

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 13-10-2020

Judgment Delivered on : 23-12-2020

CORAM :

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE C. SARAVANAN

Writ Appeal Nos. 2537 and 2612 of 2019
& C.M.P.Nos.16444 and 16791 of 2019
(Heard through Video Conferencing)

W.A. No. 2537 of 2019

1. The Government of Tamil Nadu
represented by its Chief Secretary
Tamil Nadu Secretariat
Chennai - 600 009
 2. The Government of Tamil Nadu
represented by its Secretary to Government
Department of Personnel and Administrative Reforms
Tamil Nadu Secretariat
Chennai - 600 009
- .. Appellants

Versus

1. J. Ganesan
Under Secretary to Government
Home Department
Tamil Nadu Secretariat
Chennai - 600 009
2. M. Stephen Joseph Devados Pandian
Under Secretary to Government
Personnel & Administrative Department
Tamil Nadu Secretariat
Chennai - 600 009
3. Anne Joseph
Under Secretary to Government
Social Welfare & Nutritious Meals Programme Department
Tamil Nadu Secretariat
Chennai - 600 009

Page numbers

4. E. Latha
Under Secretary to Government
Public Department
Tamil Nadu Secretariat
Chennai - 600 009
5. V. Manivannan
Under Secretary to Government
Highways Department
Tamil Nadu Secretariat
Chennai - 600 009
6. R. Yesudoss Kennedy
Section Officer
Government of Tamil Nadu
Highways Department
Tamil Nadu Secretariat
Chennai - 600 009
7. The Secretary
Tamil Nadu Public Service Commission
Chennai - 600 006
8. V. Thiruvengatam
Under Secretary to Government
Revenue Department
Tamil Nadu Secretariat
Chennai - 600 009
9. D. Martin Chelladurai
Under Secretary to Government
Tamil Development, Religious Endowments
and Information Department
Tamil Nadu Secretariat
Chennai - 600 009
10. S. Thenmozhi
Under Secretary to Government
Housing and Urban Development Department
Tamil Nadu Secretariat
Chennai - 600 009
11. K. Chandran
Under Secretary to Government
Government of Tamil Nadu
Prohibition & Excise Department
Tamil Nadu Secretariat
Chennai - 600 009

Page numbers

12. M. Dharuman
Under Secretary to Government
Government of Tamil Nadu
Higher Education Department
Tamil Nadu Secretariat
Chennai - 600 009

13. Hilda Vasantha Kumari
14. K. Vasanthamala
15. V. Geetha
16. A. Ramamoorthy
17. S. Premasheela
18. N. Vasanthi
19. V. Mani
20. C. Tamilarasan

(Respondents 13 to 20 were impleaded as
per order dated 19.09.2019 made in CMP No.
19992 of 2019 in WA No. 2537 of 2019) ... Respondents

W.A. No. 2612 of 2019

The Government of Tamil Nadu
represented by its Secretary to Government
Personnel and Administrative Reforms Department
Tamil Nadu Secretariat
Chennai - 600 009 ... Appellant

Versus

1. M. Senthamarai
Deputy Secretary to Government
Home Department
Tamil Nadu Secretariat
Chennai - 600 009

2. M. Shyam Sundar
Deputy Secretary to Government
Co-operation, Food and Consumer Protection Department
Tamil Nadu Secretariat
Chennai - 600 009

3. M. Arachelvi
Under Secretary to Government
B.C., M.B.C. & M.W. Department
Tamil Nadu Secretariat
Chennai - 600 009

Page numbers

4. K.S. Selvakumar
Under Secretary to Government
Health and Family Welfare Department
Tamil Nadu Secretariat
Chennai - 600 009
5. R. Rajasekaran
Under Secretary to Government
Labour & Employment Department
Tamil Nadu Secretariat
Chennai - 600 009
6. G. Elangovan
Under Secretary to Government
Personnel & Administrative Reforms Department
Tamil Nadu Secretariat
Chennai - 600 009
7. The Secretary
Tamil Nadu Public Service Commission
Chennai - 600 006
8. L. Panneerselvam
Deputy Secretary to Government
Health & Family Welfare Department
Tamil Nadu Secretariat
Chennai - 600 009
9. K.S. Kabaleeswaran
Deputy Secretary to Government
Animal Husbandry, Dairying & Fisheries Department
Tamil Nadu Secretariat
Chennai - 600 009
10. P.L. Vijayal
Under Secretary to Government
Public Department
Tamil Nadu Secretariat
Chennai - 600 009
- 11.A. Sivaprakasam
Under Secretary to Government
Revenue Department
Tamil Nadu Secretariat
Chennai - 600 009

.. Respondents

Writ Appeals filed under Clause 15 of The Letters Patent
against the common Order dated 03.08.2018 passed by the learned

Page numbers

Single Judge, in W.P.Nos.15683 and 15684 of 2011 on the file of this Court.

Prayer in WP.No.15683/2011: Petition is filed under Article 226 of the constitution of India, praying to issue a writ of certiorarified Mandamus to call for the records of the Second Respondent in G.O.Ms.No.277 dt.22.7.96 passed by the Secretary to the Government of Tamil Nadu Personnel & Administrative Department Chennai the second respondent herein and quash the same and to direct the second respondent to revise the Seniority of the petitioners duly applying the Quota/ Rota System as per Tamil Nadu Secretariat Service Rules as applicable to the Category of Assistant Section Officers and fix their Seniority at the appropriate places with all attendant benefits with due Seniority and consequently to fix the Seniority in the Category of Under Secretary to Government.

Prayer in WP.15684/2011: Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of certiorarified Mandamus, to call for the records of the relating to the orders in Letter No.80730/ U/96/-2 and Letter No.80730/ U/96/-3 dt.17.2.1998 passed by the Secretary to the Government of Tamil Nadu Personnel & Administrative Department Chennai the first respondent herein and quash the same and to direct the first respondent to revise the Seniority of the petitioners duly applying the Quota/ Rota System as per Tamil Nadu Secretariat Service Rules as applicable to the Category of Assistant Section Officers and fix their Seniority at the appropriate places with all attendant benefits with due Seniority and consequently to fix the Seniority in the Category of Section Officers.

WA No. 2537 of 2019

For Appellants

:Mr. P.H. Aravind Pandiyan
Additional Advocate General
assisted by Mrs. A. Srijayanthi
Special Government Pleader

For Respondents

:Mr. L. Chandrakumar for RR1 to 6
Mr. N. Bala Murali Krishna for R7
Not ready in notice for RR8 to 10
Mr. Praveen Alexander for RR11 and 12
Mr. Kandan Doraisamy for RR13 to 20

WA No. 2612 of 2019

For Appellants

:Mr. P.H. Aravind Pandiyan
Additional Advocate General

Page numbers

assisted by Mrs. A. Srijayanthi
Special Government Pleader

For Respondents

:Mr. Stalin Abhimanyu for RR2, 3 and 6
Not ready in notice for RR1, 5, 8 & 10
No appearance for R4
Mr. N. Bala Murali Krishna for R7
Mr. T. Ranganathan for R9
Mr. Parveen Alexander for R11

COMMON JUDGMENT

R. SUBBIAH, J

Both these appeals arise out of the common order dated 03.08.2018 passed by the learned Single Judge in W.P.Nos.15683 and 15684 of 2011. By the common order dated 03.08.2018, the learned single Judge allowed the Writ Petitions filed by the writ petitioners, who are the employees of the State Secretariat, with a direction to the appellants herein to revise their seniority by duly applying the quota-rota system as per the Tamil Nadu Secretariat Service Rules (Special Rules) applicable to the category of Assistant Section Officer and fix their seniority at the appropriate place with all consequential benefits.

2.(a). For the sake of convenience, the parties are referred to as they are ranked in the Writ Petitions.

2(b). The Writ Petition in WP No. 15683 of 2011 was filed by the respondents 1 to 6 in Writ Appeal No. 2537 of 2019. The said Writ Petition was filed to quash the order passed in G.O. Ms. No.277, Personnel and Administrative Reforms Department, dated 22.07.1996 and to direct the official respondents therein to revise the seniority of the writ petitioners by duly applying the quota/rota system as per the Tamil Nadu Secretariat Service Rules, as applicable to the category of Assistant Section Officers, and fix their seniority in the category of Under Secretary to Government at the appropriate place with all consequential benefit.

2(c). The Writ Petition in W.P.No.15684 of 2011 was filed by the respondents 1 to 6 in Writ Appeal No.2612 of 2019. The said Writ Petition was filed to quash the letters in Letter No.80730/U/96-2 and Letter No.80730/U/96-3, dated 17.02.1998 passed by the Secretary to the Government of Tamil Nadu, Personnel and Administrative Reforms Department, Chennai, the first respondent therein and to direct the first respondent therein to revise the seniority of the writ petitioners duly

Page numbers

applying the quota/rota system as per the Tamil Nadu Secretariat Service Rules as applicable to the category of Assistant Section Officers and fix their seniority at the appropriate places with all attendant benefits with due seniority and consequently to fix the seniority in the category of Section Officers.

3. Earlier, the writ petitioners in W.P.Nos.15683 and 15684 of 2011 have filed O.A.No.3055 of 1998 before the Tamil Nadu Administrative Tribunal seeking the reliefs they sought for in the said Writ Petitions. On abolition of the Tribunal, the Original Application stood transferred to this Court and was re-numbered as WP No. 38111 of 2006. By order dated 02.09.2009, the Court dismissed WP No. 38111 of 2006 on the ground that some of the persons, who are likely to be affected in the event of the writ petition being allowed, were not impleaded as parties. As against the same, W.A.No.1052 of 2010 was filed. The Writ Appeal was dismissed on 22.09.2010, confirming the order passed in the said Writ Petition, however, it was made clear that the order of dismissal will not debar the appellants from approaching the appropriate forum in accordance with law. It is on the basis of such observation made in the Judgment dated 22.09.2010 in W.A.No.1052 of 2020, WP No. 15683 and 15684 of 2011 were filed challenging G.O.Ms.No.277, Personnel and Administrative Reforms Department, dated 22.07.1996.

4. In Writ Petition Nos.15683 and 15684 of 2011, the common dispute raised was with respect to the fixation of inter-se seniority between the direct recruits and promotees in the cadre of Assistant Section Officers in the Tamil Nadu Secretariat Service.

WP No. 15683 of 2011

5. According to the writ petitioners in WP No. 15683 of 2011, they were directly recruited to the post of Assistant Section Officers through the Tamil Nadu Public Service Commission (for short, 'the TNPSC') and they belong to the 1988-1989 batch. The method of recruitment of Assistant Section Officers in the Departments of Secretariat other than the Law Department, is governed by Rule 8 of the Tamil Nadu Secretariat Service Rules. As per the said Rule, out of every 7 vacancies in the category of Assistant Section Officers, the first substantive vacancy shall be filled by resorting to direct recruitment. The second such vacancy shall be filled by recruitment by transfer and the remaining vacancies by way of promotion from among the cadre of Assistants, Typists, including Personal Clerks and Tamil Typists etc., It is further submitted that the Rules contemplate filling up of the post of Assistant Section Officers from the above method of recruitment in the

Page numbers

ratio of 1 : 1 : 5. Thus, according to the writ petitioners, the quota-cum-rota system was in existence at the time of their appointment to the post of Assistant Section Officer and therefore, the inter-se seniority had to be fixed by duly adhering to the said quota-cum-rota system. However, in the matter of fixation of inter-se seniority, the Department did not adhere to the quota-cum-rota system. While so, the Government issued G.O.Ms.No.277, Personnel and Administrative Reforms Department, dated 22.07.1996 fixing the inter-se seniority for the year 1988-1989. The grievance of the writ petitioners is that in Para No.2 of G.O.Ms No.277, dated 22.07.1996, it was ordered that the seniority of 17 directly recruited Assistant Section Officers had been arranged as per the rotation prescribed in the Special Rules for the Tamil Nadu Secretariat Service, however, the rota/quota Rule was not properly implemented. The relevant portion of G.O.Ms.No.277, dated 22.07.1996, which was impugned in the W.P.No.15683 of 2011, reads as under:-

"The above 17 Assistant Section Officers who have joined in the Tamil Nadu Secretariat Service in the departments on the dates noted against their names shall take their seniority as per the direction of the Tamil Nadu Administrative Tribunal in O.A. No. 623 of 1990 filed by S. Solomon Raj and others. According to the above direction, the seniority of 17 Assistant Section Officer has been arranged as per the rotation prescribed in the Special Rules for Tamil Nadu Secretariat Service as shown in the Annexure.

3. The Seniority of the 17 Assistant Section Officers will be arranged below Thiru. K. Ganesan, Assistant (Serial No.76), Personnel and Administrative Reforms Department whose name was included as last name in the panel of Assistant Section Officers for the year 1990 approved in G.O. Ms. No.165, Personnel and Administrative Reforms (Per-1) Department dated 03.05.1991.

4. The revised Seniority list of Assistant Section Officers of 1991 list may be sent to the department of Secretariat and they may be requested to communicate the list to the individuals."

Hence, the Writ Petitioners in W.P.No.15683 of 2011 had challenged the above said G.O. and for consequential direction stated supra.

WP No. 15684 of 2011

6. The grievance expressed in WP No. 15683 of 2011 is

Page numbers

verbatim the grievance of the petitioners in WP No. 15684 of 2011. According to the writ petitioners, they were selected in the selection drive conducted during 1983-1984 batch and 1986-87 batch and were appointed on various dates during June and July 1986 and August to November 1989. It is further stated that the Department resorted to ad-hoc or stop-gap arrangement and recruited several temporary Assistants to the post of Assistant Section Officer, besides created artificial vacancies to accommodate them without following the Rules. The Assistant Section Officers who were appointed as stop-gap arrangement or ad-hoc appointees, were often reverted back to their original posts of Assistants/Typists, before and after recruitment of directly recruited Assistant Section Officers like the writ petitioners. In fact, the service of 277 Assistants/Typists/Personal Assistants were included in the panel for promotion to the post of Assistant Section Officers drawn on 01.08.1990, 01.08.1991 and 01.08.1992 and their services were regularised only from 23.10.1996. Therefore, the seniority of the promotees has to be reckoned in the cadre of Assistant Section Officers only from 23.10.1996 and not before. According to the writ petitioners, the seniority among the directly recruited Assistant Section Officers and promotees, has to be fixed as per Rule 8 of the Special Rules for the Tamil Nadu Secretariat Service and not as per Rule 35(aa) of the General Rules under the Tamil Nadu State and Subordinate Service Rules. However, while determining the seniority, the persons who were appointed under ad-hoc or stop-gap arrangement, were included in the seniority list, purportedly, on the reasoning that their services were regularised with retrospective effect. When their initial appointment itself is only ad-hoc and as a stop-gap arrangement, their officiation in such post will not be taken into account for the purpose of determining the seniority in the cadre of Assistant Section Officers. Even though the writ petitioners were appointed to the post of Assistant Section Officers, by direct recruitment and their services were also regularised, the writ petitioners learnt that the seniority is likely to be fixed by placing them below the promotees. Therefore, the writ petitioners submitted a representation dated 25.11.1996, to the first respondent in the Writ Petition to fix their seniority in accordance with Rule 8, but the representation was rejected by an order dated 17.02.1998. Hence, the writ petitioners have filed the above WP No. 15684 of 2011 to quash the proceedings dated 17.02.1998 of the first respondent in the Writ Petition and for a consequential direction to revise the seniority of the writ petitioners by duly applying the quota/rota system as per the Tamil Nadu Secretariat Service Rules as applicable to the category of Assistant Section Officers and fix their seniority at the

Page numbers

appropriate place with all consequential benefits.

7. Both the writ petitions were resisted by the respondents in the Writ Petitions by filing a counter affidavit. According to the first respondent in the Writ Petition, while arriving at the estimated vacancies, the unexpected contingencies and leave reserve vacancies were also taken into account. Accordingly, some of the Assistants/Typists, were promoted as Assistant Section Officers, but they were subsequently reverted as Assistants/Typists for want of vacancies. The normal practice is that directly recruited Assistant Section Officers are accommodated in regular vacancies, while the promotees are appointed in temporary vacancies, viz., unexpected contingencies and leave reserve vacancies. When temporary vacancies cease to exist, reversion to the feeder category will be resorted to. But with reference to seniority, a person assumes seniority in a class, category or grade from the date on which he was first appointed to the service, class or category. For this purpose, the respondents in the Writ Petition(s) referred to the definition contained in Part I of the General Rules under the Tamil Nadu State and Subordinate Services, which defines that a person is said to be appointed to a service when he discharges for the first time, the duties of a post borne on the cadre. Reference was also made to Rule 39 (a), (c), (f) and (g) of the General Rules under the Tamil Nadu State and Subordinate Service, which deal with temporary promotion and subsequent regularisation. According to the respondents in the Writ Petition(s), as per the said Rule, even if a temporary promotion is given to a person without qualification, such a person should be replaced by a person with necessary qualification as soon as possible. In the present case, temporary promotion to the post of Assistant Section Officer was given to persons based on the qualification and the experience in the feeder category post. Therefore, according to the respondents in the Writ Petition(s), such promotees are also entitled for seniority from the date of their first temporary appointment as Assistant Section Officers, notwithstanding the fact that they face reversion. This is more so that the promotees service were regularised retrospectively from the date of their acquiring qualification and they were permitted to draw increments from the date of their regularisation. While so, fixing their seniority over and above the writ petitioners is proper.

8. With reference to the claim of the writ petitioners, it is stated in the counter affidavit that the claim of the writ petitioners for revision of seniority in the cadre of Assistant Section Officers, cannot be countenanced. For the year 2005-2006, a panel was drawn and published in G.O.Ms.No.47, P & A R Department, dated 15.07.2005, containing 163 names of Assistant

Page numbers

Section Officers fit for promotion to the post of Section Officers as on 01.06.2005. The seniority of the persons, whose names were included in the panel, was arranged on the basis of the master copy of Assistant Section Officers. Later, the seniority of directly recruited Assistant Section Officers of 1988-1989 batch and promotee Assistant Section Officers of 1991, was re-fixed by issuing G.O.Ms.No.277, P & AR Department, dated 22.07.1996. Later, it was noticed that the seniority of Assistant Section Officers fixed in the above said Government Order, was not carried over in the master copy maintained with reference to the Assistant Section Officers after the name of Thiru.K.Ganesan, Assistant Section Officer, which is the last name in the panel. Therefore, the Assistant Section Officers, whose seniority was fixed in G.O.Ms.No.277, P & AR Department, dated 22.07.1996, were not placed below Thiru.K.Ganesan, P & AR, in the Section Officer panel for 2005-2006. Therefore, it was contended that the rotation in the panel of the previous year as on 01.08.1990 ended with only one promotee Assistant out of the four prescribed (1:1:4:1) under the Rule and therefore the panel for the year as on 01.08.1991 commenced with the left over vacancies prescribed in the Rule. In such circumstances, it is contended that the settled seniority of the promotees and directly recruited Assistant Section Officers need not be altered after such a long period. The claim of the petitioners for re-fixation of seniority is unreasonable and untenable and therefore, the respondents in the Writ Petitions prayed for dismissal of the writ petitions.

9. The learned Single Judge, after hearing the rival submissions, allowed the writ petitions on 03.08.2018. The relevant portion of the order passed by the learned single Judge reads as follows:-

"22. The arguments made on behalf of the official respondents by the learned Additional Advocate General that the erstwhile Rule 35 (aa) of the Tamil Nadu State and Subordinate Service Rules and the present Section 40 (2) of the Tamil Nadu Government Servants (Conditions of the Service) Act, 2016 was followed in the matter of fixation of seniority, cannot be acceptable as valid piece of argument, since the Section which was relied upon by the learned Additional Advocate General has only a general application and cannot be pressed into service where quota-rota system is made mandatory. As per Rule 8 of the Special Rules, the ratio as prescribed for direct recruitment, transfer and promotion is 1 : 1: 5, which means, whenever first vacancy arises it has to be earmarked for direct recruit and once the vacancy is earmarked for direct

recruitment, the consequential benefit of seniority has to be assigned on that basis. Unfortunately, the official respondents, while granting retrospective regularisation to the promotee Assistant Section Officers, have allowed encroachment by the promotee officers into quota-rota meant for the direct recruits, thereby negated the right of the petitioners to have their due seniority fixed on the basis of their substantive appointment. In simple terms, what has to be seen is whether a substantive appointee has a better right over a temporary appointee or vice versa and the inexorable conclusion would be that a substantive appointee will have better right than the temporary appointee and the service benefits have to be fixed on that basis including seniority. The impugned action official respondents by granting retrospective regularisation detrimental to the interest of the direct recruits like the petitioners herein, would only lend legitimacy to the violation of the mandatory Recruitment Rules of quota-rota system. Such action on the part of the official respondents, would completely undermine the statutory rules and its implementation. Once a statutory rule governs any appointment, such appointment to that post has to be governed by such rules. Although it is impermissible to resort to temporary appointments in order to tide over the administrative exigencies, but that does not give a handle to the administration to grant higher seniority to such temporary appointments in complete negation of direct recruits who were recruited against substantive vacancies. In fact, in this case, many of the temporary promotee Assistant Section Officers suffered reversion in between spells of appointment and therefore, this Court does not see any justification for the Government to pass orders by placing the promotee Assistant Section Officers enblock above the writ petitioners. Such exercise by the Government is not only against the mandatory recruitment rules, but also against the legal principles laid down by the Hon'ble Supreme Court. Therefore, the impugned action of the official respondents cannot be sustained in law."

10. As against the order dated 03.08.2018 passed in W.P.Nos.15683 and 15684 of 2011, the appellants herein have filed Review Application Nos.50 and 51 of 2019 before the learned Single Judge. In the Review Application, it was mainly

Page numbers

contended by the appellants herein that the quota/rota system could not be implemented, since the administration has not appointed any person by way of 'recruitment by transfer'. Hence, the quota/rota Rule is deemed to have been broken down. The learned Single Judge refused to review the order dated 03.08.2018 and dismissed the Review Applications on 06.03.2019 by holding that there is no error apparent on the face of the record. After such an unsuccessful attempt to get the order dated 03.08.2018 reviewed by the learned Single Judge, the appellants have filed the present Writ Appeals against the common order dated 03.08.2018 passed in W.P.Nos.15683 and 15684 of 2011.

11. Mr.Aravindh Pandiyan, learned Additional Advocate General appearing for the appellants contended that, prior to introduction of Rule 35 (aa) of erstwhile General Rules under the Tamil Nadu State and Subordinate Service Rules, 1978 (now sub-section (2) of Section 40 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016), one Mr.S.Solomon Raj was appointed as Assistant Section Officer in the year 1974 by direct recruitment. He has filed O.A. No. 623 of 1990 to fix his seniority in the cadre of Assistant Section Officer, by following the quota-rota system, inter alia, claiming that the Rule relating to fixing of inter-se seniority under Rule 35 (a) shall not be applicable to his appointment, as he was appointed prior to the introduction of the Rule in the year 1978. The Tribunal passed an order dated 24.10.1991, based on which his seniority was fixed by following the quota-rota system. Subsequently, the seniority among the directly recruited Assistant Section Officer and promotees was fixed with reference to Rule 35 (aa). Further, by virtue of Rule 39 (f), the appellants had the power to regularise the temporarily promoted Assistant Section Officers who were later reverted back and forth, with effect from 11.05.1989. Such temporary promotion given to the promotees remained unchallenged by the writ petitioners.

12. By placing reliance on Rule 39 of the Tamil Nadu State and Subordinate Service Rules, the learned Additional Advocate General contended that where it is necessary in public interest, the appointing authority may temporarily promote a person, who possess the prescribed qualification for the post, otherwise than in accordance with law. Further, as per Rule 39 (f) (i), if a person is promoted under sub-rule (a) or (d) he or she shall commence probation, if any, in such category either from the date of his temporary promotion or from such subsequent, as the appointing authority may determine, on his own discretion.

Page numbers

13. The learned Additional Advocate General also placed reliance on the decision of the Supreme Court in the case of K. Megachandra Singh vs. Ningam Siro, reported in 2020 (5) SCC 689 and contended that seniority of a person has to be determined not from the date when the vacancy arose, but from the date on which the appointment is made to the post. According to the learned Additional Advocate General, notwithstanding the above legal position, the writ petitioners claimed that their seniority has to be fixed by following the quota-rota Rule. According to the learned Additional Advocate General, the post of Assistant Section Officer in Secretariat is governed by following the quota-rota Rule, as follows:-

1. Direct recruitment
2. Recruitment by transfer
3. Promotee Assistant
4. Promotee Assistant
5. Promotee Assistant
6. Promotee Assistant
7. Personal Clerk/Typist/Non-graduate Assistant/Personal Assistant.

14. It is further contended by the learned Additional Advocate General that, as per the above quota-rota Rule, after appointing a direct recruit, the next person has to be appointed by "recruitment by transfer". But no candidate was appointed under the method of recruitment by transfer as Assistant Section Officer in the Secretariat and therefore, the quota-rota system could not be adhered to. In the absence of completion of the terms of appointment as per quota-rota Rule, especially when there is no appointment made by "recruitment by transfer", the seniority of the writ petitioners cannot be fixed as per quota-rota system. Therefore, the writ petitioners' seniority was fixed as per Rule 35(aa) of the erstwhile General Rules under the Tamil Nadu State and Subordinate Services in force. It is further submitted that when the writ petitioners were recruited as Assistant Section Officers through direct recruitment for the year 1983-1984 and 1986-1987 and when they joined duty during June/July 1986 and August/November 1989 respectively, Rule 35 (aa) of the General Rules under the Tamil Nadu State and Subordinate Services was in force. However, their seniority was fixed by following the quota-rota system, in view of the order dated 24.10.1991 in O.A.No.623 of 1990 filed by Mr.S.Solomon Raj, who was appointed prior to introduction of Rule 35 (aa) in the year 1978. It is also submitted that Rule 8 of the Special Rules for the Tamil Nadu Secretariat Service, relied on by the writ petitioners, specify the vacancies to be earmarked for different methods and it does not relate to fixation of seniority of persons appointed by different methods. In the

Page numbers

absence of any specific provision relating to fixation of seniority in Rule 8 of the Special Rules for the Tamil Nadu Secretariat Service, the provisions of Rule 35(aa) of the General Rules under the Tamil Nadu State and Subordinate Service Rules, will be applicable to all posts, for which, the method of recruitment is more than one method. Therefore, the fixation of seniority in respect of the writ petitioners is in order. The learned Single Judge did not consider that Rule 8 of the Special Rules, which is reserved for "recruitment by transfer", had never been operated and filled by the Department till date and therefore, the rota-quota system is broken down. In order to buttress this submission, the learned Additional Advocate General placed heavy reliance on the decision of the Supreme Court in the case of Direct Recruit Class II Engineering Officers' Association and others Vs. State of Maharashtra and others, reported in 1990 (2) SCC 715, wherein it has been held as follows:-

"44. To sum up, we hold that

(d) If it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so, the inference is irresistible that the quota rule had broken down."

15. The learned Additional Advocate General also placed reliance on the Judgment dated 11.07.2013 passed in Writ Appeal No.862 of 2010 etc., by a Division Bench of this Court holding that direct recruits can claim seniority only from the date of their regular appointment and they cannot claim seniority earlier than their date of appointment. Thus, it is submitted by the learned Additional Advocate General that the learned Single Judge did not consider that the writ petitioners were recruited in the vacancies during the year 1983-1984 and 1986-1987. As per the orders passed by the learned Single Judge, the seniority of the writ petitioners have to be fixed by following quota-rota system in Rule 8 of the Special Rules for the Tamil Nadu Secretariat Service in the years where vacancies are earmarked for them i.e., 1983-1984 and 1986-1987 along with the promotee Assistant Section Officers included in the panel for the years 1983-1984 and 1986-1987. The promotee Assistant Section Officers are continuously officiating as Assistant Section Officers much prior to the date of joining of the writ petitioners through direct recruitment as Assistant Section Officers and therefore, the claim of the writ petitioners is untenable. The learned Single Judge, without considering the above, had allowed the Writ Petitions. The learned Additional

Page numbers

Advocate General therefore prays for setting aside the order passed by the learned Single Judge and to allow the Writ Appeals.

16. Mr.L.Chandrakumar, learned counsel appearing for the respondents 1 to 6 in W.A.No.2537 of 2019, who are writ petitioners in W.P.No.15683 of 2011, contended that the writ petitioners were directly recruited as Assistant Section Officers through the TNPSC in a substantive, regular and permanent vacancies of the year 1988-1989 notified in the Government Gazette. The respondents 4 to 8 in the said Writ Petition in W.P.No.15683 of 2011 are promotees, promoted to the post of Assistant Section Officers, temporarily on the basis of temporary panels drawn by the Department. Admittedly, the respondents 4 to 8 in W.P.No.15683 of 2011 have been reverted to the feeder category post more than once for want of vacancies and their services were regularised subsequently. Therefore, the respondents 4 to 8 cannot claim seniority over and above the writ petitioners. The official respondents, without due regard to the fact that the respondents 4 to 8 in WP No. 15683 of 2011 were reverted back to the feeder category post on several occasions for want of vacancies, fixed their seniority from the date of their initial temporary appointment by promotion, which is contrary to Rule 8 of Special Rules of the Tamil Nadu Secretariat Service, by which, rotation should be followed. The learned counsel submitted that the learned Single Judge, on considering the entire issue involved in the matter pertaining to inter-se seniority, had directed the official respondents to fix the seniority of the writ petitioners as claimed. It was specifically held that the Special Rules will prevail over the General Rules and therefore, the learned Single Judge is right in holding that the quota-rota Rule in Special Rule 8 should be followed for fixation of inter-se seniority among the direct recruits/writ petitioners and the promotees/respondents. Reliance was also placed on the decision of the Supreme Court in the case of Arvinder Singh Bains vs. State of Punjab and others, reported in 2006 (6) SCC 673, wherein it was held that rota and quota must necessarily be reflected in the seniority list and any seniority list prepared in violation of rota and quota system is bound to be negated.

17. The learned counsel appearing for the respondents 1 to 6 further submitted that the entire averments raised in the present appeal by the appellants have been discussed and considered by the learned Single Judge. The learned Single Judge held that Rule 35(aa) cannot be pressed into service, when quota-rota system is mandatory and most of the promotee Assistant Section Officers suffered reversion. The contention of the appellants that quota-rota system had been broken down, is

Page numbers

untenable and the fact remains that Rule 8 of the Rules prescribing quota-rota is still in force and it has legal sanctity. It is further submitted that the quota-rota system has not been so far annulled, modified, cancelled or amended and therefore, it is mandatory on the part of the appellants to give effect to the same in the matter of fixation of seniority among the directly recruited Assistant Section Officers and the promotees. The contention that quota-Rota system has been broken down as there was no appointment made by "recruitment by transfer" is untenable. According to the learned counsel, in all the temporary panels issued by the Department, quota-rota system had been followed in the matter relating to promotion of Assistants, Personal Clerks, Typists by transfer from the category of Personal Assistants. By virtue of not following the quota-rota system, the appellants are attempting to undermine the statutory rules and their implementation. The contention that rotation prescribed under the quota-rota system for "recruitment by transfer" alone had not been given effect to and therefore the quota-rota system is broken down, cannot be considered, inasmuch as such exercise by the Government is not only against the mandatory recruitment Rules, but also against the settled legal principles. By stating so, the appellants cannot be permitted to follow part of the mandatory provisions under Rule 8 and it should be followed in entirety.

18. The learned counsel appearing for the respondents 1 to 6 further submitted that the contention that promotee Assistant Section Officers continuously officiated in the temporary posts, will not be a ground for fixing seniority, especially when they faced reversion to the feeder category post for want of vacancy. It is also brought to the notice of this Court that the Department did not draw regular panel for promotion to the post of Assistant Section Officer during the year 1985-1986, 1986-1987, 1987-1988, 1988-1989, 1989-1990, 1990-1991 and 1991-1992 and all the panels drawn during the aforesaid period, were only temporary panel. The promotees did not continuously officiate in the temporarily promoted post of Assistant Section Officers. Therefore, the seniority of the promotees had to be fixed only from the date on which their service was regularised in the cadre of Assistant Section Officer. In support of this contention, the learned counsel invited our attention to the decision of the Supreme Court in the case of K.Madalaimuthu Vs. State of Tamil Nadu, reported in 2006 (6) SCC 558, wherein it is stated that based on the aforesaid judgment, the dispute over inter-se seniority between the directly recruited District Registrars and the Deputy Inspector General of Registration and Additional Inspector General of Registration in the Registration Department, was resolved. The appellants, inspite of being

Page numbers

aware of the settled position of law enunciated by the Supreme Court in a catena of decisions, are only prolonging the issue with respect to fixation of inter-se seniority in this case and thereby caused mental agony to the writ petitioners. The writ petitioners having joined the post in a substantive vacancy on 13.05.1992, fully became eligible for inclusion in the regular panel for the year 1991-1992. However, the writ petitioners were made to wait for fixation of their seniority for over 20 years. The learned Single Judge, on appreciation of the above facts, rightly allowed the writ petitions and directed the appellants to draw the seniority list in the cadre of Assistant Section Officer by including the name of the writ petitioners over and above promotees and the learned counsel prayed for dismissal of the Writ Appeals.

19. Similarly, Mr. Stalin Abhimanyu, learned counsel appearing for the respondents 2, 3 and 6 in Writ Appeal No. 2612, who are the writ petitioners in W.P.No.15684 of 2011 contended that the writ petitioners are seeking seniority only from the date of their appointment in the year 1989 and not from the date when the vacancy was notified in the year 1983 or 1986. According to the learned counsel, a person is entitled to get seniority from the date of regularisation of his service and not from the date when he or she officiated in a temporary post due to leave vacancy, especially when he or she has been reverted within a short period of such officiation for want of vacancy. In this case, the promotees were reverted to the feeder category post of Assistants as soon as the direct recruits/writ petitioners were appointed and joined the regular post. After the appointment of the writ petitioners, the promotees could not get temporary promotion and their service was regularised long after the writ petitioners/direct recruits joined the post of Assistant Section Officer. Therefore, the promotees are entitled to get their due seniority only from the date on which their service was regularised and not before. The learned counsel relied on the decision of the Supreme Court in Madalaimuthu case (mentioned supra) and contended that promotion under Rule 39(f) does not confer any seniority or it cannot be construed to have been appointed to a post in accordance with the Rules. It is the date of regularisation which can be taken note of to confer seniority and not the date on which the promotees were temporarily appointed to the post of Assistant Section Officer.

20. With respect to the contention of the learned Additional Advocate General that quota-rota system had broken down, it is contended that the Government has been applying Quota-rota rule continuously for the purpose of promotion from the year 1990 and

Page numbers

therefore, it cannot be gainsaid that the system has been broken down. Therefore, the learned counsel submitted that the appellants must be directed to re-draw the seniority list among the direct recruits/writ petitioners and the promotees in the cadre of Assistant Section Officer from the date on which their services were regularised in the post of Assistant Section Officer by dismissing the writ appeals.

21. We have heard the counsel on either side and perused the materials placed on record. On a consideration of rival submissions, the following points emerge for our consideration in these writ appeals:-

(i) Whether the appellants can follow Rule 35 (aa) on the ground that quota-rota system has been broken down ?

(ii) Whether the regularisation of temporary employees under Rule 35(aa) with retrospective effect can be taken note of for determining their seniority?

(iii) Whether the quota-rota system can be given a go-bye on the assumption that no one was appointed by recruitment by direct transfer, since the recruitment by transfer could not be operated ?

22. It is not in dispute that a notification was issued by the TNPSC in the year 1986 for appointment to the post of Assistant Section Officers by direct recruitment. It is also an admitted fact that the posts fell vacant during the years 1983-84 and 1986-1987 in the Tamil Nadu Secretariat Service. It is in this selection process, the writ petitioners were appointed on various dates during June-July 1986 and August-November 1989. It is also an admitted fact that prior to the appointment of the writ petitioners to the post of Assistant Section Officers by direct recruitment, ad-hoc appointment or temporary appointments were made by giving promotion to the post of Assistant Section Officers to eligible persons. At the same time, those who were promoted to the post of Assistant Section Officer did not continuously officiate in the post and they were reverted often to the feeder category post held by them for want of vacancy. It is also to be observed that the writ petitioners are not seeking for fixing their seniority from the years 1983-84 and 1986-1987 when the posts of Assistant Section Officers fell vacant. They are asserting their right to get seniority in the post from the date of their appointment in the years 1986 and 1989. With this background, the inter-se dispute between the directly recruited Assistant Section Officers and the promotees for the purpose of reckoning their seniority, had to be examined.

Page numbers

23. The learned Additional Advocate General contended that for implementing quota-rota system, the department ought to have been given effect to the 7 modes of promotion, but for a quite long time, "recruitment by transfer" to the post of Assistant Section Officer had not been resorted to and therefore, quota-rota system has been broken down. In this context, it would be appropriate to refer to Rule 8 of the Special Rules for Tamil Nadu Secretariat Service, which provides for quota-rota system, and the same reads as follows:-

"8. Pattern of Appointment of Assistant Section Officers in the Departments of Secretariat other than the Law Department and Governor's Secretariat:- Subject to rule 8 of the General Rules, out of every seven vacancies in the category of Assistant Section Officers in the Departments of Secretariat other than the Law Department, and the Governor's Secretariat appointment shall be made in the following order of rotation:-

1. by direct recruitment
2. by recruitment by transfer;
3. by promotion from Assistant;
4. by promotion from Assistant;
5. by promotion from Assistant;
6. by promotion from Assistant; and
7. by promotion from the category of Personal Clerks, Typists, non- graduate Assistants and by transfer from the category of Personal Assistants

Provided that direct recruitment or/and recruitment by transfer for filling the vacancies may be kept in abeyance by the Government and such vacancies shall be treated as lapsed.

Provided further that every Personal Clerk or Personal Assistant shall, at the time of preparation of the list of persons eligible for appointment as Assistant Section Officers exercise an option as to the line in which she/he desires to continue and that such option once exercised shall be final."

24. This Rule is squarely applicable to the promotee Assistants/Typists who were reverted and re-appointed for want of vacancy because they held a lower post and were promoted and thereafter reverted back to the feeder category post for want of vacancy. It is evident that only as and when a regular vacancy arises, the promotees were allowed to occupy the post and not

Page numbers

any prior date to their substantive appointment, which is their actual date of regularisation. Therefore, the retrospective regularisation can at best be taken note of for qualifying service, increment etc., and it cannot be construed for the purpose of determining seniority. Thus, the above Rule 8 stands in favour of the directly recruited Assistant Section Officer and it has got nothing to do with the determination of seniority of the promotees.

25. In the present case, admittedly, the promotees cannot be construed to have been holding a substantive post by virtue of their temporary promotion, inasmuch as they were reverted to the feeder category post on and off. Therefore, only from the date of their regularisation of service in the cadre post of Assistant Section Officer, they will be qualified for the purpose of reckoning their seniority. Therefore, the officiation of the post of Assistant Section Officer for a temporary period cannot be regarded or recognised for the purpose of determination of seniority. In this context, a fitting answer can be discerned from the judgment of the Supreme Court in the case of Direct Recruit Class-II Engineering Officers Association, mentioned supra, which was relied on by the learned Additional Advocate General for the appellants, wherein it has been specifically held in Para No.47 as follows:-

"47. To sum up, we hold that:-

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

(C) When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly.

(D) If it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation.

Page numbers

In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down.

(E) Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date.

(F) Where the rules permit the authorities to relax the provisions relating to the quota, ordinarily a presumption should be raised that there was such relaxation when there is a deviation from the quota rule.

(G) The quota for recruitment from the different sources may be prescribed by executive instructions, if the rules are silent on the subject.

(H) If the quota rule is prescribed by an executive instruction, and is not followed continuously for a number of years, the inference is that the executive instruction has ceased to remain operative.

(I) The posts held by the permanent Deputy Engineers as well as the officiating Deputy Engineers under the State of Maharashtra belonged to the single cadre of Deputy Engineers.

(J) The decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinised for finding out any possible error. It is not in the interest of Service to unsettle a settled position.

With respect to Writ Petition No. 1327 of 1982, we further hold:

(K) That a dispute raised by an application under article 32 of the Constitution must be held to be barred by principles of res judicata including the rule of constructive res judicata if the same has been earlier decided by a competent court by a judgment which became final.

In view of the above and the other findings recorded earlier, we do not find any merit in any of the civil appeals, writ petitions and special leave petitions which are accordingly dismissed. There will be, however, no order as to costs."

26. Therefore, it is evident from the above decision that once an incumbent is appointed to a post according to Rule, his seniority has to be counted from the date of his appointment and any appointment prior to such regular appointment either on ad-hoc or temporary appointment or as a stop-gap arrangement without continuous officiation, cannot be taken into account for the purpose of determining seniority. Therefore, by applying the above judgment of the Supreme Court, we hold that the seniority of the promotees to the cadre of Assistant Section Officer, has to be fixed from the date of their regularisation in the cadre post of Assistant Section Officer and their temporary officiation to the post of Assistant Section Officer with intermittent reversion to the feeder category post, cannot form the basis for fixing their seniority. In any event, by virtue of this decision of the Supreme Court, the contentions made by the learned Additional Advocate General by placing reliance on Rule 35 (aa) of the Tamil Nadu State and Subordinate Rules, will have no application to this case for the purpose of reckoning the seniority of the directly recruited and promotee Assistant Section Officers.

27. Rule 8 of the above said Rules, prescribes quota-rota system and it is mandatory to be followed in the matter of fixation of inter-se seniority. It is still in force and there is nothing on record to show that it has been annulled, modified, cancelled, varied or amended by reason of appointment of any person to the post of Assistant Section Officer by transfer of service. Merely because the appointment under transfer of service has not been given effect to, it will not vitiate the quota-rota system. Therefore, it is mandatory for the appellants to give effect to the quota-rota system in the matter of fixation of seniority among the directly recruited Assistant Section Officers and the promotees. Further, it is evident that the Department has implemented quota-rota system in relation to promotion of Assistants, Personal Clerks, Typists by transfer from the category of Personal Assistants. Therefore, the contention that the rotation prescribed under the quota-rota system for "recruitment by transfer" alone had not been given effect to and consequently the quota-rota system is broken down, cannot be considered. The learned Single Judge has also appreciated such an argument advanced on behalf of the Department and held that the mandatory Recruitment Rules of quota-rota system have to be followed by the Department and non-implementation of the same would have the effect of undermining the statutory rules and its implementation. We are in agreement with such a conclusion arrived at by the learned Single Judge.

Page numbers

28. The learned counsel appearing for the writ petitioners, who are directly recruited Assistant Section Officers, would place reliance on the decision of the Supreme Court in the case of K.Madalaimuthu and another versus State of T.N. and others, reported in 2006 (6) SCC 558 wherein, it has been held as follows:-

"24. On a consideration on the submissions made on behalf of the respective parties and the decisions cited on their behalf, the consistent view appears to be the one canvassed on behalf of the appellants, the decisions cited by Mr. Rao have been rendered in the context of Rule 10 (a) (i) (1) and the other relevant rules which are also applicable to the facts of the instant case. The law is well established that initial appointment to a post without recourse to the rules of recruitment, an appointment to a service as contemplated under Rule 2 (1) of the General Rules, notwithstanding the fact that such appointee is called upon to perform duties of a post borne on the cadre of such service. In fact, Rule 39 (c) of the General Rules indicate that a person temporarily promoted in terms of Rule 39 (a) is required to be replaced as soon as possible by a member of the service who is entitled to the promotion under the rules. It stands to reason that a person who is appointed temporarily to discharge the functions in a particular post without recourse to the recruitment rules, cannot be said to be in service till such time his appointment is regularized. It, therefore, follows that it is only from the date on which his services are regularised that such appointee can count his seniority in the cadre."

29. It was held in the above referred case by the Supreme Court that a person temporarily promoted in terms of Rule 39 (a) of the said Rules, is required to be replaced by a member of the service who is entitled to the promotion under the Rules. It was further held that a person who is appointed temporarily to discharge the functions in a particular post without recourse to the recruitment Rules, cannot be said to be in service till such time his appointment is regularized. This decision squarely applies to the facts of this case, where the promotees held or officiated the post of Assistant Section Officer for a considerable period and they were replaced by the writ petitioners upon their appointment to the post by virtue of their selection by the TNPSC. While so, the right of the promotees to get seniority, will begin only from the date of

Page numbers

their regular appointment to the post of Assistant Section Officer, and their officiation of the post for a temporary period, will not be taken note of for fixing their seniority. The aforesaid decisions in Direct Recruit Class-II Engineering Officers Association and Madalaimuthu's cases were also relied on by the learned Single Judge to arrive at a conclusion that the writ petitioners, who were directly recruited to the post of Assistant Section Officers, have to be placed over and above the promotees in the seniority list and we find no reason to interfere with the same.

30. In the result, we confirm the common Order dated 03.08.2018 passed by the learned Single Judge in W.P.Nos.15683 and 15684 of 2011. The Writ Appeals, therefore, fail and they are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

rsh/cs

To

1. The Government of Tamil Nadu
represented by its Chief Secretary
Tamil Nadu Secretariat
Chennai - 600 009
2. The Government of Tamil Nadu
represented by its Secretary to Government
Department of Personnel and Administrative Reforms
Tamil Nadu Secretariat
Chennai - 600 009
3. The Secretary
Tamil Nadu Public Service Commission
Chennai - 600 006

+1cc to M/s.Muthumani Doraisami, Advocate SR.42806

+2cc to Mr.L.Chaudrakumar, Advocate SR.42913

+1cc to the Government Pleader SR.43041.

W.A.Nos.2537 & 2612 of 2019

SR II(CO)

CB(19/01/2021)

Page numbers