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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.03.2022

Date of Verdict : 01.04.2022

CORAM

THE HON'BLE MR.JUSTICE M.S.RAMESH

W.P.Nos. 23693, 23697 of 2006, 29751 of 2007  
& 23139, 5397, 3865 of 2008  
and M.P.Nos.1,1,1 of 2008, 2,2,2,2 of 2008, 3 of 2008 & 2 of  
2007

1. K. SHANTHI
2. R. JAYASHREE
3. G. SARGUNA
4. R. SATHIYA MAHESWARI
5. P. POONGUZHALI
6. C. POONGODI
7. S. GUNASEKAR
8. K. PECHIAMMAL
9. S.K. LALITHA
10. A. THAMEEMUNISHA
11. S. SANGEETHA
12. T. BHUVANESWARI

...Petitioners in WP No.23693 of 2006, 23697 of 2006

S.K.LALITHA

...Petitioners in WP No.29751 of 2007

K.SHANTHI

...Petitioners in WP No.23139 of 2008

S.K.LALITHA

...Petitioners in WP No.5397 OF 2008

S.K.Lalitha

R.JAYASHREE

G.SARGUNA

...Petitioners in WP No.3865 OF 2008

Vs

1. THE GOVERNMENT OF TAMIL NADU  
REP. BY THE SECRETARY TO GOVERNMENT  
SOCIAL WELFARE AND NUTRITIOUS MEAL  
PROGRAMME DEPARTMENT.  
CHENNAI - 600 009.
- 2 THE COMMISSIONER SOCIAL  
WELFARE AND NUTRIGIOUS MEAL AND PROGRAMME  
DEPARTMENT CHENNAI - 600 005.



3

THE PROJECT CO-ORDINATOR  
WORLD BANK ASSISTED ICDS PROJECT - III  
THARAMANI CHENNAI - 113.

... Respondents in W.P.No.23693 of 2006,  
Respondents 1 to 3 in W.P.No.23697 of 2006

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MR.R. SELVARAJ  
MR.G. GANASEKARAN  
MR.N. MARIMUTHU  
MR.M. PANEERVELU  
MR. N. PAKKIARAJAN  
MR. PARAMASIVAN  
MRS.D MANGAYARKARASI

... Respondents 4 to 10 in W.P.No.23697 of 2006

1 THE STATE OF TAMILNADU,  
REP.BY THE SECRETARY TO GOVT.  
SOCIAL WELFARE DEPARTMENT,  
FORT ST. GEORGE CHENNAI-9.

2 THE DIRECTOR,  
DEPARTMENT OF SOCIAL WELFARE  
AND NUTRITIOUS MEAL PROGRAMME,  
CHEPAUK, CHENNAI.

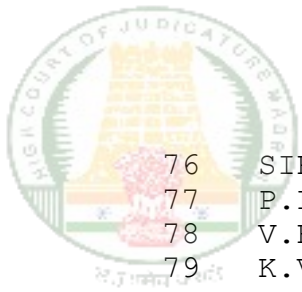
3 K.SHANTHI  
4 SANDIYA MAHESWARI  
5 K.PECHIAMMAL  
6 T.POONGUZHALI  
7 S.GUNASEKARI  
8 T.DEVAKUMARI  
9 C.POONGODI  
10 G.SARGUNA  
11 S.BUVANESHWARI  
12 THAMMEMUNISA

13 S.SANGEETHA  
14 R.JAYASREE  
15 S.A.JANSIRANI  
16 K.SAROJINI  
17 CHELLAMMAL  
18 KOTHAINAYA  
19 S.A.YUVARANI  
20 M.V.SAROJINI  
21 A.RADHABAI  
22 S.SHANTHINI JABARATHI  
23 VIGILDANI  
24 A.CHRISTINAMMAL  
25 C.ILAVARASI



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26 K.VAIDEKI  
27 C.KAMALAMBOSE  
28 R.SUMATHY  
29 L.SANTHAKUMARI  
30 LAKSHMIKUNJU  
31 T.AMIRTHA GOURI  
32 J.SELVI  
33 M.RAJESWARI  
34 A.MARY  
35 BABY GEETHANJALI  
36 G.JOSEPHINE MARY  
37 LIZZE STELLA BAI  
38 KAMALESWARI  
39 A.CHANDRA DEV  
40 C.JEESI  
41 V.THILAGAM  
42 A.MARIA SWARNAM  
43 Y.YESUTHANGAM  
44 S.KALAIVANI  
45 S.MAHALAKSHMI  
46 K.KOUSALYA  
47 K.AMBUJAM  
48 R.SHANTHA  
49 V.JAGADAMBAL  
50 S.SAROJA  
51 R.NIRMALA  
52 A.LEELAVATHI  
53 K.LAKSHMI  
54 P.GOMATHI  
55 C.RAJAMMA  
56 V.MARIA LORDHU RATHINAM  
57 C.REVATHI  
58 P.LALITH BAI  
59 M.SAROJINI BAI  
60 K.KALAVATHI  
61 LALITHA SAROJAM  
62 R.CHALLATHAI  
63 R.MALAIYARASI  
64 V.JOTHIBAI  
65 S.RASALAMMAL  
66 A.ELIZABETH  
67 V.GEETHA KRISHNAVENI  
68 D.SARASWATHI  
69 A.SAROJA  
70 A.AMSAVENI  
71 E.THAYAMMAL  
72 P.KOUSALYA  
73 K.YASODAI  
74 V.M.SANASA  
75 S.SARASWATHI



76 SIRIYA PUSHPAM MANIMEGALAI  
77 P.LEELA BAI  
78 V.BABY  
79 K.VIJAYALAKSHMI

80 N.JOTHI SUSEELA  
ALL ARE CDPOS WORKING IN DIRECTORATE OF  
SOCIAL WELFARE AND NUTRITIOUS MEAL PROGRAMME  
CHEPAUK CHENNAI-5.

... Respondents in W.P.No.29751 of 2007

THE STATE OF TAMILNADU,  
REP BY THE SECRETARY TO GOVERNMENT  
SOCIAL WELFARE DEPARTMENT,  
FORT ST.GEORGE CHENNAI 9.

THE DIRECTOR,  
DEPARTMENT OF SOCIAL WELFARE AND NUTRITIOUS  
MEAL PROGRAMME CHEPAUK CHENNAI.

TMT.ILAVARASI

TMT.RAJESHWARI

SHANTHINI JABARATHI

MRS.R. SUMATHY  
CDPO, THROUGH DIRECTOR ICDS,  
THARAMANI.

TMT.AMIRTHA GOURI  
CDPO, THROUGH DIRECTOR ICDS,  
THARAMANI.

A.T.BABY GEETHANJALI

KAMALESHWARI

A.CHANDRA DEVI

V.THILAGAM  
CDPO, THROUGH DIRECTOR ICDS,  
THARAMANI.

S.KALAIVANI  
CDPO, THROUGH DIRECTOR ICDS,  
THARAMANI.



KALAI VANI  
CDPO, THROUGH DIRECTOR OF ICDS,  
THARAMANI

K.KOUSALYA  
CDPO, THROUGH DIRECTOR ICDS,  
THARAMANI.

P.GOMATHI  
CDPO, THROUGH DIRECTOR ICDS,  
THARAMANI.

C.REVATHY  
CDPO, THROUGH DIRECTOR ICDS,  
THARAMANI.

GEETHA KRISHNAVENI  
CDPO, THROUGH DIRECTOR ICDS,  
THARAMANI.

K.KALAVATHY  
CDPO, THROUGH DIRECTOR ICDS,  
THARAMANI.

MALAIARASI  
CDPO, THROUGH DIRECTOR ICDS,  
THARAMANI.

AMSAVENI  
CDPO, THROUGH DIRECTOR ICDS,  
THARAMANI.

SIRIYA PUSHPAM  
CDPO, THROUGH DIRECTOR ICDS,  
THARAMANI.

JOTHI SUSEELA  
CDPO, THROUGH DIRECTOR ICDS,  
THARAMANI.

P.KOUSALYA  
CDPO, THROUGH DIRECTOR ICDS,  
THARAMANI.

K.YASO THAI  
CDPO, THROUGH DIRECTOR ICDS,  
THARAMANI.

... Respondents in W.P.No.23139 of 2008



THE STATE OF TAMILNADU,  
REP BY THE SECRETARY TO GOVERNMENT,  
SOCIAL WELFARE DEPARTMENT,  
CHENNAI - 9.

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THE DIRECTOR  
DEPT OF SOCIAL WELFARE AND  
NUTRITIOUS MEAL PROGRAMME,  
CHEPAUK, CHENNAI.

ILLAVARASI

RAJESWARI

SHANTHINI JABARATHI  
CDPO, KANCHEEPURAM DISTRICT,  
THROUGH DIRECTOR, ICDS, THARAMANI

R.SUMATHY  
CDPO, THROUGH DIRECTOR,  
ICDS, THARAMANI.

AMIRTHA GOURI 36-273  
CDKPO, THROUGH DIRECTOR,  
ICDS, THARAMANI.

A.T BABY GEETL ANJALI  
CDPO PANAIMARATHUPATTI

KAMALESHWARI

A.CHANDRA DEVI

V.THILAGAM  
DPO, THROUGH DIRECTOR,  
ICDS, THARAMANI.

KALAIVANI  
CDPO, THROUGH DIRECTOR,  
ICDS, THARAMANI.

K.KOUSALYA  
CDPO, THROUGH DIRECTOR,  
ICDS, THARAMANI.

P.GOMATHI  
CDPO, THROUGH DIRECTOR,  
ICDS, THARAMANI.



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C.REVATHI  
CDPO, THROUGH DIRECTOR,  
ICDS, THARAMANI.

GEETHA KRISHNAVENI  
CDPO, THROUGH DIRECTOR,  
ICDS, THARAMANI.

K.KALAVATHY  
CDPO, THROUGH DIRECTOR,  
ICDS, THARAMANI.

MALAIARASI  
CDPO, THROUGH DIRECTOR,  
ICDS, THARAMANI.

AMSAVENI  
CDPO, THROUGH DIRECTOR,  
ICDS, THARAMANI.

SIRIYA PUSHPAM  
CDPO, THROUGH DIRECTOR,  
ICDS, THARAMANI.

JOTHI SUSEELA  
CDPO, THROUGH DIRECTOR,  
ICDS, THARAMANI.

P.KOUSALYA  
CDPO, THROUGH DIRECTOR,  
ICDS, THARAMANI.

K.YASO THAI  
CDPO, THROUGH DIRECTOR,  
ICDS, THARAMANI.

... Respondents in W.P.No.5397 of 2008

THE STATE OF TAMILNADU  
REP.BY THE SECRETARY TO GOVT,  
SOCIAL WELFARE DEPT,  
FORT ST.GEORGE CHENNAI 9.

MR.N.S.PALANIAPPAN  
THE SECRETARY TO GOVT,  
SOCIAL WELFARE DEPT,  
FORT ST.GEORGE CHENNAI 9.



THE DIRECTOR,  
DEPT OF SOCIAL WELFARE  
AND NUTRITIOUS MEAL PROGRAMME,  
CHEPAUK, CHENNAI.

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MR.K.N.MANIVASAGAM  
THE DIRECTOR,  
DEPT OF SOCIAL WELFARE AND  
NUTRITIOUS MEAL PROGRAMME,  
CHEPAUK, CHENNAI.

RATHINAM  
VIJAYARANI  
P.MUTHUNAYAGAM  
BINDU  
ILAVARASI  
BHUVANESHWARI  
RAJESHWARI  
AMIRTHA GOURI  
A.T.BABU GEETHANJALI  
KMALESHWARI  
A.CHANDRA DEVI

... Respondents in W.P.No.3865 of 2008

Prayer in W.P.No.23693 of 2006:

Writ Petition filed Under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the respondents to appoint the petitioners in the existing and future vacancies in the cadre of Assistant Director, in the Social Welfare Department, Government of Tamil Nadu, such as District Project Officer, District Social Welfare Officer, or any other post by following the interse seniority fixed by G.O (3D) No.8, Social Welfare and Nutritious Meal Programme Department, dated 18.06.2004 and by following the provisions of G.O.Ms.No.1251, Social Welfare Department, dated 24.07.1987 and G.O.Ms.No.22, Social Welfare and Nutritious Meal Programme Department, dt.03.03.2003, on the file of the first respondent herein.

Prayer in W.P.No.23697 of 2006 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue, Writ of Certiorarified Mandamus, Calling for the records in GO 2D No.12 Social Welfare and Nutritious Meal Programme Department dated 09.09.2003 on the file of the first respondent and to quash the same and consequently direct the respondent to appoint the petitioners as against the vacancies arising there from in accordance with the interse seniority lits fixed by the by GO (3D) No.8 Social Welfare and Nutritious Meal Programme (SW1) Department dated



18.06.2004 and in accordance with G.O.Ms.No.1251 Social Welfare Department dated 24.07.1987 and G.O.Ms.No.1251 Social Welfare Department dated 24.07.1987 and G.O.Ms.No.22 Social Welfare and Nutritious Meal Programme Department dated 03.03.2003.

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Prayer in W.P.No.29751 of 2007 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue, Writ of Certiorarified Mandamus, to call for the records relating to the G.O. (D) No.229 dt. 31.12.2003 Social Welfare and Nutritious Meal Programme Department on the file of the first respondent herein and to quash the same in so far as regularizing the services of the respondents 26 to 75 in their post with effect from the date of joining and consequently to direct the respondents to fill up the post as per the existing seniority list vide G.O.No. (3D) No.8 dated 18.6.2004 on the file of Social Welfare and Nutritious Meal programme (SW) Department.

Prayer in W.P.No.23139 of 2008 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue, Writ of Certiorarified Mandamus, to call for the records relating to the proceedings G.O.(3D) No.11 dt 23.11.2007 on file of the Social Welfare and Nutritious meal Programme (SW1) Department, and quash the same and consequently to direct the respondents restore the seniority list vide G.O. (3D) No.8 dated 18.6.2004 on file of the Social Welfare and Nutritious Meal Programme Department.

Prayer in W.P.No.5397 of 2008 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue, Writ of Certiorarified Mandamus, to call for the records relating to the proceedings G.O. (3D) NO 11 dated 23/11/2007 on the file of the social welfare and Nutritious Meal Programme (SW1) Department and quash the same and consequently to direct the respondents restore the seniority list vide G.O. (3D) No.8 dated 18/06/2004 on the file of the Social Welfare and Nutritious Meal Programme Department.

Prayer in W.P.No.3865 of 2008 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue, Writ of Certiorarified Mandamus, to call for the records relating to the proceedings G.O.3(D) No.1 Social Welfare and Nutritious Meal Programme Dept dated 2.1.2008 and quash the same and consequently to direct the respondents to appoint the petitioner with effect from the date of the above G.O. with all monetary and service benefits.



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For Petitioners : Mr.U.Karunakaran  
..in all WPs.

For R1 & R2 : Mr.E.Veda Bagath Singh  
Special Government Pleader  
..in WP Nos.23693 of 2006, 29751 of 2007  
& 23139, 5397 of 2008

For R1 to R3 : Mr.E.Veda Bagath Singh  
Special Government Pleader  
..in WP Nos.23697 of 2006 & 3865 of 2008

For R3 : No appearance  
(in WP.No.23693 of 2006)

For R3 to R80 : No appearance  
(in WP.No.29751 of 2007)

For R4 to R6 & R8: Mr.N.Om Prakash,  
for Mr.R.Prem Narayan  
(in WP.No.23697 of 2006)

For R3, R4,R6 to R8,  
R14 to R17 & R20: Mr.N.Om Prakash  
for Mr.R.Prem Narayan  
(in WP.No.23139 of 2008)

For R6, R9 to R11,  
R13 & R15 : Mr.N.Om Prakash  
for Mr.R.Prem Narayan  
(in WP.No.3865 of 2008)

For R3 to R5, R7, R8, R10  
to R14, R16 to R21 & R23:Mr.N.Om Prakash  
for Mr.R.Prem Narayan  
(in WP.No.5397 of 2008)

For R12 : Mr.R.S.Anandan  
(in WP No.3865 of 2008)

For others : No appearance

#### COMMON ORDER

In all these Writ Petitions, the petitioners herein who are 12 in number are direct recruits in the post of Child Development Project Officer (hereinafter referred as 'CDPO'), under the department of social welfare, through the Tamil Nadu Public Service Commission, dated 16.12.1997. All the private respondents herein, had also joined the services, but their appointments were found to be irregular, since the Director of



Social Welfare Department was not the competent authority to appoint them to the post of CDPO. Subsequently, the temporary appointments of 33 persons came to be ratified as a special case in G.O.(Ms) No.44, Social Welfare and Nutritious Meal Programme Department, dated 25.03.1998, including the private respondents.

2. The case of the petitioners herein is that since the temporary appointments of all the private respondents herein, was ratified only through G.O.(Ms) No.44, Social Welfare and Nutritious Meal Programme Department, dated 25.03.1998, their seniority should be arrayed below that of the petitioners herein. It is also their case that earlier the Government had prepared an inter-se seniority list in G.O.(3D) No.8, Social Welfare and Nutritious Meal Programme Department, dated 18.06.2004, whereby the private respondents have been rightly shown to be juniors to that of the petitioners herein. However, in G.O.(3D) No.11, Social Welfare and Nutritious Meal Programme Department, dated 23.11.2007, these regular appointees have been shown as seniors to the petitioners, which is against the settled principles of law laid down by the Hon'ble Supreme Court.

3. The learned Special Government Pleader for respondents placed reliance on Section 35 (aa) of the Tamil Nadu State and Subordinate Service Rules and submitted that the date of appointment of any employee would be the crucial date for determining the seniority and since the private respondents herein, were appointed prior to the petitioners, the seniority list cannot be found fault with. It is also his submission that the appointments of these private respondents were neither challenged nor held to be illegal by any Court of law and all the private respondents were promoted during their services and have now retired from services.

4. It is not in dispute that the private respondents herein were appointed in the post of CDPO or equivalent post by the Director of Social Welfare Department. The Director of Social Welfare is not the appointing authority for the post of CDPO and therefore, they are not competent to invoke Rule 10 (a) (i) of the Tamil Nadu State and Subordinate Service Rules, for temporary appointment. This rule position was taken into consideration by the Government, while G.O.(Ms) No.44, Social Welfare and Nutritious Meal Programme Department, dated 25.03.1998, was passed. However, since it was found that the Government has already approved the regular panels for the 33 posts of CDPO, the appointments of the 33 persons were ratified, which includes the private respondents herein. In other words, the original appointments of all these private respondents have been admitted to be irregular appointments by the Government through G.O (Ms) No.44, dated 25.03.1998 and such irregular appointments were ratified only on 25.03.1998.



**\*5. It is not in dispute that the petitioners herein are direct recruits through the Tamil Nadu Public Service Commission in the year 1997/1998 and their services were regularized through an order, dated 18.08.2001, with effect from the date of appointment in the year 1997/1998, whereas the irregular appointments of the private respondents were ratified on 25.03.1998 and their services were regularised through G.O.No.229, Social Welfare Department, dated 31.12.2003, which is after the regularization of the petitioners services. Incidentally, the services of the private respondents were regularised, after the petitioner's regularisation.**

6. The learned Special Government Pleader placed reliance on Section 35 (aa) of the Tamil Nadu State and Subordinate Service Rules and had submitted that, since the date of appointment is the crucial date for determining the seniority, there is no infirmity in the seniority list, wherein the private respondents has been shown as seniors to the petitioners.

7. It is no doubt true that Section 35 (aa) of the Tamil Nadu State and Subordinate Service Rules, provides that the seniority of a person in a service is determined from the date on which he is appointed to the services, class, category or grade. This rule would apply only when such an appointment is "regular". However, when an appointment is irregular, the Hon'ble Supreme Court had held that the seniority in cases of irregular appointments would be determined on the date of the regularization only.

8. In the case of K.Madalamuthu and another Vs. State of Tamil Nadu reported in AIR 2006 SC 2662, it was held that the persons appointed temporarily without recourse to recruitment rule, cannot be said to be in service till such time his appointment is regularized. It was held in this judgement that it is only from the date on which his services were regularized, his seniority requires to be counted. Such a proposition was held in the following manner:

"....."

24. On a consideration on the submissions made on behalf of the respective parties and the decisions cited on their behalf, the consistent view appears to be the one canvassed on behalf of the appellants. The decisions cited by Mr. Rao have been rendered in the context of Rule 10(1)(i)(1) and other relevant rules which are also applicable to the facts of the instant case. Apart from the above, the law is well settled that initial appointment to a post without recourse to the rules of recruitment is not an appointment to a



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service as contemplated under Rule 2(1) of the General Rules, notwithstanding the fact that such appointee is called upon to perform duties of a post borne on the cadre of such service. In fact, Rule 39(c) of the General Rules indicates that a person temporarily promoted in terms of Rule 39(a) is required to be replaced as soon as possible by a member of the service who is entitled to the promotion under the Rules. It stands to reason that a person who is appointed temporarily to discharge the functions in a particular post without recourse to the recruitment rules, cannot be said to be in service till such time as his appointment is regularised. It, therefore, follows that it is only from the date on which his services are regularised that such appointee can count his seniority in the cadre.

25. In the instant case the authorities, on the strength of the several Government Orders giving retrospective effect to the regularisation of the promotees, have taken the date of initial appointment of such promotees as the starting point of their seniority. In our view, such a course of action was erroneous and contrary to the well established principles relating to determination of seniority. In our view, the High Court took an erroneous view in the matter in applying Rule 4 of the General Rules and holding that the period during which the promotees had initially discharged the duties of District Registrars, though appointed temporary under Rule 10 (a)(i)(1) was to be counted for determining their seniority. The decision of this Court in the case of L.Chandakishore Singh (supra) relied on by Shri Venkataramani, did not involve the question of persons appointed outside the service as a stop-gap-arrangement. The fact situation of the said decision is different from the fact situation of the instant case which finds from the decisions cited by Mr.Rao."

9. Likewise in the case of A.G.Sainath Reddy Vs. Government of A.P., and others reported in AIR 2003 SC 1839, it was held that the appointments made on adhoc basis cannot be regularized retrospectively from the date of the adhoc appointment. The relevant portion reads as follows:

".....

In response, learned counsel for the respondents submitted that the Tribunal has rightly analysed the legal position. The appointments were stop-gap, emergency or fortuitous arrangements and it cannot be treated to be appointment under the Rules. The probation period started only when there was a



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regular appointment in terms of the Rules and not on any point of time before that date.

4. One basic feature which needs to be considered is that the posts were advertised by the Commission in 1983 for direct recruits. Requisitions were sent to the Commission by the government before that. Since the posts were to be filled up by direct recruits on the basis of acceptance of recommendations of Commission, any arrangement to fill up those posts on officiating basis does not confer any right of probation on the person appointed as there was no post to which there could be appointment of a promotee after requisitions were sent to the Commission to such posts earmarked for direct recruitment. Any officiating arrangement is really of no consequence. Rule 4 of the Rules relating to "Probation" reads as follows:

"Every person appointed to the post by transfer shall from the date on which he joins duty, be on probation for a total period of one year on duty within a continuous period of two years and every person appointed by direct recruitment shall, from the date on which he joins duty, be on probation for a total period of two years on duty within a continuous period of three years."

10. A similar view was taken in the case of Ram Ganesh Tripathi and others Vs. State of U.P., and others reported in AIR 1997 SC 1446, as follows:

".....

6. It is difficult to appreciate how the High Court could hold that in view of the seniority list dated 31.12.94 the grievance of the appellants did not survive. The appellants had challenged the action of giving selection grade to the respondents and other ad hoc appointees who were regularised only on 17.5.85 and thus were their juniors. They had also sought a mandamus directing the Government to grant them selection grade from the date they have become entitled to it in accordance with the Government order dated July 29, 1986. It was their grievance that the Government was wrongly treating those adhoc appointees as regular appointees from a date earlier than 17.5.85. In view of these facts and circumstances it was not proper for the High Court to dismiss the petition on the ground that the list did not survive



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and leave the appellants again to the mercy of the Government which was out to defeat their legitimate claims.

7. Rule 21A provides for regularisation of service of ad hoc employees by treating them as persons appointed in the service on the date of their regularisation. Rule 9 provides that a person appointed under that Rule shall be entitled to seniority only from the date of appointment after selection in accordance with the said rules and shall, in all cases, be placed below the employees appointed in accordance with the procedure for direct recruitment prior to the appointment of such persons under those Rules. In view of these statutory Rules, the Government could not have treated the respondents and other ad hoc employees whose services were regularised on 17.5.85 as persons regularly appointed from an earlier date. Nor could the Government have counted seniority from an earlier date either for promotion to the higher post or for the purpose of giving selection grade.

.....

9. The Government thereby has tried to give seniority to the respondents and those other ad hoc employees by treating them as permanently appointed promotees since 2 years after the date of their joining the posts as Sahayak Nagar Adhikaris. Thus the respondents and other ad hoc employees who had been appointed temporarily and whose services were not regular and were regularised only on 17.5.85, will have to be treated as permanently appointed in 1974, as they were for the first time appointed on those posts in 1972. The said order was not challenged in the writ petition as it had not come to the notice of the appellants. It has been filed in this Court along with the counter affidavit of Respondent Nos. 3,7,8 and 9 and is relied upon by all the respondents. This order also deserves to be quashed as it is not consistent with the statutory Rules. It appears to have been passed by the Government to oblige the respondents and similarly situated adhoc appointees."

11. On a co-joint reading of all the aforesaid decisions of the Hon'ble Supreme Court, it requires to be held that in normal cases of regular appointment, the date of appointment would be the crucial date for determining the seniority. However, when such appointments are on temporary basis or irregular, the date of regularization gains significance and therefore, such date of regularization would be the crucial date for determining the seniority. In the light of this proposition,



the stand taken by the learned Special Government Pleader that the date of appointment would be the crucial date, under Section 35 (aa) of the Tamil Nadu State and Subordinate Service Rules, cannot be sustained.

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12. The learned Special Government Pleader submitted that the appointments of the private respondents herein, have not been challenged in any Court of Law and that they have been promoted to the post of Assistant Directors and also retired from the services. In this background, this Court is of the view that since they have already retired after being promoted as Assistant Directors, their promotions need not be interfered with, particularly in the light of the decision of the Government, to ratify their irregular appointments in G.O.Ms.No.44, Social Welfare and Nutritious Meal Programme Department, dated 25.03.1998. However, since this Court has already held that the petitioners, who were regularly appointed to the posts of CDPO, would stand on a better footing than the respondents herein, who were the irregular appointees, their seniorities requires to be determined above the private respondents herein.

**\*13. As stated earlier, the Government had correctly fixed the inter-se seniority of the CDPOs, for the year 1995 - 96 through G.O.(3D) No.8, Social Welfare and Nutritious Meal Programme Department, dated 18.06.2004, by placing the names of all these 12 petitioners herein, above the names of the irregular appointees. However, when the Government while filling up the posts of DPO, with that of the District Communication Officers, through G.O.Ms (2D) No.12, dated 09.09.2003, they had included the names of six male employees, which is against the Rule 6 of the Directorate of Social Welfare Consolidated Adhoc Rules, issued under G.O.No.1251, Social Welfare Department, dated 24.07.1987. Rule 6 of these Adhoc rules, provides that only women employees shall be eligible for appointment to the posts of District Social Welfare Officer, Child Development Project Officer and Taluk Project Nutrition Officer. Thus, these appointments made under G.O.Ms.(2D) No.12, Social Welfare and Nutritious Meal Programme Department, dated 09.09.2003 cannot be sustained. Since the private respondents whose names find place in this G.O (2D) No.12, dated 09.09.2003, have already retired from their services and their appointments were also not cancelled by any Court of law, this Court does not intend to interfere with their appointments at this stage. However, the petitioners herein would be entitled for such appointments from 09.09.2003 onwards.**



\*14. Likewise, when the services of the CDPOs' were regularised under G.O.Ms.No.229, Social Welfare and Nutritious Meal Programme Department, dated 31.12.2003, a similar fixation was made. Similarly, when the revised inter-se seniority of the CDPO, from the year 1994 - 95 to 1996 - 97 was approved under G.O (3D) No.11, Social Welfare and Nutritious Meal Programme Department, dated 23.11.2007, the names of the private respondents were shown as seniors to that the petitioners and accordingly, the appointment orders were issued on 02.01.2008, for the posts of Assistant Directors in the Social Welfare and Nutritious Meal Programme Department, under G.O (3D) No.11, dated 23.11.2007. In the light of the above discussions, this inter-se seniority list, approved panel and the appointment orders, insofar as it relates to the private respondents herein, does not require interference, since they have already retired from the respective services and their appointments were not nullified when they were in services.

\*15. However, since the appointments of the male employees were made under G.O.Ms.(2D) No. 12, Social Welfare and Nutritious Meal Programme Department, dated 09.09.2003, which is against the adhoc rules, the petitioners will be entitled for appointment to the posts of DPO from 09.09.2003. Likewise, since their seniority was not determined in the right place, i.e. above the irregular appointees / private respondents, under G.O. (3D) No.11, dated 23.11.2007, based on which appointment orders for the posts of Assistant Directors in the Social Welfare and Nutritious Meal Programme Department, was issued on 02.01.2008, the petitioners herein also would be entitled for such appointments to the post of Assistant Director.

16. In the light of the above findings, there shall be a direction to the Secretary, Social Welfare and Nutritious Meal Programme Department, Government of Tamil Nadu, to pass orders, notionally re-fixing the seniority of the petitioners herein, above the private respondents / irregular appointees and issue orders for notional promotion to the post of Assistant Directors, from the date on which these private respondents were promoted, together with all service and monetary benefits. Since the private respondents' appointments were neither challenged nor nullified and they had also retired from their respective services, the respondents shall not initiate any action against them, in connection with their appointments or promotions or seniority under the Department of Social Welfare and Nutritious Meal Programme. The Secretary, Department of Social Welfare and Nutritious Meal Programme, Government of Tamil Nadu, shall pass such orders granting notional promotion, together with service and monetary benefits, within a period of eight (8) weeks from



the date of receipt of a copy of this order.

17. All the Writ Petitions stand allowed accordingly. No costs. Connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (CS-VIII)

**\*Paragraph 5, 13, 14, 15  
modified as per order of this Court  
dated 12.04.2022.**

//True copy//

Sub Assistant Registrar

Pns

To

1. The Secretary to Government,  
The Government of Tamil Nadu,  
Social Welfare and Nutritious Meal Programme Department,  
Fort St. George, Chennai - 600 009.

2. The Commissioner,  
Social Welfare and Nutritious Meal Programme Department,  
Chennai - 600 005.

3. The Project Co-ordinator,  
World Bank Assisted ICDS Project - III,  
Tharamani, Chennai 113.

4. The Director,  
Department of Social Welfare Social  
and Nutritious Meal Programme Department,  
Chepauk, Chennai.

5. The Secretary the Government  
Social Welfare Department,  
Fort. St. George, Chennai 600 009.

+13ccs to Mr. U. Karunakaran, Advocate SR.No. 22880, 22881, 22883,  
22884, 22885, 22879

+1cc to Government Pleader SR.No. 22803, 22804, 22805, 22806,  
22807, 22802

W.P.Nos. 23693, 23697 of 2006, 29751 of 2007  
& 23139, 5397, 3865 of 2008

PA (CO)  
GMY (21/04/2022)