



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESEVED ON: 04.02.2022

DELIVERED ON: 04.04.2022

WEB COPY

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.Nos.10135 and 18224 of 2013

W.P.No.10135 of 2013

1.V.Rajaram
2.N.Thiyagarajan
3.K.Arutselvan
4.K.Kalimuthu .. Petitioners

vs.

1.The Secretary,
Representing the State of Tamil Nadu,
Hindu Religious & Charitable Endowment Dept.,
Fort St.George,
Chennai-600 009.

2.The Commissioner,
Hindu Religious & Charitable Endowment Act,
Uthamar Gandhi Road,
Chennai-600 006.

3.P.Nagaiah,
Executive Officer Grade-II,
Arulmighu Mariamman Angalamman Thirukkoyil,
Pollachi.

4.P.Manavazhagan,
Executive Officer Grade II,
Arulmighu Prasanna Mariamman Thirukkoyil,
Mayiladuthurai District.

5.S.Muthuraman,
Executive Officer Grade II,
Arulmighu Muthumariamman Thirukkoyil,
Konnaiyur, Thirumayan Vattam,
Pudukkottai District.

6.R.Sukumar,
Executive Officer Grade II
Arulmighu Kongalamman Temple,
Erode City, Erode.



WEB COPY

- 7.S.Viswanathan,
Executive Officer Grade II,
Arulmighu Vempuliamman Temple,
Langu Bazar, Velur.
- 8.C.Manivannan,
Executive Officer Grade II,
Arulmighu Thiruvalliswaran Temple,
Padi, Chennai-600 053.
- 9.M.Arulkumar,
Executive Officer Grade II
Arulmighu Velayudhaswamy Temple,
Thindal Malai, Erode Taluk,
- 10.R.Pandiaraju,
Executive Officer Grade II,
Narayana Reddy Chatiram, Velur.
- 11.R.Muthuchamy,
Executive Officer Grade II
Arulmighu Athanur Amman Temple,
Athanur, Namakkal District.
- 12.R.Ramasubramanian,
Executive Officer, Grade-II,
Arulmighu Thillai Kaliyamman Temple,
Chidambaram.
- 13.G.Muralidharan,
Executive Officer, Grade-II,
Arulmighu Sorimuthu Ayyanar Temple,
Singampatti, Ambasamudram Taluk,
Tirunelveli District.
- 14.K.Nagarajan,
Executive Officer Grade II,
Arulmighu Devanagaswamy Temple,
Thiruvandipuram, Kadalur District.
- 15.K.Sivakumar,
Executive Officer Grade II
Arulmighu Adinada Alwar Temple,
Alwar Thirunagari, Tiruchendur Taluk.
- 16.P.Ponnalagu,
Executive Officer Grade II
Arulmighu Srinivasa Perumal Thirukkoyil,
Nachiyarkoil, Kumbakonam Taluk,
Tanjore District.



WEB COPY

17.D.Govindaraju,
Executive Officer Grade II
Aulmighu Veeramma Kaliyamman Temple,
Athalur Peravurani Taluk,
Tanjore District.

18.S.Rajailamperuvalithi,
Executive Officer Grade II,
Arulmighu Madavaperumal Temple,
Mylapore, Chennai-4.

.. Respondents

W.P.No.18224 of 2013

K.Periamaruthu Pandian

.. Petitioners

vs.

1.The Secretary to Government,
Tourism Culture Religious Endowments Department.,
Secretariat, Fort St.George,
Chennai-600 009.

2.The Commissioner,
Hindu Religious & Charitable Endowments Department,
119, Nungambakkam High Road,
Chennai-600 034.

3.The Executive Officer,
Arulmigu Venkatesperumal Temple,
Mondipalayam, Avinashi Taluk,
Tiruppur-641 655.

4.V.Senthurpandian,
Executive Officer,
Arulmigu Sidhi Budhi Vinayagar Temple,
Royapettah, Chennai-600 014.

5.R.Rajendran,
Executive Officer,
Arulmigu Vedaranyeswarar Temple,
Vedaranyam Town & Taluk,
Nagapattinam District.

6.M.Annakodi,
Executive Officer (Under suspension),
(Through) the Assistant Commissioner,
Hindu Religious & Charitable Endowments,
Department, Trichy.



WEB COPY

7.R.Chandran,
Executive Officer,
Arulmigu Kumaraguru Subramaniaswamy Thirukovil,
Ammapettai, Salem Taluk,
Salem District.

8.P.Kolangi,
Executive Officer,
Arulmigu Sowmiya Damodara Perumal Temple,
Villivakkam, Chennai-600 049.

9.S.Ramaraja,
Executive Officer,
R.K.Nachiyarkattalai,
Sivagiri Town & Taluk, Tirunelveli District.

10.K.Raja,
Executive Officer,
Arulmigu Prasanna Venkataramana Thirukoil,
Chinnathurupatty, Omalur Taluk, Salem District.

11.S.Kailash,
Executive Officer,
Arulmigu Sidhivinayagar Temple,
Gandhipuram, Coimbatore Town,
Coimbatore.

12.S.Poovalingam,
Executive Officer,
Arulmigu Venugopalasamy Temple,
Sathiyamangalam Town, Sathiyamangalam.

13.P.Nagaiah,
Executive Officer,
Arulmigu Maniamman Angalamman Temple,
Pollachi, Coimbatore District.

14.M.Manavazhagan,
Executive Officer,
Arulmigu Prasanna Mariamman Temple,
Mayiladuthurai Nagar,
Mayiladuthurai.

.. Respondents.

Prayer in W.P.No.10135 of 2013: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the second respondent culminating in the proceedings dated 03.01.2013 made in proceedings Na.Ka.No.55688/2011/L.1 and consequently, direct the second respondent to restore the seniority position of the petitioners as contained in Seniority



List as on 01.01.2001 in S.L.Nos.246, 247, 251 and 255 respectively and thereby grant promotion to the petitioner to the post of Grade I Executive Officers as per the Seniority List dated 01.01.2001.

WEB COPY

Prayer in W.P.No.18224 of 2013: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records culminating in the proceedings dated 03.01.2013 made in Na.Ka.No.55688/2011/L-1 issued by the second respondent and quash the same and consequently, direct the second respondent to restore the petitioner's seniority position as contained in the Seniority List as on 01.01.2001 in Sl.No.231 and thereafter, grant promotion in the place of the fourth respondent as contained in the order dated 03.01.2013 made in Na.Ka.No.19356/2012-I/L2 to the post of Grade I Executive Officer with all monetary and attendant service benefits.

In all W.Ps,

For Petitioners : Mrs.G.Thilakavathi, Senior Counsel
for Mr.R.Gophinath

For Respondents : Mr.T.Chandrasekaran,
Special Government Pleader for R1 & R2

C O M M O N O R D E R

Challenge in these writ petitions is to the order of the second respondent culminating in the proceedings dated 03.01.2013 in Na.Ka.No.55688/2011/L.1 and consequently, direct the second respondent to restore the seniority position of the petitioners as contained in Seniority List as on 01.01.2001 in S.L.Nos.246, 255, 251, 247 & 231 respectively and thereby grant promotion to the petitioner to the post of Grade I Executive Officers as per the Seniority List dated 01.01.2001.

2. Facts, briefly narrated, are as follows:

2.1. The case of the petitioners is that they were direct recruits during the year 1996 as Grade IV Executive Officers and after their initial appointment, their probation were declared during the year 1998-1999, whereby they became permanent staff in the cadre of the subordinate service of the second respondent and thereafter, became eligible for being promoted as Grade III Executive Officers. As per the Service Rules governing the service conditions of the respondents herein i.e., The Tamil Nadu Hindu Religious & Charitable Endowments Subordinate Service Rule [hereinafter "TN HR&CE SS Rules"] the approved candidates are considered from out of the selection list panel prepared annually on the 15th March and promotions are granted on the basis of seniority of the eligible candidates to the next grade of Executive Officer. However, the promotion for



Grade III Executive Officer was belatedly granted on 07.03.2001 to all the petitioner i.e., one year later by proceedings No.64464/2000/L.4 of the second respondent.

2.2. Promotions were made against the approved permanent vacancies, which were available on the date of preparation of the panel in the year 2000. Hence, the appointment was against permanent vacancy as could be seen from the rules framed in this regard. During the year 2007-2008, the panel for eligible candidates to be promoted as Grade II Executive Officers was drawn by the second respondent and thereupon, the petitioners were also granted the benefit of promotion as Grade II Executive Officers with effect from 15.03.2008 in the approved list of permanent vacancies.

2.3. In the year 2012, seniority position list was called for consideration from eligible Grade II Executive Officers towards promotion to Grade I Executive Officer. The petitioners were senior-most in the seniority list settled in the year 2001, which comprised of seniority position of Grade I to Grade IV-Executive Officer. But to their shock and surprise, proceedings dated 25.05.2012 in Na.Ka.No.15688/2011/L.1 came to be issued calling for objections for the proposed revision of seniority list for the reason that objections have been submitted by direct recruitees in Executive Officers Grade III cadre, for rectification of their place in the seniority amongst the promotees on the strength of rule position in the ratio of 2:2:1 amongst direct recruitees, promotees and transfer postings from other Departments, as contemplated under Rule 10(a) of the TN HR&CE SS Rules, more particularly G.O.(Ms)No.610, Commercial Taxes and Religious Endowment Department dated 14.07.1980. As per the said Government Order, it was contended that promotions could be made only to permanent vacancies by promoting Grade IV Executive Officers, who were promoted as Grade III Officers and alleging that the seniority list determined as on 01.01.2001 in the category of Grade III Executive Officers required a redetermination insofar as the seniority placement of Executive Officers in Sl.Nos.231 - 230. On receipt of objections from ten direct recruitees, the official respondents called for objections as per show cause notice dated 25.05.2012 made in Na.Ka.No.55688/2011/L1, indicating the proposed alteration of seniority position under Sl.Nos.231 to 230 of the incumbents of Grade III Executive Officers of 2001 Seniority List to 259-314.

2.4. On receipt of the show cause notice, the petitioners have independently submitted their objections and vide proceedings dated 03.01.2013, the seniority which was settled as on 01.01.2001 was altered. In order to accommodate two incumbents, Manivannan and L.Viswanathan / respondents 7 and 8. Challenging the show cause notice issued by the second



respondent dated 25.05.2012 in Na.Ka.No.55688/2011/L1, as confirmed by the second respondent, vide proceedings dated 03.01.2013 in Proceedings Na.Ka.No.55688/2011/L1, in and which the seniority position of the petitioners have been pushed from 246 to 315, the petitioners have filed the present writ petitions.

W.P.No.18224 of 2013

2.5. The petitioner herein has raised the very same averments as stated in the above writ petition and apart from that, it is averred that on 29.06.2012, the Regional Joint Commissioner, Coimbatore issued a Charge Memo, pursuant which the petitioner submitted his explanations and vide order dated 12.12.2012, the petitioner was imposed with punishment of stoppage of increment for one year without cumulative effect. Against which, the petitioner preferred a Statutory Appeal dated 28.12.2012. The second respondent, vide Proceedings in Na.Ka.No.67554/2012L.2 dated 09.04.2013 has set aside the order of punishment awarded by the Regional Joint Commissioner and remanded the matter for fresh hearing. Challenging the above proceedings, the petitioner has filed the present writ petition.

3. The second respondent has filed a detailed counter affidavit denying the averments made in the writ petition by stating as follows:

3.1. As per Rule 35(aa) of the Tamil Nadu State and Subordinate Service Rules "the seniority of a person in a service, class, category or grade shall, where the normal methods of recruitment to that service, class, category or grade is by more than one method of recruitment... be determined with reference to the date on which he is appointed to the service, class, category or grade". Further, as per Rule 35(f) of the Tamil Nadu State and Subordinate Service Rules, "if 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 order fixing the seniority, as the case may be, any application received after the said period of three years shall be summarily rejected. However, this shall not be applicable to cases of rectifying order, resulting from mistake of fact". It is to be emphasised that no time limit has been fixed in the said Rules. Hence, the impugned order is passed in accordance with rules.

3.2. The petitioners have joined as Executive Officer Grade III by promotion from the post of Executive Officer Grade IV in the year 2001. But the respondents 3 to 18 were recruited by the Tamil Nadu Public Service Commission and appointed as Executive Officer Grade III in the year 2000 and hence, they are rightly placed above the petitioners in the seniority list.



3.3. The seniority of the respondents 7 and 8 have been fixed based on the date of appointment to the services as per Rule 35(aa) of the Tamil Nadu State and Subordinate Service Rules. But the petitioners were appointed by promotion to the post of Executive Officer Grade III in the year 2001 only and therefore, prays for dismissal of these writ petitions.

4. Mrs.G.Thilagavathi, learned Senior Counsel for the petitioners has made the following submissions / contentions:

4.1. The reasoning reflected in the impugned proceedings dated 25.05.2012 for the proposed revision of seniority was erroneous for the reason that similarly placed persons like the petitioners, who were promoted to Grade III Executive Officers from the category of Grade IV Executive Officers, were promoted as against permanent vacancies as contemplated under TN HR&CE SS Rules, which makes a clear distinction to the promotions being made to a permanent post from and out of the approved list of candidates as against temporary promotions contemplated under the General Service Rules.

4.2. As per G.O.(Ms.)No.1140, Employment and Administrative Reforms Department dated 12.12.1983 and as per Rule 35(f) of the Tamil Nadu State and Subordinate Service Rules, any revision of seniority list ought to have been done within a period of three years and not thereafter. However, for the reasons best known, after a period of nearly twelve years and also after granting the benefit of getting promotion from the category of Grade III Executive Officers to Grade II Executive Officers in the year 2008 and presently when all the petitioners are eligible as senior-most persons in the select panel for the year 2011-2012 to be promoted to the post of Executive Officers Grade I, the official respondents have chosen to interpret the provision of law as if appointments granted to the petitioners and similarly placed persons from Grade IV to Grade III Executive Officers is to their advantage and are proposing to revise the seniority list as on 2000-2001, on the strength of the alleged grievance of the contesting respondents.

4.3. The proposed revision of seniority was predominantly intended to accommodate two incumbents, namely Manivannan and L.Viswanathan / respondents 7 & 8, notwithstanding the fact that the very objections raised by them are unsustainable in view of the clear rule position of Rule 4(e), when their very



WEB COPY

appointment to the post is unsustainable in as much as having been selected for direct recruitment as Executive Officers Grade III by Tamil Nadu Public Service Commission on 16.10.2000, the said respondents joined duty only on 10.04.2001 and 19.09.2001 respectively, however, the petitioners were granted belated promotion as Grade III Executive Officers on 07.03.2001 and therefore, in seniority, they fall below the petitioners.

4.4. Insofar as the 2001 seniority position is concerned, the second respondent has not chosen to interfere with the seniority position of promotees prior to Sl.Nos.231 to 320 and hence, the said action of the respondents violates Articles 14 and 21 of the Constitution of India.

4.5. The official respondents have thoroughly ignored the Special Rules viz., TN HR& CE SS Rules, which was amended and was in force vide G.O.Ms.No.610 dated 14.07.1980 and subsequently, revised vide G.O.Ms.No.272, Commercial Taxes and Religious Department dated 06.08.1993.

4.6. In service jurisprudence, Special Rules prevail over General Rules and only in the absence of Special Rule in which seniority of the class, category or grade of employees of particular service is drawn, reliance on general rules is permissible.

The learned Senior Counsel for the petitioners, in support of his submissions, has placed reliance on the following decisions:

(i) P.S.Sadasivam v State of Tamil Nadu [AIR 1975 SC 2271]

(ii) A.Somachair and l.Geetha v. The Union of India [Order dated 15.04.2008- MHC (DB)]

(iii) Maya Mathew v. State of Kerala & Ors. [(2010) 4 SCC 498]

(iv) Union of India v. Chaman Rana [2018 SCC Online SC 294]

(v) Syed Mohideen v. Government of Tamil Nadu and Others [AIR 1986 Mad 188]

(vi) Municipal Corporation of Delgi v. Gurman Kaur [(1989) 1 SCC 101]

(vii) Vijay Narayan Thatte and Ors. v. State of



Maharashtra & Ors. [(2009) 9 SCC 92]

(viii) D.J.Malpani v. Commissioner of Central Excise
[(2019) 9 SCC 120]

WEB COPY

5. Mr.T.Chandrasekaran, learned Special Government Pleader (HR & CE) for the respondents 1 and 2 has drawn the attention of this Court to the counter affidavit filed by the second respondent and would submit that as per Rule 35(f) of the Tamil Nadu State and Subordinate Service Rules, no time limit has been fixed to revise the seniority fixed, rectifying the mistake of facts and the seniority issued in the year 2001 was prepared based on the roster to be followed for appointment while filling up the vacancies in the post and as per 35(aa) of the said Rules, when there is more than one method of recruitment, seniority among the recruits shall be fixed based on the date of appointment to the post. The learned Special Government Pleader further submitted that the petitioners were promoted against vacancies for the year 2000-2001 and whereas the respondents were recruited against the vacancies earmarked for the year 1997-2000 and hence, the contention of the petitioners are totally baseless and would further add that the promotees in Sl.Nos.121, 122 were already retired and Sl.No.225 is now officiating as Inspector and hence, there is no change in the seniority position of the persons in Sl.Nos.1 to 230 and if any person is aggrieved by the revision of seniority, it is left open to them to apply to the Commissioner to rectify the defects and hence, prays for dismissal of these writ petitions.

6. This Court has considered the rival submissions and also perused the entire materials placed before it.

7. The issue involved in the writ petition is whether the impugned proceedings of the second respondent dated 03.01.2013, revising the seniority settled in the year 2001 in the cadre of Executive Officers Grade III, is sustainable in law ?

8. Admittedly, the petitioners were recruited as Grade IV Executive Officers during 1991-1996 respectively and they earned their respective promotions in the year 2000 / 2001 and were promoted to Grade II Executive Officer during the years 2006 and 2008 respectively. It is the grievance of the petitioners that when promotion to the post of Grade I Executive Officers was proposed to be made during the year 2012, the seniority list of eligible Grade II Executive Officers were examined and at that time, the contesting respondents, more particularly, 10 direct recruitees submitted representations before the second respondent seeking alteration of the seniority list which was admittedly settled on 01.01.2001.



9. A Show Cause Notice dated 25.05.2012 was issued by the second respondent calling for objections for the proposed revision of seniority list. The proposed revision was intended by relying upon Rule 35(aa) of the Tamil Nadu State and Subordinate Service Rules, which reads as follows:

"35.Seniority -..

(aa) The seniority of a person in a service, class, category, or grade shall, where the normal method of recruitment to that service, class, category or grade is by more than one method of recruitment, unless the individual has been reduced to a lower rank as a punishment, be determined with reference to the date on which he is appointed to the service, class, category or grade;

Provided that where the junior appointed by a particular method or recruitment happens to be appointed to a service, class, category or grade, earlier than the senior appointed by the same method of recruitment, the senior shall be deemed to have been appointed to the service, class, category or grade on the same day on which the junior was so appointed.

Provided further that the benefit of the above proviso shall be available to the senior only for the purpose of fixing inter-se seniority".

According to the petitioners, the second respondent in the show cause notice, after having placed reliance upon the Special Rules for the Tamil Nadu Hindu Religious and Charitable Endowments Subordinate Service Rules, contained in G.O.Ms.No.610 dated 14.07.1980, as per Rule 10(a), seniority has to be fixed as per the said Rules at the ratio of 2:2:1 among Direct Recruits, Promotees and Transferees and however, ignoring the appropriate placement for promotees, the official respondents issued the revised seniority list without taking into consideration the substantial objections raised by the writ petitioners and passed the impugned revised seniority list dated 03.01.2013.

10. According to the petitioners, there was an administrative delay pursuant to which seniority, which ought to have been determined for the year 1999-2000 as on 15.03.1999 was drawn only on 01.06.2000, more particularly for the year 2000-2001 and promotions for Grade III Executive Officers from Grade IV was granted only on 29.06.2000. However, direct recruitment for Grade III Executive Officers were recruited and they joined duty immediately on 12.05.1999 onwards. On realising the delay caused in publishing the seniority of the year 1999-2000 and the belated promotions granted to the writ petitioners, rightly seniority was drawn with effect from 15.03.1999 and inter-se



seniority of the promotees / direct recruits of the year 1999/2000 was finished and published as on 01.01.2001, as no direct recruitment for the year 1998-1999 was caused. Thereafter the writ petitioners were given promotions as Grade II Executive Officers on the basis of seniority list drawn for Grade III Executive Officers as on 2007-2008. Thus the official respondents overlooked the factual error of administrative delay as on 15.03.1999, while drawing the interse seniority list among promotees and direct recruits and took shelter under Rules 35 (aa) and 35(f) to redress the grievance of the contesting respondents.

11. Rule 35(f) of the Tamil Nadu State and Subordinate Service Rules reads as under:

"35.Seniority..

(f). Application for 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 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."

It is the stand of the second respondent that in Rule 35(f) of the Tamil Nadu State and Subordinate Service Rules, no time limit has been fixed in respect of rectifying order, resulting from mistake of fact. According to the respondents, the petitioners have joined as Executive Officer, Grade III by promotion from the post of Executive Officers Grade IV in the year 2001, but the respondents 3 to 8 were recruited by TNPSC and appointed as Executive Officers, Grade III in the year 2000 and hence, they are rightly placed above the petitioners in the seniority list.

12. At this juncture, it is useful to refer to the decision of the Hon'ble Supreme Court in Maloon Lawrence Cecil D.Souza v. Union of India [AIR 1975 SC 1269] wherein it was held that "taking up of old matters like revision of seniority after a long time is likely to result in administrative complications and difficulties; it would therefore appear to be fair in the interest of smoothness and efficiency of administration that the settled matters should not be made unsettled and it should be given a quietus after the lapse of some time".

13. The Hon'ble First Bench of this Court in the decision in S.Somachari and L.Geetha v. Union of India [Order dated 15.04.2008 in W.P.Nos.7200 of 1999 etc., batch] held as follows:



WEB COPY

"5. Firstly, as apparent, the seniority list had been prepared as way back in May, 1989. Law is well settled that in the matters relating to seniority, an aggrieved party is expected to come to the Court as expeditiously as possible without avoidable delay and the matters which are remained settled for a long period should not be allowed to unsettle after a long lapse of time.

5.1. In the present case, the petitioners approached the Tribunal for the first time by filing Original Applications in 1996 or 1997, after about 7 to 8 years. Learned counsels for the petitioners submitted that representations have been made and they have been waiting for the reply from the Government. In such matters, merely by making a representation, an aggrieved employee cannot wait quietly for a long period. If no reply was received within a reasonable period, say six months or one year, obviously the person has to approach the Court to ventilate his grievance.

5.2. The Supreme Court, further, in the judgment relating to the State of Tamil Nadu v. Seschalam (2007 AIR SCW 7750) held that law leans in favour of those who are alert and vigilant. Speaking for the Bench, S.B. Sinha, J. in paragraph 11 had observed as follows :-

"11. Some of the respondents might have filed representations but filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and / or laches on the part of a Government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant."

14. In Union of India & Others v. Chaman Rana [2018 SCC Online SC 294], the Hon'ble Apex Court observed as under :

"8. Manifestly, the cause of action first arose to the respondents on the date of initial supersession and again on the date when rejection of their representation was communicated to them, or within reasonable time thereafter. Even if the plea based on Dev Dutt [Dev Dutt v. Union of India, (2008) 8 SCC 725 : (2008) 2 SCC (L&S) 771] be considered, the cause of action based thereon accrued on 12-5-2008. There has to be a difference between a cause of action and what



WEB COPY

is perceived as materials in support of the cause of action. In service matters, especially with regard to promotion, there is always an urgency. The aggrieved must approach the Court at the earliest opportunity, or within a reasonable time thereafter as third-party rights accrue in the meantime to those who are subsequently promoted. Such persons continue to work on the promotional post, ensconced in their belief of the protection available to them in service with regard to seniority. Any belated interference with the same is bound to have adverse effect on those already promoted affecting their morale in service also. Additionally, any directions at a belated stage to consider others for promotion with retrospective effect, after considerable time is bound to have serious administrative implications apart from the financial burden on the Government that would follow by such orders of promotion.

9. As far back as in *P.S. Sadasivaswamy v. State of T.N.* [*P.S. Sadasivaswamy v. State of T.N.*, (1975) 1 SCC 152 : 1975 SCC (L&S) 22], considering a claim for promotion belated by 14 years, this Court had observed that a period of six months or at the utmost a year would be reasonable time to approach a court against denial of promotion and that it would be a sound and wise exercise of discretion not to entertain such claims by persons who tried to unsettle the settled matters, which only clog the work of the court impeding it in considering genuine grievances within time in the following words: (SCC p. 154, para 2)

"2. ... A person aggrieved by an order of promoting a junior over his head should approach the court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the courts to exercise their powers under Article 226 nor is it that there can never be a case where the courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the court to put forward stale claims and try to unsettle settled matters. The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the court. It clogs the work of the court and impedes the work of the court in considering



WEB COPY

legitimate grievances as also its normal work. We consider that the High Court was right in dismissing the appellant's petition as well as the appeal.”
(emphasis supplied)

16. In the facts and circumstances of the present case, any direction to consider retrospective promotion of the respondents at such a belated passage of time of over 17 to 20 years, would virtually bring a tsunami in the service resulting in administrative chaos quite apart from the financial implications for the Government. The order of the High Court is therefore held to be unsustainable and is set aside.”

15. In the case on hand, there was a delay in publishing the seniority of the year 1999-2000 and considering the belated promotions granted to the writ petitioners from Grade IV Executive Officers to Grade III Executive Officers, seniority was rightly drawn with effect from 15.03.1999 and interse seniority of the promotees/direct recruits of the year 1999/2000 was finalized and published as on 01.01.2001. The objections have been submitted by direct recruitees for revision of seniority during the year 2012, after a delay of 11 years and the impugned order revising the seniority position drawn as on 01.01.2001, came to be issued by the second respondent on 03.01.2013. The aforesaid decision relied on by the learned counsel for the petitioners squarely applies to the facts of this case.

16. The second respondent has passed the impugned order by placing reliance upon Rules 35(aa) and 35(f) of the Tamil Nadu State and Subordinate Service Rules, ignoring the Special Rules viz., TN HR&CE SS Rules, which was amended and was in force, vide G.O.Ms.No.610 dated 14.07.1980 and subsequently, revised vide G.O.Ms.No.272, Commercial Taxes and Religious Department dated 06.08.1993.

17. TN HR&CE SS Rules governing the service conditions, provides the manner in which promotion is to be effected. Rule 10(b) of the said Rules specifically provides the manner in which inter-se seniority between direct recruits, promotees and transferees from other service is to be drawn in a unit of every five vacancies when there is a direct recruitment. Rule 10(c) of the said Rules provides the manner in which seniority is to be drawn for the post of Executive Officer Grade II, when no direct recruitment for particular year in Grade III is done by fixing a ratio among promotees and transferees for every ten vacancies. Section 10(e) of the said Rules says that if in a particular year there are no direct recruits and transferees, all the promotees shall be placed in the seniority list according to the



order of their rank obtained in the seniority list in the lower grade together.

18. In service jurisprudence, the legal norm is that Special Rules prevail over General Rules and only in the absence of Special Rule in which seniority of the class, category or grade of employees of particular service is drawn, reliance on General Rules is permissible.

19. The Hon'ble Apex Court in the decision in *Maya Mathew v. State of Kerala & Ors.* [(2010) 4 SCC 498] observed as follows:

"12. The rules of interpretation when a subject is governed by two sets of rules are well settled. They are:

(i) When a provision of law regulates a particular subject and a subsequent law contains a provision regulating the same subject, there is no presumption that the latter law repeals the earlier law. The rule-making authority while making the later rule is deemed to know the existing law on the subject. If the subsequent law does not repeal the earlier rule, there can be no presumption of an intention to repeal the earlier rule;

(ii) When two provisions of law—one being a general law and the other being a special law govern a matter, the court should endeavour to apply a harmonious construction to the said provisions. But where the intention of the rule-making authority is made clear either expressly or impliedly, as to which law should prevail, the same shall be given effect.

(iii) If the repugnancy or inconsistency subsists in spite of an effort to read them harmoniously, the prior special law is not presumed to be repealed by the later general law. The prior special law will continue to apply and prevail in spite of the subsequent general law. But where a clear intention to make a rule of universal application by superseding the earlier special law is evident from the later general law, then the later general law, will prevail over the prior special law.

(iv) Where a later special law is repugnant to or inconsistent with an earlier general law, the later special law will prevail over the earlier general law.

17. These decisions reiterate the position that if the intention of the rule-making authority is to make a later general rule to apply to all services in the State, for which different earlier special rules exist, then the existing special rules will give way to such later general rule. That is, where the general rule is made subsequent to the special rule and the



WEB COPY

language of the general rule signified that it was intended to apply to all services and prevail over any prior special rules, the intention of the rule-making authority should be given effect by applying the subsequent general rule instead of the earlier special rule.

20. What logically follows from the principle enunciated in the two decisions is that if any special rule is subsequent to the general rule, then the question of examining whether the prior general rule will prevail over a later special rule will not arise at all having regard to the categorical provision contained in Rule 2 of the General Rules. The principle laid down in those decisions will not apply where the special rule is made subsequent to the general rule."

20. Rule 10(e) of TN HR&CE SS Rules gives a complete answer to the issue on hand, as the respondents have admittedly drawn the seniority list as on 01.01.2001 for Grade I to Grade IV Executive Officers taking into account of the fact that for the year 1998-1999, no direct recruitment was resorted to and promotions in the year 1999-2000 was also not effected and only under such circumstances, all the promotees in the seniority list were listed in the order of their seniority obtained in the lower grade. This Court is of the view that in the light of Rule 10(e) of Special Rules viz., TN HR&CE SS Rules, the seniority list which was finalized on 01.01.2001 is legally sustainable.

21. It is brought to the notice of this Court by the learned Special Government Pleader that challenging the very same impugned revised seniority list of the second respondent dated 03.01.2013, one A.Selvam Periyasamy, a similarly placed person/promotee, has filed a Writ Petition before the Madurai Bench of this Court in W.P.(MD)No.2891 of 2013 and vide order dated 06.08.2020, the learned Judge has dismissed the writ petition and the operative portion of the said order reads as under:

"12.After perusing the impugned order and also the Rule 35(f) of the Tamil Nadu State and Subordinate Service Rules, I find that in respect of Rule 35(f) of the Tamil Nadu State and Subordinate Service Rules, where rectification was done to correct the mistake that resulted on mistake of fact, the limitation of three years will not be made applicable. After perusing the orders, I am satisfied that it is a rectification of the mistake and hence, the contention raised by the learned counsel for the petitioner that the limitation period of three years is applicable,



WEB COPY

cannot be countenanced and accordingly, the same stands negated.

13. Yet another point is that the contesting third and fourth respondents were recruited by the Tamil Nadu Public Service Commission and they have joined the service on 12.05.1999, while the petitioner has joined the execution officer in Grade IV only on 29.06.2000 also assumes significance. The third and fourth respondents were recruited and joined duty as a direct recruit in Grade III on 12.05.1999, while the petitioner, who joined in the feeder category, namely, Grade IV and promoted to Grade III executive officer on 29.06.2000. Hence, on the mistake of fact as noticed by the Department, they have drafted a revised inter se seniority list and also duly called for the objections as referred under the rules and hence the exercises carried out by the respondents 1 and 2 is found to be inconformity the Rule 35(f) of the Tamil Nadu State and Subordinate Service Rules and hence, the limitation of three years as contended by the petitioner is not applicable to the case on hand and it squarely falls under the Rule 35(aa) as contended by the learned Special Government Pleader and hence, I find there is no merit in the contention of the petitioner.

14. In the result, this Writ Petition stands dismissed..."

22. In response to the same, the learned Senior Counsel for the petitioners contended that the provisions of the Special Rules under TN HR&CE SS Rules governing the conditions of services to the present issue on hand have not been brought to the knowledge of the learned Judge at the time of advancing arguments in the aforesaid W.P.(MD)No.2891 of 2013 and the said decision is per incuriam, as the same was given in ignorance of the terms of a Statute or Rule having the force of the Statue and in this regard has placed reliance on the following decisions.

22.1. The Hon'ble Full Bench of this Court in Syed Mohideen v. Government of Tamil Nadu and Others [AIR 1986 MAD 188], held as follows:

"23. While referring to the exception to the rule of stare decisis, it is observed in Precedent in English Law by Rupert Cross, 1961 Edn., page 130, as follows:

"No doubt any Court would decline to follow a case decided by itself or any other Court (even one of superior jurisdiction), if the judgment erroneously assumed the existence or non-existence of a statute, and that assumption formed the basis of the decision.



WEB COPY

This exception to the rule of stare decisis is probably best regarded as an aspect of a broader qualification of the rule, namely, that Courts are not bound to follow decisions reached per incuriam."

The proposition that a decision per incuriam need not be followed as a binding precedent is well established. If authority is needed for this proposition, we may refer to the decision of the Court of Appeal in *Young v. Bristol Aeroplane Company, Ltd.* [(1944) 2 All E R. 293], where Lord Greene, M.R. observed as follows:

"Where the Court has construed a statute or a rule having the force of a statute, its decision stands on the same footing as any other decision on a question of law. But where the Court is satisfied that an earlier decision was given in ignorance of the terms of a statute or a rule having the force of a statute, the position is very different. It cannot, in our opinion, be right to say that in such a case the Court is entitled to disregard the statutory provision and is bound to follow a decision of its own given when that provision was not present to its mind. Cases of this description are examples of decisions given per incuriam." (emphasis supplied)

24. The Supreme Court in *Jeisri v. Rajdewan* [A.I.R. 1962 S.C. 83], has also quoted with approval the observations in Halsbury's Laws of England, 3rd Edn., Vol. 22, Para 1687, pages 799 and 800, which are as follows:

"The Court is not bound to follow a decision of its own if given per incuriam. A decision is given per incuriam when the Court has acted in ignorance of a previous decision of its own or of a Court of a co-ordinate jurisdiction which covered the case before it, or when it has acted in ignorance of a decision of the House of Lords. In the former case, it must decide which decision to follow, and in the latter it is bound by the decision of the House of Lords." (emphasis supplied)

To the type of cases referred to in the passage from Halsbury's Laws of England cited above, must also be added decisions which are rendered without noticing the crucial and relevant statutory provisions or the provisions of rules governing the relevant controversy."

22.2. The Hon'ble Supreme Court in the decision in *Municipal Corporation of Delhi v. Gurnam Kaur* [(1989) 1 SCC 101] has observed as follows:

"11. Pronouncements of law, which are not part of



WEB COPY

the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in Jamna Das case [Writ Petitions Nos. 981-82 of 1984] and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavements or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the court on the question whether or not any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter. Professor P.J. Fitzgerald, editor of the Salmond on Jurisprudence, 12th Edn. explains the concept of sub silentio at p. 153 in these words:

A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio.

12. In Gerard v. Worth of Paris Ltd. (k). [(1936) 2 All ER 905 (CA)] , the only point argued was on the question of priority of the claimant's debt, and, on this argument being heard, the court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in Lancaster Motor Co. (London) Ltd. v. Bremith Ltd. [(1941) 1 KB 675] , the



WEB COPY

court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided "without argument, without reference to the crucial words of the rule, and without any citation of authority", it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This rule has ever since been followed. One of the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened. The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a judge, however eminent, can be treated as an ex cathedra statement, having the weight of authority." (emphasis supplied)

22.3. In the decision in *Vijay Narayan Thatte and Others v. State of Maharashtra and Others* [(2009) 9 SCC 92], it was observed as under:

"27. Moreover, the observations in para 3 of the judgment dated 20-1-2004 have to be regarded as per incuriam. In this connection we may refer to the decision of a three-Judge Bench of this Court in *Babu Parasu Kaikadi v. Babu* [(2004) 1 SCC 681] wherein in paras 15 to 17 it has been observed as under : (SCC pp. 689-90, paras 15-17)

"15. In Halsbury's Laws of England, 4th Edn., Vol. 26 it is stated:

'A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow; or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having statutory force.' (emphasis supplied)

16. In *State of U.P. v. Synthetics and Chemicals Ltd.* [(1991) 4 SCC 139] this Court observed : (SCC pp. 162-63, para 40)



WEB COPY

'40. "Incuria" literally means "carelessness". In practice per incuriam appears to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The "quotable in law" is avoided and ignored if it is rendered, "in ignoratium of a statute or other binding authority". (Young v. Bristol Aeroplane Co. Ltd. [1944 KB 718 : (1944) 2 All ER 293 (CA)]) Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law.'

(emphasis in original)

17. In Govt. of A.P. v. B. Satyanarayana Rao [(2000) 4 SCC 262 : 2000 SCC (L&S) 486] it has been held as follows : (SCC p. 264, para 8)

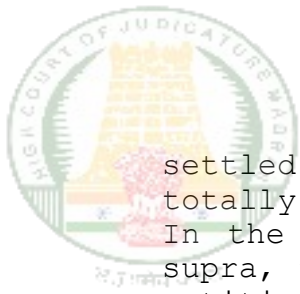
'8. ... The rule of per incuriam can be applied where a court omits to consider a binding precedent of the same court or the superior court rendered on the same issue or where a court omits to consider any statute while deciding that issue.' "

(emphasis supplied)

The decisions cited supra lays down the proposition that a decision is per incuriam, if the same was given in ignorance of the terms of a Statute or a rule having the force of Statute. The point had to be decided by the earlier Court before it could make the order which it did; nevertheless, since it was decided "without argument, without reference to the crucial words of the rule and without any citations of the authority", it was not binding and would not be followed".

23. In the light of the decisions cited supra, the order of the learned Single Judge dated 06.08.2020 passed in W.P.(MD) No.2891 of 2013 would not be binding, as the same is per incuriam and therefore, this Court has decided the case on merits, as discussed above, based on the relevant statutes/Special Rules and related decisions.

24. It is to be reiterated that in the case on hand, the interse seniority between promotees and direct recruits of the year 1999-2000 in the cadre of Grade III Executive Officers was finalized and published as on 01.01.2001 and thereafter, they were given promotion as Grade II Executive Officers during the year 2008 and after a delay of 12 years, based on the objections submitted by direct recruits for revision of seniority during the year 2012, the impugned order came to be passed by the second respondent on 03.01.2013, revising the seniority list drawn on 01.01.2001. In the light of the ratio laid down by the aforesaid decisions, seniority once settled cannot allowed to be unsettled, after a long delay. Therefore, this Court is of the view that the impugned order revising the seniority which was



settled in the year 2001, after a long duration of 12 years, is totally unsustainable in the light of the decisions cited supra. In the light of the above discussions and the decisions cited supra, the contention of the learned Senior Counsel for the writ petitioners merits acceptance and therefore, the impugned order passed by the respondents warrants interference and consequently, the same is liable to be quashed.

25. In view of the reasons assigned above, this Court is inclined to pass the following order:

(i) The impugned proceedings of the second respondent dated 03.01.2013 in Na.Ka.No.55688/2011/L1 is quashed insofar as the petitioners are concerned.

(ii) The respondents are directed to restore the seniority of the petitioners as per the Seniority List drawn as on 01.01.2001 and grant promotion to the petitioners to the post of Grade I Executive Officers as per the Seniority List dated 01.01.2001 and pass appropriate orders within a period of twelve weeks from the date of receipt of a copy of this order.

26. These Writ Petitions stands allowed with the above terms. No costs.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

Jvm

To

1.The Secretary,
Representing the State of Tamil Nadu,
Hindu Religious & Charitable Endowment Dept.,
Fort St.George, Chennai-600 009.

2.The Commissioner,
Hindu Religious & Charitable Endowment Act,
Uthamar Gandhi Road,
Chennai-600 006.

+1cc to Mr.R.Mahalingam, Advocate, S.R.No.23329

+2cc to Mr.R.Gophinath, Advocate, S.R.No.22576 & 22575

Common Order in
W.P.Nos.10135 and 18224 of 2013

PL(CO)
SB(13/04/2022)