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Writ Petition No.385 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2025

CORAM

THE HONOURABLE MRS JUSTICE V.BHAVANI SUBBAROYAN

WP NO. 385 of 2024

&

WMP Nos. 432 , 1956 & 1955 OF 2024

N.Rajasekar

Petitioner(s)

Vs

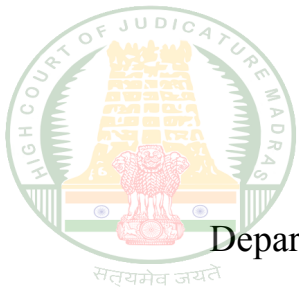
1.The Secretary to the Government,
Commercial Taxes and Registration Department,
St.George Fort, Chennai - 600 009

2.The Commissioner Of Commercial Taxes,
Ezhilagam, Chepauk, Chennai - 600 009.

3. M.Maheswari,
Deputy Commissiner(ST), GST Appeal, Erode,
O/o. Commissioner Of Commercial Taxes,
Ezilagam, Chepauk, Chennai - 600 005.

Respondent(s)

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent vide G.O.(Ms) No.142(Commercial Taxes & Registration(E2) Department, dated 27.12.2023 and quash the same and direct the respondents 1 & 2 to promote the petitioner in accordance with his seniority as per G.O.Ms.No.72(Commercial Taxes & Registration(E1)



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Department, dated 07.07.2023.

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For Petitioner(s):

M/s.T.Mohan, Sr. Advocate for Mr.Adithya
Reddy

For Respondent(s):

Mr.K.Vasantha Mala, Govt. Advocate for RR1 &2

ORDER

This Writ Petition has been filed praying to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent vide G.O.(Ms) No.142 (Commercial Taxes & Registration(E2) Department, dated 27.12.2023 and quash the same and consequently, direct the respondents 1 & 2 to promote the petitioner in accordance with his seniority as per G.O.Ms.No.72 (Commercial Taxes & Registration(E1) Department, dated 07.07.2023.

2. The petitioner was originally recruited as Assistant Commissioner by Direct Recruitment in the year 2009 and currently working as Deputy Commissioner in Chennai - II Intelligence Division. The petitioner's promotion to Deputy Commissioner was delayed due to a pending examination as on the crucial date for that year i.e., 01.01.2013. Then the



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petitioner completed his examination on 18.02.2013 and his probation was declared by the 2nd respondent vide proceedings dated 21.08.2013 with effect from 18.02.2013 which was before drawing of panel. The petitioner completed the examination within the time limit for completion of probation as required under Rule 6 of the Special Rules (excluding leave period as allowed under Proviso to Section 32). Thereafter, the petitioner was promoted in the year 2020 vide G.O(Ms).No.86 dated 18.05.2020. Subsequently, the seniority of the petitioner has been fixed correctly as having rank 29 amongst his batch mates by G.O(Ms).No.72 dated 07.07.2023. Pursuant to the Supreme Court order for fixing of seniority, the Department refixed the seniority on the basis of marks obtained in the TNPSC. This seniority now sought to be disturbed by the impugned order. Further, the petitioner gave representation on 20.12.2023 and on 16.08.2023 requesting further promotions to the post of Joint Commissioner in accordance with the original seniority. Despite several representations given by the petitioner, he was not considered for promotion to Joint Commissioner while his six juniors were promoted temporarily, by leaving out the petitioner. However, the respondent passed impugned order leaving out petitioner. Hence, this present writ petition.



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3. Per contra, the 2nd respondent denied all the allegations put forth by the petitioner herein. The respondent claims that the petitioner ought to have been the prescribed tests before 04.10.2012 by which, the three year period for completion of probation ends. However, the petitioner passed the examination in Accountancy-Junior Grade only in the February 2013. As a consequence, his probation was declared to have been completed satisfactorily within the extended period of probation on 18.02.2013 which was the date of sitting for the aforementioned examination. Subsequently, a panel was drawn on 18.10.2013 and the petitioner was overlooked on account for his not being eligible for such promotion as on the crucial date for consideration for inclusion in the panel i.e., 01.01.2013. Then no promotion panels were drawn for the years from 2014 to 2018 and panel was drawn in the year 2019. In between, the petitioner was issued with charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules on 14.03.2014 and the said disciplinary proceedings were dropped on 11.10.2019. Thereafter, petitioner's name was considered for inclusion in the next temporary panel drawn in the year 2020 and he was promoted as Deputy Commissioner in G.O. (Ms).No.86, Commercial Taxes and Registration Department, dated 18.05.2020. In the said Government



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order also, it has been recorded in para 8(ii) and (iii) that the promotion is subject to revision of inter se seniority and also will not bestow any seniority rights for promotion to the next higher category. Further, the 1st respondent issued seniority list on all categories of the State Service, namely, Assistant Commissioner (Commercial Taxes) and Additional Commissioner by issuance of G.O.(Ms).No.53, Commercial Taxes and Registration Department, dated 09.02.2024 inviting objections within a period of two months from the date of issuance of the said order. However, the petitioner didn't file objections, but filed the present writ petition prior to publication of the said provisional lists. The provisional list published and the petitioner has not been promoted on account of his belated promotion to the feeder category of Deputy Commissioner much later than his juniors in the even lower category and such belated promotion was on account of delay in acquisition of qualification by the petitioner and not on account of any administrative reasons. Hence, prays to dismiss the present writ petition.

4.Heard the learned Senior counsel for the petitioner and the learned Government Advocate appearing for the respondents and perused the entire materials available on record.



WEB COPY 5.The learned counsel for the petitioner contends that the position assigned to the petitioner is based on selection through Tamilnadu Public Service Commission cannot be altered as per Section 40 of The Tamil Nadu Government Servants (Conditions of Service) Act, 2016which reads as follows:

“40. Fixation of Seniority.

(1) the seniority of a person in a service, class, category or Cadre shall, unless he has been reduced to a lower rank as a punishment, be determined in the order of his placement in the list prepared by the recruitment agency or appointing authority, as the case may be, in accordance with the rule of reservation and the order of rotation specified in Schedule-V, where it applies. The date of commencement of his probation shall be the date on which he joins duty irrespective of his seniority.

(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 to have been appointed to the service, class,



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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.”

The above rule position is very clear wherein the seniority assigned by the Service Commission is to remain intact. There is nothing contrary to the same in the special rules. The learned Senior counsel for the petitioner would rely on a judgment dated 23.03.2020 passed by this Court in the case of “*J.Anbu Tamilarasi v. State of Tamil Nadu*” reported in dated 23.03.2020, wherein, it has been in para 13 held as follows:

“13. The point in issue, in the case on hand is whether the petitioner is entitled to retain her rank in the face of her promotion being delayed in view of her probation being not declared as on 01.03.2011 or not. It is an admitted fact that she had cleared the examination for declaration of probation within 3 years of stipulated period. When the petitioner has admittedly cleared the examination within the stipulated period, this court is unable to



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appreciate as to how she can be denied her due seniority as assigned to her originally at the time of her appointment vis-à-vis. the third respondent and others.

14. The learned Senior counsel places reliance on Rule 35(a) or 35(aa) of the erstwhile Tamil Nadu State and Subordinate Service Rules, as the case may be or present Section 40 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, would undoubtedly bolster the claim of the petitioner that her seniority cannot be altered to her disadvantage. The import of the above Rule 35(a), 35(aa) or Section 40, 40(1) or 40(2) is very clear that a senior employee cannot be denied due seniority merely by virtue of the fact that her junior is promoted ahead of the senior. Of course there is an exception given in the Rule or Section, but however that exception is not the case here. When an *inter se* seniority has been fixed, such seniority will continue to be maintained even in promotion to the next higher cadres unless a senior person suffers from any disqualification during his or her career.

15. In the case on hand, the facts disclose no such disqualification suffered by the petitioner and no such disqualification was pointed out by the official



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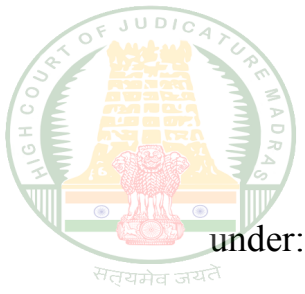


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respondents. The fact that the petitioner successfully cleared the examination within the stipulated period is also admitted by the official respondent. In the said circumstances, lowering the seniority of the petitioner *vis-à-vis* third respondent and others in the cadre of Commercial Tax Officer, cannot be countenanced either in law or on facts. The reasons as stated by the official respondents for altering the seniority of the petitioner to her detriment and to the advantage of her juniors are legally unacceptable and the same are to be discarded as being contrary to the Rules.

16. In such circumstances, this Court has no hesitation in allowing the writ petition. The second respondent communication in memo No. P1/17387/2019 dated 25.06.2019 is hereby set aside and the respondents 1 and 2 are directed to fix the petitioner's seniority in the cadre of Commercial Tax Officer also in the next higher cadre of Assistant Commissioner of her original ranking assigned to her at the time of her appointment as DCTO.”

The above order has been conferred by a Division Bench of this Court in W.A.No.1587 of 2022 dated 06.06.2023. In para 12, it has been held as



under:

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“12.In the case on hand, not only the respondent/writ petitioner has cleared the test in time, she was also senior to the third appellant as per the seniority applicable on the date of original appointment. The fact that a junior has cleared the test before her, cannot alter the original seniority and be placed before her in the temporary list and claim seniority in the permanent list prepared next year before which the writ petitioner, the original senior, had qualified. In this regard, it is relevant to extract Rules 35(a) and 35(aa) of the Tamil Nadu State and Subordinate Service Rules, which support her case, as follows:

“Rule 35 (a). The seniority of a person in a service, class or category or grade shall unless he has been reduced to a lower rank as a punishment be determined by the rank obtained by him in the list of approved candidates drawn up by the Tamil Nadu Public Service Commission or other Appointing Authority, as the case may be, subject to the rule of reservation where it applies. The date of commencement of his probation shall be the date on which he joins duty irrespective of his seniority.

(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



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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.”

Thus, it is evident from the above provisions that when the junior is appointed to a service, class, category or grade, earlier than a senior, then, the senior shall be deemed to have been appointed to that service, class, category or grade on the same day on which the junior was appointed and such reckoning is only for the purpose of fixing inter se-seniority. Further, a conjoint reading of the above rules and the departmental rules regarding probation



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and promotion would reveal that the original seniority at the time of appointment cannot be changed; that a person who has successfully completed the probation in time is entitled to be included in the list, which is to be prepared subject to availability of vacancy; and while reckoning the list of candidates fit for promotion, the possible candidates who would be fit in the next twelve months was also directed to be considered for reservation of vacancies. It is thus evident that the respondent/writ petitioner, who has successfully completed the test within the original period of probation is entitled to claim the original seniority and is entitled to be promoted on par with her junior. It is pertinent to mention here that the list for 2011 admittedly is only temporary and that, by the time the permanent list was prepared in 2012, the respondent/writ petitioner has cleared the tests and completed the probation in time. That apart, it is not the case of the appellants that the respondent/writ petitioner has suffered some disqualification preventing her to be considered for promotion. Therefore, we do not find any error in the order of the learned Judge on this aspect.”



5. With these contentions, the learned Senior counsel prays to allow the Writ Petition.

6. On the other hand, the learned Government Pleader contends that no right to seniority was conferred to persons promoted in this panel and this fact is also recorded in para 5 of the relevant G.O. (Ms).No.132, Commercial Taxes and Registration Department, dated 18.10.2013. Further, he would submit that the determination of seniority of the petitioner in the Deputy Commissioner category by inclusion in the 2019 promotion panel is in consonance with Special Rule 4 (c) whereby the petitioner is ineligible for promotion in as much as he was not an approved probationer as on 01.01.2013 which is the crucial date for the panel year.

7. The learned Government Advocate relied on some judgments to substantiate his contentions. In the case of “***R.Prabha Devi and others Vs. Government of India and others***” reported in **AIR 1988 SC 902**, wherein, in para 15, it has been held as under:

“15. The rule-making authority is competent to frame rules laying down eligibility condition for promotion to a higher post. When such an eligibility



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condition has been laid down by service rules, it cannot be said that a direct recruit who is senior to the promotees is not required to comply with the eligibility condition and he is entitled to be considered for promotion to the higher post merely on the basis of his seniority.... When qualifications for appointment to a post in a particular cadre are prescribed, the same have to be satisfied before a person can be considered for appointment. Seniority in a particular cadre does not entitle a public servant for promotion to a higher post unless he fulfils the eligibility condition prescribed by the relevant service rules. A person must be eligible for promotion having regard to the qualifications prescribed for the post before he can be considered for promotion. Seniority will be relevant only amongst persons eligible. Seniority cannot be substituted for eligibility nor can it override it in the matter of promotion to the next higher post.”

8.It is also contended by the learned Government Advocate that the seniority in the promoted post is based on the date of joining in the promoted post and not on the basis of seniority prevailing in the feeder category post. The seniority in the promoted post is determined at the time of making the



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promotion itself. It may be noted that under section 41(2) [relating to 'Promotion'] of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016-

“Promotions in a service or class to a selection category or to a selection grade shall be made on grounds of merit and ability, seniority, being considered only where merit and ability are approximately equal. The inter-se-seniority among the persons found SUITABLE for such promotion shall be with reference to the inter-se-seniority of such persons in the lower post.”

9. Further contention of the respondents is that the petitioners name in G.O.(Ms) No.72, Commercial Taxes and Registration Department dated 07.07.2023 pertains to rearrangement of seniority amongst Assistant Commissioners directly recruited through the Tamilnadu Public Service Commission based on the marks obtained in the recruitment exam. This seniority in the Assistant Commissioner category has not been disturbed. It is rather the case that the petitioner had failed to qualify for further promotion as on the crucial date as required under Special Rule 4(c) and therefore his juniors had been promoted and even in the regular seniority



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lists now published, the very same juniors of the same direct recruit batch are included in the Deputy Commissioner category for the year 2013 whereas the petitioner, who was qualified for inclusion only for the next promotion panel, has been included in the next promotion panel which was drawn in the year 2019. The non-promotion of the petitioner in the 2013 panel is solely on account of the disqualification attracted under Special Rule 4(c) which was also due to the fault on the part of the petitioner in failing to pass the prescribed exam and thus complete the probation ahead of the crucial date and not due to any administrative reasons or delays. With these contentions, the learned Government Pleader prays to dismiss the case.

As per Section 40 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, which reads as under:

“40(1) the seniority of a person in a service, class, category or Carde shall, unless he has been reduced to a lower rank as a punishment, be determined in the order of his placement in the list prepared by the recruitment agency or appointing authority, as the case may be, in accordance with the rule of reservation and the order of rotation specified in



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Schedule-V, where it applies. The date of commencement of his probation shall be the date on which he joins duty irrespective of his seniority.

(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 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



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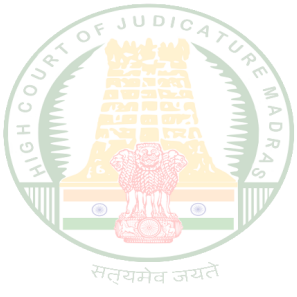
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or grade on the same day, their inter-se-seniority shall be decided with reference to their age.”

11.The learned counsel for the petitioner by relying on the above said Rule. would submit that the petitioner’s seniority should fixed from the date of appointment to the service and no the date of completion of exam before the crucial date for drawing panel.

12.Petitioner’s promotion to deputy commissioner was delayed due to a pending exam, but he qualified within the extended period as per the rule 5 of Tamil Nadu Commercial Taxes Service Rules which is as follows:

“Rule 5 (b) (i) Notwithstanding anything contained in the General Rules, at the end of the prescribed period of probation of an Assistant Commissioner or at the end of the period, if any, upto which his probation has been extended under sub-rule (ii) in the category of Assistant Commissioners- If the Commissioner of Commercial Taxes considers that a probationer in the category of Assistant Commissioner is suitable for full membership, it shall as soon as possible issue an order declaring the probationer to have satisfactorily completed his probation on the date of the expiry of the prescribed



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or extended period of probation, as the case may be.”

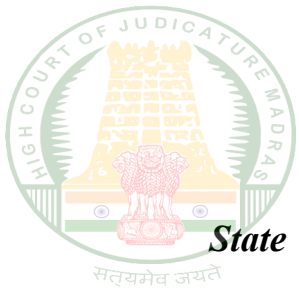
Seniority fixed as determined by the Tamil Nadu Public Service Commission, cannot be altered.

13.Respondents claim that petitioner was not eligible for promotion to Joint Commissioner as per Special Rule 4(c) as he was not an approved probationer on the crucial date i.e., 01.01.2013 which was the crucial date for the panel year 2013. The said Rule is extracted under :

“RULE 4 (C) No person shall be eligible for promotion as Deputy Commissioners of Commercial Taxes unless he is an approved probationer in the category of Assistant Commissioner on the 1 st January of the year for which the list for such promotion is drawn.”

Further, the petitioner did not challenge the previous government order in G.O. (Ms).No.132, Commercial Taxes and Registration Department, dated 18.10.2013 promoting his juniors to Deputy Commissioner.

14.The Hon'ble Apex Court in “*R.Venkata Ramudu and Another v.*



State of Andra Pradesh and others”, relied on by the learned Senior

WEB COPY counsel for the petitioner, has held as under:

“43. The Special Rules are silent with regard to the principles governing seniority, Rule 33 of the General Rules deals with it. Rule 33, insofar as it is relevant, reads as under:

“33. Seniority. (a) The seniority of a person in a service, class, category or grade, shall unless he has been reduced to a lower rank as a punishment, be determined by the date of his first appointment to such service, class, category or grade.”
(Emphasis supplied)

It can be seen from the above, the seniority of a person shall be determined by the date of his first appointment to such service. The date of appointment is different from the date of commencement of probation. Both under Rule 16(2) of the General Rules and Rule 6(2) of the Special Rules, the commencement of probation is from the date on which a person appointed joins the duty. Therefore, appointment precedes the commencement of probation. Rule 33 does not make any reference to either the commencement or declaration of probation.

“44. Therefore, the conclusion of the Tribunal (confirmed by the High Court) that those persons



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who pass the Accounts test within the prescribed period of probation constitute a different class than those who pass the Accounts test after securing the benefit of extended period of probation and such later lass shall not gain advantage by way of seniority over the class mentioned earlier is without any basis in the text of the Rules. If the rule-making authority desired to make such a distinction it should have done so expressly. It is a different matter whether such a classification would stand the test of Article 14. We do not propose to examine the same in this case.

“45. In the context of the service such as the one to which R. Venkata Ramudu belongs, what is more relevant is the technical qualification of the employee and the experience gained in utilising such technical qualification for the service of the State than the knowledge of Accounts, a subject which is of incidental significance. Because knowledge of accounts is relevant only for the discharge of administrative responsibilities to be shouldered by the engineers. Their essential duty is to provide skills of technical knowledge to the State. That is why the Rules prescribe an experience of 5 years as an Assistant Executive Engineer for being promoted to the next higher category of Deputy



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Executive Engineer. An Assistant Executive Engineer even if he passes the Accounts test within the prescribed period of probation (2 years) will not be considered for promotion till he completes 5 years of service. Therefore, we are unable to agree with the logic employed by the Tribunal and confirmed by the High Court in this regard.

“46. For the abovementioned reasons, the judgment under appeal cannot be sustained and the same is accordingly set aside. As a consequence, the OAs filed by R. Venkata Ramudu and others are required to be allowed, as prayed for. Ordered accordingly.”

15.The Hon'ble Apex Court in the case of “***State of M.P. vs Ramkinar Gupta and others***” (2000) 10 Supreme Court Cases 77, relied upon by the learned Government Pleader for the respondents, has held as under in para 14 as under:

“14. The facts of this case are different from the case of State of M.P. v.Ramkinkar Gupta [CA No. 5380 of 1999 @ SLP (C) No. 17263 of 1998]. In the present case, the respondent was granted an extension of one year for completing the probation and within that extended period he passed the requisite test. Therefore, his seniority will be fixed



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from the date of passing the departmental examination and not from the date of joining of service. Accordingly, this appeal is dismissed with no order as to costs.”

16.In “*Om Prakash Shrivastava versus State of M.P. and another*” reported in (2005) 11 Supreme Court Cases 488, the Hon'ble Apex Court has held in para 11 as under:

“11. Reiterating the principles in M.P. Chandoria case it was held in Ramkinkar Gupta case that if a person does not pass the test, then the appointing authority is empowered to assign seniority in a lower level than one which has been assigned by the Public Service Commission. A person who has neither been confirmed, nor had a certificate in his favour in terms of sub-rule (6), nor discharged from service under sub-rule (4) would fall within the category of those officers referred to in sub-rule (7) of Rule 8 of the Rules. In other words, he is to be deemed to be a temporary government servant with effect from the date of expiry of probation. The position is different in case of an officer, who passes the departmental examination within an extended period of probation.”



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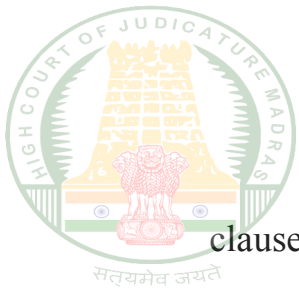
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17. In the case of “**Direct Recruit Class Ii Engineering Vs. State Of Maharashtra And Ors**” reported in 1990 AIR 1607, the legal position with regard to inter se seniority of direct recruits and promotes and while doing so, inter alia, it was held that once an incumbent is appointed to a post according to rules, his seniority has to be counted from the date of his appointment.

18. This writ petition primarily hinges on two pivotal questions:

1. Whether the petitioner cleared the Junior Accountancy examination within his probation period as extended by Section 32 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016?
2. Whether the petitioner is entitled to retain his original seniority as provided for under Section 40 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016?

19. With respect to the first issue, it is an admitted fact that the petitioner did not complete the Junior Accountancy examination within three years from his date of joining. However, a plain reading of the explanation



clause in Section 32 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, clearly indicates that any period of leave taken by the petitioner during the probation period must be excluded from the total probation period. If such leave is excluded, the petitioner would be deemed to have completed his probation within the prescribed three-year period. The relevant portion of Section 32 is extracted below:

32. (1)At the end of the prescribed or extended period of probation, as the case may be, the appointing authority shall consider the probationer's suitability for full membership of the service, class or category for which he was selected.

(2)If the appointing authority decides that a probationer is suitable for such membership, it shall, as soon as possible, issue an order declaring the probationer to have satisfactorily completed his probation. If no such order is issued within six months from the date on which he is eligible for such declaration, the probationer shall be deemed to have satisfactorily completed his probation on the date of expiry of the prescribed or extended period of probation. A formal order declaring the completion of probation shall, however, be issued by the competent authority. In all cases in which



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serious charges are pending, and therefore, probation cannot be declared, an order to the effect that the question of declaration of probation cannot be considered till the charges are disposed of shall be issued by the competent authority within six months from the due date for completion of probation and the final order on probation shall be passed as early as possible and in any case within one month after the disposal of the charges or six months after the due date for completion of probation, whichever is later.

Explanation. - For the purpose of calculating the period of probation of a probationer, complete calendar months, irrespective of the number of days in each month, shall first be calculated and then the odd number of days calculated subsequently. Period of leave, if any, taken during the period of probation shall be excluded while calculating the period of probation.”

20.It is to be seen whether the petitioner falls within the ambit of the Section 32 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, for which the service of the petitioner has to be looked into. It is not in dispute that the petitioner's date of appointment and commencement



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of training in the Assistant commissioner category as mentioned in the counter of the respondents at par 2 is 5/10/2009 and the expected date on which the petitioner was expected to complete all prescribed tests were on or before 4/10/2012 and number of leaves permitted is 144 days as seen from the office note issued on 4/01/2024. Considering the provision and explanation of Section 32 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, the date on which the petitioner ought to have completed the examination after exclusion of leave(s) accumulated as will be 25/02/2013 and the petitioner's actual date on which he completed the examination is on 18/02/2013. From the factual details, it is evident that the petitioner, with the benefit of Section 32 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and the explanation clause, has completed the relevant examinations within his probation period. Since all the leave(s) were sanctioned and authorized as seen through the office note of the superior dated 04.01.2024, the petitioner is entitled to exclude the leave period as provided in the explanation clause in Section 32.

21. Coming to the second aspect, once a seniority list is fixed, it cannot be altered unless there is a disciplinary proceeding. Admittedly, the



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petitioner's promotion was delayed solely on the ground that he had not qualified the examination within the crucial date. However, since the petitioner successfully cleared the examination within the probation period, he is entitled to retain his original seniority ranking in the seniority list. The Division Bench of this Hon'ble Court by its judgement dated 6/6/2023 made in the case of “*State of Tamil Nadu v. J Anbutamilarasi*, in W.A. No. 1587 of 2022 has ruled that:

"12. In the case on hand, not only the respondent/writ petitioner has cleared the test in time, she was also senior to the third appellant as per the seniority applicable on the date of original appointment. The fact that a junior has cleared the test before her, cannot alter the original seniority and be placed before her in the temporary list and clam seniority in the permanent list prepared next year before which the writ petitioner, the original senior, had qualified. In this regard, it is relevant to extract Rules 35(a) and 35(aa) of the Tamil Nadu State and Subordinate Service Rules, which support her case, as follows:

"Rule 35 (a). The seniority of a person in a service, class or category or grade shall unless he has been reduced to a lower rank as a punishment be determined by the rank obtained by him in the list of approved



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candidates drawn up by the Tamil Nadu Public Service Commission or other Appointing Authority, as the case may be, subject to the rule of reservation where it applies. The date of commencement of his probation shall be the date on which he joins duty irrespective of his seniority.

(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."

Thus, it is evident from the above provisions that when the junior is appointed to a service, class,

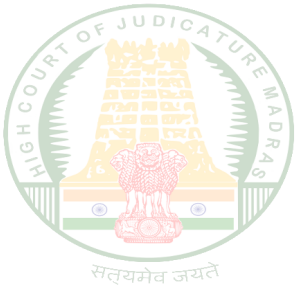


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category of grade, earlier than a senior, then, the senior shall be deemed to have been appointed to that service, class, category or grade on the same day on which the junior was appointed and such reckoning is only for the purpose of fixing inter se-seniority. Further, a conjoint reading of the above rules and the departmental rules regarding probation and promotion would reveal that the original seniority at the time of appointment cannot be changed: that a person who has successfully completed the probation in time is entitled to be included in the list, which is to be prepared subject to availability of vacancy, and while reckoning the list of candidates fit for promotion, the possible candidates who would be fit in the next twelve months was also directed to be considered for reservation of vacancies. It is thus evident that the respondent/writ petitioner, who has successfully completed the test within the original period of probation is entitled to claim the original seniority and is entitled to be promoted on par with her junior. It is pertinent to mention here that the list for 2011 admittedly is only temporary and that, by the time the permanent list was prepared in 2012, the respondent/writ petitioner has cleared the tests and completed the probation in time. That apart, it is not



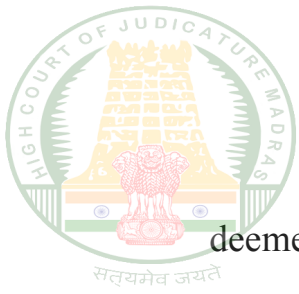
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the case of the appellants that the respondent/writ petitioner has suffered some disqualification preventing her to be considered for promotion. Therefore, we do not find any error in the order of the learned Judge on this aspect."

22.Further as per Rules 35(a) and 35(aa) of the Tamil Nadu State and Subordinate Service Rules, which fortify the claim of the petitioner that the seniority fixed at the time of appointment cannot be altered, unless affected by punishment Further, Section 40 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, the seniority of a person in a service, class, category or grade shall, unless he has been reduced to a lower rank as a punishment, be determined in the order of his placement in the list prepared by the recruitment agency or appointing authority, as the case may be. Therefore, the petitioner's original seniority remains unaltered. Consequently, if a junior has been promoted earlier, they must yield in seniority when the senior subsequently qualifies. That apart, Section 40 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, provides for deemed promotion taking into effect the date on which junior was promoted for the purpose of inter se seniority. Moreso, Rule 4(c) relied by the respondents specifies the eligibility on the date of promotion and not



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deemed promotion applied in lieu of inter se seniority as contemplated in

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Section 40 of the Tamil Nadu Government Servants (Conditions of Service)

Act, 2016. Applying J. Anbu Tamilarasi dictum, it is clear that the petitioner

has completed the probation within time period save as provided by the

explanation clause in Section 32 of the Tamil Nadu Government Servants

(Conditions of Service) Act, 2016.

23.Insofar as the charge memo under Section 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules is concerned, the same was admittedly dropped on 11.10.2019. The stand of the respondents that Special Rule 4(c) of the Special Rules for Tamil Nadu Commercial Taxes Service mandates that the petitioner was not eligible for promotion in 2013 is untenable.

24.In the light of the above discussion, this Court holds that the impugned order of the 1st respondent in GO (MS).No. 142 (Commercial Taxes & Registration)(E2) Department, dated 27.12.2023 is quashed and consequently, the respondents 1 and 2 are hereby directed to promote the petitioner in accordance with his seniority as per GO (MS) No.72



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(commercial Taxes & Registration) (E1) Department, dated 7.7.2023.

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25. Accordingly, the Writ Petition Stands allowed. No costs.

08.04.2025

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Index : Yes/No

Neutral citation : Yes/No

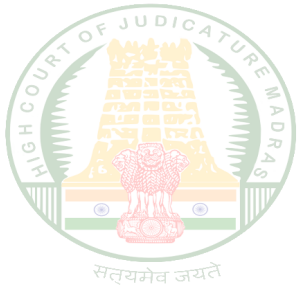
Speaking/non-speaking order

To

1.The Secretary to the Government,
Commercial Taxes and Registration Department,
St.George Fort, Chennai - 600 009

2.The Commissioner Of Commercial Taxes,
Ezhilagam, Chepauk, Chennai - 600 009.

3. M.Maheswari,
Deputy Commissiner(ST), GST Appeal, Erode,
O/o. Commissioner Of Commercial Taxes,
Ezilagam, Chepauk, Chennai - 600 005.



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V.BHAVANI SUBBAROYAN.J.,
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08.04.2025