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W.P.No.6050 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.03.2025

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

WP.No.6050 of 2022

and

WMP.No.6136 of 2022

1. N.Kalaivasan
2. M.Kanthashoba
3. P.Praveen Raj
4. P.Thirumal
5. G.Saraswathy
6. G.Ravindra Devi Revathy
7. S.P.Jeyapriya
8. V.Prasanna Moorthy
9. K.Ramesh
10. C.Meiaraj
11. S.Parimala Murugaveni

... Petitioners

Vs.

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Higher Education Department,
Fort St.George, Chennai-600 009.

2.The Principal Secretary to Government,
Human Resources Management Department,

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Fort St.George, Chennai-600 009.

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3.The Commissioner of Technical Education,
No.53, Sardarpatel Road,
Guindy, Chennai-600 025.

4.The Chairman,
Teachers Recruitment Board,
Chennai-600 006.

5.P.Subha Karuvelam,
Assistant Professor, Dept. of Electrical and Electronics Engineering,
Govt. College of Engineering,
Tirunelveli-627 007.

6.M.Gnanasundari,
Asst. Professor, Department of Electrical and Electronics Engineering, Government
College of Engineering,
Tirunelveli-627 007.

7.G.Saravanan,
Department of Civil Engineering,
Government College of Engineering,
Srirangam-620 012.

8.D.Murali,

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Assistant Professor,

Department of Electrical and Electronics Engineering,

Govt. College of Engineering,

Salem-636 011.

(R5 TO R8 ARE IMPEADED AS PER ORDER DATED 29.11.2023 IN
WMP.9059/2022 IN WP.6050/2022)

9.J.S.Christy Mano Raj,

Assistant Professor,

Dept. of Electrical and Electronics Engineering,

Govt. College of Engineering,

Salem - 636 011.

10.Sujatha Balaraman,

Assistant Professor,

Dept. of Electrical and Electronics Engineering,

Govt. College of Engineering,

Coimbatore - 641 013.

11.R.Rajeswari,

Dept. of Electrical and Electronics Engineering,

Govt. College of Engineering, Coimbatore - 641 013.

12.N.Nandakumar,

Assistant Professor,

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Dept. of Mechanical Engineering,

Govt. College of Technology,

Coimbatore - 641 013.

13.T.Sekar,

Assistant Professor,

Dept. of Mechanical Engineering,

Govt. College of Technology,

Coimbatore - 641 013.

14.C.Sivasankari,

Assistant Professor,

Dept. of Chemistry,

Govt. College of Technology,

Coimbatore - 641 013.

15.K.Ranjit Kumar,

Assistant Professor,

Dept. of Electrical and Electronics Engineering,

Govt. College of Technology,

Coimbatore - 641 013.

16.S.Latha Venkateswari,

Assistant Professor,

Dept. of English,

Govt. College of Technology,

Coimbatore - 641 013.

(R9 TO 16 ARE IMPEADED AS PER ORDER DATED 29.11.2023 IN WMP.9064/2022 IN WP.6050/2022)

17.Dr.P.Ganesan,

Associate Professor,

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Department of EEE,
Govt. College of Engineering,
Srirangam.

18.Dr.S.Murugavel,
Associate Professor,
Department of Physics,
Govt. College of Engineering,
Vellore.

(R17 AND 18 ARE IMPEADED AS PER ORDER DATED 29.11.2023 IN WMP.26443/2022 IN WP.6050/2022)

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, calling for the record of proceedings of the 1st Respondent in the Impugned letter dated 20.12.2021 bearing No.17989 / 11 / 2017-2, quash the same and consequently direct the Respondents to retain the seniority list fixed in Letter dated 14.06.2011 bearing No. 8150 / A2 / 2006 passed by the 1st Respondent and confer all the consequential benefits to the Petitioners.

For Petitioners : Mr.R. Murali

For R1 to R3 : M/s.S.Indhubala, AGP

For R4 : Mr.C.Kathiravan, St.C

For R5 to R8 : Mr.T.Dharani

For R9 to R16 : Mr.M.K.Subramanian

For R17 and R18 : Mr.M.Velmurugan

ORDER

The writ petition is filed challenging the order of the 1st respondent dated 20.12.2021, fixing seniority of lecturers (Now Assistant Professors) appointed during



2001, selected against current vacancy through general recruitment, over and above the petitioner's who were selected against shortfall vacancy through special recruitment in the same selection.

Brief facts:

2. Direct recruitment for the post of lecturers in Government Engineering Colleges, were made by the Teacher Recruitment Board (Referred to as TRB) for the first time in 2001. Prior to that the lecturers were appointed through employment exchange on contract basis. During 1998, steps were taken to fillup the existing vacancies in Government Engineering Colleges, and a proposal was placed before the Government, by the Director of Technical Education, for filling up the vacancies. The Government vide G.O.Ms.No.142, dated 25.05.2000 and G.O.Ms.No.311, dated 19.07.2000, directed the TRB to fill 40 vacant posts of lecturers in Government Engineering Colleges through general recruitment and 39 shortfall vacancies in SC/ST category through special recruitment, respectively. A combined recruitment was conducted for filling up the above vacancies by the TRB in 2001. SC/ST candidates were permitted to apply under both general recruitment as well as special recruitment (shortfall vacancy). 37 SC/ST candidates were selected against special



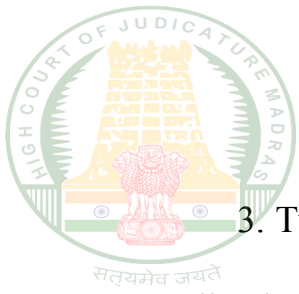
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recruitment for shortfall vacancies and were appointed as Lecturers (now Assistant Professors) in Government Engineering Colleges, vide G.O.Ms.No.220, dated 10.07.2001. Similarly, 40 candidates selected against regular vacancies, by following the rule of reservation were appointed as lecturers (now Assistant Professors) vide G.O.Ms.No.221, dated 10.07.2001. The services of all the appointed candidates were regularised vide G.O.Ms.No.128, Higher Education Department, dated 26.04.2004. When an issue arose regarding seniority of persons recruited under the aforesaid 2 recruitments, the Government issued a letter on 16.05.2011, clarifying that candidates appointed against backlog vacancies through special recruitment would be placed over and above those candidates appointed against general recruitment. The Commissioner of Technical Education, in his letter dated 14.06.2011, fixed the seniority as per the above clarification letter dated 16.05.2011. Some of the lecturers (other than SC/ST candidates) who were appointed under general recruitment and had secured higher marks than those recruited under the special recruitment for SC/ST candidates, challenged the letter dated 14.06.2011, by filing W.P.No.32349 of 2012, contending that the fixation of seniority was arbitrary and unsustainable. The said writ petition was withdrawn on 08.11.2017, in view of the revised seniority list of the 1st respondent vide letter dated



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16.08.2017, wherein the seniority was recast by placing the lecturers appointed under general recruitment above those appointed under special recruitment. Similarly, some of the SC/ST candidates who were selected against the regular vacancies also filed Writ Petition's in W.P.No.32890 of 2012 and 33263 of 2012, challenging the fixation of seniority under the earlier letter dated 14.06.2011. Their contention was that, since they had secured higher marks in the selection process, they were entitled to be placed above those SC/ST candidates who were recruited against shortfall vacancies, and had secured lesser marks. In the Writ Petition No.32890 of 2012, an interim order was passed on 10.12.2020. Likewise, in W.P.No.33263 of 2012, an interim order was passed on 13.12.2012, permitting promotions pursuant to the seniority list, subject to the outcome of the writ petition. Subsequently, in W.P.No.26629 of 2017, an interim order dated 26.02.2021 was passed, directing the petitioners to file their objections to the 1st respondent's revised letter dated 16.08.2017. Pursuant to the said order the petitioner's submitted their objections to the 1st respondent. Thereafter the 1st respondent passed the impugned order on 20.12.2021. Aggrieved by the same, the petitioner's filed the above writ petition for the aforesaid relief.



3. Two sets of lecturer's selected against general recruitment filed two implead applications in WMP.No.9064 of 2022 and W.P.No.26443 of 2023, to implead themselves in the writ petition. The implead petitions were allowed on 29.11.2023

4. In view of the fact that the submissions made in the impleading applications are materially similar to the contents of the counter filed by the 3rd respondent, they have been treated as consolidated counter of the respondents, in order to obviate unnecessary reiteration.

5. The respondents traced the sequence of events culminating in the issuance of the two recruitment notifications, one pertaining to special recruitment to fillup shortfall vacancies and the other relating to general recruitment. The respondents further delineated the history of the litigation leading to the passing of the impugned order. The respondents submitted that since the special recruitment was made for shortfall vacancies exclusively for SC/ST candidates, their seniority was fixed as per Rule 35(a) of the General Rules of the Tamil Nadu State and Subordinate Services (now Section 40(1) of the Tamil Nadu Government Servants (conditions of services) Act 2016. The respondents reiterated that the special recruitment was not backlog



vacancy but only shortfall vacancy. The respondents further stated that since the seniority was fixed following Rule 22(d) and 35(a) of General Rules of Tamil Nadu State and Subordinate Services, the impugned order could not be faulted. The private respondents placed the factual details of the comparative merit of the SC/ST candidates selected under the general recruitment and the special recruitment and submitted that as the respondents secured more marks than the petitioner's in the selection process, they were appropriately placed over the petitioner's, by considering their merit. The private respondents reiterated that the writ petition was filed on a misconception that the petitioner's were recruited against backlog vacancies. The respondents hence prayed that the writ petition deserved to be dismissed.

6. The fulcrum of the case rests upon the determination as to whether the petitioner's were selected against backlog vacancies or shortfall vacancies. In the event it is held that their selection was against backlog vacancies, the petitioner's would be entitled to succeed; if not, their claim is liable to fail.

7. The relevant facts have already been elaborated herein above and, to avoid repetition the same are not traversed. However, a few facts which, in my view are



relevant for deciding the issue are delineated. The following facts are undisputed.

1) There was no direct recruitment in Directorate of Technical Education for a long period (i.e) from 01.04.1989 to 2001.

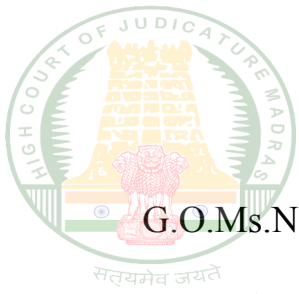
2) The Government issued G.O.Ms.No.311, dated 19.07.2000, inviting applications to fill up 39 lecturer posts of SC/ST candidates for shortfall vacancies under special recruitment, giving option to the candidates to opt for both special recruitment or shortfall vacancy and G.O.Ms.No.142, dated 25.05.2000 for general recruitment, for 40 posts of lecturers, by following communal roster.

3) For all the 79 posts there was a common advertisement published in newspaper and a common written test.

4) In January 2001, the provisional selection list of the candidates selected under the general recruitment was released by the 1st respondent and in February 2001, the 4th respondent released the provisional selection list of SC/ST candidates under special recruitment - against shortfall vacancies.

5) The SC/ST candidates who did not secure selection under the general recruitment were selected under special recruitment against shortfall vacancies.

6) Two posting orders were issued by the Government on the same day (i.e) 10.07.2001, G.O.Ms.No.220 for candidates selected under special recruitment and



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G.O.Ms.No.221 for candidates selected under general recruitment.

7) As per G.O.Ms.No.128, dated 26.04.2004, regularisation order was passed by placing the candidates selected under general recruitment above the candidates selected under special recruitment.

8. The issue arose when the official respondents tried to fix the seniority of the lecturers appointed under the special recruitment above the lecturers recruited under the general recruitment by letter dated 14.06.2011. Aggrieved by the fixation of seniority of the petitioners above the lecturers recruited under the general recruitment, some of the lecturers appointed under general recruitment filed writ petition in W.P.No.32349 of 2012. The said writ petition was withdrawn on 08.11.2017, for the reason that the 1st respondent recast the seniority list by placing the lecturer's recruited under the general recruitment over and above the lecturer's recruited under the special recruitment (shortfall vacancies) vide letter dated 16.08.2017. The said letter dated 16.08.2017, of the 1st respondent was challenged in W.P.No.30418 of 2017, 26629 of 2017 and 2750 of 2018, by some of the lecturers recruited under the special recruitment. During the pendency of the writ petitions, certain interim orders were passed which are not referred to here, since it is sufficient



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to state that in W.P.No.26629 of 2017, an order was passed by this court on 26.02.2021, directing the petitioners to file objection to the 1st respondent's letter dated 16.08.2017, with further direction to the 1st respondent to consider the same within a period of eight weeks, from the date of receipt of a copy of the order. The petitioners submitted their objections to the 1st respondent and thereafter, the 1st respondent passed the impugned order.

9. It is the petitioner's case that the petitioners were recruited against backlog vacancies, as there was no representation of SC/ST candidates in the respondent department. The petitioner's claim seniority on the ground that the special recruitment (shortfall vacancy) arose because of inadequate representation of the SC/ST category in the earlier appointments and therefore the special recruitment for shortfall vacancies stood on a higher pedestal, and was in no way inferior to the general recruitment.

10. In my view the petitioner's are erroneously trying to equate shortfall vacancy with backlog vacancy. It is pertinent to point out here that backlog vacancies are those vacancies that were previously reserved for special category like



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SC/ST or other category and which remained unfilled in the past recruitment cycles, due to non availability of suitable candidates. Shortfall vacancy on the other hand are vacancies arrived at based on inadequacy of representation of SC/ST candidates among other candidates. That the petitioner's were recruited only against shortfall vacancy, due to inadequate representation of the SC/ST candidates, is evident from the fact that there was no direct recruitment in the Directorate of Technical Education, from 01.04.1989 to 2001. As already noted, there was no direct recruitment until 2001. Consequently, the question of backlog vacancy for filling up the post's of lecturer's from among SC/ST candidates did not arise. The special recruitment was undertaken only to ensure adequate representation of candidates belonging to SC/ST category and was therefore, notified as recruitment against shortfall vacancy. It is pertinent to note that the recruitment notification issued in G.O.Ms.No.311, dated 19.07.2000, invited applications to fillup 39 lecturers posts under special recruitment for SC/ST candidates against shortfall vacancies and even the appointment notification in G.O.Ms.No.220, dated 10.07.2001 referred to the petitioner's appointments as one against shortfall vacancies. When clarification was sought for from the TRB on whether the petitioner's appointments were against backlog vacancies or shortfall vacancies, the TRB in its clarification letter dated



09.09.2014, clarified that their appointments were made against shortfall vacancies.

The petitioner's applied with full knowledge that their selection and appointment would be only against shortfall vacancies and they having opted for selection against shortfall vacancy cannot now be permitted to contend that their selection was against backlog vacancies. In the teeth of the aforesaid proceedings, the petitioner's contention that they were selected against backlog vacancies deserves to be rejected.

11. The impleaded respondents, in their affidavit, have clearly stated that SC/ST candidates who were unsuccessful in getting selected under general recruitment were selected under special recruitment for shortfall vacancies, on their option to be considered under both recruitments.

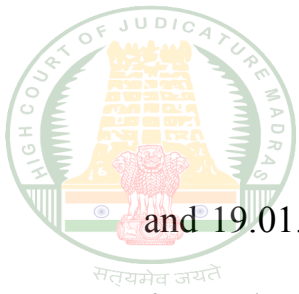
12. The impleaded respondents further submitted a tabular column indicating that the candidates selected under the special recruitment against shortfall vacancies obtained lesser marks than those selected under general recruitment, including the SC/ST candidates selected therein. It is therefore evident that the petitioners were less meritorious than the private respondents. Consequently, based on the applicable rules and comparative merit, the 1st respondent fixed the seniority of the private



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respondents above that of the petitioners. The petitioners contend that the Government had earlier treated the recruitment of the petitioner's as one against backlog vacancies and had accordingly placed them above the private respondents in the seniority list. However, the 1st respondent in compliance of the directions of this court in W.P.No.26629 of 2017, dated 26.02.2021, passed the impugned order after getting the clarification from the Teachers Recruitment Board (TRB). The TRB, in its letter dated 09.09.2014, categorically clarified that the recruitment of the petitioners was only against shortfall vacancies and not against backlog vacancies. The earlier error committed by the respondents was rectified by the impugned order, by treating the petitioner's recruitment as one against shortfall vacancies.

13. At this juncture, it will be pertinent to note that reservation in selection is different from concept of seniority. The yardsticks and parameters applicable for fixing seniority are not the same as those applied for selection under the reservation category. Though the recruitment process for both the petitioners and the private respondents was undertaken under a common advertisement with common examinations, the impugned order makes it clear that the selection list for general recruitment based on merit cum communal representation was sent on 10.01.2001



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and 19.01.2001, and the selection list for the special recruitment meant exclusively for SC/ST candidates was forwarded to the Directorate of Technical Education on 14.02.2001. This clearly establishes that the SC/ST candidates who secured higher marks were accommodated against general recruitment, and those candidates who secured lesser marks and opted for selection under both recruitments were appointed under the special recruitment against shortfall vacancies. Accordingly, even on merit, the private respondents are entitled to seniority over the petitioners. As the petitioner's recruitment is found to be against shortfall vacancy, if the claim of the petitioner's for seniority is entertained, it will amount to fixing seniority on the basis of communal reservation, which is not permissible in law.

14. It is well settled that the seniority cannot be fixed on the basis of communal roster or reservation. The Hon'ble Supreme Court in the case of *Bimlesh Tanwar v. State of Haryana* ((2003) 5 SCC 604), in para 40 held as follows:

“40. An affirmative action in terms of Article 16(4) of the Constitution is meant for providing a representation of class of citizenry who are socially or economically backward. Article 16 of the Constitution of India is applicable in the case of an appointment. It does not speak of fixation of seniority.

Seniority is, thus, not to be fixed in terms of the roster points. If

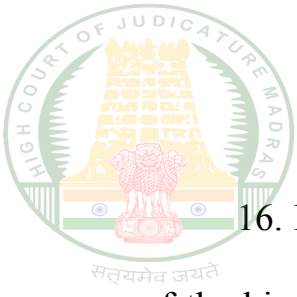


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that is done, the rule of affirmative action would be extended which would strictly not be in consonance of the constitutional schemes. We are of the opinion that the decision in P.S.Ghalaut does not lay down a good law.”

15. The Hon'ble Division Bench of this court in *N.Santhosh Kumar vs. Tamil Nadu Public Service Commission*, reiterated that seniority should be based on merit and not on roster points. Likewise, in the case of *K.Raja and others Versus Additional Chief Secretary to Government and others*, reported in (2019) 6 CTC 750, at para 37.17, the Hon'ble Division Bench held as follows:

“37.17 As noted earlier, 69% reservation is being followed in the State of Tamil Nadu and the roster point is also fixed in accordance with the reservation policy. Therefore, there is absolutely no doubt that the procedure adopted would result in excess reservation. We have already considered the decision of the Apex Court in Tripurari Sharan v. Ranjit Kumar Yadav ((2018) 2 SCC 656) on the very same issue, wherein the earlier decisions rendered were taken note of. We also hold that roster point cannot be the basis for seniority giving adequate reasons both on law and fact. The very challenge itself is to the fixation of seniority or preference on the basis of roster point.



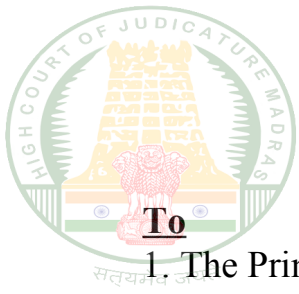
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16. In view of the above legal position and the facts on record, and in the light of the binding precedents of the Hon'ble Supreme Court and the Division Bench of this court, I find no infirmity or illegality in the impugned order. Hence, the writ petition is devoid of merits and is liable to be dismissed.

Accordingly, the Writ petition is dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

21.03.2025

Index:Yes/No
Neutral Citation:Yes/No
Speaking order:Yes/No
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To

1. The Principal Secretary to Government,

Higher Education Department,

Fort St.George, Chennai-600 009.

2.The Principal Secretary to Government,

Human Resources Management Department,

Fort St.George, Chennai-600 009.

3.The Commissioner of Technical Education,

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Department of Electrical and Electronics Engineering, Government College of Engineering,

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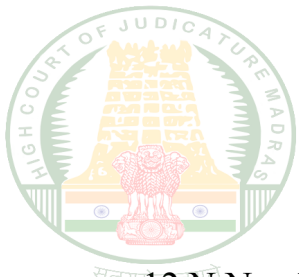
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Associate Professor,
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