

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.12.2020

Pronounced on : 23.12.2020

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

WP Nos.14853 & 14869 of 2019 WP MD No.8706 of 2019; WP No.3760 of 2020, WP MD No.2054 of 2020 and WP(MD) No.1751 of 2020 WP (MD) No.11557 of 2019, 12395 of 2019, WP No.17505 of 2020, WP No.17652 of 2020, WP (MD) No.2239 of 2020 and WMP MD (No) 1477, 3771, 4427, 4490, 4620, 8817, 9246, 9247, 6771/2019, 4442/2020 & 1891/2020, 9248, 9263 of 2020 WMP No.11919 of 2020, 13460, 13461, 13462 of 2019 WMP No.14665 of 2020; WMP Nos.14856/2019, W.P(MD) 15990/2019, 14846, 14857, 14859 of 2019 WMP Nos.19590, 19591, 21687, 21688, 21689, 21894, 21895, 21896 of 2020, WMP No.24500 of 2020, W.M.P. No. 11531/2020

1 THE REGISTRATION DEPARTMENT SC/ST & MBC
EMPLOYEES GENERAL WELFARE SANGAM
REP BY ITS GENERAL SECRETARY
NO.18 LUZ CHURCH ROAD PATTINAPAKKAM
CHENNAI 28

...PETITIONER in WP No.14853 of 2019

1. A.JAISANKAR

2. S.THIRUMARAN

3. S.ANBZHAGAN

4. L.SHANTHA KUMARI

5. P.ARULMURUGAN

... PETITIONER in WP No.14869 of 2019

1 T.V.RAMESH

2 P. NALLASIVAN

3 M. SANKARANARAYANAN

4 S. SELVAPRASAD

5 M. RAMACHANDRAN

...PETITIONER's in WP(MD) No. 8706/2019

1 S.GOPALAKRISHNAN

...PETITIONER's in WP(MD) No. 3760/2020

1 S. SIVARAM
2 R.P. KAYALSELVI
3 L. MUTHUPANDIAN
4 M. THIRUNAVUKKARASU
5 A. DHANALAKSHMI ...PETITIONER's in WP(MD) No. 2054/2020
1 P. ATHIRAMALINGAM ... PETITIONER's in WP(MD) No. 1751/2020
1 S. LOGANATHAN ...PETITIONER's in WP(MD) No. 11557/2019
1 B. BOOMINATHAN
2 S. BALAMURUGAN
3 V. MAHENDRAN
4 T. SATHISH KUMAR
5 N. RAMESH BABU
6 I.T. JEGADEESAN
7 SIVA RAMAIAH
8 R. ANANTHAN
9 N. KATHIRESAN
10 N. THIRUGNANAM
11 S. MANIKANDAN
12 M. BASKARAN
13 V. BALAMURUGAN
14 R. SELVAMANI
15 ASP SEENI MOHAIDEEN
16 C. SANKARANARAYANAN
17 M. PATTAMUTHU @ RAMESH

18 S. PARAMARTHALINGAM

19 L. MAHARAJAN

20 S. SARAVANAN

21 S. VENKATRAMAN

22 L. RENGARAJAN

23 C. KALA

24 A. ANANTHARANI

25 R. KRISHNAMURTHY

26 R. SUMATHI

27 M. AKBAR ALI

28 S. GOPIDOSS

29 R. SHANTHI

30 P.S. HAJA MOHAIDEEN

...PETITIONER's in WP(MD) No. 12395/2019

1 N.ARULMOZHI

2 D.MANI

3 N.BALASUBRAMANIAN

4 G.JAYAKUMAR

5 PANDIYARAJAN

... PETITIONER in WP No.17505 of 2020

1 M.RASAPPAN

2 K.C.SADAGOPAN

3 G.TAMILSELVI

4 V.SWAMINATHAN

5 E.A.MARIYARAJ

6 T.POONGAVANAM

7 V.DHASARAM
8 P.LATHA RANI
9 A.JAYACHANDRAN
10 M.MANIVANNAN
11 T.V.RAVIKUMAR ... PETITIONER in WP No.17652 of 2020
1 K. SARAVANA MARIAPPAN ...PETITIONER's in WP(MD) No. 2239/2020
Vs.
1 STATE OF TAMIL NADU
REP BY ITS SECRETARY TO GOVERNMENT
BACKWARD CLASSES AND MOST BACKWARD CLASSES
WELFARE DEPARTMENT FORT ST. GEORGE CHENNAI 9
2 THE SECRETARY TO GOVERNMENT
COMMERCIAL TAXES AND REGISTRATION DEPARTMENT
FORT ST. GEORGE CHENNAI 9
3 THE INSPECTOR GENERAL OF REGISTRATION
CHENNAI 28
4 D.T.BOOPATHY
DISTRICT REGISTRAR / CHIT ARBITRATOR
COIMBATORE
5 V.PRAKASH
DISTRICT REGISTRAR (AUDIT) ERODE
6 D.LINGESWARAN
SUB REGISTRAR IN THE CADRE OF DISTRICT REGISTRAR
URAIYUR TRICHY
7 R.KALPANA
DISTRICT REGISTRAR (AUDIT) TINDIVANAM
8 C.SHANMUGAM
DISTRICT REGISTRAR (AUDIT) DHARMAPURI
9 A.C.MALAR
DISTRICT REGISTRAR (AUDIT) VILLUPURAM

- 10 R.VALARMATHI
DISTRICT REGISTRAR (ADMIN) DHARMAPURI
...Respondents in W.P. No. 14853/2019, 14869/2019.
- 1 THE STATE OF TAMIL NADU
REP.BY ITS SECRETARY TO GOVERNMENT
REVENUE AND DISASTER MANAGEMENT
DEPTMENT OF SERVICE WING
(SER.3(2)) SECTION FORT ST.GEORGE
CHENNAI 600 009 ...R1 in W.P(MD)No. 8706/2019 and
W.P(MD) No. 3760/2020.
- 2 THE ADDITIONAL CHIEF SECRETARY/
COMMISSIONER OF REVENUE ADMINISTRATION
CHEPAUK CHENBNAI 600 005 ...R2 in W.P(MD) No. 8706/2019,
W.P(MD) No. 3760/2020
- 3 THE DISTRICT COLLECTOR
THOOTHUKUDI DISTRICT THOOTHUKUDI
- 4 ATHIRAMALINGAM
(R4 impleaded vide Court order dated 05.08.2019 in
W.P.M.P(MD) No. 9988/2019)
- 5 C. SEKAR
- 6 R.P. KAYALSELVI
- 7 T. PANCHAPAKESAN
- 8 T. SHUMATHI
- 9 M. THIRUNAVUKARASU
(RR5 to 9 impleaded vide Court order dated 05.08.2019 in WPMP
(MD) 9949/2019) ...RR3 to 9 in WP(MD) No. 8706/2019.
3. THE DISTRICT COLLECTOR
MADURAI DISTRICT MADURAI
...R3 in W.P.(MD)No. 3760/2020
- 1 THE SECRETARY TO GOVERNMENT
DEPARTMENT OF REVENUE AND DISASTER MANAGEMENT
SECRETARIAT FORT. ST. GEORGE CHENNAI 9
...R1 in W.P(MD) 2054/2020, 1751/2020
- 2 THE PRINCIPAL SECRETARY/
COMMISSIONER OF REVENUE ADMINISTRATION
O/O. THE COMMISISONER OF REVENUE ADMINISTRATION
EZHILAGAM CHEPAUK CHENNAI 5
...R2 in WP(MD) No. 2054, 1751/2020

- 3 BANUMATHY
- 4 T. BAGYALAKSHMI
- 5 S. JOTHI
- 6 K. VIJAYAN
(RR3 to 6 impleaded vide order dated 10.09.2020 made in
W.M.P. No. 14660/2020 in WP(MD) 2054/2020 by VPNJ)
- 7 DR.R. SUKUMAR
- 8 S. KANDASAMY
- 9 C. MUTHUKUMARAN
- 10 R. ALAGUMEENA
(RR7 to 10 impleaded vide order dated 23.12.2020 made in
W.M.P. 24500/2020 in WP(MD) No. 2054/2020 by NAVJ) in W.P.
(MD)No. 2054/2020)
3. THE DISTRICT COLLECTOR
O/O. THE DISTRICT COLLECTOR
TUTICORIN
- 4 R. APPANARAJ
- 5 N. JAYALAKSHMI
- 6 R. MUTHUKUMARAN
- 7 M. SELVAKUMAR
(RR4 to 7 impleaded vide order dated 20.08.2020 made in WP(MD)
No. 1751/2020 by VPNJ)
1. THE GOVERNMENT OF TAMIL NADU
REP BY ITS SECRETARY
BACKWARD CLASSES AND MOST BACKWARD CLASSES WELFARE (BCC)
DEPARTMENT, SECRETARIAT CHENNAI 9.
- 2 THE PRINCIPAL SECRETARY TO GOVERNMENT
COMMERCIAL TAX AND REGISTRATION (K) DEPARTMENT
SECRETARIAT CHENNAI 9.
- 3 THE INSPECTOR GENERAL OF REGISTRATION
SANTHOME HIGH ROAD
CHENNAI 28.

4 THE REGISTRATION DEPARTMENT SC/ST & MBC
EMPLOYEES GENERAL WELFARE SANGAM
REP BY ITS GENERAL SECRETARY
No.18 LUZ CHURCH ROAD
PATTINAMPAKKAM CHENNAI 28.

5 S. ARULKUMAR

6 T. SELVAPERUMAL

7 S. SUGUMARAN

8 G.K. SENTHILKUMARAN

9 R. GUNASEKARAN

10 M. RAMAMOORTHY

11 P. MURUGESAN

12 A. KARUPPASAMY

13 R. RAJESHKANNAN

14 L. UKKIRAPANDI

15 T. UMADEVI

16 M. JEYAN

17 M. SHANTHI

18 R. PAUL PANDI

19 S. SURESH KUMAR

20 G. RAMACHANDRAN

21 G. AMUDHA

22 M. MUTHUMURUGESAN

(R4 is impleaded vide Court order dated 23.07.2019 in W.M.P (MD) 9848/2019)

(RR5 to 11 are impleaded vide Court order dated 23.07.2019 in W.M.P (MD) No. 9860/2019)

((RR12 to 22 are impleaded vide Court order dated 23.07.2019 in W.M.P(MD) No. 10349/2013)

...Respondents in WP(MD) 11557/2019

1. STATE OF TAMIL NADU
REPRESENTED BY SECRETARY TO GOVERNMENT
COMMERCIAL TAXES AND REGISTRATION DEPARTMENT
FORT. ST. GEORGE
CHENNAI 600 009.
- 2 THE INSPECTOR GENERAL OF REGISTRATION
CHENNAI 600 028.
..RR1 & 2 in WP(MD) No. 17505, 17562 & 2239/2020.
- 3 REGISTRATION DEPARTMENT SC/ST
AND M.B.C. EMPLOYEES GENERAL WELFARE SANGAM
REPRESENTED BY ITS GENERAL SECRETARY
NO.18 LUZ CHURCH ROAD
PATTINAMPAKKAM CHENNAI 28.
...R3 in WP(MD) 17505 & 17652/2020
- 1 THE GOVERNMENT OF TAMIL NADU
REP BY ITS SECRETARY
BACKWARD CLASSES AND MOST
BACKWARD CLASSES WELFARE (BCC)
DEPARTMENT, SECRETARIAT
CHENNAI 600 009.
- 2 THE PRINCIPAL SECRETARY TO GOVERNMENT
COMMERCIAL TAXES AND REGISTRATION (K) DEPARTMENT
SECRETARIAT CHENNAI 600 009.
- 3 INSPECTOR GENERAL OF REGISTRATION
SANTHOME HIGH ROAD
CHENNAI 600 028.
- 4 A. KARUPPASAMY
- 5 R. RAJASHKANNAN
- 6 L. UKKIRAPANDI S/O. LOGANATHAN
- 7 T. UMADEVI
- 8 M. JEYAM
- 9 M. SHANTHI

10 R. PAUL PANDI

11 S. SURESH KUMAR

12 G. RAMACHANDRAN

13 G. AMUDHA

14 M. MUTHUMURUGAN

(R4 to R14 are impleaded vide order dated 06.08.2019 made in WMP (MD) No. 10237/2018 by DKKJ)

15 THE REGISTRATION DEPARTMENT SC/ST & MBC
EMPLOYEES GENERAL WELFARE SANGAM
REP BY ITS GENERAL SECRETARY
NO. 18 LUZ CHURCH ROAD
PATTINAMPAKKAM CHENNAI 600 028

(R15 impleaded vide order dated 06.08.2019 made in WMP(MD) No. 11101/2019 by DKKJ) ...Respondents in W.P(MD) 12395/2019

Prayer in WP No.14853 & 14869 of 2019 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned G.O.Ms.No.25, dated 12.02.2019 and G.O.(Rt) No.72 dated 12.02.2019 issued by the Commercial Taxes and Registration (H) Department / 2nd respondent herein quash the same and consequently forbear the respondents 2 and 3 from making any further promotion to the post of District Registrars without implementing or revising, re-drawing and re-fixing the panel of the sub-registrars, grade II from the year 1997 - 1998 to the till date in accordance with the Rule 5 of Special Rules of Tamil Nadu Registrar Subordinate Service Rules i.e following the Rule of Reservation and as per the judgement of the Hon'ble Apex Court of India delivered in Civil Appeal Nos.9334 to 9336 of 2018 dated 11.09.2018 within the time frame fixed by this Court.

W.P(MD) 8706/2019 & W.P(MD) 3760/2020:

Calling for the records of the 1st Respondent pertaining to G.O.Ms.No.87 Revenue and disaster Management Department, Services Wing (Ser. 3(2)) Section Department 06.03.2019 and quash the same in so far as the said G.O in para 4 & 4(b) respectively has directed the Additional Chief Secretary/Commissioner of Revenue Administration to take necessary action to get the temporary panel of Deputy Thasildar redrawn from the year 2004 to 2018 by providing reservation to the Backward Class and Most Backward Class/DNC Candidates along with schedule Caste and Schedule Tribe candidates as per rules and consequently issue a direction to the 1st Respondent to

implement the decision of the Hon'ble Supreme Court of India in Civil Appeal Nos. 9334/2018 etc dated 11.09.2018 with prospective effect from the date of the Judgment by drawing the temporary panel of Deputy Thasildar from the year 2018-2019 by providing reservation to the Backward Class and Most Backward Class/DNC candidates along with Schedule Caste and Schedule Tribe candidates for the post of Deputy Thasildar as per Rule 22 of the Tamil Nadu State and Subordinate Rules read with the Specific provisions of rule 6 of the Tamil Nadu Revenue Subordinate Service Rules.

W.P(MD) No. 2054/2020:

Writ of Mandamus directing the Respondents to implement the order passed by the 1st Respondent in G.O.Ms.No.87, Revenue and Disaster Management Department (Ser 3(2)) Section dated 06.03.2019 and the order passed by the 2nd Respondent in his letter No. Ser 3(3)/44668/2018 dated 28.09.2019 and Lr.No. Ser.3.42324/2013 dated 31.10.2019 in the light of order passed by the Hon'ble Supreme Court in Civil Appeal No. 9334/2018 dated 11.09.2018 and consequently forbearing the Respondents from in any way filing up the post of the post of Deputy Collector without revising the panel for the post of Thasildar as per the said Government order and the order of the Hon'ble Supreme Court.

W.P(MD) No. 1751/2020:

Writ of Mandamus directing the Respondents to implement the order passed by the 1st Respondent in G.O.Ms.No.87, Revenue and Disaster Management Department Service Wing (Ser 3(2)) Department dated 06.03.2019 and the order passed by the 2nd Respondent in his Lr.No.Ser.3(3)/44668/2018 dated 28.09.2019 and Lr.No. Ser.3.42324/2013 dated 31.10.2019 in the light of order passed by the Hon'ble Supreme Court in Civil Appeal No. 9334/2018 dated 11.09.2018 and consequently forbearing the Respondents from in any way effecting temporary promotions to the post of Deputy Thasildar in Tuticorin District Revenue unit under Tamil Nadu Revenue Subordinate Service Rule without implementation of the orders passed by the Respondents 1 & 2 and pass such other orders.

W.P(MD) No. 11557/2019:

To call for the records made in the impugned Lr (MS) No. 17 dated 30.01.2019 passed by the 2nd Respondent quash the same in so far as paragraphs 6 & 7 of the impugned letter is concerned and further direct the respondents to implement the order of the Hon'ble Supreme Court dated 11.09.2018 prospectively. (prayer amended) vide Court order dated 23.07.2019 in W.M.P(MD) 9924/2019.

Prayer in W.P(MD) No. 12395/2019:

Call for the records made in the impugned Letter (MSO No. 17 dated 30.01.2019 passed by the 2nd Respondent quash the same in so far as paragraphs 6 and 7 of the impugned letter is concerned and further direct the Respondents to implement the order of the Hon'ble Supreme Court dated 11.09.2018 prospectively.

(Prayer amended vide order dated 06.08.2019, made in WMP(MD) No. 9923/2019 in WP(MD) No. 12395/2019 by DKKJ)

W.P. No. 17505/2020:

Calling for the records relating to the Government Letter No. 17 dated 30.01.2019 issued by the First Respondent.

W.P. No.17652/2020:

Calling for the records relating to the Government Letter No. 17 dated 30.01.2019 issued by the First Respondent.

W.P(MD) No. 2239/2020:

Directing the Respondents to implement the order in letter (MS) No.17 dated 30.01.2019 and consequently to revise the panel to the post of Sub Registrar Grade II from the year 1997-1998 till date and consequently directing the Respondents to consider the promotion of the Petitioner as the Sub Registrar Grade II.

For Petitioners: Mr.N.L.Rajah
Senior Counsel
for Mr.K.Premkumar in
WP Nos.14853, 14869 of 2019
Mr.Veera Kathiravan
Senior Counsel
for M/s.Veera Associates
in WP (MD) Nos.
1751, 2054, 2239 of 2020
Mrs.Nalini Chidambaram
Senior Counsel for
Mrs.C.Uma and Mr.R.Vasudevan
in WP (MD) No.8706/2019 &
WP No.3760 of 2020
Mr.T.N.Rajagopalan
for Mr.M.V.Venkataseshan
in WP Nos.11557 & 12395 of 2019
Mr.M.Ravi
for WP Nos.17505 & 17652 of 2020

For Respondents: Mr.Vijay Narayan
Advocate General
Assisted by T.M.Pappiah

Special Government Pleader
for Registration Department
Mr.E.Balamurugan,
learned Special Government Pleader
for Revenue Department

COMMON ORDER

The issue involved in all these writ petitions are common and hence, all these writ petitions were taken up together, heard and disposed of through this common order.

2. The petitioners in these writ petitions broadly fall under two departments viz., the Revenue Department and the Registration Department. Insofar as the petitioners in WP MD No.8706 of 2019, WP No.3760 of 2020, WP MD No.2054 and 1751 of 2020, falling under the Revenue Department, one set of writ petitions challenges G.O. MS No. 87, Revenue and Disaster Management Department, Service Wing [Ser.3 (2)] Section dated 06.03.2019 insofar as the decision taken to redraw the panel with effect from 2004-2018 and the other set of writ petitions have been filed to implement the G.O. MS No. 87, Revenue and Disaster Management Department, Service Wing [Ser.3 (2)] Section dated 06.03.2019. Impleading petitions have also been filed in these writ petitions by similarly placed persons, seeking to either implement the Government order or opposing the same.

3. In a similar manner, Writ petitions in WP (MD) No.11557 of 2019, 12395 of 2019, WP No.17505 of 2020, WP No.17652 of 2020, WP No.15723 of 2020, WP (MD) No.2239 of 2020, WP Nos.14853 & 14869 of 2019, have been filed wherein, one set of petitioners are opposing the impugned Government letter dated 30.01.2019 insofar as the revision of panel with effect from 1997 to till date and the other set of writ petitions are seeking to implement the impugned Government letter no. (MS) 17, dated 30.01.2019. Even in these writ petitions, impleading petitions have been filed by similarly placed persons either opposing the impugned Government letter or seeking for implementation of the same.

4. This case has a small history. Originally, some of the employees belonging to the Revenue Department, Registration Department and the Commercial Taxes Department, approached the then Tamil Nadu Administrative Tribunal questioning the decision taken by the Government in applying reservation with regard to the appointments made by way of transfer on the ground that such appointments must be construed as a promotion and therefore, no rule of reservation ought to have been followed. The Tribunal took up all the applications in OA No. 9044 of 1997 etc. and

passed a common order on 22.10.2002. The Tribunal after a detailed analysis came to a conclusion that insofar as appointments for the posts of Assistant Commercial Tax Officer, Sub-Registrar Grade-II and Deputy Tahsildar are concerned appointments are done in these posts even by transfer of service and even though, it is called as appointment by transfer of service, it actually amounts to promotion in rank, status and also higher emoluments and therefore, appointment by transfer of service actually amounts to promotion and in case of promotion, the rule of reservation can never be applied. Accordingly, the Tribunal set aside the orders passed by the Government applying the rule of reservation for such appointments by transfer of service.

5. The above order became a subject matter of challenge before this Court in WP No. 11296 to 11296 of 2003. By a common order dated 28.02.2005, the Division bench of this Court dismissed all the writ petitions, by confirming the order passed by the Administrative Tribunal. A review came to be filed before the Division Bench and the same also came to be dismissed.

6. Thereafter, appeals were filed before the Hon'ble Supreme Court in Civil Appeal Nos.9334 of 2018 etc., and the Hon'ble Supreme Court by an order dated 11.09.2018 allowed the appeals by setting aside the order passed by the Division Bench of this Court, by holding that the appointments by transfer will not amount to promotion and hence, the rule of reservation will apply to such an appointment. The relevant portions in the judgement of the Hon'ble Supreme Court are extracted hereunder:

12. The view taken by the High Court that such appointment by transfer amounts to promotion being without any consideration of the provisions of the Rules, we are of the view that the High Courts has committed an error in overlooking the definition of the terms "Promotion" and "Transfer" as contained in the said Rules and in applying the Principles of general application that would be applicable to determine whether recruitment to a higher post is by way of promotion.

13. For the aforesaid reason, we are of the view that the order(s) of the High Court impugned in the appeal(s) would require to be interfered with which we accordingly do.

14. Consequently and in the light of the above, the order(s) of the High Court is set aside and the appeal(s) is allowed.

7. In pursuance to the law declared by the Hon'ble Supreme Court, the Government through the impugned G.O. MS No. 87, dated 06.03.2019 has initiated measures to redraw the temporary panel of Deputy Tahsildar from the year 2004-2018 by providing the rule of reservation to the Backward class and Most Backward class/DNC candidates along with Scheduled Caste and Scheduled Tribe candidates as per rules. This was the follow up step that was taken by the Government insofar as the revenue department is concerned. Insofar as the Registration Department is concerned, the Government through the impugned letter dated 30.01.2019 has initiated measures to revise the panels of Sub-Registrar Grade-II from the year 1997 to till date. By undertaking this exercise, the Government was taking steps to revisit all the promotions that have happened during the relevant period. The impugned Government order and the Government letter have been put to challenge by one set of petitioners and the other set of petitioners are seeking for implementation of the Government order and the Government letter.

8. Insofar as the writ petitions pertaining to the Revenue Department is concerned, Mrs. Nalini Chidambaram, learned Senior counsel lead the arguments opposing the impugned Government Order and Mr. Veera Kathiravan, learned Senior Counsel lead the arguments for the implementation of the Government order. Similarly, insofar as the Registration department is concerned, Mr. T.N. Rajagopalan, lead the arguments opposing the impugned Government letter supported by learned Advocates Mr. M. Ravi and T. Mohan and Mr. Veera Kathiravan, learned Senior counsel and Mr. N.L. Rajah, learned Senior counsel lead the arguments for the implementation of the Government letter. Mr. Vijay Narayan, learned Advocate General, appeared on behalf of the Government and the respective departments, justifying the impugned Government order and Government letter. The other counsels appearing in these writ petitions adopted the arguments depending upon the stand taken by them to oppose or implement the Government order and the Government letter, as the case may be.

9. The common grounds that were raised in the course of the arguments while opposing the impugned Government order and Government Letter are as follows :-

- The Government failed to take note of the fact that the judgement of the Hon'ble Supreme Court is silent with regard to the effect of the judgement and the same should have been implemented only with effect from the date of the judgement i.e., from 11.09.2018 and it should not have been given a retrospective effect.

- The impugned Government Order and the Government letter virtually reopens the settled seniority and promotions which have taken place and by redrawing the panel with retrospective effect, the vested rights of the petitioners and other similarly placed persons is taken away.
- It is a settled law that no rule or Government Order can be given a retrospective effect and thereby, resulting in taking away the vested rights and it has been consistently held by the Hon'ble Supreme Court that such a rule or Government Order is unsustainable in the eye of law. To substantiate this submission, the following judgements were relied upon.
 - a. [K.C.Arora and another Vs. State of Haryana and others] in 1984 3 SCC 281
 - b. [T.R.Kapur and others Vs. State of Haryana and others] in 1986 Supp SCC 584
 - c. [P.D.Aggarwal and others Vs. State of Uttar Pradesh and others] in 1987 3 SCC 622
 - d. [K.Narayanan and others Vs. State of Karnataka and others] in 1998 Supp 1 SCC 44
 - e. [Union of India and others Vs.Tushar Ranjan Mohanty and others] in 1994 5 SCC 450
 - f. [Chairman, Railway Board and others Vs. C.R.Rangadhamaiah and others] in 1997 6 SCC 623.
- The Government was taking inconsistent stand with regard to giving effect to the orders of the Court and the same is evident from the stand taken by the Government in a related case in A. Rajagopalan vs. The District Collector, which involved a dispute between the Direct Recruit Assistants and Promotees Graduate Assistants in the post of Deputy Tahsildar in the Revenue Department. When retrospective effect was sought to be given, the Government filed an affidavit before the Hon'ble Supreme Court that 313 Direct Recruit Assistants will be reverted if the earlier judgement is given a retrospective effect. The Hon'ble Supreme Court took that into consideration and held that the earlier judgement in Rathinasamy case will be given effect only prospectively. Even in the present

case, retrospective drawing of panels, will adversely affect the settled seniority and promotions of thousands of employees. But however, the Government in this case is hell-bent in implementing the judgement of the Hon'ble Supreme Court by giving it a retrospective effect.

- The Government ought to have collected data like it did in A. Rajagopalan case and should have informed the Hon'ble Supreme Court the number of persons who will be affected if retrospective effect is given for implementing the order of the Hon'ble Supreme Court and necessary clarification must have been sought for from the Hon'ble Supreme Court. The Government cannot take two different stands on identical issues, which was decided almost contemporaneously within a span of 6 months.
- When the judgement of the Hon'ble Supreme Court is silent with regard to its effect, the Government ought to have assessed the impact of the judgement and should have given only a prospective effect.
- The counter affidavit filed by the Government in these batch of writ petitions clearly accepts the fact that it is going to be a cumbersome process and when the Government is aware about the impact that will be caused by giving a retrospective effect, the same should have been taken into consideration and the Government order and the Government letter should have implemented the judgement of the Hon'ble Supreme Court only from the date of the Judgement.
- The Government after having filed the Special Leave Petition in the year 2006 slept over the matter for nearly 12 years without taking efforts to bring the matter for final hearing and consequently, the appeals came to be disposed of only in the year 2018 and such delay caused by the Government should not be put against those employees, who have attained a vested right in the meantime.
- The impugned Government Order and the Government letter suffers from non-application of mind and it is liable to be interfered by this Court and the same has to be given effect only from the date of the judgement of the Hon'ble Supreme Court.
- The declaration of law by the Supreme Court must be given effect in such a way that it does not take away the vested right and the impact of implementing the

Court order or a Government Order must be done in a reasonable manner and equity has a definite role to play.

10. The common grounds raised in the course of arguments made supporting the impugned Government order and the Government Letter and seeking for its implementation, are as follows:

- The beneficiaries of the judgement passed by the Hon'ble Supreme Court always had the right of reservation under the relevant service rules and it was kept on hold from the time the order was passed by the Tribunal, until the final judgement was given by the Hon'ble Supreme Court and the judgment of the Hon'ble Supreme Court merely recognized the right which was already available under the service rules.
- The stand taken by the petitioners as if their vested rights are being taken away by the impugned Government Order and the Government letter, is totally unsustainable since every year a temporary panel alone was prepared and it was made clear that the same is subject to the final judgment of the Hon'ble Supreme Court. Therefore, all the petitioners and similarly placed persons were clearly aware that the panel was drawn every year subject to the final result of the appeal that was pending before the Hon'ble Supreme Court and consequently, the petitioners and similarly placed persons must accept the result of the Hon'ble Supreme Court and should not claim any absolute right which was not given to them during the interregnum period. To substantiate this submission, the relevant Government Order on the drawl of temporary list from the year 2004 onwards up to 2018-2019 was brought to the notice of this Court.
- The impugned Government Order and the Government letter merely implemented the existing rules and they did not give any retrospective effect for the rules. Therefore, the judgments relied upon by the petitioners will not have any relevance to the present case. Those are cases where, a rule was implemented by giving it a retrospective effect and thereby, taking away the vested right of several employees.
- The judgement of the Hon'ble Supreme Court merely confirmed the rights of those persons, who were

entitled for the benefit of reservation, which was already available under the relevant service rules.

- The impugned Government Order and the Government letter are perfectly in line with the judgement of the Hon'ble Supreme Court and it reiterates the right of reservation, which was available under the service rules and which was deprived due to the orders passed by the Tribunal, subsequently confirmed by this Court and ultimately, reversed by the Hon'ble Supreme Court by allowing the appeals.
- After the impugned Government Order and the Government letter came into effect, circulars were issued for its implementation and the entire exercise has already been completed and the redrawn panel list is ready to be published and given effect to.
- The judgement of the Hon'ble Supreme Court in Rajagopalan case, does not have any application to the facts of the present case and that was a case pertaining to a dispute between the Direct Recruits and Promotees and this is a case involving right of reservation.
- A judgement rendered by the Hon'ble Supreme Court by declaring a law, will have to be necessarily given a retrospective effect unless the Hon'ble Supreme Court itself clearly spells out that it will have only a prospective effect. This Court does not have the jurisdiction to hold that the judgement of the Hon'ble Supreme Court will have only a prospective effect. To substantiate this submission, the judgement of the Hon'ble Supreme Court in [P.V.George and others Vs. State of Kerala and others] reported in 2007 3 SCC 557 was relied upon.
- The time taken in a Court for disposal of an appeal can never be put against the parties and in the present case, the Government cannot be blamed for the delay in disposal of the appeals.
- There is no requirement for the State to get any clarification from the Hon'ble Supreme Court and the State is only implementing a rule that is already available and the said rule has also been upheld by the Hon'ble Supreme Court.
- When the Government was taking all steps to implement the impugned Government Order and the

Government letter and the entire exercise of redrawing the panel was also completed, the writ petitions came to be filed and the implementation has been stalled.

11. The learned Advocate General appearing on behalf of the State submitted that the actual implementation District wise will take not less than 6 to 9 months to complete the process and in the meantime, the Government must be permitted to fill up a temporary panel, which has been made ready in order to meet the exigencies. This is more so due to the fast-approaching Assembly Elections. These temporary panels, will only be a stop gap arrangement and it will ultimately be replaced by implementing a permanent redrawn list. It was also made clear that the Government will not reopen the service of those employees, who have already retired or gone out of the service. Necessary safeguards will be made while implementing the impugned Government Order and the Government letter.

12. The learned Advocate General made it clear that the rule of reservation will not be extended to promotions as apprehended by some of the petitioners and the promotion can only be a consequence of redrawing the panel, where rule of reservation will be applied only at the point of time of appointment by transfer.

13. It will also be relevant to take into consideration the counter affidavit filed on behalf of Government and the concerned departments in WP (MD) 2054 of 2020. The relevant portions are extracted hereunder :-

11. It is submitted that in view of the above interim order passed by this Hon'ble Court on 9th July 2019, there is no legal impediment in redrawing the list of Deputy Tahsildars with reservations from the year 2018-19 which would be subject to outcome of final result in pending Writ Petitions. However, the revision process has to be implemented from 2004 to till date with regard to provision of reservation to Backward Classes and Most Backward Classes/ Denotified Communities candidates and simultaneously from 8.4.2009 by taking into account the verdict delivered on the status of placing the Directly Recruited Assistants and Promotee Graduate Assistants on par and by considering the positioning of Non-Graduate Assistants whose status was not decided by the Apex Court. In this revision process, the ambiguity still remains

regarding the provision of backlog vacancies to Backward Classes and Most Backward Classes / Denotified Communities categories since 2004 in view of the fact that the same was admissible as per G.O.Ms.No.34, Backward Classes and Most Backward Classes and Minorities Welfare (Bcc) Department dated 02.05.2000 but the same was disallowed with effect from 15.9.2016 while implementing the Tamil Nadu Government Servants (Conditions of Services) Act, 2016.

12. With regard to the averments made in Para3 of the affidavit, it is submitted that the same is tenable, since the rule of reservation was stopped with effect from 2004 as per the orders of the Hon'ble High Court in Writ petition No. 11296 to 11298 of 2002 and 28787 of 2004, dated 28.02.2005. Subsequently, based on the orders issued by the Hon'ble supreme Court of India in Civil Appeal No.9334 of 2018 to 9336 of 2018 in SLP © No.5588 of 2006, 5589 of 2006 and 7651 of 2006, dated 11.09.2018, the Government have intended to re-draw the temporary panel already issued by providing rule of Reservation for Backward classes and Most backward classes / Denotified Communities and issued orders accordingly vide G.O.(M.S) No.87, Revenue and Disaster Management Department, Service wing [Ser 3(2)] Section dated 06.03.2019 to redraw the temporary panel from 2004, various parameters such as placing them in the inter-se seniority among graduate promotees, Directly recruited Assistants & Non-graduate promotees as an outcome of Apex Court order, dated : 12.03.2019, in Civil Appeal Nos.251-256 of 2015, effecting backlog vacancies to Backward classes and Most Backward Classes / Denotified communities on par with Scheduled Castes / Scheduled tribes candidates and other individual eligibility criteria from time to time has to be taken into consideration while redrawing the list for permanent panel. This process is a cumbersome process where the seniority of Deputy Tahsildar and Tahsildar maintained at the District level has to be revised at the District level and inturn the revision of panel at the cadre of Deputy Collector has to be carried out as their seniority is maintained at the state level. In

the Scenario, it may not be possible at state level even if one district among the existing 37 districts is unable to redraw the panel for the post of Tahsildar. Therefore, the claim of the petitioner is not sustainable.

13. With regard to the averments made in paragraphs 4 to 8 of the affidavit, it is submitted that the same are not maintainable since, the contentions are imaginary presumptive and perspective in nature. It is also submitted that only if the temporary panel is revised year by year in their District by considering various parameters such as placing them in the inter-se seniority among graduate promotees. Directly Recruitment Assistants & Non-graduate promotees as an outcome of Apex Court order dated 12.03.2019, effecting backlog vacancies to Backward classes and Most Backward classes / Denotified communities on par with scheduled castes /scheduled Tribes candidates and other individual eligibility criteria from time to time and after completion of the same in all the 37 districts, the subsequent event of revising the panel for Deputy Collector can be done. Hence, without revising the panel, it is not possible to determine the exact status of the petitioner and others.

14. With regard to the averments made in paragraph 9 of the affidavit, it is submitted that the same is not applicable to this case. As stated by the petitioner the provision of reservation was extended to Backward classes and Most Backward classes/ Denotified communities till 2004, in Revenue Department also. As per the orders of Hon'ble High court in Writ petition No.11296 to 11298 of 2003 dated 28.02.2005, the rule of reservation was stopped with effect from 2004. Therefore, the comparison of the case with the Registration department is not applicable.

15. With regard to the averments made in the paragraph 10 of the affidavit, it is submitted that the rule of reservation is made applicable to the candidates on recruitment by transfer also. As far as, Assistants who are recruited under Group II by the Tamil Nadu Public Service Commission, are governed by Tamil Nadu Public

Service Commission are governed by Tamil Nadu Ministerial Service Rules in the appointing category and after completion of 5 years service as training, they are elevated to the cadre of Deputy Tahsildar, which is governed by Tamil Nadu Revenue Subordinate Service Rules. Similarly, those who are appointed as Junior Assistants, under Group IV by the Tamil Nadu Public Service commission, have to complete 8 years of service with other pre-requisite qualifications prescribed for Assistant to become Deputy Tahsildar. The rule of reservation is also applicable to them.

16. With regard to the averments made in paragraph 11 of the affidavit, it is submitted that the same is unsustainable as the same is suspended by the order of the Apex Court, dated 11.09.2018 in Civil Appeal No.9334 of 2018 to 9336 of 2018 in SLP(C) No.5588 of 2006, 5589 of 2006 and 7651 of 2006.

17. With regard to the averments made in paragraph 12 of the affidavit, it is submitted that the Government is not disputing with the order of the Apex Court. It is pertained to note that though the Apex Court did not specify the period of validity from which date the same has to be given effect to, the Government have taken a stand to restore the facilities hitherto available till 2004 consequently the G.O.Ms.No.87, Revenue and Disaster Management department dated 06.03.2019 was issued.

18. With regard to the averments made in paragraph 13 of the affidavit, it is submitted that with respect to the revision of panel said to have been drawn by the District collector of Madurai, Sivagandai from 2004-2018, sofar no objections or appeal against the said panels were received by the respondents. Further it is submitted that the completion report have been received from Nilgiris and Tiruppur Districts. Once all the District redrawn the panel of deputy tahsildhar and Tahsildar from the year 2004 - 2018 the panel of Deputy Collector from the year 2004-2018 can be redrawn accordingly

24. With regard to the averments made in paragraph 20 of the affidavit, it is submitted

that no individual representation is warranted for implementation of Supreme Court Order and it is not the case of a particular individual, which need to be resolved based on representation. Admittedly, following the Apex Court order, the Government have issued orders for implementation and pursuant to the same, the second respondent through circular dated 28.09.2019 and 31.10.2019 have issued guidelines with timeframe to complete the process. Hence, after revising the Deputy Tahsildar and Tahsildar panel by providing Rule of Reservation, the eligibility for including the petitioner's name in the panel of Deputy Collectors will be examined in the light of revised Deputy Tahsildar / Tahsildar panel.

25. With regard to the averments made in paragraph 21 of the affidavit, it is submitted that as already explained above, few districts have completed the process of redrawal. However, the panel of Deputy Collector for the year 2018-2019 was drawn on 06.03.2019 based on the legal opinion offered by Advocate General of Tamil Nadu. For drawal of this panel, the proposal from all the districts were received well before the date of Apex Court order. Likewise, the panel of Deputy Collectors for the year 2019-2020 is already over due for which proposals were received during the middle of 2019. By that time the stay granted by the Hon'ble Madurai Bench of Madras High Court dated 05.02.2020 in the said writ petition on the Government Order were in force.

27.

It is also submitted that the revision of panel could not be implemented in most of the districts due to ambiguity over the issues relating to positioning of Non-graduate promotee Assistants and regarding utilization of backlog vacancies to Backward Classes and Most Backward Classes / Denotified Communities candidates besides the implementation with retrospective effect as ordered by the Government vide G.O.Ms.No.87, Revenue & Disaster Management Department dated 06.03.2019.

28. It is submitted that one Thiru Gopalakrishnan filed another writ petition in WP.No.3760 of 2020

and prayed for quashing of GO.Ms.No.87, Revenue and Disaster Management Department dated 6.3.2019. It is also prayed for implementation of the said Government Order from prospective effect from the year 2018-2019 as per rule 22 of the Tamil Nadu State and Subordinate Service Rules. The above claim of the writ petitioner is substantiated with directions issued in another SLP.No.22270-22271 of 2012 wherein it was ordered that the revision of panel by placing the Direct Recruit Assistants and the Graduate promotee Assistants on par may be given effect from 08.04.2009 i.e. the date on which the Special Leave Petition was decided to partly set aside the GO.Ms.No.133, Revenue Department dated 07.02.1995 and directed to treat both the categories on par. The petitioner has prayed for extension of similar benefits in the present case also.

30. It is submitted that conflicted prayers pending before the Hon'ble Madurai Bench of Madras High Court. The Hon'ble Madurai Bench of Madras High Court in its order dated 03.02.2020 in WP (MD) no. 2054 of 2020 and WMP (MD) No.1725 of 2020 has granted interim injunction till 25.02.2020. If the stay granted to draw the panel of deputy collector for the current year which was due for the year 2018-2019, is extended it would paralyse the administration in the entire state and due to creation of new five districts during November 2019 by bifurcating and trifurcating the Districts, most of the vulnerable posts are kept vacant and even the vacancies caused by the retirement due to superannuation and by promotion as District Revenue Office, which was estimated for this year could not be filled due to pendency of the above conflicted writ petitions.

32.It is also submitted that the Advocate General of Tamil Nadu, in his earlier opinion dated 01.03.2019 has opined that the panel for the post of Deputy Collectors may be finalised by issuing a temporary list and thereafter, once all the earlier panels have been finalized by implementing the orders of the Hon'ble Supreme Court, all the panels and the promotions / recruitment by transfer may be regularised subsequently. Based on the opinion of the Advocate General of Tamil Nadu, the panel of Deputy Collectors for the year

2018-2019 was also published as temporary panel on 06.03.2019. Therefore, the proposals for drawal of Deputy Collector panel for the year 2019-2020, were received from all the districts during the mid of 2019 and were scrutinized and recommended to Government for approval and causing publication which is already over due. Hence, the revised panel of Deputy Tahsildar and Tahsildar is in process and it will take some more time due to the ambiguity over the issue relating to positioning of non-graduate promotee Assistants and regarding utilization of backlog vacancies to Backward Classes and Most Backward Classes / Denotified Communities candidates besides the implementation with retrospective effect as ordered by the Government vide G.O.Ms.No.87, Revenue & Disaster Management Department, dated 6.3.2019

14. This Court has carefully considered the submissions made on either side and the entire materials placed on record.

15. The main issues that arises for consideration in the present case are as follows:-

a. Whether the judgement of the Hon'ble Supreme Court in Civil Appeal Nos. 9334 of 2018 etc., should only be given a prospective effect?

b. Whether the impugned Government Order and the Government letter are in line with the judgement of the Hon'ble Supreme Court in Civil Appeal Nos. 9334 of 2018 etc.?

c. Whether the impugned Government Order and the Government letter which contemplates re-drawl of the panel from the year 2004-2018 insofar as the Revenue Department is concerned and with effect from 1997-2018 insofar as the Registration Department is concerned, will take away the vested rights of all those employees, who got the service benefits during the interregnum period and consequently, the same requires the interference of this Court?

16. It is an admitted case that the relevant service rules provided for reservation for both Backward Class and Most Backward Class in recruitment by transfer and also by direct recruitment. If the position had continued without initiation of a litigation process, the appointment of Deputy Tahsildar in the

Revenue Department and the appointment of Sub-Registrar Grade-II in the Registration Department would have been governed by the Rules of reservation. In other words, they would have been entitled for the benefits of reservation even when they were appointed in these posts by transfer. This benefit that was vested on those persons belonging to the Backward class and Most backward class, got snapped by virtue of the order passed by the Administrative Tribunal which construed such an appointment by transfer as a promotion and held that no rule of reservation can be applied when it comes to promotion for those persons belonging to the Backward Class and Most Backward Class. This position continued till the Hon'ble Supreme Court disposed of the appeals in Civil Appeal No. 9334 of 2018 etc., by an order dated 11.09.2018. The Hon'ble Supreme Court held that the appointment by transfer of service would not amount to promotion and therefore, the rule of reservation will apply in such appointments. Pursuant to the law declared by the Hon'ble Supreme Court, the impugned Government Order and the Government letter came to be issued in the Revenue Department and the Registration Department for re-drawing the panel with retrospective effect.

17. This Court will now take up the first issue for consideration. It is now a settled position of law that Judicial Decisions will have retrospective operation unless and otherwise it is specified that it will have only a prospective effect. It will be relevant to take note of the judgement of the Hon'ble Supreme Court [P.V.George and others Vs. State of Kerala and others] reported in 2007 3 SCC 557. The relevant portions in the judgement are extracted hereunder:-

17. The Full Bench of the High Court indisputably did not say that the promotions which had already been granted would not be disturbed. The judgment of the Full Bench attained finality as special leave petition filed thereagainst was dismissed. The Rules as amended by the State of Kerala on 1-7-1980 and 30-8-1984 were upheld.

18. If the said Rules ultimately were held to be constitutional, it was required to be given effect to. The law declared by a court ordinarily affects the rights of the parties. A court of law having regard to the nature of adversarial system of our justice-delivery system exercises adjudicatory role. Legal consequences are determined in respect of the matters which had taken place in the past.

19. It may be true that when the doctrine of stare decisis is not adhered to, a change in the law may

adversely affect the interest of the citizens. The doctrine of prospective overruling although is applied to overcome such a situation, but then it must be stated expressly. The power must be exercised in the clearest possible term. The decisions of this Court are clear pointer thereto.

20. As would be noticed by us hereafter in Suresh Chandra Verma (Dr.) v. Chancellor, Nagpur University [(1990) 4 SCC 55 : 1991 SCC (L&S) 194 : (1991) 16 ATC 439] , this Court held: (SCC p. 64, para 15)

"15. The second contention need not detain us long. It is based primarily on the provisions of Section 57(5) of the Act. The contention is that since the provisions of that section give power to the Chancellor to terminate the services of a teacher only if he is satisfied that the appointment 'was not in accordance with the law at that time in force' and since the law at that time in force viz. on 30-3-1985 when the appellants were appointed, was the law as laid down in Bhakre case [WP No. 1876 of 1984 decided on 7-12-1984 (Nag)] the termination of the appellants is beyond the powers of the Chancellor. The argument can only be described as naive. It is unnecessary to point out that when the court decides that the interpretation of a particular provision as given earlier was not legal, it in effect declares that the law as it stood from the beginning was as per its decision, and that it was never the law otherwise. This being the case, since the Full Bench and now this Court has taken the view that the interpretation placed on the provisions of law by the Division Bench in Bhakre case [WP No. 1876 of 1984 decided on 7-12-1984 (Nag)] was erroneous, it will have to be held that the appointments made by the University on 30-3-1985 pursuant to the law laid down in Bhakre case [WP No. 1876 of 1984 decided on 7-12-1984 (Nag)] were not according to law. Hence, the termination of the services of the appellants were in compliance with the provisions of Section 57(5) of the Act."

21. The ratio laid down by this Court, as noticed hereinafter, categorically shows the effect of a decision which had not been directed to have a prospective operation. The legal position in clear and unequivocal term was stated by a Division Bench of this Court in M.A. Murthy v. State of Karnataka [

(2003) 7 SCC 517 : 2003 SCC (L&S) 1076] in the following terms: (SCC pp. 520-21, para 8)

"8. The learned counsel for the appellant submitted that the approach of the High Court is erroneous as the law declared by this Court is presumed to be the law at all times. Normally, the decision of this Court enunciating a principle of law is applicable to all cases irrespective of its stage of pendency because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from inception. The doctrine of prospective overruling which is a feature of American jurisprudence is an exception to the normal principle of law, was imported and applied for the first time in *Golak Nath v. State of Punjab* [AIR 1967 SC 1643]. In *Managing Director, ECIL v. B. Karunakar* [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] the view was adopted. Prospective overruling is a part of the principles of constitutional canon of interpretation and can be resorted to by this Court while superseding the law declared by it earlier. It is a device innovated to avoid reopening of settled issues, to prevent multiplicity of proceedings, and to avoid uncertainty and avoidable litigation. In other words, actions taken contrary to the law declared prior to the date of declaration are validated in larger public interest. The law as declared applies to future cases. (See *Ashok Kumar Gupta v. State of U.P.* [(1997) 5 SCC 201 : 1997 SCC (L&S) 1299] and *Baburam v. C.C. Jacob* [(1999) 3 SCC 362 : 1999 SCC (L&S) 682 : 1999 SCC (Cri) 433].) It is for this Court to indicate as to whether the decision in question will operate prospectively. In other words, there shall be no prospective overruling, unless it is so indicated in the particular decision. It is not open to be held that the decision in a particular case will be prospective in its application by application of the doctrine of prospective overruling. The doctrine of binding precedent helps in promoting certainty and consistency in judicial decisions and enables an organic development of the law besides providing assurance to the individual as to the consequences of transactions forming part of the daily affairs. That being the position, the High Court was in error by holding that the judgment which operated on the date of selection was operative and not the review judgment in *Ashok Kumar Sharma* case No. II [Ashok Kumar Sharma v. Chander Shekher, (1997) 4 SCC 18 : 1997 SCC

(L&S) 913] . All the more so when the subsequent judgment is by way of review of the first judgment in which case there are no judgments at all and the subsequent judgment rendered on review petitions is the one and only judgment rendered, effectively and for all purposes, the earlier decision having been erased by countenancing the review applications. The impugned judgments of the High Court are, therefore, set, aside."

22. The effect of declaration of law, the rule of stare decisis and the consequences flowing from a departure from an earlier decision have been considered in great details by the House of Lords in National Westminster Bank Plc. v. Spectrum Plus Ltd. [2005 UKHL 41 : (2005) 3 WLR 58] , opining:

"8. People generally conduct their affairs on the basis of what they understand the law to be. This 'retrospective' effect of a change in the law of this nature can have disruptive and seemingly unfair consequences. 'Prospective overruling', sometimes described as 'non-retroactive overruling', is a judicial tool fashioned to mitigate these adverse consequences. It is a shorthand description for court rulings on points of law which, to greater or lesser extent, are designed not to have the normal retrospective effect of judicial decisions.

9. Prospective overruling takes several different forms. In its simplest form prospective overruling involves a court giving a ruling of the character sought by the bank in the present case. Overruling of this simple or 'pure' type has the effect that the court ruling has an exclusively prospective effect. The ruling applies only to transactions or happenings occurring after the date of the court decision. All transactions entered into, or events occurring, before that date continue to be governed by the law as it was conceived to be before the court gave its ruling.

10. Other forms of prospective overruling are more limited and 'selective' in their departure from the normal effect of court decisions. The ruling in its operation may be prospective and, additionally, retrospective in its effect as between the parties to the case in which the ruling is given. Or the ruling may be prospective and, additionally, retrospective as between the parties in the case in which the ruling was given and also as between the parties in any other

cases already pending before the courts. There are other variations on the same theme.

11. Recently Advocate General Jacobs suggested an even more radical form of prospective overruling. He suggested that the retrospective and prospective effect of a ruling of the European Court of Justice might be subject to a temporal limitation that the ruling should not take effect until a future date, namely, when the State had had a reasonable opportunity to introduce new legislation: *Banco Popolare di Cremona v. Agenzia Entrate Ufficio Cremona* [Case C-475 of 2003 dated 17-3-2005] , paras 72-88."

[See also Lord Rodger of Earlsferry: A Time for Everything under the Law: Some Reflections on Retrospectivity, (2005) 121 LQR 55, 77.]

23. Lord Nicholls of Birkenhead speaking for the House of Lords clearly held that the power to apply prospective overruling is available to the House of Lords also.

24. In *R. (on the Application of Ernest Leslie Wright) v. Secy. of State for the Home Dept.* [2006 EWCA Civ 67] it was observed:

"42. The English law in this respect is developing rapidly. Prospective rulings seemed anathema to Lord Wilberforce in *Launchbury v. Morgans* [1973 AC 127 : (1972) 2 WLR 1217 : (1972) 2 All ER 606 (HL)] , AC at p. 137 and Lord Goff of Chieveley in *Kleinwort Benson Ltd. v. Lincoln City Council* [(1999) 2 AC 349 : (1998) 3 WLR 1095 : (1998) 4 All ER 513 (HL)] , AC at p. 379. By the time of *R. v. Governor of Brockhill Prison, ex p Evans (No. 2)* [(2001) 2 AC 19 : (2000) 3 WLR 843 : (2000) 4 All ER 15 (HL)] , Lord Slynn at p. 26H considered that the effect of judicial rulings being prospective might in some situations be 'desirable and in no way unjust', though Lord Steyn at p. 28B thought the point was a 'novel one'. With some perspicacity Lord Hope of Craighead foresaw at p. 36 that 'the issue of retrospectivity is likely to assume an added importance when the Human Rights Act, 1998 is brought into force'. Lord Hobhouse at p. 48F would have none of it. The latest in this line of authority seems to be *In re Spectrum Plus Ltd. (in liquidation)* [2005 UKHL 41 : (2005) 3 WLR 58] where the danger was acknowledged that prospective overruling 'would amount to judicial usurpation of the legislative function',

per Lord Nicholls at para 28 but nonetheless he noted that, especially in the human rights field, ' "Never say never" was a wise judicial precept' (para 42).

43. The question has attracted interest in the academic journals. See Arden, L.J., Prospective Overruling, (2004) LQR 7; Lord Rodger of Earlsferry, A Time for Everything under the Law: Some Reflections on Retrospectivity, (2005) 121 LQR 57 and Duncan Sheehan and T.T. Arvind, Prospective Overruling and Fixed/Floating Charge Debate, (2006) 122 LQR 20."

(emphasis supplied)

25. In service matters, this Court on a number of occasions have passed orders on equitable consideration. But the same would not mean that whenever a law is declared, it will have an effect only because it has taken a different view from the earlier one. In those cases it is categorically stated that it would have prospective operation.

26. We are not oblivious that in Union of India v. Madras Telephone SC & ST Social Welfare Assn. [(2006) 8 SCC 662 : (2007) 1 SCC (L&S) 35 : (2006) 9 Scale 626] this Court observed that where the rights had been determined in favour of some employees in a duly constituted proceeding, which determination had attained finality, a subsequent judgment of a court or tribunal taking a contrary view would not adversely affect the applicants in whose cases the orders had attained finality.

27. The rights of the appellants were not determined in the earlier proceedings. According to them, merely a law was declared which was prevailing at that point of time; but the appellants were not parties therein. Thus, no decision was rendered in their favour nor any right accrued thereby.

18. The above judgement dutifully captures the law governing the issue. The retrospective effect of a change in the law can have disruptive and seemingly unfair consequences. Prospective overruling is a judicial tool which has been fashioned to mitigate these adverse consequences. The question is whether this Court exercising its jurisdiction under Article 226 of the Constitution of India can declare whether the judgement of the Hon'ble Supreme Court will have a prospective operation or a retrospective operation. The straight and simple

answer to this question is 'No'. The discretion to declare that a judgement will have only a prospective operation, as on today, is purely vested only with the Hon'ble Supreme Court. The law declared by the Hon'ble Supreme Court must be construed as the law right from the inception of the judicial proceedings. It is a device innovated by the Hon'ble Supreme Court by taking cue from the American Jurisprudence in order to avoid re-opening of settled issues, to prevent multiplicity of proceedings and to avoid uncertainty and avoidable litigations. However, to construe a judgement to have only a prospective operation is not a matter of assumption and it requires a clear indication to that effect in the particular decision. It is not for this Court to state as to whether the judgment rendered by the Hon'ble Supreme Court in Civil appeal Nos. 9334 of 2018 etc., will have only a prospective operation. Any such declaration made by this Court, will be clearly beyond the jurisdiction of this Court and it will be construed as a judicial overreach. Therefore, while answering the 1st issue, this Court holds that the judgment of the Hon'ble Supreme Court in Civil Appeal No. 9334 of 2018 etc. cannot be construed to have only a prospective operation, since there is no specific indication in the judgement to that effect. Therefore, the judgement of the Hon'ble Supreme Court must be construed as the law declared and which will have effect right from the inception of the proceedings before the Administrative Tribunal.

19. This Court will now proceed to take up the 2nd issue for consideration. As already held by this Court, there was an existing Service rule, which provided for reservation for persons belonging to Backward and Most Backward Class even for recruitment by transfer. The judgement of the Hon'ble Supreme Court only clarified the position that such recruitment by transfer will not amount to a promotion. Once such declaration of law was made by the Hon'ble Supreme Court, the benefit of reservation which was deprived to the concerned employees under the relevant service rules was reignited. The impugned Government Order and the Government letter has only reiterated this position and has sought to re-draw the panel from the date on which, the concerned employees were entitled for the benefit of such reservation. Even taking a hypothetical situation, where no such Government Order or the Government letter was issued, the implementation of the judgement of the Hon'ble Supreme Court would have had the same effect as found in the impugned Government Order and the Government letter. Therefore, the impugned Government Order and the Government letter are perfectly in line with the judgement of the Hon'ble Supreme Court in Civil Appeal Nos. 9334 of 2018 etc.,.

20. It must be kept in mind that the impugned Government Order and the Government letter did not actually give a retrospective effect while implementing the judgement of the Hon'ble Supreme Court and they only strictly implemented the existing rule of reservation that was already available to the employees belonging to the Backward Class and Most Backward Class. The second issue is answered accordingly.

21. This Court will now venture to take into consideration the third issue framed by this Court. One of the main grounds that was raised by the petitioners opposing the Government Order and the Government letter was that it takes away the vested rights that has already accrued to those petitioners and similarly placed persons. It is important to take note of the panel drawn right from the year 2004 onwards up to 2018. It was made very clear in all those Government Orders that the drawing of the panel is subject to the final result of the pending appeals before the Hon'ble Supreme Court. There was a clear condition imposed in every panel that was drawn from the year 2004 that it is not final and that it is subject to the final decision of the Hon'ble Supreme Court. The petitioners and other similarly placed persons are very well aware about this contingency that was specifically mentioned in every Government Order while the panel was drawn every year. Similar such contingency was placed while drawing the temporary panel in the Registration Department also. Therefore, any benefits that accrued to the petitioners and similarly placed persons was not an absolute right and it was only a contingent right about which everyone was aware. Therefore, whatever benefits accrued to them cannot come within the term vested right. A vested right is defined in Black's Law Dictionary as a Right that so completely and definitely belongs to a person that it cannot be impaired or taken away without the person's consent. In the facts of the present case, the petitioners and other similarly placed persons do not satisfy this requirement and the so called right that was accrued by them was not an absolute right which will vest upon them.

22. The judgement cited by the learned Senior counsel appearing on behalf of the petitioners, who are opposing the impugned Government Order and the Government letter to the effect that a vested right cannot be taken away by giving a retrospective operation for a rule, will not apply to the facts of the present case. In all those judgements, it is seen that either the rule or the amended rule was given a retrospective operation which resulted in taking away the vested rights. In the present case, the impugned Government Order and the Government letter does not give any retrospective effect to a new rule or an amended rule and it only implements an existing

rule which provides for the benefit of reservation to those persons belonging to the Backward class and the Most Backward class. Therefore, the judgements that were cited as precedents will not apply to the facts of the present case.

23. It was urged on the side of the petitioners who were opposing the impugned Government Order and the Government letter that the adverse impact that is caused to them must be taken into consideration by this Court on the ground of equity while implementing the judgement of the Hon'ble Supreme Court. The principle of equity cannot be applied in favour of one group of persons as opposed to the right of the other group of persons, who were deprived of the right of reservation right from the inception. If equity is to be applied only in favour of the petitioners, the right that was deprived from the year 2002 to 2018 will remain unrepaired. Ultimately, the judgement of the Hon'ble Supreme Court will have to enure in favour of those persons, who were entitled for a benefit of right of reservation as per the existing service rule. For this purpose, the panel has to be necessarily redrawn from the date on which it accrued in favour of those persons, who are entitled for such a benefit. This is the only way in which the equity can be balanced, failing which, it will become lopsided. This Court therefore does not find any illegality or infirmity in the panel being redrawn as per the impugned Government Order and the Government letter. The third issue is answered, accordingly.

24. In view of the above discussion, this Court does not find any ground to interfere with the impugned Government Order in G.O. MS No 87, Revenue and Disaster Management Department, Service Wing [Ser.3 (2)] Section dated 06.03.2019 and the impugned Government Letter in Letter (MS) No. 17, dated 30.01.2019. All those writ petitions challenging the Government Order and the Government Letter are dismissed and all those writ petitions seeking for the implementation of the same are allowed.

25. It is necessary to issue certain directions before winding up this batch of writ petitions to ensure proper implementation of the Government Order and the Government Letter :-

a. The Government Order in G.O. MS No 87, Revenue and Disaster Management Department, Service Wing [Ser.3 (2)] Section dated 06.03.2019 shall be implemented across the State of Tamil Nadu by redrawing the panel as per the Government Order, within a period of six months from the date of receipt of a copy of this Order.

b. The entire process of implementation of the Government Letter in Letter (MS) No. 17, dated 30.01.2019, shall be completed and kept ready within a period of three months and the actual implementation shall be kept in abeyance till the disposal of WP No. 23342 of 2019, wherein, a larger issue has been raised regarding the inter-se rights between the direct recruits and promotees to the post of Sub-Registrar Grade-II and an interim order has also been passed by this Court.

c. Considering the request made by the Learned Advocate General, in order to meet any exigencies, the Government is permitted to fill up the vacancies in those posts whose services are urgently required, by preparing a temporary panel. This should be only a stopgap arrangement to ensure that the administrative work of the Government is not paralyzed during the interregnum period till the impugned Government Order and the Government Letter are finally implemented in letter and spirit. While preparing the temporary panel, it should be made very clear that it is temporary in nature and it will be in effect only up to the final implementation of the Government Order and the Government Letter. It should also be made clear that persons whose names are included in the temporary panel list will not derive any superior rights and they cannot claim any preference on that basis.

d. The effect of re-drawl of the panel as per the Government Order and the Government Letter should not have any impact on those persons, who have already retired or have left the services for any other reason.

e. The effect of re-drawl of the panel as per the Government Order and the Government Letter should not result in any recovery proceedings due to the consequential change in the grade or status of those employees who got the benefits during the interregnum period till the judgement was passed by the Hon'ble Supreme Court in the year 2018. This is due to the fact that they actually performed the duties that came along with the concerned posts. and

f. It goes without saying that the rule of reservation will apply only for the purpose of enforcing the same at the point of time of recruitment

by transfer from other services while re-drawing the panel and it cannot be extended while considering the promotion and such promotion as a consequence of the re-drawl of the panel will have to satisfy the requirements of the service rules governing the parties.

26. In the result, WP (MD) No. 8706 of 2019, WP No. 3760 of 2020, WP (MD). No. 11557 of 2019, WP (MD) No. 12395 of 2019, WP No. 17505 of 2020 and WP No. 17652 of 2020 are hereby dismissed. WP (MD) No.1751 of 2020, WP (MD) No.2054 of 2020 , WP (MD) No.2239 of 2020, WP 14853 of 2019 and WP No. 14869 of 2019 are allowed with the above directions. No costs. Consequently, the connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

rka
To

1. The Secretary to Government
Backward Classes and Most Backward Classes
Welfare Department
Fort. St. George
Chennai 9.
2. The Secretary to Government
Commercial Taxes and Registration Department
Fort. St. George
Chennai 9.
3. The Inspector General of Registration
Chennai 28.
4. The Secretary to Government
Revenue and Disaster Management
Department of Service Wing(Ser.3(2)) Sec.,
Fort. St. George
Chennai 9.
5. The Additional Chief Secretary/
Commissioner of Revenue Administration,
Chepauk, Chennai

6. The District Collector
Thoothukudi
 7. The District Collector
Madurai
 8. The Secretary to Government
Department of Revenue and Disaster Management
Secretariat, Fort. St. George
Chennai 9.
 9. The Principal Secretary/
Commissioner of Revenue Administration,
Ezhilagam, Chepauk, Chennai 5.
 10. The District Collector
Tuticorin
 11. The General Secretary
The Registration Department SC/ST & MBC
Employees General Welfare Sangam
No.18 LUZ Church Road
Pattinampakkam Chennai 28.
- +2 Ccs to Mr.K. Premkumar, Advocate sr 42973 & 42974.
+1 CC to The Special Government Pleader(T) sr 43173.
+1 CC to The Government Pleader sr 43147 & 43153.
+1 CC to M/s.C. Uma, Advocate sr 42940.
+4 Ccs to Mr.D. Kanagasundaram, Advocate sr 42985 & 42986.
+4 Ccs to Mr.M.V. Venkateshan, Advocate sr 42987 & 42988.

WP Nos.14853 & 14869 of 2019 WP MD No.8706 of 2019; WP No.3760
of 2020, WP MD No.2054 of 2020 and WP(MD) No.1751 of 2020 WP
(MD) No.11557 of 2019, 12395 of 2019, WP No.17505 of 2020, WP
No.17652 of 2020, WP (MD) No.2239 of 2020,

RV(CO)
SP(01/03/2021)

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