



W.A.(MD)No.454 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : **19.09.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**  
AND  
THE HONOURABLE MR.JUSTICE **K.K.RAMAKRISHNAN**

**W.A.(MD)No.454 of 2024**  
and  
**C.M.P(MD)No.3711 of 2024**

1.The Commissioner,  
Agricultural Marketing and AgriBusiness,  
Chennai.

2.The Secretary,  
Pudukkottai Market Committee,  
Pudukkottai District.

: Appellants/Petitioners

Vs.

1.S.Rajkumar  
2.D.Ilakkiadasan

: Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent to set aside the order dated 29.09.2023 passed in W.P.(MD) No.20117 of 2021.

For Appellants : Mr.Veera Kathiravan  
Addl. Advocate General assisted by  
Mr.M.Sarangan  
Addl. Govt. Pleader

For Respondents : Mr.S.Govindan (for R1)  
Mr.P.Ganapathi Subramanian (for R2)



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## **JUDGMENT**

**WEB COPY**(Judgment of the Court was delivered by **P.VELMURUGAN, J.**)

The first respondent filed the writ petition before the Writ Court in W.P(MD)No.20117 of 2021 seeking for issuance of a Writ of Certiorarified Mandamus to call for the records connected with the impugned order passed by the second appellant in Na.Ka.No.1333/A/2020, dated 27.05.2021 and to quash the same and consequently, direct the second appellant to promote the first respondent herein as Junior Assistant from the date on which the second respondent got promoted as Junior Assistant with monetary and other consequential benefits. The Writ Court, after considering the materials on record, disposed of the writ petition with a direction to the second appellant to promote the first respondent herein as Junior Assistant with effect from 27.05.2021 with all monetary and consequential benefits. Challenging the said directions issued by the writ Court, the respondents in the writ petition have filed the present writ appeal.

2(i) The case of the appellants is that the first respondent herein was appointed as an Office Assistant under the Tamil Nadu Basic Service Rules and joined duty on 20.05.2013 and as per his request, he was promoted as a Record



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Clerk under the Tamil Nadu General Subordinate Service Rules and joined duty

on 19.08.2016. The second respondent herein was appointed as a Market

Maistry under the Tamil Nadu Agricultural Marketing Subordinate Service

Rules and joined duty on 20.05.2013 and he was promoted as a Junior Assistant

under the Tamil Nadu Ministerial Service Rules and joined duty on 28.05.2021.

The Government have issued various guidelines with regard to the appointments by recruitment by transfer from the feeder category to the post of

Junior Assistant / Junior Assistant-cum-Typist vide G.O.No.43, Personnel and Administrative Reforms (Per.B) Department, dated 15.02.1994. As per the

guidelines given in the above said Government Order, persons, who are working in lower categories for the post of Junior Assistant including Record

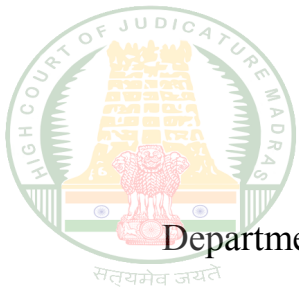
Clerk, may be moved to the post of Junior Assistant by the method of recruitment by transfer. The Tamil Nadu Public Service Commission has only

observed that the appointment to the post of Junior Assistant/Junior Assistant-cum-Typist/Typist may be made from the post of Record Clerk only. Out of a

total 4 numbers of Junior Assistant posts which have been vacant in the Pudukkottai Market Committee, only one post was reserved as 20% quota for

persons, who are working in the feeder category of Junior Assistant to be filled by recruitment by transfer as Junior Assistant for the year 2021-2022 as per the

guidelines issued in G.O.No.43, Personnel and Administrative Reforms



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Department, dated 15.02.1994. Subsequently, the second appellant, who is the

appointing authority for the post of Record Clerk, Market Maistry and Junior Assistant, has issued seniority list as on 15.03.2021 for the movement of Junior Assistant post from the feeder category of Junior Assistant such as Market Maistry, Record Clerk, Office Assistant and Watchman vide proceedings No.A/1333/2020, dated 03.05.2021 and also called for objections, if any, regarding the seniority list. Subsequently, the second appellant has issued revised seniority list vide proceedings No.A/1333/2020 dated 10.05.2021. The first respondent has not sent any objection for the above seniority list. Subsequently, after 15 days, the second appellant issued a list of qualified and non-qualified persons vide proceedings No.A/1333/2020 dated 27.05.2021, in which, the name of the first and second respondent and one S.Poongothai, Market Maistry were included. Even though three persons were eligible to get promotion as Junior Assistant, one post only was reserved for the promotion from the feeder categories. The second respondent, Market Maistry, who was senior among the three qualified persons, was promoted as Junior Assistant vide proceedings No.A/1333/2020, dated 27.05.2021 and he joined duty on 28.05.2021.

(ii) The promotion given to the second respondent as Junior Assistant



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is perfectly valid and the first respondent was not given promotion since one

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vacancy was appointed for giving promotion as Junior Assistant from the feeder categories of Junior Assistant for the year 2021-2022. The first respondent has not submitted any objections regarding the seniority list. However, he has filed the writ petition. The learned single Judge, without considering the factual position and guidelines issued in G.O.No.43, Personnel and Administrative Reforms (Per.B) Department, dated 15.02.1994, passed the order on 29.09.2023 to promote the first respondent as Junior Assistant with effect from 27.05.2021 with all monetary and consequential benefits. The learned single Judge has not taken into consideration all the facts and made an observation in the order dated 29.09.2023 that as per G.O.Ms.No.43, Personnel and Administrative Reforms (Per.B) Department, dated 15.02.1994, persons who are working in the post of Record Clerk only may be moved to the post of Junior Assistant by recruitment by transfer, which is against the factual position. Further, the learned single Judge in the order mentioned the guidelines contained in G.O.No.621, Public (Services) dated 26.03.1941 and G.O.No.90, Personnel Administrative Department, dated 12.03.1991 and G.O.No.257, Personnel Administrative Department, dated 01.08.1992. The Government has superseded all the above orders and issued revised procedures vide G.O.No.43, Personnel and Administrative Reforms (Per.B) Department, dated 15.02.1994 so as to follow



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in the matter of movement of persons to the post of Junior Assistant / Junior

Assistant-cum-Typist by recruitment by transfer from the feeder category of the Junior Assistant. According to the guidelines, only one Junior Assistant post was to be filled by promotion from the feeder categories for the year 2021-2022. If the promotion is given to the first respondent as Junior Assistant with effect from 27.05.2021 with all monetary and consequential benefits as ordered by the learned single Judge, it will go against guidelines issued in G.O.No.43, Personnel and Administrative Reforms (Per.B) Department, dated 15.02.1994. Therefore, the appellants have challenged the order of the learned single Judge.

3(i) The case of the first respondent is that he was appointed as an Office Assistant and the second respondent was appointed as a Market Maistry on 20.05.2013 at Pudukkottai Market Committee, Department of Agricultural Marketing and Agricultural Business at Pudukkottai District. The next avenue for the promotion of the first respondent is to the post of Record Clerk and further promotion is Junior Assistant. The second respondent, who joined as Market Maistry, falls under category 6 of the Tamil Nadu Agricultural Marketing Subordinate Service. The first respondent, who was appointed as Office Assistant, was subsequently promoted as Record Clerk on 19.08.2016



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and is serving as Record Clerk till the filing of the writ petition. The second

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respondent, who was serving as Market Maistry from 20.05.2013 was promoted as a Junior Assistant on 27.05.2021 itself. Since the second respondent was appointed as Market Maistry at the first instance, his condition of service is governed by the Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987 and the Tamil Nadu Agricultural Marketing Subordinate Service Rules, 1981 and in terms of rule 2 category 6, the post of Market Maistry shall be appointed by recruitment by transfer from Record Clerks in Market Committees or by recruitment by transfer from the holders of the posts of Office Assistant, Watchman, Sweeper, Gardener and Attender boys in Market Committee or by direct recruitment and the minimum educational qualification for the said post is SSLC and 3 years as Record Clerk in Market Committee. In the case of direct recruitment, a minimum educational qualification of SSLC would suffice. The next avenue of promotion for the post of Market Maistry in terms of Rule 2 of the Tamil Nadu Agricultural Marketing Subordinate Service Rules, is the post of Propoganda Inspector or Vigilance Inspector, which is placed under category 4. Likewise, the next avenue of promotion for those persons appointed as Office Assistants in the second appellant Office is to the post of Record Clerk and a further avenue of promotion for the Record Clerk is to Junior Assistant in the second appellant Office.



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**WEB COPY** (ii) The Department of Personnel and Administrative Reforms (Per.B)

Department, vide G.O.Ms.No.43, dated 15.02.1994, issued various regulations with respect to the revised qualifications to the post of Junior Assistants/Junior Assistants-cum-Typists by recruitment by transfer from other services. In terms of the aforesaid G.O.Ms.No.43, Personnel and Administrative Reforms (Per.B) Department, dated 15.02.1994, the exercise of promotion of the second respondent from the post of Market Maistry to the post of Junior Assistant is *per se* illegal. Due to the promotion of the second respondent, the promotion of the first respondent was affected. A vacancy arose for the post of Record Clerk under the Tamil Nadu Ministerial Service during the period of 2016-17, for which, a promotion panel was arrived at by the proceedings of the second appellant on 14.12.2016, wherein the first respondent was placed in seniority No.2, following which, the second respondent was promoted as Record Clerk by order of the second appellant dated 16.12.2016. While so, on 27.05.2021, a list of candidates qualified for being promoted to the post of Junior Assistant as on 15.03.2021 was issued by the second appellant, in which, the second respondent was placed in the first rank and the first respondent was placed in the second rank. Following which, on 27.05.2021, the second respondent was promoted to the post of Junior Assistant. Challenging the promotion order of



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the second respondent dated 27.05.2021, the first respondent filed the writ petition. The learned single Judge, after giving opportunity to both the parties and after filing the counter and after hearing of the matter and considering the materials, disposed of the writ petition by directing the second appellant to promote the first respondent to the post of Junior Assistant from 27.05.2021 with consequential benefits. Challenging the same, the present appeal.

4. The learned Additional Advocate General appearing for the appellants would submit that the post of Market Maistry in category 6 is a higher category than that of Record Clerk as per G.O.No.470, Agriculture (AM-III) dated 05.07.1989. In addition to that, the second respondent was also doing clerical work and he was also holding an additional charge as a Junior Assistant in the head office of the Pudukkottai Market Committee. Therefore, he was considered to be eligible for promotion to the post of Junior Assistant, and hence, there was no violation at all. The next avenue of promotion to the second respondent from Market Maistry in Category 6 is to the post of Propaganda Inspector in category 4 of the Tamil Nadu Agricultural Marketing Subordinate Service. Since there was no sanctioned post of Propaganda Inspector or Vigilance Inspector in the Pudukkottai Market Committee, there was no possibility for the second respondent to be promoted to the aforesaid



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posts. He would further submit that 20% of vacancies for the post of Junior

Assistants have to be filled up through promotion and out of 4 vacancies, on the basis of this percentage, only one post can be filled through promotion and hence, the second respondent was promoted as Junior Assistant. He would further submit that the promotion panel for the year 2021 to the post of Junior Assistant was released on 05.05.2021 and objections were called for to be submitted within 5 days and thereafter, the seniority list was subsequently released on 10.05.2021, for which objections were called for within 10 days and thereafter only on 27.05.2021, the final list of selected persons was issued by the second appellant. The first respondent, who was affected by the coronavirus at that point of time, sought for further time to submit his objection. However, he did not submit any objection even after that. Hence, there is nothing to attribute towards any deviation or violation on the part of the second appellant in the exercise of promoting the second respondent from the post of Market Maistry to the post of Junior Assistant. Therefore, the order of the learned single Judge is liable to be set aside.

5. The learned counsel for the first respondent would submit that the first respondent was appointed as Office Assistant and the second respondent was appointed as Market Maistry on the same day i.e., on 20.05.2013. The next avenue of promotion of the first respondent is Record Clerk and further



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promotion is Junior Assistant. The first respondent, who was appointed as

Office Assistant was subsequently promoted as Record Clerk on 19.08.2016

and is serving as Record Clerk till the filing of the writ petition. In the

meanwhile, the second respondent was promoted as Junior Assistant on

27.05.2021. He would further submit that since the second respondent was

appointed as Market Maistry at the first instance, his condition of service is

governed by the Tamil Nadu Agricultural Produce Marketing (Regulation) Act,

1987 and the Tamil Nadu Agricultural Marketing Subordinate Service Rules,

1981 and in terms of rule 2 category 6, the post of Market Maistry shall be

appointed by recruitment by transfer from Record Clerks in the Market

committee or by recruitment by transfer from the holders of the posts of Office

Assistant, Watchman, Sweeper, Gardener and Attender boys in the Market

Committee or by direct recruitment and the minimum educational qualification

for the said post is SSLC and 3 years as Record Clerk in the Market Committee.

The exercise of promotion of the second respondent as Junior Assistant, in

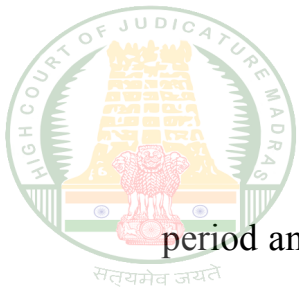
terms of G.O.Ms.No.43, dated 15.02.1994 is *per se* illegal. The seniority list

was finalised during COVID pandemic period and no opportunity was given to

the first respondent to raise his objection to challenge the same. The promotion

panel for the year 2021 to the post of Junior Assistant was released on

05.05.2021 and the objection was called for during the COVID pandemic



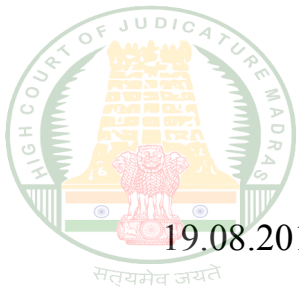
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period and the first respondent was affected by the corona-virus at that point of

time and therefore, he could not raise it. The learned Single Judge, considering the fact that both the respondents joined the duty on the same day as Office Assistant and Market Maistry as per the G.O.Ms.No.43, Personnel and Administrative Reforms (Per.B) Department, dated 15.02.1994, the first respondent ought to have been promoted as Junior Assistant. The appellants violated the norms and therefore, the learned Single Judge rightly considered the facts and gave a direction to the appellants that the first respondent has to be considered and promoted as Junior Assistant from the date on which, the second respondent was promoted as Junior Assistant i.e, 27.05.2021 with consequential benefits.

6. We have considered the rival submissions of both the learned Additional Advocate General appearing for the appellants and the learned counsel appearing for the first respondent and perused the materials available on record.

7. Admittedly, the first and second respondents were appointed as Office Assistant and Market Maistry respectively joined duty on 25.02.2013 and the first respondent was promoted and joined as Record Clerk on



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19.08.2016 under the Tamil Nadu General Subordinate Service Rules. The

second respondent was appointed as Market Maistry and subsequently promoted as Junior Assistant on 28.05.2021. The learned Additional Advocate General has referred a G.O.Ms.No.43, Personnel and Administrative Reforms (Per.B), Department, dated 15.02.1994. In the said G.O, the following guidelines have given:

*“1. Persons in services other than the Tamil Nadu Ministerial Service who are in categories having no promotional opportunities or even after more than one promotion in the respective service would still be in a category carrying scale of pay lower than that of Junior Assistants/Junior Assistant-cum-Typists/Typist alone shall be considered for appointment by transfer as Junior Assistant/Junior Assistant-cum-Typists/Typists in the Tamil Nadu Ministerial Service subject to the possession of the required qualification, i.e. qualifications as prescribed for direct recruitment.*

*2. The sphere of appointment by recruitment by transfer shall be limited to the persons in the lower categories in other services within the purview or control of the Unit Officer concerned.*

*3. While making such appointment, it should be ensured that the recruitment by transfer from the lower categories should not exceed 20 per cent of the vacancies in*



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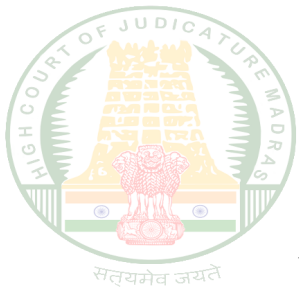
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*each of the categories of Junior Assistants or Junior Assistant-cum-Typists or Typists.*

*4. 4 person to be eligible for appointment as Junior Assistant/Junior Assistant-cum-Typist/Typist should have rendered not less than 7 years of service in the lower categories as the Tamil Nadu Administrative Tribunal has observed that the method of recruitment by transfer should not be made the means for by-passing recruitment by the Tamil Nadu Public Service Commission which could be ensured by prescribing a longer period of qualifying experience as against the existing qualifying service of 5 years.*

*5. For those who are holding posts like Record Clerk and others who are having clerical duties, there shall be no fresh training for them in clerical work.*

*6. The Tribunal has observed that a term of appointment as Record Clerk can be prescribed for movement to the post of Junior Assistant. The Tamil Nadu Public Service Commission has also observed that the appointment to the post of Junior Assistant/Junior Assistant-cum-Typist/Typist may be made from the post of Record Clerk only. As there will be only a few posts of Record Clerks as compared to a large number of persons in other categories like Office Assistants etc., will not be possible to post each of them as Record Clerk for a specified period. Instead, the Office Assistant, Watchman, Gardeners, etc., who are in*



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*possession of the required educational qualification shall be given training in clerical work for a period of one year i.e. they shall discharge the duties of Record Clerk for atleast 2 hours a day for a period of one year without detriment their normal work.”*

8. As per the above guidelines, persons who are working in the lower categories to the post of Junior Assistant, including Record Clerk may be directed to the post of Junior Assistant by method of recruitment by transfer and further the Government superseded the earlier Government Orders and issued revised procedures vide G.O.Ms.No.43, Personnel and Administrative Reforms (Per.B) Department, dated 15.02.1994 so as to follow the manner of movement of persons to the post Junior Assistant/Junior Assistant-cum-Typist by recruitment by transfer from the feeder category of the Junior Assistant. While promoting from the feeder category to Junior Assistant, as on date, the above said G.O is being followed as the existing guidelines. In this case, out of a total of 4 Junior Assistant posts that were vacant in the Pudukkottai Market committee during the relevant period, only one post should be reserved as 20% quota for the persons, who are working in the feeder category of Junior Assistant to be filled by recruitment by transfer as Junior Assistant for the year



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2021-2022 as per the guidelines issued in G.O.Ms.No.43, Personnel and Administrative Reforms (Per.B) Department, dated 15.02.1994.

9. The submission of the appellants seeking consideration for promotion on the ground that the second respondent had been acting as a Junior Assistant for some time cannot be accepted. Merely discharging duties in a higher post does not confer any right to be promoted to that post. Therefore, while considering promotion to the post of Junior Assistant, the mere fact that a Record Clerk or any other candidate from the feeder category has been acting as a Junior Assistant cannot, by itself, be a ground for promoting or transferring them to that post. However, in the present case, the seniority list was duly published and finalised, and no objection was received from the first respondent.

10. The learned counsel for the first respondent vehemently contended that the seniority list was published during the COVID pandemic period, and since the first respondent had tested positive for COVID, he was unable to raise any objection to the said seniority list. It was further submitted that, without considering this factual position and without affording the first respondent an opportunity of hearing, the name of the second respondent was



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considered for promotion, and he was subsequently promoted as Junior Assistant. However, the learned Additional Advocate General appearing for the appellants submitted that the promotion panel for the year 2021 to the post of Junior Assistant was released on 05.05.2021, and objections were called for within five days. Thereafter, the seniority list was published on 10.05.2021, and additional objections were invited within ten days. Subsequently, on 27.05.2021, the final list of selected candidates was issued by the appellants. Although the first respondent, who was affected by COVID-19 at the relevant time, requested additional time to submit his objections, even after the extension was granted, he failed to submit any objection. Therefore, there is no violation of the principles of natural justice, as sufficient opportunity was provided and not availed by the first respondent.

11. Admittedly, out of a total 4 Junior Assistant posts vacant in the Pudukkottai Market Committee, only one post should be reserved as a 20% quota for the persons who are working in the feeder category of Junior Assistant to be filled by recruitment by transfer. The second appellant, who is the appointing authority for the post of Record Clerk, Market Maistry and Junior Assistant has issued seniority list as on 15.03.2021 for the movement to Junior Assistant post from the feeder category of Junior Assistant such as



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Market Maistry, Record Clerk, Office Assistant and Watchmen vide

proceedings No.A/1333/2020 dated 03.05.2021 and also called for objections,

if any, regarding the seniority list. Subsequently, the second appellant issued

revised seniority list vide proceedings No.A/1333/2020 dated 10.05.2021 and

the details of the seniority are furnished as below:-

| S.No. | Seniority No. | Name and Designation                      | DOB        | Educational Qualification | Date of Joining in the post of Watchmen / Office Assistant | Date of Joining in the post of Record Clerk | Date of Joining in the post of Market Maistry | Date of Rtd |
|-------|---------------|-------------------------------------------|------------|---------------------------|------------------------------------------------------------|---------------------------------------------|-----------------------------------------------|-------------|
| 1     | 1             | Thiru.D.Ilakiadasan, Market Maistry       | 04.06.1979 | Higher Secondary passed   |                                                            |                                             | 20.05.2013<br>FN                              | 30.06.2039  |
| 2     | 2             | Thiru.S.Rajkumar, Record Clerk            | 09.04.1983 | B.A., B.Ed.,              | 20.05.2013<br>FN                                           | 19.08.2016<br>FN                            |                                               | 30.04.2043  |
| 3     | 3             | Tmt.S.Poongothai, Market Maistry          | 28.11.1972 | B.A                       |                                                            |                                             | 26.02.2014                                    | 30.11.2032  |
| 4     | 4             | Thiru..A.Mahabook Basha, Office Assistant | 13.01.1982 | Higher Education passed   | 26.02.2014<br>AN                                           |                                             |                                               | 31.01.2042  |
| 5     | 5             | Thiru.V.Palanisamy Watchman               | 04.05.1982 | Fifth Std. Passed         | 04.03.2014<br>FN                                           |                                             |                                               | 31.05.2042  |

Since the first respondent did not send any objection to the above seniority list,

subsequently, after 15 days, the second appellant issued a list of qualified and

non-qualified persons vide proceedings No.A/1333/2020 dated 27.05.2021. In

the qualified list, the following names of the persons have been included:-

“1. Thiru D.Ilakiadasan, Market Maistry



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2. Thiru S.Rajkumar, Record Clerk

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3. Tmt. S.Poongothai, Market Maistry”

12. Even though 3 persons are eligible to get promotion as Junior Assistant, only one post was reserved for the promotion. As per the date of birth, the second respondent was placed as No.1 in the seniority list. His date of birth was 04.06.1979 and his date of joining in the post of Market Maistry was 20.05.2013. The date of birth of the first respondent is 09.04.1983. Even assuming that the first respondent was also eligible for the promotion as per the guidelines in G.O.Ms.No.43 dated 15.02.1994, only one post alone should be reserved as the 20% quota for the persons, who are working in the feeder category of Junior Assistant for the year 2021-2022. The second respondent was the senior most person, he was considered for promotion and also he was promoted and appointed as Junior Assistant. Therefore, for the promotion from the feeder categories as per the guidelines of G.O.Ms.No.43 dated 15.02.1994 cannot be exceeded beyond 20%. Therefore, the first respondent was not considered for promotion. If he had been considered, it would have exceeded the 20% quota. It is well settled that the Junior Assistant post should be appointed by direct recruitment by the Tamil Nadu Public Service Commission. In order to give promotion to the feeder categories, only a 20%



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quota was reserved. Therefore, at the relevant point of time, there were 4

vacancies in the said District and the said post. Therefore, though three persons are eligible as per the seniority list finalised, as per the date of birth, the second respondent was placed at the top most, hence, he fell within the 20% quota and therefore, he was promoted and appointed on 27.05.2021 and he joined duty on 28.05.2021. The learned Single Judge failed to consider the fact that for the promotion of the Junior Assistant from the feeder categories, the department should follow the 20% quota and at any point of time, the age should not be exceeded. Therefore, in this case, admittedly, there were four vacancies, out of which, only one person can be promoted and appointed from the feeder category as Junior Assistant. Therefore, the second appellant rightly promoted the second respondent and appointed him as Junior Assistant. The first respondent did not submit any objection within the stipulated time even after being given an extended period and also the said G.O.Ms.43, Personnel and Administrative Reforms (Per.B) Department, dated 15.02.1994 was not challenged. Therefore, under these circumstances, the reason given by the learned Single Judge for giving a direction to the second appellant to promote the first respondent and give consequential benefit from 27.05.2021 is liable to be set aside. Accordingly, the order of the learned Single Judge is set aside.



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WEB COPY 13. In the result, the Writ Appeal is allowed. No costs.

Consequently, connected miscellaneous petition is closed.

[P.V.,J.]

[K.K.R.K.,J.]

skn

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NCC : Yes/No

Index : Yes / No

Internet : Yes



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and

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