

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 17.02.2020	Delivered on 20.02.2020
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CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.Nos.34281, 32917, 32922,32921 & 32925 of 2019
and
WMP Nos.34916, 33354, 33350, 33356, 33358 of 2019

W.P.No.34281 of 2019

Dr.I.Ponnupandian... Petitioner

.Vs.

- 1.The State of Tamil Nadu,
Represented by the Secretary to Government
Animal Husbandry, Dairying and Fisheries Department,
Fort St. George, Chennai 600 009.
2. The Secretary,
Tamil Nadu Public Service Commission,
Park Town, Chennai 600 003.
3. The Director,
Directorate of Animal Husbandry & Veterinary
Services, No.571, Annasalai,
Nandanam, Chennai 600 0035.
4. Dr.V.Ganapathy Prasad
5. Dr.R.Kannan
6. Dr.P.Chokkalingam
7. Dr.V.Arumugaraju
8. Dr.K.Murali Sadanandam
9. Dr.T.V.Murugavel
- 10.Dr.L.Lydia Arul selvi
- 11.Dr.P.Ramesh
12. Dr.G.Chandrasekar

13. Dr.M.Selvakumar
14. Dr.S.Prabu
15. Dr.S.Ramesh Babu
16. Dr.V.Saravana Kumar
17. Dr.V.Jayaram
18. Dr.A.V.Joseph Ayyadurai
19. Dr.D.Sukumar
20. Dr.D.Gandhimathi
21. Dr.G.Murugan
22. Dr.M.T.Edward Thomas
23. Dr.D.Sutha
24. Dr.A.Chandrasekar
25. Dr.M.K.Mohankumar
26. Dr.G.Manikkam
27. Dr.A.Raja
28. Dr.V.R.Baskar
29. Dr.M.Balamurugan
30. Dr.K.Saravanan
31. Dr.M.Sundaramoorthy
32. Dr.P.Kannan
33. Dr.A.Jeyaraj
34. Dr.S.Baskaran
35. Dr.S.Senthil Muthukumaran

36. Dr.T.Pandiyan
(R-4-R36 impleaded vide order dated
23.01.2020 in WMP Nos.1601 & 1601 of 2020)

.. Respondents

PRAYER in WP No.34281 of 2019: Writ petition filed under
Article 226 of the Constitution of India, to issue a Writ of
Certiorari Mandamus to call for the records in respect of
the impugned order in Memorandum No.1129 /OTD-A1/2018 dated

09.11.2019 passed by 2nd respondent and quash the same and consequently direct the respondents to rectify the anomaly by revising the TNPSC Serial Numbers contained in the order of the 3rd Respondent in Na.Ka.No.114668/M1/98 dated 31.10.1998 in accordance with merits within the reservation under MBC quota by following the orders of the Hon'ble Division Bench of this Court in WP No.998 of 2017., batch of cases on dated 15/11/2019.

W.P.No.32917 of 2019

Dr.N.Srikumar

.. Petitioner

.Vs.

- 1.The State of Tamil Nadu,
Represented by the Secretary to Government
Animal Husbandry, Dairying and Fisheries Department,
Fort St. George, Chennai 600 009.
2. The Secretary,
Tamil Nadu Public Service Commission,
Park Town, Chennai 600 003.
3. The Director,
Directorate of Animal Husbandry & Veterinary
Services, No.571, Annasalai,
Nandanam, Chennai 600 0035.Respondents

PRAYER in WP No.32917 of 2019: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records in respect of the impugned order in Memorandum No.1129 /OTD-A1/2018 dated 09.11.2019 passed by 2nd respondent and quash the same and consequently direct the respondents to rectify the anomaly by revising the TNPSC serial numbers contained in the order of the 3rd respondent in Na.Ka.No.114668/M1/98 dated 31.10.1998 in accordance with merits within the reservation under MBC quota by following the orders of the Hon'ble Division Bench of this Court in WP No.998 of 2017 batch of cases.

W.P.No.32921 of 2019

Dr.N.Pahalavan

.. Petitioner

.Vs.

- 1.The State of Tamil Nadu,
Represented by the Secretary to Government
Animal Husbandry, Dairying and Fisheries Department,
Fort St. George, Chennai 600 009.

2. The Secretary,
Tamil Nadu Public Service Commission,
Park Town, Chennai 600 003.

3. The Director,
Directorate of Animal Husbandry & Veterinary
Services, No.571, Annasalai,
Nandanam, Chennai 600 0035.

...Respondents

PRAYER in WP No.32921 of 2019: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records in respect of the impugned order in Memorandum No.1129 /OTD-A1/2018 dated 09.11.2019 passed by 2nd respondent and quash the same and consequently direct the respondents to rectify the anomaly by revising the TNPSC serial numbers contained in the order of the 3rd respondent in Na.Ka.No.114668/M1/98 dated 31.10.1998 in accordance with merits within the reservation under MBC quota by following the orders of the Hon'ble Division Bench of this Court in WP No.998 of 2017 batch of cases.

W.P.No.32922 of 2019

Dr.K.Ravi

... Petitioner

.Vs.

1.The State of Tamil Nadu,
Represented by the Secretary to Government
Animal Husbandry, Dairying and Fisheries Department,
Fort St. George, Chennai 600 009.

2. The Secretary,
Tamil Nadu Public Service Commission,
Park Town, Chennai 600 003.

3. The Director,
Directorate of Animal Husbandry & Veterinary
Services, No.571, Annasalai,
Nandanam, Chennai 600 0035.

...Respondents

PRAYER in WP No.32922 of 2020: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records in respect of the impugned order in Memorandum No.1129 /OTD-A1/2018 dated 09.11.2019 passed by 2nd respondent and quash the same and consequently direct the respondents to rectify the anomaly by revising the TNPSC serial numbers contained in the order of the 3rd respondent in Na.Ka.No.114668/M1/98 dated 31.10.1998 in accordance with merits within the reservation under MBC quota by following the orders of the Hon'ble Division Bench of this Court in WP No.998 of 2017 batch of cases.

W.P.No.32925 of 2019

Dr.K.Chandra Rajeshwari

.. Petitioner

.Vs.

- 1.The State of Tamil Nadu,
Represented by the Secretary to Government
Animal Husbandry, Dairying and Fisheries Department,
Fort St. George, Chennai 600 009.
2. The Secretary,
Tamil Nadu Public Service Commission,
Park Town, Chennai 600 003.
3. The Director,
Directorate of Animal Husbandry & Veterinary
Services, No.571, Annasalai,
Nandanam, Chennai 600 035.Respondents

PRAYER in WP No.32925 of 2019: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records in respect of the impugned order in Memorandum No.1129 /OTD-A1/2018 dated 09.11.2019 passed by 2nd respondent and quash the same and consequently direct the respondents to rectify the anomaly by revising the TNPSC serial numbers contained in the order of the 3rd respondent in Na.Ka.No.114668/M1/98 dated 31.10.1998 in accordance with merits within the reservation under MBC quota by following the orders of the Hon'ble Division Bench of this Court in WP No.998 of 2017 batch of cases.

For Petitioners : Mr.A.R.L.Sundaresan
in all WPs Senior Counsel for
M/s.R.Maheshwari

For Respondents : Mr.P.S.Sivashanmuga Sundaram
Special Government Pleader
for R1 and R3 in All WPs
M/s.C.N.G.Niraimathi
Standing Counsel for R2 in all WPs
Mr.M.Ajmal Khan
Senior Counsel for
M/s.Ajmal Associates
for R4 to R28 in WP No.34281 of 2019
Mr.G.Sankaran, for implead Petitioner
in WP No.34281 of 2019

COMMON ORDER

All the above writ petitions challenge the impugned order passed by the Secretary, Tamil Nadu Public Service Commission dated 09.11.2019 and consequently, for a direction to the respondents to rectify the anomaly by revising the seniority list of Veterinary Assistant Surgeons.

2. The case of the petitioners is that the 2nd respondent issued a notification on 21.10.1997, calling for applications to fill up 174 posts of Veterinary Assistant Surgeons. The selection consisted of a written examination and oral test. Appointment orders were issued to the petitioners by the 3rd respondent and it is seen from the proceedings dated 31.10.1998, that totally 169 persons were selected and appointed in the said post. The further case of the petitioners is that there was an anomaly that arose in the rank list that was issued by the 3rd respondent, since the meritorious candidates who secured high marks went down in the seniority list and persons who had secured lesser marks and were falling under the reservation category were placed higher in the seniority list. The petitioners were making representations in this regard. In the meantime, steps were taken by the 3rd respondent to call for service particulars of all the Veterinary Assistant Surgeons including the petitioners for considering for promotion to the post of Assistant Director, Animal Husbandry Service. It is stated that there are 97 vacancies in the said post. The petitioners approached this Court and sought for a direction to the 3rd respondent to consider the representations made by the petitioners and correct the anomaly and publish the fresh seniority list. This Court disposed of the writ petition by giving appropriate directions.

3. Pursuant to the orders passed by this Court, the 2nd respondent has passed the impugned order by proceedings dated 09.11.2019, rejecting the claim made by the petitioners. Aggrieved by the same, the present writ petitions have been filed before this Court.

4. Mr. A.R.L. Sundaresan, learned Senior counsel, appearing on behalf of the petitioners made the following submissions :-

(a) The reason given by the 2nd respondent to reject the claim made by the petitioners is totally illegal and unsustainable. The learned Senior Counsel submitted that two reasons have been assigned by the 2nd respondent to reject the claim made by the petitioners. The 1st reason is by citing the judgment of the Hon'ble Supreme Court in P.S. Ghalaut vs. State of Haryana [(1995) 5 SCC 625], and the 2nd reason is by pointing out Section 70 of the Tamil Nadu Government

Servants (Conditions of Service) Act, 2016. The learned Senior Counsel submitted that insofar as the first issue is concerned, the judgement in P.S.Ghalaut case, has already been over-ruled by Bimlesh Thanvar case and the said judgment is no longer a good law. Insofar as the 2nd issue is concerned, Section 70 has been declared to be ultra vires and unconstitutional by the Division Bench of this Court in WP No.998 of 2017., etc batch dated 15.11.2019.

(b) The Division Bench of this Court in [N.Santhosh Kumar and others Vs. The Tamil Nadu Public Service Commission and others] reported in 2015 4 MLJ 281, while interpreting Rule 35(a) of the General rules for Tamil Nadu State and Subordinate Services, has specifically held that the seniority of the persons should be determined only with reference to the rank obtained by him in the list of candidates drawn up by the Public Service Commission. By bringing to the notice of this Court this Judgment, it was submitted that the petitioners who belonged to MBC category but who were fitted in the general turn by virtue of higher marks secured by them, have been placed at the bottom of the seniority list and persons who had secured lesser marks have been placed above the petitioners and therefore, the entire seniority list is erroneous and the respondent must correct this anomaly.

(c) The seniority list has been drawn for the first time only in the year 2019 after the orders were passed by this Court and none of the petitioners find a place in the seniority list. When the petitioners requested to rectify the anomaly in the seniority list, the 2nd respondent has erroneously rejected the claim made by the petitioners.

5. When the above writ petitions were pending, impleading petitions were filed by two sets of candidates, who were also claiming for promotion to the post of Assistant Director, Animal Husbandry Service. The 1st set of candidates, who were represented by Mr.Ajmal Khan, learned Senior Counsel, were appointed as Veterinary Assistant Surgeons in the year 1991-1992. The 2nd set of candidates, who impleaded themselves and were represented by Mr.G.Sankaran are those who were appointed in the year 1997-1998 towards the backlog vacancies and who were placed above the petitioners. Mr.Ajmal Khan, learned Senior Counsel, submitted that the present controversy that has been raised by the petitioners will have absolutely no bearing while considering the promotion of the impleaded respondents who were admittedly appointed in the year 1991-1992. The learned Senior counsel submitted that totally 191 persons were appointed as Veterinary Assistant

Surgeons in the year 1991-92 and out of that, 86 persons have already been promoted to the post of Assistant Director and only the remaining 52 persons are waiting for their promotion to the said posts. These persons are any way senior to the petitioners herein and by virtue of the interim orders passed by this Court, even the claim made by the candidates belonging to 1991-1992 batch, has been kept in abeyance. The learned Senior counsel therefore submitted that the 3rd respondent must be directed to proceed further with the promotion insofar as the candidates belonging to the 1991-1992 batch.

6. Mr.G.Sankaran, learned counsel, who is appearing for the other set of candidates, submitted that the claim made by the petitioners is liable to be rejected on the ground of delay. The learned counsel submitted that the 3rd respondent by his proceedings in ROC No.5185/M1/2001.1 dated 18.01.2001 had already published the seniority list of 174 candidates and this seniority list was never questioned by the petitioners. Therefore, they cannot be permitted to question the seniority list at this length of time. The learned counsel submitted that the submissions made on the side of the petitioners goes completely contrary to the pleadings in the affidavit filed in support of the writ petition and the relief sought for in the writ petition. The learned counsel submitted that the petitioners want themselves to be fitted under the MBC quota towards backlog vacancies ahead of the impleaded respondents. On the other hand, it was argued that the petitioners must be considered on merits and placed high in the seniority list based on the marks secured by them. The learned counsel submitted that the petitioners are taking mutually contradictory stand in this writ petition. The learned counsel further submitted that the 2nd respondent has no role to play in the seniority list and it is the 3rd respondent, who should have passed orders on the representations made by the petitioners.

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

8. The main grievance that has been expressed by the petitioner in all the above writ petitions is that they have secured very high marks and they have been appointed as Veterinary Assistant Surgeons under the General Turn category, inspite of all the petitioners belonging to MBC category. While preparing the list of persons appointed as Veterinary Assistant Surgeons, the names of the petitioners were found much below the names of the persons, who were fitted in the MBC backlog category and the same is against the rules. According to the petitioners, meritorious persons brought in under the General Turn category should find their place higher in the seniority list and persons who have obtained lesser

marks must come down in the seniority list below the petitioners. The controversy involved in these writ petitions pertains to the candidates, who were appointed as Veterinary Assistant Surgeons during the selection conducted by the 2nd respondent in the year 1997-98.

9. The petitioners have pleaded in the affidavit to the effect that they should have been fitted in the MBC backlog vacancies and placed higher in the seniority list by considering the high marks secured by them. Even in the relief sought for by the petitioners, they have sought for a direction to the respondents to rectify the anomaly by revising the seniority list of Veterinary Assistant Surgeons and bring the petitioners under the MBC quota. This pleadings made by the petitioners goes contrary to the submissions made by the learned Senior counsel appearing on behalf of the petitioners. The learned Senior Counsel appearing on behalf of the petitioners argued that even though the petitioners fell under the MBC category, considering the high marks taken by them, they were fitted in the General Turn category and therefore, they should have been placed higher in the seniority list. It was never argued that the petitioner must be fitted in the MBC backlog category. When this was pointed out by this Court, the learned Senior counsel submitted that the claim made by the petitioners can be considered purely based on the marks obtained by them during the selection and they can be placed in a seniority list in line with their marks and on the basis of merit.

10. It will be relevant to rely upon the judgment of the Hon'ble Division Bench of this Court in [N.Santosh Kumar and Others Vs. The Tamil Nadu Public Service Commission and Ors.] referred supra. The relevant portions in the judgment is extracted hereunder :-

25. As a matter of fact, the additional preliminary contention of the learned senior counsel appearing for the contesting respondents is that the writ petitioners were guilty of raking up the issue of seniority after the period of limitation prescribed in Rule 35(f) of the General Rules for Tamil Nadu State and Subordinate Services.

26. But, we are obliged to point out at the outset that wherever a period of limitation is prescribed statutorily, the question of laches would not arise. The contesting respondents do not appear to have invited the attention of the learned Judge to Rule 35(f). Therefore, the learned Judge proceeded only on the ground of laches.

27. Hence, let us now see whether the writ petitioners were at least guilty of delay in terms of the prescription contained in Rule 35(f) of the General Rules for Tamil Nadu State and Subordinate Services. Rule 35(f) reads as follows:-

" Application for the revision of seniority of a person in a service, class, category or grade shall be submitted to the Appointing Authority within a period of three years from the date of appointment to such service, class, category or grade or within a period of three years from the date of the order fixing the seniority, as the case may be. Any application received after the said period of three years shall be summarily rejected. This shall not, however, be applicable to cases of rectifying orders, resulting from mistake of facts".

28. A careful look at Rule 35(f) would disclose that it has three limbs namely:-
(i) that an application for revision of seniority may be submitted within a period of three years from the date of appointment;
(ii) that an application for revision of seniority may also be made within a period of three years from the date of the order fixing the seniority; and
(iii) that the prescription of the period of limitation is not applicable to cases of rectifying orders, resulting from mistake of facts.

32. In G.O.Ms.No.104, dated 19.6.2000, the Government merely ordered the approval of candidates selected by the Public Service Commission for appointment. The Government order contained a notification with a tabular statement. The tabular statement contained 6 columns. The first column related to Serial Numbers. The second column indicated the rotation against which each of the selectees was fitted. The third column contained the category against which the candidate was selected, such as general turn, Backward Classes, Most Backward Classes, Scheduled Caste etc. The fourth column contained the names and addresses of the selectees. The fifth column contained particulars about the date of birth and qualification of the candidates. The sixth column contained remarks.

33. There was no indication whatsoever in the tabular column appended to G.O.Ms.No.104 dated 19.6.2000 that the names of the candidates had been arranged in the order of seniority. Therefore, this Government Order cannot be taken to have indicated the seniority of the selectees.

PRINCIPLE OF FIXATION OF SENIORITY

39. Having disposed of the contention relating to delay in terms of Rule 35(f) as well as the contention relating to laches, let us now proceed to consider the only other question that is left. This question is as to whether the seniority of an individual selected for appointment by the Tamil

Nadu Public Service Commission would be in accordance with the roster point prescribed in Schedule III to the General Rules or should in accordance with the order of merit.

40. As we have stated earlier, the Notification for direct recruitment was published by the Public Service Commission on 10.07.1999. On the date on which the Notification was published, a decision rendered by the Supreme Court in P.S.Ghalaut vs.State of Haryana [(1995) 5 SCC 625], was holding the field. As per this decision, the seniority gained by a reserved category candidate on account of his placement at a higher level in the roster point, over and above a more meritorious candidate placed at a lower level in the roster point, was Constitutionally valid. Therefore, the Government appear to have issued a D.O. Letter No.44129/S/98 dated 20.8.1998 of the Personnel and Administrative Reforms Department, directing the Service Commission as well as the other Appointing Authorities to treat the roster itself as the seniority list.

41. However, the decision rendered in P.S.Ghalaut by a two member Bench was declared to be not a good law, in Bimlesh Tanwar vs. State of Haryana, [(2003) 5 SCC 604], by a three member Bench. This decision was rendered on 10.3.2003. But the Government of Tamil Nadu did not withdraw or cancel the D.O. Letter No.44129/S/98 dated 20.8.1998 of the Personnel and Administrative Reforms Department, which was issued on the basis of the decision in P.S.Ghalaut. As a consequence, the Engineer in Chief of the Highways Department, issued a seniority list on 29.4.2004, only on the basis of the Government Letter dated 20.8.1998 that followed P.S.Ghalaut.

Therefore, the appellants came up with writ petitions, challenging the said seniority list. Though the learned Judge found that the writ petitioners had an arguable case on merits, he dismissed the writ petitions on the ground of laches. Since we have found on facts that there was no laches on the part of the writ petitioners, we are obliged to decide the issue on merits.

42. Though the question arising for consideration before us appears to be settled by the decision in Bimlesh Tanwar, the learned senior counsel appearing for the contesting respondents argued that the question is not as simple as that. It is the contention of the learned senior counsel for the contesting respondents (i) that there was nothing wrong in the Government applying the ratio laid down in P.S.Ghalaut, to a selection made much before P.S.Ghalaut was declared to be not a good law; (ii) that even de hors P.S.Ghalaut, the fixation of

seniority was correct in view of the prescription contained in Rule 35(a) of the General Rules for Tamil Nadu State and Subordinate Services and (iii) that the roster provided in Schedule-III of the General Rules for the Tamil Nadu State and Subordinate Services is intended to ensure the benefit of reservation even in promotions in terms of Clause (4-A) of Article 16 of the Constitution.

57. Keeping the above Rule position in mind, let us now go back to what happened when the Supreme court decided the case of P.S.Ghalaut, forcing the Public Service Commission and the State Government to take a decision to make the roster point itself as the foundation for fixation of seniority.

58. In P.S.Ghalaut, a dispute relating to fixation of seniority between a general category candidate and a candidate selected under the quota for Backward Classes for appointment as Lecturers in the Haryana Medical Education Services, came up before the Supreme Court. In the order of merit, the general category candidate was high up than the reserved category candidate. But in the 100 point roster maintained by the State Government, the reserved category candidate was placed higher, since the roster point against which she was appointed was above the roster point for the general turn. Holding that such placement was legally valid, the Supreme Court observed as follows:-

"It is seen that when the roster is maintained to give effect to the constitutional policy of reservation to render socio-economic justice to the sections concerned, respective places assigned to the candidates belonging to them, general candidates, Backward Classes or Scheduled Castes or Scheduled Tribes, as the case may be, the change in the order of merit inevitably gets affected. If the original order of merit prepared by the Public Service Commission or Selection Committee remains unaffected, roster becomes redundant and always remains unimplemented. The reserved candidates always remain at the bottom of the select list unless selected as general candidates in the order of merit. To relieve such injustice and hardship, roster is maintained and vacancies are filled up in the order maintained therein."

59. On the basis of the judgment of the Supreme Court in P.S.Ghalaut, the Government of Tamil Nadu sent a letter bearing No.44129/S/98 dated 20.8.1998 to treat the then existing 100 point roster itself as indicative of the seniority position. The State Government did not apply its mind to the fact that

the Supreme Court was concerned in P.S.Ghalaut with the claim of a general category candidate as against a reserved category candidate. The Supreme Court did not have an occasion in P.S.Ghalaut to examine the case of two reserved category candidates, one selected on his own merit and another selected as against the reserved vacancy, pitted against each other. But nevertheless, the Supreme Court took a hypothetical example in P.S.Ghalaut and held as follows:-

"Take for instance Vacancies Nos. 1 and 6, as pointed out in the Chief Secretary's letter have admittedly been reserved for Scheduled Castes. Suppose recruitment was made to fill up ten vacancies, three candidates from Scheduled Castes were selected. The first one as general and second and third were selected on the basis of reserved quota. The question is whether the first candidate will be put in the quota allotted to the Scheduled Castes in the roster. Having been selected as a general candidate, though he is more meritorious than the second and third candidates, he will not get the placement in the roster, reserved for Scheduled Castes i.e. Nos.1 and 6 points. Consequently candidates Nos. 2 and 3 will get the placement at Nos.1 and 6 and the first candidate will get the placement in the order of merit along with the general candidates according to the order of merit maintained by the Selection Committee or the Public Service Commission. He cannot complain that having been selected in the merit, he must be placed in the placement reserved for Scheduled Castes at Point No.1 in the roster. Equally, though general candidate is more meritorious in the order of merit prepared by the Public Service Commission or the Selection Committee, when the appointments are made and the vacancies are filled up according to the roster, necessarily and inevitably the reserved candidates though less meritorious in the order of merit maintained by the Public Service Commission would occupy the respective places assigned in the roster. Thereby they steal a march over some of the general candidates and get seniority over the general candidates. This scheme is, therefore, constitutional, valid and is not arbitrary."

60. But the ratio laid down in P.S.Ghalaut by a two member Bench of the Supreme Court was held to be not a good law in Bimlesh Tanwar v. State of Haryana [(2003) 5 SCC 604]. As seen from paragraph 13 of the decision in Bimlesh Tanwar, two contentions were raised before the High Court. The second was whether the seniority of the selectees had to be determined as per roster points or as per the order of merit.

From paragraphs 33 to 37, the Supreme Court dealt with the aforesaid question. Paragraphs 33 to 37 of the decision in Bimlesh Tanwar read as follows:-

33. The question as to whether the determination of inter se seniority would depend upon the filling up of the vacancies so far as the reserved categories are concerned, having regard to the roster points, in our opinion, is no longer res integra.

34. In Ajit Singh & Ors. (II) vs. State of Punjab & Ors. reported in 1999 (7) SCC 209 a five Judge Bench of this Court has laid down the law in the following terms:

40. "It must be noted that whenever a reserved candidate goes for recruitment at the initial level (say Level 1), he is not going through the normal process of selection which is applied to a general candidate but gets appointment to a post reserved for his group. That is what is meant by "reservation". That is the effect of "reservation".

41. Now in a case where the reserved candidate has not opted to contest on his merit but has opted for the reserved post, if a roster is set at Level 1 for promotion of the reserved candidate at various roster points to Level 2, the reserved candidate, if he is otherwise at the end of the merit list, goes to Level 2 without competing with general candidates and he goes up by a large number of places. In a roster with 100 places, if the roster points are 8, 16, 24 etc. at each of these points the reserved candidate if he is at the end of the merit list, gets promotion to Level 2 by side-stepping several general candidates. That is the effect of the roster- point promotion.

42. It deserves to be noticed that the roster points fixed at Level 1 are not intended to determine any seniority at Level 1 between general candidates and the reserved candidates. This aspect we shall consider again when we come to Mervyn Continho v. Collector of Customs (1966) 3 SCR 600 lower down. The roster point merely becomes operative whenever a vacancy reserved at Level 2 becomes available. Once such vacancies are all filled, the roster has worked itself out. Thereafter other reserved candidates can be promoted only when a vacancy at the reserved points already filled arises. That was what was decided in R.K. Sabharwal v. State of Punjab (1995) 2 SCC 745."

35. In Ajit Singh (II), the decision of this Court in R.K. Sabharwal case has, thus, been explained.

36. P.S. Ghalaut vs. State of Haryana & Ors. [1995 (5) SCC 625] relied upon by Dr. Chauhan, is a decision rendered by a two Judge bench. In that case Rule 13 of the Rules envisaged that the seniority inter se of members of the service shall be

determined by the length of continuous service on any post in the service; provided further that in the case of two or more members appointed by direct recruitment, the order of merit determined by the Commission shall not be disturbed in fixing the seniority. Despite the said Rule, it was held:

"Take for instance Vacancies Nos. 1 and 6, as pointed out in the Chief Secretary's letter have admittedly been reserved for Scheduled Castes. Suppose recruitment was made to fill up ten vacancies, three candidates from Scheduled Castes were selected on the basis of reserved quota. The question is whether the first candidate will be put in the quota allotted to the Scheduled Castes in the roster. Having been selected as a general candidate, though he is more meritorious than the second and third candidates, he will not get the placement in the roster, reserved for Scheduled Castes i.e. Nos. 1 and 6 points. Consequently candidates Nos. 2 and 3 will get the placement at Nos. 1 and 6 and the first candidate will get the placement in the order of merit along with the general candidates according to the order of merit maintained by the Selection Committee or the Public Service Commission. He cannot complain that having been selected in the merit, he must be placed in the placement reserved for Scheduled Castes at Point No. 1 in the roster. Equally, though general candidate is more meritorious in the order of merit prepared by the Public Service Commission or the Selection Committee, when the appointments are made and the vacancies are filled up according to the roster, necessarily and inevitably the reserved candidates though less meritorious in the order of merit maintained by the Public Service Commission would occupy the respective places assigned in the roster. Thereby they steal a march over some of the general candidates and get seniority over the general candidates. This scheme is, therefore, constitutional, valid and is not arbitrary."

37. We have not been able to persuade ourselves to the aforesaid view."

61. It will be of interest to note that the hypothetical situation taken up by a two member Bench in P.S.Ghalaut where two reserved category candidates are pitted against each other, was actually extracted by the Supreme Court in para 36 of the report in Bimlesh Tanwar and the Supreme Court recorded that the same was not correct. In para 40 of the report the Supreme Court eventually held as follows:-

"40. An affirmative action in terms of Article 16(4) of the Constitution is meant for providing a

representation of class of citizenry who are socially or economically backward. Article 16 of the Constitution of India is applicable in the case of an appointment. It does not speak of fixation of seniority. Seniority is, thus, not to be fixed in terms of the roster points. If that is done, the rule of affirmative action would be extended which would strictly not be in consonance of the constitutional schemes. We are of the opinion that the decision in P.S. Ghalaut does not lay down a good law."

62. What was done in Bimlesh Tanwar was actually a declaration of law. Therefore, the same will have retrospective effect. In P.V.George vs. State of Kerala [(2007) 3 SCC 557], the Supreme Court held that "the law declared by a court will have retrospective effect, if not otherwise stated to be so specifically". The Supreme Court was conscious of the fact, as seen from paragraph 19 of the report in P.V.George, that when the doctrine of stare decisis is not adhered to, a change in the law may adversely affect the interest of citizens. But still the Supreme court held that the power to apply the doctrine of prospective overruling (so as to remove the adverse effect) must be exercised in the clearest possible term.

63. Therefore, it is clear that anything done as a consequence of the decision of the Supreme Court in P.S.Ghalaut, cannot stand since the Supreme Court did not apply the doctrine of prospective overruling in Bimlesh Tanwar in express terms.

64. As a matter of fact even before a three member Bench held in Bimlesh Tanwar that the law laid down in P.S.Ghalaut was not a good law, a Constitution Bench of the Supreme Court had an occasion to consider in Ajit Singh (II) vs. State of Punjab [(1999) 7 SCC 209], the rights of the roster point promotees vis-a-vis general category candidates. The background of Ajit Singh (II) deserve to be noted. It goes as follows:-

(i) In Union of India vs. Virpal Singh [(1995) 6 SCC 684], the Supreme Court upheld the stand taken by the Railways that reserved category candidates who got promotion at roster points would not be entitled to claim seniority at the promotional level as against senior general category candidates who got promoted at a later point of time to the same level. The Court held that the State was entitled to provide, what came to be known in popular terms as the "catch up rule" enabling the senior general category candidates who got promoted later, to claim seniority over and above the roster point promotee who got promoted earlier.

(ii) The catch up rule formulated in Virpal was approved by a three member Bench in Ajit Singh Januja vs. State of Punjab [(1996) 2 SCC 715]. This case came to be known as Ajit Singh (I).

(iii) But, another three member Bench took a different view in Jagdish Lal vs. State of Haryana [(1997) 6 SCC 538] and held that while the rights of the reserved candidates under Article 16(4) and 16(4-A) were fundamental rights, the right to promotion was a statutory right and that therefore, the roster point promotees have to be given seniority on the very same basis as those having continuous officiation in a post.

(iv) Since Jagdish Lal took a view contrary to the views expressed in Virpal Singh and Ajit Singh (I), the State of Punjab filed Interlocutory Applications before the Supreme Court, seeking clarifications.

These Interlocutory Applications were placed before a Constitution Bench comprising of 5 Judges, in view of the fact that two Benches of coordinate jurisdiction (both three member Benches) had taken diametrically opposite views. The decision rendered by the larger Bench of 5 Judges on these Applications came to be known as Ajit Singh (II), in Ajit Singh vs. State of Punjab [(1999) 7 SCC 209].

(v) Eventually, the Constitution Bench held in Ajit Singh (II) that the roster point promotees cannot count their seniority in the promoted category, from the date of their continuous officiation in the promoted post, vis-a-vis the general category candidates who were senior to them in the lower category and who were later promoted. As a consequence, Virpal and Ajit Singh (I) were declared to have been decided correctly and Jagdish Lal was declared to be incorrect.

65. Another facet of the right of the reserved category candidates who are selected on the basis of their own merit and allotted to the general turn, came up for consideration, though in a different context, before a Constitution Bench of the Supreme Court in Union of India vs. Ramesh Ram [(2010) 7 SCC 234]. The decision in Ramesh Ram arose out of a selection held by the Union Public Service Commission to three All India Services, 15 Group-A Services and 3 Group-B Services. The question that came up for consideration before the Supreme Court as seen from paragraph 3 of the decision was follows:

"3. A three-Judge Bench of this Court, by order dated 14.5.2009 has referred these cases to the Constitution Bench as it raises an important legal question as to whether candidates belonging to reserved category, who get recommended against

general/unreserved vacancies on account of their merit (without the benefit of any relaxation/concession), can opt for a higher choice of service earmarked for reserved category and thereby migrate to reserved category."

66. Though it is clear from the question extracted above, that it had nothing to do with seniority, the issue nevertheless concerned the right of the reserved category candidates who are selected on merit and placed in the list of unreserved category candidates. This can be seen from the first question drafted in para 20.I of the report in Ramesh Ram which reads as follows:-

"Whether the reserved category candidates who were selected on merit and placed in the list of general category candidates could be considered as reserved category candidates at the time of service allocation."

Eventually, in paragraph 72, the Constitution Bench held that the reserved category candidates belonging to OBC, SC/ST who are selected on merit and placed in the list of general/unreserved category candidates can chose to migrate to the respective reserved category at the time of allocation of service.

67. Therefore, the clear dicta of the Supreme Court is that a reserved category candidate getting accommodated against the general turn, should not be made to suffer on account of being more meritorious. But what has happened in the cases on hand is that meritorious reserved category candidates, whom the Supreme Court chose to call by the acronym "MRCs" got allotted by virtue of their merit against the roster points intended for general turn (merit) and consequently got placed lower than their counter parts, who are less meritorious and who were accommodated against roster points high in the order. This is why the learned Judge could not reject the claim of the appellants as devoid of merit. Hence, the first contention of the respondents that they gained seniority on the basis of a judgment that held the filed at that time, is unacceptable.

11. It is clear from the above judgment that the Division Bench has taken into account the later judgment of the Hon'ble Supreme Court in Bimlesh Thanvar case and held that the judgement in P.S.Ghalaut case is no longer a good law. The Division Bench has categorically held that a reservation category candidate, who gets accommodated against the general turn, should not be made to suffer on account of

being more meritorious. The Division Bench after interpreting Rule 35 (a) of the General Rules for Tamil Nadu State and Subordinate Services, has categorically held that the seniority of a person should be determined only with reference to the rank obtained by him in the list of candidates drawn up by the Public Service Commission. The Division Bench has given the manner in which, the Public Service Commission should prepare the list at Paragraph No.76 of the Judgment and the same is extracted hereunder :-

76. Therefore, what is actually required to be done by the Public Service Commission is (i) first to prepare a merit list and (ii) to make allotments from the list, to the roster points, by following the steps indicated in paragraph 67 above. The allotment against roster points serves two purposes namely (a) it ensures that the Rule of Reservation is followed and (b) it creates a record to show the roster point from which the next recruitment is to commence. Say for instance, if the first recruitment has taken place for roster point Nos. 1 to 50 immediately after the amendment of the Rule on 29.4.2009, the next recruitment will have to commence from roster point No.51.

12. In the present case, a look at the appointment order issued by the 3rd respondent for various candidates selected through the written examination and interview conducted by the Tamil Nadu Public Service Commission, does not really indicate that the same was prepared in the order of seniority. The Tabular statement contained five columns, which are extracted hereunder :-

Sl.No .	Tamil Nadu Public Service Commission Serial number	Name and Address	Date of Birth / Order of Rotation	Place of posting
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13. The role of Tamil Nadu Public Service Commission comes to an end the moment they submit the rank list to the concerned Department. Thereafter, it is the concerned department which prepares the seniority list and publishes the same and seek for objections and proceeds further with the promotions. This Court is not able to understand as to why the 2nd respondent passed an order rejecting the claim made by the petitioners. It was the 3rd respondent, who was expected to consider the claim made by the petitioners and pass appropriate orders. That has not happened in the present case. As rightly contended by the learned Senior counsel appearing on behalf of the petitioners, the reason assigned by the 2nd respondent while rejecting the claim made by the petitioners is totally illegal and unsustainable. The judgment referred in the impugned order has

already been over-ruled and the rule referred in the impugned order has already been held to be unconstitutional.

14. The proceedings of the 3rd respondent dated 18.01.2001, is not a seniority list that was published by the 3rd respondent. The proceedings shows that the service of 174 candidates was regularized.

15. The 3rd respondent ought to have considered the representations made by the petitioners and passed appropriate orders in line with the rules and the judgments that have been referred supra. However, till date, no orders have been passed on the representations made by the petitioners and only list has been published by the 3rd respondent containing the names of the persons in the seniority list of the Veterinary Assistant Surgeons as on 01.07.2019. The grievance of the petitioners is that their names are not found in the seniority list.

16. In the light of the above discussion, the impugned order of the 2nd respondent dated 09.11.2019 in each of the writ petition is hereby quashed. The writ petitions are disposed of with the following directions :-

(a) The 3rd respondent is directed to publish the seniority list of the candidates, who were appointed as Veterinary Assistant Surgeons in the year 1991-1992 and proceed further to promote them in the vacancies available in the post of Assistant Director, Animal Husbandry Service. This process shall be completed within a period of four weeks from the date of receipt of copy of this order.

(b) The 3rd respondent is directed to publish the separate seniority list of Veterinary Assistant Surgeons, who were appointed in the year 1997-98 and call for objections and finalize the seniority list, strictly in accordance with the rules and the judgments of the Hon'ble Supreme Court and the Division Bench of this Court that has been referred supra. This process shall be completed within a period of six weeks from the date of receipt of copy of this order. and

(c) The 3rd respondent shall thereafter proceed to give promotions to the post of Assistant Director, Animal Husbandry Service, in the remaining vacancies in accordance with the finalized seniority list. This process shall be completed within a period of four weeks after the finalization of the seniority list of the candidates belonging to the 1997-1998 batch. No costs. Consequently, all connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CCC)

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To

1.The State of Tamil Nadu,
Represented by the Secretary to Government
Animal Husbandry, Dairying and Fisheries Department,
Fort St. George, Chennai 600 009.

2. The Secretary,
Tamil Nadu Public Service Commission,
Park Town, Chennai 600 003.

3. The Director,
Directorate of Animal Husbandry & Veterinary
Services, No.571, Annasalai,
Nandanam, Chennai 600 035.

+1cc to Mr.G.Sankaran, Advocate SR.No.14941

+10ccs to M/s.Ajmal Associates, Advocate SR.No.14775

+3ccs to M/s.R.Maheshwari & N.Vijayakumar, Advocate
SR.No.14846

+1cc to Government Pleader SR.No.15668

WP Nos.34281, 32917, 32922,32921 & 32925 of 2019

BP(CO)
GMY(12/03/2020)

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