candidates has to be prepared as required under rule 3 of the Special Rules. Previously the unit for appointment to the category of D.C.T.Os. and A.C.T.O.s. was the Commercial Tax (Composite Division) in the State. There were sour such divisions till G.O.Ms.No.679, C.T. & R.E. dated 29.7.1980 was passed. By the said G.O., the Government have directed that one unit system be introduced at the State level for the members of the Tamil Nadu Commercial Taxes Subordinate Service, namely, D.C.T.Os. and A.C.T.Os. It is for implementing the scheme, a combined ad hoc seniority list of A.C.T.Os. and also four select lists of D.C.T.Os. for the years 1982 to 1985 had been prepared by the second respondent. All these lists are under challenge. The grievance of the direct recruit petitioners is, that the transferee candidates promoted temporarily as A.C.T.Os. had been placed above them in the impugned seniority list of A.C.T.Os. arbitrarily and contrary to rules. They also challenge the select lists of D.C.T.Os. for the years 1982 to 1985 consequently.

12.It is seen from the above extracts that the impugned State inter se seniority list of A.C.T.O.s has been prepared on the basis of the first appointment as A.C.T.Os. without regard to the year of selection and following the principle formulated in the judgment of this court in Writ Appeal No.18 of 1977 and also following rule 5(A) of the Special Rules. A perusal of the judgment in Writ Appeal No.18 of 1997 discloses that it was a case not between the direct recruitment and transferees/promotees. On the other hand, that was a case of inter se seniority between the transferees and, therefore, obviously the said principle cannot be applied for fixing inter se seniority between direct recruits and transferees. Further, the principle followed in the preparation of the seniority list, namely, date of the first appointment as A.C.T.Os. does not appear to be in consonance with the General Rules. In our view, certain principles laid down in the judgment of this Court in W.P.Nos.2016 and 2017 of 1972 dated 16.9.1975 (supra) which had the approval of the Supreme Court in W.P.(Civil) No.461 of 1979 appear to be helpful in deciding the dispute that arises in this case. Both the above cases dealt with the problem of inter se seniority between direct recruits of Joint Commercial Tax Officers and those recruited by transfer. Except the fact that they dealt with the State Commercial Tax Service and the case on hand is State Commercial Tax Subordinate Service, other facts and circumstances are almost similar. This court held that in deciding the inter se seniority between the direct recruits and transferee recruits, the following principles should be followed:

1.Each year should be taken as a unit for fixing the inter se seniority.

2.Persons not actually appointed in the year 1966 should not be included n 1966 year' list and that seniority should be determined with reference to the date of their joining as Joint Commercial Tax Officer, and

3.The date on which an officer commences probation is the proper criterion for fixing the inter se seniority.

The above three principles had the approval of the Supreme Court. Of course, principles No.2 does not arise in this case. Therefore, we have to proceed on the basis that in fixing the inter se seniority each year should be taken as a unit and that the commencement of probation is the proper criterion.

13.The further and important question is whether the claim of the petitioners that they having been appointed directly through the Public Service Commission, of the year 1972, have a right to be appointed substantively to a permanent post borne on the cadre displacing transference officers holding the same during the interregnum of the vacancy causar by reason of retirement, death, resignation or promotion of the directly recruited permanent holders of that post. It is to be remembered that under rule 2 (b) of the Special Rules (vide supra), at the relevant time, 40% of the substantiate vacancies in the cadre of A.C.T.Os. was reserved for direct recruitment. If that be so, can that vacancy be filled up in any other manner except by direct recruitment? The obvious answer will be in the negative. In this connection, it is relevant to refer to rule 10(a)(1) and 39(a) of the General Rules which have already been set out. Any filing up of the vacancies except by way of direct recruitment to the reserved 40% category, for any reason, whatsoever, must be only by invoking rule 10(a)(i) or 39(a) of the General Rules.

14.Even though Mr.Peter Francis, learned counsel for the petitioners argued that the transferee A.C.T.Os. who had been appointed over and above their quota, must have been appointed either under rule 10(a)(i) or 39(a) of the General Rules, we find that are the transferees were from the service of the Ministerial Service to a Subordinate Service, they should have been appointed only under rule 10(a)(i). This doubt has not been cleared on the side of the respondents as well. But that will not make any difference as the substance of rule 10 and rule 39 of the General Rules is the same, in the sense, the former applier to temporary appointment and the latter to temporary promotion. In view of the above, any appointments made, though all persons eligible or qualified by way of transfer in excess of their respective quota, would be otherwise than in accordance with the rules. This position is made clear by a reading of rules 6(a), 7, 8, 10 and 39 of the General Rules. It is also well settled principle of service jurisprudence that it is only such service which would count for probation that could be really taken into account for determining the inter se seniority of the officers in question. Rules/39/10(a)(v) and (e) of the General Rules mandatorily lay down that a person promoted under rule 10(a) (1) or 39(a) of the General Rules shall not be regarded as a probationer. From this also it is clear that these transferees who could not be accommodated in the quota reserved for them could not claims seniority over direct recruits as and when such direct recruits are to replace them.

15.Necessarily, therefore, these officers who are temporarily promoted by transfer will have to step down as and when a regular appointments by direct recruitment are made. The contention of the learned Advocate General and also of Mr.S.Ramalingam, learned counsel for respondents 3 to 29 that eve though the officers appointed under rule 10(a) (1) or 39(a) of the General Rules, for the purpose of seniority their probation commences from the date of their first appointment cannot be accepted. A conjoint reading of rules 2(1) to (3) of the preliminary Rules along with rules 6 to 8 of the General Rules (which have already been set out above) will clearly show that the officers temporarily appointed by recruitment by transfer to fill up the vacancy caused in the reserved category of direct recruitment cannot commence probation earlier than those who are regularly recruited through service Commission directly as A.C.T.Os. Even though at a later point or time. We hold that in the light of the above conclusion, the following principle emerges.

16.If these are vacancies out of the required reservation of 40% in the permanent cadre of A.C.T.Os. for direct recruits, any appointment made either by transfer or by promotion cannot be utilised to fill up those vacancies. Such appointments being of a temporary character. Whenever direct recruits are appointed through public service Commission, they being holders of permanent posts by direct recruitment, they have a right to be appointed to whatever posts that are taken out of the 40% posts reserved for direct requirement.

23.In the light of the discussion, the impugned seniority list of A.C.T.Os. has to be revised. It is seen from 3.Nos. 129 to 519, the placements are given to transferee A.C.T.Os. belonging to either 50% reserved category or 10% reserved category. It follows from the principles now formulated that the A.C.T.Os. bearing S.Nos.129 to 519 is the impugned seniority list can be placed above the positioners in interface seniority list only if they had held the post substantively within the permanent cadre strength allotted to the particular category even before the positioners commenced their probation. Such of these who do not comply with the above requirement must be placed below the petitioners in the inter-se seniority list.

24.In the result, the impugned inter se seniority list dated17.9.1985 as well as the 4 Select Lists of D.C.T.Os. for the years 1982 to 1985 prepared by the 2nd respondent are quashed. The respondents 1 and 2 are at liberty to prepare new seniority and Select Lists in accordance with law and also in accordance with it is judgment. The writ petition is accordingly allowed, but there will be no order as to costs.

4.This judgment of the Division Bench was taken on appeal before the Hon'ble Supreme Court by the State Government and the Hon'ble Supreme Court dismissed the appeal by a judgment dated 10.02.1999. The relevant portions of the judgment is extracted hereunder:

3.In these appeals by the State Government, there is no quarrel with regard to the guidelines 1 to 4 quoted above. The dispute raised by the State government is with reference to the last direction given by the High Court with regard to the Assistant Commercial Tax Officers bearing S.Nos.129 to 519 in the impugned seniority list. Specific objection is taken against the use of the expression 'permanent cadre strength". It is contended that the cadre consists not only permanent posts but also temporary posts. It is argued by the learned counsel for the State Government that as regards the direct recruits, they were recruited only for permanent posts but with regard to the transferees from other services, they were appointed not only to permanent posts but also to temporary posts. It is the contention of the learned counsel that all those persons who are holding the temporary posts prior to the appointment of the writ petitioners should also be considered for the purpose of fixing the seniority and they should not be omitted out of consideration. Learned counsel for the state contended that temporary appointment toa permanent post is different from regular appointment to a temporary post.

4.The argument is attractive. But in the records made available in this Court or in the High Court, there is nothing to show that the cadre strength was fixed by the Government in any particular year to comprise not only permanent posts but also temporary posts. The relevant discussion found in the judgment of the High Court on this aspect of the matter shows that the Statement Government did not place any record before the High Court to disprove the contention on behalf of the writ petitioners that the transferee appointees were appointed only under Rule 10(a)(1) or 39(a) of the General Rules. Those two Rules relate to temporary stop gap arrangements which can be made in cases of emergency. They are intended to meet an immediate necessity so that the administration may not suffer and in such cases, the appointments are not made in accordance with the Rules but they are made de hors the Rules. It is well settled and not in dispute that neither of the Rules confers any right on the appointee to claim seniority over others who were regularly appointed though later in accordance with the relevant Rules.

6.Again the High Court has pointed out that the transferees, who could not be accommodated in the quota reserved for them, could not claim seniority over direct recruits as and when such direct recruits are to replace them. After referring to the judgment of this Court in P.S.Mahal .vs. U.O.I. reported in A.I.R. 1984 SC 1291, the High Court observed that those officers who were temporarily promoted by transfer will have to step down as and when regular appointments by direct recruitment are made.

7.In this Case, a tabular statement was placed before the High Court which is found in paragraph 4 of the judgment. It is evident from the said tabular statement that at the relevant time 40% of the substantive vacancies in the category of Assistant Commercial Tax Officers shall be filled in by direct recruitment. Out of the remaining 60%, 50% of substantive vacancies shall be filled in by confirmation of persons recruited by transfer from among the Assistants and Gujarathi knowing Assistants employed in the Commercial Taxes Department and

10% of substantive vacancies shall be filled in by transfer from among the Assistants and Superintendents working in the Sales Tax Appellate Tribunal, Assistants and Superintendents working int he Commercial Taxes Branch of the Board of Revenue and Assistants who have dealt with or dealing with the subject 'Commercial Taxes' in the Revenue Commercial Taxes and Religious Endowments Department of Secretariat.

9.Learned counsel for the appellants has contended that the appointments by transfer did not exceed their quota of 60% and that they never intruded upon the quota of 40% intended for direct recruits. If the tabular statement in para 4 of the judgment under appeal is read in conjunction with that is set out in paragraph 23 of the said judgment there is no doubt whatever that the High Court is right in using the expression 'permanent cadre strength'. It is only in relation to permanent posts in the cadre the seniority has to be fixed as there is no record in relation to the alleged temporary posts being within the cadre. It is advantageous to quote para 23 of the judgment of the High Court which reads as follows.:

In the light of the discussion, the impugned seniority list of A.C.T.Os. S.Nos.29 to 159, the placements are given to transferee A.C.T.Os. belonging to either 50% reserved category or 10% reserved category. It follows from the principle now formulated that the A.C.T.Os. bearing S.Nos.129 to 519 in the impugned seniority list can be placed above the petitioners in inter--se seniority list only if they had hold the post substantively within the permanent cadre strength allotted to the particular category even before the petitioners commenced their probation. Such of those who do not comply with the above requirement must be placed below the petitioners in the inter se seniority list."

10.We are entirely in agreement with the above view. There is no merit in the appeal. It is accordingly dismissed. No costs.

The Hon'ble Supreme Court in the above judgment completely concurred with the judgment of the Division Bench.

5.Even after the judgment of the Division Bench was affirmed by the Hon'ble Supreme Court, the Government and the

Commercial Tax Department did not publish the fresh seniority list and therefore, a Contempt Petition was filed before the Hon'ble Supreme Court. During the pendency of the Contempt proceedings, taking into consideration the long delay, the Hon'ble Supreme Court directed the department to publish a fresh seniority list in terms of the directions given by the Hon'ble Supreme Court in C.A.No.1454/1987.

6.The orders passed by the Hon'ble Supreme Court ultimately resulted in the department publishing the seniority list on 04.05.2009. This seniority list covered the period from 1968 to 2006.

7.The above seniority list was again put to challenge before this Court in W.P.No.11618 etc., of 2009, by the promotees from the ministerial services. They raised the contention that the temporary post should also reckoned as part of the cadre strength, for the fixation of inter se seniority. All the Writ Petitions came to be dismissed by a judgment dated 06.04.2011.

8.The directly recruited persons apprehended that an attempt is being made to form a High Level Committee and reopen the inter se seniority issue once again. Therefore, W.P.No.40814 etc., of 2015, was filed before this Court. The department took a specific stand that only a deliberation is being made and that no attempts are being made to unsettle the seniority list. The stand taken by the department was recorded and the Writ Petitions were closed by an order dated 19.02.2016.

9.In the meantime, Writ Appeals came to be filed against the orders of the learned Single Judge. There were two sets of Writ Appeals filed. One set of Writ Appeal was filed by the transferee promotees and the other set of Writ Appeal was filed by the party, who had contested the earlier Writ Petitions which went up to the Supreme Court.

10.The Division Bench disposed of W.A.Nos.2527 etc., of 2016, by a judgment dated 28.07.2016. The relevant portions of the judgment is extracted hereunder:

> The perennial inter se dispute between what may be labelled as the promotees and the direct recruits in the commercial tax department does not seem to see a light at the end of the tunnel till now. This dispute has gone on for years together with the battle being taken right till highest Court. We may notice that a part of the responsibility for this is on the State Government on account of the fact that there has

been some flip-flop on the part of the State Government on its stand possibly on account of the importance of the offices held by these officers and with an endeavour to find some 'equitable solution'. The dispute, however, has not been resolved resulting in the appeals we are hearing along with certain writ petitions.

4.The parties in the present matters, thus, agree that the four principles as set out by the Hon'ble Supreme Court in Civil Appeal No.1454 of 1987 decided on 10.02.1999 (between State of Tamil Nadu vs. S.Sundararaj & Others), which formed the basis of the Division Bench Judgment, would undoubtedly apply and they are extracted as under from the Supreme Court judgment:

1.Each year should be taken as a unit for fixing the inter se seniority.

2.Persons not actually appointed in the year 1966 should not be included in 1966 year's list and that seniority should be determined with reference to the date of their joining as Joint Commercial Tax Officer, and

3.The date on which an officer commences probation is the proper criterion for fixing the inter se seniority.

4.If there are vacancies out of the required reservation of 20% in the permanent cadre of A.C.T.Os. for direct recruits, any appointment made either by transfer or by promotion cannot be utilised to fill up those vacancies. Such appointments being of a temporary character, whenever direct recruits are appointed through Public Service Commission, they being holders of permanent posts by direct recruitment, they have a right to be appointed to whatever posts that are taken out of the 40% posts reserved for direct recruitment.

5.The matter has got largely simplified also by the statement made by the learned Advocate General on behalf of the State Government on 26.07.2016. We extract the order as under:

''The learned Advocate General states that he has obtained instructions to clarify the position in view of the arguments already addressed before this Court.

2. He states that as per his instructions, there is no quibble and it cannot be so, over the implementation of the Division Bench order of this Court, which has received the imprimatur of the Hon'ble Supreme Court. He acknowledges that the seniority list was placed before the Hon'ble Supreme Court in the contempt proceedings, but the caveat is that the said seniority list would operate up to the year 2010. This, he say so as the cadre strength remained the same till 2010 when the cadre strength was increased. There was a second increase in the cadre strength in 2013. His submission thus is that once the cadre strength increased, dependant on the ratio between the two groups as prescribed under the Rule and the principles laid down by the Hon'ble Supreme Court, the seniority list would have to be re-visited.

3. The aforesaid order has been read out, so as to re-confirm that what has been recorded by this Court is what the learned Advocate General states.

4. We have heard the learned Senior Counsels appearing for the direct recruits in Group-I service. After elaborate arguments, the nutshell of the contention is being set out hereinafter.

5. It is conceded that if there is a seat available in the quota meant for promotees, the promotee will take his seniority from the date when that seat became vacant. If there are some seats remaining vacant in respect of the direct recruitment quota, naturally, they cannot be filled up by promotees. But if direct recruitment seats have been filled up subsequently, in that situation, the seniority of the direct recruits would be reckoned from the date they have entered into the service.

6. The only difference is that it is their contention that the seniority list already drawn up does not meet the parameters, while the stand of the promotees is that it meets the parameters.

7. We may also note that all this is of course subject to the Court disagreeing with the submission of Mr.Satish Parasaran, learned Senior Counsel because if he succeeds, then everything will go.

'' In the aforesaid, the reference in para 7 is to the submissions in the writ appeal referred to aforesaid.

6.It is, thus, agreed that if the aforesaid statement is implemented in its true letter and spirit, there would be no lis inter se the parties.

7.We may note that the learned Senior Counsel for the impleaded respondents in W.P.No.17251 of 2016 seeks to persuade usw that as a temporary measure, the promotees who are awaiting promotion and may be nearing retirement should be permitted to be promoted against the post of direct recruits. We are afraid that this is something which we cannot permit because this is exactly what has created the controversy in the past.

8.In view of the aforesaid agreed arrangement, we dispose of the writ appeals and the writ petitions with the direction to the State Government to initially wait for our pronouncement in respect of the writ appeal aforesaid and thereafter, proceed to act in terms aforesaid or begin de nova depending on the fate of the writ appeal referred above. It is clarified that anything to the contrary which may have been observed by the learned Single Judge would not hold good.

11.From the above judgment, it is clear that the directions issued by the Court to the Government will be kept in abeyance till the final judgment is passed in W.A.No.2280 of 2011 and depending upon the result in that appeal, the directions can be implemented.

12.The Division Bench considered W.A.No.2280 of 2011 and passed a judgment on 31.08.2016, dismissing the appeals. The Writ Appeal was dismissed with the following findings:

20.It is apparent that the promotion as well as up gradation are only for the permanent posts and hence G.O.Ms.No.1, Commercial Taxes and Registration (A2) Department, dated 04.01.2010, G.O.Ms.No.17, Commercial Taxes and Registration (A2) Department, dated 10.02.2014 and G.O.Ms.No.47, Commercial Taxes and Registration (A2) Department, dated 31.03.2015, have to be considered. Further, the seniority list placed before the Hon'ble Supreme Court, has been agreed to by all the parties concerned, and hence there cannot be any deviation with regard to the promotions subsequently claimed by them. With regard to the increase in cadre strength on 04.01.2010, since the list in this respect has been produced before the Hon'ble Supreme Court, the same cannot be tested at this juncture, before this Court. When the Hon'ble Supreme Court had considered the matter in detail and passed the order dated 10.02.1999 in Civil Appeal No.1454 of 1987, confirming the judgment of this Court in W.P.No.12786 of 1985 dated 19.06.1986, based on the list produced and thereafter, passed the order dated 20.10.2008 in Contempt Petition (C) No.263 of 2007 in Civil Appeal 1454 of 1987, directing the State to publish seniority list in terms of the directions given, this Court is of the considered view that the matter has reached finality and any endeavour to re-agitate the matter on a new ground, cannot be countenanced. The attempt of the appellant is nothing but re-appreciating or re-arguing the case which had already been decided by the Hon'ble Supreme Court and hence such an act to re-agitate is only to be rejected. If the appellant has any grievance with regard to the judgment passed by the Hon'ble Supreme Court, he has to approach the Hon'ble Supreme Court seeking necessary clarifications, as the seniority list placed before the Hon'ble Supreme Court, has been agreed to by all the parties concerned. Therefore, it is for the appellant to approach the Hon'ble Supreme Court, for clarification of the judgment, if so advised.

13.It is clear from the above judgment of the Division Bench that the earlier judgment of the Hon'ble Supreme Court was again reiterated and the Division Bench did not allow the matter to be re agitated and it was made clear that the seniority list that was placed before the Hon'ble Supreme Court during the contempt proceedings and which was agreed by all the parties cannot be revised or reopened again. It was brought to the notice of this Court that this judgment of the Division Bench has been taken on appeal before the Hon'ble Supreme Court and the same is pending.

14.In the meantime, Government orders were passed publishing the seniority list in the cadre of Assistant Commissioners, Deputy Commissioners and Joint Commissioners in G.O.Ms.No.116, dated 24.08.2012, G.O.Ms.No.139, dated 02.11.2012 and G.O.Ms.No.16, dated 27.02.2013, respectively.

15.Before getting into the issue that is involved in the present writ petition, it must be borne in mind that the post of ACTO was later re designated as Deputy Commercial Tax Officer by virtue of G.O.Ms.No.71, dated 30.07.2008. This falls under the Subordinate Service. Earlier, the State Service consisted of the post of Commercial Tax Officer, Assistant Commissioner, Deputy Commissioner and Joint Commissioner. From the year 2008, the post of Commercial Tax Officer was re designated as Assistant Commissioner. Therefore, now the State service starts from the post of Assistant Commissioner and the next promotion is to the post of the Deputy Commissioner and the succeeding promotion is to the post of Joint Commissioner. As per the Rules, the post of Assistant Commissioner that falls within the State Service should be filled up in the ratio of 2:1 in a cyclical order in the following manner:

(I) Recruitment by Transfer
(II) Recruitment by Transfer
(III) Direct Recruitment

16.It is clear from the above that the seniority list in the Subordinate Service will have a direct impact while considering the promotion to the post of Assistant Commissioner when it comes to recruitment by transfer. Therefore, the seniority list in the Subordinate Service is directly interlinked while determining the seniority even under the State Service. It is also seen from the judgment passed by the Division Bench that the Government orders that were put under challenge consisted of candidates both from the Subordinate Service and from the State Service. It is only these Government orders which fixed the seniority for the various posts, that was affirmed by the Division Bench and it was held that it cannot be revisited or re agitated once the matter has become final before the Hon'ble Supreme Court.

17.When everybody thought all the disputes have been settled and there will be no more confusion in future, there was another attempt made to revisit the seniority list. According to the petitioners, the department wanted to somehow safeguard the interest of the ad hoc/temporary persons, who were recruited and therefore, one more attempt was made to revisit G.O.Ms.No.116, dated 24.08.2012. This is said to be based on the recommendation made by the High Level Committee, which had suggested ways and means to resolve the inter se seniority dispute. According to the petitioners, this attempt made by the department is clearly illegal and what was already settled before this Court and the Hon'ble Supreme Court is attempted to be reopened.

18.Four Writ Petitions have been filed. W.P.No.9257 and 9326 of 2018 have been filed to forbear the respondents from in any manner disturbing the seniority positions published up to the post of Deputy Commissioner. Out of this one of the writ petitioner in W.P.No.9257/2018, retired as a Joint Commissioner during the pendency of this writ petition. W.P.Nos.9258 & 5254 of 2018 have been filed to forbear the respondents from disturbing the seniority positions and for a direction to promote the petitioners as Additional Commissioners in the 2015 panel. Out of the two writ petitioners, the petitioner in W.P.No.5254 of 2018, retired from service during the pendency of the writ petition in the post of Joint Commissioner.

19.Before venturing into the process of considering the submissions made by the learned counsel appearing on either side, it is important to ascertain as to how the department has understood the effect of the earlier orders passed by this Court and the effect of the earlier Government orders which fixed the inter se seniority. For this purpose, a reference can be made to the rejection order passed by the department on 20.12.2016, when one Palani approached the department and sought for revision of the inter se seniority. The rejection order is extracted hereunder:

> i) You have contended that the inter-se seniority fixation in the cadre of AC (CT) in State Service issued vide G.O.Ms.No.116, CT & R(E1) Dept, dated 24.08.2012 has to be revised in furtherance to Hon'ble HIgh Court dated 28.07.2016 and 31.08.2017. You are aware that the WPs filed by Group-I officers [W.P.No.18264 of 2013, 19683 of 2013] challenging the inter-se-seniority has been disposed of on 28.07.2016 with directions to wait for the final orders in writ appeal (W.A.No.2280 of 2011) and this writ appeal was finally dismissed on 31.08.2016. Hence, t here is no direction whatsoever to revise the inter-se-seniority ordered in GO.Ms.No.116, CT&R (E1) Dept, dated 24.08.2012. In fact by virtue of the Hon'ble High Court order dated 31.08.2016 as of now, the above said GO and other connected orders have therefore been sustained.
>
> ii) The Group-II officers who joined the department as direct recruit DCTOs have been placed in the substantiative vacancy arising each year based on their date of commencement of probation and as per the principles enunciated by the Hon'ble High Court and confirmed by the Hon'ble Supreme Court. This fixation in the cadre of DCTO and CTO were earlier challenged before this Hon'ble High Court and was upheld by this Hon'ble High Court in

W.P.No.11618 of 2009, W.P.No.18847 to 18853 of 2009, W.P.No.21448 to 21455 of 2009 dated 06.04.2011. The subsequent fixation in the cadre of AC/DC/JC have now been sustained in W.A.No.2280 of 2011 and other connected writs by the Hon'ble High Court in order dated 31.8.2016.

iii) You have stated that, the inter-se-seniority fixation in the cadre of AC has been irregularly ordered and the transferees are occupying quota meant for direct recruit ACs and that the Government have not followed principles laid down by the Hon'ble Supreme Court in this issue and have followed the ratio of 2:1 meant for setting apart the quota in permanent post among the transferees and direct recruits, which is in violation of Hon'ble Supreme Court judgment.

In this regard you are aware that the same arguments were placed before the Hon'ble High Court in writ appeal No.2280 of 2011 and the Hon'ble High Court found no fault in the fixation and the Rule 2 (c) of TNCTS relating to quota in permanent post was also not struck down, in as much as it was correctly followed by Government in the impugned GO. Similarly, the General Rule 35(aa) of Tamil adu State and Subordinate Service Rules referred to, was also time and again raised before the High Court and it was held that this rule relating to date of joining, would apply only to permanent post, which was correctly applied by Government.

iv) You have contended that the Hon'ble Division Bench of the Madras High Court while dismissing the writ appeal (2280 of 2011 dated 31.08.2016) has directed to re-draw the inter-se-seniority from the cadre of AC onwards. On the contrary, the Hn'ble High Court has not mentioned the above contention raised by you. In fact, in the interim order dated 28.07.2016 quoted by you mentioning certain observations of the Hon'ble High Court in Para NO. 5 & 6 of the judgment dated 28.07.2016, thee is a clear direction that this would be subject to the outcome of the writ appeal No.2280 of 2011 and the Hon'ble High Court has also directed to proceed further only depending on the fate of the writ appeal, which was pending at that time. Subsequently, as the writ appeal was dismissed on 31.08.2016, the prayer of all the petitioners (transferees as well as Group-I Officers) found no favour of the Court. Hence, there is no direction to revise or revisit the inter-se-seniority from the cadre of AC(CT), as contended by you in your representation cited.

The government have already issued orders for fixation of seniority for each year from the cadre of AC onwards, for the permanent vacancies arising each year and published a list of persons holding permanent post (ie.,) only those who were in service at that relevant year and other individuals who were not part of permanent cadre were not shown within the quota.

Subsequent to the issue of G.O.Ms.No.116, CT & R Dept, dated 24.08.2012, the Government have also issued the following other orders:

1.G.O.(Ms).No.139, CT&R (E2) Dept, dated 02.11.2012 - Regular list of DCs for the years 1987 to 2011.

2.G.O.(Ms).No.16, CT&R (E2) Dept, dated 27.02.2013 - Regular list of JCs for the years 1988 to 2013.

3.G.O.(Ms).No.70, CT&R (E2) Dept, dated 19.06.2013 - Regular list of ADCs for the years 1989 to 2013.

4.G.O.(Ms).No.86, CT&R (E2) Dept, dated 20.11.2014 - Regular list panel of JCs for the year 2014 which includes the names of Tvl.V.Radha V.Devendira Boopathy, C.Palani, K.Isaivani, M.Parameshwaran, K.Ladha and D.Ramadevi.

5.G.O.(Ms).No.98, CT&R (E1) Dept, dated 22.12.2014 - Regular panel of ACs for the year 2013 - 14.

6.G.O.(Ms).No.132, CT&R (E2) Dept, dated 18.10.2013 - Temporary list of DC for the year 2013.

7.G.O.(Ms).No.40, CT&R (E2) Dept, dated 10.03.2015 - Temporary list of DC for the year 2013.

8.G.O.(Ms).No.83, CT&R (E2) Dept, dated 27.06.2013 - Temporary list of JCs for the year 2013.

9.G.O.(Ms).No.005, CT&R (E2) Dept, dated 12.01.2015 - Temporary list of JC for the year 2014.

10.G.O.(Ms).No.19, CT&R (E2) Dept, dated 11.03.2013 - Temporary list of ADC for the year 2012.

11.G.O.(Ms).No.118, CT&R (E2) Dept, dated 05.09.2013 - Temporary list of ADC for the year 2013.

12.G.O.(Ms).No.20, CT&R (E2) Dept, dated 19.02.2014 - Temporary list of ACs for the year 2013-14.

13.G.O.(Ms).No.34, CT&R (E2) Dept, dated 27.02.2015 - Temporary list of ACs for the year 2014-15.

14.G.O.(Ms).No.20, CT&R (E2) Dept, dated 01.02.2016 - Temporary list of ACs for the year

2015-16.

All the above GOs were issued based on the principles evolved by the Hon'ble High Court and which were confirmed by the Hon'ble Supreme Court. The above GOs were in operation for a period of two to three years. Now only you have chosen to challenge the GOs issued in Sl.No.1 & 2 above, besides the GO.Ms.No.116, CT&R (E2) Dept, dated 24.08.2012.

Since all the WPs and W.A.No.2280 of 2011 relating to the fixation of inter-se-seniority issue were disposed and the orders of the government issued in G.O.Nos. mentioned in Para (iv) above were sustained, further course of action could be taken only if revised orders are passed by the Court on filing of further appeals, if any.

20.It is clear from the above reply given by the department that the department has perfectly understood the fact that the earlier orders passed by the Hon'ble Supreme Court and this Court has become final and therefore, the Government orders which fixed the inter se seniority have also become final and there is no scope for revising the inter se seniority lists which have already become final.

21. A counter affidavit has been filed by the respondents and the relevant portions in the counter affidavit is extracted hereunder:

"9.This list was published on 04.05.2009 and was followed by seniority list in the promotion category of CTO. The consequential seniority lists in the State Service entry level post of AC and the promotional posts of DC, JC and ADC were also drawn and published. The contempt petitioners and other similarly placed direct recruit DCTOs were given consequential promotion on the basis of the seniority deriving in these lists.

10.However, the seniority list of DCTOs was challenged by transferees before the Hon'ble High Court of Madras in WP.11618/2009 with a prayer to consider temporary post holders on par with the permanent post holders for the purpose of inter se seniority. This prayer was rejected by the Hon'ble High Court of Madras by dismissal of the said WP on grounds that there was no scope and merit to interfere with the Hon'ble Supreme Court orders dated 10.02.1999.

11.The writ appeals in WA 2280/2012 and other related cases challenging the said lists or the consequential seniority lists of the higher categories or for promotion on the basis of these lists were pending before the Hon'ble High Court of Madras. At this juncture, the department constituted the High Level Committee comprising of Secretaries to Government, Departments of Finance (as Chairman), P & AR, Law and CT & Registration apart from the Commissioner of Commercial Taxes as member-Convener to look into the feasibility of filing a curative petition before the Hon'ble Supreme Court as a means for bringing to an end the numerous litigations and counter litigations on the issue of inter se seniority. While deliberating on this issue the then CCT (the second respondent herein) had examined the issue in detail and came to the conclusion that the existing seniority lists have not been correctly drawn in the permanent cadre strength as per the four principles confirmed by Hon'ble Supreme Court judgment and relevant service rule positions. This fact was placed before the committee which found that thee was neither a need nor a possibility to file a curative petition as the Hon'ble Supreme Court orders were in consonance with the rule provisions. However, the lists themselves were not. They were found to neither satisfy the rules nor complying with the four principles. Such of those infirmities in the lists were identified for rectification and after taking the committee into confidence, an additional counter affidavit admitting to those infirmities was filed by the second respondent before the Hon'ble High Court of Madras in WA No.2280/2011 in December 2015. For reasons adduced therein, it was proposed to rectify the lists and publish the same only in respect of persons borne on service as on 01.01.2007 and thereafter.

12.A second additional counter affidavit appending a tentative seniority list for all categories of posts from DCTO to ADC for the years from 2007 to 2015 was filed in March 2016 praying for dismissal of the writ appeal to enable the department to publish the same. The department also prayed for hearing of all the connected cases as a batch. Accordingly, the Hon'ble High Court of Madras initially took up all the related cases except the main writ appeal WA No.2280/2011 and disposed them on 28.07.2016 recording a consensus order that the four principles affirmed by the

Hon'ble Supreme Court would apply in relation to fixation of inter se seniority. The prayers in the respective writs and appeals were directed to be dealt with in terms of the decision to be taken in the main writ appeal WA No.2280/2011, viz., whether temporary posts too could be reckoned for fixation of inter se seniority. If this was answered in the affirmative, everything would go and the process had to be started afresh. If not, the four principles wee to be applied in relation to permanent posts alone and the prayers in these connected cases were to be answered accordingly.

13.The WA.No.2280/2011 was dismissed on 31.08.2016 on grounds that the Hon'ble Supreme Court orders cannot be interfered with and inter se seniority has to be fixed in relation to permanent posts only. Any grievance in this regard could be addressed by the petitioners to the Hon'ble Supreme Court only and leave was accordingly granted though no appeal is ascertained to be filed until date.

14.Subsequent to the disposal of the said writ appeal, direct recruit AC (direct recruits in State Service) prayed for rectification of the seniority lists as already proposed. These direct recruit ACs were also petitioners in some cases before the Hon'ble High Court of Madras and their cases too had been disposed of with specific mention of their prayer in para 5 of the orders of the Hon'ble High Court of Madras dated 28.07.2016. Their grievance was that while the four principles were applied in relation to the subordinate service lists, the same was not correctly followed in respect of the inter se seniority in the category of AC which is the entry level post of the State Service.

15.A representation of Thiru.C.Palani, a direct recruit AC in this regard was initially rejected by the second respondent on 20.12.2016 on grounds that there was no specific relief in their case and that the Hon'ble High Court of Madras orders gave no grounds to revisit the lists already drawn.

16.However, on a further representation by the said official to the Government and on an appreciation of the facts borne in the additional counter affidavits already filed by the department before the Hon'ble High Court of Madras in WA.No.2280/2011 and relevant rule provisions as well as the fact that the petitioner was originally addressed to the Government who is the competent authority to consider and pass orders on the same and not the second respondent, the Government were requested to take a fresh decision. Whereupon, the Government issued instructions to the second respondent to revisit the lists. The process that had already been initiated was thus continued further.

(B)Rule aspects:

(i) The inter-se seniority list in the entry level cadre post of AC in State Service for the years from 1984 to 2010 has been drawn and published in G.O.Ms.No.116, CT & Regn.(E1) Dept., dated 24.08.2012 and this was challenged by the direct recruit ACs (Group I officers) in WP.No.18264/2013 on the grounds that the said list was not in accordance with the aforesaid four principles confirmed by Hon'ble Supreme Court as well as General Rule 35(aa), as per which the date of appointment in the permanent cadre strength is the criterion for fixation of inter-se seniority between direct recruits and transferees in permanent posts in the cadre of AC. This fact, that General Rule 35 (aa) will apply in this instance has been admitted to by the petitioner himself in paragraph 20 of his affidavit. Howsoever, he proceeds to claim that he is senior as per the extant seniority which is not on the basis of General Rule 35 (aa) but on the basis of an erroneously adopted Special rule 2(c) of the Special Rules for the Tamil Nadu Commercial Taxes Service pertaining to cyclical apportioning of permanent post vacancies for appointment by either method, vz., direct recruitment and transfer of service.

(ii) In the G.O.Ms.No.116, CT & Regn.(E1) Dept. dated 24.08.2012, the Special Rule 2(c) of Tamil Nadu Commercial Taxes Service i.e., the ratio of 2:1 meant for setting apart the quota in permanent posts among the transferees and direct recruits has been followed erroneously for fixing inter-se seniority and the same is in contravention of Hon'ble Supreme Court judgment in as much as Rule 2 (c) governs only appointments to be made within the quota set apart in permanent posts. Insofar as seniority is concerned, it is the date of occupancy of permanent posts as per the Hon'ble Supreme Court judgment, again reiterated in the General Rule 35 (aa)/Section 40(2) should have been followed for fixing inter-se seniority.

(iii) This statutory provision has been followed for fixing inter-se seniority in DCTO cadre (Subordinate Service seniority list from1968 to 2006), but has not been followed for fixing inter-se seniority in AC cadre (State Service seniority list from 1984 to 2010).

(iv) It is pertinent to note that though a similar quota of 2:a (66 2/3% of permanent post vacancies for transferees and 33 1/3% for direct recruitment) is available in Special Rule 2 (b) of Special Rules for the TN CT Subordinate Services, this ratio was not adopted for fixing inter se seniority; and the General Rule 35(aa) has been correctly applied for fixation of inter-se seniority in Subordinate Service, whereas the said statutory provision has not been applied in the case of G.O.Ms.No.116 relating to State Service seniority.

(v) In the post of AC in the State Service, in certain years, there were no candidate joining the department by way of direct recruitment to 1/3rd quota of permanent posts and this includes the years 1984, 1986, 1988, 1989, 1991, 1992, 1993, 1994, 1995, 1996, 1999, 2000, 2001, 2004, 2006, 2007 and 2008. In these years, the substantive vacancies in the direct recruit quota of permanent posts (every third vacancy arising in these years) should have been kept intact and shown as 'No Candidate' since the ratio of 2:1 has been adopted for fixation of inter se seniority, with no direct recruits having joined the service in that year. However, no direct recruit quota vacancies have been shown in these years which points to the fact that either the direct recruit quota vacancies have been allocated to the transferees or that the list itself is fundamentally flawed by adoption of an incorrect Rule that is not meant for fixation of inter-se seniority.

(vi) The G.O.Ms.No.116, CT & Regn. (E1) Dept. dated 24.08.2012 has been drawn without considering all the officials born-in service each yea and the 2/3rd quota in permanent cadre strength meant for transferees had been left vacant with the legend 'No Candidate' despite availability of several transferees, which is fundamentally incorrect in a seniority list drawn up between persons already borne-in service i.e., when so many transferees occupying temporary AC posts are awaiting to occupy their transferee quota of permanent posts as and when vacancies arise for claiming seniority.

18.It is respectfully submitted in respect of the averments of the petitioner in paragraphs 16 to 20 of his affidavit, to the effect that none of the government orders relating to his seniority and consequential promotions were so far not challenged or set aside and that the department respondents are attempting to purposefully and willfully distort the orders of the Hon'ble High Court of Madras, that these averments are far from truth as had been laid bare in the preceding paragraph. There was specific challenge to the inter se seniority of AC drawn for 1984 to 2010 in G.O.Ms.No.116, CT & R Dept., dated 24.08.2012 in WP.No.18264/2013 which was addressed in the Hon'ble High Court of Madras orders dated 28.07.2016 in para 5(5) to 6 and 8. A conjoint reading of the same would clearly show that the specific orders of the Hon'ble High Court of Madras are to the effect that the four principles would apply and that this has to be done after disposal of the WA.No/.2280/2011. Further, the revisit exercise itself was not initiated at the instance of the High Level Committee but the formation of the committee itself was a part of the process of identifying avenues for resolution of the inter se seniority dispute that is unresolved in this department for the past 33 years. In fact, before the High Level Committee sat for its first meeting in May 2015, the second respondent had tabled his report before the committee to the effect that the list required revision. Further, it is naive on the part of the petitioner to suggest by nitpicking through words in the committee formation G.O. to suggest that it exceeded its brief as per the said G.O. There was no role of the committee in arriving at the prima facie conclusion that there wee infirmities in the existing lists or in filing the additional counter affidavits in WA NO.2280/2011 admitting to the infirmities in those lists. The Committee's minutes would clearly show that the committee itself was informed of the proposed filing of the additional counter affidavits and that the same was not filed on the instructions of the committee. These were decisions of the first and second respondents that were apprised to the committee to keep it informed of the developments. Also, when the committee members themselves were Secretaries of the various departments that had to take an individual call on the same issue when the same file would be circulated to them at appropriate stage, there is no harm in asking them to sit together and take a collective decision so that there is no delay in bringing a longstanding issue to a fair and legal closure. In fact, even if the petitioner is aggrieved by any panel drawn now or even revision of seniority, he would have to file an appeal to the Government, which would then have to be considered by a statutory Committee on Appeals in term of Section 66 of the Tamil Nadu Government Servants (Conditions of Service) Act of 2016. Such a committee would have as its members the Vigilance Commissioner, a member of the TNPSC and the Secretaries to Government of the departments of Finance, P & AR, Law and the Administrative department concerned. It may thus be seen that except for the Vigilance Commissioner and the member of TNPSC, the composition of the High-Level Committee is identical to the statutory Committee on Appeals. Therefore, it is perverse on the part of the petitioner to allege that the committee has exceeded its brief. Thus, as aforesaid, the respondents have acted within their jurisdiction and have taken legitimate action at one go to address the issue in a fair, transparent and expeditious manner and to bring the entire seniority into consonance with both rule provisions and court orders consequently, there is no distortion of the Hon'ble High Court of Madras orders by the respondents as claimed by the petitioner.

19.It is respectfully submitted the respondents are not trying to unsettle a settled seniority. It may be seen from the specific wordings in the orders of the Hon'ble Supreme Court dated 04.03.2009 in Contempt Petition No.263/2007 that it clearly gave liberty to aggrieved individuals to represent against the lists in accordance with the statutory procedures. When this is done and the seniority is proposed to be rectified on the basis of such representation, there is no legal impediment. In WA.No.2280/2011 also, the prayer of the transferees was to consider the temporary posts also in reckoning inter se seniority wit the direct recruits in the category of DCTO and only this prayer was negated. None of the seniority lists of the higher categories were decided upon by the Hon'ble High Court of Madras except to state in the remaining cases, in its orders dated 28.07.2016, that it was recording a consensus order to the effect that the four principles would apply in relation to fixation of inter se seniority. Even on the issue of Learned Advocate General's statement in relation to revision of seniority in relation to increase in permanent cadre strength from 2010 which is referred to in paragraphs 9 to 11 of the petitioner's affidavit, it is to be noted that this was specifically mentioned to highlight the fact that the increase in permanent posts would mean an alteration in the quota meant for direct recruitment and transfer of service from what was prevailing in the previous years. This observation was thus in relation to one specific aspect of the issue. The other aspect relating to the proposed revision of the lists for curing them of the infirmities is brought out through the statement of the Learned Advocate General recorded in para 9 of the order of the Hon'ble High Court of Madras dated 31.07.2016 made in WA.No.2280/2011. This aspect has been left open in the order dated 31.08.206 but is to be followed up in terms of the earlier order dated 28.07.2016 in WA No.2527/2012 and other connected cases. Thus, the two orders of the Hon'ble High Court of Madras dated 28.07.2016 and 31.08.2016 are to be read conjointly and cohesively. Instead, the petitioner has resorted to cherry-picking from the orders of the Hon'ble High Court of Madras to buttress his case for continued grant of consequential benefits based on erroneous seniority that is already proposed to be rectified.

SUBMISSIONS:

22.Mr.V.Prakash, learned Senior Counsel led the arguments on behalf of the petitioners and he made the following submissions:

- All these writ petitions have been filed not merely based on apprehensions but due to a potential attempt being made by the official respondents to revisit and tamper with a settled seniority list which was confirmed by the Division Bench in its judgment in W.A.No.2280 of 2011, dated 31.08.2016.

- Insofar as the writ petitions filed by the petitioners in W.P.No.9258 of 2018 and W.P.(MD).No.5254 of 2018, they are seeking for implementing 2015 panel for promotion to the post of Additional Commissioner which was even approved by the the Hon'ble Chief Minister when the note file was circulated in January 2016 and which was later not acted upon.

- G.O.Ms.No.116, dated 24.08.2012 has become final and it has not been interfered by the Division Bench and therefore, all the consequential promotions based on that seniority cannot be attempted to be taken away and the petitioners cannot be allowed to be brought down in seniority in the subsequent promotion posts while moving into the State service.
- The apprehension raised by the petitioners has now come true by virtue of the stand taken by the official respondents in the counter affidavit. The respondents instead of submitting before the Court that they will proceed further with the preparation of the seniority list in line with the judgment of the Division Bench in W.A.No.2280 of 2011, are now attempting to give it an interpretation and thereby trying to tamper with the seniority list.
- By making such an attempt, the position of the petitioners is brought down substantially in the seniority list in the further promotions to the post of AC and DC and in order to explain the same, a chart has been submitted to the Court to demonstrate that persons whose rank was much below the petitioners in the post of DCTO, have marched above the petitioners in the subsequent promotion posts of AC and DC.
- Paragraph 20 of the judgment of the Hon'ble Division Bench in WA.No.2280 of 2011 makes the position very clear and therefore, the official respondents cannot do anything which will run contrary to the settled position and if at all they want to increase the cadre strength from 2010 onwards, it can only operate in future and it cannot be applied in such a way to disturb the settled seniority list which was submitted before the Hon'ble Supreme Court during the contempt proceedings and which was held to be final by the Division Bench in W.A.No.2280 of 2011.
- The official respondents have perfectly understood the effect of the judgment of the Hon'ble Supreme Court and the Division Bench of this Court while rejecting the claim made by one Palani and they must continue with the same stand and should not be allowed to change their stand and thereby tamper with the seniority list.
- G.O.Ms.No.116, dated 24.08.2012 has been acted upon by the subsequent Government orders in G.O.Ms.No.63, dated 11.06.2018 and G.O.Ms.No.100, dated 02.08.2018, while assigning seniority and therefore, the official respondents must continue in the same line without attempting to revisit the seniority based on some claim made by the direct recruits in the State service.
- It is factually wrong to state that the persons falling under the transfer quota have taken away the quota of the direct recruits in the State service and it is very clear from G.O.Ms.No.116, dated 24.08.2012 that the list for the

year 1984 to 2010 was drawn in G.O.Ms.No.30, dated 09.03.2012 and objections were called for and ultimately the Commissioner of Commercial Tax, by letter dated 02.07.2012, considered the rule position and had sent the draft inter se seniority list from the year 1984 to 2010 by taking into account, the four principles laid down by this Court following the judgment of the Hon'ble Supreme Court and this Government order has become final and therefore, the consequential fixation of seniority should be in line with this Government order.

- It is true that only the provisional seniority list is going to be published by the respondents. But however, the petitioners were forced to approach this Court since, there was already an earlier round of litigation which ultimately became final after a long drawn legal battle and now if the respondents again revisit the seniority lists, it will be going against the orders of this Court and the Hon'ble Supreme Court. That apart even at the earliest point of time, when the issue was raised before this Court in W.P.No.12786 of 1985, the Division Bench of this Court had actually interfered only with a provisional seniority list on the ground that it was going against the rules. Therefore, there is nothing wrong in the petitioners approaching the Court even at the time when the respondents are attempting to publish a provisional seniority list. That is the reason, why this Court even directed the respondents to produce the provisional seniority list in a sealed cover.
- The grievance is not about the publication of provisional seniority list. But the actual grievance is that the respondents are attempting the unsettle the seniority which has already become final.

23.Mr.L.Chandrakumar, learned counsel appearing on behalf of some of the respondents also supported the case of the petitioners and he adopted the arguments of Mr.V.Prakash.

24.Mr.P.H.Arvindh Pandian, learned Additional Advocate General, after explaining the rule position, submitted that the official respondents are not trying to take sides either with the direct recruits or with the transferries and they are bound by the judgment passed by the Division Bench in W.P.No.2280 of 2011.

- The official respondents are bound to comply with any directions issued by this Court and the seniority list will be prepared accordingly.
- For the present, only draft seniority list has been prepared and the objections will be called for and based on the objections and the directions given by this Court, the

official respondents will prepare the seniority list.

- This dispute must be resolved as early as possible, since, it is having a direct impact in the functioning of the Commercial Tax Department which has to focus on the revenue generation instead on spending time before the Court and for that purpose the officers will have to be fitted in the appropriate posts based on their seniority.

25.Mr.N.L.Raja, learned Senior Counsel appearing for some of the contesting respondents made the following submissions:

- There is no cause of action for this lis and the writ petitions have been filed on mere apprehensions and the same is liable to be dismissed on this ground alone.
- The Government is only attempting to publish a provisional seniority list and if at all there are any objections, it can be expressed and the Government will have to ultimately consider those objections and must publish the final seniority list. Even before this could happen, there is no question of an assumed apprehension that the seniority list will be against the earlier orders of this Court and it will be in violation of the same.
- The internal note that was circulated within the department and the preparation of the provisional seniority list which has not even been published, cannot be a subject matter of challenge and for issuing a writ of mandamus, there should be a corresponding statutory duty/legal duty which will arise only after the list is prepared and till then, a mandamus cannot be issued on mere assumptions and apprehensions.
- It is always left open to the Government to change its mind by taking into consideration certain facts and in this case, the counter reveals that the Government found that the existing seniority list has not been correctly drawn in the permanent cadre strength as per the four principles confirmed by the Hon'ble Supreme Court's judgment and in accordance with the service rules and therefore, Government thought it fit to publish the provisional seniority list and call for objections. This cannot be prevented by the petitioners and they cannot dictate the Government as to how the seniority list must be published. That apart, the Government only wants to revisit and publish the provisional seniority list from the year 2007 onwards since, what was produced before the Hon'ble Supreme Court only pertained to the seniority list for the period from 1968 to 2006 and this list remains untouched.
- The Division Bench of this Court made it clear that if in case W.A.No.2280 of 2011 is ultimately dismissed, the list will have to be prepared in accordance with the stand taken

by the State Government through the learned Advocate General and which has been recorded in Paragraph 5 of the earlier judgment dated 28.07.2016. This is now being implemented by publishing a provisional seniority list and the petitioners cannot prevent the Government from publishing the same.

26.Ms.Dakshayani Reddy submitted that the contesting respondents do not have any say regarding the dispute between the direct recruits and transferries who entered service as DCTO and it is this dispute which has attained finality. However, the contesting respondents are direct recruits in the State service and the persons who form part of two third strength of transferris coming into the State service are attempting to take a march over the contesting respondents in the State service (Post of Assistant Commissioner) even though, they came into the said position much after the contesting respondents. This anomaly is now attempted to be set right by the Government in accordance with the four principles reiterated by the Division Bench of this Court following the earlier judgment of the Hon'ble Supreme Court. Therefore, the Government is making an attempt to publish the provisional seniority list. This exercise cannot be prevented by the petitioners on mere apprehensions. If after the publication of the seniority list, there is any grievance, the petitioners can always give their objections and ultimately the department can decide the same and publish the final list. There is also a right of appeal against such final list published by the department. Therefore, the present writ petitions are premature and are liable to be dismissed on this ground alone. The petitioners cannot be allowed to approach this Court to make this Court undertake a roving enquiry and any orders passed by this Court is certainly going to impact many persons who are not before this Court. The learned counsel concluded her arguments by submitting that the Government can be directed to publish the provisional seniority list and that will bring a lot of clarity with regard to the seniority position.

27.This Court has carefully considered the submissions made on either side and also the materials available on record.

28.This Court would not have normally entertained writ petitions in a case where even the provisional seniority list has not been published. It is also a settled law that writ petitions cannot be entertained on mere apprehensions. However, the present case falls under a special category. The litigation with regard to the present case had started nearly 35 years back and already it reached up to the Hon'ble Supreme Court twice and thereafter, before the Division Bench which ultimately made it clear that whatever has been settled before the Hon'ble Supreme Court will not be permitted to be re-agitated or reopened. Paragraph 20 of the judgment in W.A.No.2280 of 2011 has already been extracted supra and it makes the position very clear in no uncertain terms. In fact the Division Bench while passing the order on 19.06.1986, had interfered with a provisional seniority list since it found the list to be against the rules.

29.The learned Additional Advocate General has made it clear to this Court that the Government is not taking sides either with the direct recruits or with the transferries and the Government wants to implement the orders of this Court. The learned Additional Advocate General also made it clear that no attempt is being made to tamper with the settled seniority and the official respondents are bound by the findings of the Division Bench of this Court in W.A.No.2280 of 2011. The stand taken by the learned Additional Advocate General is further strengthened by the rejection order issued to one Mr.Palani on 20.12.2019, extracted supra, where the department has made its stand very clear to the effect that G.O.Ms.No.116, dated 24.08.2012 has become final and therefore, there is no question of revisiting the seniority lists / consequential lists. It is further clear from the later Government orders passed in G.O.Ms.No.63, dated 11.06.2018 and G.O.Ms.No.100, dated 02.08.2013 that G.O.Ms.No.116, dated 24.08.2012 and G.O.Ms.No.139 have been followed up and further promotions have been given by maintaining the consequential seniority list in the State service.

30.In the writ petitions filed by Vijayakumar and Sakthivel (W.P.No.9258 of 2018 and W.P.(MD)No.5254 of 2018), they have sought for a direction to the State Government for promoting them to the post of Additional Commissioner effective from the year 2015 on the ground that the Hon'ble Chief Minister has accorded approval for the promotion and in spite of the same, it was not followed up and attempt is being made to revisit the seniority list. The other two writ petitions have been filed with very strong apprehensions that an attempt is being made revisit the seniority list. This apprehension is strengthened by the counter affidavit filed by the respondents to the effect that the existing seniority list have not been correctly drawn as per the four principles enumerated by the Hon'ble Supreme Court and as per the relevant service rules insofar as the direct recruits who joined in the State service are concerned. It is true that the direct recruits have no qualms with regard to the earlier disputes between the direct recruits and the transferries who joined as DCTO. After this dispute was resolved and confirmed by this Court, the finalized seniority list in the revenue service also paved way to the consequential list of two thirds of the transferries who got into the State service. According to the direct recruits, even though they got into the State service before the transferries came into the State service, by virtue of the consequential seniority lists, they have been placed above the direct recruits and this anomaly is sought to be rectified by the Government. For this purpose, the Government wants to publish a provisional seniority list and this cannot be prevented by the petitioners.

31.The apprehension of the petitioners is that by doing this exercise, whatever benefits that have already enured to the transferries and which have been finalized by the earlier Division Bench in W.A.No.2280 of 2011, are attempted to be revisited. According to them, whatever is done, should not result in reopening or revisiting a settled seniority even in the consequential seniority in the State service. That is the reason why, the learned Senior Counsel appearing on behalf of the petitioners submitted that apprehension is not on the publication of the provisional seniority list. But the real apprehension is that an attempt is made to unsettle a seniority list that has already become final.

32.This Court also wanted to get a clarity on this issue from the side of the Government and therefore, it has directed the Government to send the provisional seniority list in a sealed cover and the same was also sent to this Court. Curiously the status of the petitioners in the provisional seniority list was known to the petitioners and everyone in the department, even before this Court opened the sealed cover. Whatever rank was mentioned by the petitioners was exactly tallying in the provisional list also. In this case, the particulars sent through sealed cover by the Government was an open secret about which everyone was aware, except this Court.

33.In the provisional seniority list that was sent to this Court, the procedure that was followed up for the preparation of the seniority list has been explained. What becomes clear is that, the position of the transferries has been rearranged and they have been placed below the direct recruits who came into the State service to the post of Assistant Commissioner. This obviously means that the consequential seniority that resulted from G.O.Ms.No.116, dated 24.08.2012 has been revisited to that extent the apprehensions of the petitioners stands vindicated.

34.The Division Bench of this Court in W.P.No.2280 of 2011 at Paragraph No.20 has made it abundantly clear that the seniority list that was placed before the Hon'ble Supreme Court and which was agreed by all the parties concerned, cannot be revisited and there cannot be any deviation with regard to the promotions subsequently claimed by them. The language used by the Division Bench is straight and simple and this Court cannot be called to given an interpretation to these specific findings. If at all the official respondents had any doubts, they should have got it clarified before the Division Bench and such clarification cannot be given by a Single Judge.

35.At this juncture, it is also important to understand the other direction that was given by the Division Bench in its order dated 28.07.2016, which was made subject to the final orders in W.A.No.2280 of 2011. Paragraph 5 in the said order has already been extracted supra. The more appropriate para will be Paragraph 5.5. In this paragraph, the Division Bench after extracting the submissions made by the learned Advocate General has categorically held that the promotees will take their seniority from the date on which the seat becomes vacant and the direct recruits will take their seniority from the date they have entered into services. This finding makes it clear that the transferries / promotees and the direct recruits were considered differently when it comes to determining their seniority. Therefore, even where the transferries / promotees actually function in the promoted post (AC) at a later point of time, the seniority is reckoned from the date on which the seat becomes vacant. However, when it comes to direct recruits it is the date on which they have entered into service. Therefore, it is possible that the transferries / promotees in spite of getting into the promoted post at a later point of time, will find their place above the direct recruits in the seniority list. This is the result of the earlier proceedings which got concluded before the Hon'ble Supreme Court in the contempt proceedings. The official respondents have perfectly understood this consequence and in spite of it, they did not seek for any clarification before the Division Bench and the judgment of the Division Bench was not taken up on appeal. Therefore, the very basis on which the official respondents are seeking to revise the seniority list, will go against the judgment of the Division Bench in W.A.No.2280 of 2011 and it cannot be permitted by this Court.

36.The official respondents clearly understood the consequence of the judgment of the Division Bench and the same is evident from the proposal that was forwarded along with the provisional seniority list sent through sealed cover to this Court. The proposal is extracted hereunder:

PROPOSAL FOR CREATION OF SUPERNUMERARY POSTS IN THE CATEGORIES OF ADDITIONAL COMMISSIONER (COMMERCIAL TAXES) AND JOINT COMMISSIONER (COMMERCIAL TAXES)

1. In the contempt petition no. 263/2007 in CA No.1454/1987 filed by the direct recruit DSTOs (then called as DCTOs), the department filed a provisional inter se seniority list of DCTOs for the years from

1968 to 2006 whereupon the Hon'ble Supreme Court closed the contempt case taking on record the submission of the department respondents that the petitioners will be extended consequential benefits in accordance with law. It also held that the aggrieved individuals (against the lists) can have recourse to such remedy as is available in law.

2. The consequential benefits were granted to the direct recruit DSTOs by way of promotions/recruitments by transfers to higher category posts by drawing up consequential seniority lists to those posts for the relevant periods.

3. However, during the course of subsequent litigations that emanated from the challenge to the aforesaid inter se seniority lists of DSTOs as well as the inter se seniority lists of AC (ST) drawn in G.O. Ms.No.116, CT & R Dept., dated 24.08.2012, the department had admitted to certain infirmities in those lists and submitted before the Hon'ble High Court that it intended to rectify those infirmities by publishing fresh lists that had been tentatively drawn up and filed before the Hon'ble High Court.

4. As a consequence, following up on the orders of the Hon'ble High Court dated 28.07.2016 and 31.08.2016 and also after taking into consideration the recommendations of the High Level Committee of Secretaries to Government constituted in G.O. Ms.No.132, CT & R Dept., dated 31.03.2015 at its last meeting convened on 23.02.2018, it has now been proposed to revisit and revise the inter se seniority lists aforesaid as well as the consequential lists for promotion to the respective higher category posts.

5. As a result of this revision exercise, certain direct recruit DSTOs who had been granted consequential promotion benefits based on the existing lists are found to be facing reversion from the post of JC (ST) to the post of DC (ST). The number of persons thus facing reversion as of April 2018 is eight (8). Of these, two of them were already being considered for inclusion in the temporary panel for promotion to the post of ADC (ST) for the year 2015. But, this panel was not given effect to in view of the admission to infirmities in the existing seniority lists and the consequent decision of the department to revisit them. Challenging this course of action, one of the two officials, Thiru. P. Sakthivel, JC (ST) has filed writ petition in WP (MD)No.5254/2018 praying for promotion as ADC (ST) which is still pending. It could be anticipated that further litigation could ensue on

account of the other persons facing reversion.

6.When the lists were file before the Hon’ble Supreme Court, it was also submitted that consequential benefits would be given in accordance with law and the same had been given up to the level of JC (ST). Therefore, natural justice would demand that such benefit be not taken away on account of a process of revision considered necessary to rectify infirmities for which the individuals themselves could not be held responsible. Taking away the consequential benefits without putting them on notice is also not advisable but such notice would only lead to further litigations thus not allowing for closure of the issue in the foreseeable future.

7. Also, if the lists were rectified from 2011 instead of from 2007, which was the other option placed before the High Level Committee for consideration, then these officers would have reached their present levels and two of them would also have been eligible for promotion as ADC (ST).

8. For these reasons, it is felt imperative that promotion benefits conferred on the persons facing reversion are not taken back. Towards this end, it is proposed that requisite numbers of supernumerary posts are created in the post of JC (ST) as detailed below.

9.Coming on to the specific issue of Thiru.P.Sakthivel and Thiru.S.Vijayakumar, both JC (ST) as on date but facing reversion as DC (ST), it is seen that both of them have been initially included in the temporary panel for promotion to the post of ADC (ST) for the year 2015 based on their seniority originating from the existing seniority lists of JC (ST). The file in this regard was circulated from CT Department in September 2015 for approval of the then Hon'ble Chief Minister of Tamil Nadu. The note file was ultimately approved by the Hon'ble Chief Minister in January 2016. In the intervening period, a writ petition in WP No.33226/2015 was filed by Tmt.V.Radha, a direct recruit AC (ST) working as JC (ST) praying for forbearing the department from effecting any promotion to the post of ADC pending disposal of her representation dated 10.07.2015 and decision of the High Level Committee. This writ petition was disposed of on 15.10.2015 with directions to the High Level Committee to dispose of the representation on merits within six weeks after putting the persons concerned on notice and to defer further decision on effecting promotion to the post of ADC until then. As a consequence, even though the note file already circulated was approved by the Hon'ble Chief Minister, the consequential G.O. was not issued which is precisely the issue under challenge in WP (MD) No.5254/2018 filed by Thiru.P.Sakthivel.

10.Thiru. P. Sakthivel is due to retire on superannuation on 31.08.2018. Though he would have a lower seniority and even be liable for reversion to the post of DC (ST) based on the proposed seniority, he is currently the senior most JC (ST) as per existing seniority. He was one of the original petitioners in the contempt case no.263/2007 in CA No.1454/1987 filed before the Hon'ble Supreme Court. His prayer in the pending WP is to give him promotion as ADC on the basis of the note orders approved by the then Hon'ble Chief Minister for issue of the temporary panel of ADC for the year 2015. As already stated above, he and the other official, Thiru.S.Vijayakumar would have reached this level if the list had been calculated from 2011 instead of 2007.

11.To avoid or at least reduce further litigation on the issue of seniority, it is proposed that the note orders approved by the then Hon'ble Chief Minister be given effect to by promoting him as well as Thiru. S. Vijayakumar on ad hoc basis as ADC (CT) without reference to their seniority so that the whole issue is not reagitated on grounds of a technicality that the panel approved by the then Hon'ble Chief Minister was not given effect to. However, such promotion need not be given effective from 2015 since the panel itself has lapsed due to efflux of more than a year from its approval and also because the very same seniority is not going to be followed if the proposed lists are published by Government. Instead it would be on the basis of notional inter se seniority in the State Services if the year 2011 had been taken as the basis for revision instead of 2007.

12.Consequently, the promotion may be given on ad hoc basis as on date by creation of two (2) supernumerary posts in the category of ADC (ST) specifically for these two individuals till their retirement date or till such time they are absorbed against the regular post of ADC (ST) in accordance with their proposed seniority. In the case of Thiru. P. Sakthivel, the post would be required only till 31.08.2018, whereas in the case of Thiru. S. Vijayakumar, the requirement would be upto 31.03.2021 or upto the date on which he is regularly absorbed into the cadre in accordance with seniority.

13.In respect of the other six (6) direct recruit DSTOs in service as JC (ST) and facing reversion to the post of DC (ST), for the reasons given in paras 6, 7 and 8 above, the creation of six (6) supernumerary posts in the category of JC (ST) for the tenure of their remaining service upto the date of retirement or until they are regularly absorbed in the regular cadre in accordance with their seniority is proposed.

14.By creation of such supernumerary posts, the department could resolve unnecessary litigations and instead focus its energy on revenue augmentation under GST. In fact, a regular absorption into the cadre could even be possible depending upon post requirements under the restructuring exercise that might be taken up consequent to implementation of GST. If that happens, the supernumerary posts could very well be abolished in the near term. Even otherwise, in the case of 6 individuals, the supernumerary post requirement is for a period ranging from less than one month to one year. Only in two cases would the posts be required for more than a year. Considering the fact that the other option of reversion would be uniformly negative for the Group II officers and the department badly needs a healing touch, the small and temporary financial consequences will be worthwhile.
For these reasons, the creation of supernumerary posts as proposed in para 40 (A) (vi) of the instant proposals is considered a necessity and may be sanctioned.

15.The details of the supernumerary post requirement and the names of the officers for whom they are required are as follows:

Post	No. of posts required	Name of the officials for whom proposed	Date of retirement
ADC (ST)	2	Sakthivel P	31-Aug-2018
		Vijayakumar S	30-Mar-2021
JC (ST)	6	Karunanidhi R	30-Apr-2018
		Shanmuganathan R	30-Apr-2021
		Sitrarasu P	31-Jan-2019
		Jothinathan A	31-Jul-2018

Post	No. of posts required	Name of the officials for whom proposed	Date of retirement
		Soundararaja Pandian D	30-Apr-2019
		K.Sadhasivam	30-Apr-2018

37.From the above proposal, it is clear that insofar the Sakthivel and Vijayakumar are concerned, their names were included in the panel for promotion to the post of Additional Commissioner. This file was even circulated in September 2015 for the approval of the Hon'ble Chief Minister. It received the approval of the Hon'ble Chief Minister in January 2016. As per the business rules provided in Secretariat Office Manual, once the file receives the approval of the Hon'ble Chief Minister, the final orders will have to be issued within three days from the date of receipt of orders of the Hon'ble Chief Minister and in no case, it should exceed one week. A copy of the Government Order issued must also be sent to the Chief Minster's office. Unfortunately, in the present case, this has not happened and as a result of the same, Sakthivel had retired as a Joint Commissioner and Vijyakumar is continuing to function as a Joint Commissioner. Both of them were entitled for promotion to the post of Additional Commissioner in the panel prepared in the year 2015. This is very evident from the proposal extracted supra and that is why in the proposal, it is suggested that the note orders approved by the Hon'ble Chief Minister is proposed to be given effect to. The proposal also talks about taking care of the seniority of all the petitioners by creating supernumerary posts in the categories of Additional Commissioner and Joint Commissioner. With this proposal, the Government is trying to strike a balance between the petitioners and the direct recruits in the State service.

38.In view of the above discussion, this Court is of the considered view that certain directions will have to be issued in the above writ petitions and they are as follows:

(a) Paragraph 20 of the judgment of the Division Bench in W.A.No.2280 of 2011, dated 31.08.2016 must be followed in letter and spirit and no attempts shall be made to revisit the settled seniority list that was placed before the Hon'ble Supreme Court and was agreed by all the parties and which ultimately formed the basis for the consequential seniority lists in the promotion posts in State service viz., G.O.Ms.No.116, CT & Regn. (E1) Dept. dated 24.08.2012 for fixing the inter-se seniority between the direct recruits and recruitments made by transfer in the entry level cadre post of Assistant

Commissioner (CT) in State Service for the years from 1984 to 2010, G.O.Ms.No.139, CT & Regn. (E1) Dept. dated 02.11.2012 issued publishing the seniority list in the cadre of Deputy Commissioner (CT) on the basis of the inter-se seniority list published in the entry level cadre of AC(CT) vide G.O.Ms.No. 116, dated 24.08.2012 and G.O.Ms.No.16, CT & Regn. (E1) Dept. dated 27.02.2013 issued publishing the seniority list in the cadre of Joint Commissioner (CT) on the basis of the inter-se seniority list published in the entry level cadre of AC (CT) vide G.O.Ms.No.116, dated 24.08.2012.

(b) The stand taken by the department while rejecting the claim of Mr.C.Palani by Ref.No.CP3/26741/16 dated 20.12.2016, is the correct understanding of the judgment of the Division Bench in W.A.No.2280 of 2011.

(c) Even with regard to the earlier judgment that was passed by the Division Bench in W.A.No.2257 etc of 2012, dated 28.07.2016, it was held that the promotees will take their seniority from the date when that seat becomes vacant and the direct recruits will take their seniority from the date they have entered into service. This differentiation made by the Division Bench must be kept in mind while drawing the seniority list.

(d) Any proposal mooted for creating supernumerary posts in the categories of Additional Commissioner and Joint Commissioner for the petitioners must be strictly in line with the settled seniority without any dilution in their seniority status.

(e) The petitioners in W.P.No.9258 of 2018 and W.P.(MD) No.5254 of 2018 are entitled to be considered for promotion to the post of Additional Commissioners, since, the proposal has been approved by the Hon'ble Chief Minister in January 2016 and they will be granted promotion accordingly with all consequential benefits. Appropriate orders shall be passed in this regard by the 1st respondent within a period of six weeks from the date of receipt of copy of this order.

(f) The provisional seniority list in various posts under the State service for promotion to the next level, shall be prepared by keeping in mind the judgment of the Division Bench in W.A.No.2527 etc of 2012, dated 28.07.2016 and W.A.No.2280 of 2011, dated 31.08.2016 and in line with this judgment and the same shall be published within a period of six weeks from the date of receipt of copy of this order. After calling for objections, the final seniority list shall be published within a period of four weeks, thereafter and the consequential promotion orders shall be passed immediately.

All these writ petitions are disposed of with the above directions. No Costs. Consequently, the connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

KP/SSR
To
1.The State of Tamil Nadu,
Rep.by its Secretary,
Commercial Taxes and Registration Department,
Fort St.George, Chennai-9.

2.The Principal Secretary/ Commissioner of Commercial Taxes,
O/o the Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai-5.

3.The Additional Chief Secretary,
(Chairman High Level Committee constituted under G.O(D).No.132 dated 31.03.2015)
Finance Department, Fort St.George,
Chennai-9.

4.The Secretary,
(Member in High Level Committee constituted under G.O.(D).No.132 dated 31.03.2015)
Department of Personnel and Administration Department, Fort St.George,
Chennai-9.

+2 Ccs to Mr.P. Kannan, Advocate sr 18015.
+2 Ccs to Mr.K. Krishnamoorthy, Advocate sr 17349.
+1 CC to The Special Government Pleader sr 17940.

WP.Nos.9257,9258,9326 of 2018 &
WP(MD).No.5254 of 2018

BS(CO)
SP(05/03/2020)