



W.P.No.19468 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31.08.2023

Pronounced on : 20.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.19468 of 2013

R.Hariharan

... Petitioner

Vs.

- 1.The State of Tamilnadu,
Represented by its
Secretary to Government,
Tamil Development, Religious Endowments
and Information Department,
Secretariat, Chennai 600 009
- 2.The Tamilnadu Public Service Commission,
Represented by its Secretary,
Fraser Bridge Road,
VOC Nagar, Park Town,
Chennai 600 003
- 3.M.K.Muthuraja

... Respondents

PRAYER:

Writ Petition is filed under Article 226 of Constitution of India
praying to issue a Writ of Certiorarified Mandamus calling for the
records on the file of the second respondent herein relating to the Select /
Reserve List No.Nil dated 05.07.2012 issued in pursuance of



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Advertisement No.274 Dated 16.04.2011 and to quash the same to the limited extent of the selection of the third respondent herein with Registration No.01001194 and the non selection of the petitioner and his placement in the 'reserve list' instead of, in the 'select list' and to consequently direct the respondents herein to declare the petitioner (Regn.No.00102059) as selected for recruitment for the post of Assistant Commissioner in Hindu Religious and Charitable Endowments Department, included in the Group – IB service for the year 2009-2011 and to appoint him as such, in the 35th turn in accordance with rule of rotation and grant him all consequential benefits.

For Petitioner : Mr.M.Ravi

For Respondents

For R1 : Mr.S.Yashwanth,
Additional Government Pleader
(HR&CE)

For R2 : Mr.I.Abrar Mohammed Abdullah,
Standing Counsel

For R3 : Mr.M.Purushothaman

ORDER

This writ petition is filed challenging the selection list dated 05.07.2012 insofar as the selection of the third respondent to the post of



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Assistant Commissioner in Hindu Religious and Charitable Endowments
Department with consequential direction to the respondents to declare
the petitioner as selected to the post of Assistant Commissioner.

2. The petitioner belongs to Backward Class Community and he is fully qualified and eligible for appointment by direct recruitment to the post of Assistant Commissioner in the Tamilnadu Hindu Religious and Charitable Endowments Department in pursuant to the notification issued for direct recruitment for the year 2009-2011 to the post of Assistant Commissioner. The petitioner applied to the said post and he had participated in the written examination. Based on his score obtained in the written examination, he was selected for interview and finally he had scored 508.50 marks. However, he was not selected to the post of Assistant Commissioner and he was placed as the first candidate in the reserve list in General Turn as well as in Backward Class Community.

3. The learned counsel for the petitioner would submit that the other candidates who had scored lesser marks than the petitioner have



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been placed in the selection list. Therefore, the petitioner made representation to the second respondent. It was not considered and as such, the petitioner filed writ petition before this Court in WP.No.25966 of 2012 for declaration declaring the very notification itself with an extent of providing reservation for persons studied in Tamil medium and the reservation allotted for the differently abled persons. Subsequently, the second respondent issued another notification for recruitment to the post of Assistant Commissioner for four vacancies. The petitioner also challenged the said notification in WP.No.5888 of 2013. In the meanwhile, the petitioner's father obtained information under Right to Information Act from the second respondent and it revealed that nine candidates who were selected in the year 2009-2011 were placed from 27th turn to 35th turn and the details with regard to the ninth candidate who is the third respondent herein belongs to MBC/DC community and he had scored only 499.5 marks. He was selected against G.T. turn though he scored much lesser than the petitioner's marks. He has been selected to the post of Assistant Commissioner against G.T. turn.



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3.1 He further submitted that two other candidates who belong to MBC/DC community have already been fitted against the turns allotted to MBC/DC turn i.e. against 28th and 33rd turn, are A.R.Prakash and D.Rathinavel Pandian respectively. While two candidates have been notified for MBC/DC community and the said vacancies have been occupied by the above mentioned candidates, the GT(General) by rotation takes only the 35th turn which is below 28th and 33rd turns allotted to MBC/DC community. The said A.R.Prakash despite having secured higher marks, he cannot be placed against the 27th turn as the same is allotted to GT(Blind) and GT(General) turn is only below the 28th turn. Therefore, the placement of the third respondent in 35th turn is illegal. It meant only for GT turn which can be allotted only on the basis of merit. Further, any community person scored higher marks can be fitted against the GT turn if such turn is available to the said candidate above the MBC/DC turn. In any event, the two persons were already fitted against their reserve turn, there is no scope for the third MBC / DC candidate to be fitted against the General Turn when the petitioner had secured higher marks than the third respondent. Therefore, the petitioner ought to have



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been selected against 35th turn allotted to GT(General) instead of the third respondent. The third respondent ought to have been placed in the reserve list meant for MBC/DC turn.

3.2 He further submitted that the third respondent was not appointed since he is facing some criminal charge. However, the selection of the third respondent against the 35th turn is bad and it is liable to be set aside. In support of his contention, he relied upon the judgment of the Hon'ble Division Bench of this Court in WP.No.998 of 2017, etc. batch dated 15.11.2019 and the order passed in Cont.P.Nos.603 of 2020, etc batch dated 26.03.2001.

4. The second respondent filed counter and Mr.I.Abrar Mohammed Abdullah, the learned Standing Counsel appearing for the second respondent submitted that the second respondent issued notification dated 16.04.2011 thereby invited applications for selection of the candidates to the post of Assistant Commissioner by direct recruitment in the Hindu Religious and Charitable Endowments



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Administration Department included in Group I-B Service for the year 2009-2011 to fill up nine vacancies. The petitioner had applied and he had scored 508.50 marks(written examination mark 454.50 and oral test mark 54). He has been placed in the reserve list in position No.1 against GT(General) and BC(OBCM) category. He further submitted that as per the rotation/turns, 35th turn meant for GT(G). In the said turn, the person who scored higher marks i.e. A.R.Prakash (517.50) has been fitted under GT(G). Insofar as category under BC(G) and BC(W) were filled by one, A.Arunachalam and A.Janci Rani. The said Arunachalam scored 510 marks higher than the petitioner's mark. Therefore, the petitioner is now placed in the reserve list under the category of BC-G.

4.1 He further submitted that insofar as the third respondent, he was selected under MBC/DC-G category and he scored 499.50. He was not selected under category of GT(G)-1. However, in view of pendency of a criminal case against the third respondent, he was not appointed under the category of MBC/DC. Therefore, he was never fitted against GT(G). The 35th turn meant for MBC/DC category. It is never meant for



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GT(G) category. However, it was wrongly noted that 35th turn is meant for GT and MBC/DC. As per Rule 22(c) of the General Rules for Tamilnadu State and Subordinate Services, 35th turn meant for GT. Hence, the petitioner is rightly placed in reserve list under GT-G category and BC(General) category. In support of his contention, he relied upon the judgment of the Hon'ble Division Bench of this Court in the case of *N.Santosh Kumar Vs. The Tamilnadu Public Service Commission, Chennai* reported in (2015) 4 Mad LJ 281.

5. Heard, Mr.M.Ravi, the learned counsel for the petitioner, Mr.S.Yashwanth, the learned Additional Government Pleader(HR & CE) appearing for the first respondent, Mr.I.Abrar Mohammed Abdullah, the learned Standing Counsel appearing for the second respondent and Mr.M.Purushothaman, the learned counsel for the third respondent.

6. The second respondent notified notification to recruit candidates to the post of Assistant Commissioner in the first respondent Department to fill up nine vacancies. Distribution of vacancies for the said posts are as follows:



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GT	4 (G-PSTM-1, G-1, W-1, G-PH-B-1)
BC(OBCM)	2(G-1, W-1)
MBC/DC	2(G-2)
SC(A)	1(G-1)
Total	9

7. The petitioner belongs to Backward Class Community and he applied for the said post. He was qualified in the written examination and as such he was called upon to attend the interview. He had scored 508.50 marks(written test 454.50 + oral test 54 marks). Therefore, he was not selected to the post of Assistant Commissioner either under GT category or BC(OBCM) category. He has been placed as the first candidate in the reserve list under GT(G) category and the first candidate in the reserve list of BC (OBCM) category. After having been failed for selection to the post of Assistant Commissioner, he had challenged the very notification insofar as the reservation for Tamil medium candidates and the differently abled persons in the selection in WP.No.25966 of 2012 before this Court. The said writ petition was dismissed by this Court by order dated 27.10.2015 on the ground that a candidate belongs to BC(G)-1 category had secured 510 marks and he has been selected for the post of Assistant Commissioner, Hindu Religious and Charitable



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Endowments Department. The petitioner belongs to BC community had secured only 508.50 marks and has been placed in the reserve list for the said post in position No.1 against GT(General) and BC(OBCM) category. Therefore, the writ petition was dismissed.

8. Thereafter, the second respondent issued another notification No.2 of 2013 dated 21.02.2013 for recruitment to the very same post of Assistant Commissioner in HR&CE Department to fill up 4 vacancies. It was also challenged by the petitioner in WP.No.5888 of 2013 before this Court and the same is pending. However, the petitioner has been selected under the category of BC(OBCM) and now he is working as Assistant Commissioner in the Tamilnadu Hindu Religious and Charitable Endowments Department. The petitioner's father obtained information under the Right to Information Act, in which it was stated that the third respondent has been selected in the 35th turn under the category of GT who scored 499.50 marks.

MBC/DC



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9. The specific contention of the learned counsel for the petitioner is that when the petitioner scored higher than the third respondent, the second respondent ought to have selected the petitioner under the category of GT(G). Under 28th turn, one, A.R.Prakash has been selected under the category of MBC/DC. Therefore, the second respondent ought to have selected the petitioner under the category of GT(G) in 35th turn.

10. It is clarified by second respondent that though it was shown that A.R.Prakash was fitted in MBC/DC 28th turn, he was selected under GT(G) category under 35th turn since he scored higher marks i.e. 517.50. Further, though the third respondent was shown in the information furnished to the petitioner's father as he was fitted under GT - 35th turn, he has been selected under MBC/DC category under 33rd turn. Therefore, another person D.Rathinavel Pandian who scored 511.50 has been selected under the category of MBC/DC under 28th turn. Insofar as A.R.Prakash is concerned, who scored higher marks and has been selected under GT(G) category under 35th turn. At any cost, the petitioner is not coming under the zone of selection since he has



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scored only 508.50 lesser than the person who has been selected under the category of GT(G) though the person i.e. A.R.Prakash belongs to MBC/DC category, he has been fitted under GT(G) category under 35th turn. Therefore, the other two candidates i.e. Rathinavel Pandian who scored 511.50 and the third respondent who scored 499.50 have been fitted under MBC/DC category under 28th turn and 33rd turn respectively. It is relevant to extract Rule 22(b) and (c) of the General Rules for Tamilnadu State and Subordinate Services hereunder:

(b) The Claims of the members of the Scheduled Castes, the Scheduled Tribes, the Backward Classes (other than Most Backward Classes/Denotified Communities) and the Most Backward Classes/Denotified Communities shall also be considered for the thirty one appointments, which shall be filled on the basis of merit and where a candidate belonging to Scheduled Caste, Scheduled Tribe, Backward Class (other than Most Backward Class/Denotified Communities) or Most Backward Class/Denotified Community selected on the basis of merit, the number of posts reserved for the Scheduled Castes, the Scheduled Tribes, the Backward



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Classes, (other than Most Backward Classes/Denotified Communities) or the Most Backward Classes/Denotified Communities as the case may be, shall not in any way be affected.

(c) Selection for appointment under this rule shall be made in the order of rotation specified in Schedule III to this part.?

11. Rule 22 of the General Rules for Tamilnadu State and Subordinate Services deals with selection. As per the sub rule (b) of Rule 22, everybody is entitled to be considered under the 'General Turn' notwithstanding his or her community. Rule 22 (c) speaks about the selection for appointment to be made in the order of rotation specified in Schedule III. Accordingly, meritorious reserved candidate to choose either a 'General Turn' or 'reserved' which is beneficial to candidate. However, selection in the 'General Turn' would not affect the filling up of reserved list.

12. The learned counsel for the petitioner vehemently contended that as per the information furnished to his father, A.R.Prakash has been selected under the reserve category i.e. MBC/DC and the third



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respondent has been selected under GT (G) category. Therefore, the petitioner who scored higher marks than the third respondent to be selected under GT(General). He also relied upon the judgment of the Hon'ble Division Bench of this Court rendered in WP.No.998 of 2017, etc. batch dated 15.11.2019, wherein it is held as follows:

37.16. W.P.Nos.998 of 2017 and 10021 of 2018 have been filed on the premise that a candidate, who is otherwise eligible to be considered under the general turn has not been considered as against a less meritorious one. There is no dispute on the factual position. However, what had happened was that the Tamil Nadu Public Service Commission fixed the cut off marks for each category starting from general turn. As per Section 27(d) of the Act and Rule 22(b), a candidate, who is entitled to be considered under reservation category, is also eligible to contest the general turn. Now what it did was to permit a candidate belonging to the Backward Community reserved category to be fitted in the said category, though he came under general turn on performance. This was done to facilitate the candidate to go up in the seniority or better posting as the case may be. In a given case, there may not be any difficulty in the procedure adopted from



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the point of view of the meritorious reserved candidate. Unfortunately, the candidate, in the reserve category has been inter changed by placing him in the general turn. Resultantly, in the vacancy created in the general turn by option of the candidate so selected, the other meritorious candidate, who has got higher mark than the reserved candidate got missed out. This is a classical illustration of reverse / negative discrimination extending reservation in a different form.

37.17. As noted earlier, 69% reservation is being followed in the State of Tamil Nadu and the roster point is also fixed in accordance with the reservation policy. Therefore, there is absolutely no doubt that the procedure adopted would result in excess reservation. We have already considered the decision of the Apex Court in Tripurari Sharan and another V. Ranjit Kumar Yadav and others(2018 (2) Supreme Court Cases 656) on the very same issue, wherein the earlier decisions rendered were taken note of. We also hold that roster point cannot be the basis for seniority giving adequate reasons both on law and fact. The very challenge itself is to the fixation of seniority or preference on the basis of roster point.



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37.18. Mr.Vekataramani, learned Senior Counsel appearing for the Tamil Nadu Public Service Commission, submits that there is difference between a selection, fitment and seniority. This artificial interpretation sought to be made cannot be accepted as Section 27(d) of the Act corresponding to Rule 22 only speaks about selection.

37.19. The other contention is that the present procedure has been followed from 2003 onwards. Thus, the understanding of an Executive Authority in adopting the particular procedure on an interpretation of the provision will have to be allowed to be continued. This contention also deserves to be rejected as illegality cannot be justified on the ground of being followed for more number of years. It is nothing but a perpetuation of a wrong.

37.20. The petitioners are aggrieved only now and therefore, it is for the official respondents to satisfy the genuineness of the procedure followed. Rule 22(c), which is in pari materia to Section 27(e) of the Act prescribes the procedure. This provision leaves no room



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that what is involved is only a selection. Article 16 of the Constitution of India cannot be invoked to justify the case of a less meritorious candidate being fitted into a general turn, though others are waiting in queue. Such a procedure adopted is totally arbitrary to say at the least.

37.21. A procedure, which is being followed contrary to rule, cannot be approved by the Court, especially when it affects the right of the citizen. Section 27(d) of the Act and Rule 22(b) merely provide for meritorious reserved candidates to adopt for reserved category when it confers better benefit. However, a reserved candidate, having secured lesser marks than the other meritorious candidates, cannot supercede them by getting into the general turn, which procedure is not even contemplated either in the Rules or the Act. Thus, the contention raised that neither the Rule nor an Act has been challenged cannot be countenanced because they do not provide for such a procedure.

37.22. The endeavour of the learned Senior Counsel to read Section 27(e) of the Act and Rule 22(c)



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by reading the word selection as fitment and seniority also cannot be accepted on the general principle of interpretation of a statute. We do not find any ambiguity in the words used. They also clarify that selection of a meritorious reserved candidate in the general turn on merit would not affect the reserved list. Hence there is absolutely no connection between general turn and reserved. Thus, the procedure adopted by the official respondents is nothing but an indirect way of reservation even beyond 69%. The candidates were never informed about their marks obtained. Thus, they have been kept in dark. In such view of the matter, we are of the view that W.P.Nos.998 of 2017 and 10021 of 2018 deserve to be entertained.

13. There is no dispute that the candidate who is entitled to be considered under the reservation category, is also eligible to contest under General Turn. As stated supra, the candidates have been selected by the second respondent to the post of Assistant Commissioner and they have been fitted against the following categories and turns:

<i>Name</i>	<i>Category</i>	<i>Marks</i>	<i>Rotation/ Turn</i>
D.Rathinavel Pandian	MBC/DC(G)-2	511.50	28
P.Vijaya	GT(W)-1	510.00	29



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<i>Name</i>	<i>Category</i>	<i>Marks</i>	<i>Rotation/ Turn</i>
A.Janci Rani	BC(W)-1	490.50	30
K.Ramu	GT(PSTM)-1	480.00	31
C.Karunanithi	SC(A)-1	465.00	32
M.K.Muthuraja	MBC/DC(G)-2	499.50	33
A.Arunachalam	BC(G)-1	510.00	34
A.R.Prakash	GT(G)-1	517.50	35

14. Therefore, the second respondent correctly followed the rules and selected the above candidates and there is absolutely no violation under Rule 22(b) and (c) of the General Rules for Tamilnadu State and Subordinate Services. In this regard, the learned Standing Counsel appearing for the second respondent relied upon the judgment of the Hon'ble Division Bench of this Court in the case of ***N.Santosh Kumar Vs. The Tamilnadu Public Service Commission, Chennai*** reported in ***(2015) 4 Mad LJ 281***, wherein it is held as follows:

67. Therefore, the clear dicta of the Supreme Court is that a reserved category candidate getting accommodated against the general turn, should not be made to suffer on account of being more meritorious. But what has happened in the cases on hand is that



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meritorious reserved category candidates, whom the Supreme Court chose to call by the acronym "MRCs" got allotted by virtue of their merit against the roster points intended for general turn (merit) and consequently got placed lower than their counter parts, who are less meritorious and who were accommodated against roster points high in the order. This is why the learned Judge could not reject the claim of the appellants as devoid of merit. Hence, the first contention of the respondents that they gained seniority on the basis of a judgment that held the filed at that time, is unacceptable.

72. This can be well understood only when we know the exact manner in which a select list is prepared by the Public Service Commission, whenever a direct recruitment takes place. The Public Service Commission or for that matter, any other Appointing Authority (including this Court when direct recruitment of District Judges-Entry Level is made), follows different steps, for preparing a list of candidates selected eventually for appointment. These steps are:-

(i) The Public Service Commission arranges the entire list first in the order of merit, without looking into the categories to which the candidates belong.



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(ii) *Then the Commission takes up the roster points in respect of which the recruitment had taken place. As we have pointed out earlier, the Explanation under Rule 22(c) mandated that all selections for appointment shall start afresh from serial number 1 in Schedule-III, if the vacancies sought to be filled up had arisen on and from 29.4.2009. This is due to the fact that the 200 point roster was introduced only with effect from the said date.*

(iii) *Therefore, if the recruitment was for 50 vacancies as against roster point numbers 1 to 50, the Service Commission would be required, as per Schedule-III, to fill up 15 vacancies under the General Turn, 10 vacancies from the Scheduled Castes including 2 among them from Arunthathiyars on preferential basis, 10 vacancies from the Most Backward Classes and 15 vacancies from the Backward Classes including 2 from Backward Class Muslims. (This is how the roster in Schedule-III is devised).*

(iv) *After taking the roster points against which vacancies are to be filled up, the Service Commission would first fill up all the roster points that fall under the General Turn. If we take for instance, roster points 1 to 50, points 1, 5, 9, 11, 19, 21, 25, 27, 29, 31, 35, 39, 41, 45 and 48 fall under the General Turn. Therefore, after*



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arranging the list of selectees purely on the basis of merit, the Service Commission will first allot the top 15 candidates to these points intended for the General Turn. These top 15 candidates may be from any of the categories, reserved or unreserved.

(v) After first allotting the top 15 (the most meritorious) candidates to the roster points intended for General Turn, the Service Commission will segregate and group the remaining candidates, into the reserved categories to which they belong.

(vi) For instance, 10 vacancies are allotted to the Scheduled Castes, within the first 50 roster points namely from point No.1 to point No.50. These points are at serial numbers 2, 6, 12, 16, 22, 26, 32, 36, 42 and 50. Among these points, roster point Nos.2 and 32 are intended for Arunthathiyars on preferential basis. Therefore, after allotting the top 15 candidates against the roster points for the General Turn (without reference to the community), the Service Commission will segregate the remaining candidates into Scheduled Castes, Most Backward Classes, Backward Classes other than Muslims and Backward Class Muslims. Thereafter, the candidates in each of those groups will be arranged in an order of merit inter-se. For instance, 10 Scheduled Caste



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candidates, who are entitled to be allotted against the roster points available within the first 50 points, will be arranged in the order of merit among themselves. The first of them will go to roster point No.2, the second will go to roster point No.6, the third will go to roster point No.12 and so on and so forth. But, if there is a candidate belonging to Scheduled Caste Arunthathiyar, he will be allotted against roster point No.2, in view of the fact that the said roster point is intended for them. A more meritorious candidate among the Scheduled Castes, may be allotted only against roster point No.6.

These are the steps involved in the preparation of a final select list of candidates.

73. Once the Public Service Commission or the other Appointing Authority follows the above steps and prepares a final list of candidates selected for appointment, the 200 point roster stands satisfied. But the Rule of Reservation, may not get satisfied in every selection. Only if a selection is held for filling up 200 vacancies at one stroke, the Rule of Reservation as well as the 200 point roster will stand satisfied at one stroke. This is the distinction between the Rule of Reservation and the roster.



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15. Thus, it is clear that after taking roster points against which vacancies are to be filled up, the second respondent first filled up all the roster points that fall under the General Turn. After arranging the list of selectees purely on the basis of merit, the second respondent will first allot top 15 candidates to those points intended for the General Turn. This top candidates may be from any of the categories i.e. reserved or unreserved. Accordingly, the second respondent selected the above candidates and fitted against their category. Insofar as the seniority of the above selected candidates are concerned, now their seniority have been revised as follows:

ASSISTANT COMMISSIONER IN THE TAMIL NADU HINDU RELIGIOUS & CHARITABLE ENDOWMENTS ADMINISTRATION DEPARTMENT IN THE TAMILNADU HINDU RELIGIOUS & CHARITABLE ENDOWMENTS ADMINISTRATION SERVICE (GROUP-I B SERVICE), 2009-2011			
Sl. No.	NAME(THIRU/TMT./SELVI)	EXISTING SENIORITY	REVISED SENIORITY AS PER MERIT
1	PRAKASH A.R.	2	1
2	D.RATHINAVELPANDIAN	7	2
3	P.VIJAYA	3	3
4	A.ARUNACHALAM	8	4
5	M.K.MUTHU RAJA	9(#)	-
6	A.JANCI RANI	4	5



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ASSISTANT COMMISSIONER IN THE TAMIL NADU HINDU RELIGIOUS & CHARITABLE ENDOWMENTS ADMINISTRATION DEPARTMENT IN THE TAMILNADU HINDU RELIGIOUS & CHARITABLE ENDOWMENTS ADMINISTRATION SERVICE (GROUP-I B SERVICE), 2009-2011			
7	K.RAMU	5	6
8	C.KARUNANITHI	6	7
9	N.VISAKAMURTHY	1	8

16. As far as the third respondent is concerned, his candidature itself was cancelled since he involved in a criminal case. That apart, insofar as the petitioner is concerned, he has been selected to the post of Assistant Commissioner in HR&CE Department as per the subsequent notification No.2 of 2013 dated 21.02.2013 and now he is working as Assistant Commissioner in HR& CE Department.

17. In view of the above, this Court finds no infirmity or illegality in the selection list dated 05.07.2012 as per the Advertisement No.274 dated 16.04.2011 and this writ petition is liable to be dismissed. Accordingly, this writ petition is dismissed. There shall be no order as to costs.

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Internet: Yes

Index: Yes/No

Speaking/Non-speaking order



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G.K.ILANTHIRAIYAN, J.

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To

1. Secretary to Government,
The State of Tamilnadu,
Tamil Development, Religious Endowments
and Information Department,
Secretariat, Chennai 600 009
2. Secretary,
The Tamilnadu Public Service Commission,
Fraser Bridge Road,
VOC Nagar, Park Town,
Chennai 600 003
3. The Government Advocate
High Court, Madras.

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