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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 25.01.2022

DELIVERED ON: 16.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.19948 of 2007

1.V.P.Thandapani  
2.M.Seeni Ajmalkhan

... Petitioners

Vs.

1. The Secretary to Government,  
Municipal Administration and Water Supply  
(M.E.I) Department,  
Fort St.George, Chennai-600 009.
2. The Secretary to Government,  
Personnel and Administrative Reforms Department,  
Fort St.George, Chennai-600 009.
3. The Director of Municipal Administration,  
Chepauk, Chennai-600 005.
4. N.Rajasekaran Nair,  
Municipal Commissioner,  
Dindigul Municipality, Dindigul.
5. S.Ramasamy,  
Municipal Commissioner,  
Tuticorin Municipality, Tuticorin.
6. G.Sivagnanam,  
Municipal Commissioner,  
Avadi, Chennai.

... Respondents

(Sl.No.4,5,6 for themselves and representing the other Municipal Commissioners appointed by way of transfer from the categories of (1) Assistant section officer (Secretariat) (2). Superintendent from the directorate of Municipal Administration and (3) Executive officer from (Town Panchayats) respectively in the seniority list of Municipal commissioner Gr.III Published in G.O.(4D) No.4 M.A.W.S. Department dated 26/08/1997 in a representative capacity.



Prayer: Writ petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari Mandamus to call for the records relating to (1) Government Letter No.6287/ME.I/2002-02 dated 23.09.2002 in confirming (2) G.O.4D.No.4, Municipal Administration and Water Supply (M.E.I) Department dated 26.08.1997 issued by the Secretary to Government, M.A.W.S. Department, quash the same and direct the respondents 1 and 2 herein to refix the seniority of the applicants in the category of Municipal Commissioner, Grade III as per Rule 2(c) of the Tamil Nadu Municipal Commissioner Subordinate Service as has been done in the previous years and consequently rearrange the upgradation list of Municipal Commissioner Grade II issued in G.O.Ms.No.221, Municipal Administration and Water Supply (M.E.I) Department dated 28.09.1999 in accordance with the refixation to be ordered with consequential service benefits such as notional promotion to the applicants herein to the next higher cadres and postings on par with their juniors as per the revised seniority list to be prepared with all monetary benefits accrued thereon and disburse all the arrears within a short date that may be fixed by this Court.

For Petitioner : Mr.K.Rajkumar

For Respondents : Mr.R.Neelakandan,  
Additional Advocate General  
assisted by  
Mr.C.Selvaraj,  
Additional Government Pleader  
for R1 to R3

#### ORDER

Challenge in this writ petition is to the Government Letter No.6287/ME.I/2002-02 dated 23.09.2002 in confirming G.O.4D.No.4, Municipal Administration and Water Supply (M.E.I) Department dated 26.08.1997, issued by the Secretary to Government, M.A.W.S. Department, quash the same and direct the respondents 1 and 2 herein to refix the seniority of the petitioners in the category of Municipal Commissioner, Grade III as per Rule 2(c) of the Tamil Nadu Municipal Commissioner Subordinate Service as has been done in the previous years and consequently rearrange the upgradation list of Municipal Commissioner Grade II issued in G.O.Ms.No.221, Municipal Administration and Water Supply (M.E.I) Department dated 28.09.1999 in accordance with the refixation to be ordered with consequential service benefits such as notional promotion to the petitioners herein to the next higher cadres and postings on par with their juniors as per the revised seniority list to be prepared with all monetary benefits accrued thereon and disburse all the arrears within a short date



that may be fixed by this Court.

2. The entire facts of the case, briefly narrated, are as follows:

2.1. The petitioners have initially filed Original Application before the Tamil Nadu Administrative Tribunal in O.A.No.3214 of 2003, challenging the fixation of their seniority. Consequent to the abolition of the Hon'ble Tamil Nadu Administrative Tribunal the O.A has been transferred and numbered as the present Writ Petition and the same is being considered for its final disposal.

2.2. The case of the petitioners is that they were directly recruited as Municipal Commissioner Grade III, which was later upgraded as Municipal Commissioner Grade II. The post of Municipal Commissioner Grade III is the entry level post and it is governed by the Tamil Nadu Commissioners Subordinate Service which is otherwise called as the Special Rules governing the service. Rule 2 of the Special Rules prescribes the method of appointment. Two methods of appointment have been set out in the Special Rules to fill up the post of Municipal Commissioner Grade III. They are, (1) By way of Direct Recruitment and (2) By way of Recruitment by Transfer.

2.3. The Special Rules further contemplates that there are two sources of recruitment to the category of Direct Recruitment, namely Rule 2(a)(1) and Rule 2(a)(2). All the candidates under this category of direct recruitment have to participate in the process of selection conducted by the TNPSC. As far as Rule 2(a)(1) is concerned, it enables in-service candidates to participate in the TNPSC Selection. The in-service candidates are from,

(a) Managers of the Municipal Officers which comes under Rule 2 (a) (1) (i);

(b) Accountants and Revenue Officers of the First Grade Municipalities which comes under Rule 2(a)(1)(ii) ;

(c) Managers of Township Committee which comes under Rule 2(a) (1) (iii).

Thus the above three in-service candidates as in Rule 2(a) (1) of the Special Rules have to participate in the TNPSC Selection, if they want to become Municipal Commissioner Grade - III.

2.4. The other method of Direct Recruitment is defined in Rule 2(a)(2) of the Special Rules, namely Open Competition (Graduates). Any Graduates from open category can participate in



the TNPSC examination and get selected in this method. Thus the above Rule 2(a)(1) and Rule 2 (a) (2) category of candidates alone have to write the TNPSC examination to get selected as Municipal Commissioner Grade III.

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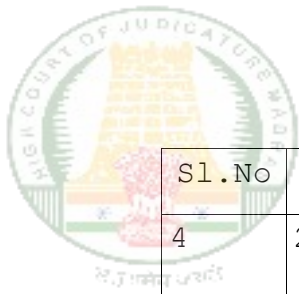
2.5. The second method of appointment to the post of Municipal Commissioner Grade III is governed by Rule 2 (b) of the Special Rules which contemplates the method of "Recruitment by Transfer". As far as Rule 2(b) category is concerned, it also enables a set of in-service candidates to be appointed as Municipal Commissioner Grade III based on their seniority without examination. In Rule 2(b) there are three sources who will be considered for appointment by way of recruitment by transfer. They are Rule 2(b)(i) Executive Officers of the Town Panchayat, Rule 2(b)(ii) Assistant Selection Officers of Tamil Nadu Secretariat Service and Rule 2(b)(iii) Superintendents of the office of the Director of Municipal Administration. Thus as per the Special Rules for appointment to the post of Municipal Commissioner Grade III are to be done by the above methods of direct recruitment and by way of recruitment by transfer.

2.6. The petitioners submits that Rule 2(c) of the Special Rules prescribes Quota for the above two methods of recruitment and also provides rotation for the purpose of fixing their seniority. The rotations are prescribed in Rule 2(c) for every Twenty vacancies as set out there in. If the overall rotation is calculated, each category will get the following number of posts.

- (1) Managers of Municipal Officers - 4 posts.
- (2) Graduates from Open Competition - 5 posts.
- (3) Executive Officers of Town Panchayat - 5 posts.
- (4) Assistant Section Officers of Secretariat - 4 posts.
- (5) Superintendents of the Director of Municipal Administration - 2 posts.

2.7. The net ratio worked out would be 4 : 5 : 5 : 4 : 2. The following table will clearly picturise the post, the rule, the rotation in the matter of appointment of every twenty vacancies prescribed in the Special Rules with reference to its Quota and Rota.

| Sl.No | Rule    | Ratio | Post                                    | Rotation                   |
|-------|---------|-------|-----------------------------------------|----------------------------|
| 1     | 2(a)(1) | 4     | Managers, Accountants, Revenue Officers | Rotations (1,6,11,15)      |
| 2     | 2(a)(2) | 5     | Open Competition                        | Rotations (2,7,12,16, 19)  |
| 3     | 2(b)(i) | 5     | Executive Officers of Town Panchayat    | Rotations (3,8,13, 17, 20) |



| Sl.No | Rule        | Ratio | Post                                                           | Rotation              |
|-------|-------------|-------|----------------------------------------------------------------|-----------------------|
| 4     | 2 (b) (ii)  | 4     | Assistant Section Officers of the Secretariat                  | Rotations (4,9,14,18) |
| 5     | 2 (b) (iii) | 2     | Superintendents of the Directorate of Municipal Administration | Rotations (5,10)      |

2.8. The petitioners contend that with the above background of the Service Rules governing the post the dispute falls for consideration is as follows. The TNPSC has notified by its notification dated 11-08-1989 to fill up the post of Municipal Commissioner Grade III under Direct recruitment Quota for in-service candidates as well as Open Market Graduates for the year 1989 - 90. A selection was held by the TNPSC and by proceedings dated 03.05.1991, the TNPSC informed the petitioners that they have been provisionally selected for appointment to the post of Municipal Commissioner Grade III for the year 1989 - 1990. But the posting order was not given immediately, because of a litigation filed by certain in-service candidates seeking appointment to the post of Municipal Commissioner Grade III without subjecting them for selection by the TNPSC and promote them on the basis of their seniority in O. A. No. 1259 of 1991 before the Tamil Nadu Administrative Tribunal, Chennai. The Tribunal, by order dated 04-04-1991, had granted an interim injunction not to fill the notified vacancies. Hence appointment of the petitioners got delayed.

2.9. The petitioners further contend that the in-service candidates under Rule 2(b) categories namely recruitment by transfer candidates who were working either in the Secretariat or in the Directorate of Municipal Administration have managed to get themselves appointed under Rule 2(b) category to the entire post notified by the TNPSC for direct recruitment as well as other post earmarked under Rule 2(b) categories on adhoc basis vide G.O(Ms)No.694, MAWS Department dated 30-09-1989, whereby 17 people have been appointed as temporary Municipal Commissioner Grade III. Para 3 of the said G.O categorically states that their appointment is purely temporary and will have no right for regular appointment for the post of Municipal Commissioner Grade - III. Para 4 of the said G.O unequivocally stated that the interse seniority of the adhoc appointees would be fixed following the rotations prescribed in the above said Special Rules for Tamil Nadu Municipal Commissioners Subordinate Service after the TNPSC selects the candidates by way of Direct Recruitment. Therefore it was a conditional appointment and all those who have got appointment on adhoc basis will not be treated as regular appointment and their seniority will be fixed



only in accordance with the Quota Rule contemplated in the Special Rules.

2.10. It is the further case of the petitioners that one Vijayalakshmi a directly recruited selected candidate filed M.A.No.855 of 1992 in O.A.No.1259 of 1991 and got the interim injunction vacated by the order of the Tribunal dated 13-05-1992. Thereafter the Government issued G.O(Ms)No.146, MAWS Department dated 16-05-1992 and appointed the directly recruited Municipal Commissioner Grade III. The directly recruited Grade IIIMunicipal Commissioners have joined the post thereafter. The last candidate joined the post based on the above G.O was on 01-07-1992 namely the first petitioner herein.

2.11. The petitioners contend that after their appointment they requested the Government to fix the seniority of the directly recruited Municipal Commissioner Grade III as well as the recruitment by transfer candidates in accordance with Rule 2 (c) of the Special Rules namely Quota - Rota method, but the Department did not take any action. Therefore the petitioners filed O.A.No.600 of 1996 before the Tamil Nadu Administrative Tribunal to fix their inter se seniority between the directly recruited candidates and others as per Rule 2(c) for the year 1989 - 90 under the 20 point roster system prescribed in Rule 2 (c). The Government has filed a counter in the said case and categorically admitted, which is extracted in Para 6 of the above order that in order to run the administration, some officials were appointed as Municipal Commissioner Grade III purely on adhoc basis and that they have not been placed above the applicants in the seniority list and such adhoc persons will be considered for regular appointment only when they become eligible for future vacancies in accordance with the Quota - Rota Rule.

2.12. The petitioners further submit that when the matter is sub-judice with regard to the prayer of fixing the inter se seniority, the Government, to nullify the claim of the petitioner, had issued G.O(4D)No.4, MAWS (ME1) Department dated 26-08-1997 and fixed the inter se seniority of the adhoc promotees as well as direct recruits and placed all the adhoc appointees above the direct recruits in total violation of Rule 2(c) of the Special Rules namely Quota - Rota Rule and thereby deprive the seniority of the petitioners in accordance with that Rule.

2.13. The Original Application was finally disposed on 18-06-1998 and directed the Government in para 11(a) that the inter se seniority of the applicant and other candidates appointed as Municipal commissioner Grade - III for the year 1989 - 1990 in accordance with the Rule 35(aa) of the Tamil Nadu State and



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Subordinate Service Rules and pass orders within 16 weeks. Second direction under para 11(b) is that the Tribunal directed to give common date of appointment for the Municipal Commissioner Grade III recruited from different sources at the same point of time and issue orders within 16 weeks.

2.14. The petitioners contend that in the meantime, adhoc promotees to the post of Municipal Commissioner Grade III were regularised in and by G.O(2D)No.149, MA & WS Department dated 24-11-1997 with effect from the date of first appointment. Thus, 1989 - 90 candidates to the post of Grade III Municipal Commissioners from the method of recruitment by transfer were regularised only on 24-11-1997 and the said date is the date of regular appointment for fixation of inter se seniority of such candidates for the year 1989 - 90. For the purpose of Rule 35 (aa) the person appointed to the post will mean only a regular appointment and the date of the regular appointment of the adhoc promotees is 24-11-1997 and that is the date for determination of their seniority as per Hon'ble Apex Court Judgement in Madalaimuthu and Another v. State of Tamil Nadu and Others [(2006) 6 SCC 558].

2.15. It is the further case of the petitioners that at the time of regularisation of adhoc appointees, namely 24.11.1997, the petitioners who were appointed under Direct Recruitment Quota through G.O(Ms)No.146, MAWS Department dated 16.06.1992 and joined the service on 01.07.1992 have already been in service and they are senior to the adhoc appointees, who were made regular subsequently on 24.11.1997. With this background the petitioners moved the Government by making representations dated 19.07.2001, 21.08.2001 and 16.09.2001 to cancel the G.O (4D) No.4, MAWS(ME1) Department dated 26-08-1997 and fix the interse seniority of the Direct recruits and Promotee Municipal Commissioners Grade III for the year 1989 - 90 as per the Quota Rule prescribed in Rule 2(c) as well as Rule 35(aa) taking into account of the date of regular appointment of the promotees dated 24.11.1997.

2.16. The Government by Govt. Letter. No. 6287/Ne.I/2002- 2, Municipal Administration and Water Supply Department dated 23.09.2002, had rejected the representations of the petitioners by stating that Rule 2(c) of the Special Rules is only relating to the appointment to the post of Municipal Commissioner Grade III by way of various methods and it is not relating to fixation of inter se seniority. It is further stated in the said letter that the fixation of seniority for the post of Municipal Commissioner Grade III ( now Grade - II ) shall be made under Rule 35(aa) of the General Rules by which the date of appointment can be taken into account for fixation of seniority. It is only by following Rule 35(aa) of the General Rules, the



interse seniority of the person appointed to the post of Municipal Commissioner Grade III has been fixed in the seniority list issued in G.O(4D)No.4, MAWS (ME1) Department dated 26.08.1997. Therefore the request of the petitioners cannot be complied with and accordingly passed the impugned order of rejection.

2.17. The petitioners, being aggrieved by the above order dated 23.09.2002 and G.O(4D)No.4, MAWS (ME 1) Department dated 26.08.1997, have filed the above Original Application, now listed as Writ Petition before this Court.

2.18. The petitioners submits that pending the Original Application the post of Municipal Commissioner Grade - III was upgraded as Municipal Commissioner Grade - II vide G.O (Ms.) No. 221, MAWS Department dated 28.08.1999, wherein also the seniority position of the adhoc promotees as set out in G.O(4D) No. 4, MAWS (ME1) Department dated 26.08.1997 have been maintained and there is no change in the seniority position at all. Hence, the present writ petition.

3. The case of the respondents as could be seen from the counter affidavit are as follows :

3.1. The estimate of vacancies for the post of Municipal Commissioner Grade III for the year 1989 - 1990 were arrived at 31 and the vacancies had been apportioned to the following categories as per rotation prescribed in Rule (2) of Tamil Nadu Municipal Commissioner's Subordinate service as follows: (1) Municipal Employee -7 Posts, Direct Recruitment through TNPSC - 7 Posts, Executive Officer of Town Panchayat - 7 Posts, Assistant Section Officer of Secretariat -6 Posts, Superintendent, O/o CMA - 4 Posts, totalling 31 posts.

3.2. Vacancies numbering 14 apportioned to direct recruitment for the post of Municipal Commissioner Grade III for the year 1989-1990 (i.e., 7 candidate from Open Market and 7 candidates from Municipal Employees) had been communicated to TNPSC vide Government Letter No.4889/E-I/1989-14 dated 20.10.1989.

3.3. In view of the existence of large number of vacancies in the post of Municipal Commissioner Grade III and due to exigencies, the Government had drawn a temporary panel for filling up of 17 vacancies from other eligible categories of Executive Officers (Town Panchayats), Superintendents of the Office of the Director of Municipal Administration and Assistant Section Officers of Secretariat as per Rule 2 of Tamil Nadu Municipal Commissioners Subordinate Services and apportionment of vacancy already arrived at the estimated vacancies to the



above categories for the post of Municipal Commissioner Grade III for the year 1989-1990 vide G.O.(Ms)No.694, MA & WS Department dated 30.09.1989.

3.4. TNPSC in their letter dated 03.05.1991 have sent the list of 17 eligible candidates (for the year 1989-1990 as 14 and for the year 1990-1991 as 3) for apportionment to the post of Municipal Commissioner Grade III. Even after the selection list of the candidates received from TNPSC, the appointment were delayed in view of the interim stay dated 04.04.1991 in O.A.No.1259/1991. Subsequently, vide order dated 13.05.1992 in M.A.No.855 of 1992 in O.A.No.1259/1991 filed by Tmt.Vijayalakshmi, the petitioner and others were appointed as Municipal Commissioner Grade III, vide G.O.(Ms)No.146, MAWS Department dated 16.06.1992.

3.5. As per Rule 2 of the Tamil Nadu Municipal Commissioners Subordinate Service, the post of Municipal Commissioner Grade III is being filled up through appointment by direct recruitment from the Municipal Employees, Graduate in open Market through TNPSC and recruitment by transfer from the categories of Executive Officers(Town Panchayats), Superintendents of the Office of the Director of Municipal Administration and Assistant Section Officers of Secretariat and if the candidates of all categories are available, regular panel would have been drawn by the Government and if any one of the categories are not available, the regular panel could not be drawn. In the year 1989-1990, TNPSC candidates were not available during the preparation of panel. Therefore, panel for adhoc appointees had been drawn with other available category of candidates.

3.6. The seniority of the incumbents shall be commenced from their temporary appointment as per Rule 23(a) of the General Rule of the Tamil Nadu State and Subordinate Service Rules and further, the petitioner had joined duty in the post of Municipal Commissioner Grade III and not earlier than the date of joining of the private respondents.

3.7. The Government have fixed the inter se seniority of 153 incumbents appointed in the post of Municipal Commissioner Grade II and brought into the care of Municipal Commissioner Grade II from erstwhile Grade III in the Tamil Nadu Municipal Commissioner's Subordinate Service from June 1997 to August 2012 as per Rule 35(aa) of the Tamil Nadu State Subordinate Service Rules, vide G.O.(ms)No.103, MAWS Department dated 22.08.2014 and based on the above seniority, the preparation of regular panel to the post of Municipal Commissioner, Grade I from the years 2001-2002 onwards is under active consideration. Therefore, it is considered that the issue is already settled one. Any



changes in the Seniority List will lead to endless litigations. If any slightest changes in seniority list, it would explode a stormy situation and would have severe impact in the preparation of regular panel for the post of Municipal Commissioner Grade I from the year 2002-2003.

4. Mr.K.Rajkumar, learned counsel appearing for the petitioner made the following contentions:

(1) The impugned order dated 23.09.2002 in rejecting the claim for re-fixation of seniority is liable to be set aside on the ground that when Quota - Rota is prescribed in the Special Rules, that alone will govern not only the appointment as per Quota prescribed therein but also the seniority as per the rotation prescribed therein. As far as Rule 35(aa) is concerned it is a General Rule and as per Rule 2 of part II of the General Rules, the Special Rules will prevail over General Rules. Therefore seniority has to be re-fixed for the year 1989 - 90 candidates commencing from rotation 81 to 100. In fact for the earlier years Special Rules has been followed in the matter of fixation of seniority for the previous year vacancies starting from rotation 1 to 33 for the year 83 - 84 in G.O(Ms) No.18, RDLA Department dated 04.01.1984 and for the rotation 33 to 80 in G.O(MS)No.506, MAWS Department dated 12-05-1988. Therefore the reasons assigned in the impugned order without following the earlier year practice adopted in the above two G.O's is arbitrary and contrary to the settled practice and therefore it is liable to be set aside.

(2) The impugned order is contrary to Division Bench Judgements of this Court dated 23.01.2004 made in W.P.Nos. 41427 of 2002 [State of Tamil Nadu and another v. A.Rajaram] and the order dated 23.12.2020 made in W.A.No.2537 and 2612 of 2019 [The Government of Tamil Nadu v. J.Ganesan and Others] wherein it was ruled that when the Special Rules prescribes Quota - Rota which is not only for appointment but it is also for fixation of inter se seniority.

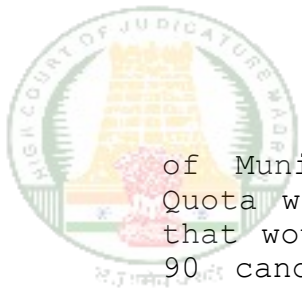
(3) Even assuming without admitting that Rule 35(aa) of the Tamil Nadu State and Subordinate Service Rules will govern the issue in the matter of fixation of inter se seniority, a reading of the Rule 35(aa) of the said Rules categorically contemplates that it is meant only for regular appointment and not for temporary / adhoc appointment. The petitioners entered service as direct recruits on 01.07.1992 based on the selection held in the year 1991 and whereas the adhoc promotees ranked as SL.Nos. 1 to 30 in the impugned seniority list, who are all adhoc appointees, got regularised in G.O(2D) No.149, MAWS Department 24.11.1997, long after the appointment of the direct recruits, till their regularisation their status is only adhoc and even



assuming that they have been regularised from the date of first appointment, that will not confer any benefit for fixation of inter se seniority and only 24.11.1997, being the date of regularisation, is the crucial date for determination of seniority. The regularisation from the date of first appointment till date of issue of order of regularisation namely 24.11.1997 will be counted only for increment and pensionary benefits and not for seniority as laid down in Madalai Muthu's case. Therefore even as per Rule 35 (aa) the petitioners who were appointed by way of direct recruitment dated 01.07.1992, will become senior than the adhoc appointees, who were regularly appointed only on 24.11.1997 and on this ground also, the fixation of seniority is illegal and liable to be recast, insofar as the petitioners are concerned.

(4) The appointment order issued to the adhoc appointees in G.O (MS)No.694, MAWS Department dated 30.09.1989 categorically stated that their appointment is purely temporary and will have no right for future regular appointment in the post of Municipal Commissioner Grade III. Para 4 of the above Government Order made it very clear that interse seniority of the adhoc appointees will be fixed following the rotation prescribed in the Special Rules for Tamil Nadu Municipal Commissioner Subordinate Service Rules and that too, after the TNPSC selects the candidates for appointment as Municipal Commissioner Grade III by way of direct recruitment. Therefore when the very order of appointment categorically indicated that adhoc service of the persons included in Sl.Nos. 1 to 30 in the seniority list issued in G.O(4D)No.4, MAWS (ME1) Department dated 26.08.1997, will not confer any right for regular appointment and seniority and for the purpose of fixation of interse seniority, only the Special Rules alone has to be followed. The claim of the respondents that Rule 35(aa) will apply for fixation of interse seniority is contrary to the stand taken in the above Government Order and it is hit by the principles of promissory estoppel and such fixation is arbitrary and illegal on the basis of G.O(Ms)No.694, MAWS Department dated 30.09.1989 itself and therefore the impugned order is liable to be set aside.

(5) In the earlier O.A.No.600 of 1996, the Tamil Nadu Administrative Tribunal has issued two directions, namely to fix the seniority as per Rule 35(aa) by taking into account of the regular appointment of the incumbents and also directed to give common date of appointment for different sources comes under the Special Rules and fix the seniority accordingly. Such exercise has not been done. If Rule 35(aa) is applied by taking into account of the regularisation date of 24.11.1997, the adhoc appointees has to be placed below the 1992 direct recruits, namely the petitioners herein. Similarly, if the common date of appointment is considered, the last candidate joined the service

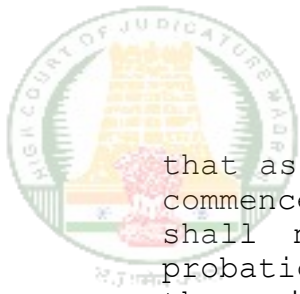


of Municipal Commissioner Grade III under direct recruitment Quota was on 01.07.1992, namely the first petitioner herein and that would be the common date of appointment for all the 1989 - 90 candidates comes under 20 slot systems. If after giving common date as 01.07.1992 for all the 1989 - 1990 candidates from various sources in the 20 slot system and thereafter the Quota - Rota is arranged, even then the adhoc promotees will not find their place in the seniority list because their regular appointment itself was only on 24.11.1997 and they cannot find place in 1989 - 90 Quota - Rota system at all. Therefore in either way the fixation of interse seniority is against the directions of the Tamil Nadu Administrative Tribunal.

(6) When O.A.No.600 of 1996 seeking for fixation of interse seniority was pending before the Tribunal, the respondents hurriedly issued the interse seniority list in G.O(4D)No.4, MAWS (ME1) Department dated 26.08.1997, even before the Judgement comes on 18.06.1998 and therefore, as per Section 19(4) of the Administrative Tribunal Act 1985, the impugned seniority list stands abated. In support of the said point, relied on the Division Bench Judgement of the Punjab and Haryana High Court in Anil Kumar Rajvanshi v. Union of India [2002 ( 2 ) SLR 755].

(7) The respondents have filed counter and additional counter and wanted to justify the impugned order by bringing the appointment of subsequent years and subsequent promotions for higher categories and subsequent cause of actions which are totally irrelevant for determining the issue involved in the present writ petition which relates to the year 1989 - 90. Therefore it is well settled principles of law laid down by the Hon'ble Supreme Court in AIR 1978 SC 851 Mohinder Singh Gil vs Chief Election Commissioner followed by this Court in C.L.Pasupathy v. Engineer in Chief (WRO), reported in 2009 (2) MLJ 491 for the point that when an order is passed by an Administrative Authority, the same should be supported by reasons. Statutory authority cannot be permitted to support his order on the basis of statements made in the counter affidavit. Therefore the impugned order cannot be explained by way of counter, which only deals with the subsequent development and not in respect of the 20 slot system of the year 1989 - 90. Therefore the counter averments are liable to be rejected.

(8) As regards the argument of the respondents that since they have invoked Rule 23(a)(i) of Tamil Nadu State and Subordinate Service Rules and exercised their discretion for commencement of probation for adhoc promotees by taking into account of the date of first appointment, the seniority given to the adhoc promotees is correct, the same has already been rejected by the Hon'ble Supreme Court in M.P.Palanisamy v. A.K.Krishnan and Others reported in 2009 (6) SCC 428 in Para 34



that as per the first proviso to Rule 23 (a)(i) that the date of commencement of probation determined by the appointing authority shall not be earlier than the date of commencement of the probation of the junior most person already in service. Applying the said ratio to the case on hand, the petitioners, who are direct recruits, were appointed as early as 01.07.1992 and the adhoc appointees were regularised only on 24.11.1997 and therefore at the time of issue of orders of commencement of probation to the adhoc appointees from an earlier date, the juniors appointed in the year 1992 were already in service and they are seniors. Therefore as per the first proviso to Rule 23 (a)(i) and as per the above Judgements, the contention of the respondents by taking umbrage under Rule 23(a)(i) is liable to be rejected.

(9) Almost all the persons included in the impugned seniority list issued in G.O(4D)No.4, MAWS (ME1) Department dated 26.08.1997, which was subsequently upgraded in G.O(MS) No.221, MAWS Department dated 28.08.1999 including the petitioners, have been retired from service and due to the illegal fixation of their seniority the first petitioner has lost his promotions to various posts, upto the level of I.A.S. Therefore the learned counsel for the petitioners prays that the writ petition may be allowed insofar as the petitioners are concerned, especially for the first petitioner by grant of notional promotions to various posts as set out in the above table from the date of its due with all consequential service and monetary benefits. As regards the second petitioner, it is submitted by the learned counsel for the petitioner that he has no instructions and therefore, he is not pressing as against the second petitioner.

5. Mr.R.Neelakandan, learned Additional Advocate General appearing for the respondents has drawn the attention of this Court to the counter affidavit filed on behalf of the respondents 1 to 3 and would submit that orders fixing inter se seniority of the Municipal Commissioner Grade III from 1989 onwards under Rule 35(aa) of the General Rule of the Tamil Nadu State and Subordinate Service Rules have been issued vide G.O. (4D)No.4, Municipal Administration and Water Supply Department dated 26.08.1997 after having elaborate examination in consultation with the Department of Personnel and Administrative Reforms and Law along with the concurrence of TNPSC. It is further contended that fixation of inter se seniority in the category of Municipal Commissioner Grade II as per Rule 2(c) of the Special Rules could not be considered, since Rule 2(c) of the Special Rules deals only with appointment and distribution of every 20 vacancies among various feeder categories and there is no specific provision in the said Special Rules to deal with fixation of inter se seniority of the incumbents appointed



through various methods as Municipal Commissioner Grade II. The learned Additional Advocate General, in support of his submissions has placed reliance on the following decisions:

(i) AFHQ/ISOs Sos (DP) Association v. Union of India [(2008) 3 SCC 331] for the proposition that direct recruits cannot claim seniority from the date of vacancy in quota before their selection.

(ii) Judgement dated 10.12.2020 in W.A.No.879 of 2019 [Damuraj v. Director General of Police and another] for the proposition that the date of appointment is the one which has to be reckoned for the purpose of determining the seniority and not the year of selection to a post.

(iii) Union of India and Others v. Chaman Rana [(2018) 5 SCC 798] for the dictum that settled seniority cannot be unsettled after a long time.

(iv) H.S.Vankani v. State of Gujarat [(2010) 4 SCC 301] for the proposition that seniority once settled, shall not be unsettled.

6. This Court has anxiously and carefully considered the submissions made by both the parties and also perused the entire materials available on record.

7. The litigation involved in the present Writ Petition relates to seniority issue in the post of Municipal Commissioner Grade III.

8. The petitioners have challenged the order dated 23.09.2002, issued by the first respondent, whereby the representation of the petitioner, challenging G.O(4D) No.4, MA&WS Department dated 26.08.1997 in preparing the interse seniority Municipal Commissioner Grade III contrary to the quota rule prescribed in Rule 2(c) of the old Tamil Nadu Municipal Commissioner Subordinate Service was rejected by the first respondent herein. The reason assigned in the impugned order is that Rule 2(c) of the Special Rules namely, the Tamil Nadu Municipal Commissioner's Subordinate Services Rules issued vide G.O(MS) No.476, Local Administration Department dated 22.03.1957 which is the operating rule to decide the issue in the present case herein after called as " SPECIAL RULES " only deals with appointment and it does not deal with the seniority issue and only Rule 35(aa) of the Tamil Nadu State and Subordinate Service Rules alone is applicable because the recruitment is from more than one source.

9. A learned Single Judge of this Court in the decision in



J.Ganesan v. State of Tamil Nadu, [Order dated 03.08.2018 in W.P.Nos.15683 and 15684 of 2011] has observed as follows:

"22.The arguments advanced on behalf of the official respondents by the learned Additional Advocate General that the erstwhile Rule 35(aa) of the Tamil Nadu State and Subordinate Service Rules and the present Section 40(2) of the Tamil Nadu Government Servants(Conditions of Service) Act, 2016, was followed in the matter of fixation of seniority, cannot be acceptable as a valid piece of argument, since the Section which was relied upon by the learned Additional Advocate General has only a general application and cannot be pressed into service where the quota-rota system is made mandatory. As per Rule 8 of the Special Rules, the ratio as prescribed for direct recruitment, transfer and promotion is 1:1:5, which means that whenever first vacancy arises, it has to be earmarked for direct recruit and once the vacancy is earmarked for direct recruitment, the consequential benefit of seniority has to be assigned on that basis. Unfortunately, the official respondents while granting retrospective regularization to the promotee Assistant Section Officers, have allowed encroachment by the promotee Officers into quota-rota meant for the direct recruitees, thereby negated the right of the petitioners to have their due seniority fixed on the basis of their substantive appointment. In simple terms, what has to be seen is whether a substantive appointee has a better right over a temporary appointee or vice versa and the inexorable conclusion would be that a substantive appointee will have better right than the temporary appointee and the service benefits have to be fixed on that basis including seniority. The impugned action of the official respondents by granting retrospective regularization detrimental to the interest of the direct recruitees like the petitioners herein, would only lend legitimacy to the violation of the mandatory Recruitment Rules of quota-rota system. Such action on the part of the official respondents, would completely undermine the statutory rules and its implementation. Once a statutory rule governs any appointment, such appointment to that post has to be governed by such rules....."

"25. In the result, both the Writ Petitions are allowed. No costs. The respondents are directed to revise the seniority of the petitioners by duly



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applying the quota-rota system as per Tamil Nadu Secretariat Service Rules (Special Rules) applicable to the category of Assistant Section Officers and fix their seniority at the appropriate place and grant consequential attendant benefits. The said exercise shall be initiated and completed within a period of eight weeks from the date of receipt of a copy of the order....."

10. The Hon'ble Division Bench in W.A.Nos.2537 and 2612 of 2019 dated 23.12.2020, while affirming the above Judgement of the Hon'ble Single Bench, held as follows:-

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

27. Rule 8 of the above said Rules, prescribes quota-rota system and it is mandatory to be followed in the matter of fixation of inter-se seniority. It is still in force and there is nothing on record to show that it has been annulled, modified, cancelled, varied or amended by reason of appointment of any person to the post of Assistant Section Officer by transfer of service. Merely because the appointment under transfer of service has not been given effect to, it will not vitiate the quota-rota system. Therefore, it is mandatory for the appellants to give effect to the



quota-rota system in the matter of fixation of seniority among the directly recruited Assistant Section Officers and the promotees....."

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Therefore, the contention that the rotation prescribed under the quota-rota system for "recruitment by transfer" alone had not been given effect to and consequently the quota-rota system is broken down, cannot be considered.

This decision squarely applies to the facts of this case, where the promotees held or officiated the post of Assistant Section Officer for a considerable period and they were replaced by the writ petitioners upon their appointment to the post by virtue of their selection by the TNPSC. While so, the right of the promotees to get seniority, will begin only from the date of their regular appointment to the post of Assistant Section Officer, and their officiation of the post for a temporary period, will not be taken note of for fixing their seniority. The aforesaid decisions in Direct Recruits case and Madalaimuthu's cases were also relied on by the learned Single Judge to arrive at a conclusion that the writ petitioners, who were directly recruited to the post of Assistant Section Officers, have to be placed over and above the promotees in the seniority list and we find no reason to interfere with the same....."

(emphasis supplied)

11. In yet another Division Bench decision in The State of Tamil Nadu and Others v. A.Rajaram and Others [Order dated 23.01.2003 made in W.P.Nos.41427 of 2002 etc., batch] it has been held as follows:

"9... three questions arise for consideration (i) whether Special Rule 3(a) only prescribes, the quota for the direct Recruits and the promotees and whether the inter se seniority has to be guided by the quota rule (ii) whether the Special Rule 3(a) would prevail over General Rule 35(aa).

13... we have already extracted proviso to Rule 3 (a) of the Tamil Nadu Labour Subordinate Service Rules, while the petitioner / State take shelter under Rule 35(aa) of the General Rule, the respondents would press into service rule 3(a) of the Special Rules. It is an entitled legal position that the Special Rule



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will exclude the General .....” (emphasis supplied)

“..... The above being the legal position we do not find any substance in the contention of the Writ Petitioners that the relevant rule applicable to only Rule 35 (aa) of the General Rules and not Special Rule 3 (a) that being so, we answered the question in favour of the respondent herein.

“18...The Tribunal is perfectly right in holding that the respondents are entitled for seniority following the quota rule, the date of their joining and they must be given appropriate placement as per the above decision. The petitioner shall immediately take up the task of preparing the revised seniority and that exercise should be completed within a period of three months .....”

Thus the matter is fully covered by the above two Division Bench decisions of this Court.

12. At the time of appointment of the temporary hands in the quota meant for direct Recruits in G.O(Ms.)No.694, MA&WS Department dated 30.09.1989, it has been categorically stated as follows:

“Para 3..... The appointments now made are purely temporary and the said appointment will have no right to any preferential claim to future regular appointment in the post of Municipal Commissioner Grade III.....”

“Para 4..... The inter se seniority of the appointees will be fixed following the rotations prescribed in the Special Rules for the Tamil Nadu Municipal Commissioners Subordinate Service after the Tamil Nadu Public Service Commission selects the candidates for appointment as Municipal Commissioner Grade III by Direct recruitment .....”

Thus the very appointment of temporary and adhoc Municipal Commissioner Grade III, by way of recruitment by transfer from other category are concerned, it has been made very clear that the appointments are purely temporary and will have no right for future regular appointment. Further it is indicated that the inter se seniority of the appointee will be fixed following the rotation prescribed in the Special Rules for the Municipal



Commissioner Subordinate Service after the direct recruited Municipal Commissioner through TNPSC joins the post. Hence the official respondents are estopped from claiming seniority as per Rule 35(aa) of the TNSSS Rules.

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13. In the case on hand, the Direct Recruits were selected on 03.05.1991 and they were appointed on 16.06.1992, vide G.O. (Ms)No.146, MAWS Department dated 16.06.1992 and due to the stay granted by the Tribunal, their appointment got delayed. Once the direct recruits got the posting order, then they should be fitted in the rotation prescribed in Rule 2(c). It is also admitted in O.A.No.600 and 630 of 1996 filed by the first respondent by way of counter that due to administrative exigencies, adhoc/temporary appointments were made and they have also admitted that no adhoc/temporary employee would be placed above the direct recruits and the seniority will be fixed after all the 1989-1990 direct recruits joint the post. When such being the categorical averments, the action of the Government in allowing the contesting respondents to have their seniority fixed above the direct recruits is contrary to the stand taken by the respondents made in the above Original Application.

14. The adhoc promotees who have occupied the post under Rule 10(a)(i)(1) at the time of the first appointment cannot be said that they were appointed in accordance with rule. Their appointment got regularized only in G.O.(2D)No.149, MA&WS Department dated 24.11.1997 with effect from the date of appointment. Therefore, 24.11.1997, namely the date of regularisation is the crucial date for determination of seniority as per the law laid down by the Hon'ble Apex Court.

15. The Hon'ble Apex Court in K.Madalaimuthu and another v. The State of Tamil Nadu [(2006) 6 SCC 558] held as follows:

"24...A person who is appointed temporarily discharge the functions in a particular post without recourse to the recruitment rules cannot be said to be in service till such time his appointment is regularised. It, therefore, follows that it is only from the date on which his services are regularised such appointee can count his seniority in the cadre ...  
(emphasis supplied)

26...Therefore the order passed by the High Court is set aside the respondents are directed to re-determine the seniority of the appellants in relation to the promotees after reckoning the starting point of seniority of such promotees from the date on which



their services were regularised and not from the date of the initial appointment under Rule 10 (a) (i)(1) of the General Rules...."

In view of the above decision, the adhoc services of the contesting respondents from 1989-1997, even though regularized, will not count for seniority.

16. In the decision in M.P.Palanisamy and Others v. A.Krishnan and Others [(2009) 6 SCC 428], in an identical circumstances, the Hon'ble Supreme Court held as follows:

"According to the first proviso to Rule 23 (a) (1) of the Tamil Nadu State and Subordinate Service Rules 1955 an adhoc employee cannot claim seniority above the junior most person already in service. The persons who were already in service could not be rendered junior by regularisation of adhoc candidates at later stage. G.O (MS) No. 1813 has to be interpreted in the light of Rule 23 (a)(1) which was a General Rule and applicable to all the appointments. When a clear reference was made to Rule 10 (a)(i) (1) which was from the General Rules there was no reason to make any exception and not to read Rule 23 (a) (1) of the General Rules ....." [Paras 34, 35 and 42]

17. In similar line, the Hon'ble Apex Court in Bhupendra Nath Hazarika and Another v. State of Assam and Others [(2013) 2 SCC 516], has held as follows :

"Where recruitment is regulated by statutory Rules recruitment must be in accordance with the rules - Any appointment Dehors Rule would be illegal and such appointees have to be put in different class and cannot claim seniority even when their appointment is later regularised ....."

"Appointment of candidates belonging to " Special Batch" dehors the statutory Rules but prior to appointment of candidates belonging to regular batch would not entitle the " Special Batch " to seniority over " Regular Batch " It was further held that appointing Authority has to respect Quota Rule, but where Quota Rule cannot be followed regular appointees should not be pushed below adhoc appointees ....."



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" Appointment Dehose statutory rules - Held such appointment remains illegal appointment - Violation of recruitment unsustainable - Adhoc Special Batch Recruits had not only encroached upon Quota of regular direct Recruits but entire selection of Special Batch was in violation of Rules ....."

Thus from the above observation of the Hon'ble Supreme Court, the adhoc / temporary appointees, namely the contesting respondents, who gained entry in service as a stop gap appointee due to exigencies of service as admitted by the first respondent in their counter affidavit filed in the earlier O. A. No. 600 of 1996 cannot claim seniority just because they have been regularised from the date of their first appointment. They cannot claim seniority over the petitioners who were directly recruited Municipal Commissioner Grade III. The petitioners, who were recruited for 1989 - 90 batch got selected by the TNPSC in 1991, but appointed only on 16.06.1992 in G.O (MS) No.146, MAWS Department dated 16.06.1992. Whereas the adhoc appointees were regularised in G.O(2D)No. 149, MAWS Department dated 24.11.1997 and therefore 24.11.1997 is the date of regular appointment of adhoc / temporary appointee as per law. Therefore they cannot claim seniority over the directly recruited candidates whose appointment was in the year 1992.

18. In view of the above settled legal position, the impugned orders are liable to be set aside so far as the petitioners are concerned and the Writ Petition deserves to be allowed, insofar as the petitioners are concerned.

19. The learned counsel for the petitioner filed an affidavit of the first petitioner confining his relief for notional promotion and its consequential benefits upto the level of Additional Director of Municipal Administration, which comes under State Service and also undertook that he will not seek any relief disturbing the seniority in the level of All India Service. As far as the second petitioner is concerned, it is reported before this Court by the learned counsel for the petitioners that he has no instructions.

20. In view of the reasons assigned above in the foregoing paras, the impugned Government Letter No.6287/ME.I/2002-02 dated 23.09.2002 in confirming G.O.4D.No.4, Municipal Administration and Water Supply (M.E.I) Department dated 26.08.1997 issued by the Secretary to Government, M.A.W.S. Department, Government of Tamil Nadu are quashed insofar as the first petitioner is concerned. The first respondent is directed to refix the pay, allowances and other attendant monetary benefits in each posts



with effect from the notional date which the first petitioner is entitled to and to refix the retiral and pensionary benefits of the first petitioner based on the above said Notional Promotions, if he is otherwise eligible.

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21. The Writ Petition Stands partly allowed. No costs.

Sd/-  
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

Jvm

To

1. The Secretary to Government,  
Municipal Administration and Water Supply (M.E.I) Department,  
Fort St.George, Chennai-600 009.
2. The Secretary to Government,  
Personnel and Administrative Reforms Department,  
Fort St.George, Chennai-600 009.
3. The Director of Municipal Administration,  
Chepauk, Chennai-600 005.
4. The Municipal Commissioner,  
Dindigul Municipality, Dindigul.
5. The Municipal Commissioner,  
Tuticorin Municipality, Tuticorin.
6. The Municipal Commissioner, Avadi, Chennai.

+1cc to Mr.K.Rajkumar, Advocate, S.R.No.17574  
+1cc to the Government Pleader, S.R.No.18578

W.P.No.19948 of 2007

PMK (CO)  
CT 29/03/2022