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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.01.2022

PRONOUNCED ON : 03.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.NO.23342 OF 2019

AND

W.M.P.NOS.23087 & 22717 OF 2019

1. N.Mahalingam
2. M.Kanchana
3. V.Kala
4. D.Latha
5. A.Mohan Dass
6. T.Karthi
7. N.Lingeswaran
8. P.Senthil Kumar
9. I.Sankar
10. K.Nepolean

... Petitioners

.Vs.

1. The Government of Tamil Nadu,
Rep. by its Secretary,
The Commercial Taxes and
Registration Department,
Fort St. George,
Chennai - 600 009.
2. The Inspector General of Registration,
O/o. The Inspector General of Registration,
No.100, Santhome High Road,
Chennai - 28.



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3. R.Sridhar,
Assistant,
O/o. The Sub Registrar Office,
Peranampet,
Kancheepuram District.

(Representing the class of Promotee Assistants who have been notionally promoted as Assistants with effect from 11.06.2010 and shown in the seniority list of Assistants dated 02.02.2018 from SI.No.113 onwards)

4. N.Santhakumar
5. T.Daivasigamani
6. G.P.Paramaguru
7. S.Subramanian
8. S.Gunasekaran
9. S.Soundarapandian
10. T.Elaiyaraja
11. V.Kalavathi
12. G.Ashok Kumar
13. C.Boopathy Kannan
14. M.Sheik Abdullah
15. R.Senthil Kumar
16. S.Ilangovan
17. J.Shanthamaria
18. M.Pandian
19. G.Srinivasan
20. S.Malligeswaran
21. V.A.Raja
22. N.Ganesh

... Respondents



(Respondents 4 to 22 have been impleaded vide order dated 04.03.2021 made in W.M.P.Nos.918, 920, 921, 922, 923, 924, 926, 927, 929, 931, 932, 933, 934, 935, 936, 939, 941, 942 & 945 of 2021)

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PRAYER:-

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent 1 and 2 in connection with the impugned proceedings bearing Ref.No.21380/nf1/2016, dated 07.06.2016 and consequential impugned seniority list bearing Ref.No.18/nf1/2018, dated 02.02.2018 and quash the same in so far as Mr.R.Sridhar SI.No.113 in the impugned seniority and others like him in the seniority list up to SI.No.239, have been placed above the petitioners and direct the respondents 1 and 2 to treat the petitioners as seniors to the 3rd respondent and others of the same class and accordingly, direct the respondents 1 & 2, to issue orders of promotion to the post of Sub-Registrar Grade II for the petitioners.

For petitioners : Mr.V.Prakash
Senior Counsel
For Mr.K.Krishnamoorthy

For Respondents : Mr.R.Neelakandan
AAG, Assisted by
Mr.L.S.M.Hasan Fizal
Additional Government Pleader
For R1 & R2

Mr.A.Palaniappan
For RR4 to 22

No Appearance For R3

ORDER

This writ petition has been filed to issue a writ of Certiorarified Mandamus, to call for the records of the respondent 1 and 2 in connection with the impugned proceedings bearing Ref.No.21380/nf1/2016, dated 07.06.2016 and consequential impugned seniority list bearing Ref.No.18/nf1/2018, dated 02.02.2018 and quash the same in so far as Mr.R.Sridhar SI.No.113 in the impugned seniority and others like him in the seniority list up to SI.No.239, have been placed above the petitioners and direct the respondents 1 and 2 to treat the petitioners as seniors to the 3rd respondent and others



of the same class and accordingly, direct the respondents 1 & 2, to issue orders of promotion to the post of Sub-Registrar Grade II for the petitioners.

2. The age old and the never ending controversy in the service jurisprudential landscape, constantly engaging the attention of the Courts over six decades, is the fixation of inter se seniority between direct recruits and promotees. The fixated controversy refusing to die down despite the rulings of this Court in multitude of litigations over the years and each time, when a resolution is found by the Courts, yet, the dispute manifests in variegated and kaleidoscopic form, shape and colour, from time to time and bounce back to the Courts seeking its attention all over again. The Courts painstaking efforts notwithstanding in laying down definite legal principles on the vexed issue, nevertheless, the dispute crawl back re-engaging the Courts, every now and then, at various points of time. The issue has been constantly engaging the attention of the Courts periodically for the last few decades, despite a Constitution Bench judgment of the Hon'ble Supreme Court formulating the legal principles to be applied to various contingencies that may arise in the matter of inter se fixation of seniority as between direct recruits and promotees. Finding a panacea has always been elusive, a conundrum each time and any order, direction or ruling on the issue, hold the field only upto a transitional point of time. It gets a new avatar after sometime and land on the lap of the Courts for its intervention, again and again interminably, having no end at all.

3. The present dispute is one more to be added to the multitude of litigations, yearning for judicial remedy. The petitioners herein are the direct recruits and the respondents 3 to 22 are the promotees at loggerheads in the matter of fixation of inter se seniority between them.

4. The brief facts which led to the filing of the present writ petition are stated hereunder:

(i) According to the petitioners, they are directly recruited Assistants working in the registration department. The private respondents 3 to 22 are rank promotees from the post of Junior Assistants. The petitioners were recruited as Assistants by selection through Tamil Nadu Public Service Commission (hereinafter referred to as Commission). The Commission issued a notification dated 30.12.2010, calling for applications for direct recruitment to various posts in different departments of the Government that included registration department. In the notification, number of vacancies for the post of Assistant were notified as 320. The recruitment was stated to be against the vacancies of the year 2010-11.



(ii) All these petitioners after being selected by the Commission, were appointed as Assistants directly on 18.12.2012. After their appointment as direct recruits, their seniority has been fixed on the basis of the ranks obtained by them in the selection. As far as the private respondents are concerned, they had been originally appointed as Junior Assistants on compassionate ground in the year 2007. Their appointments being on compassionate consideration, were not in conformity with the governing rules, at that point of time. Although the private respondents had been appointed as Junior Assistants in 2007, which was the feeder post for promotion to the post of Assistant, factually, their services as Junior Assistants had been regularized only in 2012, 2013 and 2014.

(iii) According to the petitioners, after completion of necessary training which was mandatory for declaration of probation and for regularizing their services, the private respondents were eventually regularized in 2012, 2013 and 2014. Only thereafter, they were granted promotion as Assistants, whereas, the petitioners herein were appointed as Assistants and borne on the regular cadre (Assistant) in December 2012 itself in respect of the vacancies of the year 2010-2011. On the other hand, the private respondents were granted promotion as Assistants as against the vacancies of the year 2012-13. Their promotions to the post of Assistant is a subsequent event, as orders were passed promoting them admittedly after the direct recruitment of the petitioners as Assistants in December 2012.

(iv) While matter stood thus, according to the petitioners, in fixing the inter se seniority in the cadre of Assistants, the private respondents appeared to have stolen a march over them. The private respondents have been shown seniors to the petitioners in the seniority list circulated on 02.02.2018. In the seniority list, surprisingly, it is mentioned that the date of regularization of the private respondents in the cadre of Assistants as 2010, as against the date of regular appointment of the petitioners in 2012. The private respondents though admittedly was appointed only in 2012, 2013 and 2014 as Assistants, illegally, their date of regular promotion as Assistants has been antedated, detrimental to the interest of the petitioners. According to the petitioners herein, the fixation of seniority as reflected in the impugned seniority list dated 02.02.2018, is in contravention of the relevant service rules and also the legal principles enunciated by this Court and the Hon'ble Supreme Court of India. Being aggrieved by the wrong fixation of seniority in the cadre of Assistant, the petitioners are before this Court.

5. Mr.V.Prakash, learned Senior Counsel appearing for the petitioners would straight away draw the attention of this Court



to the departmental proceedings dated 24.11.2012. According to the said proceedings, the names of the Junior Assistants which were found in the annexure to the proceedings, are stated to be appointed as Assistants against the vacancies of the year 2012-13. The learned Senior Counsel would also refer to another proceedings dated 28.08.2012, in which, one of the private respondents who was appointed as Junior Assistant on compassionate ground in 2007, was declared to have commenced his probation in 2012 as he was being sent to Bhavani Sagar Training for the purpose of declaring his probation and regularizing his service as Junior Assistant.

6. Likewise, the learned Senior Counsel would also refer to yet another proceedings in G.O.Ms.3D.No.7, Commercial Taxes and Registration Department, dated 01.07.2013. Through the said Government Order, the Junior Assistants viz., some of the private respondents herein who were originally appointed on compassionate ground outside the rules, had been granted relaxation. The relaxation granted on consideration of the fact that those Junior Assistants named in the order had belatedly completed their Bhavani Sagar Training only from 14.12.2012 to 11.02.2013, for no fault of their's, therefore, their services as Junior Assistants stood regularized from the date of their initial irregular appointment. Subsequently, several other Junior Assistants who are among the private respondents herein had been granted the benefit of relaxation and granted promotion as Assistants vide proceedings dated 06.01.2014.

7. According to the learned Senior Counsel, when admittedly the private respondents' promotions had been effected only during the year 2012, 2013 and 2014 as Assistants, that too, by relaxing the rules, the benefit, if any, as a consequent of such relaxation may at best accrue to them personally like earning of increments and counting of their regular services from the date of their initial appointment for promotion and pensionary benefits etc. But, the private respondents are certainly not entitled to be conferred with the benefit of seniority in derogation of the rights of the direct recruit Assistants, the petitioners herein.

8. The learned Senior Counsel, as a matter of fact, has briefly brought to the attention of this Court the background in which the direct recruitment was resorted to through the notification dated 30.12.2010. Prior to the notification, there were several hundred vacancies in the cadre of Assistants which were not filled for years together, affecting proper and effective administration of the Department. With a view to remedy the situation, Government has issued G.O.Ms.No.47, Commercial Taxes and Registration Department, dated 09.04.2010, after consultation with the Commission. In the Government Order,



a decision was taken for the first time that in the registration department, 50% of the substantive vacancies in the post of Assistant are to be filled up through direct recruitment. Earlier, as per the then existing rules, appointments to the post of Assistant was only by promotion or transfer from a feeder or equivalent cadre. After passing of the above order, appointment by direct recruitment was introduced and the process of identification of the vacancies to be earmarked for direct recruitment, was undertaken.

9. Subsequently, another Government Order in G.O.(D) No.183, Commercial Taxes and Registration Department, dated 31.05.2010, was issued, wherein, 50% of the estimate of vacancies for the year 2010-11 by direct recruitment was declared and total vacancies identified for such recruitment and declared were 320. Thereafter, the Commission issued publication/advertisement dated 30.12.2010, inviting applications from the open market for filling up of the 320 vacancies in Assistant cadre by direct recruitment.

10. The learned Senior Counsel would therefore submit that these petitioners have been appointed against the vacancies earmarked as above for direct recruitment and according to the above said Government Orders, the vacancies that had been estimated, identified were of the year 2010-11. Once the recruitment was finalised and appointment orders were issued, these petitioners have become regular employees in the cadre of Assistant on day one when they joined service and their seniority is to be fixed from that date. It cannot therefore be varied or suppressed by antedating the promotion of the promotees prior to the date of appointments of the petitioners, in any event. According to the learned Senior Counsel, as a matter of fact, the relevant rule position confers the benefit of counting of service from the date of the notification by the Commission, which means, the petitioners herein would have their seniority fixed from 30.12.2010, the date of the notification. If not, they ought to be adjusted against the vacancies of the year as notified in the notification or with reference to the government Order that preceded the notification. In such case, these petitioners were admittedly appointed against the vacancies declared for the year 2010-2011 or even earlier.

11. The learned Senior Counsel would also draw the attention of this Court to the impugned seniority list dated 02.02.2018, in order to highlight the fact that as to how the dates of promotion of the promotee Assistants had been illegally antedated as if they were promoted as Assistants regularly in 2010. But, the fact of the matter is that in 2010, they were not even confirmed Junior Assistants and therefore, by no stretch of legal standard or application of any rule, such retrospective



promotion is permissible. According to the learned Senior Counsel, as stated above, it may be possible for the promotee Assistants to obtain relaxation in terms of the rules and their probation declared from their date of their initial appointment as Junior Assistants, but, the consequence of the benefit of such relaxation cannot be allowed to enure to the advantage of the promotees affecting the accrued rights of the direct recruit Assistants, in the matter of fixation of inter se seniority.

12. According to the learned Senior Counsel that as a matter of fact, some of the private respondents were promoted as Assistants even as late as on 06.01.2014, factually. This Court's attention has been drawn to the proceedings of the second respondent dated 06.01.2014, containing as many as 117 names of the promotee Junior Assistants. Some of the names figured in the list are the private respondents herein whose promotions had been antedated illegally prior to the date of the appointments of the petitioners along with higher seniority assigned to them.

13. After making the factual submissions as above, the learned Senior Counsel would refer to the rule position that govern the present inter se fixation of seniority between the direct recruits and the promotees. He would draw the attention of this Court to rule 4 of the erstwhile Tamil Nadu State and Subordinate Service Rules which has now been replaced and superceded by the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. The erstwhile rule 4 replaced by new Section 7 of the Act, 2016, defines the meaning of Approved candidates. He would particularly rely on the first proviso to the section which states that the approved candidates for appointment by promotion or recruitment, by transfer, shall be prepared annually against the estimated number of vacancies expected to arise during the course of the year. The estimate of vacancies shall be prepared taking into account the total number of permanent posts in a category and the number of temporary posts in existence etc. According to the learned Senior Counsel that these petitioners have been recruited admittedly against the vacancies of the year 2010-11 as against the promotion of the private respondents for the year 2012-13.

14. He would further draw the attention of this Court to rule 2(13) and 2(14) of the erstwhile Subordinate Service Rules which have been superseded by the Act, 2016 and replaced by rule 3 (q) and (r) which are reproduced hereunder:

"(q) "promotion" means the appointment of a member of any category or grade of service or class of service to a higher category or grade of such service or class;



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(r) "recruited direct to a service" means when a candidate, in case his first appointment to a service, class or category has to be made in consultation with the Commission, on the date of its notification inviting applications for the recruitment and in any other case, at the time of his first appointment thereto, he is not in the service of the Government of India or the Government of a State."

15. From the above, it is clear that if the date of notification is taken into consideration i.e., 30.12.2010, as per Sub-clause (r), these petitioners are entitled to be assigned much higher seniority vis-a-vis the private respondents herein. On the date of the notification, all the private respondents were admittedly working only as Junior Assistants and even subsequent to that date, when these petitioners were appointed in December 2012, the private respondents had still not completed their mandatory training required for declaration of their probation and regularization of their services in the feeder grade. The dispute arose only when their services were regularized as Junior Assistants retrospectively with effect from the date of their initial appointment on compassionate grounds and the consequent antedating of their promotion as Assistants prior to the date of the appointment of the petitioners and fixation of their seniority over and above the petitioners in the cadre of Assistants.

16. The learned Senior Counsel would delve into the contention of the respondents in this regard that the seniority has been fixed in terms of the erstwhile Rule 35(aa), replaced by the present Section 40(2) of the Act, 2016. According to the respondents that the determination of seniority shall be with reference to the date of appointment when normal method of recruitment is by more than one method of recruitment. The learned Senior Counsel would however clarify that the date of appointment means the date of regular appointment in terms of the definition of the erstwhile rule 2(i) of the Tamil Nadu State and Subordinate Service Rules, replaced by the Act 2016. He would refer to the present section 3(b) which reads as under:

"(b) "appointed to a service" means when a person appointed in accordance with this Act or in accordance with the rules applicable at the time, as the case may be, discharges, for the first time the duties of a post borne on the cadre of such service or commences the probation, instruction or training prescribed for members thereof."



17. If the above rule is to be applied, the private respondents cannot said to have been appointed originally in accordance with the erstwhile rules or by the provision of the Act, 2016. Only by virtue of relaxation granted to them, they got the benefit of retrospective regularization of their services as Junior Assistants during the years 2012, 2013 and 2014. Thereafter only, their promotions could fructify into the cadre of Assistants. In such circumstances, the private respondents' retrospective promotion from 2010 as Assistants as indicated in the impugned seniority list, can never be considered as regular appointment in accordance with the Act, for the purpose of granting them higher seniority over and above the petitioners. Such retrospective promotion literally amounted to nullifying the date of appointment of the direct recruits namely the petitioners herein, through selection by the Commission.

18. The learned Senior Counsel would then refer to a few decisions in support of his contentions. He would firstly rely on a decision of the Hon'ble Supreme Court of India, rendered in the case of V.Sreenivasa Reddy and Ors Vs. Govt. of A.P. and Ors in C.A.Nos.6575-6580 of 1994 dated 05.10.1994, the relevant observations of the Hon'ble Supreme Court are extracted hereunder:

"It is now well settled law that appointment/promotion must be in accordance with the Rules, direct recruit takes his seniority from the date on which he starts discharging the duty of the post borne on the cadre While a temporary appointee appointed de hors the rules or on ad hoc basis or to a fortuitous vacancy gets seniority from the date of regular appointment.

It is settled law by the judgment of the Constitution Bench in Direct Recruits Class II Officers Association v. State of Maharashtra, [1992] 2 SCR 900, that appointment in accordance with Rules is a condition precedent to count seniority. Temporary or act hoc or fortuitous appointments etc. are not appointments in accordance with the Rules and the temporary service cannot be counted towards the seniority. Delhi Water Supply and Sewage Disposal Committee v. R.K. Kashyap, 1989 Supp 1 SCC 194, Masood Akhatar Khan v. State of M.P., [1990] 4 SCC 24, D.N. Aggrawal v. State of M.P., [1990] 2 SCC 553, State of Tamil Nadu v. E. Paripoamam, [1992] Supp. 1 SCC 420, R.C. Poudyal v. Union of India, JT (1993) 2 SC 1 and at 25, Excise Commissioner, Karnataka v. Sreekanta, [1993] 3 SCC 53.



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Under Rule 23(a) of the Rules, the temporary appointee, if sub-sequently appointed to a post borne on the cadre of any service, class or category in accordance with the Rules, shall commence his probation "from the date of such subsequent appointment or from such earlier date as the appointing authority may determine", Under Rule 33 (a), the seniority of such temporary employees under rule 10(a)(i)(1), Such temporary service does not count towards probation or his seniority, shall not be determined by the date of the commencement of his service which counts towards probation. It would thus be clear that by operation of Special Rules and Rules, that PSC candidates gets his seniority from the date on which he starts discharging his duties on the post borne on the cadre and his seniority shall be determined with effect from that date while the temporary appointee under Rule 19(a)(i)(1) who is subsequently appointed in accordance with the Rules, the temporary service rendered prior to his appointment shall not be counted towards his seniority or the temporary service even if counted towards probation shall not be counted for the purpose of seniority. Obviously to achieve the same result clause (3) of G.O.Ms. No. 413 dated August 29, 1983 directed that the temporary service of the temporary employee should be regularised from the date subsequent to the last regular candidate or candidates "appointed" or allotted for appointment from the list of successful candidates drawn by PSC based on the examination last held.

The further contention of Sri Madhava Reddy that since the temporary appointees and PSC candidates have been appointed under Rule 10(a)(i)(1) giving seniority to the PSC candidates from the date of their appointment and denial thereof to the promotees of the same date of their initial appointment, since both possess the same qualifications and were appointed under rule 10(a)(i)(1), the denial of seniority to the temporary appointees from the date of their initial appointment, violates Article 14. We find no substance in the contention. It is seen that the PSC candidates were recruited on recommendation by PSC and pending verification of the antecedents of the candidates, they came to be appointed under Rule (a)(i)



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(1) but they were put on probation since they are selected on regular basis. Being direct recruits, their seniority, as stated earlier counts from the date on which they started discharging the duties of the post. The temporary appointees though have the insignia of the appointment under Rule 10 (a)(i)(1), yet they are not members of the service until they are duly appointed and their services subsequently regularised, they get a date later to regular candidates, appointed in accordance with the Rules and were accordingly regularised. In other words, they are only temporary appointees not in accordance with the Rules (Special Rules prescribed the procedure of recruitment by PSC and appointment by the State of the candidates recommended by PSC). Since the temporary appointees have not undergone that process, they remain to be outside the cadre. Their probation should be determined in accordance with the Rule 23(a) and 33. Till the Government exercised its power under proviso to clause (3) of Article 320 and excluded the constitutional obligation of the consultation of the PSG and then directed by an ad hoc rule to regularise their services in the terms contained in G.O. Ms. No. 413, the temporary appointees have no right to the post. Clause (3), as extracted earlier, gives the state the power to regularise the service and in terms thereof, they fixed the seniority of temporary appointees after the PSC candidates. Both form two distinct classes. The seniority of the appellants should rank under Rules 10(3) below the PSC candidates and their seniority should be on a date, later to PSC candidates. Even the regularisation order by the Chief Engineer also reserves that right to the State. The GAD which issued G.O. Ms. 413 itself had explained its intention to give benefit of seniority to the PSC candidates of 1981 batch vis-a-vis the temporary appointees. Thus, the question of arbitrariness or unfairness or invidious discrimination violating Article 14, does not arise.

We would also test the validity of the appellants' contention on grounds of equity. It is seen that admittedly some of the temporary appointees had appeared before PSC and were selected on competitive basis by direct recruitment. The PSC candidates appeared for and were selected in the order of their merit. In Bhatnagar' case, this Court considered a situation where temporary appointees between different periods and many a candidate



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availed of the selection by UPSC who thought they were appointed later to the non-selected temporary candidates, this Court upheld the seniority as per the list drawn by the UPSC. All those temporarily appointed as earlier as 1964, were made juniors to the candidates selected by the UPSC. This Court also made a distinction between UPSC candidates and temporary candidates who do not stand at part. The unregularised officers remained outside the cadre until 1977 and those officers should be placed below regular recruits through the 1970 examination. The same ratio applies to the facts in the case. The temporary appointees cannot be put on a higher pedestal over the PSC candidates who stood the test of merit and became successful and secured ranking according to the merit in the approved list of the candidates prepared by the PSC. In Piara Singh's case, this Court reiterated that the temporary candidates always be replaced giving way to the regular recruits through the prescribed agency and appointments of the regularly selected candidates cannot be withheld or kept in abeyance for the sake of temporary or ad hoc employees.

Therefore we have no hesitation to hold that the appellants cannot claim seniority over the PSC candidates. The appeal are accordingly dismissed but in the circumstances without costs."

19. In the above case, the Hon'ble Supreme Court has categorically held that appointments to a post must be in accordance with the statutory rules. A direct recruit takes his seniority from the date on which he starts discharging his duty, while, the temporary appointee, appointed dehors the rules, gets his seniority from the date of his regular appointment. According to the learned Senior Counsel, the petitioners herein having been appointed in 2012, for the vacancies of the year 2010-11, cannot be superseded by the subsequent appointees viz., the private respondents herein for the subsequent years 2012-13, 2013-14.

20. A further reference is made to C.A.Nos.2791-2793 of 2002 dated 04.07.2006, in the case of K.Madalaimuthu and Ors Vs. State of Tamil Nadu and Ors. The relevant observation of the Hon'ble Supreme Court relied upon is extracted hereunder:

"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



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appellants, the decisions cited by Mr. Rao have been rendered in the context of Rule 10 (a) (i) (1) and the other relevant rules which are also applicable to the facts of the instant case. The law is well established that initial appointment to a post without recourse to the rules of recruitment, an appointment to a 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 indicate that a person temporary 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 his appointment is regularized. Therefore, it is only from the date on which his services are regularized that such appointee can claim seniority over those appointees subsequently.

In the instant case the authorities, on the strength of the several Government Orders giving retrospective effect to the regularization 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 appears to have taken an erroneous view in the matter in holding that the period during which the promotees had initially discharged the duties of District Registrars, though appointed under Rule 10 (a) (i) (1) were to be counted for determining their seniority. The decision of this Court in the case of L.Chandrakishore 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 support from the decisions cited by Mr.Rao.'

In the above decision, the legal principle has been reiterated that persons appointed without recourse to the rules of



recruitment can claim seniority only from the date of regularization.

21. The learned Senior Counsel would further refer to a decision of the Hon'ble Supreme Court in C.A.Nos.3582-84 of 2009 dated 15.05.2009, in the case of M.P.Palanisamy and Ors Vs. A.Krishnan and Ors. The observations and the ruling of the Hon'ble Supreme Court as found in paragraph Nos.19 to 26, are extracted hereunder:

"19. As has already been stated, the contention of the appellants is that they had all the qualifications for holding the posts of Post Graduate Assistants when they were appointed under Rule 10(a)(i)(1) and their service was also without any breaks and they were ultimately regularized in the year 1988. Therefore, though the act of the State Government in regularizing them was correct, the provision that their seniority will be below those who were selected by TNPSC in 1986, is not correct. Ms. Nalini Chidambaram, Learned Senior Counsel appearing on behalf of the appellants, alongwith Ms. Indu Malhotra and Mr. M.N. Krishnamani, Learned Senior Counsel, firstly urged that when a candidate is appointed under Rule 10(a)(i)(1) on ad-hoc basis and is subsequently regularized, then ordinarily, his seniority has to be reckoned from the date when he was first appointed, provided he has all the necessary qualifications for the job. There can be no dispute with this proposition generally, however, it must be borne in mind that though the appellants herein had the necessary qualifications at the time of their initial appointment under Rule 10(a)(i)(1) and though they were subsequently regularized also, the regularization was conditional regularization, which was done way back in 1988. The condition regarding the seniority was explicit in the said regularization, which is clear from the mere reading of the G.O.Ms. No. 1813. It cannot be forgotten that this regularization was all along accepted by the present appellants. Once they chose to accept the regularization which was conditional, then it would have to be borne in mind that they have accepted the conditions also. It cannot be countenanced that only the favourable part of the G.O.Ms. was accepted by them and the unfavourable part was rejected. If they had to do it, they had to challenge the G.O.Ms. immediately. They did not do it, instead they waited almost for six years, when for the first time, they



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came out with an Original Application vide O.A. No. 3617 of 1994. Again, when the matters were decided in the Writ Petition Nos. 2911 and 3041 of 1998 on 24.3.1998 and the seniority prayed for on the basis of initial appointment was refused to them, they kept quiet, only to raise the same demand again in 2003 when the Panel was prepared. The Panel is absolutely correct in the light of G.O.Ms. No. 1813. The appellants merely raised a lame plea that they did not challenge the G.O.Ms. No. 1813, as they were expecting themselves to be placed over and above the TNPSC selected candidates. Such could never be the position in the wake of plain language of G.O.Ms. No. 1813. This is one of the main reasons why the claim of the appellants has to be rejected. The aspect of conditional regularization, therefore, had to be kept in mind.

21. This stand is correct, as though the appellants were fully qualified P.G. Assistants at the time of their initial appointment after 1981, the fact of the matter is that they never faced any competition. They studiously and conveniently desisted from taking the examination, though it was made very clear to them that they would have to take the examination. It was feebly argued before us by the Learned Senior Counsel for the appellants that they had no opportunity for doing so, as the last date for the examination had already passed. We do not understand as to what the appellants were waiting for. There was a general advertisement issued and there was no question of presuming that these P.G. Assistants would in any manner be exempted from taking the examination of TNPSC without whose selection, they could never enter the Government service. Under the circumstances, it was for these P.G. Assistants to appear for the examination and prove themselves. They had come in ad-hoc manner and, therefore, they could not expect regularization straightaway. Under these circumstances, they remained on the roll in their ad-hoc capacity and, therefore, were not the members of the service. Rule 23(a)(i) of the Tamil Nadu State and Subordinate Services Rules provides as under:-

"23(a)(i) Date of commencement of probation of persons first appointed temporarily:- If a person appointed temporarily either under sub-



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rule (a) or sub-rule (b) of the rule 10 to fill a vacancy in any service, class or category otherwise than in accordance with the rules governing appointment thereto, such vacancy being a vacancy which may be filled by direct recruitment, is subsequently appointed to the service, class or category in accordance with the rules, he shall commence his probation if any, in such category either from the date of his first temporary appointment or from such subsequent date, as the appointing authority may determine. If the post is one to which appointment may be made by transfer, and the person who had been appointed thereto either under General Rule 10 (a) or 10(d) is subsequently recruited thereto by transfer and included in the list of approved candidates, the appointing authority may in his discretion, allow such person to commence his probation if any, from the date of his first temporary appointment or from such subsequent date, as the appointing authority may determine:

Provided that the date so determined by the appointing authority to commence probation in this clause, shall not be earlier than the date of commencement of probation of the junior most person already in service.

Provided further that on the date so determined by the appointing authority to commence probation in this clause, the person shall not only possess all the qualifications prescribed for appointment to the service, but also be fit for inclusion in the list of approved candidates drawn up by the Tamil Nadu Public Service Commission or the appointing authority, as the case may be.

One look at the first proviso shows that in case of an ad-hoc employee, he cannot claim any seniority to the junior most person already in service. The words "junior most person already in service" in the proviso are extremely important. All the TNPSC P.G. Assistants were already in service, when the question of regularization of the P.G. Assistants appointed under Rule 10(a)(i)(1) came for consideration. Till then, the Government had steadfastly refused the regularization and



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ultimately, chose to regularize them only in 1988. Therefore, the stance of the Government in providing the second condition was absolutely correct and by mere subsequent regularization, that too without taking any examination under TNPSC or undergoing any recruitment process and facing general competition from the other candidates, the ad-hoc P.G. Assistants could not be held seniors to those, who were already in service. If, therefore, these ad-hoc P.G. Assistants claim a seniority over and above the TNPSC selected candidates, who were admittedly already in service, it would be ridiculous in the wake of a very clear language of G.O.Ms. No. 1813. It will be further ridiculous as the said condition was accepted by all the P.G. Assistants appointed under Rule 10(a)(i)(1) without a demur and as if this is not sufficient, they did not challenge it at least for six long years and thereafter, upto 2003. All this goes totally against the claim of the appellants. We also cannot ignore the fact that some of the appellants did appear for the TNPSC examinations and failed. It will now be preposterous if those failed candidates who were later on regularized, are placed over and above the successful candidates in TNPSC examination and selection process which followed the said examination. This is another reason why the claim of the appellants must fail.

24. Speaking on the interpretation of G.O.Ms. No. 1813, the Learned Senior Counsel appearing on behalf of the appellants, led a great stress on the language of second condition, more particularly, on the last 3 words, they being "for the year". For the convenience sake, we will quote that condition:-
"They will be placed below the candidates selected by the TN Public Service Commission while ranking their seniority, i.e., those candidates selected by the TNPSC for the year."

Relying on this, the Learned Senior Counsel contended that, therefore, the appellants were quite justified in interpreting that the seniority rule will apply only and only if the candidates appointed under Rule 10(a)(i)(1) and the TNPSC selected candidates were appointed in the same year. The Learned Senior Counsel took the argument further and submitted that since the appointment of the TNPSC selected candidates came only in the year 1986, only those candidates under Rule 10(a)(i)(1) would be



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rendered junior who were appointed after 1986, but those, who were appointed earlier, would have to be held to be senior to the TNPSC selected candidates. We are not impressed by this, as we have already pointed out that under Rule 23(a) (i) of the Tamil Nadu State and Subordinate Services Rules, the persons who were in service, could not be rendered junior by the regularization of the ad-hoc candidates at later stage. This G.O.Ms. No. 1813, therefore, has to be interpreted in the light of Rule 23(a)(i), which was a General Rule and applicable to all the appointments. After all, 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)(i) of the General Rules. For this reason, the argument must fail.

25. Mr.Senthil Jagadeesan, Learned Counsel appearing on behalf of the respondents urged that the act of regularization of these P.G. Assistants under Rule 10(a)(i)(1) itself was contradictory to the Service Rules, inasmuch as it was in breach of Rule 2(c), 4, 5 and 11 of the Tamil Nadu Higher Secondary Education Service Special Rules and that was subject to challenge in Writ Petition No. 9719 of 2005. Since it is already a pending matter before the High Court and since that Writ Petition is already segregated from the group of Writ Petitions, we do not wish to offer any comment on that issue. This is more particularly so, because as the things stand today and at least insofar as the present controversy is concerned, it relates only to the fact of seniority. The said contention is not apposite to the present case.

26. Mr.C.Selvaraju, Learned Senior Counsel for the contesting respondent invited our attention to the decision in case of State of Tamil Nadu and Anr. Vs. E. Paripoornam & Ors. reported in 1992 Supp. (1) SCC 420, which was the case pertaining to the seniority of the teachers, who were appointed temporarily. Those were also the teachers appointed under Rule 10(a)(i)(1) of the Tamil Nadu State and Subordinate Services Rules. Subsequently, they were regularized for the limited purpose of increments. The order of regularization itself denied their previous service for the purpose of determining the seniority. This Court came to the conclusion that while determining the seniority, the Court could not



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count that service for the purpose of seniority. In para 14, this Court observed:-

"14. Apart from that, Rule 10(a)(i)(1) provide for making of temporary appointments when it is necessary in the public interest to do so owing to an emergency which has arisen for filling a vacancy immediately. Such appointments are made otherwise than in accordance with the procedure prescribed under the Rules. In the instant case, the respondents were appointed temporarily and otherwise than in accordance with the Rules. They were later selected along with others for direct recruitment by the Public Service Commission. they were not entitled to count their temporary service for seniority. In A.P.M.Mayankutty Vs. Secretary, Public Service Department, this Court observed that the services rendered by the applicants under Rule 10(a)(i)(1) cannot be considered for the purpose of seniority, as such appointment is a matter of stop-gap, emergency or fortuitous arrangement."

Earlier, in para 13, referring to Rule 35(a), according to which the seniority is fixed, the Court proceeded to observe:-

13.The service rendered in the temporary post is available either for earning increments or for commencement of probation. That would be clear from Rule 23 (a). Consistent with the Rule 23(a), the Government in the order of regularization has directed that the incumbents are eligible for increments from the date of their regularization, as they are fully qualified to hold the post on that date. The increments already sanctioned to them during their service as temporary Junior Professors prior to regular appointment have been ratified by the said order. The High Court was plainly in error in ignoring the statutory rules and the terms and conditions of the order of regularization of services." (Emphasis supplied) The emphasized portion, undoubtedly, presents out a clear position that the language of the G.O.Ms., offering regularization, is of utmost importance.



Therefore, it is clear that that second condition will have to stay as it is."

22. In the above decision, the Hon'ble Supreme Court has come up with a succinct distinction that the benefit of retrospective regularization is available only for earning increments or for commencement of probation in terms of Rule 35 (aa) of the erstwhile Tamil Nadu State and Subordinate Service Rules and it cannot be considered for seniority. The placement of the private respondents above the petitioners in the seniority list is directly in contravention of the ruling of Hon'ble Supreme Court on the subject.

23. The learned Senior Counsel would then proceed to refer to a division bench decision of this Court reported in (2012) 7 MLJ 513 in the case of S.P.Pathel Raj and Ors Vs. VE.Vairappan and Ors in W.A.Nos.1704 of 2010 and 304 & 305 of 2011. The learned division bench has held that retrospective regularization of temporary appointees will not confer any right on seniority and they should be placed below the candidates selected by the Commission. One other decision has also been referred to in respect of a batch of writ petitions in W.P.Nos.23302 of 2018 etc., dated 27.04.2019, by a learned Single Judge of this Court. However, this Court finds that the observations made therein may not have any bearing on this case, as the decision has been passed entirely on the factual matrix of that case. Moreover, this Court does not find any statement of law made in the judgment. Therefore, the observations of the learned Judge are not specifically referred to herein.

24. The learned Senior Counsel after making reference to the above decisions, concluded his arguments by submitting that the fixation of seniority as between the petitioners and the private respondents is contrary to the rules and the settled legal principles on the subject matter and in such circumstances, the impugned seniority list is liable to be interfered with by this Court.

25. Per contra, the learned Additional Advocate General Mr.R.Neelakandan, appearing for the official respondents would submit that the seniority list has been fixed in terms of the then existing Rule 35(aa) of the erstwhile State and Subordinate Service Rules. According to him that the date of appointment is the only crucial consideration in the matter of fixation of inter se seniority. The private respondents admittedly had been appointed much earlier to the year 2012 in the feeder grade and their promotion had been correspondingly antedated as a consequence of grant of relaxation, regularising their services as Junior Assistants from the date of their original appointment in 2007.



26. He would in this regard submit that there was an administrative delay in deputing the private respondents for the mandatory training when they were working as Junior Assistants, for no fault of their's. The Government therefore felt impelled that the delay ought not to affect their further career progression. In the said circumstances, after completion of their training, necessary relaxation has been granted to them towards regularizing their services as Junior Assistants with effect from the date of their initial appointment. Once their services had been regularized as Junior Assistants from the date of their initial appointment, as a corollary, all other benefits would have to automatically follow viz., promotion to the next higher post of Assistant etc. According to the learned Additional Advocate General that the petitioners herein were not even borne on any cadre in the Government Service, when the private respondents came to be appointed as early in the year 2007, as Junior Assistants. In such circumstances, these petitioners cannot claim to have any legitimate grievance as against the grant of higher seniority to the private respondents.

27. A detailed counter affidavit has been filed on behalf of the official respondents. The substance of the objections of the official respondents to the relief being granted to the petitioners herein are stated in paragraph Nos.5 to 9, which are re-produced hereunder for better clarity:

"5. It is respectfully submitted that prior to and up to 2012, all the vacancies arising in the post of Assistant were filled up only by promotion from the categories of Junior Assistant, Typist and Steno Typist. The provision for direct recruitment of Assistant was made in the year 2010, vide G.O.Ms.No.47, Commercial Taxes and Registration (M2) Department, dated 09.04.2010 and the recruitment of Direct Assistants was done in December, 2012.

6. It is respectfully submitted that the writ petitioners herein were selected as Assistant through Combined Sub-ordinate Service Examination-I through Tamil Nadu Public Service Commission and allotted to Registration Department and posting orders were issued to them by the second respondent herein.

7. With regard to the averments made in paragraph 5 of the affidavit, it is respectfully submitted that Thiru.R.Sridhar, the third respondent herein, was appointed as Junior Assistant on compassionate grounds on 12.03.2007. For the



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candidates appointed on compassionate grounds, the concurrence of the Tamil Nadu Public Service Commission had to be obtained for regularization of their services as per the procedure that was in vogue at that point of time. Hence, after obtaining the concurrence of Tamil Nadu Public Service Commission, his services in the post of Junior Assistant were regularized w.e.f. 12.03.2007 vide G.O.(2D) No.118, Commercial Taxes and Registration (K) Department, dated 03.08.2011. He had undergone Foundational Training at Bhavanisagar from 13.09.2011 to 11.11.2011. Due to administrative reasons, he could not be sent to the Foundational Training at Bhavanisagar during his period of probation. Hence, by relaxing rule 34(a) of the Tamil Nadu Ministerial Service Rules, vide G.O.(3D) No.18, Commercial Taxes and Registration (K) Department, dated 16.10.2012 his probation was declared to have been completed on 11.03.2009. Subsequently, his name was included in the year 2011-12 Assistant panel and he joined duty as Assistant on 26.11.2012 F.N.

8. It is submitted that Thiru.R.Sridhar, the third respondent herein, had passed all the Department Tests and qualified to hold the post of Assistant in the year 2010. Hence, he submitted an appeal to the second respondent herein, to consider his name for inclusion in the Assistant panel for the year 2010-11 and restore his seniority on par with his juniors.

9. It is submitted that the second respondent herein, considered his appeal according to relevant service rules, and has restored his seniority in the panel of Assistants for the year 2010-11, vide proceedings No.21550/K1/2013, dated 22.07.2013. Since juniors to the third respondent herein in the post of Junior Assistant and Typist were included in the year 2010-11 panel, his date of regularisation in the post of Assistant was fixed as 11.06.2010 on par with his junior."

28. According to the learned Additional Advocate General, apart from the merits of the challenge, the writ petition is not maintainable in law as the relaxation granted in favour of the private respondents towards retrospective regularization in the cadre of Junior Assistant has not been put to challenge. The writ petition is only against the consequential fixation of seniority in the higher cadre and in such circumstances, the



writ petition itself is misconceived and liable to be dismissed on this ground alone. Even otherwise, the Government is empowered to grant relaxation under the Rules and the grant of seniority is only a consequential benefit of the relaxation and it cannot therefore be faulted with.

29. The learned Additional Advocate General would then proceed to rely on the following decisions that have been referred to, in the counter affidavit itself in brief. He would refer to a decision of the Hon'ble Supreme Court of India reported in (2011) 3SCC 267, in the case of Pawan Pratap Singh & Ors Vs. Reevan Singh & Ors in C.A.No.9906 of 2003 dated 10.02.2011. According to him that as per the above decision that the inter se seniority in a particular service has to be determined as per the Service Rules. The date of entry in a particular service or the date of substantive appointment is the safest criteria for fixing seniority inter se between one officer and the other recruited from different sources.

30. He would also refer to a decision of the Hon'ble Supreme Court of India, reported in (1977) 1 SCC 308, in the case of N.K.Chouhan and Ors Vs. State of Gujarat & Ors in C.A.No.463 of 1976 dated 01.11.1976. According to him, the above decision has held that the later direct recruits cannot claim 'deemed' dates of appointment for seniority with effect from the time, according to the rota or turn, the direct recruits vacancy arose. The seniority will depend on the length of continues officiating service.

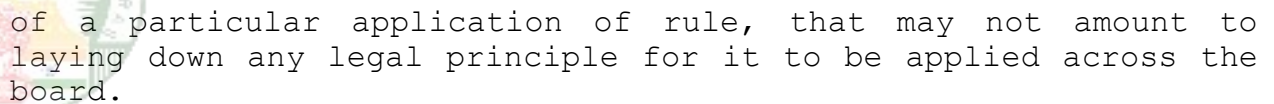
31. In the same breadth, the learned Additional Advocate General referred to the following decisions:

(i) A.Janardhana Vs. Union of India and Others, reported in (1983) 3 SCC 601.

(ii) A.N.Pathak and Others Vs. Secretariat to the Government, Ministry of Defence and Another, reported in (1987) (supp) SCC 763.

(iii) K.Meghachandra Singh & Ors Vs. Ningam Siro and Ors, in C.A.Nos.8833-8835 of 2019.

32. In the above first two decisions, according to the learned Additional Advocate General that the later direct recruits cannot claim seniority from a date before they were borne in the service and the slots cannot be kept reserved for the direct recruits for retrospective appointments. The last decision in C.A.Nos.8833-8835 of 2019, was rendered in respect



submit

34. Mr.A.Palaniappan, learned counsel appearing for respondents 4 to 22, would make the following submissions.

35. He would at the outset draw the attention of this Court to one of the specimen appointment letters issued to the some of the private respondents on compassionate ground dated 06.03.2007. According to the learned counsel that these persons, the private respondents herein, have continuously worked for several years ever since their initial appointments. As a matter of fact that they have cleared all the qualifying departmental examinations/tests in 2010 itself and became fully eligible for declaration of their probation. It was not their fault that they had been sent for requisite training belatedly, resulting in declaring of their probation and regularizing their services from the date of their initial appointment, at a later point of time.

36. The learned counsel would submit that the authorities on realising that the compassionate appointees were not at all at fault for not being sent for training promptly, issued appropriate orders granting necessary relaxation while declaring their probation from the date of their initial appointment as Junior Assistants in the year 2007. The benefit of seniority conferred upon them is a natural consequence of such relaxation granted to them. In the absence of challenge to the order of relaxation, these petitioners cannot seek to unsettle the consequential benefit arising therefrom.

37. The learned counsel would further submit that as rightly contended by the learned Additional Advocate General, the seniority has been fixed in terms of the erstwhile Rule 35(aa) and in terms of the present Section 40(2) of Act 2016. According to him that the petitioners can by no stretch of legal standards, can claim seniority prior to the date of their actual appointments on the basis of the date of notification by the Commission. Such claim is contrary to the rules and also the same is contrary to the established legal principles. According to the learned counsel that the claim of these petitioners is also hit by limitation in terms of Section 40(6) of the Act,



2016. According to the Sub-Clause 6 of Section 40, the application for the revision of seniority of a person, shall be submitted to the appointing authority within a period of three years from the date of appointment to such service. The petitioners have not chosen to approach the appointing authority under Sub-clause 6 of Section 40 and therefore, the claim is barred by limitation and the writ petition is liable to be dismissed on this ground alone.

38. The learned counsel would then refer to G.O.Ms.No.56, Personnel and Administrative Reforms (B) Department dated 17.04.2012. According to him, the Government Order in paragraph No.9 would clarify how the inter se seniority between the directly recruited and the promotee Assistants to be arranged with reference to Rule 35(aa) of the erstwhile Tamil Nadu State and Subordinate Service Rules. According to him that if the date of appointment is taken as a criterion, then, the private respondents had been appointed earlier to the petitioners and as such, there cannot be any legitimate grievance as against the seniority assigned to them. According to him, the said Government Order further brought about an amendment to the Special Rules that out of two substantive vacancies, one Assistant will be filled up by direct recruitment which meant the ratio as between the direct recruit and the promotee is 1:1. The said Government Order was issued as early as on 17.04.2012 and this fact has not been conveniently revealed by the petitioners in their affidavit. They have not chosen to disclose the issuance of the above G.O. for serving their own ends.

39. The learned counsel then proceeded to refer to a few decisions in his support. He would at the outset refer to the landmark constitution Bench decision of the Hon'ble Supreme Court of India, reported in (1990) 2 SCC 715, in the case of Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra and Ors. This Courts attention has been drawn to paragraph Nos.13 and 47(B), which are extracted hereunder:

"13. When the cases were taken up for hearing before us, it was faintly suggested that the principle laid down in Patwardhan's case was unsound and fit to be over-ruled, but no attempt was made to substantiate the plea. We were taken through the judgment by the learned counsel for the parties more than once and we are in complete agreement with the ratio decidendi, that the period of continuous officiation by a government servant, after his appointment by following the rules applicable for substantive appointments, has to be



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taken into account for determining his seniority; and seniority cannot be determined on the sole test of confirmation, for, as was pointed out, confirmation is one of the inglorious uncertainties of government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies. The principle for deciding inter se seniority has to conform to the principles of equality spelt out by articles 14 and 16. If an appointment is made by way of stop-gap arrangement, without considering the claims of all the eligible available persons and without following the rules of appointment, the experience on such appointment cannot be equated with the experience of a regular appointee, because of the qualitative difference in the appointment. To equate the two would be to treat two unequals as equal which would violate the equality clause. But if the appointment is made after considering the claims of all eligible candidates and the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules made for regular substantive appointments, there is no reason to exclude the officiating service for purpose of seniority. Same will be the position if the initial appointment itself is made in accordance with the rules applicable to substantive appointments as in the present case. To hold otherwise will be discriminatory and arbitrary. This principle has been followed in innumerable cases and has been further elaborated by this Court in several judgments including those in *Baleshwar Dass v. State of U.P. and others*, [1981] 1 SCR 449, and *Delhi Water Supply and Sewage Disposal Committee and others v. R.K. Kashyap and others*, [1989] Supp. 1 SCC 194, with which we are in agreement. In *Narender Chadha and others v. Union of India and others*, [1986] 1 SCR 211, the officers were promoted although without following the procedure prescribed under the rules, but they continuously worked for long periods of nearly 15-20 years on the posts without being reverted. The period of their continuous officiation was directed to be counted for seniority as it was held that any other view would be arbitrary and violative of Articles 14 and 16. There is considerable force in this view also. We, therefore, confirm the principle of counting towards seniority the period of continuous officiation following an appoint-



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ment made in accordance with the rules prescribed for regular substantive appointments in the service.

47. To sum up, we hold that:

(A)

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

40. The above ruling of the Hon'ble Supreme Court would directly apply to the claim of the private respondents. The appointments of the private respondents might have been made initially without following the procedure in view of providing immediate employment assistance to the deceased family, nevertheless, once the appointee continued in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will have to be counted. Once, the period of service is counted, as in the present case, the seniority is an automatic attendant benefit to be enjoyed by the promotees.

41. The learned counsel would then refer to a decision reported in (1984) 4 SCC 450, in the case of O.P.Singla and Another Vs. Union of India and Ors. He would draw the attention of this Court to paragraph No.30, which is extracted hereunder:

"30.This order shows that, firstly, by a notification dated March 13, 1972, the Administrator created temporary posts in the Service under Rule 16(1); secondly, four promotees were appointed to those posts in the Delhi Higher Judicial Service; and thirdly, that they were appointed 'till further orders'. The appointments were neither ad-hoc, nor fortuitous, nor in the nature of stop-gap arrangement. Indeed, no further orders have ever been passed recalling the four promotees and, others similarly situated, to their original posts in the subordinate Delhi Judicial Service. Promotees who were appointed under Rule 16 have been officiating continuously, without a break, as Additional District and Sessions Judges for a long number of years. It is both unrealistic and unjust to treat them as aliens to the Service merely because the authorities did not take up to



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the necessity of converting the temporary posts into permanent ones, even after some of the promotees had worked in those posts from five to twelve years. Considering the history of the Delhi Higher Judicial Service, it is clear that the phrase 'till further orders, is only a familiar official device to create and perpetuate temporary posts in the Service when the creation of permanent posts is a crying necessity. The fact that temporary posts created in the Service under Rule 16(1) had to be continued for years on end shows that the work assigned to the holders of those posts was, at least at some later stage, no longer of a temporary nature. And yet, instead of converting the temporary posts into permanent ones, the authorities slurred over the matter and imperilled, though unwittingly, the reasonable expectations of the promotees. Unwittingly' because, no one appears to have been interested in belittling the contribution of the promotees who held temporary posts in the Service or in consciously jeopardising their prospectus. The tragedy is that no one was interested in anything at all. Or else, why was direct recruitment not made from time to time, at regular intervals? If that were done, the undesirable situation which confronts us to-day could have been easily avoided. The proviso to Rule 7 prescribes a system of quota and rota. why was that rule put in cold storage by creating temporary posts in the Service when permanent posts were clearly called for? Permanent posts could have been allocated to direct recruits and promotees in the ratio of one to two. In these circumstances, it will be wholly unjust to penalise the promotees for the dilatory and unmindful attitude of the authorities. It is not fair to tell the promotees that they will rank as juniors to direct recruits who were appointed five to ten years after they have officiated continuously in the posts created in the Service and held by them, though such posts may be temporary. This Court, at least, must fail them not."

42. In the above matter, the Hon'ble Supreme Court has held that it is not fair to deny the promotees their due seniority as against the direct recruits who were appointed several years after the promotee started officiating in the post.

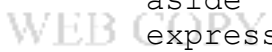
43. The learned counsel would refer to yet another decision of the Hon'ble Supreme Court reported in (1998) 4 SCC 456, in



the case of Jagdish Ch.patnaik and Ors Vs. State of Orissa and Ors. and this Court's attention has been drawn to paragraph No.34, which is extracted hereunder:

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"34. The only other contention which requires consideration is the one raised by Mr. Raju Ramachandran, learned Senior Counsel appearing for the intervenors to the effect that expression 'recruitment' and 'appointment' have two different concepts in the service jurisprudence and, therefore, when Rule 26 uses the expression 'recruited' it must be a stage earlier to the issuance of appointment letter and logically should mean when the selection process started and that appears to be the intendment of the Rule Makers in Rule 26. We are, however, not persuaded to accept this contention since under the scheme of Rules a person can be said to be recruited into service only on being appointed to the rank of Assistant Engineer, as would, appear from Rule 5 and Rule 6. Then again incase of direct recruits though the process of recruitment starts when the Public Service Commission invites applications under Rule 10 but until and unless the Government makes the final selection under rule 15 and issues appropriate orders after the selected candidates are examined by the Medical Board, it cannot be said that a person has been recruited to the service. That being the position it is difficult for us to hold that in the Seniority rule the expression 'recruited' should be interpreted to mean when the selection process really started. That apart the said expression 'recruited' applies not only to the direct recruits but also to the promotees. In case of direct recruits the process of recruitment starts with the invitation of application by the Commission and in case of promotees it starts with the nomination made by the Chief Engineer under rule 16. But both in the case of direct recruits as well as in the case of promotees the final selection vests with the State Government under rules 15 and 18 respectively and until such final selection is made and appropriate orders passed thereon no person can be said to have been recruited to the service. In this view of the matter the only appropriate and logical construction that can be made of Rule 26 is the date of the order under which the persons are appointed to the post of Assistant Engineer. It the crucial date for determination of seniority under



44. In the above case, the Hon'ble Supreme Court has brushed aside and dismissed the contention raised therein that the expression "recruited" must logically to be taken to mean the stage earlier to the issuance of the appointment letter, when the selection process started. The Hon'ble Supreme Court ultimately held that "recruited" means only on being actually appointed to service and not earlier. The learned counsel would therefore submit that the seniority claimed by the petitioners from the date earlier to their appointment and joining service in December 2012, on the basis of the year of vacancy, has to be discountenanced by applying the above ruling of the Hon'ble Supreme Court.

"13. It was also contended on behalf of the respondents before the Tribunal, and is also reiterated here, that the respondents are entitled to reckon their seniority from 1970 and 1971 as they were appointed against the vacancies of those years. It is pointed out that the advertisement in 1970-71 for direct recruitment on the posts of Asstt. Engineer was issued by the Public Service Commission on 6.12.1971 and the result was thereafter published which indicated that all the respondents had been selected. They were also directed to appear before the Medical Board. The order of appointment was, however, passed on 3.1.1972. The respondents, therefore, claim seniority with effect from 1970 and 1971 on the ground that they were appointed against the vacancies of 1970 and 1971. They claim that their seniority may be ante-dated.

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"32. The next question for consideration is whether the year in which the vacancy accrues can have any relevance for the purpose of determining the seniority irrespective of the fact when the persons are recruited? Mr. Banerjee's contention on this score is that since the appellant was recruited to the cadre of Assistant Engineer in respect of the vacancies that arose in the year 1978 though in fact the letter of appointment was issued only in March, 1980, he should be treated to be recruit of the year 1978 and as such would be senior to the promotees of the years 1979 and 1980 and would be junior to the promotees of the year 1978. According to the learned counsel since the process of recruitment takes a fairly long period as the Public Service Commission invites application, interviews and finally selects them whereupon the Government takes the final decision, it would be illogical to ignore the year in which the vacancy arose and against which the recruitment has been made. There is no dispute that there will be some time lag between the year when the vacancy accrues and the year when the final recruitment is made for complying with the procedure prescribed but that would not give a handle to the Court to include something which is not there in the rules of seniority under Rule 26. Under Rule 26 the year in which vacancy arose and against which vacancy the recruitment has been made is not at all to be looked into for determination of the inter se seniority between direct recruits and the promotees. It merely states that during the calendar year direct recruits to the cadre of Assistant Engineer would be junior to the promotee recruits to the said cadre. It is not possible for the Court to import something which is not there in Rule 26 and thereby legislate a new rule of seniority. We are, therefore, not in a position to agree with the submission of Mr. Banerjee, the learned Senior Counsel appearing for the appellants, on this score."

15. In view of the above, this plea has to be rejected, particularly as the judgment, of which a portion has been extracted above, related to the



same Service Rules with which we are concerned in the present case."

46. The above observations of the Hon'ble Supreme Court, is the reiteration of the ruling of its earlier decisions referred to supra in the case of Jagdish Ch.patnaik and Ors Vs. State of Orissa and Ors., reported in (1998) 4 SCC 456.

47. Lastly, the learned counsel would refer to a decision of a division bench decision of this Court rendered in W.A.Nos.302 of 2014 etc., dated 28.05.2015. He would rely on paragraph Nos.22 to 24, herein below:

"22. Therefore, the above statutory provisions, namely, Rules 10 a (i) (1) and 48 would empower the executive/appointing authority to appoint persons on compassionate grounds in regular vacancies. Further, as there was inherent risk in the process in the event of non-selection of the dependant by the Tamil Nadu Public Service Commission in the normal channel, which would cause loss of job and defeat the very purpose of the scheme, and also as the same would run counter to the Government instructions, in order to not to cause embarrassment to such compassionate appointees, the Government has come out with G.O.Ms.No.156, dated 16.07.1993, directing that the dependants of deceased Government servants, who are technically or professionally qualified, be appointed by the appointing authorities concerned in the lowest category of post for which his/her qualification is the minimum prescribed in the relevant service rules for direct recruitment, temporarily in the first instance, provided there are vacancies and the condition prescribed for appointment on compassionate grounds are satisfied, and, thereafter, their services will be regularised with effect from the date of appointment after obtaining the concurrence of the Tamil Nadu Public Service Commission under latter part of Regulation 16 (b) of the Tamil Nadu Public Service Commission Regulations, 1954, thereby also waiving the passing of Tamil Nadu Public Service Commission examination for persons like the writ petitioner, who were appointed on compassionate ground. Following the said G.O.No.156, the Transport Commissioner forwarded a proposal to the Government for issue of order of the Government for the regular appointment of the writ petitioner. Thereafter, the Tamil Nadu Public Service Commission was consulted for



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concurrence for the regular appointment of the writ petitioner, namely, S.K.M.Sivakumaran. Pursuant thereto, the Commission, has accorded its concurrence under the later part of Regulation 16 (b) of its Regulations for regular appointment of the writ petitioner as Motor Vehicle Inspector, Grade-II, with effect from 16.07.1993, subject to the condition that he should be physically fit for the post. The Government, after examining the proposal of the Transport Commissioner and carefully taking into consideration the views of the Commission, issued G.O.(2D) No.63, Home (Transport-II) Department, dated 25.03.1999, appointing writ petitioner-S.K.M.Sivakumaran as Motor Vehicle Inspector Grade-II on compassionate grounds on regular basis with effect from 16.07.1993. The said Government Order, in the absence of any challenge, has become final. Were respondents 4 and 5 really aggrieved, nothing prevented them from challenging the said Government Order.

23. In this regard, Rule 35 (aa), which is a crucial provision for fixation of seniority in a service, class, category or grade, where the normal method of recruitment to that service, class, category or grade is by more than one method of recruitment, would come into play. According to the said rule, 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.

24. In the case on hand, the writ petitioner was neither reduced to a lower rank as a punishment nor were there any criminal/disciplinary proceedings pending against him. Therefore, definitely, his seniority had to be fixed with reference to the date on which he was appointed to the service, which was 28.12.1992. It may be true, respondents 4 and 5 were promoted to Grade-I on 12.03.1998 whereas the writ petitioner was promoted on 11.10.1999, though he was appointed prior to the said respondents. It all happened due to no fault of the writ petitioner, but for the lackadaisical attitude of the authorities. Were the authorities



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diligent enough in the discharge of their duties, the order of regularisation of the writ petitioner would have been issued immediately after G.O.Ms.No.156, dated 16.07.1993, or after some reasonable time thereafter for obtaining the views and concurrence of the Tamil Nadu Public Service Commission, in which event, the writ petitioner would have been promoted to Grade-I earlier to respondents 4 and 5 and there could not have been the issue of the writ petitioner not fulfilling the conditions of Rule 3 of Tamil Nadu Transport Service Rules. The authorities took six long years to give the benefit of the said G.O. to the writ petitioner, though the same was given retrospective effect. Such huge delay on the part of the authorities cannot be attributed to the writ petitioner and cannot be taken advantage of by respondents 4 and 5 to claim seniority. That apart, none of the provisions discussed above would indicate that the seniority of such appointees would count from the date on which their services were regularised and that such seniority has to be counted only for the purpose of increment and monetary benefits. As held by the Supreme Court in *L. Chandrakishore Singh v. State of Manipur*, 1999 (8) SCC 287, which is subsequently referred to by the very same Court in *S. Sumnyan v. Limi Niri*, (2010) 6 SCC 791, even in cases of probation or officiating appointments which are followed by a confirmation, unless a contrary rule is shown, the service rendered as officiating appointment or on probation cannot be ignored for reckoning the length of continuous officiating service for determining the place in the seniority list. Further, where the first appointment is made by not following the prescribed procedure and such appointee is approved later on, the approval would mean his confirmation by the authority shall relate back to the date on which his appointment was made and the entire service will have to be computed in reckoning the seniority according to the length of continuous officiation. The same view was earlier held by the Apex Court in *G.P. Doval v. Govt. of U.P.*, 1984 (4) SCC 329. It is also not out place to mention hereat that in *Sumnayan's* case, cited supra, the ratio laid down in *L.Chandrakishore Singh's* case, referred to above, was distinguished for the reasons that in *Sumnayan* case, the appointments in question were purely ad hoc and the appointment orders issued therein were subject to



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the terms and conditions, which include the one that the said ad hoc appointment would not entitle any seniority in the regular cadre and hence the ratio decidendi in L.Chandrakishore Singh's case was not made applicable to Sumnayan's case. However, in the case on hand, the appointment of the writ petitioner is governed by the relevant Rules and orders of the Government issued from time to time, as stated above. As such, the contention in this regard that the appointment of the first respondent was de hors the rules and hence his seniority has to be counted only from the date on which his services were regularised i.e., with effect from 25.03.1999, and the regularisation cannot have retrospective effect for the purpose of seniority but it has to be counted only for the purpose of increment and monetary benefits and, therefore, the first respondent cannot have a march over the appellants in the matter of seniority, cannot be acceded to.'

48. In the above case, the learned division bench of this Court has held that even in respect of the appointments made on compassionate ground, such persons continued and their services regularized, they would take seniority from the date of their initial appointment. On the other hand, persons who were appointed in between the date of initial appointment and the actual regularization cannot seek seniority over the compassionate appointees. The learned counsel placed strong reliance on the observations and interpretation of the rules by the learned division bench and submitted that the decision would squarely apply to the factual matrix of the present case. If the ratio as laid down by the learned division bench is to be applied, the writ petition is liable to be dismissed as devoid of merits and substance. The learned counsel would therefore submit that the seniority of the private respondents has been fixed correctly and properly which does not require interference of this Court.

49. By way of reply, the learned Senior Counsel for the petitioners would draw specific attention of this Court to the affidavit filed by one of the private respondents Mr.R.Senthil Kumar, the 15th respondent herein. In his affidavit, he has averred that he had joined as Junior Assistant on 14.03.2007 and completed his probation on 14.03.2009 and undergone requisite test and training and was promoted as Assistant in the office of the Sub-Registrar, Joint - I, Madurai on 10.01.2014 and was regularized on the same date. The fact that a person who had been appointed admittedly on 10.01.2014, as Assistant is shown as senior to the petitioners who had been appointed in December



2012, by itself is indicative of the fact that something is amiss with the assignment of inter se seniority as between the petitioners and the private respondents. Therefore, he would submit that the seniority list is liable to be re-cast in terms of the applicable rules and the judicial principles laid down by the Courts on the subject matter.

50. Heard Mr.V.Prakash, learned Senior Counsel for the petitioners, Mr.R.Neelakandan, learned Additional Advocate General for the official respondents and Mr.A.Palaniappan, learned counsel for the private respondents viz., the respondents 4 to 22.

51. The issue raised in this writ petition is pure and simple and can be put in a straight jacket perspective as to whether in the facts and circumstances, the private respondents can said to be appointed as Assistants on regular basis in terms of the rule position, justifying their seniority position over and above the petitioners or not?

52. From the detailed factual narrative as above, the dates of appointment of the petitioners and the private respondents are not in dispute. The dispute is only with reference to retrospective regularization of the private respondents as Junior Assistants and the consequential grant of retrospective promotion as Assistants and the attendant benefit of seniority from 2010 or so. In order to deal with the rival contentions, with reference to the core consideration of this Court, it is essential that the technical objections raised on behalf of the respondents need to be addressed first to clear the path towards unraveling of the nucleus of the lis before this Court.

53. The first of the technical objections raised is that these petitioners have not challenged the relaxation orders granted in favour of the private respondents which gave raise to the conferment of consequential benefit of retrospective promotion as Assistant and the attendant seniority. In the opinion of this Court, such objection may not be sustainable for the reason that these petitioners cannot said to have been aggrieved by the grant of relaxation (of rules) in favour of the private respondents as the benefit of relaxation and its impact, is entirely personal to the persons whose favour the orders were passed. The petitioners herein could not have had any stake in such benefit being conferred on the promotee Assistants. The heart burn comes only when the relaxation benefit of seniority tramples upon the rights of the petitioners in having proper seniority assigned to them over and above the private respondents.



54. As rightly contended by the learned Senior Counsel, as long as the benefits of relaxation are confined and restricted in the realm of personal enjoyment of the petitioners like earning of increment, counting of the years for other service benefits like promotion, pension etc., from the date of their initial appointment, such benefits would not have invited the present challenge. But, when such relaxation has its adverse and onerous effect on the seniority of the directly recruited petitioners as reflected in the impugned seniority list, all of a sudden, the petitioners rightly felt aggrieved and approached this Court for redressal of their grievance. It cannot be therefore gainsaid that these petitioners having not chosen to challenge the relaxation orders, cannot be allowed to challenge the consequential seniority list. Such objection on the part of the both official and private respondents, cannot be countenanced both in law and on facts.

55. On behalf of the private respondents, the learned counsel raised the plea of limitation or plea of non-exhaustion of departmental remedy available under Section 40(6) of the Act 2016. Here again, the contention of the learned counsel is to be held as misconceived and incorrect. The Sub-clause to Section 40 is with reference to revision of seniority, i.e., the revision of seniority simplicitor in a service, class or category or grade. In this case, the challenge is not revision of seniority simplicitor within the grade among a homogeneous class but the very basis of the assignment of seniority as between the direct recruits and promotees. The assailment inter se is against the basis of the so called policy adopted by the authorities concerned while fixing the seniority as between the direct recruits and promotees viz., the petitioners and the private respondents herein.

56. In the above circumstances, resorting to the departmental remedy as provided under Section 40(6) of the Act 2016, cannot be insisted upon. In any case, it appeared from the materials made available that some objections have been raised by one of the direct recruited Assistants against the tentative seniority list in 2016, but, despite the detailed objections, final seniority list came to be published on 02.02.2018, which list is impugned in the present writ petition. Even otherwise in a matter like this, when the petitioners cannot stated to have approached this Court belatedly as the point actual trigger was the issuance of the seniority list dated 02.02.2018. Therefore, it may not be fair to non-suit the petitioners on the basis of such hyper technical pleas. The reliance placed by the learned counsel on Section 40(6) of the Act, in the facts and circumstances of the case, is not helpful to him and it does not advance the cause of his case a wee bit either.



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57. Now, reverting to the principal and the core controversy, it is imperative and essential to delve into the rule position, governing the service conditions of the petitioners as well as the private respondents with particular reference to the dates of their appointments. As far as the petitioners are concerned, all of them have come through selection by the Commission, in pursuance of the notification dated 30.12.2010 and were appointed by order dated 18.12.2012. Although the learned Senior Counsel originally contended that the petitioners were appointed against the vacancies of the year 2009-10, but, the G.O referred above, particularly, G.O.(D). No.183, Commercial Taxes and Registration Department dated 31.05.2010, notify the vacancies of the year 2010-11

58. The said G.O stated that the estimated vacancies earmarked for direct recruitment were of the year 2010-11. All the 320 vacancies identified for the year were earmarked for direct recruitment. In order to appreciate the inter se claim of the parties, it is very relevant and useful to refer to the contents of the two Government Orders which were the basis of the Commission's notification issued subsequently on 30.12.2010. The Government Order G.O.Ms.No.47, Commercial Taxes and Registration Department dated 09.04.2010, was issued with reference to filling up enormous number of accumulated vacancies in the cadre of Assistants in Registration Department which had not been filled up over the years. In the order, it was disclosed that due to non-filling of hundreds of vacancies, there were practically no Assistants available for promotion to the next higher post of Sub-Registrar Grade II. In the above said backdrop, the recruitment process was set in motion for direct recruitment of Assistants for the first time. The contents of G.O.Ms.No.47, Commercial Taxes and Registration Department dated 09.04.2010, as found in paragraph Nos.2 to 4 are re-produced hereunder:

2.The Inspector General of Registration has also stated that under the Ministerial Service Rules, the post of Assistants in the Registration Department are to be filled up only by way of recruitment by transfer from the categories of Junior Assistants and Typists, who have completed probation and have passed the prescribed departmental tests. There is no provision in the Tamil Nadu Ministerial Service Rules for direct recruitment of Assistants in Registration Department. The number of substantive posts in the cadre of Assistant under the Ministerial Service in the Registration Department is 1320. There are a huge number of vacancies in the post of Assistants and there is shortage of Junior Assistants for



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getting promotion as Assistants, since there was ban on recruitment for above five years from the year 2001. It has also to be highlighted that Assistant post is the only feeder category for the post of Sub-Registrar Grade II numbering 385 posts. As there is enormous number of vacancies in the post of Assistants, a situation has arisen wherein there are no Assistants available to be promoted as Sub-Registrar Grade II. He has therefore sent proposal to Government to earmark 50% of the substantive vacancies in the post of 'Assistant' in Registration Department under direct recruitment, on regular basis, through Tamil Nadu Public Service Commission.

3. The Tamil Nadu Public Service Commission was consulted on the above proposal of the Inspector General of Registration. The Tamil Nadu Public Service Commission while agreeing to the proposal of filling up the 50% of the substantive vacancies in the post of 'Assistant' in the Registration Department by direct recruitment, on a regular basis, through Tamil Nadu Public Service Commission has stated that the post of 'Assistant' in the Registration Department shall be classified as "Non-Technical" and included under the combined Subordinate Services Examination-I for Direct Recruitment. The qualification of "Any Degree" shall be prescribed for this post to be filled by Direct Recruitment as is being prescribed for the posts of 'Assistant' in various departments included under Category-12 of Rule-2 of the Special Rules for the Tamil Nadu Ministerial Service. The unit for the purpose of allotment shall be "State" as is being maintained for the post of "Junior Assistant" in Registration Department. The Commission has requested the Government to issue necessary executive orders on the above lines and consequently, to send necessary draft amendment to the Special Rules for Tamil Nadu Ministerial Services for the Commission's Views.

4. In the circumstances, the Government accept the proposal of the Inspector General of Registration and direct that 50% vacancies be earmarked under direct recruitment in the substantive post of Assistant in Registration Department every year. On a regular basis, through Tamil Nadu Public Service Commission. The Government also direct that the post of 'Assistant' in the Registration Department shall be classified as "Non-



Technical" and included under the Combined Subordinate Services Examination-I for Direct Recruitment and the Unit for the purpose of allotment shall be "State".

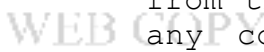
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59. On the basis of the above Government Order, subsequently, another G.O. was issued in G.O.D.No.183, dated 31.05.2010, by the Department of Commercial Taxes and Registration. The G.O. reads as under:

"2. The Government have examined the proposal of the Inspector General of Registration in the letter 2nd read above and direct that the estimate of vacancies in the post of 'Assistant' be fixed as 320 for the year 2010-11 for direct recruitment, through Tamil Nadu Public Service Commission. Since the Service Rules for apportioning direct recruitment of Assistant in the Registration Department has not yet been amended, the Government have decided to grant one time exemption for filling up of vacancies for the post of Assistant by direct recruitment through Tamil Nadu Public Service Commission and orders accordingly."

60. The above G.O. clearly stated that the vacancies in the cadre of Assistants to be fixed as 320 which cadre strength was approximately 50% of the estimate of the vacancies for the year 2010-11 by direct recruitment. Although the rules do not provide for filling up of post of Assistant by direct recruitment, a one time exemption was granted for the purpose of overcoming the acute crisis faced by the Department due to shortage of sufficient number of Assistants in the Department. In order to tide over the administrative crisis, the Department resorted to direct recruitment and thus came the notification by the Commission on 30.12.2010. The petitioners herein admittedly were selected and appointed by the Commission pursuant thereto and subsequently, the appointment orders were issued on 18.12.2012, appointing the petitioners as Assistants.

61. In appreciation of the above factual backdrop which preceded the selection and appointment of the direct recruit petitioners, there is no scope for entertaining any doubt by this Court that these petitioners have encroached upon any quota meant for promotees, while they were appointed as per the above two Government Orders. The earmarked vacancies for direct recruitment constituting 50% of the total sanctioned strength at that point of time were 320 and these petitioners came to be appointed in pursuance of such identified vacancies meant exclusively for them. In such categorical scenario, the seniority of the petitioners herein has to be reckoned either



62. As far as reckoning of seniority of the petitioners from the date of their appointment is concerned, there cannot be any controversy at all, as being direct recruits, appointed against substantive vacancies, their seniority was to be assigned from the date of their appointments. Be that as it may, before adverting to other limb of the dispute whether these petitioners were entitled to take their seniority from the date of the Commission's notification, this Court is inclined to factually examine as to whether the private respondents could said to have been appointed regularly ahead of the petitioners, with reference to the detailed submissions of the respective counsels on the basis of the materials made available on record.

64. In the first of the proceedings dated 24.11.2012, it was mentioned that the appointment of promotee Assistants was against the vacancies 2012-13 and in the second of the communication dated 06.01.2014, it was mentioned as 2013-14. It is therefore factually established that the private respondents/promotees had been promoted as against the subsequent vacancies which arose in 2012-13 and 2013-14, whereas the petitioners herein had been directly recruited in respect of the vacancies of the year 2010-11.

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learned counsels is there was an administrative delay in deputing them to the mandatory Bhavani Sagar Training for the purpose of declaring their probation as Junior Assistants and the fault of the administration ought not to affect the career progression of the promotees. The above explanation may appear to be plausible and valid on the precipitative understanding of the case, however, looking at it from the perspective of clash of interest as between the direct recruits and promotees, the explanation may not be held to be valid.

66. In 2010, none of the private respondents/promotees was said to have acquired eligibility for regular appointment as Assistants, as at that point of time, they were working as Junior Assistants and their probation was yet to be declared due to non-completion of the mandatory training. In such admitted circumstances, pitchforking the private respondent promotees into the slots exclusively meant for direct recruits in terms of the above referred two Government Orders, cannot be countenanced both in law and on facts. Firstly, the private respondent promotees were not eligible and qualified to be appointed as regular Assistants in 2010. Secondly, when admittedly the direct recruits were regularly appointed as Assistants in December 2012, for the vacancies of the year 2010-11, the claim of the private respondent promotees that they were originally appointed in 2007, as Junior Assistants and that they had successfully qualified in the departmental examination in 2010 itself and therefore they were entitled to be regularized from the date of their initial appointment as Junior Assistants with all benefits including promotion to next higher grade and seniority, is untenable and contrary to the law on the subject. Such retrospective regularization and the consequent promotion may hold good only towards personal service benefits like counting of service for the purpose of earning their increments, acquiring eligibility for promotion to the higher grades, calculation of pension etc. But, when it comes to seniority as between direct recruits and promotees, the claim of the promotees must be adjudged with reference to the rules and legal principles laid down by the Courts on the subject matter.

67. As far as the rule position is concerned, the learned Senior Counsel for the petitioners referred to Section 3 of the 2016 Act, a comprehensive Act replaced the earlier Tamil Nadu State and Subordinate Service Rules. According to him, appointed to a service means, appointment in accordance with the provisions of the Act. According to him, the private respondent promotees were initially appointed not in accordance with the provisions of the Rules or the Act and subsequently, relaxation was granted to them. However, this Court is not inclined to go into those aspects for the simple reason that as long as the appointment of the private respondent promotees did not clash



with the interest of the petitioners, they cannot be stated to be aggrieved.

68. The learned Senior Counsel sought to emphasize the fact that the initial appointments being irregular as compassionate appointees, the private respondent promotees' regularisation was dependent on the relaxation to be granted to them in terms of the Act and the Rules governing the service conditions. On the day when the petitioners were appointed, the private respondent promotees could not be said to have been fully eligible and qualified for regular appointment as Assistants. This Court is in agreement with the submissions made by the learned Senior Counsel on this aspect.

69. On behalf of the private respondents, with reference to the rule position, reliance was placed on Section 35(aa) of the erstwhile Tamil Nadu State and Subordinate Service Rules replaced by Section 40(2) of the Act, 2016, both are extracted hereunder:

"35(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 services, 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.

Provided also that where persons appointed by more than one method of recruitment are appointed or deemed to have been appointed to the service, class, category or grade on the same day, their inter se seniority shall be decided with reference to their age."



40.Seniority

(1).....

(2) 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.

Provided also that where persons appointed by more than one method of recruitment are appointed or deemed to have been appointed to the service, class, category or grade on the same day, their inter se seniority shall be decided with reference to their age."

According to the learned counsel, the date of appointment to the service, class or category alone should be reckoned when appointment is by more than one method of recruitment in terms of the above provisions.

70. The said contention is not supported by Section 3(b) of the Act which has been extracted supra. The date of appointment should be read as date of regular appointment and if the provision is to be applied, the private respondent promotees cannot claim themselves as being appointed regularly as Assistants in 2010, affecting the seniority of the petitioners. But, as far as their personal benefits are concerned, after due relaxation granted by the Government, their service from the date of initial appointment could be counted.

71. Be that as it may, the claim of the petitioners herein gets further fortified by application of Section 3(r) of the



Act, 2016. Sub-Clauses (q) and (r) are once again extracted hereunder, to elucidate the position of promotees and direct recruits on their appointments to service:

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"(q) "promotion" means the appointment of a member of any category or grade of service or class of service to a higher category or grade of such service or class;

(r) "recruited direct to a service" means when a candidate, in case his first appointment to a service, class or category has to be made in consultation with the Commission, on the date of its notification inviting applications for the recruitment and in any other case, at the time of his first appointment thereto, he is not in the service of the Government of India or the Government of a State.

Provided that, for the purpose of this definition, a person shall be deemed to be not in the service of the Government of India or the Government of the State,

(i) if a period of five years has not elapsed since his first appointment to a service of the Government of India or the Government of a State; or

(ii) if he belongs to the Scheduled Castes, Scheduled Tribes or Backward Classes;"

72. As far as the promotion means appointment of a person from any category to higher category or grade which means that appointment must be regular in terms of the Act. As far as the direct recruit in consultation with the Commission is concerned, he or she is deemed to have been appointed from the date of the notification inviting application for the recruitment. If this sub-clause is to be pressed into service, the date of appointment of these petitioners ought to have been considered from 30.12.2010, in which case, the claim of higher seniority by the private respondent promotees by no means can said to be in consonance with the rule position. In the said circumstances, the present fixation of seniority in terms of the impugned communication dated 02.02.2018, is in contravention of the rules and the same therefore cannot stand the test of judicial scrutiny.

73. Apart from the rule position as explained above, the case laws cited on behalf of the parties needed to be examined.



On behalf of the petitioners, the decision of the Hon'ble Supreme Court of India in the case of V.Sreenivasa Reddy and Ors Vs. Govt. of A.P. and Ors in C.A.Nos.6575-6580 of 1994 dated 05.10.1994 was cited and the operative portions of the ruling have also been extracted supra. The observations of the Hon'ble Supreme Court in the said decision are pointedly relevant and crucial for settling the lis between the petitioners and the private respondent promotees herein. The following observation of the Hon'ble Supreme Court in the judgment, is once again extracted hereunder:

"Under Rule 23(a) of the Rules, the temporary appointee, if sub-sequently appointed to a post borne on the cadre of any service, class or category in accordance with the Rules, shall commence his probation "from the date of such subsequent appointment or from such earlier date as the appointing authority may determine", Under Rule 33(a), the seniority of such temporary employees under rule 10(a)(i)(l), Such temporary service does not count towards probation or his seniority, shall not be determined by the date of the commencement of his service which counts towards probation. It would thus be clear that by operation of Special Rules and Rules, that PSC candidates gets his seniority from the date on which he starts discharging his duties on the post borne on the cadre and his seniority shall be determined with effect from that date while the temporary appointee under Rule 19(a)(i){l} who is subsequently appointed in accord-ance with the Rules, the temporary service rendered prior to his appointment shall not be counted towards his seniority or the temporary service even if counted towards probation shall not be counted for the purpose of seniority. Obviously to achieve the same result clause (3) of G.O.Ms. No. 413 dated August 29, 1983 directed that the temporary service of the temporary employee should be regularised from the date subsequent to the last regular candidate or candidates "appointed" or allotted for appointment from the list of successful candidates drawn by PSC based on the examination last held."

74. In the above matter, the Hon'ble Supreme Court has succinctly held that while temporary appointees being regularized at certain point of time, may count their earlier services towards probation, but, it shall not be counted for the purpose of seniority as against the Commission's candidates' seniority which is to be counted on the date when he starts



discharging his duty in the post borne on the cadre. In fact, the entire ruling of the Court and the relevant paragraphs extracted supra would squarely support the case of the petitioners herein.

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75. On behalf of the petitioners, one other decision was referred in the case of K.Madalaimuthu and Ors Vs. State of Tamil nadu and Ors in C.A.Nos.2791-2793 of 2002 dated 04.07.2006. In that case, the relevant observations of the Hon'ble Supreme Court have also been extracted supra, wherein, the Hon'ble Supreme Court has categorically held that the person who is appointed temporarily cannot said to be in service till such appointment is regularized. It is from the date on which his services are regularized, such appointee can claim seniority.

76. On the same lines, yet another decision of the Hon'ble Supreme Court of India has been referred in the case of M.P.Palanisamy and Ors Vs. A.Krishnan and Ors in C.A.Nos.3582-84 of 2009 dated 15.05.2009. In that case, the Hon'ble Supreme Court was dealing with the case of inter se seniority between the direct recruit P.G.Assistants and the promotee P.G.Assistants and in that context, held that all the P.G.Assistants recruited through the Commission who are already in service cannot be superseded by the P.G.Assistants appointed temporarily though earlier to direct recruits and regularized subsequently. In fact, while concluding as such, the Hon'ble Supreme Court has referred to an another judgment of its and its observation in paragraph No.13, as under:

"Earlier in paragraph No.13, referring to Rule 35(a), according to which, the seniority is fixed, the Court proceeded to observe:

13.The service rendered in the temporary post is available either for earning increments or for commencement of probation. That would be clear from Rule 23(a). Consistent with the Rule 23(a), the Government in the order of regularization has directed that the incumbents are eligible for increments from the date of their regularization, as they are fully qualified to hold the post on that date. The increments already sanctioned to them during their service as temporary Junior Professors prior to regular appointment have been ratified by the said order. The High Court was plainly in error in ignoring the statutory rules and the terms and conditions of the order of regularization of services." (Emphasis supplied) The emphasized portion, undoubtedly, presents out a



clear position that the language of the G.O.Ms., offering regularization, is of utmost importance. Therefore, it is clear that that second condition will have to stay as it is."

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77. Here again, the Hon'ble Supreme Court has held that such retrospective regularization of service could be available only for earning increment and for commencement of probation and not seniority. Therefore, for the purpose of assignment of seniority, the private respondent promotees certainly cannot claim the benefit of retrospective regularization of their services as Junior Assistants and then, consequent promotion as Assistants over and above the claim of the petitioners herein.

78. The learned counsel appearing for the private respondents on his turn has relied upon various decisions which have been referred to and the relevant rulings of the Court have also been extracted supra. In the case of Direct Recruits Class II Engineering Officers' Association Vs. State of Maharashtra and Ors, reported in 1990 2 SCC 715, the Hon'ble Supreme Court in a landmark judgment, after adverting to various case laws, had summed up its ruling in paragraph No.47. As far as the present lis is concerned, the learned counsel relied on paragraph B, which is again extracted hereunder:

"47. To sum up, we hold that:

(A)

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

79. According to the learned counsel that these petitioners who were continued in service, were eventually granted the benefit of regularization in accordance with the rules and therefore, in terms of the above ruling, their services ought to be counted for all purposes. In that case, the Constitution Bench of the Hon'ble Supreme Court was considering the rules of Engineering Services in the State of Maharashtra and also with reference to the application of quota rota rule as between direct recruits and promotees. In that context, the judgment came to be rendered. The ratio laid down in that judgment was that when the appointment was made from two sources, the quota rota rule to be followed. The reliance placed by the learned counsel based on the ruling of the Hon'ble Supreme Court, may not be valid, as the private respondent promotees' services were



retrospectively regularized not as Assistants, but, as Junior Assistants. But, the consideration of this Court is the effect of such regularization in the feeder grade and their promotion in the next higher grade viz., the Assistant.

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80. Even otherwise, there is no trespassing or encroachment of the quota meant for the promotees by the petitioners herein, as stated above. These petitioners had been recruited against 320 vacancies clearly earmarked for direct recruitment created for the first time under G.O.Ms.No.47 dated 09.04.2010 and G.O.D.No.183, dated 31.05.2010. The petitioners herein were slotted in those vacancies which cannot be altered to their detriment by super imposing the private respondent promotees in those slots. Therefore, the decision relied on by the learned counsel for the private respondent promotees does not advance their case at all.

81. The learned counsel for the private respondents also relied on the decision of the Hon'ble Supreme Court reported in 1984 4 SCC 450 in the case of O.P.Singla and Another Vs. Union of India and Others. This Court's attention has been drawn to paragraph No.30 which has been extracted supra. The decision was rendered particularly on the basis of the facts therein and the ruling cannot therefore ipso facto be imported in the factual matrix of the present case. The learned counsel referred to two other decisions of the Hon'ble Supreme Court one is 1998 4 SCC 456 in the case of Jagdish Ch.Patnaik and Ors Vs. State of Orissa and Ors and the another one is 1999 9SCC 596 in the case of Ajit Kumar Rath Vs. State of Orissa and Ors. In both the decisions, the Hon'ble Supreme Court had dealt with peculiar factual aspects of those cases and premised its decisions on that basis. The decisions as such cannot be blindly or uncritically applied herein.

82. The learned counsel lastly relied on the learned division bench order of this Court rendered in W.A.Nos.302, 425 & 855 of 2014, dated 28.05.2015. Although this Court finds that there are certain observations in favour of the contentions raised on behalf of the private respondents, yet, the facts of this case can be clearly distinguished from the facts of that case. Even otherwise, the learned division bench had no occasion to refer to the rules which have been referred to herein which clearly tilted the balance in favour of the petitioners herein. The learned division bench however has not laid down any proposition of law having precedential value as the decision was primarily and principally rendered in the context of the facts and circumstances of that case.

83. On the other hand, the relevant rules relied upon by the learned Senior Counsel for the petitioners read with the legal



principles laid down by the Hon'ble Supreme Court, fully support the claim of the petitioners herein as against the private respondents. The learned counsel for the private respondents made another submission about the issuance of subsequent G.O.Ms.No.56 dated 17.04.2012, Personnel Administrative Reforms Department. The order sought to amend the special rules for any Ministerial Services in respect of Registration Department on filling up 50% of the vacancy in the post of Assistant by direct recruitment. The learned counsel referred to paragraph No.9 of the Order which mandate the fixation of inter se seniority between directly recruited Assistants and the Assistants by promotion, which is extracted hereunder:

"9.The inter se seniority between the directly recruited Assistants and the Assistants appointed by promotion shall be as per the provisions laid down in Rule 35(aa) of the General Rules for the Tamil Nadu State and Subordinate Services."

84. According to the learned counsel, as per the above amendment, the date of appointment is a crucial factor for determining the inter se seniority. This Court has no quarrel with the submission of the learned counsel. The Rule 35(aa) and the replaced Section 40(1) & (2) of the Act, 2016, have already been referred to and considered earlier in this decision.

85. In any event, as far as the recruitment of these petitioners is concerned, they were appointed in pursuance of the notification issued by the Commission dated 30.12.2010. All of them have been accommodated in the quota meant for them in terms of the aforementioned two Government Orders. In that context, there is no legal significance of G.O.Ms.No.56, dated 17.04.2012, in respect of the petitioners' claim in the writ petition.

86. In the said circumstances, this Court has no hesitation to hold that the petitioners have made out a clear case for grant of relief as prayed for in the writ petition.

87. For the above said reasons, the impugned proceedings bearing Ref.No.21380/nf1/2016, dated 07.06.2016 and consequential impugned seniority list bearing Ref.No.18/nf1/2018, dated 02.02.2018 are hereby set aside.

88. The official respondents are directed to prepare a fresh seniority list and assign proper seniority as between the petitioners and the private respondents herein in terms of the above ruling of this Court.



89. The official respondents are also directed to comply with the above direction within a period of eight weeks from the date of receipt of a copy of this order.

90. With the above directions, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

gsk

To

1. The Secretary,
The Government of Tamil Nadu,
The Commercial Taxes and
Registration Department,
Fort St. George,
Chennai - 600 009.
2. The Inspector General of Registration,
O/o.The Inspector General of Registration,
No.100, Santhome High Road,
Chennai - 28.

+1cc to Mr.A.Palaniappan, Advocate, S.R.No.14305

+1cc to Mr.K.Krishnamoorthy, Advocate, S.R.No.14422 (14/03/2022)

W.P.NO.23342 OF 2019 AND
W.M.P.NOS.23087 & 22717 OF 2019

BR(CO)
PBS/04/03/2022