



W.P.(MD).Nos.7638 and 7833 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 30.11.2022

DELIVERED ON : 10.07.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).Nos.7638 and 7833 of 2015

and

M.P.(MD).Nos.2 and 2 of 2015

W.P(MD)No.7638 of 2015

1.A.L. Premkumar

Assistant,

O/o. The Assistant Director (Audit),

Collectorate, Theni,

Theni District.

... Petitioner

Vs

1.The State of Tamilnadu,

Represented by its Secretary,

Rural Development and Panchayat Raj Department,

Secretariat, Chennai.

2.The Secretary,

Tamil Nadu Public Service Commission,

Frazer Bridge Road,

V.O.C.Nagar,

Park Town,

Chennai-600 003.

3.The Director/Commissioner,

Rural Development and Panchayat Raj Department,

Panagal Building,

Saidapet,

Chennai-600 015.



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4.The District Collector,
Theni District,
Theni.

5.M.Subathara,
Assistant,
Panchayat Union,
Aundipatti,
Theni District.

6.V.Palaniraj
Deputy Block Development Officer,
Panchayat Union,
Cumbum,
Theni District.

7.K.Murugan
Deputy Block Development Officer,
Panchayat Union,
Uthamapalayam,
Theni District.

8.P.Sivakumar,
Deputy Block Development Officer,
Panchayat Union,
Chinnamunnur,
Theni District.

9.S.Subbarani,
Deputy Block Development Officer,
Panchayat Union,
Chinnamunnur, Theni District.

10.S.Geetha,
Rural Welfare Officer I,
Panchayat Union,
Aundipatti,
Theni District.



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- 11.R.Rathi,
Rural Welfare Officer I,
Panchayat Union,
K.Mayiladumparai,
Theni District.
- 12.S.Sumathi,
Rural Welfare Officer I,
Panchayat Union,
Theni, Theni District
- 13.M.Balamurugan,
Rural Welfare Officer I,
Panchayat Union,
Cumbum, Theni District.
- 14.P.Muthumariappan,
Rural Welfare Officer I,
Panchayat Union,
K.Mayiladumparai,
Theni District.
- 15.S.Chellaraja,
Rural Welfare Officer I,
Panchayat Union,
Uthamapalayam,
Theni District.
- 16.V.Radhakrishnan,
Rural Welfare Officer I,
Panchayat Union,
Bodinayakanur, Theni District.
- 17.R.Kannan,
Rural Welfare Officer I,
Panchayat Union,
Periyakulam, Theni District.



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18.M.Murugan,
Rural Welfare Officer I,
Panchayat Union,
Chinnamanur, Theni District.

19.S.Maliga,
Assistant, Panchayat Union,
Theni, Theni District.

20.M.Krishnaveni,
Assistant, District Collectorate (Development),
Theni, Theni District.

21.V.Sethupathi,
Assistant,
District Rural Development Agency,
Theni, Theni District.

22.P.Kesavan,
Assistant, Panchayat Union,
Cumbum, Theni District

23.M.Nagarani,
Assistant,
O/o.Assistant Director (Audit),
Theni, Theni District.

24.A.Thavaraja,
Assistant, Panchayat Union,
Periyakulam,
Theni District.

25.A.Sithik
Assistant, Panchayat Union,
Aundipatti, Theni District.

26.S.Sridharan
Assistant, Panchayat Union,
Chinnamanur, Theni District.



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27.V.Meenakumari
Assistant, District Collectorate (Development),
Theni, Theni District.

28.M.Santhi
Accountant, Panchayat Union,
Periyakulam, Theni District.

29.T.Paranjothi,
Assistant, Panchayat Union,
Uthamapalayam,
Theni District.

30.S.Valli,
Assistant, Panchayat Union,
Bodinayakanur,
Theni District.

31.G.Sathish,
Assistant, Panchayat Union,
Bodinayakanur,
Theni District.

32.S.Uthayamanimala,
Assistant,
O/o.Assistant Director (Audit),
Theni, Theni District.

33.A.Jeyaprabha,
Assistant, Panchayat Union,
Bodinayakanur,
Theni District.

34.P.Annalakshmi,
Assistant,
District Collectorate (Development),
Theni, Theni District.



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35.T.Kaliappan,
Accountant, Panchayat Union,
Chinnamanur,
Theni District.

36.S.Suresh,
Assistant, Panchayat Union,
Chinnamanaur,
Theni District.

37.V.Mariappan,
Assistant, Panchayat Union,
Uthamapalyam,
Theni District.

38.M.Raja,
Assistant, Panchayat Union,
K.Mayiladumparai, Theni District.

39.P.Sheela
Accountant, Panchayat Union,
Theni, Theni District.

40.S.Chitra
Assistant, District Rural Development Agency,
Theni, Theni District.

41.K.Vijayalakshmi,
Assistant, Panchayat Union,
Aundipatti, Theni District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned seniority list issued by the fourth respondent in his proceedings ந.க.எண்.7639/2014/உள.வ.1, dated 26.02.2015 and quash the same as illegal and consequently to direct the



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respondents to place the petitioner's being the directly recruited Assistants ahead of the promotive Assistants in the inter seniority as on 01.01.2014.

For Petitioner : Mr.H.Mohammed Imran,
For M/s.Ajmal Associates.

For R-1, R3 & R4 : Mrs.D.Farjana Ghoushia
Special Government Pleader

For R-2 : Mr.J.Anand Kumar

For R6 to R41 : Mr.T.Antony Arul Raj

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1.S.Prabhu,
Assistant, Panchayat Union,
Uthamapalayam, Theni District.

2.R.Karthik Kumar,
Assistant, District Panchayat Office,
Theni, Theni District.

3.K.Purusothaman,
Assistant,
Panchayat Union,
Aundipatti, Theni District.

4.V.Ramesh,
Assistant,
Panchayat Union,
Aundipatti, Theni District.



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5.D.Balaji,
Assistant,
Panchayat Union,
Aundipatti, Theni District.

6.M.Dharmaraja,
Assistant,
Magalir Thittam,
Theni, Theni District.

7.R.Pandimeenal,
Assistant,
Panchayat Union,
Chinnamannur, Theni District.

8.S.Vani,
Assistant,
O/o.Assistant Director Panchayat,
Theni, Theni District.

9.N.Vimal,
Assistant,
Panchayat Union,
Chinnamannur, Theni District.

10.S.Palpandi,
Assistant,
District Rural Development Agency,
Theni, Theni District.

11.M.Prasath Kumar,
Assistant, Panchayat Union,
Cumbum, Theni District.

12.T.Saravanan,
Assistant, Panchayat Union,
Bodinayakannur, Theni District.



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13.P.Banumathi,
Assistant,
O/o Assistant Director Panchayat,
Theni, Theni District.

14.R.Uma,
Assistant, Panchayat Union,
Theni, Theni District.

15.J.Amutha,
Assistant,
O/o Assistant Director Panchayat ,
Theni, Theni District.

16.P.Ragunatha Sethupathi,
Assistant, Panchayat Union,
Aundipatti, Theni District.

17.K.Deepalakshmi,
Assistant, Panchayat Union,
Theni, Theni District.

... Petitioners

Vs

1.The State of Tamilnadu,
Represented by its Secretary,
Rural Development and Panchayat Raj Department,
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Frazer Bridge Road,
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Park Town,
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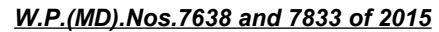
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Rural Welfare Officer I,
Panchayat Union,
Uthamapalayam,
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Bodinayakanur, Theni District.



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Assistant, Panchayat Union,
Aundipatti, Theni District.

26.S.Sridharan

Assistant, Panchayat Union,
Chinnamanur, Theni District.

27.V.Meenakumari

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41.K.Vijayalakshmi,
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... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned seniority list issued by the fourth respondent in his proceedings ந.க.எண்.7639/2014/உள.வ.1, dated 26.02.2015 and quash the same as illegal and consequently to direct the respondents to place the directly recruited Assistant ahead of the promotive Assistants in the inter se seniority as on 01.01.2014.

For Petitioners : Mr.H.Mohammed Imran,
For M/s.Ajmal Associates.

For R-1, R3 & R4 : Mrs.D.Farjana Ghoushia
Special Government Pleader

For R-2 : Mr.J.Anand Kumar

For R-5 to 13
R-15 to 23,
R-25, R-27 to 29,
R-31 to 34,
R-37, R39 to 41 : Mr.T.Antony Arul Raj

COMMON ORDER

1. (i). The writ petition in W.P.(MD)No.7638 of 2015 is filed for Writ of Certiorarified Mandamus to quash the impugned seniority list issued by the fourth respondent in his proceedings ந.க.எண்.7639/2014/உள.வ.1, dated 26.02.2015 and consequently to direct the



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respondents to place the petitioners' being the directly recruited Assistants ahead of the promotive Assistants in the inter seniority as on 01.01.2014.

(ii). The writ petition in W.P(MD)No.7833 of 2015 is filed for Writ of Certiorarified Mandamus to quash the impugned seniority list issued by the fourth respondent in his proceedings ந.க.எண். 7639/2014/உள்.வ.1, dated 26.02.2015 and consequently to direct the respondents to place the directly recruited Assistant ahead of the promotive Assistants in the inter se seniority as on 01.01.2014.

2. Both the writ petitions are filed to quash the same impugned seniority list dated 26.02.2015 with consequential prayer to place the directly recruited Assistants (petitioners) ahead of the promotive Assistants in the inter se seniority as on 01.01.2014. The issue raised in both the Writ Petitions are one and the same. Hence, a common order is passed.

3. The petitioners herein are directly recruited Assistant and they were recruited through Tamil Nadu Public Service Commission, the



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second respondent herein. The petitioners participated in the Combined Subordinate Service Examination for the year 2009-2011 and attended the written examination on 30.07.2011 and the results were published on 08.06.2012. Thereafter, they were called for counselling held on 27.11.2012 and they were selected and directed to meet the third respondent on 06.12.2012 to get the appointment order in which they were orally instructed to meet the fourth respondent on the very same day itself for getting the appointment order. The contention of the petitioner is that they were made to wait till 21.12.2012 and the appointment orders were served to the petitioners on 24.12.2012 and they joined the service on 24.12.2012. Though the persons who were selected along with the petitioners were directed to appear before the fourth respondent on various dates commencing from 02.12.2012, all of them were made wait till 24.12.2012 and they joined only on 24.12.2012. Even prior to the date of joining of the petitioners, all other Junior Assistants who were working in the Department of Theni District were given promotion as Assistant and they were made to join in the first week of December 2012, so as to place them above than the directly recruited Assistants in the inter-se Seniority List. The petitioners also submitted their objections to the inter-se tentative seniority list, but the same was not considered. The



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further contentions of the petitioners is that except in the petitioners department, the other departments are following the inter se seniority which is extracted hereunder:

The inter se seniority of the directly recruited Assistants in the Districts shall be fixed in the following cyclical order irrespective of the date of their joining duty.

- | | |
|--------------------------------|--|
| (a) First two vacancies | - Persons appointed by promotion. |
| (b) Third vacancy | - Persons appointed by direct recruitment. |
| (c) fourth and fifth vacancies | - Persons appointed by promotion |
| (d) sixth vacancy | - Persons appointed by direct recruitment. |

4. The third respondent sought for further clarification to the second respondent with regard to the inter se seniority. The second respondent has clarified that the directly recruited Assistants were selected against the vacancies relating to earlier years that may be placed above the promotee Assistant who were selected for the subsequent year and directed to grant seniority since the examination conducted against the vacancies in the year 2006-2007 and placed the directly recruited Assistants above the promotee Assistants in the year 2007. Based on this clarification, the petitioners are seeking to place them above the promotee Assistants. The petitioner further contended that the directly recruited Assistants are having degree qualification, whereas, the



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promotee Assistants are holding only SSLC qualification, since the directly recruited Assistant having higher qualification, they should be placed above the promotee Assistants. Since the petitioners were placed below the promotee Assistants, aggrieved over the same, the present Writ Petitions are filed.

5. The respondents have filed counter stating that as per the letter dated 23.11.2012 of the Secretary, TNPSC, the intimation regarding the candidates selected in Combined Subordinate Service Examination-I, 2009-2011 has been intimated to the District Collector, Theni on 17.12.2012. Soon after the receipt of the letter, the appointment order giving postings by allotting places to the selected candidates including the petitioner was issued vide order dated 21.12.2021 without any delay. Thereafter, within four days the petitioners were allowed to join on 24.12.2012. The inter-se-seniority list was drawn based on the letter No.23555/P.S.4/2014-1 dated 10.12.2014 of the Secretary to Government, Rural Development and Panchayat Raj Department, whereas it is clarified that the inter-se-seniority list should be prepared as per Rule 35(aa) of General Rules in Tamil Nadu State and Sub-ordinate Service rules. The said Rule states to draw the inter-se-seniority based on



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the date of joining the post. The Government has amended the Special Rules by issuing G.O.Ms.No.35, Personnel and Administrative Reforms (B) Department dated 15.04.2015 which comes into retrospective effect from **17.05.2011**. In Rule 9 of the amended rules in G.O.Ms.No.35 dated 15.04.2015, it has been categorically stated that the inter-se-seniority between the directly recruited Assistants and Assistant appointed by promotion shall be as per the provision laid down in Rule 35(aa) of the general rules for Tamil Nadu State Subordinate Services. Moreover, *Rule 8 of the amended Special Rules reads as under:*

Every person appointed as Assistant by direct recruitment shall, within the period of probation:-

(a) complete the Foundation Training for a period of two months at civil Services Training Institute, Bhavanisagar, and

(b) Pass the following Tests namely:-

(i) Tamil Nadu Government Office Manual Test.

(ii) Departmental Test for Officers of Panchayat Development Department and Panchayat Development Account Test.

(iii) Account Test for Subordinate Officers, Part-I.

Rule 11 of the Special Rules reads as under:

“For every such person, so appointed, there shall be reserved a substantive vacancy arising in the permanent cadre of the category of Assistants in the Rural Development and Panchayat Raj Department. His appointment to a substantive vacancy shall not, however, confer on him any preferential claim to promotion”.



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6. Since the petitioners are still a probationer, the period of probation will be ordered to be satisfactory completed only on fulfilment of conditions laid down in Rule No.8. The petitioners herein without fulfilling the conditions are in a hurry to claim seniority over others with an intention to get promotion to a higher cadre for which they are not yet qualified. The petitioners have not even completed their examination as prescribed above. Moreover, under G.O.Ms.No.35, dated 15.04.2015, the amendment of rules were passed by invoking the power granted under proviso to Article 309 of the Constitution of India. Therefore, there is no infirmity in drawing the seniority based on the date of appointment to the post of Assistant.

7. The other private respondents (promotee assistants) have also filed counter stating that they joined as Junior Assistants in the year 2009 through TNPSC Group-IV Rural Development and Panchayat Raj Department and they have completed their probation and the same was declared. The next promotional post is the Assistant, since they were fully eligible and qualified, they were to be promoted to the said post in June 2012 and joined in the month of June 2012 itself as Assistant. The



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post of Assistant is filled up only by way of promotion. But, due to administrative exigencies, as a “one-time” measure, the Government resorted to filling up certain percentage of the total vacancies throughout Tamil Nadu through direct recruitment. The counselling was held from 22.11.2012 to 01.12.2012. Finally, the appointment orders were issued to the petitioners in December 2012 on various dates. The writ petitioners were joined in the post of Assistant only after six months of joining the promoted post of Assistant by the private respondents (promotee assistants). Infact, some of the directly recruited candidates joined in the month of January to July, 2013. None of the directly recruited Assistants joined duty in the post of Assistants prior to the promotee assistants. Based on G.O.Ms.No.35 dated 15.04.2015, the inter-se-seniority ought to be drawn as per Rule 35(aa) of the General Rule for Tamil Nadu State and Subordinate Service Rules. The Rule specifically states that the inter-se-seniority should be the date of appointment in the said post, if there are one or two more methods of recruitments. Since there are two categories of recruitment one by promotion and other by direct recruitment, therefore, the date of appointment to the post of Assistant would be the date of appointment and the inter-se-seniority ought to be fixed based on the date of



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appointment. Hence, the claim of the petitioners is against Rule 35(aa) of the said rules and the private respondents prayed to dismiss the Writ Petitions.

8. Heard Mr.H.Mohammed Imran, For M/s.Ajmal Associates, the Learned Counsel appearing for the petitioner, Mrs.D.Farjana Ghoushia, the Learned Special Government Pleader appearing for the 1st, 3rd and 4th respondents, Mr.J.Anand Kumar, the Learned Counsel appearing for the 2nd respondent and Mr.T.Antony Arul Raj, the Learned Counsel appearing for the private respondents and perused the records.

9. Admittedly, the petitioners were appointed from 27.12.2012, whereas the Junior Assistants who were promoted as Assistants were promoted from June 2012 and it is prior to 29.12.2012 (on various dates but prior to 29.12.2012). The said Junior Assistants were appointed through TNPSC in the year 2009 and they had also completed the Departmental Examination and Bhavani Sagar Training and they are eligible for considering for promotion. Hence after consideration they were granted promotion on fulfilling the above said conditions on and from 06.06.2012 and some of them on various other dates but prior to



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29.12.2012. As per Rule 35(aa) of General Rules in Tamil Nadu State and Subordinate Service rules, the inter-se-seniority shall be based on the date of joining the post. The relevant portion of the Rule is extracted hereunder:

“(aa) 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;”

After the enactment of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (Act 14 of 2016) the same position prevails. The relevant portion of the Act is extracted hereunder:

“40

(1) ...

(2) 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.**”

Based on this provision of law, the date of appointment to the post of Assistant ought to be taken into account for fixing the seniority. Admittedly the promotee Assistants (private respondents) were appointed prior to the petitioners in the post of Assistant, then the impugned seniority list is legally valid.



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10. The Government has amended the Special Rules for the Tamil Nadu Ministerial Service (Section 22 in Volume of the Tamil Nadu Services Manual 1970) by issuing G.O.Ms.No.35, Personnel and Administrative Reforms (B) Department dated 15.04.2015. Under clause (3) of the amendment it is stated that “after Annexure IX-W, the following Annexure shall be inserted namely:- Annexure IX-X (Referred to in Rule 38(b)(ii))”. It is specifically stated under clause 2.(i) that the amendment under clause (3) would come into retrospective effect from **17.05.2011**. In the said Annexure under clause (9) it is stated that

“9. The inter-se-seniority between the directly recruited Assistant and the Assistants (appointed by promotion) shall be as per the provisions laid down in Rule 35(aa) of the General Rule for Tamil Nadu State and Subordinate Services.”

On the reading of the Rule 35(aa) of Tamil Nadu State and Subordinate Service Rules, Section 40(2) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and Annexure IX-X (Referred to in Rule 38(b)(ii) under (9), consistently it only states that seniority should be fixed based on the date of joining in the post of Assistant. Therefore it is a settled proposition that when one or more recruitment method is followed, then the date of appointment in the post of Assistant would be the date fixed to draw the seniority.



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11. The contention of the petitioners that the other departments have followed the method of ratio of first “two” vacancies to promotees and third to direct and then fourth and fifth to promotees etc., under Rule 38(b)(ii) of the Tamil Nadu Ministerial Rules. On perusal of the rules it is seen that rule is amended through G.O.Ms.No.35 and hence the petitioner’s contention is against the amended rules and this plea is rejected.

12. The next contention of the petitioner is that the official respondents have deliberately granted promotion to the Junior Assistants in the year 2012. On perusing the service details of the private respondents it is seen that they were appointed as Junior Assistants in the year 2009 through TNPSC have completed the departmental test, completed Bhavani Sagar training and had fulfilled all other conditions and they were ready for promotion. Therefore this Court is of the considered opinion that the respondents have rightly considered and promoted in the June 2012 itself and there is no infirmity at all.

13. The petitioners relied on one Subathra who was recruited on 07.12.2007 as Junior Assistant and completed the Departmental test on



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31.12.2009 and completed the probation on 31.12.2009 but completed Bhavani Sagar Training on 24.06.2013. The respondents have granted promotion to the said Subathra after completion of Bhavani Sagar Training to the post of Assistant only on 01.02.2015. But the contention of the petitioners are that the official respondents have kept the said Subathra above the petitioners and she ought to be placed below the direct recruits, since she was promoted on 01.02.2015. This contention of the petitioners cannot be accepted. The respondents have rightly placed the said Subathra above the direct recruits, because there was delay in sending the said Subathra to Bhavani Sagar Training, which cannot be held against her. It is a settled proposition that the service qualification like the Bhavani Sagar Training, Survey Training or the Rural Welfare Officer Training cannot be held against the candidate, since it is with the domain of the employer to send the employee for training based on the available vacancy. Belatedly sending the candidate for training is the mistake of the employer and the same cannot be held against the said candidate. The other persons have completed prior to the petitioners appointment. Therefore, all of them were placed above the petitioners. Infact, some of them had qualified only in the first week of December 2012 and immediately they were granted promotion in the 1st week of



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December itself and this cannot attribute any intention on the official respondents for granting promotion prior to the petitioners. This Court is of the firm opinion that the said private respondents have acquired the qualification and hence they were granted promotion and their right ought to be protected. The petitioners cannot claim any benefits at the cost of the others right and the petitioner have no right to questioned the promotion granted to the private respondents (promotee Assistants).

14. The contention of the petitioners that they possess higher qualification than that of private respondents and they should be granted preference. This plea is not sustainable, since the qualification prescribed for Junior Assistant is SSLC and based on their service they are eligible to be promoted. When the rule permits for promotion of Junior Assistants if the conditions are fulfilled, simply because the petitioners are possessing higher qualification (degree qualification), then the petitioners should be placed above the promotive Assistants, is unsustainable in law. Therefore this contention also fails. Therefore, the petitioners have not made out any case.



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15. The contention of the petitioners that they were recruited for the vacancies from 2009-2011, they attended written exam on 30.07.2011 and the results were published on 08.06.2012 and all these happened prior to the promotion of the promotee Assistants and hence they should be kept above the promotees Assistants. This Court is of the considered opinion, if this plea of the petitioners is accepted then the petitioners would be placed in seniority list when they were not even in government service. This plea is against Rule 17 of the Tamil Nadu Fundamental Rules, the relevant portion is extracted hereunder:

“17. A Government servant shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties.”

The Government servant is entitled to draw pay and other allowances from the date when he assumes charge, hence placing the petitioners in the seniority list even before the petitioners have assumed charge is mischievous and against service jurisprudence. Hence this plea is also rejected.



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16. For the above reasons, the Writ Petitions are dismissed.

There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

10.07.2023

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

To

1.The Secretary,
The State of Tamilnadu,
Rural Development and Panchayat Raj Department,
Secretariat, Chennai.

2.The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
V.O.C.Nagar,
Park Town,
Chennai-600 003.

3.The Director/Commissioner,
Rural Development and Panchayat Raj Department,
Panagal Building,
Saidapet,
Chennai-600 015.

4.The District Collector,
Theni District,
Theni.



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S.SRIMATHY, J

Nsr

Pre-delivery Order made in
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10.07.2023