



WEB COPY



WA Nos.3315 of 2023, 403, 636, 874, 966, 1108 and 1153 of 2024

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 27.06.2024

CORAM :

**THE HONOURABLE MR. R.MAHADEVAN, ACTING CHIEF JUSTICE  
and  
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ**

Writ Appeal Nos.3315 of 2023 & 403, 636, 874, 966, 1108 & 1153 of 2024  
and  
C.M.P.Nos.26980, 27366 and 28425 of 2023  
and 2264, 2708, 2952, 4518, 6949, 1126, 1344, 1350, 2027 & 4628 of 2024  
7965 and 8281 of 2024

W.A.No.3315 of 2023

1. S.Subramani
2. M.Sivakumar
3. P.Narayanasamy
4. M.K.Lakshmi Narayanan
5. M.Tamilvelan
6. A.Vigneswari
7. P.Suganthi
8. N.Jula
9. M.Chitra
10. J. Uma Maheshwari
11. D.Kavitha
12. S.Senthil Lakshmi
13. R.Surya
14. K.Selvarani
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WA Nos.3315 of 2023, 403, 636, 874, 966, 1108 and 1153 of 2024

26. S.Chithra
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29. G.Aanandhavalli
30. J.Umamaheswari
31. K.Kalaiarasi
32. D.Malarvizhi
33. C.Indira
34. C.Deivanai
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38. R.Vellaiyammal
39. A.Anis Fathima
40. K.Radhalakshmi
41. J.Manjula
42. U.Shoba
43. V.Koeleswari

.. Appellants

Versus

1. The State of Tamilnadu,  
Rep.by its Health Secretary,  
Fort St.George, Secretariat,  
Chennai - 60 009.
2. The Secretary to Government,  
Personnel and Administrative Reforms Department,  
Government of Tamilnadu,  
Secretariat, Chennai - 600 009.
3. Tamilnadu Public Service Commission,  
Rep.by its Secretary,  
TNPSC Road, VOC Nagar,  
Park Town, Chennai - 600 003.
4. The Director of Medical and Rural Health Services,  
Medical Department, DMS Campus,  
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5. R.Mariajanaki
6. D.Kamalakkannan
7. V.Kumar
8. M.Gandhi
9. M.Sakthi



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11. M.Silambarasan
12. A.Hady Josephine Sen
13. M.Senthil Kumar
14. M.Selvi
15. M.Dhivanmohideenkhan
16. R.Kandasamy
17. T.Pechimuthu
18. R.Deepa
19. I.Selvarani
20. T.Palani
21. G.Uma
22. M.Geetha
23. A.chinnannan
24. Reeta Shree
25. S.Susikaran Bernardshaw
26. K.Sundaraselvi
27. T.Lakshmi
28. M.Ruthmary
29. C.Quil
30. K.Jansirani
31. G.K.Priya
32. S.Muthumariyammal
33. M.Selvi Suguna
34. A.Auxilia Mary
35. R.Jeyavinayaki
36. K.Shanthi
37. Usha Nandhini Devi.M

.. Respondents

Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 10.11.2023 made in WP.No.35800 of 2019.

|                     |   |                                                         |
|---------------------|---|---------------------------------------------------------|
| For Appellants      | : | Mrs.Kavitha Nithyanandan                                |
| For R1, R2 & R4     | : | Mrs.Sneha, Special Counsel                              |
| For R3              | : | Mr.R.Bharanidharan,<br>Standing Counsel                 |
| For R6 to R23 & R25 | : | Mr.V.Prakash, Senior Counsel<br>for Mr.K.Krishnamoorthy |
| For R5 & R26 to R37 | : | Given up                                                |
| For R24             | : | Died                                                    |



WA Nos.3315 of 2023, 403, 636, 874, 966, 1108 and 1153 of 2024

W.A.No.403 of 2024

1. S.R.Chitra
2. E.Anitha
3. S.Banumathi
4. R.Gowri
5. R.Kumari
6. J.Tamilselvi
7. N.Sumathi

.. Appellants

Versus

1. The State of Tamilnadu,  
Rep. by its Health Secretary,  
Fort St.George, Secretariat,  
Chennai - 600 009.
2. The Secretary to Government,  
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Government of Tamilnadu,  
Secretariat, Chennai - 600 009.
3. Tamilnadu Public Service Commission,  
Rep.by its Secretary, TNPSC Road,  
VOC nagar, Park Town,  
Chennai - 600 003.
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Teynampet, Chennai - 6.
5. R.Mariajanaki
6. S.Subramani
7. M.Sivakumar
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9. M.K.Lakshmi Narayanan
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- 11.A.Vigneswari
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WA Nos.3315 of 2023, 403, 636, 874, 966, 1108 and 1153 of 2024

20. R.Mohana Priya
21. V.Seetha
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80. S.Susikaran Bernardshaw

.. Respondents

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| For Appellants                  | : | Mrs. Kavitha Nithyanandan                               |
| For R1, R2 & R4                 | : | Mrs.Sneha, Special Counsel                              |
| For R3                          | : | Mr.R.Bharanidharan,<br>Standing Counsel                 |
| For R6, 61 to 63, 65 to 78 & 80 | : | Mr.V.Prakash, Senior Counsel<br>for Mr.K.Krishnamoorthy |
| For R5 & R7 to R60              | : | Given up                                                |
| For R79                         | : | Died                                                    |

W.A.No.636 of 2024

1. K.Jansirani
2. S.Muthumariyammal
3. A.Auxilia Mary

.. Appellants

Versus

1. The State of Tamilnadu,  
Rep. by its Health Secretary,  
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Chennai - 600 009.



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| For Appellants      | : | Mrs. Kavitha Nithyanandan                               |
| For R1, R2 & R4     | : | Mrs.Sneha, Special Counsel                              |
| For R3              | : | Mr.R.Bharanidharan,<br>Standing Counsel                 |
| For R58 to R75 & 77 | : | Mr.V.Prakash, Senior Counsel<br>for Mr.K.Krishnamoorthy |
| For R5 to R57       | : | Given up                                                |
| R76                 | : | Died                                                    |

W.A.No.874 of 2024

1. M.Murugan
2. M.Kavitha
3. K.Jai Shankar
4. S. Pitchiah
5. G.Manju Priyadharshni
6. D.Revathi
7. R.Rathna Kumar
8. S.Ramadurai
9. S.Venkatalakshmi
- 10.A. Hemalatha
- 11.G.Senthamari Indumathi
- 12.M.Kanagalatha
- 13.R.Senthil Kumar
- 14.S.Joseph Fabian
- 15.S.Senthilkumar
- 16.B.J.Ravikumar
- 17.R.Singaravel
- 18.S.Murugesan
- 19.M.P.Thirunavukkarasu
- 20.A.Gnana Selvan
- 21.N.Gokulakrishnan
- 22.A.E. Anand
- 23.J.Cecil George Christopher
- 24.A.V.G.Sekar
- 25.J.Arockiya Raja
- 26.M.Dharmar
- 27.R.Sasikumar
- 28.V.Narayanan
- 29.S.Shanmuga Sundaram
- 30.R.Kavitha



WA Nos.3315 of 2023, 403, 636, 874, 966, 1108 and 1153 of 2024

- 31.Pon Arulmurugan
- 32.A.Ilango
- 33.P.Rajapandi
- 34.M.Gnana Prakash
- 35.S.Javeed
- 36.S.Rajkumar
- 37.G.J.Srinivasan
- 38.S.Indurani
- 39.Radhalakshmi
- 40.J.Thenmozhi
- 41.R.Suganthi
- 42.M.Umapathy
- 43.K.Muthukumar
- 44.S.Petchimuthu
- 45.C.Kanagaraju
- 46.M.Kamaraj
- 47.C.S.Jeyalakshmi (Assistant)
- 48.T.Neela Varnam (Assistant)
- 49.P.Rajapraphu
- 50.M.Gopinath
- 51.Uthirai
- 52.Pradeep
- 53.R.K.Manjula
- 54.K.Srinivas
- 55.Maria Immanuel Babu
- 56.N.Saraswathi
- 57.R.Mariappan
- 58.Felix Daniel
- 59.K.Gopal
- 60.M.Premalatha
- 61.A.Palaniappan
- 62.V.Muruga Prakash
- 63.G.Chezhiyan
- 64.P.Vijayalakshmi
- 65.S.Vadivelan
- 66.T.Muthulakshmi
- 67.S.Rama Subramanian
- 68.P.Muthukumar
- 69.S.Maheswari
- 70.Nagaraj
- 71.G.Raja
- 72.K.Ayyanar
- 73.M.Tharvesh Maideen
- 74.S.Karthikeyan



WA Nos.3315 of 2023, 403, 636, 874, 966, 1108 and 1153 of 2024

75.S.Manikandan  
76.N.Kavitha  
77.E.Nainamalai  
78.T.Malarkodi  
79.A.Premarani  
80.R.Ramesh  
81.S.Umadevi  
82.D.Natarajan  
83.A.Natarajan  
84.M.Thavamani

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Versus

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.. Respondents

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| For Appellants     | : | Mrs.L.Hema Murali Krishnan                              |
| For R1, R2 & R4    | : | Mrs.Sneha, Special Counsel                              |
| For R3             | : | Mr.R.Bharanidharan,<br>Standing Counsel                 |
| For R5 to R60      | : | Given up                                                |
| For R61 to 78 & 80 | : | Mr.V.Prakash, Senior Counsel<br>for Mr.K.Krishnamoorthy |
| For R79            | : | Died                                                    |

W.A.No.966 of 2024

1. S.Gnanavel
2. K.P.Vasanth
3. P.Ganesan
4. S.Prakash
5. Selva muthu Kumar
6. V.Chitra
7. S.Senthoor Kani
8. A.Titus

.. Appellants

Versus



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| For R1, R2 & R4     | : | Mrs.Sneha, Special Counsel                              |
| For R3              | : | Mr.R.Bharanidharan,<br>Standing Counsel                 |
| For R61 to 78 & R80 | : | Mr.V.Prakash, Senior Counsel<br>for Mr.K.Krishnamoorthy |
| For R5 to R60       | : | Given up                                                |
| For R79             | : | Died                                                    |

W.P.No.1108 of 2024

R.Maria Janaki

.. Appellant

Versus

1. The State of Tamilnadu,  
Rep. by its Health Secretary / Principal Secretary to Government,  
Fort St. George, Secretariat, Chennai – 09.
2. The Secretary to Government,  
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49. M.Ahila Mary
50. M.Veluthai
51. R.Vellaiyammal



WA Nos.3315 of 2023, 403, 636, 874, 966, 1108 and 1153 of 2024

52. R.Jeyavinayaki
53. K.Shanthi
54. A.AnisFathima
55. K.Radhalakshmi
56. J.Manjula
57. U.Shoba
58. V.Koleswari
59. Usha Nandihini Devi M
60. D.Kamalakkannan
61. V.Kumar
62. M.Gandhi
63. M.Sakthi
64. C.Krishnamoorthi
65. M.Silambarasan
66. A.Hady Josephine Sen
67. M.Senthilkumar
68. M.Selvi
69. M.Dhivanmohideenkan
70. R.Kandasamy
71. T.Pechimuthu
72. R.Deepa
73. I.Selvarani
74. T.Palani
75. G.Uma
76. M.Geetha
77. A.Chinnannan
78. Reeta Shree
79. S.Susikaran Bernardshaw

.. Respondents

Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 10.11.2023 made in WP.No.35800 of 2019.

|                      |   |                                                         |
|----------------------|---|---------------------------------------------------------|
| For Appellant        | : | Mrs.L.Hema Murali Krishnan                              |
| For R1, R2 & R4      | : | Mrs.Sneha, Special Counsel                              |
| For R3               | : | Mr.R.Bharanidharan,<br>Standing Counsel                 |
| For R60 to R77 & R79 | : | Mr.V.Prakash, Senior Counsel<br>for Mr.K.Krishnamoorthy |
| For R5 to R59        | : | Given up vide Memo SR No.2662                           |
| For R78              | : | Died                                                    |



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W.A.No.1153 of 2024

1. The State of Tamilnadu,  
Rep. by its Health Secretary / Principal Secretary to Government,  
Fort St. George, Secretariat, Chennai - 09.
2. The Secretary to Government,  
Personnel and Administrative Reforms Department,  
Government of Tamil Nadu,  
Secretariat, Chennai 09.
3. The Director of Medical and Rural Health Services,  
Medical Department, DMS Campus,  
Teynampet, Chennai - 06.

.. Appellants

Versus

1. D.Kamalakkannan
2. V.Kumar
3. M.Gandhi
4. M.Sakthi
5. C.Krishnamoorthi
6. M.Silambarasan
7. A.Hady Josephine Sen
8. M.Senthilkumar
9. M.Selvi
10. M.Dhivanmohideenkhan
11. R.Kandasamy
12. T.Pechimuthu
13. R.Deepa
14. I.Selvarani
15. T.Palani
16. G.Uma
17. M.Geetha
18. A.Chinnannan
19. Reeta Shree
20. S.Susikaran Bernardshaw
21. Tamil Nadu Public Service Commission,  
Rep. by its Secretary, TNPSC Road,  
VOC Nagar, Park Town, Chennai 600 003.
22. R.Mariajanaki



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23. S.Subramani
24. M.Sivakumar
25. P.Narayanasamy
26. M.K.Lakshmi Narayanan
27. M.Tamilvelan
28. A.Vigneswari
29. P.Suganthi
30. N.Jula
31. M.Chitra
32. J.Umamaheshwari
33. D.Kavitha
34. S.Senthil Lakshmi
35. R.Surya
36. K.Selvarani
37. R. Mohanapriya
38. V.Seetha
39. G.Vasanthi
40. R.Shanthi
41. G.Shanmugavalli
42. S.Maheswari
43. Padmavijila
44. D.Vasanthi
45. R.Santhameena
46. K.Sundaraselvi
47. T.Lakshmi
48. T.Tamilarasi
49. M.Ruthmary
50. C.Quil
51. K.Jansirani
52. S.Alamelu
53. S.Chithra
54. S.Bagavathi
55. T.S.Kavitharani
56. G.Ananndhavalli
57. J.Umamaheswari
58. K.Kalaiarasi
59. D.Malarvizhi
60. C.Indira
61. G.K.Priya
62. S.Muthumariyammal
63. M.Selvisuguna
64. A.Auxila Mary
65. C.Deivanai
66. G.Ponpandi



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67. M.Ahila Mary  
68. M.Veluthai  
69. R.Vellaiyammal  
70. R.Jeyavinayaki  
71. K.Shanthi  
72. A.Anis Fathima  
73. K.Radhalakshmi  
74. J.Manjula  
75. U.Shoba  
76. V.Koeleswari  
77.Usha Nandhini Devi

.. Respondents

Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 10.11.2023 made in WP.No.35800 of 2019.

|                                                             |   |                                                         |
|-------------------------------------------------------------|---|---------------------------------------------------------|
| For Appellants                                              | : | Mrs.Sneha, Special Counsel                              |
| For R1 to R18 & R20                                         | : | Mr.V.Prakash, Senior Counsel<br>for Mr.K.Krishnamoorthy |
| For R21                                                     | : | Mr.R.Bharanidharan,<br>Standing Counsel                 |
| For R19                                                     | : | Died                                                    |
| For R23 to R45, 48, 51 to 60<br>R62, R64 to R69 & R72 to 76 | : | Mrs.Kavitha Nithyanandan                                |
| For R22, R46, R47, R49, R50,<br>R61, R63, R70, R71 & R77    | : | No appearance                                           |

### **COMMON JUDGMENT**

(Delivered by the Hon'ble Acting Chief Justice)

All these writ appeals arise out of the order dated 10.11.2023 passed by a learned Judge in W.P.No.35800 of 2019.

2.At the outset, it may be stated that before the learned Judge, there were two categories of cases, one relating to Typists, who were originally selected and



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appointed by the Tamil Nadu Public Service Commission under Group IV service in 2009. They belong to the 2006-07 batch. This category of persons are regular appointees and the issue in this writ petition relates to the validity of the orders dated 20.01.2015 regularizing them as Assistants from 18.10.2012 i.e., the date on which they had been promoted temporarily as Assistants in the 2012-2013 panel; and the second relating to Junior Assistants who are MCI candidates appointed in the year 2005 on consolidated pay through Employment Exchange, following communal rotation. They were brought into regular time scale of pay as per G.O Ms.No.144, Health and Family Welfare Department, dated 30.04.2007, and their services were regularized with retrospective effect i.e., from 01.04.2007, *vide* G.O Ms.No.218, Health and Family Welfare Department, dated 09.09.2016.

3.Insofar as the first category is concerned, they were private respondents in WP No.35800 of 2019 filed by direct recruit Assistants who challenged the regularization orders granted to them in the post of Assistants.

4.Insofar as the second category is concerned, the very same direct recruit Assistants filed WP No.35788 of 2019 challenging the regularization of *ad hoc* promotees to the post of Assistant *vide* GO Ms.No.218 dated 09.09.2016.

5.The learned Judge rendered a common order in both cases. In our opinion, the two categories of cases are distinct in law and since the circumstances



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of their appointments and the law applicable in respect of each of the categories being different, whether they could have been decided by way of a common order with common reasoning and findings is the matter of debate. This is primarily due to the reason that the very fundamental nature of the appointment in respect of both the categories is different.

6.The challenge made in these appeals is to the order dated 10.11.2023 passed in W.P.No.35800 of 2019 thereby allowing the prayer made by the writ petitioners therein. The private respondents 6 to 28, 31, 35 to 43, 48 to 52 and 55 to 59 in the writ petition are the appellants in WA No.3315 of 2023. Some others, who are similarly placed as the private respondents in the writ petition, and who were not made parties in the writ petition, though they were included in the annexures to the orders impugned in the writ petition and those now working as Office Superintendents, have filed third party appeals viz., WA Nos.403 and 636 of 2024 and 874, 966 and 1108 of 2024. The Government has also filed a writ appeal bearing No.1153 of 2024 against the order passed in the said writ petition.

7.The writ petitioners therein are all directly recruited Assistants in the Directorate of Medical and Rural Health Services, Medical Department. They were appointed in the year 2012 against the substantive vacancies that arose during the year 2009-2011, duly notified by Tamil Nadu Public Service Commission (TNPSC) on 31.12.2010. They completed their probation satisfactorily. However, the



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issuance of an order declaring their probation was wantonly delayed, with ulterior motive of accommodating *ad hoc* and fortuitous appointees. While so, they preferred the aforesaid writ petition, challenging the proceedings bearing Ref.No.47155/E2/1/2014, dated 20.01.2015, issued by the Director of Medical and Rural Health Services insofar as regularizing the services of the *ad hoc* promotees like R.Mariajanaki and other similarly placed persons retrospectively, from 2005 to 2015, with seniority benefits accorded to them in the post of Assistant, detrimental to the accrued rights of seniority of the direct recruit Assistants.

8.The learned Judge after classifying the following categories, observed that the writ petitioners therein fall under the fourth category:

- (i) MCI candidates being Junior Assistants or Steno Typist Grade III being promoted as Assistants;
- (ii) Candidates appearing through special competitive exam Group IV, TNPSC being promoted as Assistants;
- (iii) Group IV TNPSC Typist promoted as Assistants; and
- (iv) directly recruited Assistants through TNPSC Group II.

9.The learned Judge thereafter delved in detail on the issues arising out of the second writ petition i.e. W.P.No.35788 of 2019, while not examining the correctness of the order impugned in W.P. No. 35800 of 2019. However, a common order dated 10.11.2023 came to be passed thereby allowing the writ petitions with



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a direction to the authorities to re-fix the seniority and pass suitable orders within a period of 12 weeks. The present appeals are filed against the order passed in W.P. No. 35800 of 2019.

10.Mrs.Kavitha Nithyanandan, learned counsel for the appellants in W.A.Nos.3315 of 2023 and WA Nos.403 and 636 of 2024 submitted that the order under appeal warrants interference of this Court on the sole ground that it is a common order for two writ petitions, the facts of which are fundamentally different, and a reading of the same would show that the learned Judge while dealing with the facts in the first writ petition has decided the matter under the assumption that the facts in the second writ petition i.e., W.P.No.35800 of 2019 are one and the same. The order under appeals proceeds on the fundamental basis that the private respondents in WP.No.35788 of 2019 and the private respondents in WP.No.35800 of 2019 belong to the same category of the employees and as such, the learned Judge has painted both these categories of employees with the same brush. The learned Judge has, on finding that the private respondents in WP.No.35788 of 2019, being appointed initially on consolidated pay, referred to such appointments as back door method. However, it is a matter of fact and record that the appellants herein were properly appointed as Typists by the TNPSC and after appearing for the examination, they were promoted as Assistants in the ordinary course of their service after having been found qualified on the crucial date i.e., 15.03.2012. By no stretch of imagination, can the appellants herein be



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said to be appointed by back door method. On this ground also, the order under appeal deserves to be set aside. Adding further, it is submitted that the order under appeal does not deal with the rights of the appellants to be given promotion with retrospective effect in a case where they have indeed been promoted as Assistants in 2012 and the order impugned in the writ petition is merely an order of regularization with effect from the date of their joining as Assistants. It is also submitted that while the writ petitioners were directly recruited Assistants, the appellants herein had already been in service since 2009 and were properly appointed through the TNPSC and thereafter, promoted to the post of Assistants after having been found eligible on the crucial date. It is a matter of fact that the appellants have been working as Assistants from 2012 and the proceedings impugned in the writ petition dated 20.01.2015 regularising their services from 2012 in the post of Assistants, cannot, in any way take away their seniority. Also, this is not a case of deemed promotion, but one where the actual orders of regularisation in the promoted post came in the year 2015, though the appellants were promoted in the year 2012 itself. However, all these facts were not considered by the learned Judge and as such, the order under appeal is liable to be set aside.

10.1. Continuing further, the learned counsel for the appellants in W.A.No.3315 of 2023 etc. batch submitted that the appellants, who were appointed as Typists after selection through competitive examination by the



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TNPSC, had completed their one-year training as Junior Assistants, without detrimental to their typist work and had also completed their training before 15.03.2012 and hence, they have been promoted as Assistants. Thus, according to the learned counsel, they have fulfilled all the requirements under Rules 5(b), 30(c) & 37 of the Tamil Nadu Ministerial Service Rules and they are entitled to have their seniority reckoned from the date of their promotion as Assistants on 18.10.2012.

10.2. It is also submitted by the learned counsel that since the appellants were promoted/appointed by promotion to the post of Assistant on 18.10.2012, their seniority should be reckoned from the said date. On the other hand, the writ petitioners/respondents in the appeals, who were all direct recruits, were first appointed to the post of Assistant on 11.12.2012 and started discharging their duties of Assistant from the said date only and not prior to that. It is trite principle of law that no person can claim seniority from a date on which he is not borne in the cadre. It is further submitted that the services of the appellants came to be regularized much later, is only due to the fact that there was pending litigation relating to quota for promotion to the posts of Typists and Steno-Typists, which finally came to be decided that out of 50% quota earmarked for promotees to the post of Assistant, 45% is for Typists and Junior Assistants while 5% would be for Steno-Typists, as could be seen from the affidavit filed by the Government in their writ appeal. Therefore, according to the learned counsel, the appellants herein were promoted during the years, when the private respondents had not even



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joined service. In other words, the appellants herein were promoted as Assistants during 2005-06 to 2010-11, whereas the private respondents joined service as Assistants only in 2012 and hence, they cannot claim seniority over the appellants herein. Without considering all these aspects, the learned Judge erred in allowing the writ petition filed by the private respondents by the order impugned herein, which has to be set aside.

10.3. In support of her contentions, the learned counsel for the appellants in WA No.3315 of 2023 etc. Batch, relied upon the following decisions:

(i) ***S.B.Patwardhan and ors. Vs. State of Maharashtra and Ors.*** [1977 (3)SCC 399];

(ii) ***The Direct Recruit Class-II Engineering Officers' Association and ors. Vs. State of Maharashtra and Ors.*** [1990 (2) SCC 715];

(iii) ***State of Tamil Nadu and Ors. Vs. E.Paripoornam and Ors.*** [AIR 1992 SC 1823];

(iv) ***V.Sreenivasa Reddy and Ors. Vs. Govt. of Andhra Pradesh and Ors.*** [AIR 1995 SC 586];

(v) ***L.Chandrakishore Singh Vs. State of Manipur and Ors.*** [AIR 1999 SC 3616];

(vi) ***K.Madalaimuthu and Ors. Vs. State of Tamilnadu and Ors.*** [AIR 2006 SC 2662];

(vii) ***Amarjeet Singh and Ors. Vs. Devi Ratan and Ors.*** [2010 (1) SCC 417];



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(viii) ***H.S. Vankani and Ors. Vs. State of Gujarat and Ors.*** [AIR 2010 SC 1714];

(ix) ***Pawan Pratap Singh and Ors. Vs. Reevan Singh and Ors.*** [2011 (3) SCC 267];

(x) ***K.Meghachandra Singh and Ors. Vs. Ningam Siro and Ors.*** [2020 (5) SCC 689];

(xi) ***P.S.Sadasivaswamy Vs. State of Tamil Nadu*** [AIR 1974 SC 2271];

(xii) ***Vijay Kumar Kaul and Ors. Vs. Union of India and Ors.*** [AIR 2012 SC 2274];

(xiii) ***State of Uttaranchal and ors. Vs. Shiv Charan Singh Bhandari and ors.*** [2013 (12) SCC 179] ;

(xiv) ***Londhe Prakash Bhagwan Vs. Dattatraya Eknath Mane and Ors.*** [2013 (10) SCC 627] ; and

(xv) ***State of Uttar Pradesh Vs. Arvind Kumar Srivastava*** [2015 (1) SCC 347] .

11.Mrs.Hema Muralikrishnan, learned counsel for the appellants in W.A.Nos.874, 966 and 1108 of 2024 submitted that the appellants have joined Government Service on various dates from 1991 to 2006 as Junior Assistants /Typists /Steno-Typists and were regularised and successfully completed probation and training. They were promoted to the substantive vacancies in the post of



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Assistant on varying dates from 2006 to 2011 and two of the appellants were appointed in 2012 (prior to December 2012, when the contesting respondents were appointed through Direct Recruitment). Though the appointment order says that the appointment is temporary, it clearly states that the appellants have completed training and are eligible to be appointed as Assistants and the appointment was made to the substantive vacancy to be filled up by promotion only and as per Government Procedure and custom, the orders for regularization are issued later with retrospective effect. It is further submitted that the appellants herein have been promoted to the post of Assistant even before the private respondents had entered into service and have been subsequently, promoted to the post of Office Superintendent during the period from 2017-2019, however, the orders for regularization in the post of Assistant came to be issued only in 2015.

11.1. It is further submitted that prior to issuance of G.O.Ms.No.199 dated 16.07.2010, providing for filling up 50% of the vacancies in the post of Assistant by direct recruitment, the only mode of appointment to the post of Assistant was by promotion and the appellants herein have therefore been appointed in accordance with the rules by promotion in the substantive vacancies. The contesting private respondents joined duty only in 2012, on temporary appointment and completed their probation during 2014 and 2015 and their services were regularized in 2014 and 2015 with retrospective effect. In such circumstances, the right of the contesting private respondents to the post of Assistant accrued only in 2014/2015



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and they cannot claim any right against the appellants herein who were promoted as Assistants from 2006 to 2011 much prior to the very recruitment of the contesting private respondents. Even at the time of arguments, the contesting private respondents have expressed their grievance only in respect of typist/steno typist who were appointed in 2009, completed probation on 03.08.2011 and posted as Assistant in 2012 and in respect of MCI candidates. The appellants herein do not fall under either of the above two categories. Therefore, it is clear that the contesting private respondents, who were the writ petitioners in WP No.35800 of 2019, ought not to have sought for quashment of the proceedings bearing No.47155/E2/1/2014 dated 20.01.2015 issued by the Director of Medical and Rural Health Services, which proceedings contained the regularisation orders of the appellants herein as well i.e., in respect of the promotion panel 2005-06 to 2010-11 and 2011-12 (in respect of two appellants).

11.2. Placing reliance on the judgment in the case of *Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra* [1990 (2) SCC 715], it is submitted that the appellants herein have been rightly placed as seniors to the writ petitioners as the writ petitioners were not even in service, when the appellants herein were promoted to the post of Assistants and they started discharging the functions attached to the said post. The appellants were promoted as Assistants according to the rules that existed during the said period, as per which appointment to the post of Assistant was only by way of promotion. As held by the



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Apex Court, confirmation is one of the inglorious uncertainties of the Government service and the appellants cannot be made to suffer for no fault of theirs. Even assuming without conceding that the initial appointment of the appellants herein as Assistants was not made by following the procedure, still, it is to be noted that the appellants continued in the post uninterruptedly till the regularisation of their service and therefore, the period of officiating service ought to be counted. Stating that the judgments cited by the writ petitioners and followed by the learned Judge are factually distinguishable and are not applicable to the facts of the present case, the learned counsel sought to set aside the order impugned in these appeals.

12.Per contra, Mr.V.Prakash, learned senior counsel appearing on behalf of the respondents 6 to 25 in W.A.No.3315 of 2023, respondents 61 to 80 in W.A.No.403 of 2024, respondents 58 to 77 in W.A.No.636 of 2024, respondents 61 to 80 in W.A.Nos.874 and 966 of 2024, respondents 60 to 79 in W.A.No.1108 of 2024, and respondents 1 to 20 in W.A.No.1153 of 2024, submitted that the private respondents / writ petitioners were directly recruited Assistants in the Directorate of Medical and Rural Health Services, Medical Department and were appointed in the year 2012 against the substantive vacancies that arose during the year 2009-2011, duly notified by the Tamil Nadu Public Service Commission (TNPSC) on 31.12.2010. They preferred W.P.No.35800 of 2019 challenging the proceedings bearing Ref.No.47155/E2/1/2014, dated 20.01.2015, issued by the Director of Medical and Rural Health Services insofar as regularizing the services of *ad hoc*



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promotees like R.Mariajanaki and other similarly placed persons retrospectively from 2005 to 2015, with undue seniority benefits accorded to them in the post of Assistants, detrimental to the accrued rights of seniority of the direct recruit Assistants.

12.1. Adding further, the learned senior counsel summarised the special rules governing the appointment by promotion of Typists, which read as under:

(i) A regularly appointed Typist should commence his probationary period, namely, for 2 years on duty within a continuous period for 3 years;

(ii) Then the Typist should work as Junior Assistant for one year;

(iii) The Typist could count his seniority from the date when he was regularly appointed as Junior Assistant;

(iv) A combined *inter se* seniority list is to be drawn from among the regular Junior Assistants, Typists and Steno-Typists Grade III for each year. From this combined *inter se* seniority list alone, can there be promotion in the post of Assistants on the basis of merit and ability as per Rule 36(b)(i) of the Tamil Nadu Subordinate Service Rules;

(v) Rule 13 and Rule 13(a) of the Tamil Nadu Ministerial Rules provides for annual preparation of merit list for selection to the post of Assistant from the combined seniority list prepared for Junior Assistant/Typist/Steno-Typist Grade III in accordance with Rule 5(b) of the Tamil Nadu Ministerial Service Rules. In that, against the 20% of the Junior Assistant vacancies, candidates working as Record



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Clerk/Office Assistant/Driver ought to have been considered;

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(vi) Rule 14 provides that the crucial date on which the candidates should possess the prescribed qualification for inclusion in the annual list of accrued candidates for appointment to the post by promotion and recruitment by transfer, shall be 15th of March, every year;

(vii) In any event, the appellants in W.A.No.3315 of 2023 and W.A.Nos.403 and 636 of 2024, did not challenge the higher seniority assigned to the other class of persons from Sl.No.109 (Shanti Bala) and admittedly, the said Shanthi Bala became Assistant only in the year 2018, but Shanti Bala and other similarly placed individuals were placed above the appellants and thus, the appellants cannot seek any remedy in the writ appeals based on the writ petition filed by the writ petitioners, who are direct recruits. In the event of the direct recruits succeeding in the above writ appeals, the directly recruited Assistants will be placed above Shanti Bala who is shown in Sl.No.109, whereas these Typists could be placed only below such *ad hoc* appointees as the TNPSC Typists have accepted the seniority of Shanti Bala and others.

12.2. In respect of the contention raised by the learned counsel for the appellants in W.A.Nos.874, 966 and 1108 of 2024 that though regularization orders were issued through the impugned proceedings in the writ petition, dated 20.01.2015, the Assistants who were promoted up to 2009, were seniors to the writ petitioners for the reason that Direct Recruitment took place only for the year



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2010, it has been submitted by the learned senior counsel that in the common order under which the orders of regularization in the post of Assistant for the years from 2005 to 2014, were challenged, there are no details as to the fact whether they were originally appointed as Junior Assistants through the Tamil Nadu Public Service Commission or compassionate appointment or Steno-Typist Grade-III, as projected in W.A.Nos.874, 966 and 1108 of 2024. Only the details of one, Mariam Janaki are discussed. Thus, according to the learned senior counsel, the orders of regularization dated 20.01.2015 issued by the Director of Medical and Rural Health Services are clear violation of the various recruitment rules governing the appointment by promotion to the post of Assistant, such as, Rule 5(b) and Rule 36(k) of the Tamil Nadu Ministerial Service Rules and Rule 2(1) and Rule 4 of the Tamil Nadu State and Subordinate Service Rules and Regulation 17(3) of the Tamil Nadu Public Service Commission Regulations, 1954. The Government alone is empowered to relax such rules, but no such relaxation was obtained by the Director of Medical and Rural Health Services from the Government and that, he has no jurisdiction to pass regularization orders and therefore, the orders passed by him are non-est in the eye of law. Accordingly, the learned Judge has rightly dealt with this issue and passed the order impugned herein, which does not require any interference at the hands of this court.

13. On the side of the Government in WA No.1153 of 2024, Mrs.Sneha, learned Special Counsel contended that through the proceedings dated 20.01.2015



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which was impugned in WP No.35800 of 2019, the temporary services of the Assistants have been regularised retrospectively from the date of joining the post of Assistants by promotion during the panel years 2005-06 to 2013-14. According to the Government, these persons were selected through regular modes and due to pendency of WA No.417 of 2012, they were promoted temporarily in various panel years according to their seniority (2005-06 to 2013-14) and joined as Assistants in the concerned panel year itself. It is further submitted that the orders impugned in the writ petition are the actual orders of regularisation in the promoted post issued in the year 2015, though the appellants and others were promoted as Assistants in the panel years 2005-06 to 2013-14 itself and joined/working from the concerned panel years and thus, they are seniors to the writ petitioners, which fact was not properly appreciated by the learned Judge. Therefore, the order of the learned Judge deserves to be set aside.

14.We have considered the submissions made by the learned counsel on either side and perused the records carefully and meticulously.

15.It is beyond dispute that the appellants in WA Nos.3315 of 2023 and 403 and 636 of 2024 were originally selected and appointed as Typists by the Tamil Nadu Public Service Commission (TNPSC) under Group IV services (2006-2007 batch) in August 2009. After their completion of probation, they were found eligible to the post of Assistant on the crucial date of 15.03.2012 and hence, they were



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promoted as Assistants on 18.10.2012 and joined duty as such on 26.10.2012. The promotion orders of the appellants from the post of Typist to Assistant state that they have been promoted under Rule 39(1)(a) of the General Rules for Tamil Nadu State & Subordinate Service Rules, purporting to mean thereby that their promotions are temporary. However, the order dated 20.01.2015 regularizing their services as Assistants from the date of their joining in the post of Assistant i.e., from 26.10.2012, states that their regularization was delayed only due to the pendency of the case in WA No.417 of 2012 which relates to the quota of promotions between Typists and Steno-Typists for the post of Assistant. It is also not in dispute that the appellants in WA Nos.874, 966 and 1108 of 2024 were promoted to the cadre of Assistant in the vacancies that arose from 2005 to 2011 on the basis of their seniority in accordance with the list drawn by the promotion panel and their services were regularised from the date of taking charge as Assistants by the order dated 20.01.2015. It is this order dated 20.01.2015 which was impugned in the writ petition.

16.The common case of the appellants in WA No.3315 of 2023 etc.batch and the State Government in all these appeals is that the appellants were eligible for promotion as Assistants from the post of Typists on the crucial date i.e., on 15.03.2012 and their promotions were initially granted as temporary promotions only due to the pendency of case relating to the quota of promotions between Typists and Steno-Typists for the post of Assistants. Thus, the entire case has to



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stand or fall on whether the appellants were eligible for promotion as Assistants on the crucial date i.e., on 15.03.2012. In order to come to a conclusion on this aspect, a perusal of the following Rules is essential:

**Tamilnadu Ministerial Service Rules:**

**Rule 5b:** Promotion to the post of Assistant and to the posts which carry the scale of pay of Assistant, shall be filled up from qualified Junior Assistants and Typists from the combined inter se seniority list of the holders in these categories recruited in the same year, with reference to the date of regular appointment in the respective category:

Provided that the seniority among the Junior Assistants or the Typists as fixed by the Tamil Nadu Public Service Commission shall not be altered while fixing their inter se seniority.

**Rule 9- Transfers between categories:**

(a) Omitted (vide GO Ms.No.16, P&AR(B) Department dated 21.02.2002 w.e.f 01.08.1992)

A Junior Assistant or Telephone appointment as a Junior Assistant or Telephone Operator, if he is qualified and Operator shall be eligible for appointment as Typist shall be eligible for suitable and if he has satisfactorily completed his period of probation as Junior Assistant or Telephone Operator or as Typist, as the case may be.

**Rule 30(c): Special Qualifications:-**

No Typist shall be eligible for promotion as Assistant or to the posts which carry the scale of pay of Assistant in any department unless he has undergone training as Junior Assistant for a period of one year without detrimental to his Typist work.

**Rule 37: Promotion or transfer as Assistants or Junior Assistants.-**

Typists shall not be eligible for promotion or transfer as Audit Assistants or Junior Assistants in the Local Fund Audit Department or as Assistants or Junior Assistants in the Office of the Commissioner of Revenue Administration and Office



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of the Commissioner of Land Administration or in any other Department Tamil Nadu Public Service Commission for recruitment of Junior Assistants unless they have passed the competitive examination (full test) held by the or unless they had been selected as Typists on the results of a competitive examination held before 1942, or unless they have been selected as Typist on the results of Competitive Examination for Group IV Services held in the year 1977 or thereafter.

No Typist shall be eligible for such promotion or transfer before he has satisfactorily completed the period of his probation.

No Typist who has not attained 35 years of the age on the 9th November, 1961, shall be eligible for such promotion or transfer before he has undergone the training in Tamil Typewriting on the Standard Key-board for the period to be prescribed by the competent authority in his department and served as Typist for a total period of one year from the date of the completion of the said training:

Provided that the Head of the Department concerned may, with the prior concurrence of the Official Language Committee, Chennai, declare that the one year service as Typist shall not apply to any Typist specified in the declaration with effect from the date mentioned in the declaration if his services as a Tamil Typist are not indispensable from that date owing to the availability of adequate number of Typists trained in Tamil Typewriting to meet the requirements of the Department.

Note (1). In respect of persons who are qualified, in Tamil Typewriting before 9th November, 1961, the one year period of service as Typist shall be reckoned from the date on which they became so qualified; and

Note (2).—The prescribed period of training in Tamil Typewriting on the standard key-board and the service as Typist for a total period of one year from the date of completion of the said training shall apply to all Government Typists who have not commenced probation as Assistants and Junior Assistants on the 9th November, 1961.

Note (3).—The Typists of the Treasuries and Accounts Department are exempted from the training in Tamil Typewriting on the standard key-board and from the service as Typist after the date of completion of such training:

Provided further that persons appointed to the post of Typist by recruitment by transfer need not pass the full test conducted by the Tamil Nadu Public Service Commission for promotion as Assistant or for conversion as Junior Assistant, as the case may be.



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Explanation. Nothing contained in the first paragraph of this rule will be construed as precluding the promotion as Assistant or the transfer as Junior Assistant or Typist or who was selected by the Staff Selection Board or other Competent authority before the system of selection through the commission was introduced.

**Tamilnadu State and Subordinate Service Rules:**

**Rule 10 A:-** Recruitment to posts, which are outside the purview of the Tamil Nadu Public Service Commission.— (a) Where the posts are outside the purview of the Tamil Nadu Public Service Commission, recruitment shall be made only by calling for names of eligible candidates from the Employment Exchange. In respect of specialized posts for which candidates are not available with the Employment Exchange, the appointing authority shall get a certificate of a non-availability from the Employment Exchange, and call for applications from eligible candidates by advertising the posts in prominent daily newspapers giving the number of vacancies and indicating the qualifications, etc.

**Rule 35(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;

Provided that where the junior appointed by a particular method or recruitment happens to be appointed to a service, class, category or grade, earlier than the senior appointed by the same method of recruitment, the senior shall be deemed to have been appointed to the service, class, category or grade on the same day on which the junior was so appointed:

Provided further that the benefit of the above proviso shall be available to the senior only for the purpose of fixing inter-se-seniority:

Provided also that where persons appointed by more than one method of recruitment are appointed or deemed to have been appointed to the service, class, category or grade on the same day, their inter-se-seniority shall be decided with reference to their age.



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### **Tamilnadu Government Servants (Conditions of Service) 2016**

**Section 3(b):-** "appointed to a service" means when a person appointed in accordance with this Act or in accordance with the rules applicable at 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.

**Section 40(2):-** (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:

Provided that where the junior appointed by a particular method of recruitment happens to be appointed to a service, class, category or grade, earlier than the senior appointed by the same method of recruitment, the senior shall be deemed Appointment of full members. Appointment as full member, discharge and reappointment of member who are not probationers or approved probationers. Penalty for failure to pass prescribed test. Fixation of seniority. 32 to have been appointed to the service, class, category or grade on the same day on which the junior was so appointed:

Provided further that the benefit of the above proviso shall be available to the senior only for the purpose of fixing inter-se-seniority:

Provided also that where persons appointed by more than one method of recruitment are appointed or deemed to have been appointed to the service, class, category or grade on the same day, their inter-se-seniority shall be decided with reference to their age.

17.Further, certain guidelines were framed by the Government with respect to promotion to the post of Assistant *vide* G.O.Ms. No.417 Personnel and Administrative Reforms (Per-B) Department dated 01.12.1993, the relevant portion of which is also extracted hereunder for better appreciation:

"Para 4



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The Government have examine the whole matter in consultation with the Tamil Nadu Public Service Commission in the light of the orders of the Tamilnadu Administrative Tribunal and the orders of the Government above mentioned and they direct that the following revised procedures be adopted while promoting Junior Assistants and Typists as Assistants in the Tamilnadu Ministerial Service:-

a) For purpose of appointment to the post of Assistant a combined seniority list of Junior Assistants and Typists shall be drawn hereafter as observed by the Tamilnadu Administrative Tribunal.

b) The inter-se-seniority of the holders of the two categories of posts recruited in the same year shall be fixed with reference to the date of their regular appointments. However, the seniority among the Junior Assistants or the seniority among the Typists as fixed by the Tamilnadu Public Service Commission shall not be altered while fixing their inter-se-seniority.

c) all the seniors in the category of Typists who are likely to get their promotion as Assistants in the course of next one or two years shall be asked to undergo training as Junior Assistants for a period of one year by allotting a few subjects covering different aspects of the department and they shall be allowed to dispose of the files without detriment to their typing work.

d) while selecting typists for training as Junior Assistants, strict seniority shall be adhered to.

e) all typists promoted to the post of Assistant shall undergo the foundational Training at Civil Services Training Institute, Bhavanisagar within a period of two years from the date of their promotion as Assistant on a regular basis.

f) the tests already prescribed, if any will not be affected consequent on the changes mentioned above.

g) in respect of future recruitment's, the Tamilnadu Public Service Commission is requested to prepare a combined Seniority list of Junior Assistants and Typists based on the results of the common examination held by it. Promotions to the post of Assistant shall be made in accordance with the common seniority list after fixing the inter-se seniority of candidates appointed as Junior Assistants-Typists by recruitment by transfer from lower posts like Record Clerks etc., along with the Commission candidates under Rule 35(a) of the General Rules for the Tamilnadu State and Subordinate Services.

**h) for the existing vacancies in the category of Assistant in the Tamilnadu Ministerial Service, the appointing authorities shall draw a**



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**combined seniority list of Typists and Junior Assistants with reference to the date of their regular appointment keeping the commission seniority in tact and fill up the vacancies from this list without insisting on one year training ordered, since the present vacancies cannot be allowed to remain unfilled till the typists undergo the training as Junior Assistants.”**

18. The amendment in Special Rules for the Tamil Nadu Ministerial services issued vide GO Ms No.57 dated 17.04.2012 including annexure IX-D is also relevant and reads as follows:

*"ANNEXURE-IX-D.*

*(Referred to in rule 38(b)(ii))*

*Appointment, training and conditions of service of directly recruited Assistants (Non-Technical) in the Medical Department:-*

*1. Appointment to the service may be made in the category of Assistant (Non-technical) in the Medical Department by direct recruitment for employment in the State.*

*2. The number of vacancies in the State filled up under rule 1 shall not exceed in any year 50% of the total number of vacancies arising in the post of Assistant in the State in that year.*

*3. The Director of Medical and Rural Health Services shall be the appointing authority.*

*4. The rule of Reservation of Appointments (General Rule 22) shall apply to such appointments.*

*5. No person shall be eligible for appointment as Assistant by direct recruitment, if he has completed or will complete the age of 30 years on the first day of July of the year in which the selection for appointment is made.*

*6. No person shall be eligible for appointment as Assistant by direct recruitment unless he possesses a Degree, from any University recognized by the University Grants Commission.*

*7. Every person appointed as Assistant by direct recruitment shall be on probation for a total period of two years on duty within a continuous period of three years.*

*8(a). Every person appointed as Assistant by direct recruitment shall within the period of probation complete the Foundational Training for a period of two*



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*months at Civil Services Training Institute, Bhavanisagar.*

*(b). Every person appointed to the post of Assistant by direct recruitment, shall within the period of probation, pass the following tests, namely:-*

*(i) Tamil Nadu Medical Code;*

*(ii) Account Test for Subordinate Officers, Part-I;*

*(iii) Tamil Nadu Government Office Manual Test.*

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

*10. Consistent with his seniority, a directly recruited Assistant shall be eligible for promotion to any selection category posts, provided he has successfully completed his probation and has also passed the tests prescribed.*

*11. For every such person, there shall be reserved a substantive vacancy arising in the permanent cadre of the category of Assistants in the Medical Department after his appointment. His appointment to a substantive vacancy shall not however confer on him any preferential claim to promotion.*

*12. The directly recruited Assistant shall be allowed straightaway to draw the minimum of the time scale of pay applicable to the post of Assistant. The training period shall be allowed to count for increment and for probation.*

*13. Every person appointed as Assistant by direct recruitment shall execute an agreement in proper Form with two sureties binding himself-*

*(i) to serve in the Medical Department for a period of not less than five years, and*

*(ii) in case, he fails to serve as aforesaid, to refund to the State Government the total amount drawn by him as pay and allowances during the period of training."*

19. Thus, it is clear from the above Rules that appointment to the post of Assistant in the Medical Department by direct recruitment shall not exceed 50%, meaning thereby that for the post of Assistant, 50% post shall be filled by direct recruitment and the remaining 50% by promotion from the posts of Typist and



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Junior Assistant. It is further seen that the *inter se* seniority between the direct recruit Assistants and promotee Assistants shall be as per the provisions laid down in Rule 35 (aa) of the General Rules of the Tamil Nadu State and Subordinate Service Rules. It may also be stated here that it is now settled that in the 50% quota allocated for promotion to the post of Assistant, 45% is for typists and 5% is for Steno-Typists. This came to be decided pursuant to the decision rendered in WA No.417 of 2012, during the pendency of which all promotions to the post of Assistants were made only temporarily.

20.As per Rule 37 of the Tamil Nadu Ministerial Service Rules, the persons, who have been selected and appointed as Typists on the result of the competitive examination for Group IV shall be eligible for promotion as Assistants provided they have satisfactorily completed the period of probation. Further, under Rule 5(b) of the said Rules, promotion to the post of Assistant and to the posts which carry the scale of pay of Assistant, shall be filled up from qualified Junior Assistants and Typists from the combined *inter se* seniority list of the holders in these categories recruited in the same year, with reference to the date of regular appointment in the respective category. To be read along with Rule 5(b) is Rule 30(c) which states that no Typist shall be eligible for promotion as Assistant or to the posts which carry the scale of pay of Assistant in any department unless he has undergone training as Junior Assistant for a period of one year without detrimental to his Typist work. In the present case, all the appellants who were Typists have



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completed the one-year training as Junior Assistants without detrimental to their Typist work as can be seen from the available records. They had also completed their training before 15.03.2012. That apart, it is pertinent to refer to para 4(h) of G.O.Ms.No.417 Personnel and Administrative Reforms (Per-B) Department dated 01.12.1993, which states that for the existing vacancies in the category of Assistant in the Tamil Nadu Ministerial Service, the appointing authorities shall draw a combined seniority list of Typists and Junior Assistants with reference to the date of their regular appointment keeping the Commission seniority intact and fill up the vacancies from this list without insisting on one year training ordered, since the present vacancies cannot be allowed to remain unfilled till the Typists undergo the training as Junior Assistants. This would make it clear that there have been instances in the past, where the one year training period was not insisted upon for promotion as Assistant. However, the appellants in WA No.3315 of 2013 etc. batch, who have been regularly appointed as Typists after selection through competitive examination by the TNPSC, and after having completed their probation as well as the one year training as Junior Assistants, have been promoted as Assistants. As such, they have satisfied all the requirements provided under the Tamil Nadu Ministerial Service Rules.

21.The contention of the private respondents / writ petitioners that Typists seeking promotion as Assistants should first be transferred/converted as Junior Assistants under Rule 9 (a) in order to be considered for promotion as Assistants,



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is proved fallacious by a reading of Rule 30(c), which states that no Typist shall be eligible for promotion as Assistant or to the posts which carry the scale of pay of Assistant in any department unless he has undergone training as Junior Assistant for a period of one year without detrimental to his Typist work. Though Rule 9(a) was not brought to the notice of this Court, the same has been omitted *vide* G.O. Ms.No.16 P&AR(B) Department dated 21.02.2002 w.e.f 01.08.1992.

22. Since it is now clear as daylight that all the appellants in WA No.3315 of 2023 etc. batch, are eligible to be promoted as Assistants on the crucial date of 15.03.2012, the next question would be as to the date from which their seniority is to be reckoned. As per the Tamil Nadu State and Subordinate Service Rules as well as Section 3(b) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (hereinafter referred to as 'the Act'), "appointed to a service" means, when a person appointed in accordance with this Act or in accordance with the Rules applicable at the time, as the case may be, discharge, 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. In the present case, since the appellants who being found eligible for the post of Assistant by promotion, were promoted as Assistants on 18.10.2012, which is the date on which they can be said to have, for the first time, started discharging their duties in respect of the post of Assistant. This fact juxtaposed with Rule 35(aa) of the Tamil Nadu State & Subordinate Service Rules which is presently in Section 40(2) of the Act, which





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vacancies in the post of Assistant on varying dates from 2006 to 2011 according to the extant rules and the order of regularisation came to be issued only in the year 2015. In such circumstances, the contesting private respondents, who were appointed as Assistants through direct recruitment in December, 2012, much after the appellants were promoted as Assistants, cannot claim seniority over the appellants. The position of law in this regard, has been well settled in the following decisions:

(i) ***S.B.Patwardhan and another vs. State of Maharashtra and Ors.***

[1977 (3) SCC 399]

"39.If officiating Deputy Engineers belong to Class II cadre as much as direct recruits do and if the quota system cannot operate upon their respective confirmation in that cadre, is there any valid basis for applying different standards to the members of the two group for determining their seniority? Though drawn from two different sources, the direct recruits and promotees constitute in the instant case a single integrated cadre. They discharge identical functions, bear similar responsibilities and acquire an equal amount of experience in their respective assignments. And yet clause(iii) of rule 8 provides that probationers recruited during any year shall in a bunch be 'treated as senior to promotees confirmed in that year. The plain arithmetic of this formula is that a direct recruit appointed on probation say in 1966, is to be regarded as senior to a promotee who was appointed as an officiating Deputy Engineer, say in 1956, but was confirmed in 1966 after continuous officiation till then. This formula gives to the direct recruit even the benefit of his one year's period of training and another year's period of probation for the purposes of seniority and denies to promotees the benefit of their long and valuable experience. If there was some intelligible ground for this differentiation bearing nexus with efficiency in public services, it might perhaps have been possible to sustain such a classification. It is interesting that time and again the State Governments themselves found it difficult to justify the hostile treatment accorded to the promotees. In various affidavits filed on their behalf, entirely contradictory contentions were taken, sometimes in favour of the promotees and sometimes in favour of direct recruits. Instead of adopting an intelligible differentia, rule



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8 (iii) leaves seniority to be determined on the sole touchstone of confirmation which Seems to us indefensible. Confirmation is one of the inglorious uncertainties of government service depending neither on efficiency. of the incumbent nor on the availability of substantive vacancies. A glaring instance widely known in a part of our country is of a distinguished member of the judiciary who was confirmed as a District Judge years after he was confirmed as a Judge of the High Court. It is on the record of these writ petitions that officiating Deputy Engineers were not confirmed even though substantive vacancies were available in which they could have been confirmed. It shows that confirmation does not have to conform to any set rules and whether an employee should be confirmed or not depends on the sweet will and pleasure of the government.

40. There is no substance in the plea that direct recruits must be given weightage on the ground that the engineering services require the infusion of new blood since it is a highly specialised service. Were it so, the Government would not have itself reduced the proportional representation gradually so as to tilt the scales in favour of promotees. Besides, the plea that engineering service is a specialised service is made not by the Government but by direct recruits who, obviously, are interested in so contending. Nor indeed is the apprehension justified that the higher echelons of engineering services will in course of time be manned predominantly by promotees. Those recruited directly as Assistant Engineers in Class I can, under the rules, officiate as Executive Engineers after 4 years' service and are eligible for confirmation as Executive Engineers after a total service of 9 years. Promotees can hardly ever match with that class in terms of seniority.

41. Learned counsel for direct recruits relied on the decision of this Court in B.S. Gupta v. Union of India [(1975) 3 SCC 116], where it was observed that when recruitment is made from several sources, it may be necessary in the public interest to depart from the normal rule of seniority and to provide that dates other than the dates of appointment will determine inter se seniority of officers. These observations have to be understood in the context which the Court itself clarified by saying that the, problem before it was not of discrimination in the matter of promotion from an integrated service constituted from two sources but the problem was of integrating two sources in one service by adjusting inter se seniority. Besides, the rule of seniority prescribed in that case was not shown to suffer from the infirmity from which rule 8 (iii), suffers.

42. Reliance was also placed by the direct recruits on another decision of this



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Court in V.B. Badami v. State of Mysore [(1976) 2 SCC 901] in which it was held that in cases where rules prescribe a quota between direct recruits and promotees, confirmations for substantive-appointments can only be made in clear vacancies occurring in the permanent strength of the cadre and that confirmed persons have to be treated as senior to those who are officiating. This decision is distinguishable because it is based on the consideration that rule 9 of the Probation Rules of 1957 provided for confirmation of a probationer as a full member of the service in any substantive vacancy in the permanent cadre and that rule established the exclusion of temporary posts from the cadre. Since the cadre consisted of permanent posts only, confirmation in permanent posts necessarily determined the inter se seniority of officers."

**(ii) *The Direct Recruit Class-II Engineering Officers' Association and Ors. vs. State of Maharashtra and Ors. [1990 (2) SCC 715]***

"38. As has been stated earlier, the seniority list of the Deputy Engineers for the period up to 1.11.1956 was confirmed in the Patwardhan's case. The question of determining the seniority for the subsequent period arose in pursuance of the further decision in this judgment. The 1960 Rules were enforced with effect from 30.4.1960 which introduced, for the first time, several new provisions including the quota rule. The period from 1.11.1956 to 30.4.1960 was, therefore, separately dealt with by framing the 1978 Rules under Article 309 of the Constitution. In accordance with the decision in Patwardhan's case the seniority list of the Deputy Engineers as on 1.11.1956 was declared by these Rules as valid, final and binding, and thereafter the further seniority lists were directed to be prepared for the years 1957, 1958, 1959 and 1960 on the basis of continuous officiation in accordance with the judgment. The petitioner contends that the judgment in Patwardhan's case cannot be interpreted to have struck down the 1941 Rules and the claim of the direct recruits appointed prior to the coming in force of the 1960 Rules must be upheld in view of the provisions of Rule 2 of the 1941 Rules. The 1941 Rules contained only two rules which are quoted below:

"1. In the case of direct recruits appointed substantively on probation, the seniority should be determined with reference to the date of their appointment on probation.



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2. In the case of officers promoted to substantive vacancies, the seniority should be determined with reference to the date of their promotion to the substantive vacancies provided there has been no break in service prior to theft confirmation in those vacancies."

39. Mr. Singhvi replied by saying that Rule 2, aforementioned, when properly understood, does not help the petitioner at all, inasmuch as the rule refers to substantive vacancies and not permanent appointments and substantive vacancies can arise even in temporary posts. Reliance was placed on the observations in Baleshwar Dass' case. However, we do not consider it necessary to deal with this argument, as in our view the petitioner cannot succeed even otherwise. The substance of the petitioner's argument is again the same as has been contended on behalf of the appellants in the Civil Appeals, namely, that the principle of seniority being dependent on continuous officiation as laid down in Patwardhan's case should not be accepted. The contention is that the seniority ought to be reckoned with reference to the dates of permanent appointment in the cadre. This argument precisely was rejected in Patwardhan's case and we are in complete agreement with the same. We also do not accept the argument of the petitioner that the judgment did not deal with the 1941 Rules. The said Rules were pointedly considered at SCR pp. 790G – 791E [SCC pp. 414 – 15, paras 28 and 29] in the published report and it was, inter alia, held,

"The 1941 Rules contained the real germ of discrimination because the promotees had to depend upon the unguided pleasure of the Government for orders of confirmation. In the pre-Constitution era, such hostile treatment had to be suffered silently as a necessary incident of government service."

It has to be remembered that the 1941 Rules, made under an executive instruction, do not stand on a stronger footing than the provisions of the subsequent similar Rules which have been struck down on the ground of illegal discrimination; and as in the case of the 1982 and the 1984 Rules, the 1978 Rules also were framed under Article 309 of the Constitution. No valid objection can be taken against the 1978 Rules made for undoing the wrong resulting from arbitrariness and offensive discrimination which had visited the promotees.

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47. To sum up, we hold that:

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to



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the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

(C) When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly.

(D) If it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down.

(E) Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date.

(F) Where the rules permit the authorities to relax the provisions relating to the quota, ordinarily a presumption should be raised that there was such relaxation when there is a deviation from the quota rule.

(G) The quota for recruitment from the different sources may be prescribed by executive instructions, if the rules are silent on the subject.

(H) If the quota rule is prescribed by an executive instruction, and is not followed continuously for a number of years, the inference is that the executive instruction has ceased to remain operative.

(I) The posts held by the permanent Deputy Engineers as well as the officiating Deputy Engineers under the State of Maharashtra belonged to the single cadre of Deputy Engineers.

(J) The decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinised



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for finding out any possible error. It is not in the interest of Service to unsettle a settled position.

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With respect to Writ Petition No. 1327 of 1982, we further hold:

(K) That a dispute raised by an application under article 32 of the Constitution must be held to be barred by principles of res judicata including the rule of constructive res judicata if the same has been earlier decided by a competent court by a judgment which became final.

In view of the above and the other findings recorded earlier, we do not find any merit in any of the civil appeals, writ petitions and special leave petitions which are accordingly dismissed. There will be, however, no order as to costs."

(iii) ***State of Tamil Nadu and another vs. E.Paripoornam and Ors.***

*[AIR 1992 SC 1823]*

"12.The High Court has stated that Rule 35(a) could not have been properly invoked by the State Government after the regularisation of the services of the candidates and it would be against the very concept of order of regularisation. It has been pointed out that by regularisation the period of temporary service has been converted into a period of regular service and a deeming, fiction is introduced that the candidates whose services have been regularised retrospectively must be treated for all purposes as being in regular service from the respective dates of regularisation.

13.In our opinion, the view expressed by the High Court not only runs counter to the terms of the order of the regularisation but also is inconsistent with Statutory principle of determining seniority under Rule 35(a). In the first place the order of regularisation of the services of the candidates expressly states that the inter se seniority of the candidates would be in accordance with the rankings in the approved list prepared by the Public Service Commission and will not be affected in any way by the date of regularisation of services. When the order of regularisation of temporary service itself denies such service for the purpose of determining seniority, the Court cannot count that service for the purpose of seniority. Secondly, Rule 35(a) provides for determining the inter-se seniority of the candidates selected by the Public Service Commission. It states that the seniority of a person in a



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service, class or category or trade shall be determined unless he has been reduced to a lower rank as a punishment, by the rank obtained by him in the list of approved candidates drawn by the Public Service Commission or other appointing authority as the case may be. Since the parties in these cases appeared for selection before the Public Service Commission for regular recruitment as Junior Professors, the list of approved candidates prepared by the Public Service Commission in the order of merit and accepted by the Government should be the basis for determining their inter-se seniority. It is not open to the parties to claim that their temporary service as Junior Professors upon regularisation should be counted for the purpose of determining the seniority in the cadre. There is no rule supporting such contention. The services rendered in the temporary post is available either for earning increments or for commencement of probation. That would be clear from Rule 23(a). Consistent with the Rule 23(a), the Government in the order of regularisation has directed that the incumbents are eligible for increments from the date of their regularisation as they are fully qualified to hold the post on that date. The increments already sanctioned to them during their services as temporary Junior Professors prior to regular appointment has been ratified by the said order. The High Court was plainly in error in ignoring the statutory Rules and the terms and conditions of the order of regularisation of services."

(iv) ***V. Sreenivasa Reddy and Ors. vs. Govt. of Andhra Pradesh and***

***Ors. [AIR 1995 SC 586]***

"31.It is true that Rule 33(a) speaks of length of service but a temporary employee appointed under Rule 10(a)(i)(I), when his services are sought to be regularised under Rule 23(a), the appointing authority has been invested with the discretion to fix the date of initial appointment or subsequent date as the commencement of the date of the probation. In other words, appointment to the service in accordance with the Special Rules is a condition precedent and fixation of the date for commencement of the probation of temporary appointees under Rule 23(a) should be done in accordance with the rules. Therefore, when the competing interests of the PSG candidate and the temporary appointees under Rule 10(a)(i)(I) emerges, the appointing authority has been given discretion to give later date to the temporary appointees. Therefore, the entire length of temporary service cannot be computed for the purpose of determining seniority under Rule 33(a).



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32.The further contention of Sri Madhava Reddy that since the temporary appointees and PSC candidates have been appointed under Rule 10(a)(i)(l) giving seniority to the PSC candidates from the date of their appointment and denial thereof to the promotees of the same date of their initial appointment, since both possess the same qualifications and were appointed under rule 10(a)(i)(l), the denial of seniority to the temporary appointees from the date of their initial appointment, violates Article 14. We find no substance in the contention. It is seen that the PSC candidates were recruited on recommendation by PSC and pending verification of the antecedents of the candidates, they came to be appointed under Rule (a)(i)(l) but they were put on probation since they are selected on regular basis. Being direct recruits, their seniority, as stated earlier counts from the date on which they started discharging the duties of the post. The temporary appointees though have the insignia of the appointment under Rule 10(a)(i)(l), yet they are not members of the service until they are duly appointed and their services subsequently regularised, they get a date later to regular candidates, appointed in accordance with the Rules and were accordingly regularised. In other words, they are only temporary appointees not in accordance with the Rules (Special Rules prescribed the procedure of recruitment by PSC and appointment by the State of the candidates recommended by PSC). Since the temporary appointees have not undergone that process, they remain to be outside the cadre. Their probation should be determined in accordance with the Rule 23(a) and 33. Till the Government exercised its power under proviso to clause (3) of Article 320 and excluded the constitutional obligation of the consultation of the PSG and then directed by an ad hoc rule to regularise their services in the terms contained in G.O. Ms. No. 413, the temporary appointees have no right to the post. Clause (3), as extracted earlier, gives the state the power to regularise the service and in terms thereof, they fixed the seniority of temporary appointees after the PSC candidates. Both form two distinct classes. The seniority of the appellants should rank under Rules 10(3) below the PSC candidates and their seniority should be on a date, later to PSC candidates. Even the regularisation order by the Chief Engineer also reserves that right to the State. The GAD which issued G.O. Ms. 413 itself had explained its intention to give benefit of seniority to the PSC candidates of 1981 batch vis-a-vis the temporary appointees. Thus, the question of arbitrariness or unfairness or invidious discrimination violating Article 14, does not arise."



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(v) ***L.Chandrakishore Singh vs. State of Manipur and Ors.*** [AIR 1999

SC 3616]

"14.Seniority itself based upon length of service is an acquired right of an employee which entitles him to be considered for further promotion. It is generally regulated by Service Rules. Such rules normally provide for determined seniority with reference to the date of appointment to the class, category and grade to which the appointment is made. It is determined only on the basis of the length of service. Such length of service may be on the basis of the difference of continuous officiation or on the basis of the difference of substantive appointment in the cadre or grade or service which may be reckoned from the date of confirmation on the basis of regularisation.

15.It is now well settled that even in cases of probation or officiating appointments which are followed by a confirmation unless a contrary rule is shown, the service rendered as officiating appointment or on probation cannot be ignored for reckoning the length of continuous officiating service for determining the place in the seniority list. Where the first appointment is made by not following the prescribed procedure and such appointee is approved later on, the approval would mean his confirmation by the authority shall relate back to the date on which his appointment was made and the entire service will have to be computed in reckoning the seniority according to the length of continuous officiation. In this regard we fortify our view by the judgment of this Court in G.P. Doval & Anr. vs. Chief Secretary, Government of U.P. & Ors. [(1984) 4 SCC 329]."

(vi) ***K.Madalaimuthu and another vs. State of Tamilnadu and Ors.***

[AIR 2006 SC 2662]

"25.In the instant case the authorities, on the strength of the several Government Orders giving retrospective effect to the regularization of the promotees, have taken the date of initial appointment of such promotees as the starting point of their seniority. In our view, such a course of action was erroneous and contrary to the well established principles relating to determination of seniority. In our view, the High Court took an erroneous view in the matter in applying Rule 4 of the General Rules and holding that the period during which the promotees had initially discharged the duties of District Registrars, though appointed under Rule



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10(a) (i)(1) were to be counted for determining their seniority. The decision of this Court in the case of L.Chandrakishore Singh (supra) relied on by Shri. Venkataramani, did not involve the question of persons appointed outside the service as a stop-gap arrangement. The fact situation of the said decision is different from the fact situation of the instant case which finds support from the decisions cited by Mr.Rao.

26.We, therefore, set aside the order passed by the High court and direct the concerned respondents to re-determine seniority of the appellants in relation to the promotees after reckoning the starting point of seniority of such promotees from the date of their services were regularized and not from the date of their initial appointment under Rule 10(1)(i)(1) of the General Rules."

(vii) **Amarjeet Singh and Ors. Vs.Devi Ratan and Ors.** [2010 (1) SCC

417]

"27.An officer cannot be granted seniority prior to his birth in the cadre adversely affecting the seniority of other officer who had been appointed prior to him. "The late comers to the regular stream cannot steal a march over the early arrivals in the regular queue" (vide Dr. S.P. Kapoor vs. State of Himachal Pradesh AIR 1981 SC 2181; Shitala Prasad Shukla vs. State of U.P., AIR 1986 SC 1859; and Uttaranchal Forest Rangers' Assn. (Direct Recruit) & Ors. vs. State of U.P. & Ors., (2006) 10 SCC 346)."

(viii) **H.S. Vankani and Ors. vs. State of Gujarat and Ors.** [AIR 2010 SC

1714]

"38. Seniority is a civil right which has an important and vital role to play in one's service career. Future promotion of a Government servant depends either on strict seniority or on the basis of seniority-cum-merit or merit-cum-seniority etc. Seniority once settled is decisive in the upward march in one's chosen work or calling and gives certainty and assurance and boosts the morale to do quality work. It instills confidence, spreads harmony and commands respect among colleagues which is a paramount factor for good and sound administration. If the settled seniority at the instance of one's junior in service is unsettled, it may generate bitterness, resentment, hostility among the Government servants and the enthusiasm to do quality work might be lost. Such a situation may drive the parties



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to approach the administration for resolution of that acrimonious and poignant situation, which may consume lot of time and energy. The decision either way may drive the parties to litigative wilderness to the advantage of legal professionals both private and Government, driving the parties to acute penury. It is well known that salary they earn, may not match the litigation expenses and professional fees and may at times drive the parties to other sources of money making, including corruption. Public money is also being spent by the Government to defend their otherwise untenable stand. Further it also consumes lot of judicial time from the lowest court to the highest resulting in constant bitterness among parties at the cost of sound administration affecting public interest.

39. Courts are repeating the ratio that the seniority once settled, shall not be unsettled but the men in power often violate that ratio for extraneous reasons, which, at times calls for departmental action. Legal principles have been reiterated by this Court in *Union of India and Another v. S.K. Goel and Others* (2007) 14 SCC 641, *T.R. Kapoor v. State of Haryana* (1989) 4 SCC 71, *Bimlesh Tanwar v. State of Haryana*, (2003) 5 SCC 604. In view of the settled law the decisions cited by the appellants in *G.P. Doval's case* (supra), *Prabhakar and Others case*, *G. Deendayalan*, *R.S. Ajara* are not applicable to the facts of the case."

(ix) ***Pawan Pratap Singh and Ors. vs. Reevan Singh and Ors.*** [2011

(3) SCC 267]

"37. In *Ram Janam Singh v. State of U.P. and Anr.* [(1994) 2 SCC 622], this Court reiterated that the date of entry into a service is the safest rule to follow while determining the inter se seniority between one officer or the other or between one group of officers and the other recruited from the different sources. It was observed that this is consistent with the requirement of Articles 14 and 16 of the Constitution. It was, however, observed that if the circumstances so require, a group of persons can be treated a class separate from the rest for any preferential or beneficial treatment while fixing their seniority, but, normally such classification should be by statutory rule or rules framed under Article 309.

23. A two-Judge Bench of this Court in *Jagdish Ch. Patnaik* [(1998) 4 SCC 456] while construing the word 'recruited' occurring in *Orissa Service of Engineers Rules, 1941*, held that a direct recruit is recruited when formal appointment order is issued and not when recruitment process is initiated. This is what this Court said:



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"34. The only other contention which requires consideration is the one raised by Mr Raju Ramachandran, learned Senior Counsel appearing for the intervenors, to the effect that the expressions "recruitment" and "appointment" have two different concepts in the service jurisprudence and, therefore, when Rule 26 uses the expression "recruited" it must be a stage earlier to the issuance of appointment letter and logically should mean when the selection process started and that appears to be the intendment of the rule-makers in Rule 26. We are, however, not persuaded to accept this contention since under the scheme of Rules a person can be said to be recruited into service only on being appointed to the rank of Assistant Engineer, as would appear from Rule 5 and Rule 6. Then again in case of direct recruits though the process of recruitment starts when the Public Service Commission invites applications under Rule 10 but until and unless the Government makes the final selection under Rule 15 and issues appropriate orders after the selected candidates are examined by the Medical Board, it cannot be said that a person has been recruited to the service. That being the position it is difficult for us to hold that in the seniority rule the expression "recruited" should be interpreted to mean when the selection process really started. That apart the said expression "recruited" applies not only to the direct recruits but also to the promotees. In case of direct recruits the process of recruitment starts with the invitation of application by the Commission and in case of promotees it starts with the nomination made by the Chief Engineer under Rule 16. But both in the case of direct recruits as well as in the case of promotees the final selection vests with the State Government under Rules 15 and 18 respectively and until such final selection is made and appropriate orders passed thereon no person can be said to have been recruited to the service. In this view of the matter the only appropriate and logical construction that can be made of Rule 26 is the date of the order under which the persons are appointed to the post of Assistant Engineer, is the crucial date for determination of seniority under the said Rule.

....

41. This Court emphasized in the case of Uttaranchal Forest Rangers' Association [(2006) 10 SCC 346] that no retrospective promotion can be granted nor any seniority can be given on retrospective basis from a date when an employee has not even born in the cadre. In this regard, the Court relied upon earlier decisions of this Court in State of Bihar & Ors. v. Akhouri Sachindra Nath & Ors. [1991 Supp (1) SCC 334] and Jagdish Ch. Patnaik [(1998) 4 SCC 456].

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44.The Constitution Bench of this Court in Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra & Ors. [(1990) 2 SCC 715] stated the legal position with regard to inter se seniority of direct recruits and promotees and while doing so, inter alia, it was stated that once an incumbent is appointed to a post according to rules, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

45. From the above, the legal position with regard to determination of



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seniority in service can be summarized as follows :

(i) 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.

(ii) Inter se seniority in a particular service has to be determined as per the service rules. 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 the different sources. 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.

(iii) Ordinarily, notional seniority may not be granted from the back date and if it is done, it must be based on objective considerations and on a valid classification and must be traceable to the statutory rules.

(iv) 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 is so because seniority cannot be given on retrospective basis when an employee has not even been born in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the mean time."

(x) ***K.Meghachandra Singh and Ors. vs. Ningam Siro and Ors.*** [2020

(5) SCC 689]

"28. Before proceeding to deal with the contention of the appellants' Counsel vis-à-vis the judgment in N.R. Parmar (Supra), it is necessary to observe that the Law is fairly well settled in a series of cases, that a person is disentitled to claim seniority from a date he was not borne in service. For example, in J.C. Patnaik (Supra) the Court considered the question whether the year in which the vacancy accrues can have any bearing for the purpose of determining the seniority irrespective of the fact when the person is actually recruited. The Court observed that there could be time lag between the year when the vacancy accrues and the year when the final recruitment is made. Referring to the word "recruited" occurring



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in the Orissa Service of Engineers Rules, 1941 the Supreme Court held in J.C. Patnaik (Supra) that person cannot be said to have been recruited to the service only on the basis of initiation of process of recruitment but he is borne in the post only when, formal appointment order is issued.

29. The above ratio in J.C. Patnaik (Supra) is followed by this Court in several subsequent cases. It would however be appropriate to make specific reference considering the seniority dispute in reference to the Arunachal Pradesh Rules which are pari materia to the MPS Rules, 1965, (vide - Nani Sha & Ors. Vs. State of Arunachal Pradesh & Ors. [(2007) 15 SCC 406]). Having regard to the similar provisions, the Court approved the view that seniority is to be reckoned not from the date when vacancy arose but from the date on which the appointment is made to the post. The Court particularly held that retrospective seniority should not be granted from a day when an employee is not even borne in the cadre so as to adversely impact those who were validly appointed in the meantime.

30. We may also benefit by referring to the Judgment in State of Uttar Pradesh and others vs. Ashok Kumar Srivastava and Anr. [(2014) 14 SCC 720]. This judgment is significant since this is rendered after the N.R. Parmar (Supra) decision. Here the Court approved the ratio in Pawan Pratap Singh and Ors. Vs. Reevan Singh & Ors. [(2011) 3 SCC 267], and concurred with the view that seniority should not be reckoned retrospectively unless it is so expressly provided by the relevant service Rules. The Supreme Court held that seniority cannot be given for an employee who is yet to be borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime. The law so declared in Ashok Kumar Srivastava (supra) being the one appealing to us, is profitably extracted as follows: (SCC p. 730, para 24)

24. The learned Senior Counsel for the appellants has drawn inspiration from the recent authority in Pawan Pratap Singh v. Reevan Singh [(2011) 3 SCC 267] where the Court after referring to earlier authorities in the field has culled out certain principles out of which the following being the relevant are produced below: (SCC pp. 281 – 82, para 45)

“45. (ii) Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a



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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. 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.

.....

45. (iv) 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 is so because 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.”

Thus, it is clear from the above decisions that once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. If the initial appointment is not made by following the procedure laid down by the rules, but the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules, the period of officiating service will be counted.

25. In the present case, the narration of the facts and circumstances in which the appellants in WA No.3315 of 2023 etc. batch were appointed in the post of Assistants by promotion, would make it clear that they started discharging duties in the post of Assistants in 2012, when they were found eligible on the crucial date i.e., 15.03.2012 and were promoted on 18.10.2012 accordingly as Assistants. As



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such, the contention that the regularization granted to them is retrospective and prior to the date on which they were borne on the cadre is legally untenable and is hence rejected. On the contrary, the private respondents / writ petitioners, who are direct recruits in the post of Assistant were appointed only on 11.12.2012, which is their date of entry into service and hence, by any stretch of imagination, they cannot claim seniority from an earlier date. Only if the regularization to the appellants was given prior to the crucial date, ie., on 15.03.2012 or from a date on which the appellants had not been eligible for the promotional post, such regularization being retrospective could not have been sustained in law. But, that is not so, in the present case. It is borne out by records that all the appellants being regularly appointed Typists, were eligible for the post of Assistant on 15.03.2012, having completed their one-year training period prior to the said date. There is nothing in the Rules mandating that such period of one year should commence only after the declaration of probation. In fact, the said one-year training period was not even insisted upon earlier, as evident from G.O. Ms. No.417 dated 01.12.1993. Therefore, this Court comes to a conclusion that the proceedings dated 20.01.2015, regularizing the services of the private appellants as Assistants from 18.10.2012 is valid. In view of the same, the contention of the learned Senior Counsel for the private respondents / writ petitioners that one year training period completed by the appellants cannot be taken into consideration, holds no water. Similarly, the order dated 20.01.2015 regularising the services of the appellants in WA Nos.874, 966 and 1108 of 2024 from the date on which they were promoted as



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Assistants, as per the extant rules, much prior to the appointment of the directly recruited Assistants, cannot be found fault with. However, the learned Judge without examining or dealing with the above issues, has set aside the said proceedings dated 20.01.2015, by the order under appeals and hence, the same deserves to be interfered with by this court.

26. With regard to the issue in respect of the right of the petitioners in CMP. Nos.2264, 2708, 2952, 4518, 6949, 1126, 1344, 1350, 2027 & 4628 of 2024 to be impleaded as respondents in the present appeals, the same has to be tested from the standpoint of how they are aggrieved by the orders impugned in the writ petition as well as the reasons for their non-impleadment earlier. It is seen that all the impleading petitioners are directly recruited in the post of Assistants, who are similarly placed as that of the writ petitioners. They did not choose to challenge the proceedings impugned in the writ petition, i.e. the proceedings by which the appellants herein were regularised as Assistants from 18.10.2012, the date from which they were temporarily promoted as Assistants. All the impleading petitioners were well aware of these proceedings. Only after the appeals were filed and an order of interim stay was granted during the pendency of these appeals, the impleading petitioners have filed the petitions to implead themselves as respondents in the appeals. A perusal of the affidavits filed in support of the impleadment petitions would make it clear that the reason for their non-impleadment earlier, or for not filing writ petitions earlier, are conspicuously



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absent. As such, they do not have any semblance of a right to be impleaded at this stage when they never choose to challenge the orders impugned in the writ petition. Also, no prejudice will be caused to any of the impleading petitioners by dismissal of these petitions as all the points raised by them on merits are dealt with in detail in this judgment.

26.1. In this regard, the judgments relied upon by the appellants while opposing these applications are as follows:

- (i) ***P.S.Sadasivaswamy vs. State of Tamilnadu*** [AIR 1974 SC 2271]
- (ii) ***Vijay Kumar Kaul and Ors. vs. Union of India and Ors.*** [AIR 2012 SC 2274]
- (iii) ***State of Uttaranchal and ors. vs. Shiv Charan Singh Bhandari and Ors.*** [2013 (12) SCC 179]
- (iv) ***Londhe Prakash Bhagwan vs. Dattatraya Eknath Mane and Ors.*** [2013 (10) SCC 627]
- (v) ***State of Uttar Pradesh vs. Arvind Kumar Srivastava*** [2015 (1) SCC 347].

26.2. Suffice it to state that the law on the point has been exhaustively dealt with in the judgment of the Supreme Court in *Arvind Kumar Srivastava's* case. The relevant portion of the said judgment is extracted below for better appreciation:





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dated 20.01.2015 regularizing the services of the private appellants as Assistants.

Therefore, the official respondents are directed to proceed with the next promotion in accordance with the seniority of the appellants-promotee Assistants over and above the directly recruited Assistants, within a period of eight weeks from the date of receipt of this judgment.

28. In the result,

(i)All the writ appeal Nos.3315 of 2023, 403, 636, 874, 966, 1108 and 1153 of 2024 are allowed by setting aside the order dated 10.11.2023 passed in respect of W.P.No.35800 of 2019 alone.

(ii)C.M.P.Nos. 2264, 2708, 2952, 4518, 6949, 1126, 1344, 1350, 2027 & 4628 of 2024 are dismissed.

(iii)Other CMPs are closed. No costs.

**[R.M.D.,A.C.J.] [M.S.Q., J.]**

**27.06.2024**

Index : Yes / No  
Internet : Yes / No  
rk

To

1.The Health Secretary,  
State of Tamilnadu,  
Fort St.George, Secretariat,  
Chennai - 60 009.



WA Nos.3315 of 2023, 403, 636, 874, 966, 1108 and 1153 of 2024

2. The Secretary to Government,  
Personal and Administrative Reforms Department,  
Government of Tamilnadu,  
Secretariat, Chennai - 600 009.
3. The Secretary,  
Tamilnadu Public Service Commission,  
TNPSC Road, VOC Nagar,  
Park Town, Chennai - 600 003.
4. The Director of Medical and Rural Health Services,  
Medical Department, DMS Campus,  
Teynampet, Chennai - 6.

**R. MAHADEVAN, ACJ**

and

**MOHAMMED SHAFFIQ, J**

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**Writ Appeal Nos.3315, 3484 of 2023  
& 403, 636, 874, 966, 1108, 1110 & 1153 of 2024**

**27.06.2024**