



W.P.Nos.4835 & 25824 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.01.2024

PRONOUNCED ON : 20.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.4835 & 25824 of 2022
and W.M.P.Nos.4965, 4966, 24891, 24892, 24894 of 2022

W.P.No.4835 of 2022 :-

Dr.D.Jothibass
Veterinary Assistant Surgeon,
Veterinary Poly Clinic,
Hosur,
Kirshnagiri District.

...Petitioner

-Vs-

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Animal Husbandry, Dairying, Fisheries,
and Fishermen Welfare (AH-7) Department,
Secretariat, Chennai – 9.
2. The State of Tamil Nadu,
Rep. by its Joint Secretary to Government,
Animal Husbandry, Dairying, Fisheries,
and Fishermen Welfare (AH-7) Department,
Secretariat, Chennai – 9.
3. The Commissioner,
O/o. Commissioner of Animal Husbandry
and Veterinary Services,
Chennai – 600 035.
4. The Secretary,



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Tamil Nadu Public Service Commission,
VOC Nagar, Park Town,
Chennai – 600 003.

5. Joint Director (Administration)
O/o. Commissioner of Animal Husbandry
and Veterinary Services,
Chennai – 600 035.

6. Dr.N.Srikumar,
Veterinary Assistant Surgeon,
Veterinary Poly Clinic,
Saidapet,
Kanchipuram District.

7. Dr.K.Saravanan,
Veterinary Assistant Surgeon,
V.D., Papparpatti,
Dharmapuri District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the second respondent in his proceedings in Letter No.19885/AH7/2019-17 dated 20.12.2021 and the consequential impugned proceedings passed by the fifth respondent in ந.க.எண்.52073/ஈ3/2021 dated 29.12.2021 (Served to the petitioner on 21.02.2022) and quash the same as illegal insofar as fixation of seniority of the candidates appointed under backlog category and consequentially to direct the respondents to refix the seniority of the Veterinary Assistant Surgeons for the year 1997-1998 strictly in accordance with the merits of the candidates and confer all other consequential monetary and service benefits within the period that may



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be stipulated by this Court.

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For Petitioner : Mr.L.Calvin Jones
For M/s.Ajmal Associates
For Respondents
For R1 to R3 & R5 : Mr.Haja Nazrudeen
Additional Advocate General
Assisted by Mr.Bindhran
Additional Government Pleader and
Mr.P.Haribabu, Government Advocate
For R4 : Mrs.C.N.G.Niraimathi
For R6 : Dr.R.Maheswari
For R7 : Mr.G.Sankaran, Senior Counsel
For Mr.S.Nedunchezhiyan

W.P.No.25824 of 2022 :-

1. Dr.M.Balamurugan,
Veterinary Assistant Surgeon,
Veterinary Dispensary,
Jalagandapuram,
Mettur Taluk, Salem District.

2. Dr.M.Sundaramoorthy
Veterinary Assistant Surgeon,
Veterinary Dispensary,
Keeranur – 623 704,
Ramanathapuram District.

...Petitioners

-Vs-

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Animal Husbandry, Dairying, Fisheries Department,
Fort St. George, Secretariat,
Chennai – 600 009.

2. The Commissioner,
Directorate of Animal Husbandry and



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Veterinary Services,
571, Anna Salai,
Nandanam, Chennai – 600 035.

3. The Secretary,
Tamil Nadu Public Service Commission,
Park Town,
Chennai – 600 003.
4. Dr.N.Srikumar,
Veterinary Assistant Surgeon,
Veterinary Poly Clinic,
Government of Tamil Nadu,
Chennai – 600 035.
5. Dr.N.Pahalavan,
Veterinary Assistant Surgeon,
Veterinary Dispensary,
Government of Tamil Nadu,
Vellakovil and Post,
Dharapuram Divn.,
Tirupur – 638 111
6. Dr.K.Ravi,
Veterinary Assistant Surgeon,
Veterinary Dispensary,
Gudimangalam – 642 201.
(R4 to R6 impleaded vide order dated
14.06.2023 made in W.M.P.No.26915
of 2022 in W.P.No.25824 of 2022)
7. Dr. C.Thirumurugan,
Veterinary Assistant Surgeon,
Veterinary Dispensary,
Mallanikinaru,
Virudhunagar District.
8. Dr.A.Krishnasamy,
Veterinary Assistant Surgeon,



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Veterinary Dispensary,
Earvadi,
Thirunelveli District.

9. Dr.K.Thirunavukarasu,
Veterinary Assistant Surgeon,
Veterinary Dispensary,
Vilapakkam,
Ranipet District.

10. Dr.A.L.S.Senthur Selvam,
Veterinary Assistant Surgeon,
Veterinary Dispensary,
Sevalaperipandi,
Thirunelveli District.

11. Dr.S.Murugan,
Veterinary Assistant Surgeon,
Veterinary Dispensary,
Thiruvengadam,
Sankarankoil,
Tenkasi District.
(R7 to R11 impleaded as per order dated
10.11.2023 made in W.M.P.No.32030
of 2023 in W.P.No.25824 of 2022)

12. Dr.K.Saravanan,
Veterinary Assistant Surgeon,
Veterinary Dispensary,
Papparpatti,
Dharmapuri District.
(R12 impleaded vide order dated
15.11.2023 made in W.M.P.No.32181
of 2023 in W.P.No.25824 of 2022)

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus, calling for the



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records relating to the impugned proceedings issued by the second respondent in Na.Ka.No.40778/M1/2017 dated 06.09.2022 and to quash the same and consequently directing the respondents to prepare the seniority list in the post of Veterinary Assistant Surgeon for the TNPSC selectees of the year 1997-98 in accordance with the settled seniority as protected in the orders passed in the Review Application No.53 of 2020 dated 19.04.2022 and to finalize the 2019 panel for remaining 49 vacancies for promotion to the post of Assistant Director in consideration of the petitioners based on their seniority as finalized.

For Petitioner	: Mr.P.Wilson, Senior Counsel For Mr.S.Bharathi Rajan
For Respondents	
For R1 & R2	: Mr.Haja Nazrudeen Additional Advocate General Assisted by Mr.Bindhran Additional Government Pleader & Mr.P.Haribabu, Government Advocate
For R3	: Mrs.C.N.G.Niraimathi
For R4 to R6	: Dr.R.Maheswari
For R7 to R11	: Ms.A.Pramila For Mr.P.Nethaji
For R12	: Mr.G.Sankaran, Senior Counsel For Mr.S.Nedunchezhiyan



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COMMON ORDER

WEB COPY W.P.No.25824 of 2022 :-

This writ petition has been filed challenging the proceeding issued by the second respondent dated 06.09.2022, thereby rejected the objections raised by the petitioners to the seniority list of the Veterinary Assistant Surgeon.

2. The petitioners were selected and appointed to the post of Veterinary Assistant Surgeon through the third respondent in the year 1997-98. They were issued appointment order dated 31.10.1998 and their services were regularized after successful completion of their probation. Though they belonged to Most Backward Community (MBC) category and they have been selected for the post of Veterinary Assistant Surgeon under the MBC reserved category. They have been appointed against backlog vacancies notified by the third respondent since they scored higher marks under the MBC category. The seniority in the post of Veterinary Assistant Surgeon have been finalized by the proceedings dated 18.01.2001, by the second respondent for regularization of service selected by the third respondent.



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3. Thereafter, the proceeding dated 11.11.2009 on the file of the second respondent relates to finalization of seniority as on 01.07.2008 for the persons working in the post of Veterinary Assistant Surgeon after calling for objection. Once again, the second respondent issued proceedings dated 21.01.2015, for finalization of seniority of all the Veterinary Assistant Surgeons as on 01.07.2015 after calling for objection. Accordingly, the petitioners names were included in the appropriate places and finalized in the year 2001, 2009 and 2015. No objections were made as against the finalization of seniority in the post of veterinary Assistant Surgeon. The next avenue of promotion for the petitioners is to the post of Assistant Director.

4. When the second respondent initiated steps to promote the Veterinary Assistant Surgeons to the post of Assistant Director for the year 2019, called for particulars based on seniority. One doctor I.Ponnupandian and others, who are juniors to the petitioners submitted their objections in the year 2019. On the strength of the objections, they also approached this Court and this Court directed the respondents to consider the representation on merits. Subsequently, their objections were rejected by the third respondent. Therefore, they challenged the order of



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rejection by way of writ petition in W.P.No.34281 of 2019, on the ground that seniority list was drawn for the first time only on 27.08.2019. Their contention was that they should be fitted under the MBC quota towards backlog vacancies, instead of general turn category. The petitioners also filed petition to implead themselves as parties to the said writ petition. Further, the candidates who were selected in the year 1991-92 in the post of Veterinary Assistant Surgeon and to be promoted to the post of Assistant Director, were also impleaded as parties in the said writ petition.

5. This Court quashed the order passed by the third respondent and directed the third respondent to publish seniority list of the candidates who were appointed as Veterinary Assistant Surgeon in the year 1991-92 and proceed further to promote them in the vacancies available in the post of Assistant Director. Further the third respondent was also directed to publish separate seniority list of Veterinary Assistant Surgeons who were appointed in the year 1997-98 and called for objections to finalize the seniority list, strictly in accordance with the rules and the judgments of the Hon'ble Supreme Court of India and the Division Bench of this Court. Further directed the third respondent to



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proceed with promotions to the post of Assistant Director in the remaining vacancies in accordance with finalized seniority list. Accordingly, the third respondent published the seniority list and calling for objection. The petitioners submitted their objections and the same were rejected. Hence, the present writ petition.

6. Mr.P.Wilson, learned Senior Counsel appearing for the petitioners, Mr.G.Sankaran, learned Senior Counsel appearing for the 7th respondent in W.P.No.4835 of 2022 and 12th respondent in W.P.No.25824 of 2022, submitted that the contention of the respondents 4 to 11 is that the seniority of Veterinary Assistant Surgeon was not finalized so far and as such, delay in claiming revision of seniority is barred under Rules 35(f) of General Rule is not applicable. Already the seniority list was finalized by the proceedings dated 27.09.2019, 21.08.2015 and 18.01.2001. Further the respondents 4 to 11 never raised any objections so far. This Court passed order in W.P.No. 34281 of 2019 etc., batch for fixation of seniority list in the post of Veterinary Assistant Surgeon following principal of fixation of seniority as held in the case of ***Santosh Kumar & ors Vs Tamil Nadu Public Service Commission & ors*** reported in ***2015 SCC Online Mad 362***.



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6.1. In fact, the petitioners herein filed review application in Rev.Appl.No.53 of 2020 in W.P.No.34281 of 2019, on the ground that seniority list was finalized by the second respondent even as early as on 18.01.2001, 27.09.2019 & 21.08.2015 and also called for objections from the affected persons. However, there was no objections raised from the respondents 4 to 11 herein. Therefore, the claim of the respondents 4 to 11 for fresh fixation of seniority is hit by Rule 35(f) of General Rules and Section 40(6) of Condition of Service Act, since revision of seniority is sought to be made after the period of 20 years from the date of their appointment.

6.2. This Court disposed the review application after recording undertaking of the second respondent by its communication dated 19.04.2022. According to the said communication, seniority list published in the year 2009, 2015 and 2019 and the same will not be disturbed. Further fixation of seniority as of now only for deletion of persons viz., retired, died in harness and promoted to the higher post. But the seniority will be properly maintained and the seniority position will not be disturbed. Recording the said proceeding of the second



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respondent, this Court further observed that apprehension raised by the review petitioners viz., the petitioners herein is unfounded and in any case, the seniority list is going to be published pursuant to the directions issued by this Court and objections will be called for. Accordingly, the review application in Rev.Appl.No.53 of 2020 was disposed of.

6.3. The learned Senior Counsels appearing for the petitioners and 7th respondent in W.P.No.4835 of 2022 & 12th respondent in W.P.No.25824 of 2022, further contended that the seniority list as finalized in the post of Veterinary Assistant Surgeon in the year 2001, 2009, 2015 and 2019 would not be disturbed and the seniority position is protected. There cannot be any revision of seniority in the post of Veterinary Assistant Surgeon at the instance of objections submitted by the respondents 4 to 11, that too after the period of 20 years from the date of their appointment. Unfortunately, the second respondent by its proceedings dated 24.12.2021, disturbed the seniority of the petitioners and six others by placing far juniors in the Seniority list above the petitioners.

6.4. In the contempt petition filed by the respondents 4 to 6, the



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respondents produced copy of panel for promotion to the post of Assistant Director for the year 2021-2022 enclosed with list of eligible candidates for promotion to the post of Assistant Director for approval towards the compliance of the order passed by this Court. However, no seniority list was finalized for the post of Veterinary Assistant Surgeon in accordance with the orders passed by this Court. When the panel is sought to be approved by the first respondent vide proceedings dated 08.08.2022, the second respondent by its proceedings dated 12.08.2022 for the purpose of fixation of seniority in the post of Veterinary Assistant Surgeon, calling for objections received from the affected person. Therefore, the seniority list in the post of Veterinary Assistant Surgeon yet to be finalized.

6.5. On receipt of the same, the petitioners submitted their objections against the final list prepared by the second respondent. However, it was mechanically rejected by the proceedings dated 06.09.2022, on the ground that the seniority list as finalized on 24.12.2021 in accordance with the orders passed by this Court. It is in violation of the order passed by this Court in the review application. Further the revision of seniority list cannot be possible after the several



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years as per General Rule 35(a) of the Tamil Nadu State and Subordinate Service, thereby prescribing time limit for claiming seniority.

6.6. The learned Senior Counsel also relied upon the order dated **15.11.2019** passed in the batch of cases by the Hon'ble Division Bench of this Court in **W.P.No.998 of 2017 etc.**, relating to fixation of seniority with regard to delay and laches for revision of seniority as well as seniority fixed for the post of backlog vacancies, as follows :-

“37.14.Now, let us take the individual writ petitions. W.P.Nos. 11150, 11151 and 22136 of 2018 have been filed questioning the backlog. Here again, the question of delay, laches and acquiescence would be relevant factors. At the time of seniority fixation, no eyebrows were raised. Few promotions have taken place. After quite a number of years, these writ petitions have been filed inter alia alleging that the procedure followed is contrary to R.K.Sabharwal's case. We are afraid such a challenge cannot be permitted at this stage. Persons have been moved from the post of Assistant Engineer to Assistant Executive Engineer and to Executive Engineer. Though the last promotion was made during the pendency of the proceedings before us, the earlier promotions were never questioned. It is not,



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as if, the petitioners were not aware of the seniority fixed. We are not inclined to accept the contentions on merit as well.

37.15. We are dealing with the issue which has arisen because of the filling up of the backlog vacancies. Backlog vacancies were filled up along with ensuing year by carrying them forward. The backlog vacancies are thus meant for the previous year. Therefore, there is nothing wrong in the private respondents being placed above the petitioners. After all, we are concerned with the social justice to be rendered leading to equality. If to say there is over representation, now, it implies, there was under representation earlier. The private respondents could have been selected in the earlier year. Had it been done, the petitioners would not have got any grievance. Just because, the selection process happens to be one and the same, the petitioners cannot claim parity with the private respondents. Accordingly, W.P.Nos. 11150, 11151 and 22136 of 2018 deserve to be dismissed.”

The said order also confirmed by the Hon'ble Supreme Court of India. Accordingly as per the order passed in the batch of cases, the question of delay, laches and acquiescence would be the relevant factors to be considered before revision of seniority. Further the seniority fixed for the



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backlog vacancies cannot be disturbed.

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7. The second respondent filed counter and the learned Additional Advocate General submitted that by the proceedings dated 18.01.2001, the second respondent issued orders for regularization of service for the candidates selected by the third respondent and it is not seniority list as claimed by the petitioners. The finalization of Assistant Director panel and those who were recruited in the year 1991-92 and 1997-98 and eligible for promotions were clubbed and sent for the verification to the concerned individuals. The order of the second respondent dated 18.01.2001 is not a seniority list and it is only retrospective regularization order based on the third respondent merit list. Likewise during the year 2019 also, Assistant Director panel was prepared and sent to the concerned individuals for verification. Therefore, the second respondent has not fixed any seniority and the third respondent is the nodal body that has been authorized to fix the seniority list.

7.1. In the year 2019, the seniority list was the final seniority list till the judgment of this Court in the batch of writ petitions filed by the



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respondents 4 to 11 herein. As per the directions, issued by this Court, the revised seniority list received from the third respondent and the same was communicated to all the concerned individuals. Therefore, the writ petitions have been filed only to stall the proceeding and the procedure of Assistant Director promotion panel. As directed by this Court, the third respondent fixed the revised seniority list for the year 1997-98 for the Veterinary Assistant Surgeon appointees for the purpose of the promotion to the post of Assistant Director based on merits and the revised merit seniority list was received by the proceeding dated 20.12.2021. The same has been communicated to the concerned Veterinary Assistant Surgeon to raise their objections. The candidates having the lower mark will automatically get the lower rank in the seniority list and the revised seniority list is strictly based on the marks obtained by the individuals in the Tamil Nadu Public Service Commission Veterinary Assistant Surgeon Examination.

7.2. Further the seniority list which was likely stated as published is not the seniority list but it is the merit list of the 1997-98 Veterinary Assistant Surgeon recruitment based on the marks of the candidates in descending order from top to bottom for the purpose to



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prepare the panel for the particular year. Even as per the objection raised by the petitioners that too questioning the excess number of MBC candidates in the list, which is totally irrelevant to the subject of seniority. Therefore, the writ petition is devoid of merits and liable to be dismissed.

8. While pending the writ petitions, the respondents 4 to 12 filed petitions to implead themselves as parties/respondents and the same were allowed. They filed counter and Ms.A.Pramila, learned counsel appearing for the respondents 7 to 11 & Dr.R.Maheswari, the learned counsel appearing for the respondents 4 to 6 submitted that the respondents 4 to 6 and others were only filed the batch of writ petitions in W.P.No.34281, 32917, 32922, 32921 & 32925 of 2019 and this Court passed common order dated 20.02.2020. The petitioners herein filed review application in Rev.Appl.No.53 of 2020 to review the common order passed in the above writ petitions. Therefore, only based on the directions issued in the batch of writ petitions, the third respondent prepared the seniority list and communicated to all the individual of the said seniority list. The petitioners herein are raised objections and the same were rejected. Now instead of challenging the order passed in the batch of writ petitions, simply filed the present writ



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petitions challenging the order of rejection of their objections, since only on the basis of the orders passed in the batch of writ petitions filed by the respondents 4 to 6 and others, the second and third respondents published the seniority list. In fact, the petitioners herein also filed review application in Rev. Appl.No.53 of 2020.

8.1. They further submitted that without even challenging the order dated 20.02.2020, passed by this Court in the batch of writ petitions, the petitioners filed the present writ petitions and raised grounds as against the order passed by this Court in the batch of writ petitions. Therefore, the petitioners cannot re-agitate the very same set of facts which was already decided in the batch of writ petitions. The respondents 4 to 6 had joined as Veterinary Assistant Surgeon in the year 1997-98. They had applied for the said post under the Most Backward Community quota. However, in view of their higher marks in the written test and the interview conducted by the third respondent, they were selected against general turn on the basis of their marks.

8.2. As per the notification dated 21.10.1997, the third respondent called for application in order to fill up 174 vacancies



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including 12 backlog vacancies for MBC quota. Instead of appointing the respondents 4 to 6 in the backlog vacancies, they were appointed under the general turn, since they were scored higher marks than the other candidates. Those who had secured lessor marks than the respondents 4 to 6, were appointed against the backlog vacancies in MBC quota, thereby creating a set back to the meritorious candidates in their promotional aspects.



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8.3. In fact, the appointment order shows the serial number provided by the third respondent. After completion of their probation period, the respondents 4 to 6 approached the second respondent to rectify the anomaly in fixing the seniority of Veterinary Assistant Surgeon. However, the said request was not considered and they assured that at the time of any promotion to the post of Assistant Director, it will be considered. In fact, the fifth respondent submitted his representation dated 31.08.2005, to rectify the anomaly and to promote him to the post of Assistant Director as per the merit list. The second respondent by its communication dated 25.11.2005, rejected the representation on the ground that he has been appointed by the third respondent and he cannot be placed on the rotation basis. Thereafter, the respondents 4 to 6 repeatedly submitted their representations to rectify the anomaly in the seniority. Thereafter, for the seniority list published in the year 2019, the respondents 4 to 6 raised objections and the same were not considered. Therefore, the respondents 4 to 6 filed writ petitions and this Court passed detailed order dated 20.02.2020 and issued directions.



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8.4. In fact, thereafter the petitioners filed review application and this Court categorically recorded that the apprehension raised by the petitioners is unfounded and they were given opportunity to raise objections for the seniority list which is going to be published. They raised objections for the merits seniority list communicated to all the Veterinary Assistant Surgeon by the second respondent on 24.12.2021, 29.12.2021 & 12.08.2022. The petitioners were having been kept quiet without raising any objections and without challenging the same for the period of eight months, they raised objections against the merit seniority list only on 19.08.2022, with the intention to struck the promotion of the individuals, those who had secured higher marks then the petitioners.

9. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

10. The petitioners and the respondents 4 to 11 were selected and appointed to the post of Veterinary Assistant Surgeon through the third respondent in the year 1997-98. 174 persons were selected and appointed in the said post and 156 Veterinary Assistant Surgeons were regularized with effect from their taking charge as Veterinary Assistant



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Surgeons. So far, they were not promoted in spite of full service. As per the seniority allotted to the individual by the third respondent, the second respondent has maintained and published the seniority list in the years 2009, 2015 & 2019 onwards in respect of the persons serving as Veterinary Assistant Surgeon. The second and third respondents had initiated process for promotion to the post of Assistant Director in the year 2019 and on 27.08.2019 by inviting the objections and particulars from the respective Veterinary Assistant Surgeon based on seniority.

11. The respondents 4 to 6 and others raised their objections that the third respondent has to rectify the anomaly by revising the Tamil Nadu Public Service Commission serial numbers contained in the order of the second respondent dated 31.10.1998, in accordance with merits within the reservation under MBC quota. However, their objections were not considered and rejected by an order dated 09.11.2019 by the third respondent. The respondents 4 to 6 raised specific ground before this Court that though they belonged to MBC category, they were fitted under general turn by virtue of higher marks scored by them and the persons who had scored lower marks have placed above them. Further they also contended that the seniority list has been drawn after the order passed by



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this Court and their names were not found place in the seniority list.

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12. On perusal of records revealed that the third respondent issued notification dated 21.10.1997, calling for applications for 174 posts of Veterinary Assistant Surgeon including 12 backlog vacancies in the department of Veterinary Services and Animal Husbandry. The respondents 4 to 6 had applied for the said post under the Most Backward Community quota. They were got selected in the competitive written examination and also interview conducted by the third respondent. They had secured higher marks than the other candidates. Therefore, they were selected against general turn on the basis of merit.

13. As rightly pointed out by the learned counsel appearing for the respondents 4 to 6, the third respondent ought to have appointed the respondents 4 to 6, who secured higher marks, against backlog vacancies in MBC quota. Only thereafter, the current vacancies for the year 1997 ought to have been filled up after filling up the backlog vacancies. However, they were appointed against general turn category in order to fill up the current vacancies of 1997. The backlog vacancies were filled up by other MBC candidates, who had secured lower marks than the



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respondents 4 to 6, thereby creating a set back to the meritorious candidates in their promotional aspects, such as the respondents 4 to 6 herein. Therefore, they were placed junior than the others, who have fitted in the backlog vacancies. Accordingly, the second respondent issued appointment-cum-posting order dated 31.10.1998.

14. In fact, the appointment order also consists serial number of the third respondent for each appointee. However, the second respondent erroneously followed the list for the purpose of seniority in promotions against vacancies, which is against the rules laid down in the Special Rules for Tamil Nadu Animal Husbandry Service. After declaration of their probation period, the fifth respondent approached the second respondent by way of several representations to rectify the anomaly in fixation of seniority of the Veterinary Assistant Surgeon, during the year 2005. However, it was denied for the erroneous reasons, by the communication dated 25.11.2005.

15. Therefore, the respondents 4 to 11 and others approached this Court by way of writ petitions in W.P.No.34281 of 2019 etc. batch and this Court by an order dated 20.02.2020 passed the following order:-



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“11. It is clear from the above judgment that the Division Bench has taken into account the later judgment of the Hon'ble Supreme Court in Bimlesh Thanvar case and held that the judgement in P.S.Ghalaut case is no longer a good law. The Division Bench has categorically held that a reservation category candidate, who gets accommodated against the General Turn, should not be made to suffer on account of being more meritorious. The Division Bench after interpreting Rule 35 (a) of the General Rules for Tamil Nadu State and Subordinate Services, has categorically held that the seniority of a person should be determined only with reference to the rank obtained by him in the list of candidates drawn up by the Public Service Commission. The Division Bench has given the manner in which, the Public Service Commission should prepare the list at Paragraph No.76 of the Judgment and the same is extracted hereunder :-

76. Therefore, what is actually required to be done by the Public Service Commission is (i) first to prepare a merit list and (ii) to make allotments from the list, to the roster points, by following the steps indicated in paragraph 67 above. The allotment against roster points serves two purposes namely (a) it ensures that the Rule of Reservation is followed and (b) it creates a



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record to show the roster point from which the next recruitment is to commence. Say for instance, if the first recruitment has taken place for roster point Nos. 1 to 50 immediately after the amendment of the Rule on 29.4.2009, the next recruitment will have to commence from roster point No.51.

12. In the present case, a look at the appointment order issued by the 3rd respondent for various candidates selected through the written examination and interview conducted by the Tamil Nadu Public Service Commission, does not really indicate that the same was prepared in the order of seniority. The Tabular statement contained five columns, which are extracted hereunder:-

<i>Sl. No</i>	<i>Tamil Nadu Public Service Commission Serial number</i>	<i>Name and Address</i>	<i>Date of Birth / Order of Rotation</i>	<i>Place of posting</i>
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13. The role of Tamil Nadu Public Service Commission comes to an end the moment they submit the rank list to the concerned Department. Thereafter, it is the concerned department which prepares the seniority list and publishes the same and seek for objections and proceeds further with the promotions.



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This Court is not able to understand as to why the 2nd respondent passed an order rejecting the claim made by the petitioners. It was the 3rd respondent, who was expected to consider the claim made by the petitioners and pass appropriate orders. That has not happened in the present case. As rightly contended by the learned Senior counsel appearing on behalf of the petitioners, the reason assigned by the 2nd respondent while rejecting the claim made by the petitioners is totally illegal and unsustainable. The judgment referred in the impugned order has already been over-ruled and the rule referred in the impugned order has already been held to be unconstitutional.

14. The proceedings of the 3rd respondent dated 18.01.2001, is not a seniority list that was published by the 3rd respondent. The proceedings shows that the service of 174 candidates was regularized.

15. The 3rd respondent ought to have considered the representations made by the petitioners and passed appropriate orders in line with the rules and the judgments that have been referred supra. However, till date, no orders have been passed on the representations made by the petitioners and only list has been published



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Court that has been referred supra. This process shall be completed within a period of six weeks from the date of receipt of copy of this order and

(c) The 3rd respondent shall thereafter proceed to give promotions to the post of Assistant Director, Animal Husbandry Service, in the remaining vacancies in accordance with the finalized seniority list. This process shall be completed within a period of four weeks after the finalization of the seniority list of the candidates belonging to the 1997-1998 batch. No costs. Consequently, all connected miscellaneous petitions are closed”

This Court specifically and categorically held that the respondents 4 to 11 as well as the petitioners herein were selected through written examination and also the interview conducted by the third respondent. Further it does not really indicate that the same was prepared in the order of seniority. The seniority of a person should be fixed only with reference to the rank obtained by him in the list of candidates drawn by the third respondent.



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16. Though the learned Senior Counsel appearing for the petitioners had relied upon the judgment of the Hon'ble Supreme Court of India reported in **(1995) 5 SCC 625** in the case of ***P.S.Ghalaut Vs. State of Haryana***, it was over ruled by the Hon'ble Supreme Court of India in the case of ***Bimlesh Tanwar Vs. State of Haryana & ors*** reported in **(2003) 5 SCC 604**. Based on the Bimlesh Tanwar case, the Hon'ble Division Bench of this Court in the case of ***N.Santosh Kumar Vs. Tamil Nadu Public Service Commission***, reported in **2015 SCC Online Mad 362**, while interpreting Rule 35(a) of the General Rules for Tamil Nadu State and Subordinate Services, held that the seniority of a person should be determined only with reference to the rank obtained by him in the list of candidates drawn up by the Public Service Commission.

17. The respondents 4 to 6 were fitted in the general turn by virtue of their high score in the written examination as well as the interview conducted by the third respondent and they have placed at the bottom of the seniority list. The persons who had secured lower marks than the respondents 4 to 6 have been placed above to them. Therefore, the entire seniority list is erroneous and the respondents 1 to 3 without



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considering the same mechanically rejected the objections raised by the respondents 4 to 6. Therefore, this Court issued the above directions in the batch of writ petitions.

18. The learned Senior Counsel appearing for the petitioners and 7th respondent in W.P.No.4835 of 2022 & 12th respondent in W.P.No.25824 of 2022, vehemently contended that this Court categorically observed in the order passed in the review application that the seniority as finalized in the post of Veterinary Assistant Surgeon in the year 2001, 2009, 2015 and 2019 would not be disturbed and the seniority position is protected. Therefore, there cannot be any revision of seniority in the post of Veterinary Assistant Surgeon at the instance of objections submitted after 20 years from the date of appointment. It is in violation of statutory provisions such as Rule 35(f) of the General Rules for Tamil Nadu State and Subordinate Service.

19. As stated supra, the fifth respondent already raised objections immediately after regularization of his service in the year 2005 itself. The second respondent in its proceedings dated 25.11.2005, erroneously denied the claim of the fifth respondent. It is relevant to



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extract the Rule 35(f) of the General Rules for Tamil Nadu State and Subordinate Services as follows :-

" Application for the revision of seniority of a person in a service, class, category or grade shall be submitted to the Appointing Authority within a period of three years from the date of appointment to such service, class, category or grade or within a period of three years from the date of the order fixing the seniority, as the case may be. Any application received after the said period of three years shall be summarily rejected. This shall not, however, be applicable to cases of rectifying orders, resulting from mistake of facts"

Therefore, the said Rule shall not be applied in case of rectifying orders resulting from mistake of facts.

20. In the case on hand, as stated supra, the respondents 4 to 6 were fitted against the general turn quota, instead of backlog vacancies in MBC quota. Whereas the candidates who had secured lesser than the respondents 4 to 6 were fitted under the backlog vacancies in MBC quota. Therefore, the prescription of the period of limitation is not applicable to the case of rectifying orders, resulting from mistake of facts. In fact, the objections raised by the respondents 4 to 6 were rejected on



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the ground of latches applying the Rule 35(f) of the General Rules for Tamil Nadu State and Subordinate Services. Therefore, the petitioners cannot hold the prescription contained in Rule 35(f) of the General Rules as against the respondents 4 to 6. Hence, they cannot make legal innovations for defeating the claim of the respondents 4 to 6.

21. Even assuming that the second respondent had already finalized the seniority list in the post of Veterinary Assistant Surgeon in the year 2009, 2015 and 2019, the respondents 4 to 6 had already raised objections immediately after their regularization and successful completion of their probation period. Further, even according to the second respondent, the list published in the year 2009, 2015 and 2019 are Assistant Director promotional panel list and they are not seniority list. Further the proceeding of the second respondent dated 18.01.2001 is not a seniority list and it was published to show that the services of 174 candidates were regularized.



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22. As directed by this Court in the batch of writ petitions and in order to comply the same, the third respondent fixed revised seniority list for the year 1997-98 Veterinary Assistant Surgeon appointees for the purpose of promotion of Assistant Director strictly based on merits. The revised merit seniority list was received by the first respondent on 20.12.2021 and the same was communicated to all concerned Veterinary Assistant Surgeon by the communication dated 24.12.2021 by the second respondent.

23. Accordingly, the candidates who had secured lower marks will automatically get the lower rank in the revised seniority list and the revised seniority list strictly based on the marks obtained by the individual in the written examination and the interview conducted by the third respondent for the post of Veterinary Assistant Surgeon in the year 1997-98. The list was also forwarded to the first respondent for approval.

24. The Hon'ble Supreme Court of India in the case of ***Bimlesh Tanwar Vs. State of Haryana & ors*** reported in ***(2003) 5 SCC 604***, held as follows :-

“40. An affirmative action in terms of Article 16(4) of the Constitution is meant for providing a representation of



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class of citizenry who are socially or economically backward. Article 16 of the Constitution of India is applicable in the case of an appointment. It does not speak of fixation of seniority. Seniority is, thus, not to be fixed in terms of the roster points. If that is done, the rule of affirmative action would be extended which would strictly not be in consonance of the constitutional schemes. We are of the opinion that the decision in P.S. Ghalaut does not lay down a good law.”

Thus it is clear that the seniority list of the selected candidates would only be based on the merit rank published by the third respondent and not at the roster point.

25. The Hon'ble Division Bench of this Court following the judgment of the Bimlesh Tanwar case, passed order in the case of ***N.Santosh Kumar Vs. Tamil Nadu Public Service Commission***, reported in ***2015 SCC Online Mad 362***. Therefore, the seniority list published to the post of Assistant Director dated 20.12.2021 in consonance with the order passed by the Hon'ble Supreme Court of India as well as the Hon'ble Division Bench of this Court in the case of N.Santhosh Kumar.



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26. That apart, the petitioners had raised objections after the period of eight months from the date of publication of the seniority list.

Therefore, the intention of the petitioners is very clear that only to stall the entire process of promotion to the post of Assistant Director.

Therefore, this Court finds no infirmity or illegality in the order passed by the second respondent dated 06.09.2022 and the writ petition is devoid of merits and liable to be dismissed.

27. Accordingly, the Writ Petition stands dismissed. The respondents 1 & 2 are directed to proceed with the promotion to the post of Assistant Director of Animal Husbandry as per the seniority list dated 20.12.2021 forthwith. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

W.P.No.4835 of 2022 :-

28. This writ petition has been filed challenging the seniority list dated 20.12.2021 and consequential proceeding of the Joint Director (Administration) Commissioner of Animal Husbandry, Chennai dated 29.12.2021, insofar as the fixation of seniority of candidates appointed in the backlog category.



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29. On perusal of records revealed that the petitioner did not even raise any objections on the seniority list to the post of Assistant Director and straight away challenged the seniority list dated 20.12.2021. In view of the above discussions and the order passed in W.P.No.25824 of 2022, this writ petition is devoid of merits and liable to be dismissed.

30. Accordingly, the Writ Petition stands dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

20.02.2024

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

Note :- Issue order copy on
or before 22.02.2024

rts



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To

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1. The Principal Secretary to Government,
State of Tamil Nadu,
Animal Husbandry, Dairying, Fisheries Department,
Fort St. George, Secretariat,
Chennai – 600 009.
2. The Secretary to Government,
State of Tamil Nadu,
Animal Husbandry, Dairying, Fisheries,
and Fishermen Welfare (AH-7) Department,
Secretariat, Chennai – 9.
3. The Joint Secretary to Government,
State of Tamil Nadu,
Animal Husbandry, Dairying, Fisheries,
and Fishermen Welfare (AH-7) Department,
Secretariat, Chennai – 9.
4. The Commissioner,
Directorate of Animal Husbandry and
Veterinary Services,
571, Anna Salai,
Nandanam, Chennai – 600 035.
5. The Secretary,
Tamil Nadu Public Service Commission,
VOC Nagar, Park Town,
Chennai – 600 003.
6. Joint Director (Administration)
O/o. Commissioner of Animal Husbandry
and Veterinary Services,
Chennai – 600 035.



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W.P.Nos.4835 & 25824 of 2022

G.K.ILANTHIRAIYAN. J.

rts

COMMON ORDER IN
W.P.Nos.4835 & 25824 of 2022
and W.M.P.Nos.4965, 4966,
24891, 24892, 24894 of 2022

20.02.2024