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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.10.2020

DELIVERED ON : 05.11.2020

C O R A M

THE HON'BLE MR.A.P.SAHI, THE CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.NOS.626, 627 AND 628 OF 2020
AND
C.M.P.NOS.8726 TO 8729 AND 11258 OF 2020

K.Latha
Joint Commissioner(CT),
Chennai (North) Division,
No.32, Elephant Gate Bridge Road,
Chennai - 3.

... Appellant/5th Respondent
(in W.A.No.626 of 2020)

M.Ravi
Joint Commissioner (Appeals)
PAPJM - Annex Buildings,
No.1, Greams Road,
Chennai - 6.

... Appellant/5th Respondent
(in W.A.No.627 of 2020)

A.N.Veeresalingam
Deputy Commissioner (CT),
Inspection - II, PAPJM Buildings,
No.1, Greams Road,
Chennai - 6.

... Appellant/5th Respondent
(in W.A.No.628 of 2020)

..vs..

1. S.Vijayakumar
Joint Commissioner(CT),
Interstate Investigation Cell,
PAPJM Building, Chennai.

... First Respondent in
(in W.A.No.626 of 2020)/Writ Petitioner

1. D.Soundararajapandian
Joint Commissioner, ST, Chennai South,
Commercial Tax Department, Chennai - 600 006.

... First Respondent in
(in W.A.No.627 of 2020)/Writ Petitioner



1. C.Arumugam
Deputy Commissioner (CT)
Commercial Taxes Building,
Integrated Master Plan Complex,
(Near TRO Office),
Villuputam - 605 602.

... First Respondent in
(in W.A.No.628 of 2020)/Writ Petitioner

2. The State of Tamil Nadu,
Rep. by the Principal Secretary,
Commercial Tax and Registration Department,
Fort St. George, Secretariat,
Chennai - 609 009.
3. The Principal Secretary/
Commissioner of Commercial Taxes,
O/o. The Commissioner of Commercial Taxes,
Ezhilagam, Chempauk,
Chennai - 600 005.
4. The Additional Chief Secretary
(Chairman of High Level Committee constituted under
G.O.(D)Ms.No.132, CT & Regn. (E1) Dept. dt.31.03.2015
Finance Department, Fort St. George.
Secretariat, Chennai - 600 009.
5. The Secretary
(Member in the High Level Committee constituted under
G.O.(D)Ms.No.132, CT & Regn. (E1) Dept. dt.31.03.2015
Department of Personnel and Administrative Department,
Fort St. George. Secretariat,
Chennai - 600 009.

... Respondents 2 to 5
(in all writ appeals)/Respondent 1 to 4

6. A.Lakshmipathy
(impleaded as per order dated 27.08.2019
By PDAJ in W.M.P.No.23242/2019)

... 6th Respondent
(in W.A.No.628 of 2020)/6th Respondent

PRAYER IN W.A.NO.626 OF 2020:

Writ Appeal is filed under Clause 15 of the Letters of Patent to set aside the order dated 27.02.2020 in W.P.No.9258 of 2018 and to allow the writ appeal.



W.P.No.9258 of 2018:-

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, for bearing 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 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.A.NO.627 OF 2020:

Writ Appeal is filed under Clause 15 of the Letters of Patent to set aside the order dated 27.02.2020 in W.P.No.9257 of 2018 and to allow the writ appeal.

W.P.No.9257 of 2018:-

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, for bearing 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 direction as this court may deem fit and proper in the facts and circumstances of the case.

PRAYER IN W.A.NO.628 OF 2020:

Writ Appeal is filed under Clause 15 of the Letters of Patent to set aside the order dated 27.02.2020 in W.P.No.9326 of 2018 and to allow the writ appeal.



W.P.No.9326 of 2018:-

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, for bearing 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.116 issued by CT & R Department dated 24.08.2012 and 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.

For Appellant : Mr.M.Ravi
(in all writ appeals)

For Respondents : Mr.V.Prakash, senior counsel
for Mr.K.Krishnamoorthy
(for R-1 in all writ appeals)

Mr.P.H.Aravindh Pandian, AAG
Assisted by Mr.Mohd. Shaffiq
Spl.GP C.T.Cases
(for R2 to R5 in all writ appeals)

Mr.S.Sivakumar
for impleading party.

C O M M O N J U D G M E N T

SENTHILKUMAR RAMAMOORTHY J.,

These Writ Appeals are directed against the common order dated 27.02.2020 in W.P. Nos.9257, 9258 and 9326 of 2018. In W.P. Nos.9257, 9258 and 9326 of 2018, the private Respondent, in each writ appeal, prayed for a writ of mandamus to prevent the official Respondents herein from lowering their seniority and the said writ petitions were allowed. The Appellants were directly recruited as Group-I Commercial Tax Officers (CTO) [now re-designated as Assistant Commissioner(AC)], which is the promotion level post in the Subordinate Services of the Commercial Taxes Department, and are currently in the post of Joint Commissioners/Deputy Commissioners. The private Respondent, in each writ appeal, was directly recruited as a Group-II Officer in the post of Assistant Commercial Tax Officer (ACTO) [now re-designated as Deputy Commercial Tax Officer (DCTO)], which is the entry level post in the Subordinate



Services of the Commercial Taxes Department, and were in the post of Joint Commissioners/Deputy Commissioners when the writ petitions were filed. From the post of CTO, the next promotion is to the entry level post of AC in the State Service followed by the promotion posts of Deputy Commissioner (DC), Joint Commissioner (JC) and Additional Commissioner (ADC). Recruitment to the entry level post of ACTO (now DCTO) in the Subordinate Service and to the entry level post of AC (now DC) in the State Service is both by direct recruitment and by transfer from the Ministerial Service and Subordinate Service, respectively.

2. The battle between direct recruits and transferees in the Commercial Tax Department is a long drawn saga, which primarily related to the filling up of the promotional posts in the prescribed ratio as between those promoted and direct recruits (currently 2:1) and the preparation of seniority lists in accordance with applicable general and special rules. For the present purposes, it is sufficient to trace the history of the dispute to the provisional seniority lists of ACTO and DCTO, which were prepared by the Commissioner of Commercial Taxes, on 17.09.1985 and 30.10.1985, respectively, upon taking the decision to consolidate the four divisions of Chennai, Coimbatore, Trichy and Madurai. The said inter-se seniority list of ACTO and the consequential DCTO lists were challenged in W.P. No. 12786 of 1985 by the directly recruited DCTO's. While rejecting the provisional seniority lists and disposing of the matter, the Division Bench of this Court adopted from an earlier judgment and reiterated four principles for drawing up fresh seniority lists. The matter was carried in appeal before the Hon'ble Supreme Court in C.A. No.1454 of 1987 by the State Government, which, however, did not challenge the said four principles. Instead, the grievance of the State Government was that persons who were holding temporary posts, prior to the appointment of the writ petitioners therein, should be considered for purposes of fixing seniority. This contention was rejected by the Supreme Court, by judgment dated 10.02.1999, on the basis that there was no evidence that the cadre consisted of both temporary and permanent posts. The Supreme Court concluded that the impugned seniority lists should be revised and that the persons whose names are at Sl. Nos. 129-519, in the impugned seniority list of ACTO, should be placed above the petitioners therein only if they held the post substantively within the permanent cadre strength allotted to the particular category even before the petitioners therein commenced their probation. Thus, by the said order, the Hon'ble Supreme Court affirmed the decision of the Division Bench of this Court wherein four principles were formulated by the Division Bench. The said principles are as under:



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"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.

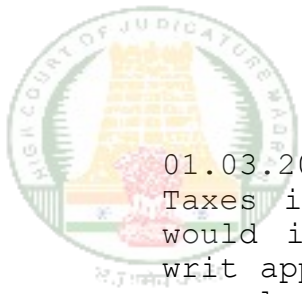
4) If there are vacancies out of the required reservations of 40% in the permanent cadre of A.C.T.O. for direct recruits, any appointment made either by transfer or by promotion cannot be utilized to fill up those vacancies. Such appointment being of a temporary character, whenever direct recruits are 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."

3. Contempt Petition No.263 of 2007 was filed in respect of the alleged wilful disobedience of the aforesaid order of the Supreme Court. While the Contempt Petition was pending, the State Government agreed to publish a fresh seniority list. Based on assurances by the State Government, the Contempt Petition was closed by order dated 04.03.2009. Thereafter, by superseding earlier lists, a provisional inter se seniority list of ACTO from 1968 to 2006 was published on 01.12.2008 and objections were invited in respect thereof. Upon considering the objections, the inter se seniority list was confirmed subject to certain modifications and annexed to Proceedings dated 04.05.2009 (Proc.No.P1/58439/2007). Upon challenge, this Court, by order dated 06.04.2011 in W.P. No.11618 of 2009 batch, rejected the challenge to the seniority list. Pursuant thereto, a seniority list of DCTO for the years 1982 to 2010 was drawn and communicated by Proceedings dated 18.08.2011 (Proc.No.P1/15245/2011). A list of DCTO/CTO fit for appointment as CTO/AC was prepared under G.O. (Ms.) No.69, Commercial taxes and Registration Department dated 04.06.2012 (G.O.Ms. No.69). Similarly, under G.O. (Ms.) No. 116, Commercial Taxes and Registration (E1) Department dated 24.08.2012 (G.O. Ms. No.116), the inter se seniority in the regular list of CTO/AC by direct recruitment and by recruitment by transfer for the years 1984 to 2010 was fixed and the list was communicated.



4. These developments triggered a second round of litigation, including appeals against the order dated 06.04.2011 in W.P. No.11618 of 2009 batch, wherein the Proceedings dated 04.05.2009; the Proceedings dated 18.08.2011; G.O. Ms. No.1, dated 04.01.2010; G.O. Ms. No.69; G.O. Ms. No.116, etc. were challenged. W.A. No.2280 of 2011 against W.P. No.11618 of 2009 was de-linked from this batch and by order dated 28.07.2016, the batch of about 59 writ petitions/writ appeals were disposed of. The said order referred to the order of the Hon'ble Supreme Court and reproduced the four principles set out supra in paragraph 4 thereof. After setting out the said four principles, the Division Bench of this Court disposed of the writ petitions/writ appeals with a direction to the State Government to initially wait for the pronouncement of orders in the de-linked W.A. No.2280 of 2011 and thereafter proceed to act in accordance with the aforesaid four principles or by beginning de novo in case the said de-linked writ appeal is allowed. W.A. No.2280 of 2011 related to the Proceedings dated 04.05.2009 whereby the inter se seniority list of Assistant Commercial Tax Officers was drawn and the appellants therein prayed for the inclusion, in that list, of all transferees appointed temporarily or permanently in accordance with General Rule 35 (aa) of the Tamil Nadu State and Subordinate Services Rules. In the said writ appeal, the State Government filed additional counter affidavits. In paragraph 11 of the additional counter affidavit dated 01.12.2015, the deficiencies in the inter se seniority list was admitted and this was cited as the reason for the formation of a High Level Committee. In both the counter affidavits, the State Government took the position that it had made regular appointments both to temporary and permanent posts, which together constitute the cadre strength for promotion purposes. Indeed, in the additional counter affidavit dated 01.03.2016, the Supreme Court's judgment dated 10.02.1999 was interpreted as merely giving precedence in seniority to permanent post holders and not as rendering the temporary posts irregular. In that context, in paragraph 20, the Division Bench of this Court by order dated 31.08.2016, once again, referred to the proceedings before the Hon'ble Supreme Court and the seniority list placed before the Hon'ble Supreme Court and concluded that the same pertains only to permanent posts and cannot be interfered with. On that basis, W.A. No.2280 of 2011 was dismissed. The present litigation, therefore, represents the third round.

5. Pursuant to the aforesaid orders of the Division Bench of this Court in the year 2016, it appears that a High Level Committee was constituted by the State Government. On the basis of the minutes of the meeting of the High Level Committee on 23.02.2018, it appears that measures were taken to revise the seniority list as per the additional counter affidavit dated



01.03.2016 of the Principal Secretary/Commissioner of Commercial Taxes in W.A. No.2280 of 2011. Apprehending that such revision would impact the seniority of the private Respondent, in each writ appeal, the three writ petitions giving rise to the present appeals were filed. By the impugned order, the learned single Judge disposed of the writ petitions by issuing certain directions in paragraph 38 of the order. In particular, the learned single Judge referred to paragraph 20 of the judgment of the Division Bench dated 31.08.2016 in W.A. No.2280 of 2011 to the effect that the settled seniority list placed before the Hon'ble Supreme Court should not be re-visited. In addition, in paragraph 38(c), it was held that the seniority list of those promoted would be reckoned from the date when the seat/post becomes vacant whereas the seniority of direct recruits would be reckoned from the date of entry into service. The State Government was directed to prepare the provisional seniority list in various posts under the said service for promotion to the next level by taking note of the judgments of the Division Bench of this Court dated 28.07.2016 and 31.08.2016. The present writ appeals are filed in these facts and circumstances.

6. We heard Mr.M.Ravi, the learned counsel for the Appellants; Mr.V.Prakash, the learned senior counsel for the first Respondent in all writ appeals; Mr.P.H.Aravindh Pandian, the learned Additional Advocate General for the Respondents 2 to 5; and Mr.S.Sivakumar, the learned counsel for the impleading parties.

7.The first submission of Mr.Ravi was that the Hon'ble Supreme Court, in Civil Appeal No.1454 of 1987, by order dated 10.02.1999, affirmed the four principles that were adopted and reiterated by the Division Bench of this Court. Similarly, by order dated 28.07.2016, the Division Bench of this Court, in a batch of writ petitions/writ appeals, directed the State Government to proceed with the preparation of the seniority lists by applying the four principles that were adopted by the Division Bench of this Court and affirmed by the Hon'ble Supreme Court. However, the State Government was advised to await the order in one writ appeal which was de-linked from this batch. The reason for de-linking the said writ appeal was that the said writ appeal, namely, W.A. No.2280 of 2011, was filed by the promotees/transferees from the Ministerial Service, whose dispute was with the Group II direct recruits, such as the private Respondent in each writ appeal. This writ appeal related to the Proceedings dated 04.05.2009 whereby the inter se seniority list of ACTO's and the relief prayed for was to re-draw the seniority list by including in that list all transferees appointed temporarily or permanently in accordance with General Rule 35(aa) of the Tamil Nadu State and Subordinate Services Rules. According to Mr.Ravi, this writ appeal did not



concern the Appellants herein and, in fact, they were not parties to the said writ appeal. However, insofar as temporary posts would be reckoned if the writ appeal was allowed, the outcome of the said writ appeal would have a bearing on the preparation of the seniority list in accordance with the four principles laid down by the Hon'ble Supreme Court. In that context, the Division Bench of this Court, by order dated 28.07.2016, directed the State Government to await the outcome of W.A. No.2280 of 2011. Once W.A. No.2280 of 2011 was dismissed by order dated 31.08.2019, there was no impediment whatsoever for the State Government to proceed to prepare the seniority list and make necessary changes thereto. Indeed, this process was commenced by the State Government, including by forming the High Power Committee.

8. In these circumstances, Mr.Ravi contended that the private Respondent, in each writ appeal, filed writ petitions for a writ of certiorarified mandamus to prevent the State Government from acting in furtherance of the order dated 28.07.2016 in the batch of 59 cases. According to Mr.Ravi, these writ petitions were therefore liable to be rejected as frivolous cases which were meant to prevent the State Government from preparing the provisional list. In addition, Mr.Ravi contended that the writ petitions were premature inasmuch as the seniority list had not yet been prepared by the State Government. Unfortunately, the private Respondent successfully conveyed the erroneous impression that the Hon'ble Supreme Court and the Division Bench of this Court had settled the seniority list conclusively and that therefore the preparation of the provisional list should be interfered with. On that basis, the learned single Judge issued the erroneous directions in paragraph 38 of the impugned order. In fact, Mr.Ravi's contention is that the judgment dated 31.08.2016 in W.A. No.2280 of 2011 is completely irrelevant to this case. As regards the judgment dated 28.07.2016 in the batch of writ petitions/writ appeals, he also pointed out that it is, in effect, a consent order and, therefore, the writ petitions were not sustainable.

9. He also pointed out that in the writ petitions, the State Government supported the case of the Appellants. He relied upon paragraphs 17(B)(i & ii) and 19 of the counter affidavit of the State Government in support of this contention and pointed out that the State Government agreed unequivocally that the inter se seniority list in the entry level cadre of the post of AC in the State Services for the years 1984 - 2010 had been drawn and published in GO.Ms.No.116 dated 24.08.2012 without adhering to the four principles that were affirmed by the Hon'ble Supreme Court and also without conforming to Rule 35(aa). On that basis, the State Government stated that it proposes to rectify the seniority list so as to set right the anomaly in the earlier



Government orders. He also pointed out as to how the State Government had taken the categorical stand that the preparation of the seniority list was left open in the order dated 31.08.2016, wherein only the request of the transferees to consider temporary posts also while reckoning inter se seniority was rejected, whereas the seniority lists were required to be prepared in terms of the earlier order dated 28.07.2016 in the batch of cases. Unfortunately, the State Government has thereafter not filed an appeal against the order of the learned single Judge wherein, at paragraph 38, directions that are adverse to the decision of the State Government, as stated in the counter affidavit, were issued.

10. Mr.Arvind Pandian, the learned Additional Advocate General, invited the attention of the Court to paragraph 21 of the counter affidavit of the State and pointed out that the State Government does not want to take sides in the dispute between the two groups of employees. Instead, the State Government would like to maintain neutrality as reflected in the averments at paragraph 21 of the counter affidavit. Accordingly, Mr. Arvind Pandian submitted that the State Government would abide by the decision of the Court in this matter.

11. Mr.V.Prakash, the learned senior counsel for the contesting private Respondent, in each writ appeal, provided a historical overview of recruitments in the Commercial Tax Department. In particular, he pointed out that, originally, 40% of the posts were reserved for direct recruitment and that this was subsequently reduced to 33.33%, whereas 66.66% was reserved for recruitment by transfer. The first round of litigation was initiated by Group-II direct recruits such as the private Respondents herein. These persons succeeded before the Division Bench of this Court and the Division Bench adopted the four principles referred to supra. When the judgment of the Division Bench was carried in appeal, the Hon'ble Supreme Court affirmed the judgment of the Division Bench and reiterated the four principles. The State Government took further action by issuing certain Government orders. These Government orders were challenged in the batch of writ petitions/writ appeals which came to be disposed of on 28.07.2016. In order to substantiate this contention, Mr.Prakash referred to the relief prayed for in the writ petitions. In particular, he invited the attention of the Court to the relief prayed for in W.P. No.18264 of 2013, wherein the Petitioner therein had prayed that G.O.Ms.No116 dated 24.08.2012 should be quashed. However, he pointed out that the Division Bench of this Court rejected the prayer to quash the said Government orders. As a result, the said Government Orders were upheld by the Division Bench. In addition, the Division Bench held that the process of drawing-up



the seniority list would depend on the outcome of W.A. No.2280 of 2011. After recording that the outcome would be linked to the judgment in W.A. No.2280 of 2011, the said writ appeal was de-linked. By the subsequent judgment dated 31.08.2016, W.A. No.2280 of 2011 was dismissed. While dismissing W.A. No.2280 of 2011, in paragraph 20, the Division Bench categorically held that the seniority list had already been placed before the Hon'ble Supreme Court and agreed to by all the parties concerned. Therefore, such list cannot be deviated from.

12. In spite of the said judgment of the Division Bench of this Court, Mr.Prakash submitted that the State Government took measures to constitute a High Power Committee to revise the seniority list in a manner contrary to the judgment of the Hon'ble Supreme Court and that of the Division Bench of this Court. Therefore, the private Respondents herein were constrained to file three writ petitions. In the said writ petitions, the learned single Judge concurred with the contentions of the Respondents and concluded at paragraph 38 of the judgment that the seniority list placed before the Hon'ble Supreme Court should not be deviated from. He also pointed out that a review petition was filed against the judgment dated 31.08.2016 in W.A. No.2280 of 2011 and the said review petition was dismissed on 26.07.2019 at the SR stage. Therefore, he submitted that the writ petitions were not frivolous and the private Respondents herein were constrained to file the same because the State Government endeavoured to deviate from the seniority list that had been prepared and placed before the Hon'ble Supreme Court.

13. By way of rejoinder, Mr.Ravi contended that W.A. No.2280 of 2011 dealt with a discrete issue which did not concern the Appellants herein. Indeed, the Appellants herein were not parties to the said writ appeal. Therefore, the judgment dated 31.08.2016 is irrelevant for the present purposes. By inviting the attention of the Court to the judgment dated 28.07.2016, Mr.Ravi emphasized that the said judgment did not restrain the State Government from proceeding to prepare a seniority list in accordance with the four principles adopted by the Division Bench of this Court in the year 1985 and affirmed by the Hon'ble Supreme Court on 10.02.1999. For this purpose, he referred to paragraph 8 of the said judgment. He also pointed out that the State Government is entitled to eliminate anomalies and revise the seniority list both under the Tamil Nadu State and Subordinate Services Rules and the Tamil Nadu Government Servants (Conditions of Service) Act 2016. This process should not have been interfered with by the learned single Judge. As regards the Government Orders that were challenged in the batch of writ appeals that were disposed of on 28.07.2016, he submitted that the Government Orders were neither



upheld nor quashed. For these reasons, he submitted that the order of the learned single Judge is liable to be set aside.

14. We considered the submissions of the learned counsel/senior counsel for the respective parties and examined the materials on record.

15. As a first step in the discussion and analysis and in order to put matters in perspective, it is necessary to appreciate the context in which the Division Bench of this Court, in W.P. No.12786 of 1985, adopted and reiterated the four principles from an earlier judgment dated 16.09.1975 in W.P. Nos. 2016 and 2017 of 1972, which were affirmed, thereafter, by the Supreme Court. This is evident from the following excerpt from paragraph 11 of the judgment in W.P. No.12786 of 1985:

".... The grievance of the direct recruit petitioners is that the transferee candidates promoted temporarily as A.C.T.O.'s had been placed above them in the seniority list arbitrarily and contrary to rules. They also challenge the select lists of D.C.T.O.'s for the years 1982 to 1985 consequently."

Upon considering this challenge, the Division Bench concluded as follows in paragraphs 15,16, 23 and 24:

"15.Necessarily, therefore, these officers who are temporarily promoted by transfer will have to step down as and when 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 even 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.O.'s even though at a later point of time. We hold that in the light of the above conclusion, the following principle emerges.



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16. If there are vacancies out of the required reservation of 40% in the permanent cadre of A.C.T.O.'s 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 were taken out of the 40% posts reserved for direct recruitment.

23. In the light of the discussion, the impugned seniority list of A.C.T.O.'s has to be revised. It is seen from 3.Nos. 129 to 519, the placements are given to transferee A.C.T.O.'s belonging to either 50% reserved category or 10% reserved category. It follows from the principles now formulated that the A.C.T.O.'s bearing S.Nos. 129 to 519 is the impugned seniority list can be placed above the petitioners 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 petitioners 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 dated 17.9.1985 as well as the 4 Select Lists of D.C.T.O.'s 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."

16. As stated earlier, the matter was carried in appeal to the Supreme Court by the State Government not with regard to the four principles but as regards temporary posts. The Supreme Court rejected the State Government's contention and held as under in paragraphs 8 and 9 of the judgment dated 10.02.1999:



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"8. We cannot act upon the tabular statement and proceed on the footing that the cadre consisted of both temporary and permanent posts. It should also be noted that the appellant has not produced even one order of appointment to temporary post by transfer from other service.

9. In the light of the discussion, the impugned seniority list of A.C.T.O.'s has to be revised. It is seen from S.Nos. 129 to 519, the placements are given to transferee A.C.T.O.'s bearing S.Nos. 129 to 519, the placements are given to A.C.T.O.'s belonging to either 50% reserved category. It follows from the principles now formulated that the A.C.T.O.'s 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 held 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."

17. Against this backdrop, the first question that arises for consideration is whether the Division Bench of this Court by order dated 28.07.2016 in the batch of about 59 cases restrained the State Government from revising the seniority lists or imposed fetters in that regard. In order to answer this question, it is necessary to examine the order of the Division Bench closely. The said order is, therefore, set out, in entirety, 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.



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2. We have heard the learned counsels for the parties over a number of days. Suffice to say that one set of parties represented in W.A. No.2280 of 2011 as appellant and respondents have a slightly different case. That we are saying so, as it is their submission that though the battle may have been fought right till the Supreme Court, the war does not end with that. This is so as in terms of their submission certain crucial rules were never brought to the notice of the Court or not considered correctly in their perspective. In that matter, we have reserved judgment today. Needless to say that if the appellant in that appeal succeeded, the whole process would have to be nullified and to begin de novo, an aspect accepted by all the learned counsel for parties.

3. Fortunately, on the principles to be applied, there is no disagreement vis-a-vis the other matters now. It is in these circumstances it is agreed that a consent order may be recorded as to how the State Government would proceed qua the rights of other parties, but subject to the fate of the appeal referred to aforesaid.

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



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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 upto 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, dependent 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



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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 us 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 novo 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.

9. Writ appeals and writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions stand closed."

Upon perusal of the aforesaid judgment, it is clear that the Division Bench set out the four principles that were adopted by the Division Bench of this Court in W.P. 12786 of 1975 and affirmed by the Hon'ble Supreme Court in paragraph 4 thereof. In addition, in paragraph 5, the Division Bench of this Court referred to and extracted an earlier order based on the statement of the learned Advocate General. The said extract refers to the statement of the learned Advocate General that the seniority list that was placed before the Hon'ble Supreme Court in the contempt proceedings would operate only up to the year 2010 and would change thereafter on account of the increase in cadre strength both in the year 2010 and 2013. It also records the fact that direct recruits and promotees disagree as to whether the seniority list meets the parameters. After recording the aforesaid, in paragraph 8, the Division Bench directed the State Government to await the outcome of W.A. No.2280 of 2011 and proceed in terms of the four principles set out in paragraph 4. Therefore, it is clear that the Division Bench did not impose an embargo on the State Government so as to prevent the preparation of the seniority list but made it clear that the preparation of the seniority lists should be in accordance with the four principles. The reason for directing the State Government to await the outcome of the judgment in W.A. No.2280 of 2011 is stated in paragraph 2 of the above judgment and will be clear when the nature of the said dispute is examined.

18. The prayer in W.A. No.2280 of 2011 was to issue a certiorarified mandamus to quash the Proceedings dated 04.05.2009, whereby the inter se seniority list of ACTO for the years 1968 to 2006 was communicated, and direct the Respondents



therein to prepare a fresh inter se seniority list of ACTO strictly in accordance with Rule 35(aa) of the General Rules of the Tamil Nadu State and Subordinate Service by including, in that list, transferees appointed permanently or temporarily to either permanent or temporary posts of ACTO in their respective orders of appointment without any consideration as to availability of permanent vacancies for their confirmation in service. From the above, it is clear that it is a resurrection of the temporary posts issue and pertains to re-drawing the seniority list for the years 1968 to 2006 by including persons who were appointed to temporary posts. By additional counter affidavit dated 01.03.2016 in W.A. No.2280 of 2011, the State Government attempted to interpret the Supreme Court judgment dated 10.02.1999 by stating that it merely gave precedence to those in permanent posts and did not render the temporary posts as irregular. After considering the rival contentions, the Court set out the findings in paragraphs 17-20 by holding that the Supreme Court only recognized permanent and not temporary posts. For the present purposes, it is sufficient to set out paragraphs 19 and 20 of the judgment dated 31.08.2016, which are as under:

"19. It is seen from the records that the Hon'ble Supreme Court took note of the tabular statement placed before this Court showing 40% of the substantive vacancies to be filled up by way of direct recruitment and out of the remaining 60%, 50% of the substantive vacancies to be filled up by confirmation of persons persons recruited by transfer from among the Assistants and Gujarathi knowing Assistants employed in the Commercial Taxes Department and 10% of the substantive vacancies by transfer from among the Assistants and Superintendents working in the Sales Tax Appellate Tribunal, Assistants and Superintendents working in the Commercial Taxes Branch of the Board of Revenue and Assistants who have dealt with or dealing with the subject 'Commercial Taxes' in the Commercial Taxes and Religious Endowments Department of the Secretariat. The Hon'ble Supreme Court therefore took note of the fact, that in the tabular statement, reference was expressly made to "substantive vacancies" which indicates that the reference was to apply to permanent posts which are substantive vacancies. It was also taken note that no material was placed to show that cadre comprised both permanent and temporary posts. Therefore, the Hon'ble Supreme Court, by judgment dated 10.02.1999, confirmed the judgment passed by this Court in W.P. No.12786 of 1985 dated



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19.06.1986, holding that as per the chart placed from the year 1972 to 1997, there were only 271 permanent posts as against 422 posts which were shown as temporary. In the year 1997, 1080 posts were shown as temporary out of the total 1351 posts, and that no other figures were given for the years 1973 and 1974. The Hon'ble Supreme Court also took note of the fact that no reference was made in the tabular statement, to any G.O. or Rule which fixed the cadre strength shown in the tabular statement. Therefore, it was concluded that if there was increase in the cadre strength from year to year, as contended, there should have been different Government Orders fixing such cadre strength. The Hon'ble Supreme Court accepted the contention that temporary appointments will not by themselves increase the cadre strength and did not rely upon the tabular statement produced by the State of Tamil Nadu. Consequently, the Hon'ble Supreme Court upheld the judgment passed by this Court as stated supra, and the Special Leave Petition filed on behalf of one individual person and some other Special Leave Petitions were also ordered to be dismissed. Thereafter, vide order dated 20.10.2008 in Contempt Petition (C) No.263 of 2007 in Civil Appeal No.1454 of 1987, the Hon'ble Supreme Court directed the State to publish seniority list in terms of the directions given. The Hon'ble Supreme Court did not entertain the intervening application moved by the employees and permitted them to raise objection to the revised seniority list and to have recourse of such remedy available to them in the event of rejection of their representation. Pursuant to the judgment of the Hon'ble Supreme Court 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, the impugned order under challenge in W.P. No. 11618 of 2009, has been passed.

20. It is apparent that the promotion as well as upgradation 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

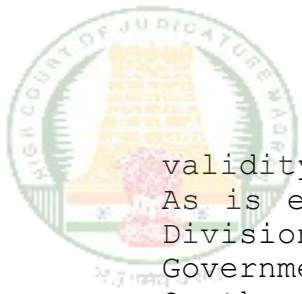


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considered. Further, the seniority list placed before the Hon'ble Supreme Court has been agreed to by all the parties concerned, and hence there cannot be any deviation with regard to the promotions subsequently claimed by them. With regard to the 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 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."

From the above extracts, when viewed in context, it is evident that the conclusions in paragraph 20 of the said Division Bench judgment only pertain to the rejection of an appeal seeking revision of the seniority list of ACTO for the years 1968 to 2006 under Proceedings dated 04.05.2009 by taking into consideration temporary posts also. It is also clear that if this appeal had been allowed, it would have entailed not merely the application of the four principles for the preparation of the seniority lists but a fundamental change because it would have become necessary to consider temporary posts also.

19. We are unable to accept the contention of Mr. V.Prakash that the Division Bench by order dated 28.07.2016 upheld the



validity of the Government orders that were impugned therein. As is evident from paragraph 5 and 8 of the said judgment, the Division Bench did not proceed on the basis that the said Government Orders are valid and therefore should not be revised. On the contrary, the extract of the earlier order in paragraph 5 captures the fact that direct recruits and promotees hold opposite views and are ranged against each other as regards the disputed seniority lists. Therefore, the State Government was directed to proceed with the preparation of the seniority list by applying all four principles that were adopted by the Division Bench of this Court and affirmed by the Hon'ble Supreme Court by order dated 10.02.1999.

20. Thus, when viewed in totality, we find that the State Government is entitled to prepare the seniority lists by adhering to the applicable general and special rules and the four principles that were formulated by this Court and affirmed by the Supreme Court, including by making revisions in consonance therewith. However, as regards temporary posts, the door was shut firmly by the Supreme Court and as reiterated by the Division Bench in the judgment in W.A. No.2280 of 2011, no revision can be made on that score without the intervention of the Supreme Court. As stated earlier, at paragraph 5 of the additional counter affidavit dated 01.03.2016 in W.A. No.2280 of 2011, an attempt was made to interpret the above judgment of the Supreme Court such that temporary posts were not rendered irregular. We also note that the High Power Committee, at its meeting on 23.02.2018, had resolved to revise the seniority list as per the additional counter affidavit filed in W.A. No.2280 of 2016. While this may be done in accordance with the four principles and applicable rules, it certainly cannot be done as regards temporary posts. Subject to the above caveat, in our view, the writ petitions giving rise to the writ appeal were premature and should have been rejected for that reason. Instead, the learned single Judge interfered with the preparation of the provisional seniority list in spite of being conscious of the fact that the writ petitions should not be entertained on the basis of apprehensions. Therefore, we conclude that the directions in paragraph 38 of the judgment of the learned single Judge cannot be sustained. Consequently, the order of the learned single Judge is set aside. It is open to the State Government to prepare the provisional seniority lists by reckoning only permanent posts in accordance with applicable general and special rules and the four principles adopted by the Division Bench of this Court and affirmed by the Hon'ble Supreme Court in its order dated 10.02.1999 in C.A. No.1454 of 1987. Once the provisional seniority lists are prepared and published, it will be open to the private parties herein to object to and challenge the same, if they are aggrieved in any manner.



21. In the result, the writ appeals are allowed subject to the observations made herein. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

RRG

To

1. The Principal Secretary,
The State of Tamil Nadu,
Commercial Tax and Registration Department,
Fort St. George, Secretariat,
Chennai - 609 009.
2. The Principal Secretary/
Commissioner of Commercial Taxes,
O/o. The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.
3. The Additional Chief Secretary
(Chairman of High Level Committee constituted under
G.O.(D)Ms.No.132, CT & Regn. (E1) Dept. dt.31.03.2015
Finance Department, Fort St. George.
Secretariat, Chennai - 600 009.
4. The Secretary
(Member in the High Level Committee constituted under
G.O.(D)Ms.No.132, CT & Regn. (E1) Dept. dt.31.03.2015
Department of Personnel and Administrative Department,
Fort St. George. Secretariat,
Chennai - 600 009.

W.A.Nos.626 to 628 of 2020

SRA(CO)
CS/01/12/2020