

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.04.2021
DELIVERED ON : 09.04.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.Nos.1878 of 2010 and 2752 of 2012

W.A.No.1878 of 2010:

1 R. RATHINA KUMAR
2 S. MOHANAVADIVELAN
3 S. KARTHIKEYAN
4 G. KUMARAN
5 S. VIMALA RATNA
6 D. CHANDRASEKARAN
7 T. SENTHIL KUMAR
8 M. GANESH LAL
9 R. NITHIYANANDA JOTHY
10 R. JAYARAMAN
11 R. SADAIPANDI
12 G. JAWAHAR
13 K. KANNAPPAN
14 S. SIVAJI BASKAR
15 N. SIVAKAMI
16 L. RAJKUMAR
17 D. NADARAJAN
18 S. KANNAN
19 B. RAMESH
20 M. REVATHI
21 J. PREMILA
22 C. RAVICHANDRAN
23 A.S. PERIYANAYAKI
24 R. AMUDHAVALLI
25 M. RAMAKRISHNAN
26 K. SAKTHI KUMARAN
27 D. KANDHIMATHI
28 N. KALAVATHI
29 M. THIRUPPATHI
30 T. KUMAR
31 J. DEVI
32 A. GOPAL
33 A.L. VALARMATHY
34 L. LAKSHMI NARAYANAN
35 S. KUMAR

36 M. ANBALAGAN
37 R. KASTHURI
38 P. SANTHI
39 S. SWARNAM
40 P. MUNICHAMY
41 C. SANKAR
42 R. MUTHUMARAN
43 S. RAMU
44 P. GOVINDARAJULU
45 M. MANIMALA
46 S. PARIMALAVALLI
47 P. CHELLADURAI
48 A. THIYAGARAJAN
49 P. SELVADHASS
50 P. INDIRA
51 S. PANDIAN
52 S. AMBIKA
53 K. SENTHILNATHAN
54 M. PORSELVI
55 I. BHARATHI
56 D. THIRUNAVUKKARASU
57 G. MOHAN
58 N. TAMIL JOTHI
59 K .POONGODI
60 A. SWARNARAJ
61 R. NANDAKUMAR
62 S. KODIMARAN
63 P. RAVI
64 K. SHYAMALADEVI
65 N. ARUNADEVI
66 A.R. RAJAN
67 T.K.C. ARUNACHALAM
68 N. MEENAKSHI
69 S. SELVA PERUMAL
70 S. LAKSHMI
71 G. HARIKRISHNAN
72 G. VENKATESAN
73 N. VISWANATHAN
74 D. KALYANI
75 E. NALINI
76 V. PARIMALA
77 P. KALAISELVI
78 K. VENKATESAN
79 A. PANDURENGAN
80 S. LOGEESWARAN
81 H. MD. SHERBUDEEN
82 G. INDRA
83 S. GOPALASAMY
84 P. KOMALA
85 V.K. RAJENDRAN

86 K. SELVAGANAPATHI
87 A. GANESH KUMAR
88 K. CHINNIAH
89 J. MEERABAI
90 K. KATHIRAVAN
91 S. KARIKALAN
92 M. SIVAKUMAR
93 K. SHANMUGAM
94 R. SIVASANKAR
95 TAMILSELVAN
96 B. MOHAN RANGAN
97 M. SANKARANARAYANAN
98 M. BALAMURUGAN
99 M. GANESAN
100 S. SENTHIL KUMARAN

...Appellants

Vs

1 THE SECRETARY TO GOVERNMENT
PERSONNEL AND ADMINSTRATIVE REFORMS DEPT
FORT ST. GEORGE
CHENNAI- 9.

2 THE TAMIL NADU PUBLIC SERVICE COMMISSION
REP BY SECRETARY
GOVT ESTATE
CHENNAI- 2.

3 B. RADHAKRISHNAN
4 R. MUGUNTHAN
5 K. CHANDRAKASAN
6 P.M. ARACHELVI
7 V. AYYAPPAN
8 M. PRABHAKARAN
9 V.K. BASKAR
10 N. PADMANABHAN
11 M. RAMESH
12 K. SUBRAMANIAN
13 V. SRINIVASAN
14 L. JANARDHANAN
15 V. ANANDA RAMAKRISHNAN
16 V. REVATHI
17 L. VENKATACHALAM
18 V. SHANMUGAVELU
19 A. PREMA
20 T.V. MURALI
21 DEVENDRAN
22 R. RAGHU
23 R. RAMACHANDRAN
24 G. ALAGUVEL

25 M. BAGGYALAKSHMI
26 K.K. GOKULNATH BABU
27 V. SUKUMAR
28 S. VENKATESAN
29 K. SURESH KUMAR
30 A. RAMAKRISHNAN
31 R. SENTHILKUMAR
32 S. SELVAM
33 S. SHANKARI
34 M. PARIMALA
35 S. UMAMAHESWARI
36 N.R. SHANTHI
37 M. SATHIAVANI
38 K. JAYANTHI
39 S. RITA LIDYA
40 V. VATSALA DEVI
41 J. JANAKI
42 D. DAVID GNANARAJ
43 D. JACOB
44 N. NAGARAJAN
45 K.P. SUJATHA
46 G. MARAGATHAM
47 K. SARASWATHI
48 A.C. ARUNA
49 N. SWAMINATHAN
50 S.T. KAMAL KUMAR
51 M .PUNITHAVEL
52 P. NARAYANAN
53 K. PREMKUMAR RAO
54 M. VIJAYALAKSHMI
55 SUBRAMANI PILLAIYAN
56 G. VIDYA SANKARI
57 G. ABDUL MOHEETH
58 K. ARUNMOZHI
59 S. LATHA
60 P. PARTHIBAN
61 K. LATHA
62 M. SENTHIL KUMAR
63 D. GAJALAKSHMI
64 S. VIJAYA BASKARAN
65 P. JAWAHARLAL NEHRU
66 N. LATHA
67 V.G. SIVARAMAN
68 N. MANIVANAN
69 K. SRILAKSHIMI
70 S. PUSHPALALTHA
71 K. ARAVIND
72 P. KUMARI
73 N. ARUN SWETHAMBARA
74 P. KALAISELVI

75 D. MEENAKSHI
76 S. THANKA PAPPA

...Respondents

(RR 53 TO 76 IMPEADED AS PARTY
RESPONDENTS VIDE ORDER OF COURT DT.
08.08.2017 IN CMP NO.1163/2017 IN
WA NO. 1878/2010)

W.A.No.2752 of 2012:

THE SECRETARY TO GOVERNMENT
PERSONNEL AND ADMINISTRATIVE
REFORMS DEPARTMENT
FORT ST. GEORGE
CHENNAI -600 009.

...Appellant

Vs

1 B. RADHAKRISHNAN
2 R. MUGUNTHAN
3 K. CHANDRASEKARAN
4 P.M. ARACHELVI
5 V. AYYAPPAN
6 M. PRABHAKARAN
7 V.K. BASKAR
8 N. PADMANABHAN
9 M. RAMESH
10 K. SUBRAMANIAN
11 V. SRINIVASAN
12 L. JANARDHANAN
13 V. ANANDHA RAMAKRISHNAN
14 V. REVATHI
15 L. VENKATACHALAM
16 V. SHANMUGAVELU
17 A. PREMA
18 T.V. MURALI
19 DEVENDRAN
20 R. RAGHU
21 R. RAMACHANDRAN
22 G. ALAGUVELU
23 M. BAGGYALAKSHMI
24 K.K. GOKULNATH BABU
25 V. SUKUMAR
26 S. VENKATESAN
27 K. SURESH KUMAR
28 A. RAMKRISHNAN
29 R. SENTHILKUMAR
30 S. SELVAM
31 S. SHANKARI
32 M. PARIMALA
33 S. UMAMAHESWARI
34 N.R. SHANTHI

35 M. SATHIAVANI
36 K.JAYANTHI
37 S. RITA LIDYA
38 V.VATSALA DEVI
39 J. JANAKI
40 D. DAVID GNANARAJ
41 D. JACOB
42 N. NAGARAJAN
43 K.P. SUJATHA
44 G. MARAGATHAM
45 K.SARASWATHI
46 A.C ARUNA
47 N.SWAMINATHAN
48 S.T. KAMAL KUMAR
49 M.PUNITHAVEL
50 P. NARAYAN

51 THE TAMILNADU PUBLIC SERVICE COMMISSION
REP. BY ITS SECRETARY
GOVERNMENT ESTATE
CHENNAI 600 002.
(Now No.1, Greams Road
Chennai 600 006)

...Respondents

Prayer: Appeals filed under Clause 15 of the Letters Patent against the order made in W.P.No.46697 of 2006 dated 26.04.2010.

W.P.No.46697 of 2006:

O.A. No. 5527 of 2000 filed before the Tamil Nadu Administrative Tribunal stood transferred to this Court, which was filed praying to call for the entire records relating to the impugned proceedings of the first respondent in his impugned G.O. Ms. No.67, Personnel & Administrative Reforms Department dated 27.03.1998 and quash the said impugned G.O. Ms. No.67, issued by the first respondent dated 27.03.1998 in so far as it affects the applicants and direct the respondents to promote the applicants as Assistants and further promotions with all consequential benefits.

W.A.No.1878 of 2010:

For Appellants	: Ms.R.Vaigai Senior Counsel and Mr.AR.L.Sundaresan Senior Counsel for Mr.B.Vijay
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For Respondents : Mr.P.H.Arvind Pandian
Additional Advocate-General
assisted by
Mr.V.Jayaprakash Narayanan
State Government Pleader
for 1st respondent

No appearance
for 2nd respondent

Mr.G.Masilamani
Senior Counsel
for Mr.M.Sriram
for respondents 3 to 52

Mr.A.V.Arun
for respondents 53 to 76

W.A.No.2752 of 2012:

For Appellant : Mr.Arvind Pandian
Additional Advocate-General
assisted by
Mr.V.Jayaprakash Narayanan
State Government Pleader

For Respondents : Mr.P.Wilson
Senior Counsel
for Mr.M.Sriram
for respondents 1 to 50

No appearance
for 51st respondent

COMMON JUDGMENT
(Delivered by The Hon'ble Chief Justice)

The two appeals arise out of a common order of April 26, 2010 by which a writ petition filed by a group of government employees has been allowed and the retrospective operation of a government notification of March 27, 1998 has been quashed in so far as it adversely affected the writ petitioners. One of the appeals is by persons who were not impleaded in the writ petition, though their rights have been substantially affected by the order impugned. These private appellants' future prospects are prejudiced by the impugned order and even the promotions earned by them years back rendered liable to be taken away thereby.

2. The matter pertains to Typists who had switched over from the Tamil Nadu Ministerial Service to the Tamil Nadu Secretariat Service. Of the 50 writ petitioners, at least 24 joined the secretariat service prior to August 19, 1993. The remainder joined on or after October 29, 1993. The date August 19, 1993 is important in the present context since the government notification that was questioned in the writ petition was issued on March 27, 1998 with retrospective effect from August 19, 1993.

3. The primary ground urged in the writ petition was that the writ petitioners had switched over to the secretariat service in view of the better promotional avenues available to jump to the immediate next post of Assistant and climb the ladder even thereafter. According to the writ petitioners, their chances of promotion stood considerably reduced as a result of the said government notification, being G.O.Ms.No.67, Personnel and Administrative Reforms (D) Department, dated March 27, 1998 which was given retrospective effect from August 19, 1993.

4. The writ petitioners originally carried the complaint to the then Tamil Nadu Administrative Tribunal by way of O.A.No.5527 of 2000. The substance of their grievance is captured in the following lines from paragraph 6(i) of the petition filed before the Tribunal:

"... As stated already, when they joined the Secretariat Service, there is no scope for direct recruitment to the post of Assistant. The Applicants chance of promotion, which is recognized as a fundamental right by our courts, is now being denied by a retrospective amendment. It is further submitted that there is no further avenue of promotion for these Typists otherwise by minimising their chances of promotion that too when available persons are very limited will be nothing but an arbitrary and unreasonable exercise of power (sic)."

5. The relief sought before the Tribunal may also be seen from paragraph 9 of the petition carried to the Tribunal:

"It is prayed that this Hon'ble Tribunal may be pleased to call for the entire records relating to the impugned Proceedings of the first respondent in his impugned G.O.Ms.No.67, Personnel & Administrative Reforms Department, Dated 27-3-98 and quash the said impugned G.O.Ms.No.67, issued by the first respondent dated 27-3-98 in so far as it affects the Applicants and direct the respondents to promote the applicants as Assistants and further promotions with all consequential benefits and pass

such further or other orders as this Hon'ble Tribunal may deem fit and proper and thus render justice."

6. Upon the Administrative Tribunal in the State being abolished, the writ petition was received in this Court and re-numbered in 2006. It is, thus, evident that the case run by the writ petitioners was that their chances of being promoted to the post of Assistant stood considerably reduced upon G.O.Ms.No.67 dated March 27, 1998 being brought, since such notification restored the original position under which a part of the vacant posts of Assistants would be filled up by direct recruitment and the remainder by way of promotion. The writ petition did not make out any case of any of the writ petitioners being immediately entitled to the promotion or, at least, being in the zone of consideration for promotion and, as such, any right being infringed by virtue of the impugned notification. The only assertion that can be gleaned from the writ petition is that the writ petitioners' prospects for promotion to the post of Assistant stood considerably diminished upon direct recruitment being permitted in the erstwhile exclusively promotional post of Assistant.

7. The matter has a bit of history to it and the same must be noticed before the arguments put forth by the parties are recorded. It may also be observed at this stage that the issue that the Writ Court perceived was before it and which the Writ Court proceeded to address was "whether the retrospective amendment can take away the vested right of the petitioners, which under law has been given to them by virtue of their longer experience in the Secretariat Service ..."

8. G.O.Ms.No.236 of April 12, 1988 was issued upon rules being framed under Article 309 of the Constitution to provide for the post of Assistant in the secretariat to be filled up by direct recruitment; by transfer from the category of Personal Clerk or Typist; and, for special reasons, by transfer from any other service. G.O.Ms.No.71 dated February 9, 1990 was issued by an executive order that did away with direct recruitment to the post of Assistant in the Tamil Nadu Secretariat Service. G.O.Ms.No.391 of December 14, 1992 came to be made by amending the Special Rules in accordance with Article 309 of the Constitution for giving retrospective effect to the abolition of direct recruitment to the post of Assistant from February 9, 1990.

9. In 1992 and 1993, several requests came to be received, inter alia, by the State Legislative Assembly, for restoration of the system of direct recruitment for filling up a part of the vacancies in the post of Assistant. Reports were obtained in

such regard and on August 19, 1993 an executive order was issued requiring 50% of the posts at the Assistant level to be filled up by direct recruitment and the remaining by way of promotion or lateral transfer. Pursuant to such executive order, the Tamil Nadu Public Service Commission issued a notification of August 21, 1995 for direct recruitment to the post of Assistant in the secretariat service. On behalf of the employee appellants, much is made of several of the writ petitioners having applied to be recruited directly as Assistant despite being engaged at the relevant point of time as Typists in the secretariat service after having switched over from the ministerial service. However, such argument of prejudice has only to be disregarded, since nothing turns on such aspect of the matter.

10. A further executive order by way of G.O.Ms.No.362 came to be issued on November 29, 1995 by which 50% of the vacancies in the post of Assistant in the secretariat service were earmarked for direct recruits and the balance 50% by way of lateral transfer or promotion in a particular ratio, which is not relevant for the present purpose.

11. The preliminary and final examinations for direct recruits were conducted by the State Public Service Commission between February and August, 1996 and the results thereof were published on or about September 4, 1997. On or about December 8, 1997, some of the personnel who had switched over as Typists in the secretariat service from the ministerial service instituted O.A.Nos.9448 and 9866 of 1997 before the Administrative Tribunal challenging the two notifications, namely G.O.Ms.No.315 of August 19, 1993 and G.O.Ms.No.362 of November 29, 1995. Both the petitions filed in 1997 came to be disposed of by a common order of April 3, 1998 that provided as follows in its operative part:

"23) In the light of our discussions above and in the peculiar circumstances of the case and on consideration of equity, the respondents are given six weeks time to consider the issuance of necessary amendment to the rules as submitted by them and act pursuant to such amended rules. During this period, the interim orders shall stand vacated. On the failure to do so, G.O.Ms.No.315, dated 19.8.93 and G.O.Ms.No.362 dated 29.11.95 shall stand quashed and the respondents are directed to consider the case of the applicants for promotion to the posts of Assistants as per rules. These O.As are ordered accordingly."

12. In course of the discussion that preceded the order, the Tribunal observed in the judgment that due to the delay in recruitment of candidates during the period 1990 to 1996, the available vacancies in the post of Assistant were filled up by promoting the Personal Clerks/Typists totalling about 287. Out of such 287 promotees, 197 were Graduate Typists. The Tribunal noticed that 60% of the promotees were erstwhile Graduate Typists and observed that Typists "got a major share out of the Assistants promoted during the years 1990-96 in the absence of any direct recruitments." The Tribunal perceived that the promotees from the Graduate Typists had been over-subscribed and Typists "given more than their due share by apportioning the vacancies meant for the other categories." The Tribunal went on further to observe as follows: "Graduate Typists (totalling 86 persons) do not come under the zone of consideration at all. Therefore the grievance that the number of promotions offered to them fall short of entitlement is totally unsustainable. In fact, the proportion given is very much in excess of the entitlement."

13. What the Tribunal failed to reckon at the time of passing the final order of April 3, 1998 was that on March 27, 1998 the Special Rules pertaining to the post of Assistant had been amended in due deference to Article 309 of the Constitution upon G.O.Ms.No.67 being issued on March 27, 1998. As a consequence, the State, which has carried an independent appeal against the judgment and order impugned dated April 26, 2010, submits that no further action was required to be taken by the Government since the rules and the amendment that the operative part of the Tribunal's order spoke of had already been put in place.

14. It must be noticed that a Division Bench order of this Court of March 27, 2002 in W.P.No.5205 of 1998 and batch cases considered the challenge to the order passed by the Administrative Tribunal on O.A.Nos.9448 and 9866 of 1997 dated April 3, 1998. The Division Bench recorded the State's submission that the petitions before the Tribunal had become infructuous as amended rules had been issued. The writ petitions before this Court were disposed of with a direction to await the final result of the original applications filed to challenge the amended special rules.

15. There is another minor matter that needs to be noticed. G.O.Ms.No.67 of March 27, 1998 came to be challenged by way of O.A.No.3348 of 1998 before the Tribunal. After the abolition of the Tribunal, the matter stood transferred to this Court and re-numbered as W.P.No.33003 of 2006. Such petition was considered by a Single Bench of this Court and dismissed by an order of August 28, 2009. At paragraph 6 of the short order, the Writ

Court recognised that the only question that arose for consideration was whether the government had any power to frame rules under Article 309 of the Constitution with retrospective effect. The Single Bench referred to Supreme Court judgments to observe that it was permissible for retrospective rules to be made under such provision of the Constitution. The Court then observed that the rules made under Article 309 of the Constitution could be struck down only on such grounds as may invalidate a legislative measure. Again, a Supreme Court dictum in such regard was referred to. The Writ Court then proceeded to consider whether the retrospective effect given by the impugned notification had any nexus with the object sought to be achieved. The Court noticed that the petitioners therein had challenged, inter alia, G.O.Ms.No.315 and G.O.Ms.No.362, but had withdrawn such challenge. The writ petition stood dismissed in such circumstances.

16. Whether the present writ petition deserved the similar fate is the matter that arises for consideration, but two aspects pertaining to G.O.Ms.No.67 dated March 27, 1998 came to be settled by the order of August 28, 2009 without any subsequent challenge thereto. These covered the legal issue that the rules formulated under Article 309 of the Constitution could be given retrospective effect and the related aspect that rules made under Article 309 of the Constitution could be struck down only on such grounds as may invalidate a legislative measure.

17. In the judgment and order impugned dated April 26, 2010, the submission of the parties and the decisions cited on their behalf are recorded in the first 17 paragraphs. The operative part of the order is contained in paragraphs 18 to 23, of which paragraph 18 condenses the factual issue. The opening sentence of paragraph 19 records that the amendment to the rules was made with retrospective effect "and it is held to be not correct." Paragraph 20 refers to the Supreme Court having held "if an amendment takes away the vested right of a person, which is claimed to be his fundamental right, then such an amendment is legally not sustainable." Paragraph 22 of the judgment quashes the impugned government notification of March 27, 1998 "only in so far as it affects the petitioners and the respondents are directed to consider the claim of the petitioners for promotion ...". The immediate preceding paragraph, possibly, indicates the basis for the order, apart from the Supreme Court dictum that a vested right could not be taken away by a retrospective amendment to the rules:

"21. Considering the over all circumstances of the case, I hold that the petitioners are having vested right to get promotion as Assistants pursuant to their opting to go to secretariat service and it

cannot be taken away by an amendment with retrospective effect. Therefore, the claims made by the petitioners are well founded. It is also brought to the notice of this Court that the petitioners are representing a small group of 50 employees and they were also given promotion on a subsequent date, but for the amendment, they would have got the promotion earlier."

18. According to both sets of appellants, the judgment impugned does not consider the legal issues which arose and is fundamentally flawed for considering the chance of being promoted as a vested right without the writ petitioners demonstrating that they fell within the zone of consideration or were liable to be immediately considered for promotion but for the retrospective amendment.

19. The appellants also assert that it is evident that the government had consciously not filled up the vacancies in the post of Assistant to allow room for direct recruits to be brought in and it is always open to a government, as employer, to adopt such measure.

20. The private appellants maintain that since the writ petitioners had not been able to demonstrate any jurisdictional error on the part of the government or make out any case of malice or even demonstrate any degree of arbitrariness on the part of the government, no order could have been made on the petition. In any event, the private appellants refer to the "chance of promotion" that was the basis of the writ petition and the relief sought being a writ in the nature of certiorari, which is not available to question any legislative action.

21. According to the State, all that was done by G.O.Ms.No.67 of March 27, 1998 was to give legal effect to the two executive orders of August 19, 1993 and November 29, 1995. The basis for the amendment, according to the State, could not have been questioned by the writ petitioners since that was a matter of policy and the State perceived that direct recruits would be better suited to the post of Assistant. The State also emphasises that the executive notifications of August 19, 1993 and November 29, 1995 had not been struck down by any order and the State had bona fide acted in terms thereof, though the appropriate procedure in accordance with Article 309 of the Constitution had not been followed. The retrospective effect of G.O.Ms.No.67 of March 27, 1998 was only to rectify the flaw in the procedure under Article 309 of the Constitution not having been adhered to in course of the notifications of August 19, 1993 and November 29, 1995 being issued.

22. The State is quick to point out that the direct recruits to the post of Assistant were appointed only on May 25, 1998 and thereafter. Thus, according to the State, there was no infirmity in the appointment, nor were illegal appointments attempted to be cured by the retrospective operation of a subsequent notification. The first appointments by direct recruitment to the post of Assistant, after the change in policy notified by the executive order of August 19, 1993, were at a time when the appropriate amendment in accordance with the procedure recognised under Article 309 of the Constitution was effected by G.O.Ms.No.67 dated March 27, 1998.

23. The private appellants have referred to a judgment reported at (1984) 4 SCC 251 (Prabodh Verma v. State of U.P.) for the proposition that the writ of certiorari cannot be issued to question a legislation brought about by the appropriate legislature. Another judgment reported at (1997) 3 SCC 59 (Dr.K.Ramulu v. Dr.S.Suryaprakash Rao) has been brought for the principle that it is open to a government employer not to fill up vacancies, unless the decision is found to be patently arbitrary. The judgment also touches upon the most important legal issue which has arisen herein as to whether employees who had not acquired any vested right for being considered for promotion had any right to challenge any new rule.

24. A more recent judgment reported at (2009) 12 SCC 62 (High Court of Delhi v. A.K.Mahajan) has been carried by the private appellants to demonstrate how a similar challenge on the basis of the chance of promotion being affected by retrospective rules being put in place was dealt with by the Supreme Court. Paragraphs 20 to 23 of the report are relevant. As in the present case, there was no discussion in the judgment impugned before the Supreme Court as to what benefit that was available to the concerned employee in the reported case had been taken away as a result of the amendment to the rules. The Supreme Court observed that there could be no benefit of possible consideration for promotion. In the exact words of the Supreme Court, "A mere chance of promotion being affected by amendment is in our opinion inconsequential." Paragraphs 22 and 23 of the report are of some relevance in the immediate context:

"22. This Court has time and again held that since promotion is not a right of the employee, a mere chance of promotion if affected cannot and does not invalidate the action on the part of the employer. That right of consideration may accrue at a particular point of time or subsequently thereto. Merely because at a particular point of time the employee is not considered, does not mean the total denial of the consideration of the employee.

"23. In the present case, it is not as if Writ Petitioner 8 concerned was altogether denied the benefit of consideration for ever. He was undoubtedly considered later on and was promoted also. Therefore, it is incorrect to say that the amendment had the effect of denying him the benefit of consideration, which was available to him. He did continue with that benefit and was actually benefited under the same. This is apart from the fact that the concept of consideration is an uncertain concept. One can understand a pension amount which is already decided or the promotion which is already granted or the seniority which is already conferred upon or the substantive appointment which is already made. If the amendment has the effect of denying this crystallised promotion, seniority or substantive appointment, then certainly the amendment could be held as arbitrary. But that has not happened in the present case. Here, no promotion was already granted or seniority already fixed, or any substantive appointment already made which were affected by the retrospective amendment. The observations in abovequoted para 24 of *Railway Board v. C.R.Rangadhamaiah*, (1997) 6 SCC 623, have to be understood in that sense."

25. The private appellants refer to four other judgments of the Supreme Court for the proposition that the mere eligibility to be considered for promotion cannot be regarded as a vested right unless the consideration actually takes place. In the first of such judgments reported at (2011) 6 SCC 725 (*Deepak Agarwal v. State of Uttar Pradesh*), the relevant rule provided for recruitment by promotion to a particular post and such promotion was to be made on the basis of seniority, subject to the rejection of the unfit. Paragraph 22 of the report records that as at June 30, 1999, 12 vacancies existed in the post of Deputy Excise Commissioner. By virtue of the impugned amendment, the appellants before the Supreme Court claimed that they had been deprived of their right to be considered for promotion. The legal issue framed by the Supreme Court is found at paragraph 23 of the report:

"23. Could the right of the appellants, to be considered under the unamended 1983 Rules be taken away? The promotions to the 12 vacancies have been made on 26-5-1999 under the amended Rules. The High Court rejected the submissions of the appellants that the controversy herein is squarely covered by the judgment of this Court in *Y.V. Rangaiah v.*

J.Sreenivasa Rao, (1983) 3 SCC 284. The High Court has relied on the judgment of this Court in Dr. K. Ramulu v. Dr.S.Suryaprakash Rao, (1997) 3 SCC 59."

However, at the immediate succeeding paragraph, it was observed that the dictum in the case of Y.V.Rangaiah v. J.Sreenivasa Rao, reported at (1983) 3 SCC 284, would not be applicable to the case, since the judgment in Y.V.Rangaiah was rendered on the interpretation of a particular rule.

26. It is necessary in such context to see the judgment in Y.V.Rangaiah itself. The substance of the relevant Rule 4 is indicated in the second paragraph of the judgment. The rule contemplated the preparation of a list in the prescribed manner by the appointing authority and it further required that the list of approved candidates for appointment by transfer was to be prepared in the month of September every year so as to be in force until the list of approved candidates for the succeeding year was prepared and for the purpose of preparing the said list, the claims of as many eligible candidates as such authority considered necessary would be considered. The relevant rule also enjoined that the list of approved candidates would contain such number of candidates as was approximately equal to the number of vacancies expected to arise during the currency of that list.

27. It is, therefore, evident that the list to be prepared in the Y.V.Rangaiah was not a list of eligible candidates, but the list would be of candidates selected to fill up the vacancies as and when the vacancies arose. Implicit in the rule is the consideration of the candidatures of the eligible candidates and the preparation of an approved panel after due consideration and deliberation. It was such nature of right, that had accrued to the persons whose names figured in the approved panel, that was sought to be adversely affected by the retrospective amendment challenged in that case. It was in such circumstances that the distinction was made in Deepak Agarwal. Indeed, as would be evident from paragraph 26 of the report in Deepak Agarwal, the relevant rule in Y.V.Rangaiah was interpreted by the Supreme Court to imply that the approved panel would be prepared by the date specified in the rule and the right, in such a scenario, is much more than the eligibility to be considered for promotion, but a vested right to promotion itself. Paragraph 26 of the report in Deepak Agarwal is set out:

"26. It is by now a settled proposition of law that a candidate has the right to be considered in the light of the existing rules, which implies the "rule in force" on the date the consideration took

place. There is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the date when the vacancy arises. The requirement of filling up old vacancies under the old rules is interlinked with the candidate having acquired a right to be considered for promotion. The right to be considered for promotion accrues on the date of consideration of the eligible candidates. Unless, of course, the applicable rule, as in Y.V. Rangaiah case lays down any particular time-frame, within which the selection process is to be completed. In the present case, consideration for promotion took place after the amendment came into operation. Thus, it cannot be accepted that any accrued or vested right of the appellants has been taken away by the amendment."

28. In the next judgment referred to by the private appellants, the same distinction of the Y.V.Rangaiah dictum was made. In such judgment reported at (2017) 3 SCC 646 (State of Tripura v. Nikhil Ranjan Chakraborty), the action on the part of the State of Tripura in relying upon the amended rules and thereby expanding the feeder posts was challenged by 22 interested candidates. The contention before the Court was that since a notification had been published to constitute a selection committee for filling up the promotional posts, the subsequent retrospective amendment could not have taken away the right of the writ petitioners to be considered for promotion by the selection committee. The Court referred to Deepak Agarwal (supra) and held that the writ petitioners had not been prejudiced since they would also be considered for promotion, but as a result of the amended rules they had now to compete with more candidates and "since there was no accrued right nor was there any mandate that vacancies must be filled invariably by the law existing on the date when the vacancy arose," the writ petitioners had no room for grievance.

29. A judgment reported at (2019) 4 SCC 319 (Union of India v. Krishna Kumar) has next been placed by the private appellants. In that case, the vacancies had arisen before the rules were amended. The Court held that there was no rule of universal application to the effect that vacancies must necessarily be filled in on the basis of the law which existed on the date when they arose. The decision in Y.V.Rangaiah was noticed and it was observed that in Y.V.Rangaiah "the applicable Rules required the process of promotion or selection to be completed within a stipulated time-frame."

30. For similar purpose another recent judgment reported at (2019) 6 SCC 270 (State of Orissa v. Dhirendra Sundar Das) has been brought by the private appellants. The issue in such case, as evident from paragraph 9.1 of the report, was whether a right vested in the contesting respondents for selection or promotion to a particular post merely on the basis of their names being forwarded by the respective departmental authorities. The discussion veered around the dictum in Deepak Agarwal and how the ratio decidendi in Y.V.Rangaiah was read at paragraph 26 of Deepak Agarwal before the Supreme Court holding that the contesting respondents could not be considered to be eligible for appointment since the steps indicated in the applicable rules had not been completed prior to the repeal thereof.

31. Two other grounds are urged on behalf of the private appellants. They assert that though the order of May 21, 1998 passed in W.P.No.5205 of 1998 directed the appointment orders to be issued to the direct recruits to the post of Assistant with a clear caveat that the relevant appointment was subject to the result of the writ petition, the relevant writ petition itself was disposed of by an order dated March 27, 2002 without affecting the appointments of direct recruits made during the interregnum. The private appellants also point out that since they and other subsequent direct recruits to the post of Assistant had not been impleaded as parties to the writ petition on which the impugned judgment and order came to be passed, the private appellants could not have been prejudicially affected by the order impugned.

32. The private appellants indicate that as a result of the limited relief given to the writ petitioners by the order impugned, the future rights of the private appellants get seriously affected and even the promotions obtained by the private appellants may have to be undone unless the government allows supernumerary posts. The private appellants criticise the impugned judgment on the ground that such aspect ought to have been taken into consideration before conferring any benefit to the writ petitioners, since the extent to which the writ petitioners stand to benefit affects the rights of the private appellants.

33. The supporting submission made on behalf of the private appellants questions the vagueness of the impugned order and emphasises on the applicable rules that did not confer any right on the writ petitioners to be granted promotion or even considered for promotion at a particular date, though the effective or crucial date was fixed as August 1 of every year.

34. There is no doubt that Rule 6 of the Tamil Nadu Secretariat Service Rules was applicable to the writ petitioners, including whatever right, benefit or interest that was conferred thereby. The said Rule is of key importance since the writ petitioners contend that such Rule must be seen to be similar to the relevant rule in Y.V.Rangaiah:

"6. Preparation of annual list of approved candidates:- A list of approved candidates for appointment to the posts by promotion, by transfer and by recruitment by transfer shall be prepared annually and the crucial date on which the candidates should have acquired the prescribed qualifications shall be the 1st August of every year."

35. According to the writ petitioners, not only was the deprivation of the writ petitioners' right to be considered for promotion at an early stage illegal, but the direct recruitment conducted was also impermissible. The scope of the writ petition is now sought to be enlarged to even question the appointment of the direct recruits in 1998. Divers grounds are canvassed on behalf of the writ petitioners, more in the hope to explore if any of them falls into place than with any degree of conviction founded on legal grounds. To begin with, it is suggested that in view of Article 320 of the Constitution, the Public Service Commission ought to have been consulted before G.O.Ms.No.67 of March 27, 1998 was issued. To boot, it is pointed out that there is a line in the government notification to the effect that the Public Service Commission was consulted, but a subsequent clarification was issued that the Public Service Commission had not been consulted.

36. Next, it is suggested on behalf of the writ petitioners that if the commencement of a process was illegal, it could not have been subsequently cured. The writ petitioners emphasise that since G.O.Ms.No.315 of August 19, 1993 and G.O.Ms.No.362 of November 29, 1995 could not have tinkered with the Special Rules formulated under Article 309 of the Constitution that ought to be regarded as deemed legislation, no action taken in pursuance of such notifications of August 19, 1993 or November 29, 1995 could have been continued, notwithstanding the ex post facto essay to breathe legality into them.

37. The most serious contention of the writ petitioners is that at the time the writ petitioners abandoned the ministerial service and switched over to secretariat service, they were lured by the better prospects in the secretariat service; and once they had made the change and had irretrievably abandoned

the ministerial service, their prospects in the secretariat service could not have been altered to their prejudice by any subsequent or retrospective amendment to the rules.

38. The writ petitioners assert that even though the right which had crystallised in favour of the writ petitioners may not have been appropriately indicated in the narration of facts at paragraph 6 of the petition originally filed before the Tribunal, in the third ground therein a frontal challenge was made that accrued rights could not be taken away by the retrospective operation of an amendment to the rules. They also refer to the ninth ground which squarely states that the writ petitioners "who are expected to be promoted to the post of Assistant as per the then existing Rules, were not considered."

39. The writ petitioners refer to Rule 4(a) of the Tamil Nadu State and Subordinate Services Rules to demonstrate that no promotion or appointment could be made on the basis of executive orders seeking to modify the rules framed under Article 309 of the Constitution. Similarly, Section 7(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 is placed to show that the provision mandates that in case of posts governed by rules, promotion or appointment shall not be made with reference to the proposed amendment to rules, but shall be made only with reference to the existing rules. The substance of such submission is that no promotion or appointment could have been made in terms of flawed G.O.Ms.No.315 of August 19, 1993 or in accordance with faulty G.O.Ms.No.362 of November 29, 1995.

40. Indeed, the writ petitioners press ahead to say that the selection process conducted for direct recruits who were inducted in 1998 was bad since no selection process for such purpose was legally recognised when the Public Service Commission invited applications for direct recruitment, as direct recruitment to the post of Assistant came to be introduced only in 1998 after it was abolished in 1992. The writ petitioners suggest that the word "appointment" has to incorporate the process of selection therein and if there is no room for appointment, no selection process in such regard may be initiated or pursued. However, the writ petitioners concede that it is not their case that the private appellants herein should be thrown out of service after this long, but only that the private appellants have no locus to prefer the appeal or object to the status that the writ petitioners demand for themselves.

41. The writ petitioners point out that pursuant to the interim order passed by this Court on May 21, 1998, the direct

recruits were issued appointment letters that made their appointments subject to the outcome of the petition. This proverbial sword, the writ petitioners suggest, dangled over the private appellants' heads and fell in place upon the impugned judgment and order being passed. The writ petitioners submit that the private appellants cannot be regarded as persons aggrieved by the order impugned since they accepted the letters of appointment with the condition attached thereto and did not approach the Court to remove such onerous condition. The writ petitioners go so far as to say that the leave granted to the private appellants to carry an appeal against the order impugned should be revoked and their appeal dismissed by refusing to acknowledge such direct recruits to be persons aggrieved by the impugned judgment and order. The writ petitioners refer to the order dated March 27, 2002 by which W.P.No.5205 of 1998 was disposed of. It is evident from the relevant order that this Court permitted all the issues raised to be canvassed in further proceedings against G.O.Ms.No.67 dated March 27, 1998. It is also clear that such order of March 27, 2002 provided that till the further challenge was decided, the status quo as on the date of the order was to be maintained. Quite appropriately, the writ petitioners suggest that the status that was preserved by the order was the uncertain appointment of the private appellants herein.

42. The writ petitioners also submit that since the writ petitioners could not have known the particulars of the direct recruits and had, in any event, filed the writ petition prior to all the private appellants being appointed, it was for the private appellants herein to get impleaded in the proceedings and defend their appointments and further benefits. The writ petitioners suggest that since the private appellants herein did not choose such course of action, their present grievance should not be countenanced.

43. The writ petitioners say that the State could not have done indirectly what was impermissible to do directly. They point out that G.O.Ms.No.67 dated March 27, 1998 did not validate the selection process for direct recruitment, but merely validated the changes brought about by the flawed notifications of August 19, 1993 and November 29, 1995. The writ petitioners contend that though they accept the proposition that an employer has the right not to fill up all the vacancies that arise, in the present case it must be demonstrated that such a right was consciously exercised. The writ petitioners seek to distinguish the Supreme Court dictum in Dr.K.Ramulu, as cited by the private appellants, on the ground that there was a conscious decision in that case to not fill up the vacancies and no right had accrued to any person for the retrospective operation of the amendment to be objected to.

44. The writ petitioners refer to a judgment reported at (1986) Supp SCC 584 (T.R.Kapur v. State of Haryana) for the proposition that though a mere chance of promotion may not be a right and an amended rule under the proviso to Article 309 may also have retrospective effect, the benefits acquired under the erstwhile rules could not be taken away by an amendment with retrospective effect. The following passage from paragraph 16 of the report is apposite:

"16 ... It is equally well settled that any rule which affects the right of a person to be considered for promotion is a condition of service although mere chances of promotion may not be. It may further be stated that an authority competent to lay down qualifications for promotion, is also competent to change the qualifications. The rules defining qualifications and suitability for promotion are conditions of service and they can be changed retrospectively. This rule is however subject to a well recognised principle that the benefits acquired under the existing rules cannot be taken away by an amendment with retrospective effect, that is to say, there is no power to make such a rule under the proviso to Article 309 which affects or impairs vested rights."

45. Another judgment reported at (2005) 5 SCC 598 (Ashok Lanka v. Rishi Dixit) has been brought by the writ petitioners for the proposition that no step may be taken on the pre-supposition that a rule would be amended and also for the principle that if a selection process is over upon following a procedure which is illegal, it cannot be rendered valid ex post facto by a subsequent amendment being given retrospective effect.

46. The writ petitioners refer to the Special Rules for the Tamil Nadu Secretariat Service. Rule 6 of such Rules pertain to the preparation of the annual list of approved candidates and it requires a list of approved candidates for appointment to the posts by promotion to be prepared annually and the crucial date to be reckoned as August 1 for the candidates to have acquired the prescribed qualifications by such crucial date. Thus, according to the writ petitioners, upon such of them who qualified to be considered for promotion by August 1, 1995 or by the same date in 1996 or 1997, a vested right must be seen to have accrued to them which could not have been taken away by a retrospective amendment to the rules.

47. The writ petitioners also refer to the revised Special Rules pertaining to Tamil Nadu Secretariat Service brought into

effect by G.O.Ms.No.236 dated April 12, 1998 to indicate how they were entitled to be promoted after completion of a continuous period of two years following their switch-over from the ministerial service to the secretariat service. Rule 15 of the said revised Rules is relevant:

"15. Probation:- Every person appointed to a category by direct recruitment shall, from the date on which he joins duty, be on probation for a total period of two years on duty within a continuous period of three years.

Provided that every person appointed to a category by recruitment by transfer shall, from the date on which he joins duty, be on probation for a period of one year on duty within a continuous period of two years."

48. In this context, Rule 14 of the said revised Rules that deals with the categories of posts, the methods of appointment to the posts and the qualifications therefor has also been referred to by the writ petitioners and the private appellants. There is a chart which is incorporated in Rule 14 of the said revised Rules that, for the present purpose, governs how a person occupying a particular post qualifies to be promoted to the next post. Category 3 in the chart under Rule 14 pertains to Assistants in the departments of the secretariat other than the Law Department and the Governor's secretariat. It is such category of Assistants which is relevant herein. In respect of promotion from the category of Personal Clerks and Typists, to which the writ petitioners belonged at the relevant point of time, the qualifying period of service is indicated to be not less than four years as Personal Clerk or Typist. However, there is a proviso to such qualifying period of service which reads as follows:

"Provided that a Typist or Personal Clerk irrespective of the method of appointment by which he/she has been appointed as such who holds a degree, shall be eligible for appointment as Assistant only after satisfactory completion of their probation and possessing two years of service either before or after acquiring a degree."

49. According to the writ petitioners, they were all qualified graduates at the time of their transfer from the ministerial service to secretariat service and, as such, they were eligible to be considered for promotion upon completion of two years of continuous service, since the period of probation would have been completed by then. It is, thus, the contention of the petitioners that the writ petitioner No.45, who switched-

over from ministerial service to secretariat service on July 7, 1993, was eligible to be considered for promotion on July 8, 1995. Similarly, the junior-most of the writ petitioners, who stood transferred to the secretariat service on July 21, 1995, was eligible to be considered for promotion to the post of Assistant on July 22, 1997. The writ petitioners assert that all of them were adversely affected by the retrospective operation given to G.O.Ms.No.67 dated March 27, 1998 as, their promotion to the post of Assistant, instead of coming within reasonable time after their completion of two years in service, came between 10 and 11 years in the secretariat service.

50. The writ petitioners maintain that their grievance as canvassed in the present proceedings was not on the basis of some imaginary prejudice, but the prejudice they suffered was real and evident.

51. It must be said that the matters that fall for consideration on the basis of the rival submission did not engage the attention of the Writ Court, nor was any view expressed thereon or cogent reasons furnished for arriving at the ultimate finding which is evident from paragraph 21 thereof.

52. It is now beyond question that in service jurisprudence there is no right to obtain promotion, but a right to be considered for promotion has always been recognised. Equally, as some of the judgments referred to above instruct, it is open to the employer to not fill up all vacancies, though ordinarily such a measure is resorted to if suitable candidates are not found or for other pressing administrative reasons like the workload at the relevant post having considerably reduced.

53. Before the core issue involved in the present proceedings is addressed, the arguments of prejudice put forth by both the writ petitioners and the private appellants need to be dealt with. The private appellants say that their rights could not have been affected by the judgment and order impugned without the direct recruits, who were appointed at least in 1998, being impleaded as parties to the proceedings. The other contention of the private appellants on similar lines is that since some of the writ petitioners had opted to participate in the selection process to be directly recruited as Assistant, it would not lie in their mouth to question the process of direct recruitment or the consequences thereof. It appears that some six or seven writ petitioners had unsuccessfully attempted to be directly recruited as Assistant.

54. Nothing turns on either ground urged by the private appellants. Indeed, at the time when G.O.Ms.No.67 dated March 27, 1998 was challenged, the private appellants were not even born, so to say, since they came to be appointed only on or after May 21, 1998. Further, it was not necessary to implead the private appellants after they had been appointed since their letters of appointment, pursuant to the interim order passed by this Court, indicated that their appointments would be subject to the result of the proceedings. As to some of the writ petitioners' participation in the selection process to be directly recruited as Assistant, it matters little since the rights canvassed by them are qua their position as Personal Clerks or Typists, which post they did not surrender to take the examination to be directly recruited. Though such petitioners may be seen to have acted in terms of G.O.Ms.No.67 dated March 27, 1998, but it would be rather harsh to preclude them from asserting the rights that accrued to them prior to G.O.Ms.No.67 dated March 27, 1998 coming into effect merely by virtue of their subsequent perceived acquiescence in such notification.

55. Similarly, the writ petitioners' assertion that the private appellants cannot be seen as persons aggrieved by the judgment and order impugned has to be rejected out of hand. It is true that their appointment letters indicated that such appointments were subject to the outcome of the proceedings, but the private appellants seek to challenge the judgment and order impugned on the ground of illegality, in the sense that such judgment and order failed to recognise the permissibility of the retrospective amendment to rules framed under Article 309 of the Constitution. It is an entirely different matter that, on merits, the private appellants may succeed, whether in part or in full, or may even fail. But it cannot be said that the private appellants cannot be regarded as persons aggrieved by the judgment and order impugned dated April 26, 2010.

56. Though it must be acknowledged that the manner in which the relief sought in the petition is couched or how inarticulately the right is sought to be canvassed by merely claiming a chance and opportunity of promotion without clearly specifying the right that may have vested in the writ petitioners to be considered for promotion, in service matters pertaining to clerical or lower or middle-ranking posts, it is for the Writ Court - and the appeal is nothing but a continuation of the same proceedings - to discern the right and to dispense justice in accordance with law. It would be extremely helpful for Courts and Judges to be presented with appropriate pleadings, articulately expressed and concisely stated. But that is not the regular dish that is served and

merely because the fare may be unattractive will not do for a constitutional Court to reject the same without making an endeavour to ascertain the rights and undo the injustice, if any, in accordance with law.

57. The only substantial issue that arises for consideration here is whether by virtue of the writ petitioners' mere eligibility to be considered for promotion, a right had vested in them by March 27, 1998 for the retrospective operation of G.O.Ms.No.67 dated March 27, 1998 to not apply to the writ petitioners.

58. The subtle distinction made by the Supreme Court in subsequently reading the dictum in Y.V.Rangaiah is instructive. On the basis of the authoritative pronouncements brought by the parties to bear on the issue, it appears that when a particular post fixes a tenure for occupants in such post being eligible for promotion, there may be four possibilities that may arise immediately upon such persons becoming eligible for promotion: they are actually promoted; or, they are selected to be promoted, but the promotion is not effected immediately; or, they are under consideration to be selected for promotion; or, they are merely eligible for promotion without the process of consideration for promotion having commenced. The jurisprudence that has developed reveals that if promotions have already been obtained, the retrospective operation of any amended rule cannot take away the promotion already effected. This is because the concerned employee ceases to be in the feeder post upon being promoted and, technically, the retrospective operation of the amended rule would not apply to such employee. More importantly, even if promotion is effected and, accidentally, the person has not taken up the promoted post, no amended rule can take away the promotion obtained, since such a promotion is not only a vested right but a benefit conferred on the basis of the vested right and it cannot be undone since the vested right would stand merged into the benefit that had already been conferred.

59. In the second scenario, when the selection process for promotion is already completed before the retrospective operation of the amended rules becomes effective, there is also a firm and inalienable right that has accrued to the employee selected for promotion and once the process has been completed, the retrospective operation of an amended rule cannot take away such valuable right. It is such quality of vested right that is protected against the retrospective operation of the service rules.

60. In the third case, the process of consideration would have commenced but not completed. If, at such stage, there is

any retrospective change in the rules that allows, say, more persons to be considered for promotion, such alteration in the rules would not amount to divesting the employee of any entrenched right. The employee would still remain eligible for consideration for promotion, but he would now be one out of a much larger field to be considered for promotion. If the right to be considered for promotion remains unaffected, the fact that the right is diluted is of no consequence.

61. The fourth case is where the employee has served out the qualifying period and is eligible to be considered for promotion. There is no real right that has accrued in such a scenario and the rules of the game can be changed retrospectively and even the period of eligibility to be considered for promotion may be enlarged by retrospective operation of any amended rule.

62. It needs to be reiterated that Rule 6 of the Secretariat Service Rules that the writ petitioners bank on is not on the same footing as the governing rule in *Y.V.Rangaiah*. It is, thus, that the dictum in *Y.V.Rangaiah* would not be applicable in the present case for a vested right to be seen to have accrued to the writ petitioners. Rule 6 of the Secretariat Service Rules in the present case mandates that a list of approved candidates would be prepared annually and the crucial date to assess whether the candidates have acquired the prescribed qualifications would be August 1 every year. In *Y.V.Rangaiah*, the relevant rule required the list of approved candidates to be prepared in the month of September every year and such list of approved candidates to contain such number of candidates as was approximately equal to the number of vacancies expected to arise during the currency of the list. In other words, the prevalent rule in *Y.V.Rangaiah* required the list of eligible candidates to be trimmed down to a panel of prospective promotees who would move into the promoted post upon a vacancy arising. That would necessarily imply that the consideration for promotion would be complete upon the approved panel being prepared; and there was a prescribed date for the approved panel to be prepared. Rule 6 in the present case neither gives the right of appointment every year, nor does it recognise any duty to fill up the vacancies. At any rate, the applicable rule in the present case does not mandate the preparation of any approved panel by any suggested date. The crucial date is relevant for the purpose of eligibility, not for the finalisation of any approved panel.

63. There is no dispute between the parties that it is the employer and the employer alone who may decide whether or not to fill up any vacancies and merely because a person is eligible to

be considered for promotion does not imply that all the vacancies in the promotional post must be filled up or there is any corresponding right of the employee in such regard. However, the writ petitioners accept the principle with a minor caveat that the decision to not fill up the vacant positions must be conscious and not in anticipation of any proposed amendment or otherwise on arbitrary or imaginary considerations. The point that the writ petitioners make is that the only reason why the vacancies to the post of Assistant may not have been filled up in 1995 or 1996 or 1997 was that the government anticipated direct recruits to be inducted to the post of Assistant, but the process was flawed since G.O.Ms.No.315 of August 19, 1993 was without the procedure under Article 309 of the Constitution being adhered to.

64. There is no doubt that the State decided not to completely fill up the post of Assistant in 1995 and again in 1996 and 1997. There is also no doubt that the underlying basis for this was the expected recruitment to be made directly to such post. But, in fact, the direct recruits did not come in the year 1995 and not even in the year 1996 or 1997. Yet the Government did not fill up the posts otherwise apparently earmarked for direct recruits. Implicit in such decision was the conscious rejection of filling up further posts of Assistant with Graduate Typists, since a completely lopsided promotion policy followed prior thereto resulted in only Graduate Typists garnering the majority posts of Assistant. The order dated April 3, 1998 of the then State Administrative Tribunal observed as such in the discussion therein.

65. The judgment impugned dated April 26, 2010 does not delve into any of the relevant legal aspects and does not take relevant considerations into account. In any event, the impugned judgment does not furnish any or adequate reasons to sustain the order impugned. The writ petitioners having attained the mere eligibility to be considered for promotion, there was no vested right for the writ petitioners to canvass and none that the Writ Court could have legitimately protected. The case that the writ petitioners made out was that their chances of obtaining promotion stood somewhat dwindled and their prospects worsened upon the amended rule being given retrospective effect, but there was no entrenched or vested right of the writ petitioners that was prejudicially or adversely affected by the retrospective operation of G.O.Ms.No.67 dated March 27, 1998 for their challenge thereto to succeed. It was a fanciful right that was asserted which could not have been accepted or protected by the Writ Court. As a consequence, the impugned judgment and order of April 26, 2010 are set aside and W.P.No.46697 of 2006 stands dismissed.

66. The hearing in these appeals was originally concluded and the matter was reserved for judgment on March 31, 2021. However, the matter was mentioned on behalf of the private appellants on April 1, 2021 with a request to allow the private appellants to make further submission and cite certain judgments. Accordingly, the matter appeared on April 7, 2021 and all the appearing parties were heard, not only in respect of the additional submission on behalf of the private appellants, but also on other aspects that the relevant parties wished to focus on.

W.A.Nos.1878 of 2010 and 2752 of 2012 are allowed. In the facts and circumstances of the case, there will be no order as to costs. Consequently, C.M.P.Nos.18041 to 18044 of 2016; 15975 of 2019; 7903 and 9735 of 2020 are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

sasi

To:

1 THE SECRETARY TO GOVERNMENT
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TAMIL NADU PUBLIC SERVICE COMMISSION
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+2 Ccs to Mr.M. Sriram, Advocate sr 22839, 22838

+2 Ccs to Mr.B. Vijaya, Advocate sr 22569

+1 CC to The Government Pleader sr 22815.

W.A.Nos.1878 of 2010
and 2752 of 2012

JP(CO)
SP(16/04/2021)