



W.P.(MD).No.6511 of 2023 and Cont.P.(MD).No.920 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 30.06.2023

DELIVERED ON: 09.11.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.6511 of 2023

and

Cont.P.(MD).No.920 of 2023

and

W.M.P.(MD).Nos.9782 and 8042 of 2023

W.P.(MD).No.6511 of 2023:

1.S.S.Rahmathullah,
Special Thasildar, (Stamps),
Deputy Collector (Stamps) Office,
Tirunelveli,
Tirunelveli District.

2.R.Kandappan,
Special Thasildar (Election),
Collector Office,
Tirunelveli,
Tirunelveli District.

... Petitioners

Vs.

1.The State of Tamil Nadu,
Represented by its Principal Secretary to Government,
Revenue Administration and Disaster Management Department,
Revenue Department,
Fort.St.George, Chennai – 600 009.



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2. The Additional Chief Secretary/
Commissioner of Revenue Administration,
Revenue Administration and Disaster Management Department,
Ezhilagam, Chepauk,
Chennai – 600 005.
3. The District Collector,
Tirunelveli District,
Tirunelveli – 627 009.
4. Ramesh,
Head Assistant,
District Backward Welfare Office,
Tirunelveli,
Tirunelveli District.
5. Babu,
Thasildar,
Sankarankovil,
Tenkasi District.
6. Murugan,
Zonal Deputy Thasildar,
Taluk Office,
Nanguneri,
Tirunelveli District.
7. Aravind,
Personnel Assistant to District Supply and
Consumer Protection Officer,
Tenkasi,
Tenkasi District.
8. C. Sudalaimani,
Head Quarter Deputy Thasildar,
Alankulam Taluk Office,
Tenkasi District.



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9.R.Rani,
Zonal Deputy Thasildar,
Sankaran Kovil Taluk Office,
Sankaran Kovil,
Tenkasi District.

10.C.Jeyalakshmi,
Head Assistant,
D Section,
Collector Office,
Tirunelveli District.

11.M.Hamithal Begam,
Head Assistant,
Z Section,
Collector Office,
Tenkasi District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned revised Deputy Tahsildar panel for the years from 2004 to 2018 published by the third respondent in his proceedings Rc.A6/49282/2019 dated 21.03.2023 and the consequential order of reversion passed by the third respondent vide his proceedings Na.Ka.A6/49282/2019 dated 23.03.2023 and quash the same as illegal.

(Prayer amended vide order dated 09.11.2023 in W.M.P.(MD).No.13601 of 2023 in W.P.(MD).No.6511 of 2023)

For Petitioner : Mr.Ajmalkhan,
Senior Counsel,
For M/s.Ajmal Associates



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For R-1 to R-3 : Mr.Veera Kathiravan,
Additional Advocate General,
Assisted by,
Mr.P.Thambidurai,
Government Advocate.

For R-4 and R-8 : Mr.Porkodikannan,
for M/s.Polax Legal Associates

Cont.P.(MD).No.920 of 2023

In

Cont.P.(MD).No.700 of 2023

in

W.P.(MD).No.6511 of 2023

1.S.S.Rahmathullaj,
Special Thasildar, (Stamps),
Deputy Collector (Stamps) Office,
Tirunelveli,
Tirunelveli District.

2.R.Kandappan,
Special Thasildar (Election),
Collector Office,
Tirunelveli,
Tirunelveli District.

... Petitioners/Petitioners/Petitioners

Vs.

Dr.K.P.Karthikeyan, I.A.S.,
District Collector,
Tirunelveli District,
Tirunelveli – 627 009.

... Contemnor/Contemnor/Respondent No.3



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WEB PRAYER: Petition filed under under Section 11 of the Contempt of Court Act, 1971, to punish the contemnor for wilfully disobeying and not complying with the order of this Court in Contp.(MD).No.700 of 2023 dated 13.04.2023.

For Petitioner : Mr.Ajmalkhan,
Senior Counsel,
For M/s.Ajmal Associates.

For Respondent : Mr.Veera Kathiravan,
Additional Advocate General,
Assisted by,
Mr.P.Thambidurai,
Government Advocate.

COMMON ORDER

The Writ Petition in W.P.(MD)No.6511 of 2023 is filed to quash the impugned revised Deputy Tahsildar Panel for the year 2004 to 2018 passed by the third respondent dated 14.07.2022 and consequential order dated 08.10.2022.

2. Pending writ petition, the writ petitioner had filed W.M.P.(MD)No. 13601 of 2023 to amend the prayer. In the amendment petition, the writ petitioner has sought to quash the impugned revised Deputy Tahsildar panel for the years from 2004 to 2018 dated 21.03.2023 of the 3rd respondent proceedings



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and the consequential impugned reversion order dated 23.03.2023 passed by the 3rd respondent and the same is allowed. Hence, the plea of the respondents that the challenge in the writ petition is the order dated 14.07.2022 and the same is already cancelled on 17.03.2023 cannot be entertained, since the petitioner had filed petition to amend the prayer and the said petition is allowed by this Court. Now the challenge in the Writ Petition is the impugned order dated 21.03.2023 of the 3rd respondent proceedings.

3. The petitioners were working as Tahsildar prior to the passing of the impugned orders and they are coming under the category of “Non-Graduate Promotee Assistant”. The petitioners were initially appointed as Junior Assistant and thereafter promoted as Assistant and thereafter as Deputy Tahsildar. The first petitioner was promoted as Tahsildar on 04.06.2018 by including his name in the Deputy Tahsildar panel for the year 2011. The second petitioner was promoted as Tahsildar on 05.06.2018 by including his name in the Deputy Tahsildar panel for the year 2011 and the service particulars are given in the tabulation below:

Petitioner Name	Junior Assistant	Assistant	Deputy Tahsildar	Tahsildar
Rahmathulla	07.10.1998	16.09.2005	31.03.2013	04.06.2018
Kandappan	22.09.1999	19.09.2005	31.03.2012	05.06.2018



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4. The contention of the petitioners is that at the time of appointment, the seniority list was prepared by the employer and the said list is being treated as seniority list for all purposes. The posts of Assistants are governed by the Tamil Nadu Ministerial Service Rules and the seniority of the Assistants is on the basis of District wise. Subsequent to the petitioners' promotion as Assistant, they had undergone number of trainings in the cadre of Assistant, so as to become eligible for promotion to the post of Deputy Tahsildar. As per the provisions of Tamil Nadu Ministerial Service Rules, the petitioners have to undergo Bhavani Sagar Training for a period of two months, pass in departmental examinations, undergo land survey training for 45 days and then undergo training as Firka Revenue Inspector and clear Survey Maintenance Test, so as to become qualified for further promotion. The above said training are to be imparted as per the seniority. Since the seniority of the petitioners was fixed in the year 2004 itself, the said seniority was being operated for the purpose of undergoing above referred trainings. The Government of Tamil Nadu issued G.O.Ms.No.133 Revenue Department dated 07.02.1995, thereby amended Annexure III item (ii) and inserted two provisos to the Special Rules for the Tamil Nadu Revenue Subordinate Service and thereby the following proviso was inserted:



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“Provided also that an Assistant appointed by direct recruitment in the District Revenue Unit, who has completed a total period of five years, passed all the tests prescribed and undergone training as Firka Revenue Inspector for a period of two years successfully, shall be eligible for inclusion of his name in the approved list of Deputy Tahsildars in the District above his seniors appointed other than by direct recruitment or for refixation of his seniority over such seniors, if his name has already been included in the list of Deputy Tahsildars. The consideration of his claim shall be against the first vacancy that follows the carried over vacancies.

5. In view of the above proviso, the directly recruited Assistant, by virtue of their qualification of degree, can claim preference only if his name had already been included in the list of Deputy Tahsildar. As per the above said Rules, the Assistant would become eligible only if he has completed 5 years of service. When the petitioners were promoted as Deputy Tahsildar in the year 2011, the directly recruited Assistant has not even completed required period of five years and as such when the petitioners became Deputy Tahsildar in the year 2011 itself, the question of revising the seniority to implementing the Judgment of Apex Court will not at all arise and as such, the impugned revision of seniority is wholly illegal besides violation of the effect of G.O.Ms.No.133. There were three judgments of Apex Court and the same was bound to be implemented subjects to any order to be passed by the Apex Court in the review



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application filed by the Government. Among three judgments, in the present case, we are concerned with the judgment rendered in case of *M.Rathinasamy Vs State of Tamil Nadu* reported in 2009 5 SCC 625 vide order dated 08.04.2009 and the judgment was passed considering the plea of degree qualifications. Under the pretext of implementing the said judgment, the impugned order dated 14.07.2022 is passed revising the seniority for much earlier period as well. As against the said revision of seniority, the petitioner approached this Court in W.P.(MD)No.18417 of 2022 and the same was disposed of vide order dated 23.08.2022, directing the respondent to pass appropriate orders. It is only thereafter the third respondent vide the impugned order dated 08.10.2022 has rejected the claim of the petitioner. In regard to the qualification of the Assistant, the petitioners had filed Writ Petition before the Principal Seat and the same is pending. During the pendency of the Writ Petition, the present impugned orders came to be passed.

6. In the *Rathinasamy's* case, the promotee graduate Assistants shall have a preference over the non-graduate promotee Assistant and the judgment of Apex Court was directed to be implemented with effect from 08.04.2009, the date on which the judgment of Rathinasamy case was delivered. Admittedly, the



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petitioners were promoted as Assistants as early as in the year 2005 itself and as such in view of the prospective implement of the judgment, the petitioners were well protected and the seniority in the cadre of Assistant need not be revised. In the impugned order dated 14.07.2022, one of the incumbent in the panel namely, I.Ramesh and 17 others who were appointed as directly recruited Assistant only in the year 2009 was placed ahead of the petitioners, even though they were appointed as Assistants in the year 2005. Likewise, the directly recruited Assistants appointed in the year 2009 were placed ahead of the petitioners in the impugned seniority list. Therefore, the contention of the petitioners is that the impugned panel is quite contrary to the judgment of the Apex Court as well. Moreover, the panel was revised from the year 2004 to 2018 and the same is not permissible in law. That apart, the petitioners' promotion as Assistant made in the year 2005 ought not to have been revised on the pretext of the implementing the judgment of the Apex Court. The persons who were appointed on 2009, cannot be treated on par with the candidates who were posted as Assistants in the year 2005, so as to give preference and hence the impugned order is *per se* illegal. Moreover, the conferred right cannot be taken away without any authority of law that too without even issuing prior notice. Rule 38-b(ii) read with Annexure IX clause 9 of the Ministerial Service



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Rules contemplates that while fixing the inter se seniority among the directly recruited Assistant and Promotee Assistant, 2:1 ratio has to be followed. In the year 2005, when the petitioners were promoted as Assistants, there was no directly recruited Assistant, hence there is no question of fixing seniority between directly recruit. Moreover, in the panel, 4 incumbents who are not qualified in terms of the Ministerial Service Rules and who have not completed the Revenue Inspector Training and **did not pass** Survey Maintenance Test as on the crucial Deputy Tahsildar panel year dated 15.09.2015, were included in the panel even though the proposal for ratification / relaxation of their qualification is pending on the file of the Government and the details of the said unqualified persons are as follows:

S. No.	Name and the post	Seniority prior to revision	Seniority after revision	Revenue Inspector completed on	Survey Maintenance Test completed on
1	C.Sudalaimani	09/2016	04/2015	29.02.2016	23.08.2016
2	R.Rani	05/2016	05/2015	22.09.2015	02.03.2016
3	C.Jeyalakshmi	08/2016	29/2015	21.12.2015	27.03.2016
4	M.Uramithal Begam	32/2018	18/2017	21.01.2018	16.04.2018



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7. It is only on the basis of the seniority fixed in year 2004, the training was imparted and the petitioners were promoted as Deputy Tahsildar. That being so, in view of the judgment rendered by the Apex Court, the Government through G.O.Ms.No.87 Revenue and Disaster Management Department dated 09.03.2019, refixing the entire seniority of the Deputy Tahsildars is not in accordance to law. Hence, the petitioners have filed the present Writ Petition.

8. The private respondent namely, I.Ramesh has filed counter stating that there were several disputes with regard to the fixing of seniority between Graduate and non-Graduate promotee and fixing of seniority by following the rules of reservation for the candidates belonging to BC and MBC category and other disputes relating to fixing of seniority based on merit at the time of recruitment. All the disputes pertaining to the above issues had gone upto Hon'ble Supreme Court and had attained finalities by various orders of Hon'ble Supreme Court. One such issue attained finality before Supreme Court in Civil Appeal No.251 to 256 of 2015 dated 12.03.2019 reported in *2009 5 SCC 625* with respect to the Graduate and Non-Graduate promotee. The said judgment issued some directions such as to extend the benefits of Rathinasami's case with effect from its judgment dated 08.04.2009 and as such Promotee Graduate



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Assistants are placed on par with Direct Recruit Assistants. And so far as Promotee non-graduate Assistants are concerned, preferential treatment to Direct recruit Assistants would be given over Promotee Non-Graduate Assistants. The private respondents were appointed as Assistant in the Revenue Department by direct recruitment in the year 2009. The writ petitioners are Non-Graduate Promotee and they were appointed on compassionate ground. Admittedly, they were promoted as Assistants in the year 2005 itself and they were kept in the seniority list for promotion to the post of Deputy Tahsildars in the year 2011. The said panel was drawn subject to the order of the aforesaid SLP. The respondents had issued directions to redraw the panel from the year 2004-2018. Hence, the name of the writ petitioners has now been included in the panel of Deputy Tahsildar for the year 2015 as per the revised panel of Deputy Tahsildar published on 21.03.2023 (which was passed after cancelling the notification dated 14.07.2022), that too after implementing the judgment of Hon'ble Supreme Court and thereafter they are included in the panel of Tahsildar for the year 2021. While drawing the Deputy Tahsildar panel as per the Hon'ble Supreme Court order dated 08.04.2009, no revision of seniority to the panel of Assistant was ordered. Prior to the implementation of the Supreme Court order dated 08.04.2009, the names of the writ petitioners were included



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in the panel list of Deputy Tahsildar for the year 2011. While implementing the Supreme Court order dated 08.04.2009, the promotee graduate Assistants were treated on par with the Directly recruited Assistants and the Non-Graduate promotee Assistants were placed below them and as such the names of the writ petitioners were found place in S.I.No.40 and 42 in the Deputy Tahsildar panel for the year 2015. The private respondents have completed all the required qualifications for promotion as Deputy Tahsildar. Since they are direct recruits, their names had been placed in SI.No.14 in the Deputy Tahsildar panel for the year 2015. The seniority panel would be prepared only as and when the vacancy arises to the particular post. The writ petitioners who were appointed as Assistant in the year 2005, became eligible for the post of Deputy Tahsildar for the year 2011 only. While implementing the order of the Hon'ble Supreme Court dated 08.04.2009, the writ petitioners have not reached the required seniority till 2014 panel year as they are non-graduate promotee and their names have been included in the list of Deputy Tahsildar for the year 2015. The notification of the 3rd respondent dated 14.07.2022 was already challenged by way of Writ Petition in W.P.(MD)No.20046 of 2022 and the said Writ Petition was allowed on 06.12.2022 by following the decision in a batch of cases in W.P.(MD)No.21566 of 2022. Against the said order, a direct recruit Assistant



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had filed W.A.(MD)No.1522 of 2022 and an order of interim stay was passed by this Court in its order dated 23.12.2022. The Government had also filed a writ appeal bearing W.A.(MD)No.141 of 2023 and as such a batch of Writ Appeals sought to be filed and are pending before the Hon'ble Division Bench pertaining to the same issue of revision and re-drawal of panel from 2004 to 2018. When the issue is pending before the Hon'ble Division Bench, the petitioners had filed W.P.(MD)No.6511 of 2023 for the very same cause of action, challenging the notification of the third respondent dated 14.07.2022, raising a different ground and the writ petitioner ought to have informed the Court in order to maintain judicial discipline. The 4th respondent was appointed as Assistant by the TNPSC on 21.12.2009. The entire appointment was based on marks secured at the time of recruitment. Based on the same, rank was allocated and the fourth respondent was posted in the fifth respondent Revenue District. After bifurcation of Tenkasi District, at present the fourth respondent is working in the Tenkasi District. The writ petitioners are non-graduate promotee and they were working only as Assistants during 2009. The order of the Hon'ble Supreme Court in Rathinasamy case was given effect and as such the panel for Deputy Tahsildar was redrawn from 2004 to 2018. Hence the claim of the petitioners to include in the redrawn panel is not valid. The settled



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position of law with respect to the promotion of Direct Recruits and Graduate Promotee and Non-Graduate Promotee need no revision as of now as claimed by the writ petitioners. Any such attempt would definitely cause a serious chaos in the working nature of the entire department. The writ petitioners had been given appointment as Deputy Tahsildar and subsequently as Tahsildar only temporarily and subject to the outcome of final decision in Civil Appeal No.251 to 256 of 2015 and Civil Appeal No.9334/2018. Since the writ petitioners had accepted the conditional temporary promotion, the same could be reversed by the authorities at any time without any pre-notice and without assigning any reason. Hence, there is no violation of principles of natural justice. Further the official respondents have issued various posting orders and the private respondents had already assumed charges in the promoted place. Therefore, the private respondents submitted that they should not be disturbed.

9. The official respondents have filed counter stating that the revised panel of Deputy Tahsildar for the year from 2004 to 2018 was issued by the Collector Tirunelveli in the proceedings dated 14.07.2022 based on the orders of Hon'ble Supreme Court and also instructions issued by Principal Secretary / Commissioner of Revenue Administration in his circular dated 02.06.2022. In



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the meantime, a Writ Petition was filed in W.P.(MD)No.18417 of 2022 and WMP(MD)No.13423 of 2022, challenging the revised panel of Deputy Tahsildar published on 14.07.2022. The writ petitioners were also the petitioners among six in the above case. This Court vide order dated 23.08.2022 directed the respondents to dispose of the petitioners' representations. Till such time, the respondents shall not revert the petitioners to any lower post. Based on the above judgment, the objection petition of Thiru.R.Harihara Subramanian and 17 promotee Non-graduate Assistants have been examined and rejected vide order dated 08.10.2022. Subsequently, a writ petition challenging the revised panel of Deputy Tahsildar published on 14.07.2022, was filed by four promotive non-Graduate Assistants (R.Harihara Subramanian and 3 others) in W.P.(MD)No. 24006 of 2022 and this Court vide order dated 06.12.2022 granted an order of interim stay. Aggrieved over the same, a Writ Appeal was filed by one directly recruited Assistant in W.A.(MD)No.1522 of 2022 and this Court vide order dated 23.12.2022 granted an order of interim stay and the same is pending. Challenging the order dated 06.12.2022, another Writ Appeal in W.A.(MD)Nos.141 and 142 of 2023 was filed and this Court vide order dated 20.02.2023 granted an order of interim stay. In the meantime, the writ petitioners have now filed this Writ Petition by



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suppressing and concealing the facts of above directions and obtained an interim direction to keep the reversion in abeyance in W.P.(MD)No.6511 of 2023 dated 24.03.2023. The order of the Hon'ble Supreme Court dated 08.04.2009 is applicable to entire Tamil Nadu State [Revenue Department] and have to be implemented by all Districts. The revised list of Deputy Tahsildar published on 14.07.2022 based on the orders of the Supreme Court and also instructions issued by Principal Secretary and Commissioner of Revenue Administration in his circular dated 02.06.2022 for the period from 2004 to 2018 was cancelled on 17.03.2023 and the panel of Tahsildar for the period from 2004 to 2021 and Deputy Tahsildar for the period from 2004 to 2018 was redrawn in Tirunelveli Collector proceedings dated 21.03.2023 adopting the directions of Hon'ble Supreme Court and the provisions contained under Section 27(f) of Tamil Nadu Government Servants (Conditions of Service) Act, 2016, in view of the order vide Government in Revenue and Disaster Management Department in their letter dated 26.12.2022. The order dated 24.03.2023 passed in W.P.(MD)No.6511 of 2023 could not be implemented as the revised panel of Deputy Tahsildar dated 14.07.2022 challenged by this writ petitioners have since been cancelled on 17.03.2023. The petitioners' contention was the order issued on 14.07.2022 only. But the order dated



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14.07.2022 revised Deputy Tahsildar panel order was cancelled on 17.03.2023 and panel of Deputy Tahsildar for the period from 2004 to 2018 was redrawn in Tirunelveli Collector proceedings dated 21.02.2023 in view of the order issued by the Government in its letter dated 26.12.2022 adopting the Judgment of Hon'ble Supreme Court and the provisions contained under Section 27(f) of Tamil Nadu Government Servants (Conditions of Service) Act, 2016. There are no significant differences in the result of the seniority position by the two revised panels of Deputy Tahsildar published on 14.07.2022 and 21.03.2023. The stay ordered in W.P.(MD)No.6511 of 2023 dated 24.03.2023, only after an order passed on 17.03.2023 cancelling the revised panel of Deputy Tahsildar dated 14.07.2022 challenged in this Writ Petition and also after giving effect to the revised panel of Deputy Tahsildar dated 21.03.2023 and revised panel of Tahsildar dated 21.03.2023. Like these writ petitioners, another four persons were ordered to be reverted from the post of Tahsildar to the post of Deputy Tahsildar on publication of the revised seniority list dated 21.03.2023 and the posting orders were issued on 23.03.2023. The individuals filed this Writ Petition only after publication of both revised panel of Deputy Tahsildar and Tahsildar dated 21.03.2023 and issuance of posting orders dated 23.03.2023. However, S.S.Rahmathullah proceeded on leave from 17.03.2023 to 30.04.2023



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and R.Kandappan proceeded on leave from 20.03.2023 to 18.04.2023. They filed a writ petition and obtained the stay order on 24.03.2023. Since the orders of posting in view of revised panel published was already given effect before the issue of orders of this Court. Adopting the revised panel of Tahsildar the proposal for drawal of Deputy Collector has also been submitted to the Additional Chief Secretary / Commissioner of Revenue Administration, Chennai in the letter dated 23.03.2023. The stay ordered in W.P.(MD)No.6511 of 2023 dated 24.03.2023 for the notification dated 14.07.2023 which is cancelled on 17.03.2023 after all the above came into effect vide the office proceedings dated 21.03.2023. In this regard, the remedy available for the petitioners is to file an appeal before Commissioner of Revenue Administration within 60 days of the notification dated 21.03.2023, but the petitioners had not filed any appeal. The name of the writ petitioners have now been included in the panel of Deputy Tahsildar for the year 2015 as per the revised panel of Deputy Tahsildar published on 21.03.2023 adopting the judgment of the Supreme Court and also included in the panel of Tahsildar for the year 2021. Postings are being issued to the individuals placed in the panel of Tahsildar for the year 2021 and the writ petitioners would also be posted as Tahsildar according to the seniority. The writ petitioners were originally appointed as



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Junior Assistant on compassionate ground and they respectively joined duty on 07.10.1998 and 22.09.1998. They were qualified for the post of Assistant and their name were included in the panel of Assistant for the year 2004 and respectively joined duty on 16.09.2005 and 19.09.2005. Since the revised panel of Tahsildar was issued based on the orders of the Hon'ble Supreme Court, hence they are recruited to Deputy Tahsildar as per the panel for the year 2014-2018. Therefore, there is no infirmity in the order and hence the official respondents prayed to dismiss the writ petition.

10. Heard Mr.Ajmal Khan, the Learned Senior Counsel For M/s.Ajmal Associates appearing for the petitioners, Mr.Veera Kathiravan, the Learned Additional Advocate General, assisted by, Mr.P.Thambidurai, the learned Government Advocate appearing for the 1 to 3 respondents and Ms.Porkodi Karnan, for M/s.Polax Legal Associates the Learned Counsel appearing for the 4 to 8 respondents and perused the records.

11. The issue raised in the present writ petition has chequered history. The petitioners were appointed as Junior Assistant in the year 1998-1999 through TNPSC. After acquiring the requisite qualifications, they were promoted as Assistants in the year 2004 and their next promotion is Deputy



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Tahsildar. The respondents 4 to 8 were Direct Recruits who were appointed in the year 2009 through TNPSC.

12. The State Government issued G.O.Ms.No.884 Revenue Department dated 12.08.1992. And the consequential G.O.Ms.No.133 Revenue Department dated 07.02.1995 was passed amending Rule 7(a) in Annexure III item (ii) of the Tamil Nadu Revenue Subordinate Service Rules, wherein two provisos were introduced. By which the Direct Recruits were given preferential treatment by making them eligible for promotion as Deputy Tahsildars on completion of five-year service as Assistants and by placing them above the senior promotee Assistants. From here onwards, the litigation started.

13. Aggrieved over the preferential treatment and granting seniority above the senior promotee Assistants, the promotee Assistants had filed O.A.No.5710 of 1992 in Tribunal to quash the said amendments. The Tribunal quashed the said amendment vide order dated 26.02.1997. Aggrieved over, an appeal was preferred before the High Court and the same was allowed, wherein the High Court had reversed the order of the Tribunal. Hence Civil Appeal No. 2251 of 2009 in SLP No.9628 of 2006 and Civil Appeal No. 2252 of 2009 in SLP No. 8848 of 2008 was filed by M.Rathinaswami and others Vs. State of



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Tamil Nadu and others. The Hon'ble Supreme Court had upheld the amendment as far as the Non-Graduates Promotee Assistants but declined as far as Graduates Promotee Assistants are concerned. The Hon'ble Supreme Court has held as under:

18. As regards the training, we are satisfied that the promotees also have undergone the same experience as those of direct recruits, and in fact the former have usually longer experience than the direct recruits. Hence this cannot be a valid basis for discrimination against the promotees.

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26. As regards the non-graduate promotee Assistants, we are of the opinion that ordinarily it is for the State Government to decide whether their qualification has a reasonable relation to the nature of duties and responsibilities that go with and are attendant on the promotional post of Deputy Tehsildar. It is true that as observed in Roop Chand Adlakha's case (supra) there may, conceivably, be cases where the differences in the educational qualifications may not be sufficient to give any preferential treatment to one class of candidates as against another, and whether the classification is reasonable or not must, therefore, necessarily depend upon the facts of each case and the circumstances obtaining at the relevant time. However, the question whether the difference in the educational qualifications is sufficient to give preferential treatment to one class of candidates against another, should in our opinion be ordinarily left to the executive authorities to decide. The executive authorities have expertise in administrative matters, and it is ordinarily not proper for this Court to sit in appeal over their decisions unless it is something totally arbitrary or shocking. Whether graduate degree is a sufficient basis for classification for promotion vis-à-vis non-graduates, and whether such classification has rational relation to the nature of duties of a Deputy Tehsildar, is, in our opinion for the State Government to decide, and not the Court. Hence, we uphold the validity of impugned rule to the extent that it gives preference to the directly recruited Assistants over the promoted Assistants who are non-graduates.

27. However, we cannot find any rational basis for giving preference to the direct recruits over those promotee Assistants who are graduates, since the very basis for the distinction sought to be drawn by the respondents is that the direct recruits are graduates and hence intellectually superior to non-graduates. Hence we have to



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read down the impugned rule in order to save it from becoming violative of Articles 14 and 16 of the Constitution.

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14. Again another litigation started when the amendment of Rule 7(a) in Annexure III item (ii) of the Tamil Nadu Revenue Subordinate Service Rules was implemented. The writ petitions in W.P.(MD)No.12918 of 2009 batch was filed and the same was dismissed. Aggrieved over W.A.(MD)Nos.1285 to 1290 of 2011 was filed and the Hon'ble Division Bench had set aside the order of the Learned Single Judge and directed the respondents to draw the seniority list taking all the three categories namely Direct Recruits, Promotee Graduate and promotee Non-Graduate as one group for promotion as Deputy Tahsildar. Aggrieved over the same, SLP Civil Appeal No.251-256 of 2015 batch was filed by A.Rajagopalan etc. Vs. District Collector of Thiruchirapalli District. And also Contempt Petition No.750 of 2017 was filed for disobeying the order passed in M.Rathinaswami's case. The Hon'ble Supreme Court had held that the Division Bench of Madras High Court has misconceived the judgment passed in M.Rathinaswami's case. Further held that the Division Bench had took into consideration of Letter (MS) No. 392 dated 30.12.2011, wherein it is stated that the Government accepted the proposal of the Principal Secretary, Revenue to dispense with the degree or graduation as minimum educational



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qualification for the post of Deputy Tahsildar and directed to take the non-graduate promotee along with graduate promotees and direct recruits as one group based on the seniority as on 04.12.1978. Infact the Government reiterated the same in their counter (filed in the year 2013) filed in the Civil Appeal in Rajagopalan's case. But the Government had changed its stand when a contempt is filed in the year 2017 and filed another counter by completely changing its stand. Even the Hon'ble Supreme Court had observed that the earlier stand of the Government is unacceptable, since the Hon'ble Supreme Court had up held the amendment of two provisos in Annexure III item (ii) of Rule 7(a) in Rathinaswami's case by reading down the provisions. Hence, the Hon'ble Supreme Court has issued directions in A.Rajagopalan's case and the same is extracted hereunder:

19. In the result, the impugned judgement of the High Court is set aside and these appeals are allowed with the following observations and directions:

(i) Promotions of the Direct Recruit Assistants effected between 07.02.1995 and 08.04.2009 and their seniority in their respective positions as on date, shall not be disturbed;

(ii) The benefit extended to the Graduate Promotee Assistants by placing them on par with Direct Recruit Assistants is to be given effect to prospectively from the date of judgment of this Court dated 08.04.2009 rendered in the case of M. Rathinaswami v. State of T.N. reported in (2009) 5 SCC 625;



(iii) *After 08.04.2009, the promotion to the post of Deputy Tahsildar from its feeder category, i.e., Direct recruit Assistants and Promotee Graduate Assistants, shall be strictly in accordance with the judgment of this Court referred above, i.e., treating Promotee Graduate Assistants on par with Direct recruit Assistants. Such promotion shall be given effect to, without reference to any interim order(s) passed by the High Court;*

(iv) *If any panels are prepared, and promotions are given, after 08.04.2009 for promoting the Assistants to the post of Deputy Tahsildars in Tamil Nadu Revenue Subordinate Service contrary to the judgment of this Court dated 08.04.2009, such panels and promotions have to be revised so as to bring in conformity with the judgment of this Court referred above;*

(v) *By virtue of the judgment of this Court dated 08.04.2009, referred above, Promotee graduate Assistants are placed on par with Direct recruit Assistants. So far as Promotee non-graduate Assistants are concerned, the amended rule holds the field, which gives preferential treatment to Direct recruit Assistants, over Promotee non-graduate Assistants;*

(vi) Promotee non-graduate Assistants, who are impleaded as party respondents in these appeals, are not entitled to any directions in their favour, as much as, all these appeals are preferred by Direct recruit Assistants;

(vii) *While implementing the above directions, if the seniority and promotion, of the persons who are already retired or dead, is affected in any manner, payments made on account of such seniority and promotion earlier granted to them during the interregnum period, i.e., from 08.04.2009 till this date shall not be recovered.*



accepted the recommendation, ought to have deleted the Annexure III item (ii) of Rule 7(a) and inserted a new rule by treating all the three as one category.

But the Government failed to do so. When there is a statutory rule, then the same ought to be amended by deleting the earlier rule and by inserting another rule and definitely cannot be nullified by executive letters or executive orders.

It is exactly on this ground, in the subsequent judgment in A.Rajagopalan's case the Hon'ble Supreme Court had declined to accept the stand of the Government and the observation of the Court is extracted hereunder:

8. Challenging the judgment of the Single Judge dated 12.10.2011, a batch of writ appeals were filed before the Madurai Bench of Madras High Court. The Madurai Bench vide common judgment dated 09.03.2012 set aside the judgment of the Single Judge and directed the State of Tamil Nadu to draw the seniority list taking Direct recruit Assistants, graduate promotees as well as non-graduate promotees forming as one group and directed the State to draw the panel as on 04.12.1978 and reconsider the promotion subject to the candidates satisfying the criteria required under the rules within a period of two months. **While passing the impugned judgment, the Division Bench took into consideration the Letter (MS) No.392 dated 30.12.2011 in and by which the government accepted the proposal of the Principal Secretary, Revenue to dispense with the degree or graduation as minimum educational qualification for the post of Deputy Tahsildar and directed to take non-graduate promotees along with graduate promotees and direct recruits as one group, based on the seniority as on 04.12.1978 for the post of Deputy Tahsildar. The Division Bench also directed the State not to disturb the cases of those candidates who were already promoted but not in service either on account of retirement on superannuation or by reason of death.** The review petitions filed by the appellants herein were dismissed by the Madurai bench of Madras High Court. Being aggrieved, the appellants and others have filed these appeals.

9...

14. Letter No.392 dated 30.12.2011:- The Supreme Court in paras (25) and (26) in Rathinaswami held that "whether graduate degree is a sufficient basis for



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classification vis-à-vis non- graduates and whether such classification has rationale relation to the nature of duties of a Deputy Tahsildar” is for the State of Tamil Nadu to decide and “only executive authorities have expertise in administrative matters and it is ordinarily not proper for the Supreme Court to sit in appeal over the decisions unless it is something totally arbitrary or shocking.” Based on the observations of the Supreme Court, Principal Secretary to the State Government vide its Letter (MS) No.392 dated 30.12.2011 recommended for amendment to Rule 7(a) of the TNRSS Rules Annexure-III, item (ii) to the effect that it may not be appropriate to prescribe graduation or degree as minimum educational qualification for the post of Deputy Tahsildar. The State of Tamil Nadu vide its letter dated 30.12.2011 accepted the recommendation of the Principal Secretary/Commissioner of Revenue Administration and directed not to prescribe degree or graduation as minimum qualification for the post of Deputy Tahsildar. Acceptance of the recommendation of dispensing with the graduation as the essential qualification is still under consideration of the State Government. **In that letter, Government merely accepted the recommendations of the Principal Secretary and Commissioner of Revenue who has opined that it may not be appropriate to prescribe graduate qualification as essential qualification for the post of Deputy Tahsildar. It is to be pointed out that at this stage, appointment to the post of Deputy Tahsildar is governed by rules framed under proviso to Article 309. In the absence of any amendment to such rules, the decision of the Government, as accepted in the letter dated 30.12.2011 issued in Letter (MS) No.392, has no consequence so far as non-graduate Promotees are concerned.**

15. The Division Bench did not keep in view that the letter No.392 dated 30.12.2011 is still only a proposal and the rules are yet to be amended. The Division Bench fell in error by relying upon the said letter dated 30.12.2011 and erred in directing the State to treat the Promotee non-graduate Assistants, Promotee graduate Assistants and Direct recruit Assistants as one category and draw revised seniority list for the purpose of promotion to the post of Deputy Tahsildar. The Division Bench failed to notice that the amendment to Rule 7(a) Annexure III item (ii) of TNRSS Rules by G.O. No.133 dated 07.02.1995 has been upheld by the Supreme Court and has attained finality. The direction of the Division Bench to treat all three categories viz. Promotee non-graduate Assistants, Promotee graduate Assistants and Direct recruit Assistants as one group for the promotion to the post of Deputy Tahsildar virtually amounts to reversing the judgment of the Supreme Court. In our considered view, the direction of the Division Bench in the impugned judgment is wholly misconceived.



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16. The Government was facing contempt of the order for not complying the order passed in Rathinaswami's case, hence the Government was in a position to comply with the order of Rathinaswami's case. Had the government deleted the said two provisos of Annexure III item (ii) of Rule 7(a) and amended the said rule by including the said three categories on par, then the Government would have substantiated their case. But for the reasons best known to them, the Government with a recommendation letter of the Principle Secretary was trying to substantiate their stand, which is totally absurd. Even now the Government has power to put an end to this litigation and the Hon'ble Supreme Court in A.Rajagopalan's case had held that the non-graduates shall approach the Government for the relief of rule amendment and the relevant portion is extracted hereunder:

(viii) So far as Promotee non-graduate Assistants are concerned, it is open for them to pursue with the Government for appropriate amendment to the Rules, in which event we keep it open to Government to consider such request on its own merits.

And this relief is granted since the litigations are filed by graduate promotees and incidentally the rights of non-graduates promotees are affected. Also this is evident from the aforesaid judgment and the relevant portion is extracted hereunder:



(vi). Promotee non-graduate Assistants, who are impleaded as party respondents in these appeals, are not entitled to any directions in their favour, as much as, all these appeals are preferred by Direct recruit Assistants;

From this, it is evident that the promotee non-graduate assistants had not filed any separate petition and prayed for any relief.

17. Relying on *M.Rathinaswami's* case judgment and *A.Rajagopalan's* case judgment, the State Government try to revise the seniority panel between the Direct Recruits and Promotive Assistant with graduate and promotive non-graduates. The Government instead of putting an end to this litigation by amending or deleting the two provisos in Annexure III Item (ii) is allowing such litigations and this Court is at loss why the Government is creating litigations.

18. It is based on the aforesaid two judgments the Government is trying to fix the seniority. While fixing the seniority, an issue was raised by the non-graduates that they are promoted as Assistant in the year 2005 itself, whereas, the direct recruits were recruited in the year 2009. If that is so, even though they are non-graduates, they should be kept in the seniority panel for the panel year 2005 above the said direct recruits. In order to substantiate their claim, the



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petitioners submitted that their names are in the Assistant panel for the year 2005. If the respondents have issued a seniority list applicable for the panel year 2005 itself, then the petitioner would have been placed in the year 2005 ahead of direct recruits. However, the contention of the respondents is that the respondents are mandated to follow the reservation policy even for promotional post and if candidates to that roster is not available then the same would be carried to the next year. And the said plea cannot be accepted. The respondents ought to apply reservation but by taking that particular panel year of 2005 and apply reservation, but the same cannot be carried over to next year. Each year should be considered a separate recruitment year and it cannot be carried over to next year. Unfortunately, the respondents have taken the years 2004-2018 and is trying to fix the seniority, which had created a situation that the non-graduate promotee assistant promoted in the year 2005 is considered as junior to a person who is directly recruited assistant in the year 2009. As rightly pointed out when the non-graduate promotee was promoted as assistant, the directly recruited was not even in the service but was granted seniority over the person who is already in service.



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19. For promotion to Deputy Tahsildar, the Assistant ought to have completed in the post of Assistant for five years. When this condition is applied, then the petitioners ought to have been considered in the year 2010. And in the year 2010, the directly recruited Assistant would have completed only one year of service and they would be eligible for considering in the year 2014. But by taking 2004 to 2018 years as one recruitment year, the respondents have kept the petitioners as juniors to the directly recruited assistant, thereby the petitioners had lost their valuable rights of promotion.

20. For the post of Deputy Tahsildar, if the respondents had prepared the list, the petitioner would have been included ahead of direct recruits in the year 2010-2011 panel, but by that time the direct recruits would have completed only two years of service. In the panel of Tahsildar, the petitioners would have move ahead. On perusal of the list circulated before this Court, it is seen that the respondents have followed the reservation policy but had carried forward if candidate is not available. As far as seniority, the respondents have not followed the seniority as stated supra. Therefore, this Court is of the considered opinion that the respondents ought to follow the reservation policy and seniority for each and every year as recruitment year.



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21. The Hon'ble Supreme Court has stated that the *Rathinasamy* case shall be implemented from the year 2009 onwards. If the respondents had implemented from 2009 onwards, this issue would not arise. The respondents are trying to implement from the year 2004 onwards and try to redraw the Assistants seniority list from 2004 and that is against the directions of the Supreme Court as well. The respondents should follow from 2009 onwards by taking the list of Assistant who are promoted from 2009 onwards. The persons who were recruited as Assistants prior to 2009, either the direct recruits or the promotee as Assistants ought not to have been disturbed. Even though the counter states it will be implemented from the year 2009, but in reality, the respondents have implemented from the year 2004 onwards.

22. The Hon'ble Supreme Court in *A.Rajagopalan's* case (cited supra) vide judgment dated 12.03.2019 has also directed the "Promotee Non-Graduate Assistant" to approach the Government to amend the rules and the relevant portion of the judgment states "so far as Promotee non-graduate Assistants are concerned, it is open for them to pursue with the Government for appropriate amendment to the Rules, in which event we keep it open to Government to consider such request on its own merits". It is seen all the litigations were filed



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by the graduate promotee assistants and in their petitions and appeals orders were passed, but the real sufferers are the non-graduates assistants. Therefore, the petitioners and similarly placed Promotee Non-Graduate Assistant are at liberty to submit representation within a period of four (4) weeks from the date of receipt of the copy of the order and the Government shall consider to amend the rules within a period of twelve (12) weeks therefrom. This Court hopes that wisdom would prevail over the Government to put an end to this litigation.

23. Therefore, this Court is of the considered opinion that the impugned seniority list passed by the respondents, even though the Supreme Court judgment of graduates and non-graduates were taken into account, the respondents fail to comply with year wise seniority stated supra. Hence, the impugned seniority list is quashed. Hence, the impugned orders passed in 21.03.2023 and 23.03.2023 are liable to be quashed and accordingly the same is quashed.

24. For the reasons stated supra, with the above direction the writ petition is allowed. Connected Miscellaneous Petitions are closed. There shall be no order as to costs.



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25. Alleging willful disobedience of the order passed by this Court in Cont.P.(MD)No.700 of 2023 dated 13.04.2023, the Contempt Petition has been filed. Since the official respondents have not obeyed the interim order of this Court, contempt petition is filed. Since this Court had issued certain directions in this order, the respondents are directed to comply with the said directions within stipulated time. Hence, the Contempt Petition is closed.

09.11.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr



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To

- 1.The Principal Secretary to Government,
The State of Tamil Nadu,
Revenue Administration and Disaster Management Department,
Revenue Department,
Fort.St.George,
Chennai – 600 009.
- 2.The Additional Chief Secretary/
Commissioner of Revenue Administration,
Revenue Administration and Disaster Management Department,
Ezhilagam, Chempauk,
Chennai – 600 005.
- 3.The District Collector,
Tirunelveli District,
Tirunelveli – 627 009.



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S.SRIMATHY, J.

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