



W.P.No.29452 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.06.2024

PRONOUNCED ON : 20.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.29452 of 2023

1. P.Stephen
2. A.Yakkoob
3. S.Prabakaran .. Petitioners

Vs.

1. Government of Tamil Nadu
Rep. by its Additional Chief Secretary to Government
Home Department, Fort St. George
Chennai – 600 009.

2. The Director General of Police
and Head of Police Force
Dr. Radhakrishnan Salai
Mylapore, Chennai – 600 004.

3. The Secretary
Tamil Nadu Public Service Commission
TNPSC Road, V.O.C. Nagar, Park Town
Chennai – 600 003.

4. K.Velladurai
5. P.Balakrishnan
6. B.Manikandan
7. V.Jayachandiran
8. S.Kuthalingam
9. S.Vijayakumar
10. G.Karthikeyan
11. C.Sangu
12. A.C.Karthikeyan
13. V.Karthik
14. A.G.Inigo Thivyan



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15. S.Ashokkumar
16. A.Arun
17. N.Devanathan
18. K.Muthukumar
19. T.Eswaran
20. V.Gomathi
21. M.Meenakshi
22. A.Velmurugan
23. Muththamil
24. J.Jareena Begum
25. R.Ramesh Krishnan
26. B.Geetha
27. K.Maheswari
28. R.Rajeswari
29. A.Kanakeswari

[R6 to R29 impleaded vide order dated
04.06.2024 in W.M.P.No.15835 of 2024
in W.P.No.29452 of 2023]

.. Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, for issuance of writ of certiorarified mandamus, calling for the records in connection with impugned G.O.Ms.No.301, Home (Pol.2) Department, dated 02.08.2021 issued by the 1st respondent fixing the seniority of the 4th and 5th respondent and the impugned G.O.(2D).No.325, Home (Police.1A) Department, dated 17.12.2021, including the names of the 4th and 5th respondents in the temporary panel of Deputy Superintendents of Police fit for promotion to the post of Additional Superintendent of Police (Category – 1) for the year 2020-2021 and the impugned Police Note No.2, dated 24.03.2022, promoting and posting them as Additional Superintendents of Police (Category – 1) for the year 2020.2021 and quash the same as illegal, arbitrary, contrary to law, ultra vires and unconstitutional and consequently revise the seniority of the petitioners in accordance to the service laws and rules above the 4th and 5th respondents.



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For Petitioners : Mr.MA.Gowthaman

For Respondents : Mr.P.Kumaresan
Additional Advocate General
assisted by Mr.Sowmi Dattan
for R1 and R2

Mr.R.Bharanidharan
for R3

Mr.R.Vijayakumar
for R4

Mrs.Dakshayani Reddy
Senior Counsel
assisted by Ms.S.Suneetha
for R5

Mr.P.Chandrasekaran
for R6 to R29

ORDER

A. The Petitions:

The present writ petition is filed challenging the impugned G.O.Ms.No.301, Home (Police-1A) Department, dated 02.08.2021, in and by which, the seniority of the respondents 4 and 5 are fixed as 4 A1 and 4 A2 in the post of Deputy Superintendent of Police [for brevity, hereinafter referred to as “DSP”] for the purpose of considering for promotion to the next higher post of Additional Superintendent of Police [for brevity, hereinafter referred to as “Adl. SP”] (Category – 1) for the year 2020-2021 and the panel



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vide G.O.Ms.No.325, Home (Police-1A) Department, dated 17.12.2021 prepared for promotion to the post of *Adl. SP* (Category – 1) for the year 2020-2021 and the consequential Police Note No.2 dated 24.03.2022, promoting and posting them as *Adl. SP* (Category – 1) for the year 2020-2021.

B. The Case of the Petitioner:

2. The facts, that are relevant for the disposal of the present writ petition, are culled out hereunder:

(i) There were vacancies in the DSP post (Category – 1) in Class II of the Tamil Nadu Police Service. Recruitment to the said post is under the Special Rules framed under Article 309 of the Constitution of India, which read as follows:

<i>Class (1)</i>	<i>Method of Appointment (2)</i>
<i>Class II</i> <i>Category (1)</i> <i>Deputy Superintendent of Police including those posted as Deputy Assistant Inspector General of Police in the Office of the Inspector General of Police, Tamil Nadu Deputy Supdt. Of Police posted to the Directorate of Vigilance and Anti Corruption and Assistant Commissioners of Police in the Madras City Police, but excluding those posted as</i>	<i>(a) Direct recruitment or recruitment by transfer from Inspectors of the Tamil Nadu Police Subordinate Service.</i> <i>(b) The proportion in which substantive vacancies shall be filled by Direct recruitment and recruitment by transfer shall be 1:2.</i>
<i>(a) Assistant Commissioner</i>	



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*of Police, Armed Reserve,
Madras City.*

*(b) Assistant Commissioner
of Police, Transport, Madras
City,*

*(c) Principal, Police Recruits
School, Coimbatore.*

*(d) Deputy Superintendent
of Police, Care Camp and
Care Home, Melpakkam*

*(e) Deputy Superintendent
of Police, Armed Reserve,
Madurai, Ramanathapuram
and Tiruchirappalli.*

(ii) In 2011-2013, applications were called for among the eligible candidates for appointment to the said post through direct recruitment and according to the selection, the vacancies were filled up. While so, the estimate of vacancies for the year 2012-2014, which were also included in the said selection list was four.

The following four candidates were selected against the said post:

- a. Elambahavath.K.
- b. Sita.K.
- c. Shajitha.B.H.
- d. Dhivya.M.P.

(iii) After joining the service, in September 2014 and January, 2015 respectively, two of the candidates, viz., *Mr.Elambahavath.K* and *Ms.Sita.K* resigned the posts without lien,



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as they got selected in the Union Public Service Commission.

Thereupon, on 12.01.2016, the Deputy Secretary of the Tamil Nadu Public Service Commission issued a call letter to the candidates who were on the reserve list, viz., *Mr K.Velladurai* and *Mr P.Balakrishnan*, who are respondents 4 and 5 herein. Accordingly, after counselling, they were selected by the order dated 28.11.2016 and were deputed for training and after completion of training, they joined the post as *DSP* on 10.04.2017 and 18.04.2017 respectively.

(iv) In the meanwhile, the writ petitioners, who were working in the post of Inspector of Police, were promoted as *DSPs* by order dated 13.01.2016 and they joined the post immediately and are working in the said post. Apart from the writ petitioners, several other candidates, totalling 208 persons, were granted promotions.

(v) There were litigations concerning promotions, pursuant to which, the official respondents did not finalize the seniority in respect of the incumbents of the post of *DSP* and because there were several vacancies that have arisen, by fixing appropriate placement in the panel, the official respondents resorted to filling up the post of *Adl. SP*. Regarding the same, the second



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respondent, namely the Director General of Police, vide his letter dated 13.01.2021, proposed that the seniority of respondents 4 and 5 have to be fixed immediately below the rest of the persons who were directly recruited by Group – I (2011-2013). The Government examined the same and considering Sections 27(f) and 42 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 [in short, hereinafter referred to as “the Act of 2016”], the Government ordered that the seniority of the said *Mr.K.Velladurai* and *Mr.P.Balakrishnan* shall be fixed accordingly at 4 A1 and 4 A2. In that order of seniority, the said respondents 4 and 5 were placed in the panel and consequently, were granted promotion as *Adl. SP* by order dated 24.03.2022. Aggrieved by the same, the present writ petition is filed.

C. The Case of the Respondents:

3. The writ petition is resisted by the respondents by filing separate counter affidavits.

4.1. On behalf of respondents 1 and 2, the previous process of selection, right from the year 1996 is detailed. The details of the litigations *inter se* between various batches of Sub-Inspectors of Police, right from 2014, are given. It is submitted that on



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19.08.2014, vide G.O.Ms.No.548, orders were issued appointing four directly recruited *DSPs* according to the estimate of vacancies for 2011-2012 subject to the result of the writ petitions pending before this Court.

4.2. Out of these four candidates, *Mr Elambahavath.K* and *Ms Sita.K*, upon being selected for the post of Customs and Central Excise Services by the Union Public Service Commission, left service. Therefore, the Government requested the Tamil Nadu Public Service Commission to allot two candidates from the reserve list against the two vacancies.

4.3. Therefore, supplementary for the year 2011-2013, respondents 4 and 5 were selected. They were appointed to the post of *DSP* vide G.O.Ms.No.839 dated 28.11.2016 and G.O.Ms.No.123 dated 09.02.2017 respectively. They joined the Tamil Nadu Police Academy for one year of institutional training on 10.04.2017 and 18.04.2017 respectively and completed their probation in the rank of *DSP* (Category - 1) on 09.04.2019 and 09.10.2019 respectively.

4.4. While so, the Government approved the estimate of 63



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vacancies for the next higher post of *Adl. SP* (Category – 1) for the year 2020-2021 vide Letter (Ms.) No.92, dated 18.02.2021.

Pursuant to this, a panel was formed in respect of the said 63 vacancies vide G.O.Ms.No.129, Home (Police-1A) Department, dated 29.02.2021. Of the said 63 officers empanelled, 49 *DSPs* were promoted and posted as *Adl. SP* (Category – 1) vide order dated 26.02.2021 and 16.08.2021. Posting orders could not be issued for the remaining 14 candidates for the shortfall of vacancies. The validity of the said panel lapsed on 25.02.2022, before which, no vacancy arose. Therefore, the next panel was drawn for the year 2021-2022 and the Government also approved the same vide G.O.Ms.No.263 dated 30.05.2022. Therefore, the writ petitioners were also included in the above panel and were promoted as *Adl. SP* on 27.06.2022.

4.5. As far as the fixation of seniority in respect of respondents 4 and 5 is concerned, the following is stated in paragraph 19, which is reproduced hereunder:

"19. It is submitted that 6th and 7th provisos of Section 27(f) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 provides as follows:-

..."Provided also that the candidates appointed



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from the reserve list shall be placed below all the candidates appointed from the regular list in the same order in which the vacancies have arisen.

Provided also that the reserve list shall be operated even against the vacancies caused due to the fact that the candidates have joined duty, but left while the reserve list is force”.

Section 40(2) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 provides as follows:-

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 service, class, category or grade.”

4.6. Therefore, it is the contention of respondents 1 and 2 that given the proviso to Section 27(f) of the Act of 2016, if candidates are appointed from the reserve list, they have to be placed below all the candidates from the regular list in the same order, in which vacancies have arisen and accordingly, respondents



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4 and 5 were kept below all the candidates appointed from the regular list and therefore, fixation of seniority is in order. According to the said seniority, the names of *Mr.K.Velladurai* and *Mr.P.Balakrishnan* were placed in the appropriate places in the promotion panel in between *Tmt.M.P.Dhivya* and *Thiru.R.Sivakumar* and they were granted promotion.

4.7. The other allegation relating to favouritism shown to respondents 4 and 5 or to any other person is denied. Considering the exigencies of service and requirement to fill up the vacancy in the post of *Adl. SP* expeditiously, certain requirements were relaxed by the Government, which is for every candidate including the petitioners. Therefore, it is prayed that the writ petition be dismissed.

5.1. Separate counter affidavit is also filed by the fourth respondent.

5.2. Apart from the other contentions raised by the official respondents, it is further contended by the fourth respondent that the writ petitioners, other than the first petitioner, are not even included in the panel for the year 2020-2021 and were included



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only in the year 2021-2022. When the petitioners did not even come within the zone of consideration and several of their seniors, who have come within the zone of consideration in the year 2020-2021 did not question the fixation of the seniority, the petitioners have no *locus standi* to question the seniority.

5.3. It is also contended that the seniority has been properly fixed as per the rules, considering the deeming provisions of Section 40(2) of the Act of 2016 and the proviso of Section 27(f) of the Act of 2016.

D. The Arguments:

6. Heard *Mr MA.Gowthaman*, learned counsel appearing for the petitioners, *Mr P.Kumaresan*, learned Additional Advocate General, assisted by *Mr Sowmi Dattan*, learned counsel for respondents 1 and 2, *Mr R.Bharanidharan*, learned counsel appearing for respondent 3, *Mr R.Vijayakumar*, learned counsel appearing for respondent 4, *Mrs Dakshayani Reddy*, learned Senior Counsel assisted by *Ms S.Suneetha*, learned counsel for respondent 5 and *Mr P.Chandrasekaran*, learned counsel appearing on behalf of respondents 6 to 29.



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7.1. *Mr MA.Gowthaman*, learned counsel appearing on behalf of the petitioners, firstly taking this Court through the Police Note dated 13.01.2016 would submit that the petitioners were all duly promoted to the post of *DSP* as of 13.01.2016. The vacancies for the said post arose before the said date and the petitioners were all fully eligible to be considered only after their turn came, they were promoted on 13.01.2016 and they were working in the said post continuously.

7.2. Thereafter, turning the attention of this Court to the impugned G.O.Ms.No.301 dated 02.08.2021, learned counsel for the petitioners would point out that the impugned order itself mentions that when the original selection took place for Group – I services, 2011-2013, the respondents 4 and 5 were not selected. They were in the reserved list as No.1 and No.2 respectively.

7.3. The four vacancies meant for the year 2012-2014 were duly filled up. But, after joining the post and working from 19.01.2015, the said *Mr Elambahavath.K* and *Ms Sita.K* subsequently resigned, after being selected by the Union Public Service Commission. In respect of the subsequent vacancies which



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arose ultimately after the selection process, the fourth respondent was appointed to the post with effect from 10.04.2017 and the fifth respondent with effect from 18.04.2017. After completion of training, when respondents 4 and 5 thus were borne into the cadre of *DSP* only in the year 2017, there is no way they could be held as seniors to the petitioners, who are promoted and working in the said post by the order dated 13.01.2016.

7.4. The learned counsel for the petitioners would submit that admittedly, the recruitment to the post of *DSP* is by more than one method of recruitment. If the candidates are recruited through more than one method of recruitment, then, as per Section 40(2) of the Act of 2016, the seniority is to be fixed with reference to the date on which the candidate is appointed to the services, class, category or grade. Therefore, in the instant case, where the recruitment is both by way of direct recruitment and also by promotion, the candidates' seniority has to be fixed with the date of appointment. The dates of appointment of the petitioners' is of the year 2016, whereas the respondents 4 and 5 are of the year 2017. Therefore, they are very much juniors to the petitioners.

7.5. According to the learned counsel for the petitioners,



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placing reliance on Section 27(f) of the Act of 2016 is incorrect. Section 27(f) of the Act of 2016 deals with a situation where no suitable candidates belonging to any category is not available. In that view, the last proviso subsequently provides that the reserve list shall be operated even against the vacancies caused because the candidates have joined duty but resigned thereafter while the reserve list is in force. The other proviso, relating to the seniority/placement, is only to mandate that the candidate who were drawn up from the reserve list cannot be placed above the candidates who were appointed from the original list.

7.6. As a matter of fact, the said proviso re-enforces the mandate of Section 40(2) of the Act of 2016 that the seniority has to be reckoned only from the date of joining. The said proviso cannot be read that even if in between the operation of the reserve list and the original appointment of the candidates in the original list, there are some other appointments through other sources also. If the candidates who are drawn up from the reserved list are placed above them in seniority, then that would render violence to Section 40(2) of the Act of 2016. According to him, no person can claim seniority even before the date in which he is borne into service.



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7.7. Learned counsel for the petitioners, in support of his submissions, would rely upon the judgment of the Delhi High Court in the case of **Jagmohan Vishwakarma and Ors. vs. Union of India and Ors.**¹, more specifically, paragraphs 48 to 50 to contend that irrespective of the batch of appointments, seniority cannot be fixed anterior to the date of appointment. Mere empanelment or relating to the batch will not confer consequential seniority.

7.8. Learned counsel would also rely upon the judgment of the Apex Court in the case of **Amit Singh vs. Ravindra Nath Pandey and Ors.**² by relying upon paragraphs 3.3, 11 to 13, to contend that whenever in a particular mode of appointment, if there is a shortfall and if the vacancies are filled in the subsequent year or years, the persons so appointed shall not get seniority over any earlier year, but shall get the seniority from the year in which their appointments are made.

7.9. Learned counsel for the petitioners would further rely upon the judgment of the Apex Court in the case of

1 2023 SCC OnLine Del 4494

2 2022 SCC OnLine SC 1559



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K.Meghachandra Singh and Ors. vs. Ningam Siro and Ors.³ to

contend that the backdating of seniority with reference to the initiation of the recruitment process is not sustainable in law.

7.10. Learned counsel would also place reliance upon the Division Bench Judgment of this Court in the case of **K.S.Arun Sabhapathy vs. The Registrar General, Hon'ble High Court, Madras and Ors.**⁴ to contend that the respondents cannot claim consequential seniority upon being drawn from the reserve list. The learned counsel also relies upon the judgment of this Court in the case of **M.Ramachandran vs. The State and Ors.**⁵ for the proposition that the services of respondents 4 and 5 are deemed to commence only from the date when they joined duty as *DSP* after completing their training on 10.04.2017 and 18.04.2017 respectively.

8.1. *Per contra*, Mr.P.Kumaresan, learned Additional Advocate General appearing on behalf of respondents 1 and 2 would submit that the language of the proviso to Section 27(f) of the Act of 2016 is clear and categorical. The Act also specifically provides for filling up of vacancies, which arise out of subsequent

³ (2020) 5 SCC 689

⁴ W.P.No.410 of 2024; dated 20.02.2024

⁵ W.P.(MD)No.5595 of 2023; dated 22.06.2023



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resignations also from the same reserve list. The reserve list will be valid until the next direct recruitment is undertaken and the subsequent list is finalized. So long as the reserve list was operating and the respondents 4 and 5 have been taken from the reserve list and have been appointed, the proviso clearly mandates that they will get seniority below their batch mates following the other candidates who are appointed from the regular list of the same selection. Accordingly, respondents 4 and 5 are kept under their immediate senior *Tmt.M.P.Dhivya* and *Thiru.R.Sivakumar*. Therefore, the seniority has been correctly fixed and there is no infirmity whatsoever.

8.2. According to the learned Additional Advocate General, even in respect of the identical selection process undertaken with reference to the District Collector post etc., the very same procedure is uniformly adopted. When the statute prescribes the method of fixing the seniority, the petitioners cannot have any quarrel over the same.

9.1. *Mrs.Dakshayani Reddy*, learned Senior Counsel appearing on behalf of the fifth respondent would submit that firstly the petitioners cannot attack the validity or otherwise of the



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appointment of respondents 4 and 5. When respondents 4 and 5 have been validly appointed, their seniority has to be reckoned only as per the relevant provisions of the Act. The proviso to Section 27(f) of the Act of 2016 provides that they have to be placed at the bottom of the other appointees on the regular list. Only as per the same, the placement is done.

9.2. The learned Senior Counsel, relying upon the additional typed set of papers filed by her, would point out that proceedings were initiated on 22.12.2015 itself upon the resignation of *Mr Elambahavath.K* and *Ms Sita.K*. Thereafter, the selection was conducted on 28.11.2016 itself. The placement order was issued on 28.11.2016 and after the training, ultimately, appointments were made in April 2017.

9.3. According to the learned Senior Counsel, the petitioners are far below in the seniority list than that of respondents 4 and 5. When the candidates in between had not chosen to challenge the promotion panel for the year 2021, the petitioners had no *locus standi*. Conversely put, if respondents 4 and 5 are not to be placed in the appropriate places in the panel and have to be pushed down, still the petitioners would not be within the zone of



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consideration. Therefore, when the petitioners are not there within the zone of consideration, their entire plea would only be academic and they have no *locus standi* to file the present writ petition. Therefore, she would pray that the writ petition be dismissed.

9.4. In support of her submissions, the learned Senior Counsel would rely upon the judgment of the Supreme Court in the case of ***State of Jammu and Kashmir and Ors. vs. Sat Pal***⁶, more specifically, relied upon paragraphs 17 and 18 to contend that the respondents should be placed only immediately below those who are appointed from the same process of selection.

9.5. The learned Senior Counsel also relies upon the judgment of the Supreme Court of India in the case of ***C.Jayachandran vs. State of Kerala and Ors.***⁷, more specifically upon paragraphs 25 and 39 to contend that if for any reason that a candidate is left out of the original selection, and is being subsequently appointed, it is only natural that the consequential seniority should also be conferred to him.

E. The Questions:

10. I have considered the rival submissions made on either

6 (2013) 11 SCC 737

7 (2020) 5 SCC 230



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side and perused the material records of the case.

11. The questions, that arise for consideration in the instant case are:

(i) whether or not the action of the official respondents in placing respondents 4 and 5 in seniority No.4 A1 and No.4 A2, immediately below the list of the candidates selected in the regular list of the same selection, but over and above the petitioners and other promotees in between is in order?

(ii) whether or not the petitioners have *locus standi* to file the present writ petition?

F. Question No. 1 :

12.1. Every incumbent in a post has a right to seniority. It is relatable from the date of appointment to the post. The Hon'ble Supreme Court of India in *State of U.P. v. Dinkar Sinha*⁸, held as follows:

"25.Seniority may not be a fundamental right, but is a civil right. (See Indu Shekhar Singh v.State of U.P.[(2006) 8 SCC 129 : 2006 SCC (L&S) 1916] ,Bimlesh Tanwar v.State of

⁸ (2007) 10 SCC 548



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Haryana[(2003) 5 SCC 604 : 2003 SCC (L&S) 737] and Prafulla Kumar Dasv.State of Orissa[(2003) 11 SCC 614 : 2004 SCC (L&S) 121] .) Infringement of the said right would be permissible only if there exists any rules validly framed under a statute and/or the proviso appended to Article 309 of the Constitution of India. It cannot act in a vacuum. Any rule taking away such rights would deserve strict construction."

(emphasis supplied)

12.2 Whenever recruitment is made through more than one source, the seniority has to be reckoned as per the Legislation/Rules in force. As far as the post of *DSP* is concerned, there are no Special Rules concerning the fixation of seniority. In the absence of any Special Rules, the provisions of the Act of 2016 are applicable regarding the fixation of seniority.

12.3. As far as the fixation of seniority is concerned, the same is dealt with in Section 40 of the Act of 2016. Section 40(1) enumerates that if the selection is done through a particular mode, the seniority of a person will be determined in the order of his placement in the list prepared by the recruitment agency. When the selection of a particular post is by more than one method of recruitment, the same is dealt with by Section 40(2) of the Act of 2016. Section 40(2) of the Act of 2016 is extracted hereunder:



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"Section 40(2) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 provides as follows:-

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 service, class, category or grade."

12.4. Thus, it can be seen that the seniority in respect of the candidates has to be determined regarding the dates on which they are appointed. Therefore, as per Section 40(2) of the Act of 2016, the petitioners are all appointed in the year 2016, while respondents 4 and 5 are appointed in the year 2017, after the petitioners and therefore, the petitioners are seniors to the respondents 4 and 5 as per Section 40(2) of the Act of 2016.

13.1. The contention on behalf of the respondents is that the proviso to Section 27(f) of the Act of 2016 entitles the official respondents to place them below the list of persons selected in the



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regular list. At the risk of repetition, the sixth and seventh proviso to Section 27(f) of the Act of 2016 is extracted hereunder:

“Provided also that the candidates appointed from the reserve list shall be placed below all the candidates appointed from the regular list in the same order in which the vacancies have arisen.

Provided also that the reserve list shall be operated even against the vacancies caused due to the fact that the candidates have joined duty, but left while the reserve list is force”.

13.2. Reading the proviso, it would be clear that if the candidates are drawn from the reserve list, normally they will be appointed much after the candidates who are appointed in the original list. It can be seen that a particular candidate originally appointed though the selection list in reserved category would have got lesser marks than the candidate in the reserve list-general category. Therefore, such candidates, if are appointed well after the original appointees cannot score a march over them.

13.3. Candidates who are appointed in the regular list including those appointed in the reserved category and even if



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have secured lesser marks than the reserved list candidates are to be deemed to be more meritorious in view of the Principles of Substantive Equality under Articles 14 and 16 of the Constitution of India. They also work from an early date. Only to overcome the said situations that may arise, the proviso has been specifically included that the candidates appointed from the reserve list shall be placed below all the candidates appointed from the regular list. The same is to establish merit and also reinforce the principle of seniority contained in Section 40(2) that the seniority should be reckoned from the date of appointment. But, the said proviso does not lay down that the candidates appointed from the reserve list shall be placed below all the candidates appointed from the regular list, but above all other candidates from the other sources of recruitment who are appointed in the meanwhile.

13.4. If respondents 4 and 5 are granted seniority from the date of their appointment, still the same complies the proviso. But the respondents' action in granting seniority over and above the petitioners and several candidates appointed by promotion and who are borne in the cadre even in the previous recruitment year is nothing but adding something that is not there in the proviso. That proviso does not contemplate or mean that in all



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circumstances, even if there are any other candidates appointed in between, the candidates should be placed immediately below the candidates appointed from the regular list.

13.5. Therefore, the reading of the proviso to Section 27(f) of the Act of 2016 by the respondents is erroneous. Such an interpretation of the proviso to Section 27(f) not only amounts to leading something extra into the Act but also renders violence to the Rule of Seniority, which is contained in Section 40(2) of the Act of 2016. Therefore, the proviso to Section 27(f) of the Act of 2016 cannot be interpreted to negate or override Section 40(2), which is the substantive provision relating to seniority. Merely because in some other instances the seniority has been fixed, that will not set right the error nor the same could be pressed into service for claiming seniority. Seniority has to be fixed as per the provisions of the Act alone.

14.1. As far as the judgments relied upon on the side of the respondents are concerned, the judgment in the case of **C.Jayachandran** (*supra*) relied upon where it has been held that if in any reason, a person is left out from selection and is appointed



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subsequently, the seniority should follow from the original date along with the batch mates. The judgment in the case of ***Union of India vs. N.R. Parmar***⁹ has been specifically overruled by the Larger Bench in the case of ***K.Meghachandra Singh*** (*supra*).

14.2. This apart, the case in ***C.Jayachandran*** (*supra*) is that on account of erroneous registration of the marks given by the High Court, the petitioners were left out of selection. In the present case, is not where the respondents 4 and 5 ought to have been selected and appointed with reference to the original batch itself. They did not come within the zone of consideration and were kept on the reserve list. They were considered only because two candidates subsequently resigned, being selected by the Union Public Service Commission. As a matter of fact, but for the proviso contained in the Act, enabling the respondents to fill up such vacancies also from the reserve list, normally the vacancies should only be advertised as they are subsequent vacancies and we are not concerned with the validity of the proviso in this matter.

14.3. As far as the judgment in the case of ***State of Jammu and Kashmir*** (*supra*) is concerned, it can be seen that considering

⁹ (2012) 13 SCC 340



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the plight of the Scheduled Caste candidate, who has been made to run pillar to post, by rendering complete justice in the exercise of powers under Article 142 of the Constitution of India, the Apex Court has granted the relief as an extraordinary case.

14.4. As far as the present case is concerned, the identical issue has been considered by the Division Bench of this Court in the case of **K.S.Arun Sabhapathy** (*supra*) and it is relevant to extract paragraph 14 of the said judgment, which reads as follows:

"14. The reserve panel remains in force until the drawal of the next select list by the Tamil Nadu Public Service Commission, In the present case, the select list was published in the year 2009 and the name of the petitioner was released from the reserve panel in the year 2011 and consequently, the Government issued the appointment order in G.O.(4D) No.87 dated 1.12.2011. Therefore, the petitioner entered into judicial service only in the year 2011 and therefore, he cannot claim seniority in respect of the selected candidates who joined in service in the year 2009 and working for a period of 2 years before the appointment of the petitioner in the year 2011."



14.5. Further the principle of dating back the seniority of a later incumbent advocated by the Hon'ble Supreme Court in N.R. Parmar's case has been expressly over-ruled by the recent dictum in **K. Megachandra Singh** (cited supra) and it is relevant to extract paragraph 39 which reads thus:

"39. The judgment in N.R. Parmar[Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] relating to the Central Government employees cannot in our opinion, automatically apply to the Manipur State Police Officers, governed by the MPS Rules, 1965. We also feel that N.R. Parmar[Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] had incorrectly distinguished the long-standing seniority determination principles propounded in, inter alia, Jagdish Ch. Patnaik [Jagdish Ch. Patnaik v. State of Orissa, (1998) 4 SCC 456 : 1998 SCC (L&S) 1156], Suraj Parkash Gupta v. State of J&K [Suraj Parkash Gupta v. State of J&K, (2000) 7 SCC 561 : 2000 SCC (L&S) 977] and Pawan Pratap Singh v. Reevan Singh [Pawan Pratap Singh v. Reevan Singh, (2011) 3 SCC 267 : (2011) 1 SCC (L&S) 481]. These three judgments and several others with like enunciation on the law for determination of seniority makes it abundantly clear that under service jurisprudence, seniority cannot be claimed from a date when the incumbent is yet to be borne in the cadre. In our considered opinion, the law on the issue is correctly declared in Jagdish Ch. Patnaik [Jagdish Ch. Patnaik v. State of Orissa, (1998) 4 SCC 456 : 1998 SCC (L&S) 1156] and consequently we disapprove the norms on assessment of inter se seniority, suggested in N.R. Parmar [Union of India] v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711]. Accordingly, the decision in N.R. Parmar [Union of



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India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] is overruled. However, it is made clear that this decision will not affect the inter se seniority already based on N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] and the same is protected. This decision will apply prospectively except where seniority is to be fixed under the relevant rules from the date of vacancy/the date of advertisement.”

(emphasis
supplied)

14.6. While considering the issue as to the date of commencement of service, a Coordinate Bench of this Court in the case of **M.Ramachandran** (*supra*), after considering appointment to service as contained under Section 3(b) of the Act of 2016, has held as follows:

"5. I carefully considered the rival contentions and went through the materials on record. The argument of the petitioner's counsel is attractive at the first blush. However, on a deeper scrutiny, it fails to hold. The issue turns on the meaning to be attached to expression "appointed to the service". This expression has been defined in Section 3(b) of the Act as follows:

"3.Definitions.-(a)...

(b) "appointed to a service" means when a person appointed in accordance with this Act of in accordance with the rules applicable at



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the time, as the case may be, discharges, for the first time the duties of a post borne on the cadre of such service or commences the probation, instruction or training prescribed for members thereof.

Explanation.- The appointment of a person holding a post borne on the cadre of one service to hold additional charge of a higher post in the same service or a post borne on the cadre of another service or to discharge the current duties thereof does not amount to appointment to the latter service;"

The language is plain and simple. The date on which the appointment order was issued or selection was made is not determinative. A person is appointed to a service only when he discharges for the first time the duties attached to the post or commences his probation or training. Admittedly the petitioner's training commences only on 10.04.2017. Applying the statutory definition I have to come to the conclusion that the petitioner was appointed to the service only on 10.04.2017."

15. Therefore, respondents 4 and 5 are borne into service only with effect from 10.04.2017 and 18.04.2017 respectively. No person can claim seniority to a post before having been borne into service. The net effect of the exercise carried out by the official



respondents is that the respondents 4 and 5 are borne in service in April 2017, however, are granted seniority concerning the year 2014-2015. Such an action is violative of the Right to Seniority of the petitioners.

16. In this regard, useful reference can be made to the recent decision of the Hon'ble Supreme Court of India in **Amit Singh Vs Ravindra Nath Pandey**¹⁰, more particularly to paragraph 21 which reads as under :

"21.This Court in the said case held that the effective date of selection has to be understood in the context of the service rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be. This Court further held that the inter se seniority in a particular service has to be determined as per the service rules. It held that the date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. It further held that any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution of India. It further held that the seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It held that the

10 2022 SCC Online SC 1559



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seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime."

(emphasis supplied)

17. For all the foregoing reasons, I am of the view that the placement of respondents 4 and 5 in seniority over and above the petitioners is illegal, arbitrary and violative of Section 40(2) of the Act of 2016 and Articles 14 and 16 of the Constitution of India. Accordingly, Question No. 1 is answered.

G. Question No. 2 :

18. It is true that respondents 4 and 5 are kept below one *Tmt.M.P.Dhivya* and above one *Thiru.R.Sivakumar*. Between the fifth and fourth respondents and the petitioners, there are several others who are above the petitioners herein. For instance, if the petitioners are in seniority No.80 and if respondents 4 and 5 are kept in seniority Nos.41A and 41B, merely because the other candidates who are there in seniority Nos.42 to 79 did not challenge the seniority, it cannot be held that the petitioners have no *locus standi*. The petitioners, whose right to seniority, is affected are entitled to move the Court. It is another question



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while considering the consequential relief, this court would not order promotion to the petitioners but as per the seniority. Therefore, it is held that the petitioners shall have the locus standi and accordingly this question is answered.

H. The Result:

19. In view thereof, this writ petition stands allowed on the following terms:

(a) the impugned Government Order in G.O.Ms.No.301 dated 02.08.2021 is quashed;

(b) the official respondents are directed to fix the seniority of respondents 4 and 5 with reference to their date of appointment as *DSP* (Category - 1), that is with effect from 10.04.2017 and 18.04.2017 respectively;

(c) the G.O.Ms.No.325 dated 17.12.2021, approving the panel for the year 2021 is declared to be illegal, in as much as it places respondents 4 and 5 in between *Tmt.M.P.Dhivya* and *Thiru.R.Sivakumar*.



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Consequently, the order dated 24.03.2022 promoting respondents 4 and 5 as *Adl. SP* in respect of the panel for the year 2020-2021 also is declared to be illegal;

(d) respondents 1 to 3 shall first carry out the exercise of re-fixing the seniority and accordingly, notionally rework the panel for the year 2021 as well as 2022 and recalibrate the dates of promotion of the petitioners as well as respondents 4 and 5 and such other candidates, as the case may be;

(e) Further promotions of the petitioners as well as the respondents 4 and 5 shall be considered in that reworked order.

20. There shall be no order as to costs. Consequently, W.M.P.Nos.29068, 29069 of 2023 and 10433 of 2024 are closed.

20.06.2024



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Index: Yes

Speaking Order: Yes

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To

1. The Additional Chief Secretary to Government
Government of Tamil Nadu
Home Department, Fort St. George
Chennai – 600 009.
2. The Director General of Police
and Head of Police Force
Dr. Radhakrishnan Salai
Mylapore, Chennai – 600 004.
3. The Secretary
Tamil Nadu Public Service Commission
TNPSC Road, V.O.C. Nagar, Park Town
Chennai – 600 003.



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D.BHARATHA CHAKRAVARTHY, J.

(drm)

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20.06.2024