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W.P.(MD)Nos.12670, 13764 and 20484 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.04.2022

PRONOUNCED ON : 04.11.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.12670, 13764 and 20484 of 2017
and

W.M.P.(MD)Nos.9772 to 9774, 10742,
10743, 16754 and 16755 of 2017

W.P.(MD)No.12670 of 2017:

1. P. Murugavel
2. K. Carolin Mary
3. A.Rajeswari
4. K. Rajasekaran
5. Rathinapandi
6. Senapathi
7. G. Hemalatha
8. Vetriselvan
9. A.Damodharan
- 10.S. Murugesan
- 11.T. Suryakumar
- 12.S.Sudharani
- 13.M.Ukkirapandi
- 14.S.Siva Balaji
- 15.S.Amirtharaj



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- 16.T. Sudarson
- 17.M.Syed Mohamed Shameem
- 18.R.Sasipriya
- 19.D. Raghupathi
- 20.C. Mariyappan
- 21.Sathiyamoorthi Ambedkumar
- 22.B.Muthulakhsmi
- 23.A.Sakthivel
- 24.M. Amirtharani
- 25.S.Ilayaraja
- 26.D. Karthikeyan
- 27.M.Ramkumar
28. Eswari

... Petitioners

vs.

1. The State of Tamil Nadu,
represented by its Secretary,
Rural Development and Panchayat Raj Department,
Secretariat, Chennai.
2. The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road, V.O.C. Nagar,
Park Town, Chennai-600 003.
3. The Director/Commissioner,
Rural Development and Panchayat Raj Department,
Panagal Building, Saidapet,
Chennai-600 015.
4. The District Collector,
Collectorate Building,



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Dindigul District.

5. R.Kamalakannan
6. C.Balamurugan
7. A.Senthil Kumaran
8. P. Ravikumar
9. R. Maduraiveeran
- 10.A.Manoharan
- 11.S.Vasantha
12. P.Saroja
- 13.R.Sridharan
14. V.Kandeepan
- 15.P.Rajasekaran
- 16.P.Patchaimuthu
- 17.K.Arumugam
- 18.S.Mohammed Siddiq
- 19.M.Nagendran
- 20.S.Kulanthai Therasa
- 21.S.Roja
- 22.K.Karmegam
- 23.M.Palanichamy
- 24.G.Santhidevi
- 25.V.Srinivasa Raghavan
26. M.Enjalin Martha
- 27.M.Palanichamy
- 28.S.Thilagam
29. V.Mariyammal
- 30.K. Balasundaram
- 31.M. Buvaneshwari
- 32.P. Vasuki
- 33.K.Gurusamy
- 34.V. Kathiresan



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- 35.K.Kalaiselvi
- 36.K.Tamilselvi
- 37.T. Kanmani
- 38.T. Mahalakshmi
- 39.P. Arunkumaran
- 40.K.Deepalakshmi
- 41.P. Saraswathi
- 42.H.Ameethaselvi
- 43.C.Sarojini
- 44.P.Kasthuri Thilagam
- 45.K.P. Ramanathan
- 46.R. Muthulakshmi
- 47.K.Sumathi
48. A.Gopalakrishnan
- 49.R.K.Ramachandran
- 50.R. Sumathi
- 51.P.Nambidevi
- 52.R.P. Buvaneshwari
- 53.M. Kavitha
- 54.P. Suganthi
- 55.M.Alagumani
- 56.R.Balasubramanian
- 57.A.Ilangotharan
- 58.S. Rajamohan
- 59.S. Muthusamy
- 60.P.Deisy Flora
- 61.K.Perinbamani
62. R. Ramakrishnan
63. Sundaravadivel
64. Dhanapandian
65. Thangadurai
66. R. Suganthi



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67.P. Anitha Ruby

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned Orders passed by the 4th respondent in Na.Ka. No.2292/2011/௨௭.௮.1(1), dated 25.11.2011, Na.Ka.No.2292/2011/ ௨௭.௮.1, dated 28.12.2011, Na.Ka. No.2292/2011/௨௭.௮.1, dated 29.06.2012 and Impugned Seniority List issued by the 4th respondent in his Proceedings Na.Ka.No.135/2014/Vu.Va.1, dated 29.02.2016 and consequentially the Order of Promotion issued by the 4th respondent in his Proceedings Na.Ka.No.1759/2017/Vu.Va.2(1), dated 17.06.2017 and to quash the same as illegal and consequently, to direct the 4th respondent to draw the inter-se seniority list of Assistant Directly Recruited through TNPSC and Promotee Assistants by placing the directly recruited Assistants ahead of the Promotee Assistants in the light of the Proceedings of the 2nd respondent in Letter No.5669/OTD-C3/2006, dated 08.07.2011 and in the light of the fact that the Promotee Assistants from the Post of Typist did not complete the One Year Junior Assistant Training as contemplated under Rule-30 (C) of the Tamil Nadu Ministerial Service Rules.

For Petitioners

: Mr.J.Lawrance

For R1, 3 and 4

:Mr.R.Baskaran

Additional Advocate General

assisted by Mr.N.Ramesh Arumugam



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For R2	Government Advocate (Civil side) : Mr.J.Anand Kumar
For R12 to 29, 31, 37 to 39, 42, 45 to 47, 49, 55 & 60	: Mr.G.Prabhu Rajadurai
For R32 to 34, 36, 41. 43, 48, 51, 54 & 56	: Mr.S.Balamurugan
For R5 to 11, 30, 35, 40, 44, 50, 52, 53, 55, 57 to 58 & 61 to 67	: No appearance

W.P.(MD)No.13764 of 2017:

P.Murugavel

... Petitioner

vs.

1. The State of Tamil Nadu,
represented by its Secretary,
Rural Development and Panchayat Raj Department,
Secretariat, Chennai.
2. The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road, V.O.C. Nagar,
Park Town, Chennai-600 003.
3. The Director/Commissioner,
Rural Development and Panchayat Raj Department,
Panagal Building, Saidapet,
Chennai-600 015.



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4. The District Collector,
Collectorate Building,
Dindigul District.

5.K.Gurusamy

6.M.Buvaneswari

7.V.Kathiresan

8.K.Kalaiselvi

9.Vasuki

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the Impugned Orders of Promotion issued by the 4th respondent in Na.Ka.No.1759/2017/உள.வ.2(1), dated 19.07.2017, in favour of the 5th respondent, Na.Ka.No.1759/2017/உள.வ.2(1), dated 19.07.2017, in favour of the 6th respondent, Na.Ka.No.1759/2017/உள.வ.2(1), dated 19.07.2017, in favour of the 7th respondent Na.Ka.No.1759/2017/உள.வ.2(1), dated 19.07.2017, in favour of the 8th respondent and Na.Ka.No.1759/2017/உள.வ.2(1), dated 19.07.2017, in favour of the 9th respondent and to quash the same as illegal.

For Petitioner

: Mr.J.Lawrance

For R1, 3 and 4

:Mr.R.Baskaran

Additional Advocate General

assisted by Mr.S.Kameswaran

Government Advocate (Civil side)



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For R2	: Mr.J.Anand Kumar
For R5 & 7	: Mr.G.Prabhu Rajadurai
For R6, 8 & 9	: Mr.S.Balamurugan

W.P.(MD)No.20484 of 2017:

P.Murugavel

... Petitioner

vs.

1. The State of Tamil Nadu,
represented by its Secretary,
Rural Development and Panchayat Raj Department,
Secretariat, Chennai.
2. The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road, V.O.C. Nagar,
Park Town, Chennai-600 003.
3. The Director/Commissioner,
Rural Development and Panchayat Raj Department,
Panagal Building, Saidapet,
Chennai-600 015.
4. The District Collector,
Collectorate Building,
Dindigul District.
5. The Personal Assistant to the Collector,
(Panchayat Development),
Dindigul District,
Dindigul.



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- 6.C.Malliga
- 7.P.Maruthairaj
- 8.M.K.Sundararaj
- 9.K.Sathiyamoorthi
- 10.L.Rayappan
- 11.P.Saravana Krishnan
- 12.S.Uma
- 13.K.Maharajan
- 14.R.Kamalakannan
- 15.R.M.Arumugam
- 16.C.Balamurugan
- 17.M.P.Sivasubramanian
- 18.A.Senthil Kumaran
- 19.P.Ravikumar
- 20.I.Shanthi
- 21.M.Tamilarasi
- 22.A.Dharmaraj
- 23.R.Renugadevi
- 24.R.Manoharan
- 25.R.Maduraiveeran
- 26.A.Manoharan
- 27.G.Sakthivel
- 28.K.Thanakodeeswaran
- 29.M.Vijayalakshmi
- 30.R.Nagalakshmi
- 31.S.Vasantha
- 32.P.Saroja
- 33.R.Sridharan
- 34.V.Kandeepan
- 35.P.Rajasekaran
- 36.P.Patchaimuthu



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- 37.K.Arumugam
- 38.S.Mohammed Siddiq
- 39.M.Nagendran
- 40.S.Kulanthai Therasa
- 41.S.Roja
- 42.K.Karmegam
- 43.M.Palanichamy
- 44.G.Shanthidevi
- 45.V.Seenivasaraghavan
- 46.M.Angelin Martha
- 47.M.Palanichamy
- 48.S.Thilagam
- 49.V.Mariammal
- 50.K.Balasundaram
- 51.M.Buvaneshwari
- 52.P.Vasuki
- 53.K.Gurusamy
- 54.V.Kathiresan
- 55.K.Kalaiselvi
- 56.K.Tamilselvi
- 57.T.Kanmani
- 58.T.Mahalakshmi
- 59.P.Arunkumaran
- 60.P.Saraswathi
- 61.H.Amithaselvi
- 62.C.Sarojini
- 63.K.P.Ramanathan
- 64.R.Muthulakshmi
- 65.K.Sumathi
- 66.A.Gopala Krishnan
- 67.R.K.Ramachandran
- 68.P.Nambidevi



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- 69.R.P.Buvaneshwari
- 70.M.Kavitha
- 71.M.Alagumani
- 72.R.Balasubramanian
- 73.S.Sundaravadivel
- 74.A.Ilangotharan
- 75.S.Rajmohan
- 76.S.Muthusamy
- 77.P.Deisy Flora
- 78.K.Perinbamani
- 79.R.Ramakrishnan
- 80.S.Dhanapandian
- 81.M.Thangadurai
- 82.M.Dhanalakshmi
- 83.Na.Balasubramanian
- 84.T.Chandrasekaran
- 85.K.Usharani
- 86.T.Balakrishnan
- 87.M.Santhakumari
- 88.S.Nagarajan
- 89.M.Marathamuthu
- 90.A.Selvi
- 91.C.Santhanalakshmi
- 92.P.Balamurugan
- 93.A.Abraham
- 94.R.Marimuthu
- 95.A.Arockiya George
- 96.D.Balasubramaniam
- 97.E.Irulayee
- 98.P.Suguna

... Respondents

***(R6 to R98 impleaded, vide Court order,
dated 13.12.2017, in W.M.P.(MD)No.18366***



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of 2017)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the Impugned Orders passed by the 4th respondent vide his proceedings Na.Ka.No. 135/2014/உள.வ1, dated 30.08.2017 and to quash the same as illegal.

For Petitioner : Mr.J.Lawrance

For R1, 3 to 5 : Mr.R.Baskaran
Additional Advocate General
assisted by Mr.S.Kameswaran
Government Advocate (Civil side)

For R2 : Mr.J.Anand Kumar

For R14, 28 to 32, 34 to 39,
41, 43 to 49, 51 to 55, 57 to
72, 77, 78 & 84 : Mr.S.Balamurugan

For R6 to 13, 15 to 27, 33,
40, 42, 50, 56, 73 to 76,
79 to 83 and 85 to 98 : No appearance

COMMON ORDER

The Writ Petition in W.P.(MD)No.12670 of 2017 is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned orders passed by the 4th respondent, dated 25.11.2011, 28.12.2011 and 29.06.2012 and impugned



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Seniority List issued by the 4th respondent in his proceedings, dated 29.02.2016 and consequential promotion in proceedings, dated 17.06.2017 and consequently, to direct the 4th respondent to draw the inter-se seniority list of Assistant Directly Recruited through TNPSC and Promotee Assistants by placing the directly recruited Assistants ahead of the Promotee Assistants in the light of the Proceedings of the 2nd respondent in Letter No.5669/OTD-C3/2006, dated 08.07.2011 and in the light of the fact that the Promotee Assistants from the Post of Typist did not complete the One Year Junior Assistant Training as contemplated under Rule-30 (C) of the Tamil Nadu Ministerial Service Rules.

2. The petitioners in this writ petition were appointed as Assistants in the year 2012 through TNPSC. The 1st petitioner namely, Murugavel, joined the office of the Block Development Officer on 28.12.2012. The petitioners had participated in the Combined Subordinate Service Examination I for the year 2009-2011 and wrote the examination on 30.07.2011 and the results were published on 08.06.2012. Upon the successful participation in the examination,



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he was called for counselling held on 23.11.2012 and on the very same day, he chose the place and was directed to report the 3rd and 4th respondents on 30.11.2012, to get an appointment order and was also directed to meet the 4th respondent and the 1st petitioner reported before the 4th respondent in person and the petitioner was made to wait until 24.12.2012. Thereafter, the petitioner was issued an appointment order on 24.12.2012 and the petitioner joined the service on 28.12.2012. Though the persons who are selected along with the petitioner were directed to appear before the 4th respondent on various dates commencing from 23.11.2012 all of them were directed to wait until 24.12.2012 and had joined only on 27.12.2012. The 4th respondent vide his proceedings, dated 14.07.2014, issued a tentative inter-se-seniority list of directly recruited Assistants and Promotee Assistants and also called for objections. The tentative inter-se-seniority list was prepared taking into consideration of the date of joining in the cadre of Assistants irrespective of the fact whether they were Promotee Assistants or directly recruited Assistants.



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3. The contention of the petitioners are that even prior to the petitioners' joining, all other Junior Assistants and Typists working in the same Department in Dindigul District were given promotion as Assistant and they were made to join prior to the petitioners so as to place them above than the directly recruited Assistants in the inter-se-seniority list. That is the reason why, the 4th respondent made the petitioners to wait to join till 27.12.2012 though they were selected much earlier. The contention of the petitioners are that since they were directly recruited Assistants they should be placed above the Promotee Assistants, since the Promotee Assistants have not completed degree examination whereas the petitioners have completed degree examination. The further contention of the petitioners are that the 4th respondent without following due process of law prepared the above mentioned seniority list, wherein, the respondents 5 and 6, respondents 9 to 32, and respondents 57 to 59 who have been promoted as Assistants in the year 2012, were placed ahead of directly recruited Assistants. Further, the respondent Nos. 7, 8, 60 to 67 who have been promoted in the year 2013 were also placed ahead of the directly recruited Assistants. Further, the



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respondent Nos.33 to 56 who were employed as Typists and have been promoted as Assistants in the year 2011 were also ahead of the directly recruited Assistants. As far as the respondent 62 is concerned, he has been promoted as an Assistant during the year 2014 have also been placed ahead of the directly recruited Assistants i.e. the petitioners herein. Thus, the respondent No.4 has not at all followed any procedure while preparing the above said seniority list and have deprived the legitimate promotion of these petitioners.

4. The Government of Tamil Nadu has decided to fill up 25% of substantive vacancies in the post of Assistants in the Rural Development and Panchayat Raj Department by direct recruitment through the Tamil Nadu Public Service Commission. That the G.O.Ms.No.35 dated 15.04.2015 was issued whereby, the Government has amended the Special Rules to Tamil Nadu Ministerial Services (Section 22 in Volume-3 of Tamil Nadu Service Manual). As per the above said amendment, every person who was appointed as an Assistant by direct recruitment shall be on probation for a total period of two years on duty within a



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continuous period of three years and further the directly recruited Assistant within one year period of probation shall complete the foundation training for a period of two months at Civil Services Training Institute, Bhavanisagar and pass Tamil Nadu Government Office Manual Test, Departmental Test for Officers of Panchayat Development Department and Panchayat Development Department Account Test and Account test for subordinate Officers Part 1. The petitioners have successfully undergone the above said required training and also successfully completed the above prescribed conditions.

5. Except Rural Development Department, in all other departments, the Directly Recruited Assistants are placed above than the Promotee Assistants. Whereas in the Rural Development Department, as far as the Assistant Engineer, those who were directly recruited by the Tamil Nadu State Public Service Commission, were given seniority placing them above the promotees i.e. Assistant Engineers. Further, as far as other Districts are concerned, the Direct Recruited Assistants were placed above the promotees in the Seniority List. The



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3rd respondent has issued notice seeking clarification as regards the inter-se-seniority of directly recruited and Promotee Assistants, the 2nd respondent, vide his proceedings, dated 08.07.2011, has issued clarification stating that the directly recruited ought to be placed above the Promotee Assistants. The petitioners further contended that without adverting to the above said clarification, the 4th respondent, vide his proceedings, dated 14.07.2014, has issued the tentative seniority list placing the Assistants below the Promotee Assistants. The 4th respondent has called for objections and the petitioners have submitted a detailed Review Petition praying the 4th respondent to reconsider the above said Tentative Seniority List. It was brought to the notice of the 4th respondent in the said petition that the petitioners were appointed against the vacancies which were existing during that particular period. Hence, the petitioner's names should be found above Promotee Assistants in the said impugned list.

6. The petitioners further submitted that as far as the promotees are concerned, the feeder category for promotion of Assistant is concerned, it is



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Junior Assistant, Typist and Rural Welfare Officer Grade-II. Further, the persons who are appointed for these posts should have completed and should possess all the above said prescribed qualification including the training period etc., besides the probationary period. The Promotee Assistants, those who were included in the above said tentative seniority panel are not able to clear the departmental test prescribed for the promotional post. But without advertng to the same, the 4th respondent has simply prepared the panel placing ineligible persons before the petitioners. The respondents without fulfilling the said conditions, without undergoing requisite training and probationary period etc., large number of Junior Assistants, Typists, Rural Welfare Officer Grade -II were given promotion as Assistants immediately prior to the petitioners' joining in the department with an intention to deprive their legitimate promotion in time and indirectly help the incumbents who joined prior to the petitioners. The petitioners further submitted that it would be relevant to mention that as per G.O.Ms.No.16 P & AR (Personnel) (B) Department, dated 21.02.2002, the Rule 30 (c) has been inserted to the said Rules to the effect that no typist shall be eligible for promotion as



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Assistant or to the posts which carry the scale of pay of Assistant in any department unless he has undergone training as Junior Assistant for a period of one year without detrimental to the Typist Work. The respondents 33 to 57 who does not even possess the required qualification were holding the post of Assistants and their names were included in the proposed tentative list and the respondents 33 to 57 have not undergone training as Junior Assistant for a period of one year. Therefore, the petitioner submitted representation and has pointed out the serious anomaly and requested to remove the names of those Assistants who were illegally given promotion. On receipt of the above said representation, the 4th respondent has passed the impugned proceedings, dated 29.02.2016, whereby, the final inter-se-seniority list was published placing the Promotee Assistants above the directly recruited Assistants. The petitioners' objections were rejected on the ground that the seniority will be reckoned only from the date on which the candidates were appointed in the service in terms of Rule. It is the usual practice that the directly recruited Assistants will be placed above the Promotee Assistants having regard to the variation in the qualification. The



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impugned Seniority list placing the directly recruited Assistants below the Promotee Assistants is on the basis of their date of joining is not correct. While that being the position, the Government of Tamil Nadu issued a G.O.Ms.No.35, Personal and Administrative Reforms (B) Department, dated 15.04.2015, amending the Special Rules for the Tamil Nadu Ministerial Services and the amended Rule - 9 reads as follows:

“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 Rule for Tamil Nadu State and Subordinate Services.”

7. Rule 35 (aa) only says about the Seniority and it has no role to place in the case of inter-se-seniority. In so far as the inter-se seniority between the directly recruited Assistants and the Promotee Assistants is concerned, it is well settled in a catena of decision of the Hon'ble Supreme Court as well as this Court that the directly recruited Assistants should be placed ahead of the Promotee Assistants. The respondents have fixed the seniority list only on the basis of the date of joining. The Seniority of the directly recruited Assistants should be fixed



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only on the basis of the marks secured by the candidates in the examination held for the concerned recruitment. As per the rules, the seniority of the directly recruited Assistants should be only on the basis of the marks secured in the examination and not on the basis of the communal roaster. But in the present case, without even obtaining the marks of the candidates in the examination seniority list was prepared that too on the basis of the joining of the respective candidates and the same is also not in conformity with law. The respondents No.32 to 56 who were working as Typist were given promotion as Assistants, vide orders, dated 25.11.2011, dated 28.12.2011 and dated 29.06.2012. However, their promotion as Assistant is per-se illegal as they did not complete the training for Junior Assistant for the period of one year as contemplated under Rule 30 (C) of the Tamil Nadu Ministerial Service Rules. Further, the one year Junior Assistant Training shall be given after completion of the period probation. However, without following the Rule 30 (C) of the Tamil Nadu Ministerial Service Rules, the Typists were given promotion as Assistant with an intention to fix their seniority over and above the petitioners. The respondent Nos.33 to 59 did not



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complete their respective training on the crucial date. When the promotion of the Promotee Assistant is bad, the consequential seniority is not correct and as such they should be placed below the petitioners. Being aggrieved by the impugned orders, the petitioners have submitted a collectively made a representation in person to the 4th respondent, requesting not to rely on the Seniority List /Supplementary List published on 29.02.2016 by giving promotion to the illegal candidates. But without considering the representation, the respondents have passed the illegal promotion orders. Aggrieved over the same, the present writ petition is filed.

8. The respondents 1, 3 to 5 have filed a counter affidavit in W.P.(MD)No. 20484 of 2017. As far as the allegation of delay in issuing the appointment orders, the 4th respondent has submitted that original placement orders have been received by the 4th respondent from TNPSC on 04.12.2012 only. After completing formalities such as verification of certificates, allocation of places etc., (including postal communications) appointment orders have been issued on



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24.12.2012. All these formalities have been completed within 20 days and the selected individuals had joined duty from 28.12.2012 onwards. Hence, there is no lapse on the part of official respondents. The second respondent has filed an adoption counter affidavit and has adapted the counter affidavit filed by the other official respondents. The allegation that the respondents intentionally made the petitioners to wait in order to give promotion to Junior Assistant / Typist and to place Promotee Assistants above them is denied. The petitioners have received the placement order on 30.11.2012, the original order of placement from TNPSC was received by this office only on 04.12.2012. Thereafter, the 4th respondent has called all the selected candidates for certificate verification and fitness certificates. After completing all office formalities within 20 days (including postal communication) separate posting orders were sent to the individuals concerned from 24.12.2012 and the selected candidates joined duty from 28.12.2012.



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9. Further, the Promotee Assistants joined duty on the substantive vacancy meant for the promotees on a regular basis is denied. Though the respondents 6 to 81 were selected by TNPSC as Typist /Junior Assistants during the year 2009, and admittedly they are all seniors to the petitioners and directly recruited Assistants, but respondents 82 to 98 were selected by TNPSC as Junior Assistants during the year 2009, but their probation was declared belatedly for the reasons that they belatedly passed departmental examinations. Therefore, the respondents 82 to 98 are rightly placed below the petitioners and directly recruited Assistants. Hence, there is no illegality or infirmity.

10. As far as the contention that the petitioners' educational qualification is concerned, over qualification is not a criteria for fixing combined seniority between direct recruits and promotees and for getting, promotion from Junior Assistant to Assistant. Seniority was prepared based on the date of joining in the cadre of Assistant following the rule 35 (aa) of Tamilnadu State and Subordinate Service Rules.



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11. As far as the contention in para 57 of the affidavit, the respondents have submitted that there was no direct Assistant post in Rural Development, and no such recruitment, has been made prior to 2012. Therefore, the Junior Assistants and Typists were being posted and they were given promotion as Assistants. During the year 2012, the Direct Assistant post was created and recruited all over the state in Rural Development Department. At that time, there was no specific Service Rules prescribed by the Government for directly recruited Assistants even up to the year 2014. Later, the Government issued government orders, in G.O. Ms.No.35, Personnel and Administrative Reforms (B) Department, dated 15.04.2015 and clarified that the fixation of seniority of directly recruited Assistants shall be fixed as per rule 35(aa) of Tamilnadu State and Subordinate Service rules, which was issued in consonance with the Government letter No.23555/2014-1, dated 10.12.2014. Therefore, the directly recruited Assistants were rightly placed in appropriate place in the combined seniority list based on the date of joining in service as stated under common



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service rule 35(aa) of Tamilnadu State and Subordinate Rules. As per this rule, the date of joining in the Assistant cadre is alone taken into consideration for combined inter-se-seniority list. Therefore, the inter-se-seniority list was published, vide proceedings, dated 29.02.2016, as legally valid. The Government in their letter no.10103/E4/2015-7, dated 03.06.2016, have clearly stated as follows:

“....that there is no statutory provision is available to fix the inter-se-seniority between the direct recruits and promotees either on the basis of vacancies estimated year or on the date of Commission's notification and hence the Commission has already clarified Rule 35 (aa) of the Tamil Nadu State and Subordinate Service Rules for fixing inter-se-seniority between the direct recruits and promotees on the basis of date of joining of the candidates.”

12. Hence the Promotee Assistants names were rightly placed above the petitioner and other similarly placed persons as Assistants in Dindigul District. The petitioners have pointed out that number of Junior Assistants were promoted as Assistants in the year 2013 and 2014 were also placed ahead of the Direct



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Assistants. The respondents submitted that in the present case, respondents 5 to 9 had joined duty as Assistants prior to the joining of the petitioner as stated supra. Hence, the plea of the petitioner is not correct. The respondents submitted that even though there was mass (93) vacancy in Assistant cadre during the year 2009-11, separate reservation (25%) was earmarked for direct Assistants recruited under TNPSC were kept intact, whereas the remaining 75% vacancies reserved for promoted Assistants were filled up. The placement order of petitioners have been received on 04.12.2012. After verification within 20 days, the persons were given posting orders on 24.12.2012. There was no delay in issuing the appointment orders. The petitioners have referred to Assistant Engineer in Rural Development who were selected by TNPSC were placed above the name of the Promotee Assistant Engineers. The Tamilnadu Rural Development Engineer service is another category and entirely different from that of direct Assistants category. In this regard, the respondents submitted that the Government has clearly informed in letter, dated 03.06.2016, that the date of joining should be taken as criteria for fixing the inter-se seniority. Therefore, the petitioners cannot



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compare the engineering service and claim to fix the seniority ahead of the Promotee Assistants. The tentative seniority list, dated 14.07.2014, was issued prior to the amendment under Rule 35 (aa). The Rule 35 (aa) was amended through G.O.Ms.No.35, Personnel and Administrative Reforms (B) Department, dated 15.04.2015. Therefore, the petitioner cannot claim that the tentative seniority should be made official seniority list. The allegation that the Promotee Assistants whose names were included in the seniority list are not able to clear the departmental test is wrong and frivolous. The petitioner has not mentioned the names specifically, who have not cleared the department test. It is relevant to mention here that for promotion to assistant from Junior Assistant cadre, one should have passed all departmental tests and should complete Basic civil service training at Bhavanisagar civil service training Institute and after that they will be promoted as Assistants. In the instant case, all individual respondents had already completed departmental exams and basic civil service training at Bhavanisagar civil service training Institute.



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13. The allegation stated in para 11, it is absolutely false since all the Promotee Assistants were given promotion only in accordance with law and rules in vogue and there is no violation of rules and all the promotee Assistants are fully eligible.

14. As far as para 13, the allegation that the Junior Assistants / typists have not completed one year training in the cadres of Junior Assistant as contemplated under Rule 30 (c) of Tamilnadu Ministerial Service Rules is concerned, the respondents submitted that out of 63 private respondents, only 23 respondents are Typist and rests 40 in numbers are Junior Assistants. The petitioners are aware of this fact and have willfully added Junior Assistants in order to create chaos in the administration and mislead this Court. Even though 23 typists were not officiated to undergo one year training as Junior Assistants, they were permitted to serve as Junior Assistant post in addition to their regular typist work and handled all files pertaining to junior Assistants, in their respective offices and the office orders were issued by the head of the offices at relevant



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point of time to that effect which can be seen from office proceedings in this regard. Moreover, it is submitted that the time scale of pay of Junior Assistant is same to the typist (i.e.) 5200-20200+ 2400 Grade pay. At the time of giving promotion to the above mentioned typists, the petitioners were not even in service and they entered into service as Assistants only on 28.12.2012. Hence, the petitioners have no right to oppose promotion given to the Typists when they are possessed with requisite qualification and fully qualified hold office as Assistants. Further, the individual respondents were promoted in the permanent vacancies reserved for Promotee Assistants (75%) and the vacancies reserved for direct recruits (25%) were kept intact. Therefore, the petitioners who were directly recruited as Assistants joined duty in the vacancies coming under the purview of TNPSC.

15. As far as the allegation stated in para 14 is concerned, the respondents submitted that since the inter-se seniority list of Assistant cadre issued vide proceedings, dated 29.02.2016, were as per rules and in compliance with



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G.O.Ms.No.35, Personnel and Administrative Reforms (B) Department dated 15.04.2015 and Government letter, dated 03.06.2016, promotion to Deputy Block Development Officer Cadre (next promotion avenue from Assistant Cadre) are effected to the eligible Assistants under rule 39 (a) (1) of Tamilnadu State and Subordinate Service rules, vide proceedings, dated 17.06.2017. The petitioners have made collective representation on 07.06.2017 and suitable reply was sent to all petitioners, vide this letter, dated 03.08.2017, stating that their request cannot be considered for the aforesaid reasons. Further, it is submitted that the service of the Promotee Assistants were regularized in the cadre of Assistants, vide order, dated 30.08.2017. The petitioners have already filed a writ petition in W.P.(MD) No.12670 of 2017 stating the same averments which are now repeated in this affidavit, where already a counter affidavit has been filed by the 4th respondent. The respondents submitted that there is no bar to give promotion to the eligible Promotee Assistants.



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16. The official respondents submitted that the petitioners are junior to respondents 6 to 98 by virtue of their date of appointment and they cannot claim any parity among the Promotee Assistants and there is no interim order not to effect any further promotion based on the combined seniority list, dated 29.02.2016. The petitioner challenged the promotion given in favour of some of Promotee Assistants on the reasons that they were given promotion without regularizing their services in the promotional post. This Court granted an order not to give any more promotion giving cause of action for anyone to approach this Court and in the event of not passing any order, regularizing the service of the promotees appointed under rule 39(a)(1) of the Tamil Nadu State and Subordinate Service Rules. The interim order clearly states that without regularizing the service of Promotee Assistants, no promotion shall be given under rule 39(a)(1) TNSSS Rules. Even though the Promotee Assistants were promoted temporarily under rule 39(a)(1), they acquired permanency as soon as their names were included in the seniority list for next level of promotion. On account of administrative reasons, the services of promotee Assistants were not



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regularized immediately in the cadre of Assistants. However, the services of the Promotee Assistants were regularized as per the order, dated.30.08.2017, from the date of their joining in promotional post i.e. Assistant. Further, the inter-se seniority between direct recruits and promotees is to be counted from the date of their appointment and not from their confirmation, such promotion cannot be stated as stop-gap arrangement. Hence, there is no illegality or infirmity in the promotion given to Promotee Assistants. The petitioners are admittedly juniors to the respondents 6 to 81. Therefore, the promotion and inter-se-seniority of respondents 6 to 81 cannot be questioned by the petitioners.

17. As far as the regularization of respondents 6 to 98 is concerned, even assuming without admitting that of promotee Assistants were promoted in a stop-gap arrangement or temporary, when their promotion itself in substantive vacancy that too in a regular basis, which made in accordance with rules, then the seniority would be counted from the date of such temporary promotion and the regularization would be from the date of their initial appointment or joining in



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promotional post and not from the date of regularization. Further, the petitioners can very well prefer an appeal before the Director of Rural Development as against the rejection of petitioners and other similar persons' collective representation was considered and suitable reply, dated 03.08.2017, was issued, since the appeal remitted is available. Therefore, the writ petition W.P.(MD)No. 20484 of 2017 ought to be dismissed based on the availability of alternative remedy.

18. In order to comply with the interim order, subsequent promotions were given to the promotee Assistants, who were admittedly seniors to the directly recruited Assistants, after regularizing the service but the inter-se seniority of promotee Assistants from 01.01.2009 to 31.12.2013, contains 102 names of the promotee Assistants and 38 names of directly recruited Assistants, totally 140 Assistants, out of which 2 promotee Assistants had come on mutual transfer from one district to another. As the services of promotee Assistants were regularized at their initial appointment either as Typist or Junior assistants, once again their



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services in the cadre of Assistants were regularized in order to effect regular promotion and regularization cannot be given in a pick and choose manner, it has to be in uniform and therefore, mass regularization was given from the date of their appointment or promotion, irrespective of the fact that some of them either retired or died. Therefore, it cannot be said that the promotional panel list is prepared by placing ineligible persons and moreover all the promotee Assistants were working under the 4th respondent at the time of their initial appointment and 4th respondent only prepared inter-se seniority and some of them went on district transfer. In order to weed out anomaly in fixing inter-se seniority and rectifying mistakes in the matter of regularization of promotional cadre, the 4th respondent has an administrative power to give regularization retrospectively which cannot be given in a pick and choose manner and no one can be singled out which will unsettle the settled position when their promotional cadre warrants rectification in the matter of regularization in view of rule 39(a)(1) of TNSSS rules. Therefore, the respondents prayed to dismiss the writ petitions.



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19. Heard Mr.J.Lawrance the learned Counsel appearing for the petitioners in all cases, Mr.R.Baskaran, the learned Additional Advocate General assisted by Mr.S.Kameswaran, learned Government Advocate (Civil Side) appearing for the official respondents in all cases, Mr.J. Anand Kumar appearing for 2nd respondent in all cases, Mr.S.Balamurugan and Mr.G.Prabhu Rajadurai appearing for the individual respondents.

20. The first objection that was raised by the petitioners is that the petitioners are having degree qualification and the respondents 6 to 98 in W.P. (MD)No.20484 of 2017 are not having degree qualification and based on the qualification, the petitioners ought to be placed before them. This plea can never be accepted, since there are two kinds of promotions in all departments. One for the “Directly Recruited Assistants” and the other one is “Promotee Assistants”. The promotee Assistants after a period of service are eligible to be considered for promotion. For considering such promotion, the qualification prescribed for promotee Assistants is only based on the departmental test and training in Junior



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Assistant post. The qualification was never ever stated that the promotee Assistants should possess degree qualification. In such circumstances, the plea raised by the petitioners that they should be considered, since they are having degree qualification ought to be rejected and hence, this Court rejects the said plea.

21. The next contention that was raised by the petitioners are that the petitioners submitted that the respondents 33 to 56 were employed as Typists. The respondents 7, 8, 60 and 67 were also placed ahead of directly recruited Assistants and the respondent 62 was promoted as Assistant during the year 2014 was also posted ahead of the directly recruited Assistants. The respondents replied to this allegation that the promotee Assistants from 01.01.2009 to 31.12.2013 contains 102 names of promotee Assistants. The service of promotee Assistants were regularized with effect from their initial appointment either as Typist or Junior Assistants, once again their services in the cadre of Assistants were regularized in order to effect to regular promotion and regularization cannot be



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given in a pick and choose manner, it has to be in uniform and therefore, mass regularization was granted from the date of their appointment or promotion, irrespective of the fact that some of them either retired or died.

22. After considering the rival contentions, it is seen that the respondents 5, 6 and 67 were appointed as Junior Assistant under compassionate ground, their services were regularized in the cadre of Junior Assistant by the Government belatedly, but given retrospective effect and consequently their promotion in the cadre of Assistant were given retrospectively. Even though they were promoted during the year 2013, their seniority in the cadre of Assistant have been place during the year 2012, the date on which they would have been given promotion originally if their services were properly regularized in due time as per rules. Therefore, this Court is of the considered opinion that the government has every power to grant retrospective to the promotion based on the facts of the case and in the present case since the regularization of compassionate appointment was belated and hence the promotion was granted retrospectively and there is no



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infirmity. It is further seen that the respondents 5, 6, 9 to 32, 57 to 59, 33 to 56 were promoted prior to the date of joining of the petitioners, i.e., 28.12.2012. Therefore, this Court is of the considered opinion that the above said respondents are eligible to be promoted, since the petitioners were not at all in service when the above said respondents were granted promotion under the category of “Promotee Assistants”.

23. As far as the respondents 7, 8, 60 to 67 are concerned, it is seen that they were promoted in the year 2013-2014 and they were placed above the petitioners in the seniority list. The above respondents have been given Bhavanisagar training belatedly on account of administrative reasons, hence their promotion was given during the year 2013 with retrospective effect in the 2012, which is prior to the recruitment of the petitioners. This Court in several cases has held that promotion cannot be withheld or granted belatedly by citing Bhavanisagar training. It is also held in some cases that service qualifications cannot be held against the government servants, since training is based on the



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availability of vacancies. The object behind it is that, since it is not in the hands of the government servants it cannot be cited. Therefore, this Court is of the considered opinion that even though they were promoted in the year 2013-2014, they were placed above the writ petitioners, since service qualifications cannot be cited to deny the seniority or the promotion and there is no infirmity in granting the same.

24. As far as the respondents 82 to 98 are concerned, they were selected by TNPSC as Junior Assistants in the year 2009 but the probation was declared belatedly for the reason that they belatedly passed the departmental examinations. The respondents have rightly placed them below the petitioners, since the respondents 82 to 98 have not passed the departmental examinations, at the time of considering promotion. Therefore, this Court is of the considered opinion that the respondents have rightly kept keeping the respondents 82 to 98 below the petitioners.



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25. The next contention raised by the petitioners are that the original date of appointment cannot be considered for fixing seniority. The respondents have submitted that in the Rural Welfare Department, until 2012, there was no post called direct recruitment for Assistants at all. All these years, the post of Assistant was a promotion post from the cadre of Junior Assistant, Typist, Rural Welfare Officer Grade II and there was no service rule fixing inter-se seniority between the promotee Assistants and the direct recruitment Assistants in order to clarify this position, Government has issued G.O.Ms.No.35, dated 15.04.2015, wherein it has been clarified as under:

“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 Rule for Tamil Nadu State and Subordinate Services”

Therefore, in order to resolve, the Government has amended the rule by fixing inter-se seniority as the date of original appointment in the post of Assistant. Admittedly, the respondents were appointment in the post of Assistant prior to the date of appointment of the petitioners, i.e., prior to 28.12.2012. Therefore, the



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plea raised by the petitioners are erroneous and the plea is against the Rule 35(aa). Hence the claim of the petitioners are rejected in this issue also.

26. The petitioners' next plea is that the seniority ought to be fixed based on the marks from the very original appointment and the respondents have not fixed the seniority based on the marks. But, the seniority is followed based on the list published by the second respondent which was prepared based on communal rotation. The petitioners who were appointed in the year 2012, separate seniority list should be prepared based on the marks/merit as stated in Bimlesh Talwar Vs State of Haryana case reported in (2003) 5 SCC 604 and the respondents shall adhere to Bimlesh Talwar case. This Court specifically clarifies that before making the inter-se seniority between the “Promotees Assistants” and the “Direct Recruits”, the respondents shall prepare a separate list **based on merits** for direct recruitment Assistants and a separate list for the direct recruitment Typist/Junior Assistant. Thereafter, prepare an inter-se seniority list from the above lists prepared above by following Bimlesh Talwar case.



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27. The petitioners alleged that some of the individual respondents have not completed training or some of them have not completed the departmental test. The respondents submitted through the counter affidavit that all the individual respondents have passed the departmental test and the petitioners have not mentioned who has not completed the departmental test. According to the respondents, all the individual respondents have completed the departmental test and they are eligible to be considered for the post of Assistant. The respondents 82 to 98 have completed the departmental test belatedly and they are kept below the petitioners. Therefore this Court is of the considered opinion that the petitioners failed to establish their plea.

28. For the allegation that the respondents have not undergone one year training as contemplated under Rule 30(c) of the Tamil Nadu Ministerial Service Rules. The respondents submitted that out of the 63 respondents, only 23 respondents are Typists and 40 other respondents are Junior Assistants. The petitioners deliberately added Junior Assistants, in order to create confusion and



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to mislead the Court. The respondents further submitted that even though the 23 typists have not officiated to undergo one year training as Junior Assistant, they were permitted to serve in Junior Assistant post in addition to their regular typist work and handled all files pertaining to junior assistants, in respective offices and the office orders were issued by the Head of the office at the relevant point of time to that effect. Moreover, the salary of Junior Assistants and the Typists are one and the same. Therefore this Court is of the considered opinion that the respondents have taken into consideration that 23 Typists could not be accommodated in the Junior Assistant training. In order to accommodate them in the available vacancy, the respondents have promoted 23 Typists to serve as Junior Assistants while they were serving as Typists. As held supra this Court in several judgments have held that the service qualification cannot be taken into account for denying the promotion because, the training in the post of Junior Assistant, Bhavani Sagar training, Rural Welfare Officer training and Survey Department training are considered as service qualification and if the individuals have not acquired any service qualification because the employer has not sent



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them to the training for want of vacancy, the mistake committed by the employer by not sending them for training cannot be fasten on the individuals. Even if the petitioners' allegations are taken into account that the 23 Typists have not completed the training in the post of Junior Assistants which is only a service qualification and the respondents have power to exempt them from such training. However, in the present case, the Typists were also granted Junior Assistants work and they have completed Junior Assistants work also. Hence the respondents have considered them for the promotion and there is no infirmity. Therefore, this plea also cannot be considered in favour of the petitioners.

29. Therefore, this Court is of the considered opinion that the respondents 6 to 81 in W.P.(MD)No.20484 of 2017 are seniors by virtue of their date of appointment. The respondents 82 to 98 in the same writ petition are placed below the directly recruited persons since they have passed the departmental test belatedly. Therefore, the petitioners cannot claim any seniority over and above the respondents 6 to 81 in W.P.(MD)No.20484 of 2017. The petitioners have not



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made out any case and the claim of the petitioners in all the writ petitions are rejected.

30. With the above said reasons and observation, the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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04.11.2022

Internet : Yes

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To

1. The Secretary,
State of Tamil Nadu,
Rural Development and Panchayat Raj Department,
Secretariat, Chennai.
2. The Director/Commissioner,
Rural Development and Panchayat Raj Department,
Panagal Building, Saidapet,
Chennai-600 015.
3. The District Collector,
Collectorate Building,
Dindigul District.
4. The Personal Assistant to the Collector,
(Panchayat Development),
Dindigul District,
Dindigul.



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S.SRIMATHY, J

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