BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
21.02.2023	03.03.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.4963 OF 2018

1. P.Saravanaperumal
2. K.Karuppasamy
3. S.Sundarraj
4. O.Keerthiraja
5. K.Udhayakumar
6. N.Packiyaraj
7. Vinodkumar
8. M.Leelavathi
9. S.Vimaladevi
10. A.Mahalakshmi
11. S.Rajalakshmi
12. R.Karthick
13. T.Ganeshamoorthy
14. M.Madhan
15. D.Muthukumar
16. A.Megala
17. M.Muthuabishegam
18. P.Siva Prakasam
19. N.Ramesh
20. V.Vijaya Lakshmi .. Petitioners

- Vs -

1. The State of Tamil Nadu

Rep. by its Secretary
Commercial Taxes & Registration
Department, Fort St. George
Chepauk, Chennai – 9.

2. The Commissioner of Commercial Taxes
O/o the Commissioner of Commercial of Taxes
Ezhilagam, Chepauk, Chennai – 5.

3. Tamil Nadu Public Service Commission
Rep. by its Secretary
TNPSC Road, VOC Nagar
Park Town, Chennai 600 003.

4. The Joint Commissioner (ST)
O/o Joint Commissioner
Combined Commercial Taxes Building
No.6, Pichards Road
Hasthampatti, Salem.

5. E.Prathap
6. G.Ananthakrishnan
7. A.Shahul Hameed
8. R.Sivaguru
9. M.Manoj
10. M.P.Akilandeswari
11. G.Senthilkumar
12. S.Venkatesh
13. R.Kailash Shankari
14. S.Vignesh
15. J.Ramprasad
16. G.Abilash Deepak
17. K.Selvameenakshi
18. P.Andi
19. C.Johnson Raj

20. N.Manimehalai
21. G.Manikandan
22. P.Sumithra
23. D.Nagarajan
24. S.S.Thennarasu
25. P.Shenbagraman
26. P.Akilanda Eswari
27. R.Shenbagalakshmi
28. P.Ranjith Kumar
29. P.Balasubramaniam
30. V.Karthick
31. K.Manikandan
32. V.Jeyanthi
33. N.Senthil Kumar
34. R.Charles Devakumar .. Respondents

(RR-11 to 34 impleaded vide order Of Court dated 20.12.18 in WMP (MD) Nos. 13740 & 20854/2018)

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records in connection with the impugned Proc. No.P2/2133/2016 dated 22.02.2018 and proceedings viz., Proc. No.P2/2133/2016 dated 02.03.2018 of the 2nd respondent and quash the same and direct the respondents 1, 2 and 4 to prepare the inter-se seniority list for the cadre in accordance with Section 40 of the Tamil Nadu State and Subordinate Service Rules and then effect any appointments by transfer to the post of DCTO/DSTO in accordance with law.

For Petitioners : Mr. K.Krishnamoorthy

For Respondents : Mr. S.P. Maharajan for RR-1 & 4
Mr. J.Anand Kumar for R-3
Mr. Pooventhrerajan for RR-5 to 33
Mr. G.Sankaran, SC for
Mr. F.Deepak for R-34

ORDER

Through the present writ petition, the petitioners have assailed the proceedings of respondents 1 and 2 in and by which relaxation with regard to the minimum requirement was relaxed and the consequential inclusion of the names of the respondents in the panel for promotion as Assistants and their further inclusion in the already expired panel to the post of Deputy Commercial Tax Officer of the year 2016, without fixation of *inter-se* seniority in the cadre of Assistants between the in-service candidates and the candidates, who were directly recruited as Assistants through proper selection process.

2. The facts in a nutshell, which are necessary for appreciating the case of the petitioners, as culled out from the affidavit filed by the petitioners in support of their contention, are stated hereunder :-

The petitioners were directly recruited through the Tamil Nadu Public Service Commission to the post of Assistant and allotted to the various divisions of the Commercial Taxes Department in the year 2014 and the petitioners were appointed on various dates in the year 2014 in various divisions as is evident from the tabulated statement filed by the petitioners in support of their petition.

3. It is the further case of the petitioners that the appointment to the cadre of Assistant in the Commercial Taxes Department is in the ratio of 1 : 1, i.e., one post of Assistant to be filled up by promotion from in-service candidate and the other by direct recruitment. It is the further case of the petitioners that respondents 5 to 10 were appointed on compassionate grounds as Junior Assistants, lower in cadre to the petitioners, in the year 2009 and 2010 and, thereafter, their services were regularized as Assistants in the year 2014 and 2015, which is much later to the date of appointment of the petitioners. Therefore, by no stretch, the said respondents 5 to 10 could be termed to be senior to the petitioners by virtue of Rule 35 (aa) of the Tamil Nadu State and Subordinate Service Rules (for short 'SS Rules'), which is *pari material* to Section 40 (2) of the Tamil Nadu State Government Servants (Conditions of Service) Act,

2016, (for short 'Act, 2016'), which clearly stipulates that the seniority of a person in service is to be determined with reference to the date on which he is appointed to the services, class, category or grade.

4. It is the further averment of the petitioners that the date of appointment in service has the determinant role in fixing the seniority of a person and when appointment is made from different sources in the branches of the Commercial Taxes Department, *inter se* seniority of the employees coming from the different sources have to be fixed and without fixing the *inter se* seniority in the post of Assistant, viz., between the direct recruits and the promotees, including the names of respondents 5 to 10 in the panel of Deputy Commercial Tax Officer (for short 'DCTO') for the year 2016 is wholly illegal, impermissible and deserves to be set aside.

5. It is the further averment of the petitioners that the appointment to the post of DCTO is governed by Rule 2 of the Tamil Nadu Commercial Taxes Subordinate Service Rules (for short 'CT Rules'), which provides for filling up of 66-2/3rd percent of substantive vacancies by recruitment by transfer from the

feeder category of Assistant and 33-1/3rd percent of substantive vacancies by direct recruitment. It is the further averment of the petitioners that G.O. Ms. No. 91, P&AR dated 3.11.2015 provides for a minimum period of 2 years of service in the post of Assistant to be considered eligible for such promotion.

6. It is the further averment of the petitioner that Rules ought to be framed under Article 3098 of the Constitution for regular appointment or promotion, but such procedure is not adhered to by the respondents 1, 2 and 4 and by virtue of the power granted under Rule 10 (a) 1 and 39 of the General Rules, the respondents 1, 2 and 4 virtually run parallel adhoc service rules by not resorting to framing of rules. In such a backdrop, without framing the Rules, the respondents 1, 2 and 4 published only temporary panel without fixing the seniority in the feeder category and that Junior Assistants and Typists are promoted to the post of Assistant in total disregard to the number of available substantive vacancies.

7. It is the further averment of the petitioners that the 2nd respondents vide the impugned proceedings dated 22.2.2018, without arriving at the *inter-se*

seniority between the direct recruits and promotes, by relaxing Rule 5 and 6 (d) of the CT Rules, included respondents 5 to 10 in the panel of Assistants retrospectively and further included respondents 5 to 10 in the expired DCTO panel of the year 2016, which is wholly arbitrary, prejudicial, impermissible, erroneous and unsustainable as the *inter-se* seniority between the direct recruits and promotees were never fixed since inception. Challenging the proceedings issued by respondents 1 and 2 dated 9.2.2018 and 2.3.2018, the present writ petitions have been filed.

8. Learned counsel appearing for the petitioners submit that once appointment is made through direct recruitment, as per rules, it is the duty of the respondents to draw and publish the *inter-se* seniority between the direct recruits and the promotes and without conducting the said exercise, it is not open to respondents 1, 2 and 4 to give relaxation and grant retrospective benefit to respondents 5o to 10, which is not only untenable, but is a *mala fide* act, which deprives the vested rights of the petitioners, thereby affecting the seniority to be considered for appointment by transfer to the post of DCTO.

9. It is the further submission of the learned counsel for the petitioners that all the petitioners having been appointed through direct recruitment by the Tamil Nadu Public Service Commission, the date of appointment should be the same and it is not open to the appointing authorities to issue orders on various dates so as to make the said dates as countable for the purpose of reckoning their date of appointment. The delay in the issuance of appointment orders by the appointing authority cannot be put against the petitioners, nor could it be attributed to them.

10. It is the further submission of the learned counsel that the issue relating to fixing of *inter-se* seniority between the direct recruits and the promotes has already been fixed by the Apex Court as well as by this Court and respondents 1, 2 and 4 cannot go beyond the said dicta of the Supreme Court while fixing the *inter-se* seniority between the two categories.

11. It is the further submission of the learned counsel that the petitioners have been appointed in the substantive posts, in the 50% quota reserved for direct recruitment in respect of the vacancies arising for the year 2011-2012. The

50% direct recruitment quota should be filled up only by candidates through direct recruitment, but persons, who are promotes, were made to occupy the quota meant for direct recruitment in respect of vacancies for the year 2011, 2012 and 2013 under the guise of ad-hoc appointment, which has resulted in granting them undue benefit and advantage in the matter of inclusion of their names in the panel for promotion to the post of DCTO, though in actuality, the said persons cannot be allowed to hold the post and, in fact, they should stand reverted, which is the case with respondents 5 to 10.

12. It is the further submission of the learned counsel that the ad-hoc appointees, promoted to meet the emergent needs are seldom reverted to their original post, though they are occupying the posts, which are earmarked for direct recruits and through a back-door system, the said promotes are conferred with further promotion. It is the further submission of the learned counsel that respondents 5 to 10, being ad-hoc appointees of the year 2015, could by no means, be allowed to hold the post reserved for direct recruits and be granted with further promotion to the detriment of the direct recruitees, by relaxing the rules.

13. It is the further submission of the learned counsel that respondents 5 to 10, being ad-hoc appointees, their service cannot be counted for the purpose of reckoning seniority in the said post and respondents 5 to 10, who have been recruited by transfer to the post of DCTO are all persons, who were promoted as Assistants much to the detriment of the direct recruits, who are being discriminated and not being promoted as no *inter-se* seniority has been drawn by the respondents 1, 2 and 4. The lacunae on the part of the respondents 1, 2 and 4 in not drawing the *inter-se* seniority cannot be put against the petitioners by discriminating them and not promoting them, thereby, the seniority is being nullified is wholly against the decision of the Apex Court in the matter of fixation of *inter-se* seniority and is nothing but an act of contempt on the part of the respondents 1, 2 and 4.

14. It is the further submission of the learned counsel for the petitioners that respondents 5 to 10 belong to different divisions and when each division is to be considered as a separate unit, comparing the seniority of respondents 5 to 10 for the purpose of their promotion by fixing *inter-se* seniority is not only

against the interest of the petitioners, but also against the relevant rules which govern the field.

15. It is the further submission of the learned counsel that the seniority of direct recruits is determined by the rank assigned to them in the order of selection and Rule 35 (aa) of SS Rules reckons the date of appointment to the service, class, category or grade for determination of *inter-se* seniority between the direct recruits and promotes. However, not only in violation, but more on purpose, without preparing the *inter-se* seniority, respondents 1, 2 and 4 have indulged in practice against the rules, thereby, granting ad-hoc benefit of promotion to respondents 5 to 10, that too with restrospectivity and consequential financial benefits, which is in detriment to the petitioners, who are direct recruits. It is the submission of the learned counsel that the petitioners are entitled for consideration for promotion/appointment by transfer over the promotees, viz., respondents 5 to 10, as Rule 35 (aa) of the SS Rules would stand squarely attracted to the case of the petitioners. It is the further stand of the petitioners that respondents 1, 2 and 4, exercising the power conferred u/r 10 (a) (i) and 39 of the provisions of SS Rules and the Act, 2016 in a *mala fide* manner,

have resorted to filling up of the posts on promotion by transfer from the promotee category, only to defeat the interest of the petitioners.

16. It is the further submission of the petitioners that the petitioners are not party to the impugned order, though they are directly affected by the promotion granted without following the relevant rules and that they were also not served with a copy of the order, which has been passed by the 1st respondent, as the same has not been uploaded in the public domain. This, according to the learned counsel, clearly reveals the devious mind and ulterior motive on the part of respondents 1, 2 and 4 to grant some benefit to respondents 5 to 10, to which they are not legally entitled to. Therefore, for the infractions on the part of respondents 1, 2 and 4, learned counsel for the petitioners pray for allowing the present petition.

17. Per contra, learned Special Government Pleader appearing for respondents 1, 2 and 4 submitted that only to meet the emergent and exigent situation, respondents 5 to 10 have been promoted on temporary basis and their

promotion and fixation in the seniority would be on the basis of the *inter-se* seniority that is being drawn by the respective Joint Commissioner.

18. It is the further submission of the learned Special Government Pleader that the petitioners were direct recruits as Assistants of the year 2014, who have since been regularized and respondents 5 to 10 were initially appointed as Junior Assistants and, thereafter, their services were regularized belatedly on administrative grounds. It is the further stand of the learned Special Government Pleader that the temporary panel of DCTO was drawn by the 2nd respondent to fill the existing vacancies in the interest of Revenue and this temporary panel was drawn by following the existing rules and provisions in the service rules. It is the further stand of the learned Special Government Pleader that the case of the petitioners for being considered for temporary promotion as DCTO by including their name in the panel was not considered for the reason that as on the crucial date, viz., 1.3.2016, the petitioners had not completed the mandatory service of 2 years in the cadre of Assistant, which is the crucial date for drawal of panel for the year 2016.

19. It is the further stand of the learned Special Government Pleader that the respective Joint Commissioners of the concerned Division are the authority to draw up the *inter-se* seniority in the cadre of Assistants and upon drawal of the seniority on examining the representation and objections made, if any, with regard to the said drawal, the fixation of respondents 5 to 10 in the seniority would be regularized, as the present promotion to the cadre of DCTO is only temporary in nature. It is the further stand of the learned Special Government Pleader that the respective Joint Commissioners have drawn the *inter-se* seniority lists, which have also been published, which is in respect of Assistants from the year 2013.

20. It is the further stand of the learned Special Government Pleader that if at all the petitioners have any grievance against the *inter-se* seniority, which has been drawn by the concerned Joint Commissioner, the proper course open to the petitioners is only to make a representation before the concerned Joint Commissioner, on the question of relative seniority between the direct recruits and the promotees and if any of the junior to the petitioners have been

promoted ahead of the petitioners, the representation, if any, to be filed by the petitioners would be duly considered and disposed of in accordance with law.

21. It is the further submission of the learned Special Government Pleader that the respective Joint Commissioners have been directed to publish the *inter-se* seniority list and subject to the representations/objections that may be received on the publication of the list, the petitioners, if aggrieved, can have their grievance redressed with regard to the *inter-se* seniority by submitting their representation/objections and the act of the petitioners in rushing to this Court and filing the present writ petition, thus stalling the whole process of promotion, is impermissible, more so, when the concerned Joint Commissioners have since published the *inter-se* seniority list which have been normalized with the ad-hoc list drawn so far and the seniority with reference to the service rules would be strictly followed in terms with Act, 2016. Accordingly, learned Special Government Pleader prayed for dismissal of the present petition while granting liberty to the petitioners to work out their remedy in accordance with law.

22. Learned counsel appearing for respondents 11 to 33, who have impleaded themselves as party respondents in the present writ petition, submits that the writ petitioners have no locus to file the present petition as there are strangers to the impugned proceedings. It is the further submission of the learned counsel that the petitioners having not suffered any legal injury, have no right to challenge any act under Article 226 of the Constitution. When the petitioner has no judicially enforceable right available for enforcement, the petitioners cannot invoke the extraordinary jurisdiction of this Court.

23. It is the further submission of the learned counsel for respondents 11 to 33 that the Commercial Taxes Department is governed by the Tamil Nadu Ministerial Service Rule and the seniority of Assistant is reckoned in the respective division. That being the case, the petitioners belonging to different divisions and respondents 5 to 10 not coming within the division in which the petitioners are employed, the petitioners are estopped from questioning the fixation of seniority in respect of not only respondents 5 to 10, but also respondents 11 to 33.

24. It is the further submission of the learned counsel that *inter-se* seniority list between the direct recruits and promotee Assistants is governed by the Tamil Nadu Ministerial Serivce Rule and the stand of the petitioners that it is governed under Rule 2 (a) of the Tamil Nadu Commercial Taxes subordinate Service Rules is wholly untenable. It is the further submission of the learned counsel that DCTO comes under the purview of the CT Rules and that the promotional panel pertains to the year 2016 and the crucial date for preparation of the panel of Assistants fit for promotion to the post of DCTO is 1.3.2016 on which date none of the petitioners are fit for being considered for promotion.

25. Learned senior counsel appearing for the 34th respondent, who has been impleaded as party respondent at his instance, submitted that the case of the 34th respondent is wholly different as he was appointed as Assistant way back on 31.8.2007, much prior to the appointment of the petitioners and merely on account of his not passing the Accountancy Lower Test, his name was not included for being considered for promotion in the year 2016. However, the 34th respondent, having successfully completed the said test in February, 2017, he was fit to be considered for inclusion of his name in the panel for the year 2017.

26. It is the further submission of the learned senior counsel for the 34th respondent that while proforma of the eligible persons in the cadre of Assistants working in the Commercial Taxes Department was called for, for being considered for inclusion in the panel for promotion to the post of DCTO by recruitment by transfer for the year 2017, the name of the 34th respondent was included in the proposed panel. However, no orders have been passed on the said panel in view of the interim orders passed in the present petition, which is adversely affecting the interest of the respondents, including the 34th respondent. The petitioners have no grievance insofar as the 34th respondent is concerned and their claim would not lie against the 34th respondent in view of the fact that his appointment to the post of Assistant was much earlier in point of time, viz., in the year 2007. Therefore, learned counsel appearing for the 34th respondent prays for appropriate orders by highlighting to the Court to the age of superannuation of the 34th respondent, which falls on 31.12.2018.

27. This Court paid its careful consideration to the submission advanced by the learned counsel appearing on either side and perused the materials available

on record as also the relevant provisions of law to which this Court's attention was drawn.

28. Before analyzing the facts of the present case, it is but necessary to look at the proposition of law with respect to fixation of *inter-se* seniority between direct recruits and promotes and the ratio that has been laid by the Courts on the said subject.

29. The Apex Court in ***M.P.Palanisamy & Ors. – Vs – A.Krishnan & Ors. (MANU/SC/1017/2009)***, on the issue relating to *inter-se* seniority between direct recruits vis-à-vis promotes, which is on similar lines as that of this Court in the present petition, the Apex Court, in similar circumstances had held as under :-

> *"21. This stand is correct, as though the appellants were fully qualified P.G. Assistants at the time of their initial appointment after 1981, the fact of the matter is that they never faced any competition. They studiously and conveniently desisted from taking the examination, though it was made very clear to them that they would have to take the examination. It was feebly argued before us by the Learned Senior Counsel for the appellants that they had no opportunity for doing so, as the last date for the*

examination had already passed. We do not understand as to what the appellants were waiting for. There was a general advertisement issued and there was no question of presuming that these P.G. Assistants would in any manner be exempted from taking the examination of TNPSC without whose selection, they could never enter the Government service. Under the circumstances, it was for these P.G. Assistants to appear for the examination and prove themselves. They had come in ad-hoc manner and, therefore, they could not expect regularization straightaway. Under these circumstances, they remained on the roll in their ad-hoc capacity and, therefore, were not the members of the service. Rule 23(a)(i) of the Tamil Nadu State and Subordinate Services Rules provides as under:

> *23(a)(i) Date of commencement of probation of persons first appointed temporarily:- If a person appointed temporarily either under sub- rule (a) or Sub-rule (b) of the Rule 10 to fill a vacancy in any service, class or category otherwise than in accordance with the rules governing appointment thereto, such vacancy being a vacancy which may be filled by direct recruitment, is subsequently appointed to the service, class or category in accordance with the rules, he shall commence his probation if any, in such category either from the date of his first temporary appointment or from such subsequent date, as the appointing authority may determine. If the post is one to which appointment may be made by transfer, and the*

> *person who had been appointed thereto either under General Rule 10(a) or 10(d) is subsequently recruited thereto by transfer and included in the list of approved candidates, the appointing authority may in his discretion, allow such person to commence his probation if any, from the date of his first temporary appointment or from such subsequent date, as the appointing authority may determine:*
>
> *Provided that the date so determined by the appointing authority to commence probation in this clause, shall not be earlier than the date of commencement of probation of the junior most person already in service.*
>
> *Provided further that on the date so determined by the appointing authority to commence probation in this clause, the person shall not only possess all the qualifications prescribed for appointment to the service, but also be fit for inclusion in the list of approved candidates drawn up by the Tamil Nadu Public Service Commission or the appointing authority, as the case may be.*

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

* * * * * * *

26. Mr. C. Selvaraju, Learned Senior Counsel for the contesting respondent invited our attention to the decision in case of State of Tamil Nadu and Anr. v. E. Paripoornam and Ors. reported in MANU/SC/0347/1992 : (1992)IILLJ619SC , which was the case pertaining to the seniority of the teachers, who were appointed temporarily. Those were also the teachers appointed under Rule 10(a)(i)(1) of the Tamil Nadu State and Subordinate Services Rules. Subsequently, they were regularized for the limited purpose of increments. The order of regularization itself denied their previous service for the purpose of determining the seniority. This Court came to the conclusion that while determining the seniority, the Court could not count that service for the purpose of seniority. In para 14, this Court observed:

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

applicants under Rule 10(a)(i)(1) cannot be considered for the purpose of seniority, as such appointment is a matter of stop-gap, emergency or fortuitous arrangement."

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

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

The emphasized portion, undoubtedly, presents out a clear position that the language of the G.O.Ms., offering regularization, is of utmost importance. Therefore, it is clear that that second condition will have to stay as it is."

30. The above decision of the Apex Court was followed and quoted with approval in the decision of this Court in ***S.P.Pethel Raj & Ors. – Vs – V.E..Vairappan & Ors. (MANU/TN/1242/2012)***, wherein the Division Bench of this Court held as under :-

> *"22. Ergo, it is in accordance with the Constitutional mandate and the TNPSC Regulations, 1954, the Government has sought concurrence from the TNPSC and it is seen that in respect of 37 temporary appointees, including the original writ petitioners, the TNPSC has given concurrence for regularizing their appointment suggesting that the relevant Rules, including the rules relating to the method of recruitment/reservation, may be relaxed in order to regularize their services. The TNPSC has also made it clear, as it is seen in the Government Order challenged, that the retrospective regularization of these candidates will not confer any right on seniority and they should be placed below the candidates selected by the TNPSC in the last selection, to wit 1992 approved list.*
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> * * * * * * *
>
> *28. When a similar question arose before the Supreme Court in M.P. Palanisamy v. A. Krishnan, MANU/SC/1017/2009 : (2009) 6 SCC 428, in respect of appointment of teachers in Matriculation Schools in the State of Tamil Nadu vide G.O.Ms. No. 1813, dated 12.12.1988, by which the teachers temporarily appointed as per Rule 10 (a) (i) were regularized from the date of their original appointment, however directing them to be placed in the seniority*

below the last candidate selected by the TNPSC, while confirming the said government order, the Apex Court has, in fact, referred to Rule 23 (a) (i) of the Tamil Nadu State and Subordinate Service Rules, 1955, which is as follows:

> *23. (a)(i) Date of commencement of probation of persons first appointed temporarily.' If a person appointed temporarily either under sub-rule (a) or sub-rule (b) of the Rule 10 to fill a vacancy in any service, class or category otherwise than in accordance with the rules governing appointment thereto, such vacancy being a vacancy which may be filled by direct recruitment, is subsequently appointed to the service, class or category in accordance with the rules, he shall commence his probation if any, in such category either from the date of his first temporary appointment or from such subsequent date, as the appointing authority may determine. If the post is one to which appointment may be made by transfer, and the person who had been appointed thereto either under General Rule 10(a) or 10(d) is subsequently recruited thereto by transfer and included in the list of approved candidates, the appointing authority may, in his discretion, allow such person to commence his probation if any, from the date of his first temporary appointment or from such subsequent date, as the appointing authority may determine:*

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

Provided further that on the date so determined by the appointing authority to commence probation in this clause, the person shall not only possess all the qualifications prescribed for appointment to the service, but also be fit for inclusion in the list of approved candidates drawn up by the Tamil Nadu Public Service Commission or the appointing authority, as the case may be. and took particular reference to the first proviso stated above, and rejected the contention of the temporary appointees to have their seniority placed above the persons appointed through TNPSC and has held as follows:

42. We are not impressed by this, as we have already pointed out that under Rule 23 (a) (i) of the Tamil Nadu State and Subordinate Services Rules, the persons who were in service, could not be rendered junior by the regularisation of the ad hoc candidates at a later stage. This G.O. Ms. No. 1813, therefore, has to be interpreted in the light of Rule 23 (a) (i) which was a general rule and applicable to all the appointments. After all, when a clear reference was made to Rule 10 (a) (i) (1), which was from the General Rules, there was no reason to make any *exception and not to read Rule 23 (a) (i) of the General Rules. For this reason, the argument must fail."*

31. In ***Santhosh Kumar & Ors. – Vs – G.R.Chawla & Ors. (2003 (10) SCC 513),*** the Apex Court, with respect to *inter-se* seniority between direct recruits and ad-hoc employees went on to observe that *"the seniority of ad hoc appointees to be reckoned from the date of their substantive appointments and ad hoc appointments cannot be deemed to be substantive appointments and hence such appointees to be placed below the direct recruits appointed prior to their regularisation".* The facts of the present case stands squarely covered by the decision in the aforesaid case, as the regularization of respondents 5 to 10 are posterior in point of time to that of the appointment of the petitioners by direct recruitment.

32. Similar is the view of the Apex Court in ***Malook Singh & Ors. – Vs – State of Punjab & Ors. (*MANU/SC/0795/2021*)***, wherein the Supreme Court held as under :-

"20. The law on the issue of whether the period of ad hoc service can be counted for the purpose of determining seniority

has been settled by this Court in multiple cases. In Direct Recruits (supra), a Constitution Bench of this Court has observed:

> *"13. When the cases were taken up for hearing before us, it was faintly suggested that the principle laid down in Patwardhan case [MANU/SC/0331/1977 : (1977) 3 SCC 399: 1977 SCC (L&S) 391: (1977) 3 SCR 775] was unsound and fit to be overruled, but no attempt was made to substantiate the plea. We were taken through the judgment by the learned Counsel for the parties more than once and we are in complete agreement with the ratio decidendi, that the period of continuous officiation by a government servant, after his appointment by following the Rules applicable for substantive appointments, has to be taken into account for determining his seniority; and seniority cannot be determined on the sole test of confirmation, for, as was pointed out, confirmation is one of the inglorious uncertainties of government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies. The principle for deciding inter se seniority has to conform to the principles of equality spelt out by Articles 14 and 16. If an appointment is made by way of stop-gap arrangement, without considering the claims of all the eligible available persons and without following the Rules of appointment, the experience on such appointment cannot be equated with the experience of a regular appointee, because of the*

qualitative difference in the appointment. To equate the two would be to treat two unequals as equal which would violate the equality clause. But if the appointment is made after considering the claims of all eligible candidates and the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the Rules made for regular substantive appointments, there is no reason to exclude the officiating service for purpose of seniority. Same will be the position if the initial appointment itself is made in accordance with the Rules applicable to substantive appointments as in the present case. To hold otherwise will be discriminatory and arbitrary.....

.....

47. To sum up, we hold that

(A) Once an incumbent is appointed to a post according to a rule, his seniority has to counted from the date of appointment and not according to date of his confirmation. The corollary to the above Rule is that where the initial appointment is only ad hoc and not according to Rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account considering the seniority."

(emphasis supplied)

The decision in Direct Recruits (supra) stands for the principle that ad hoc service cannot be counted for determining the *seniority if the initial appointment has been made as a stop gap arrangement and not according to rules. The reliance placed by the Single Judge in the judgment dated 6 December 1991 on Direct Recruits (supra) to hold that the ad hoc service should be counted for conferring the benefit of seniority in the present case is clearly misplaced. This principle laid down in Direct Recruits (supra) was subsequently followed by this Court in Keshav Chandra Joshi v. Union of India MANU/SC/0061/1991 : 1992 Supp (1) SCC 272. Recently a two judge Bench of this Court in Rashi Mani Mishra v. State of Uttar Pradesh, of which one of us (Justice D.Y. Chandrachud) was a part, observed that the services rendered by ad hoc employees prior to their regularization cannot be counted for the purpose of seniority while interpreting the Uttar Pradesh Regularization of Ad Hoc Appointment Rules. This Court noted that under the applicable Rules, "substantive appointment" does not include ad hoc appointment and thus seniority which has to be counted from "substantive appointment" would not include ad hoc service. This Court also clarified that the judgment in Direct Recruits (supra) cannot be relied upon to confer the benefit of seniority based on ad hoc service since it clearly states that ad hoc appointments made as stop gap arrangements do not render the ad hoc service eligible for determining seniority. This Court speaking through Justice M.R. Shah made the following observations:*

> *"36. The sum and substance of the above discussion would be that on a fair reading of the 1979 Rules,*

extended from time to time; initial appointment orders in the year 1985 and the subsequent order of regularization in the year 1989 of the ad hoc appointees and on a fair reading of the relevant Service Rules, namely Service Rules, 1993 and the Seniority Rules, 1991, our conclusion would be that the services rendered by the ad hoc appointees prior to their regularization as per the 1979 Rules shall not be counted for the purpose of seniority, vis-à-vis, the direct recruits who were appointed prior to 1989 and they are not entitled to seniority from the date of their initial appointment in the year 1985. The resultant effect would be that the subsequent re-determination of the seniority in the year 2016 cannot be sustained which was considering the services rendered by ad hoc appointees prior to 1989, i.e., from the date of their initial appointment in 1985. This cannot be sustained and the same deserves to be quashed and set aside and the seniority list of 2001 counting the services rendered by ad hoc appointees from the date of their regularization in the year 1989 is to be restored.

37. Now so far as the reliance placed upon the decision of this Court in the case of Direct Recruit Class II Engg. Officers' Assn. (supra), relied upon by the learned Senior Advocate appearing on behalf of the ad hoc appointees is concerned, it is required to be noted that even in the said decision also, it is observed and held that where initial appointment was made only ad hoc as a stop gap *arrangement and not according to the rules, the officiation in such post cannot be taken into account for considering the seniority. In the case before this Court, the appointments were made to a post according to Rule but as ad hoc and subsequently they were confirmed and to that this Court observed and held that where appointments made in accordance with the rules, seniority is to be counted from the date of such appointment and not from the date of confirmation. In the present case, it is not the case of confirmation of the service of ad hoc appointees in the year 1989. In the year 1989, their services are regularized after following due procedure as required under the 1979 Rules and after their names were recommended by the Selection Committee constituted under the 1979 Rules. As observed hereinabove, the appointments in the year 1989 after their names were recommended by the Selection Committee constituted as per the 1979 Rules can be said to be the "substantive appointments". Therefore, even on facts also, the decision in the case of Direct Recruit Class II Engg. Officers' Assn. (supra) shall not be applicable to the facts of the case on hand. At the cost of repetition, it is observed that the decision of this Court in the case of Direct Recruit Class II Engg. Officers' Assn. (supra) was considered by this Court in the case of Santosh Kumar (supra) when this Court interpreted the very 1979 Rules.”*

The notification dated 3 May 1977 stated that the ad hoc appointments were made in administrative interest in anticipation of regular appointments and on account of delay that takes place in making regular appointment through the concerned agencies. In this regard, the vacancies were notified to the Employment Exchange or advertisements were issued, as the case maybe, by appointing authorities. The appointments were not made on the recommendation of the Punjab Subordinate Service Selection Board. However, subsequently a policy decision was made to regularize the ad hoc appointees since their ouster after a considerable period of service would have entailed hardship. Thus, the initial appointment was supposed to be a stop gap arrangement, besides being not in accordance with the rules, and the ad hoc service cannot be counted for the purpose of seniority."

33. From the above, it is implicitly clear that it has been the consistent view of the Apex Court that the direct recruits hold a march over the ad-hoc appointees and the seniority between these two categories would always sway in favour of the direct recruits. Further, the Apex Court has gone on to hold that the ad-hoc employees, on regularization would continue in service, but their continuity of service for the purpose of fixing their seniority should be determined only from the date of their regularization in service and not on the

date of their entry into service as an ad hoc employee. Therefore, the period of ad hoc employment would in no way confer any benefit on an employee and the date of regularization in service would be the determinant factor, which has to be taken into account for the purpose of fixation of *inter-se* seniority.

34. Keeping in mind the ratio with regard to the legal aspect relating to *inter-se* seniority, this Court would proceed to analyze the factual matrix in the present case.

35. The factum of the date of the appointment of the petitioners and also the respective respondents are not in dispute. While the petitioners are directly recruited Assistants, having partaken in the recruitment process and have been recruited in service on various dates, though ranked and recruited at the behest of the Tamil Nadu Public Service Commission by the respective heads of the Commercial Taxes Division, but on different dates. Respondents 5 to 10, who have been temporarily promoted to the cadre of DCTO by relaxing the rules with regard to the minimum qualifying service required for such promotion, have joined the department as Junior Assistants on compassionate appointment and,

thereafter, were regularized in service at a later point of time after obtaining the approval of the Tamil Nadu Public Service Commission and their probation was declared by the Government on the date of their actual completion of two years of service by relaxing the relevant rules. Thereafter, the names of respondents 5 to 10 were included in the panel of Assistants by the respective Joint Commissioners (CT).

36. There is no quarrel with the proposition that each commercial tax division is a separate unit as per Rule 11 (b) (v) of the Tamil Nadu Ministerial Service Rules and that the seniority of the members in the respective commercial tax division to be reckoned on the basis of seniority in the said division. However, even from a bare perusal of the details pertaining to respondents 5 to 10, they belong to different commercial tax division.

37. It is also equally not disputed by the parties that there are two modes of recruitment to the post of Assistant, viz., 50% of the vacancies by direct recruitment and the balance 50% by way of promotion from the feeder category, viz., Junior Assistants. Respondents 5 to 10 were initially appointed as Junior

Assistants and, thereafter, they were promoted in the 50% of the vacancies earmarked for promotion from the feeder category. While no material has been placed by the respondents to show the actual date of appointment of respondents 5 to 10 as Assistants, it transpires from the affidavit of the petitioners with regard to the date of appointment of respondents 5 to 10 as Assistants, which is between September, 2014 and August, 2015. The aforesaid material is not disputed by the respondents.

38. Be that as it may. Section 35 (aa) of Act, 2016 is a *pari materia* provision to Section 40 (2) of the Act, which governs the fixation of seniority between the persons, who have been recruited through more than one method of recruitment, viz., direct recruitment and recruitment by transfer and for better appreciation, the relevant provision is quoted hereunder :-

> *"The seniority of a person in a service, class, category or grade shall, where the normal method of recruitment to that service, class, category or grade is by more than one method of recruitment, unless the individual has been reduced to a lower rank as a punishment, be determined with reference to the date on which he is appointed to the services, class, category or grade."*

39. As evidenced by the various decisions, which have been discussed above, it is the settled legal position that with regard to *inter-se* seniority, the direct recruits will have a march over the promotees from the feeder category with respect to fixation of seniority. Therefore, applying the aforesaid provision of law with regard to fixation of seniority, the direct recruits would have to be placed above the promotees from the feeder category. Meaning thereby, necessarily an *inter-se* seniority list ought to be drawn by the respondents 1, 2 and 4, which should be published and, thereafter approved from which alone the panel for DCTO could be drawn.

40. Neither the petitioners nor the respondents dispute the aforesaid position. However, the only stand of respondents 1, 2 and 4 is that due to administrative exigency, in the absence of list showing the approved *inter-se* seniority between the direct recruits and the promotees and the petitioners having not completed their probation of two years on the cut-off date, the names of the petitioners were not considered for promotion.

41. It is borne out by record and not disputed by the parties that the cut off date for the drawal of seniority list for creating the panel for the year 2016 is 1.3.2016. Such being the case, necessarily, an *inter-se* seniority list ought to have been in existence for the purpose of drawal of panel from amongst the direct recruits and in-service candidates. It is also evident from the provision of law that for the post of DCTO, direct recruits would be considered for 33.33% of the vacancies, while the promotees would be considered for 66.66% of the vacancies, which is as per Rule 2 (1) (1) of the Special Rules r/w CT Rules.

42. Rule 3 of the CT Rules speaks about the preparation of the list of approved candidates to be considered for promotion to the post of Commercial Tax Officers and DCTOs. The said rule prescribes that such list of approved candidates shall be prepared by the Commissioner of Commercial Tax or the Tamil Nadu Public Service Commission, which list would be based on the list sent by the Joint Commissioners of Commercial Taxes of the concerned Division. From the above, it is clear that for the purpose of promotion to the post of DCTO, while unit seniority sent by the respective Joint Commissioners are taken into consideration, the Commissioner of Commercial Tax draws a comprehensive

seniority list, which is a State-wide seniority list, which would be utilised for the purpose of promoting the persons to the next higher post of DCTO from the feeder category of Assistant.

43. A perusal of the materials available on record reveal that as on 1.3.2016, the petitioners had not fulfilled the requisite period of two years, which is mandated for the purpose of considering their names for inclusion in the panel for promotion to the post of DCTO. However, it is borne out by record that the respondents 5 to 10 joined as Junior Assistants and, thereafter, upon regularization and after relaxation of the rules and regularizing their service from the date of their initial appointment, the names of respondents 5 to 10 were included in the panel of Assistants. However, there is no material placed by the respondents 1, 2 and 4 to indicate as to when respondents 5 to 10 were promoted as Assistants except for details provided by the petitioners that respondents 5 to 10 were appointed as Assistants between September, 2014 and August, 2015, which is not disputed by the respondents. Though it is seen from the impugned Government Order, which permitted inclusion of the names of respondents 5 to 10 in the panel for promotion to the post of DCTO noting that

juniors to respondents 5 to 10 have been promoted and they are placed above them, however, there is no whisper about when the persons, junior to respondents 5 to 10 were promoted or their date of appointment in the cadre of Assistants so as to enable the respondents to scale respondents 5 to 10 to the level to which their juniors had reached in the cadre of Assistant by refixing their seniority. Suffice to state that all the affidavits, be it filed by respondents 1, 2 and 4 and the other respondents are silent on this aspect.

44. The declaration of probation of respondents 5 to 10 from the date of their actual completion of two years of service by relaxing the relevant rules stands fortified by the impugned G.O. (D) No.25 dated 9.2.2018, in and by which relaxation has been granted to respondents 5 to 10 and the said Government Order proceeds on the following lines :-

> *"The Additional Chief Secretary/Commissioner of Commercial Taxes in the letter read above has stated that Tvl. E.Prathap, G.Ananthakrishnan, A.Shahul Hameed, R.Sivaguru, M.Manoj and Tmt. M.P.Akilandeswari were initially appointed as Junior Assistants on compassionate grounds in the Commercial Taxes Department and their services were regularized with effect from the date of their joining after obtaining the concurrence of the*

Tamil Nadu Public Service Commission. Thereafter, they were deputed for the Bhavanisagar foundational course training belatedly and all of them successfully completed the training in their first attempt. Accordingly, their probation was declared by the Government on the date of their actual completion of two years fo service in relaxation of relevant rule provisions. Consequent to the above, their names were included in the panel of Assistants by the respective Joint Commissioners (Commercial Taxes). Accordingly, they are officiating as Assistants in the Salem and Chennai (South) Commercial Taxes Division respectively.

2. The Additional Chief Secretary/Commissioner of Commercial Taxes has also stated that the above individuals have placed requests to include their names above the juniors in the panel of Deputy Commercial Tax Officers drawn for the year 2016. For inclusion of the names of the Assistants in the panel of Deputy Commercial Tax Officers one must have completed two years of service in the post of Assistant on the crucial date for the drawal of the panel. As all the above six individuals were appointed as Junior Assistant on compassionate grounds and due to their belated deputation for foundation course training, they were not able to be included in the panel of Assistants for the respective years.

3. The Additional Chief Secretary/Commissioner of Commercial Taxes has therefore requested for the relaxation of rule 6(d) of the Special Rules for the Tamil Nadu Commercial Taxes Subordinate Services in favour of all the six individuals for inclusion their *names in the panel of Deputy Commercial Tax Officers drawn for the year 2016 above their juniors ……"*

(Emphasis Supplied)

45. From the above, it is evident that all along, the case of respondents have been going on in the relaxation mode, be it in the post of Assistant or in the next higher post of DCTO and respondents 1, 2 and 4 have not been oblivious of the fact that the *inter-se* seniority between the direct recruits and promotees have not been fixed, which would have a cascading effect in the matter of promotion being made to the post of DCTO.

46. When Rule 35 (aa) of the SS Rules provides a clear mandate as to how the *inter-se* seniority should be arrived at, it is the bounden duty of the respondents 1, 2 and 4 to arrive at the *inter-se* seniority between the candidates appointed through the two modes of appointment before embarking upon filling up the post of DCTOs by promotion.

47. Section 41 of Act, 2016 covers the issue relating to promotion and the requisites, which are necessary for the purpose of considering the candidature for promotion. Sub-section (1) thereof provides as under :-

> *"**41. Promotion –** (1) No member of a service or class of a service shall be eligible for promotion from the category in which he was appointed to the service unless he has satisfactorily completed his probation in that category."*

48. It is the stand of the respondents that the petitioners have not completed two years of service from the date of the declaration of their probation with reference to the cut-off date. However, the fact remains that respondents 5 to 10 have also not completed the requisite period of two years, which is evident from the impugned order, which has granted the requisite relaxation.

49. But mindful of the case of respondents 5 to 10, the department has been determined to address the Government seeking relaxation in favour of respondents 5 to 10 from the rigors of two years service in the post of Assistant, being the period of probation. But insofar as the case of the petitioners is

concerned, they being direct recruits, no relaxation of the rules with regard to probation is sought and more curiously, till 2017, no steps have been taken by the Joint Commissioners of the respective division or the Commissioner of Commercial Taxes to seek for list of candidates for the purpose of arriving at the *inter-se* seniority between the direct recruits and the promotees.

50. When the petitioners are also similarly placed persons, infracting Section 41 (1) in detriment to the petitioners while granting relaxation only to respondents 5 to 10 by including their names in the panel of DCTO for the year 2016 is not only a glaring violation of Article 14, but is a fraudulent act, which defeats the legitimate rights of the petitioners, as a benefit is sought to be conferred on respondents 5 to 10 by keeping the petitioners at bay by not approving the list and finalizing the *inter-se* seniority.

51. The Supreme Court has frowned upon the aforesaid practice and has clearly held in *Santhosh Kumar's case* that ad hoc appointments cannot be deemed to be substantive appointments and such appointees ought to be placed below the direct recruits appointed prior to their regularization. However, this

Court is not giving any opinion as to the respective appointment of respondents 5 to 10 in the absence of any material as to their appointment and subsequent promotion as Assistant.

52. Further, the Government Order is also bereft of any details as to the juniors of respondents 5 to 10, who have already been promoted to the post of DCTO and also the substantive posts against which respondents 5 to 10 have been accommodated. Though this Court, even for a second is not questioning the powers conferred on the authority to grant relaxation of the rules relating to the period of probation, yet what looms large before this Court is the fact that while respondents 5 to 10 have been granted the said benefit, the same has not been extended to the petitioners. When Section 41 (1) is clear as to the mandatory prescription relating to satisfactory completion of probation in the said category for consideration of promotion to the next higher category and when one set of persons are granted the benefit of relaxation on the ground that they had not been sent for training and that it is no fault of theirs but purely attributable to the official respondents, yet, when it comes to the case of the petitioners, though their selection had been made by Tamil Nadu Public Service

Commission, but their appointment had been put at the mercy of the respective Joint Commissioners of the Division, which is the allegation of the petitioners as each and every petitioner had been appointed on different dates, though their selection was on the basis of a single competitive examination by the Tamil Nadu Public Service Commission.

53. Further, one other aspect of importance, which looms large on the face of the Government Order regularizing the services of respondents 5 to 10 is the fact that there is no whisper either in the Government Order or in the counter affidavit filed on behalf of respondents 1, 2 and 4 or even a contention advanced on behalf of respondents 1, 2 and 4 that TNPSC had concurred with the view of the Government not only with regard to retrospective regularization but also for conferring the right of seniority over the persons, who were subsequently selected by TNPSC in the recruitment process, viz., the petitioners. That being the case, in the absence of approval by TNPSC, the act of the respondents 1, 2 and 4 in granting retrospective regularization and also placing respondents 5 to 10 above the petitioners is grossly an exercise of overreach, which has not received the assent of TNPSC.

54. This Court is not adjudicating the *inter-se* seniority between the petitioners and the other promotee respondents with reference to the promotion of respondents 5 to 10 as DCTO. However, this Court is only pointing out that the panel should have been drawn for the post of DCTO by preparing the *inter-se* seniority between the direct recruits and promotees before effecting inclusion of the names in the panel. However, without adverting to the aforesaid procedure, respondents 1, 2 and 4 have included the names of respondents 1 to 5 in the panel for promotion to the post of DCTO and have, promoted respondents 5 to 10, though said to be a temporary promotion pending finalization of the approved seniority list. However, the said act of respondents 1, 2 and 4 cannot be allowed to continue, as otherwise it will send a wrong signal to the appointing authorities that they can bend the rules to the benefit of certain persons who find favour with them. Rules are made for being complied with in letter and spirit. Law must not be bent to the whims and fancies of the authorities and there must be strict compliance of the rules as any infraction would lead to perpetual inequality being committed amongst equals.

55. In this regard, useful reference can be had to the decision of the Apex Court in the case of ***K.Madalaimuthu & Anr. – Vs – State of T.N. & Ors. (2006 (6) SCC 558),*** wherein the Apex Court held as under :-

> *"24. On a consideration on the submissions made on behalf of the respective parties and the decisions cited on their behalf, the consistent view appears to be the one canvassed on behalf of the appellants, the decisions cited by Mr. Rao have been rendered in the context of Rule 10 (a) (i) (1) and the other relevant rules which are also applicable to the facts of the instant case. The law is well established that initial appointment to a post without recourse to the rules of recruitment, an appointment to a service as contemplated under Rule 2 (1) of the General Rules, notwithstanding the fact that such appointee is called upon to perform duties of a post borne on the cadre of such service. In fact, Rule 39 (c) of the General Rules indicate that a person temporary promoted in terms of Rule 39 (a) is required to be replaced as soon as possible by a member of the service who is entitled to the promotion under the rules. It stands to reason that a person who is appointed temporarily to discharge the functions in a particular post without recourse to the recruitment rules, cannot be said to be in service till such time his appointment is regularized. It, therefore, follows that it is only from the date on which his services are regularized that such appointee can count his seniority in the cadre.*

25. In the instant case the authorities, on the strength of the several Government Orders giving retrospective effect to the regularization of the promotees, have taken the date of initial appointment of such promotees as the starting point of their seniority. In our view, such a course of action was erroneous and contrary to the well-established principles relating to determination of seniority. In our view, the High Court took an erroneous view in the matter in applying Rule 4 of the General Rules and holding that the period during which the promotees had initially discharged the duties of District Registrars, though appointed under Rule 10 (a) (i) (1), was to be counted for determining their seniority. The decision of this Court in the case of L. Chandrakishore Singh (supra) relied on by Shri Venkataramani, did not involve the question of persons appointed outside the service as a stop-gap arrangement. The fact situation of the said decision is different from the fact situation of the instant case which finds support from the decisions cited by Mr. Rao."

(Emphasis Supplied)

56. In view of the binding dicta laid down in the aforesaid judgments, it is clear that the respondents 5 to 10 cannot have any claim over the petitioners till such time *inter-se* seniority is drawn by respondents 1, 2 and 4 and for the said

reason, the appointment of respondents 5 to 10 by way of promotion to the cadre of DCTO cannot be allowed to continue.

57. Insofar as respondents 11 to 33 is concerned, the said respondents also being promotees and not direct recruits, they would also have to fall in line in the *inter se* seniority list that would be drawn by respondents. The seniority insofar as DCTO being a State-wide seniority, which has to be drawn from various divisions, which would resultantly result in the publishing of the approved list by the Commissioner of Commercial Taxes, the contention placed by respondents that the petitioners have no *locus* to initiate the present writ petition deserves to be rejected.

58. Insofar as the 34th respondent is concerned, who claims to have been appointed as Assistant way back in the year 2007, much prior to the petitioners, who are direct recruits and whose promotion was deferred only for want of completion of passing the requisite test, the respondents 1, 2 and 4, while drawing the panel for the year 2017 for promotion to the post of DCTO, shall include the name of the 34th respondent at the appropriate place in the *inter se*

seniority and grant him notional promotion, if he is otherwise eligible and entitled to the same subject to availability of vacancies.

59. For the reasons aforesaid, the writ petition deserves to be allowed by setting the orders impugned herein in Proc. No.P2/2133/2016 dated 22.02.2018 and proceedings viz., Proc. No.P2/2133/2016 dated 02.03.2018 of the 2nd respondent and respondents 1, 2 and 4 are directed to prepare the *inter se* seniority list for the cadre of DCTO/DSTO in accordance with Section 40 of the Tamil Nadu State and Subordinate Service Rules and then effect any appointments by transfer to the post of DCTO/DSTO. The aforesaid exercise of preparation of *inter se* seniority list shall be taken up and completed by respondents 1, 2 and 4 within a period of twelve weeks from the date of receipt of a copy of this order. In the circumstances of the case, there shall be no order as to costs.

03.03.2023

Index : Yes / No

GLN

To

1. The Secretary
Commercial Taxes & Registration
Department, Govt. of Tamil Nadu
Fort St. George
Chepauk, Chennai – 9.

2. The Commissioner of Commercial Taxes
O/o the Commissioner of Commercial of Taxes
Ezhilagam, Chepauk, Chennai – 5.

3. Tamil Nadu Public Service Commission
Rep. by its Secretary
TNPSC Road, VOC Nagar
Park Town, Chennai 600 003.

4. The Joint Commissioner (ST)
O/o Joint Commissioner
Combined Commercial Taxes Building
No.6, Pichards Road
Hasthampatti, Salem.

M.DHANDAPANI, J.

GLN

PRE-DELIVERY ORDER IN
W.P. (MD) NO.4963 OF 2018

Pronounced on
03.03.2023