IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.A.No.1100 of 2023
and
C.M.P.Nos.11171 of 2023 and 23911 of 2023

C.Sundaramoorthy .. Appellant

Vs.

1. The State of Tamil Nadu,
   Rep. by the Principal Secretary to Government,
   Commercial Taxes and Registration Department,
   Secretariat, Chennai 600 009.

2. The Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk,
   Chennai 600 005.

3. M.Sasikumar,
   Assistant Commissioner (Commercial Taxes),
   Ram Nagar Circle, Coimbatore Division,
   Coimbatore.

4. D.Mythili,
   Assistant Commissioner (Commercial Taxes),
   Central II Circle-Erode Division,
   Tirupur 2.

5. A.Arunmozhi,
   Assistant Commissioner (Commercial Taxes),
   Selaiyur Assessment Circle,
   Chennai East Division,
   Chennai.

6. A.N.Veeresalingam,
   Deputy Commissioner (ST),
   Inspection,
   Villupuram 605 602.

(R6 impleaded *vide* order of this Court dt.14.07.2023
in C.M.P.No.13172/2023 in W.A.No.1100/2023) .. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 08.12.2021 passed in W.P.No.4785 of 2021.

For Appellant	:	Mr.V.Prakash, Senior Counsel for Mr.K.Krishnamoorthy
For R1 & R2	:	Mr.Haza Nazirudeen Additional Advocate General assisted by Mr.M.Venkateswaran Special Government Pleader
For R3	:	Mr.Vigneshwar Elango
For R4 & R5	:	Mr.B.Saravanan, Senior counsel for Mr.E.K.Kumaresan
For R6	:	Mrs.Dakshayani Reddy, Senior Counsel for Ms.S.Suneetha

JUDGMENT

(Judgment of the court was delivered by R. MAHADEVAN, J.)

This Writ Appeal is filed against the order dated 08.12.2021 passed by the learned Judge in W.P.No.4785 of 2021.

2.The respondents 3 to 5 herein, who were directly recruited as Assistant Commissioners (Commercial Taxes Department) (2012-14 batch Group I Officers) through Tamil Nadu Public Service Commission vide G.O.Ms.No.121 (CT&R) (E-1) Department dated 17.10.2016, preferred the aforesaid writ petition, praying for a direction to the respondent authorities to prepare inter-se seniority lists between the directly recruited Assistant Commissioners (Commercial Taxes) and the Transferees from directly recruited Group II candidates after duly revisiting and revising the inter-se seniority lists right from Deputy Commercial Tax Officer (DCTO) cadre in compliance with the directions of the Division Bench of this Court in the judgment dated 28.07.2016 in W.P.Nos.18264 of 2013 and 11118 of 2016 etc. batch and the judgment dated 05.11.2020 in W.A.Nos.626 to 628 of 2020 and to issue inter-se seniority lists between the directly recruited Assistant Commissioners and the Transferee Assistant Commissioners (CT) from the year 2014 and calling for objections from the concerned parties within a limited time frame, in any event, prior to grant of any promotion / *ad hoc* promotion to the post of Deputy Commissioner (CT).

3.The learned Judge, relying on the order dated 29.11.2021 passed in a similar matter in W.P.No.10154 of 2021, disposed of the above writ petition along with connected WP.No.10126 of 2021, in the following terms:

> *"4.As regards the present seniority list is concerned, a direction to publish a comprehensive seniority list by the department would be the first step towards resolution to the dispute, as raised in the present writ petitions, as the prayer itself is for preparation of inter-se seniority list between the directly recruited Assistant Commissioners and the Transferees / parties.*
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> *5.It is needless to mention that in case, any particular class of employees is aggrieved by the assignment of ranking in the seniority list to be published, it is always open to them to work out their remedy in the manner known to law. In the absence of seniority list, the present writ petitions need not be heard as the state of inter-se seniority between the parties is in the state of fluidity which can only be settled on publication of the comprehensive inter-se seniority between the warring groups.*
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> *6.In the above circumstances, the Writ Petitions are disposed of. The*

petitioners and the private respondent are to await publication of seniority list which would ultimately govern the future promotions of all the stakeholders. No costs. Connected Miscellaneous Petitions are closed."

Challenging the aforesaid order passed in W.P.No.4785 of 2021, the present appeal has been filed by the third respondent in the writ petition, who was recruited directly to the post of ACTO through TNPSC, in the year 2008.

4.Before proceeding further, it would be necessary to understand the genesis of the issue involved herein, which runs thus:

4.1. Originally, the provisional inter-se seniority list dated 17.09.1985 for the posts of Assistant Commercial Tax Officer (ACTO) and DCTO was challenged by the Direct Recruit ACTO's (now DCTO) in W.P.No.12786 of 1985. By order dated 19.06.1986, a Division Bench of this Court, while formulating four principles, held that the persons recruited in excess of their quota in the permanent cadre strength cannot be taken into account for seniority and accordingly, allowed the said writ petition by setting aside the provisional seniority list. The four principles read as follows:

"(i)Each year should be taken as a unit for fixing inter-se seniority.
(ii)Persons actually not appointed in the year 1966 should not be

included in 1966 year's list and that seniority should be determined with reference to their date of joining as Joint Commercial Tax Officer, and

(iii)The date on which an officer commences probation is the proper criterion for fixing the inter-se seniority.

(iv)If there are vacancies arising out of the required reservations of 40% in the permanent cadre of ACTO Direct Recruits, any appointment made either by transfer or by promotion cannot be utilized to fill up those vacancies. Such appointments being of temporary character and whenever Direct Recruits are appointed through Public Service Commission, they, being holders of permanent posts by direct recruitment, they have a right to be appointed to whatever posts that are taken out 40% posts reserved for Direct Recruitment."

4.2. The aforesaid order passed in WP.No.12786 of 1985 was challenged by the respondent authorities before the Hon'ble Supreme Court by filing CA.No.1454 of 1987 and the Hon'ble Supreme Court *vide* order dated 10.02.1999, upheld the order passed in the writ petition. Subsequently, Contempt Petition No.263 of 2007 in CA No.1454 of 1987 came to be filed and during the course of hearing, the Government had filed a draft list of inter-se seniority and given an undertaking to implement the same within a period of four months. Recording the same, the Hon'ble Supreme Court closed the contempt petition on 20.10.2008.

4.3. Subsequently, the inter-se seniority list dated 04.05.2009 in the post of ACTO, was published. Consequently, seniority list in the cadre of Assistant Commissioners for the years from 1981 to 2010 was also published.

Pursuant to the same, promotions were given to approximately 90 Direct Recruit ACTO's of the year 1990, 1996, 2002 and 2008.

4.4. While so, the seniority list dated 04.05.2009 was challenged by one R.Shanmuganathan by filing WP.No.11618 of 2009, which was dismissed by a learned Judge by order dated 06.04.2011. Challenging the same, he preferred WA. No.2280 of 2011. Simultaneously, a batch of writ petitions in WP. No. 18552 of 2012 etc., were filed challenging the inter-se seniority finalized by the authorities.

4.5. During the pendency of the above writ appeal, a High Level Committee was formed to suggest a way for filing a curative petition. The formation of the said committee was questioned by some of the petitioners in Cont.Petn.No.263 of 2007 in CA. No.1454 of 1987, by filing WP. Nos. 40814, 40815 and 41048 of 2015, wherein, by order dated 19.02.2016, it was held that the High Level Committee has no power to examine the question of seniority fixed as per the orders of the Hon'ble Supreme Court.

4.6. Subsequently, by judgment dated 28.07.2016, the Hon'ble First Bench, in which, one of us (RMDJ) was a member, after recording the statement made by the learned Advocate General on 26.07.2016, disposed of the matters viz., W.A.No.2527 of 2012 etc. and W.P.No.18552 of 2012 etc., cases, with the following direction and clarification:

> *"2....Suffice to say that one set of parties represented in W.A.No.2280 of 2011 as appellant and respondents have a slightly different case. That we are saying so, as it is their submission that though the battle may have been fought right till the Supreme Court, the war does not end with that. This is so as in terms of their submission certain crucial rules were never brought to the notice of the court or not considered correctly in their perspective. In that matter, we have reserved judgment today. Needless to say that if the appellant in that appeal succeeded, the whole process would have to be nullified and to begin de nova, an aspect accepted by all the learned counsel for parties.*
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> *8.In view of the aforesaid agreed arrangement, we dispose of the writ appeals and the writ petitions with the direction to the State Government to initially wait for our pronouncement in respect of the writ appeal aforesaid and thereafter, proceed to act in terms aforesaid or begin de nova depending on the fate of the writ appeal referred above. It is clarified that anything to the contrary which may have been observed by the learned single Judge would not hold good."*

4.7. Thereafter, *vide* judgment dated 31.08.2016, WA. No. 2280 of 2011 came to be dismissed with the following observations:

> *"20.It is apparent that the promotion as well as upgradation are only for the permanent posts and hence, G.O.Ms.No.1, Commercial Taxes and Registration (A2) Department, dated 04.01.2010, G.O.Ms.No.17, Commercial Taxes and Registration (A2) Department, dated 10.02.2014 and G.O.Ms.No.47, Commercial Taxes and Registration (A2) Department, dated 31.03.2015, have to be considered. Further, the seniority list placed before the Hon'ble Supreme Court, has been agreed to by all the parties concerned, and hence, there cannot be any deviation with regard to the promotions subsequently claimed by them. With regard to the increase in cadre strength on 04.01.2010, since the list in this respect has been produced before the Hon'ble Supreme Court, the same cannot be tested at this juncture, before this Court. When the Hon'ble Supreme Court had considered the matter in detail and passed the order dated 10.02.1999 in*

Civil Appeal No.1454 of 1987, confirming the judgment of this Court in W.P.No.12786 of 1985 dated 19.06.1986, based on the list produced and thereafter, passed the order dated 20.10.2008 in Contempt Petition (C) No.263 of 2007 in Civil Appeal No.1454 of 1987, directing the State to publish seniority list in terms of the directions given, this Court is of the considered view that the matter has reached finality and any endeavour to re-agitate the matter on a new ground, cannot be countenanced. The attempt of the appellant is nothing but re-appreciating or re-arguing the case which had already been decided by the Hon'ble Supreme Court and hence such an act to re-agitate is only to be rejected. If the appellant has any grievance with regard to the judgment passed by the Hon'ble Supreme Court, he has to approach the Hon'ble Supreme Court seeking necessary clarifications, as the seniority list placed before the Hon'ble Supreme Court, has been agreed to by all the parties concerned. Therefore, it is for the appellant to approach the Hon'ble Supreme Court for clarification of the judgment, if so advised."

4.8. In the mean while, at the instance of the Direct Recruit Assistant Commissioners, a batch of writ petitions in WP.No.9257, 9258 and 9326 of 2018 came to be filed, forbearing the respondent authorities from in any manner lowering the seniority of the petitioners therein or disturbing the seniority positions published upto the Joint Commissioner by various G.Os including G.O.Ms.No.139 dated 02.11.2012, G.O.Ms.No.5 dated 12.01.2015. These writ petitions were disposed of, by a common order dated 27.02.2020. Aggrieved by the same, WA Nos.626, 627 and 628 of 2020 were filed and the same were allowed, by judgment dated 05.11.2020 by confirming the order of the earlier Division Bench in WA No.2280 of 2011 dated 31.08.2016 and by holding lucidly that the department is entitled to prepare the seniority lists by reckoning only permanent posts in accordance with the applicable general and special rules and the four principles that were formulated by the Division Bench of this court and affirmed by the Hon'ble Supreme Court. However, as regards temporary posts, no revision can be made without the intervention of the Supreme Court. It was further observed in the said judgment that the private parties concerned are at liberty to object to and challenge the provisional seniority lists to be published, if they are aggrieved in any manner.

4.9. In such circumstances, the present writ petition came to be filed by the respondents 3 to 5 herein and the same was disposed of, by the learned Judge in line with the earlier order dated 29.11.2021 passed in WP.No.10154 of 2021, which was subsequently challenged in WA. No.452 of 2022. By judgment dated 03.03.2022, the said writ appeal was disposed of, with the following observations:

> *"6.Since the case of the appellant / intervenor is that the objection alone has got to be considered dehors the finding of the learned Single Judge without rendering any finding on merits with regard to the various points raised by both the parties, including the one whether the appellant is in the zone of consideration or not, the authorities are expected to take a decision on the objections made by the parties concerned and independently take a decision on the said objection for the Draft Seniority and go head with finalising the final seniority list in accordance with the principles laid down vide the orders of this Court and the Hon'ble Supreme Court governing the issue. In case any other person has not filed any objection, they are expected to file objection within one week from the date of receipt of a copy of the order and the Department is*

expected to communicate it on the notice board."

4.10. In the above factual background, the third respondent in the writ petition, has preferred this writ appeal before this court.

5. The learned senior counsel for the appellant submitted that the issue of inter-se seniority has been settled by this court as early as in WP.No.12786 of 1985 *vide* order dated 19.06.1986 and the same was upheld by the Supreme Court in CA No.1454 of 1987 *vide* order dated 10.02.1999, which was again reiterated by the Division Bench of this court in WA No.2527 of 2011 dated 28.07.2016 and W.A. No. 2280 of 2011 dated 31.08.2016. Thus, the issue of inter-se seniority in the cadre of DCTO upto the year 2010 has attained finality. Adding further, the learned senior counsel submitted that when the rota and quota is prescribed in the special rules, the general rules will not have any application and the special rules will prevail over the General rules. Therefore, Rule 35(aa) will apply only in the post of DCTO and not in the post of Assistant Commissioner. However, the respondent authorities have now, come forward to reopen the seniority already settled, stating that they have wrongly applied Special Rule 2(c), instead of General Rule 35(aa) of the Tamil Nadu

Commercial Taxes Subordinate Service viz., in the category of Assistant Commissioners in the 'State' Service.

5.1. Continuing further, the learned senior counsel for the appellant submitted that the Division Bench of this court in the judgment in WA No.2280 of 2011, had clearly permitted the preparation of seniority lists only to the extent of subsequent posts, which were created in 2010, 2014 and 2015, which was followed by the subsequent judgment in WA Nos. 626 to 628 of 2010. In other words, as per the judgment of the Division Bench, the Government was permitted to prepare the provisional seniority list by reckoning only permanent posts in accordance with applicable general and special rules and the four principles adopted by the Division Bench of this court and affirmed by the Hon'ble Supreme Court in its order dated 10.02.1999 in CA No.1454 of 1987. Therefore, the seniority list finalised and approved by the Hon'ble Supreme Court cannot be reopened. Thus, according to the learned senior counsel, the issue of preparation of seniority list in the Tamil Nadu Commercial Taxes Subordinate Service is only from the year 2010 and for State Service from the year 2011 onwards.

5.2. The learned senior counsel appearing for the appellant also submitted that the respondents / writ petitioners joined the service in the year 2016, but they sought revision of seniority, in the post of ACTO, based on the proposed revised seniority list from the years 1981 to 2020, as if they are seniors to the appellant herein. The authorities have also wrongly interpreted the judgment passed in WA. No.2280 of 2011 dated 31.08.2016, as if the seniority list produced before the Hon'ble Supreme Court in Cont.P.No.263 of 2007 upto the year 2010, can be reopened. Without considering all these aspects, the learned Judge erred in permitting the authorities to publish the inter-se seniority list from the years 1981 to 2020 by the order impugned herein, which will have to be set aside by this court.

6. On the other hand, the learned Additional Advocate General appearing for the respondents 1 and 2 submitted that the respondents 3 to 5 / writ petitioners are Direct Recruit Assistant Commissioners through TNPSC in the Tamil Nadu Commercial Taxes Service viz., State Service, and they joined the service on 02.11.2016 in the substantive vacancies, whereas the appellant is

a Direct Recruit Deputy Commissioner Tax Officer being governed under the Tamil Nadu Commercial Taxes Subordinate Service, and he joined in the department on 19.11.2008; and he was placed as Assistant Commissioner in the Tamil Nadu Commercial Taxes Subordinate Service in temporary post on 19.12.2014. Elaborating further, the learned Additional Advocate General submitted that the litigation by the aggrieved transferees from Ministerial service and direct recruits in State service resulted in two judgments passed in WA. No.2527 of 2012 etc cases on 28.07.2016 and in WA No. 2280 of 2011 dated 31.08.2016. In the first judgment dated 28.07.2016, it was unanimously agreed by all the parties that the four principles affirmed by the Supreme Court in C.A.No.1454 of 1987 would have to be followed in determining inter-se seniority and that, the department has to implement the same and the question of whether it would be in permanent posts alone or in temporary posts also, alone was left to be decided in the main case in WA. No.2280 of 2011. In the second judgment dated 31.08.2016, it was held that the inter-se seniority has to be determined only in permanent posts. Thus, according to the learned Additional Advocate General, the issue agitated in WA No.2280 of 2011 was whether temporary post holders had a right to inter-se seniority and the same was answered in the negative by judgment dated 31.08.2016. What was barred by that judgment was any revision of lists prior to 2010 to grant inter-se seniority to temporary post holders. In that sense, the matter had reached finality. The learned Additional Advocate General further submitted that after 2010, there being an expansion in permanent post strength, a revision to allow higher quota for transferees in the permanent posts was countenanced.

6.1. It is also submitted by the learned Additional Advocate General appearing for the respondent authorities that the intention of the department to revisit the seniority lists is only to correct factual errors and to bring the lists into consonance with applicable rule provisions that were omitted or overlooked or wrongly applied in the year 2009, such as, instead of applying General Rule 35(aa) in fixing inter-se seniority and the four principles as directed by the Division Bench in its decision dated 28.07.2016, Special Rule 2(c) of the Special Rules for Tamil Nadu Commercial Taxes Service, was wrongly applied in determining inter-se seniority in the category of Assistant Commissioner in the State Service, etc. There is no vacillation in implementing this court's orders on the part of the department and the only intent is to comply with all the court orders on the issue, in true letter and spirit. It is also submitted that the department is either way required to revise the lists to implement the Hon'ble Supreme Court's order dated 18.04.2023 in C.P (C) No.Diary No.6415 of 2021 relating to grant of merit based seniority in all categories across all the departments in the Government within a prescribed time frame as well as the order dated 11.09.2018 in CA Nos.9334 to 9336 of 2018 relating to adopting the rule of reservation for BC and MBC categories in recruitment by transfer of service to the post of DCTO in Tamil Nadu Commercial Taxes Subordinate Service. Therefore, the department must revisit the lists on account of revision of underlying appointment and promotion panels since 2000 and simultaneously, to rectify the factual and rule errors in the inter-se seniority lists subject to the condition that the inter-se seniority between direct recruits and transferees will be restricted to permanent post holders within their respective quota. Thus, according to the learned Additional Advocate General, mere apprehension of the appellant with respect to adverse position to be caused in the event of publication of revised seniority list, is not suffice to grant the relief sought in this writ appeal.

6.2. It is also submitted by the learned Additional Advocate General appearing for the respondents 1 and 2 that the Division Bench in W.A.No.2280 of 2011 has categorically observed that temporary appointments will not by themselves increase the cadre strength and that, if the appellant has any grievance with regard to the judgment passed by the Hon'ble Supreme Court, he has to approach the Hon'ble Supreme Court seeking necessary clarifications, as the seniority list placed before the Hon'ble Supreme Court has been agreed to by all the parties concerned. He further submitted that as far as the Direct Recruit Assistant Commissioners or Promotee Assistant Commissioners or anyone in the cadre of Deputy Commercial Tax Officer are concerned, the Department is evincing keen interest to set right the anomaly and put an end to this matter. There is no leniency or secrecy in furnishing the list only to a particular person or leaving the others. The provisional list drafted by the second respondent pursuant to the orders of the learned Judge in WP.No.4785 of 2021 has been made available on web portal of the department. In fact, the appellant himself has filed an objection to the same, on 14.03.2022 and the same has been received by the office on 16.03.2022. Hence, the appeal filed by the appellant merely on apprehension, is liable to be dismissed.

7. According to the learned senior counsel appearing for the third respondent as well as for the respondents 4 and 5 herein, the appellant has preferred this writ appeal to re-agitate the issue which has already attained finality in WA No.626 of 2020 dated 05.11.2020. Further, a co-ordinate Bench of this court in WA. No. 452 of 2022 by judgment dated 03.03.2022, has issued directions to the authorities with respect to finalizing the final seniority list in accordance with the principles laid down by the Division Bench earlier and the Hon'ble Supreme Court governing the issue. That apart, the order impugned herein has neither asserted nor denied the rights of either party to the litigation and the learned Judge has passed an innocuous order simply directing the parties to the *lis* to await publication of seniority list, which would ultimately decide future promotions of all the stakeholders. It is also submitted that the judgment passed by the Division Bench in WA No.2280 of 2011 dated 31.08.2016 especially the observation made at paragraph no. 20 is applicable only for the temporary employees and the same has got nothing to do with the dispute relating to the preparation of inter-se seniority list between the permanent employees. Therefore, the learned senior counsel sought for

dismissal of this appeal.

8. The learned senior counsel appearing for the sixth respondent submitted that the sixth respondent is a direct recruit AC (earlier CTO) recruited under Group I services and the appellant in WA No. 628 of 2020. By judgment dated 05.11.2020, the Division Bench of this court in WA Nos.626, 627 and 628 of 2020 filed by the direct recruits ACs (CT) (earlier CTOs) recruited under Group I Services in 1998, 2002 and 2009 respectively, has set aside the order of the learned Judge dated 27.02.2020, more particularly, in paragraph no.38, passed in WP Nos. 9257, 9258 and 9326 of 2018 filed by the direct recruits DCTOs (earlier ACTOs) recruited under Group II services in 1990, 1996 and 2002 respectively, and granted liberty to the Government to prepare the provisional seniority lists by reckoning only permanent posts in accordance with applicable general and special rules and the four principles adopted by the Division Bench of this court and affirmed by the Hon'ble Supreme Court in its order dated 10.02.1999 in CA No.1454 of 1987.

8.1. Elaborating further, the learned senior counsel appearing for the sixth respondent submitted that the appellant herein who is a direct recruit

DCTO (earlier ACTO) recruited under Group II services in 2008, has preferred this writ appeal thereby re-agitating the very same prayer that was not allowed by the Division Bench by judgment dated 05.11.2020 in WA No. 626 of 2020 etc. According to the learned senior counsel, the contention raised on the side of the appellant that the seniority lists drawn in DCTO cadre upto the year 2010, has reached finality by virtue of learned Advocate General's statement recorded in para 5 of the judgment dated 28.07.2016 in WA No.2527 of 2012 etc. and cannot be rectified to remove the factual infirmities, is legally incorrect. The seniority list that was placed before the Hon'ble Supreme Court in contempt proceedings was provisional inter-se seniority list drawn in the cadre of DCTO (earlier ACTO) / base list for the years from 1968 to 2006 vide proceedings No.P1/58439/2007 dated 04.12.2008, which was finalised subsequently vide proceedings dated 04.05.2009; and that, the said list drawn upto 2006 has a caveat that it would operate upto 2010 and as and when the permanent cadre strength was increased from 2010, 2013, etc., the seniority list has to be drawn between the direct recruit DCTOs and transferee DCTOs, as prescribed under the Rule and the principles laid down by the Hon'ble Supreme Court. Thus, the same cannot be construed that the inter-se seniority lists drawn in DCTO cadre (earlier ACTO) cannot be re-visited for rectifying the factual infirmities and that too, when the department had categorically admitted that the impugned lists had not been correctly drawn as per the four principles / parameters confirmed by the Hon'ble Supreme Court in CA No. 1454 of 1987 dated 10.02.1999.

8.2. The learned senior counsel appearing for the sixth respondent further submitted that the reasons for revision of seniority of direct recruit ACs (Group I Officers) from DCTO cadre/ base list drawn upto 2006 are that the inter-se seniority fixation in base list/ DCTO cadre and seniority fixation in the CTO cadre in Subordinate Services are the feeder categories for fixation of inter-se seniority in the cadre of AC (CT) in State Services and the higher posts of DC(CT), JC(CT) and ADC(CT) are promotional posts only. Therefore, the inter-se seniority fixation in the base list / DCTO cadre is the starting point of seniority fixation and forms the basis for fixation of seniority in higher cadres and has chain reaction till the post of Additional Commissioner (CT). Thus, if seniority fixation is not done correctly in the base list / DCTO cadre, then it shall have adverse cascading effect till the post of Additional Commissioner

(CT). Secondly, the inter-se seniority fixation in base list / DCTO cadre in subordinate service is done between direct recruit DCTOs and transferee DCTOs from Ministerial Service (Promotees), and inter-se seniority fixation in AC(CT) cadre in State Service is done between direct recruit ACs and transferees from subordinate service (including transferees from directly recurited DCTOs).

8.3. It is also submitted by the learned senior counsel appearing for the sixth respondent that the department has now taken up comprehensive revision of all officials from the cadre of DCTO to ADC and is also on the verge of publication of the rectified seniority lists in obedience of the judgment of the Division Bench dated 05.11.2020 in WA Nos. 626, 627 and 628 of 2020. Therefore, the writ appeal filed to negate the efforts of the Government to keep intact the factual infirmities and incorrectness in the earlier drawn seniority lists from DCTO cadre so as to protect the incorrect seniority unduly conferred to them, in order to derive illegal career prospects over and above the direct recruit ACs (earlier CTOs) recruited under Group I services, need to be dismissed.

9. This court has considered the submissions made by the learned counsel appearing for all the parties and perused the materials available on record carefully and meticulously.

10. It could be seen that the principles evolved by the Division Bench of this court in WP. No.12786 of 1985 in its order dated 19.06.1986 with regard to fixation of inter-se seniority between the transferees / promotees and direct recruits in the category of Assistant Commercial Tax Officers (now DCTO), were affirmed by the Hon'ble Supreme Court. Subsequently, various decisions have been rendered by different Division Benches of this court, reiterating the principles originally evolved. The details of the same have already been narrated at the first instance itself. In the order impugned in this writ appeal, the learned Judge has granted permission to the department only to publish the seniority list in the categories of which are the subject matter of the present *lis*, with liberty to all the parties to approach this court, in case, they are aggrieved by reflection of their seniority in the list to be published. While so, it was observed by the learned Judge that in the absence of seniority list, the present case need not be heard as the inter-se seniority between the parties is in the state of liquidity. It

was also observed that the parties are to await publication of seniority list, which would ultimately govern the future promotions of all the stakeholders. That apart, it is important to point out that it was the categorical stand of the respondent authorities that there is no attempt whatsoever to revisit the principles laid down by the Division Bench, as affirmed by the Hon'ble Supreme Court and reiterated in the subsequent Division Bench Judgments; and that, in view of the latest decision of the Hon'ble Supreme Court dated 18.04.2023 in CP(C) Diary No.6415 of 2021 as referred to above, it is just and necessary to prepare the seniority list as directed by the Division Benches of this court.

11. At this juncture, the learned counsel appearing for all the parties have agreed that the directions issued by the learned Judge in paragraphs 5 and 6 of the order dated 08.12.2021 have to be complied with by the respondent authorities, in the light of the Division Bench judgments, more particularly, W.A.No.2280 of 2011 dated 31.08.2016.

12. In view of the above, this writ appeal stands disposed of, directing the respondent authorities to comply with the directions issued by the learned

Judge in Paragraphs 5 and 6 of the order impugned herein, scrupulously. It is also directed that while preparing the inter-se seniority list, the respondent authorities shall follow the Division Bench decisions in W.A.No.2527 of 2012 etc. cases dated 28.07.2016 and in W.A.No.2280 of 2011 dated 31.08.2016 in letter and spirit and also other Division Bench decisions in respect of other issues. It is needless to state that after the seniority list is published, it is always open to the parties concerned to have their legal remedy, if they are aggrieved, in the manner known to law. No costs. Consequently, connected miscellaneous petitions are closed.

[R.M.D, J.] **[M.S.Q, J.]**
20.11.2023

Internet : Yes
Speaking Order / Non -speaking order
Neutral Citation : Yes/No

rk

To

1.The Principal Secretary to Government
Commercial Taxes and Registration Department
Secretariat, Chennai 600 009

2.The Commissioner of Commercial Taxes

Ezhilagam, Chepauk, Chennai 600 005

R. MAHADEVAN, J.
AND
MOHAMMED SHAFFIQ, J.

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W.A.No.1100 of 2023

20.11.2023