IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2025

CORAM:

THE HONOURABLE Ms. JUSTICE P.T.ASHA

W.P.No.38422 of 2024
and W.M.P.Nos.41616 and 41617 of 2024

1.A.Ayyappan
2.M.Sivasakthivelan
3.K.Vignesh
4.P.Vignesh
5.R.Karnan
6.P.Deepika
7.K.Thilothama
8.K.Sugapriya
9.P.Prabakaran
10.M.Rama
11.R.Satheesh
12.B.Moorthy
13.A.Sundaramoorthy
14.G.Sridevi
15.T.Porthamizhan
16.V.Gokulraj
17.P.Rangadurai
18.S.Elavarasu
19.S.Nandhakumar
20.T.Pandi Vivek
21.S.Dhatchinamoorthy
22.D.Parvathavarthini
23.M.Periyasamy
24.A.Sureshbabu
25.S.Vandhana
26.R.Pandiselvan
27.V.Kumaravel

28.S.Praveen
29.P.Arunprakash
30.A.Prasanth
31.T.Rajalakshmi
32.G.Saranya
33.C.Elamaran
34.John Edwardraj
J 35.Vinoth A
36.Arun Shankar C
37.M.Kamalahasan
38.Raguraman N
39.T.Thanikachalam
40.Raguraman V
41.C.Thirunavukarasu
42.M.Devaraj
43.A.P.Karthikeyan
44.S.Sheik Bareeth
45.G.Raja
46.V.Karthikeyan
47.R.Kanraj
48.S.Raviram
49.K.Sathiya Prakash
50.S.P.Fidel Castro
51.S.Prabakar ..... Petitioners

Vs.

1.The Tamil Nadu Public Service Commission,
represented by its Secretary,
Chennai – 600 003.
2.The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005.
3.Ragulkumar.R
4.Ashok Kumar.V
5.Harshavardhini.E
6.Nambu Selvan.R
7.Venkatesan.E
8.Gayathri.K

9.Kavin.M
10.A.P.Mohan Pradap
11.Pavithra.P
12.M.Vetrivel Vigneshwari
13.Regan.B
14.Vikraman.K
15.Dinesh Kumar.S
16.Sivakumar.S
17.Nethaji Subash Chandrabose.P
18.Venkatesan.R
19.Gowtham.S .... Respondents
(R2 to R19 impleaded vide Order dated 13.06.2025
made in W.M.P.No.22681 of 2025 in
W.P.No.38422 of 2024)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus to call for the records relating to the impugned Notifications issued by the first respondent in Notification No.8/2024 (Advertisement No.687) dated 20-06-2024 and Addendum Notification No.8 A/2024 dated 08-11-2024 and quash the same insofar as the post of Deputy Commercial Tax Officer is concerned and direct the respondents to restrict direct recruitment to 157 vacancies only to the said post.

For Petitioners : Mr.P.Rajendran

For Respondent-1 : Mr.J.Ravindran
Additional Government Pleader

For Respondents 3 to 19 : Ms.Gayathri Vasudevan

ORDER

The writ petition is filed seeking to quash the notifications of the 1st respondent in Notification No.8 of 2024(Advertisement No.687) dated 20.06.2024 and Addendum Notification No.8A/024 dated 08.11.2024 insofar as the post of Deputy Commercial Tax Officer is concerned and consequently to direct the respondents to restrict direct recruitment to 157 vacancies only to the said post.

2. The basis on which the above writ petition has been filed are as follows:

(i) The petitioners, numbering 51 were working as Assistants in the Commercial Tax Department in various offices, which have been detailed by them in paragraph No.3 of their affidavit filed in support of the petition in a tabulated statement.

(ii) It is the contention of the petitioners that they were selected by the Tamil Nadu Service Commission namely the 1st respondent for appointment to the post of Assistant in 2017-2018 and they were appointed as Assistants in October 2018. It is the contention of the petitioners that they belong to the Tamil Nadu Ministerial Service and the next higher post in the Commercial Taxes Department is that of Deputy Commercial Tax Officer. They would submit that prior to 26.08.2010, there existed a category of Assistant Commercial Tax Officer, which, by an amendment issued in G.O.Ms.No.222, Commercial Taxes and Registration (A1) Department dated 15.02.2012 was substituted with the post of Deputy Commercial Tax Officer. As per Rule 2 of the Tamil Nadu Commercial Taxes Subordinate Service Rules, the post of Deputy Commercial Tax Officer (DCTO), previously known as Assistant Commercial Tax Officer (ACTO) should be filled in the following manner.

> *a) Recruitment by transfer from among the Assistants and Gujarathi knowing Assistants of the Tamil Nadu Ministerial Service in the Commercial Taxes Department including the office of the Commissioner of Commercial Taxes, Assistants of the Tamil Nadu Ministerial Service in the office of the Tamil Nadu Sales Tax Appellate Tribunal and Assistant Section Officers in the Departments of*

Secretariat coming under one unit and by direct recruitment.

b) 33-1/3rd percent of the substantive vacancies in the category of Assistant Commercial Tax Officers shall be filled in or reserved to be filled in by direct recruitment and the remaining 66-2/3rd percent substantive vacancies shall be filled in by confirmation of persons recruited by transfer.

Therefore, 1/3rd of the substantive vacancies was to be filled by direct recruitment and 2/3rd through transfer.

(iii) The 1st respondent had issued the impugned notification and the Addendum Notification inviting applications through on-line mode for direct recruitment to the posts included in Combined Civil Services Examination -II (Group-II and II-A Services). In the said notification, 336 vacancies in the post of DCTO have been notified for direct recruitment.

(iv) The petitioner's contention is that the total cadre strength of

DCTO is 2174 and as on 28.02.2024, the vacancy position in the said cadre is 472. Out of the said 472 vacancies, 130 vacancies were filled up on 28.02.2024 through transfer by proceedings of the Commissioner of Commercial Taxes. Therefore, out of 472 vacancies, 315 vacancies should be filed by transfer and only 157 vacancies should be filled up by direct recruitment. However, 336 vacancies are sought to be filled by direct recruitment. If this is done, the petitioners would submit that they would be affected. Therefore, they seek to quash the said notifications on the ground that the Rule provides for 1/3rd of the vacancies to be filled by direct recruitment and 2/3rd by transfer whereas the impugned notification does not conform to this ratio. The petitioners would submit that the Hon'ble Supreme Court in a judgment reported in ***1980(1) SCC 634*** (include names of parties in that case) has clearly held that a reasonable period for the carry forward of direct recruitment vacancies should be 3 years and not more. The respondents had to explain how they had arrived at the figure of 336. Even if it is so calculated on the basis of carry forward, the vacancies for 3 years would not amount to 336. Therefore, the petitioners have filed this writ petition.

3. The 1st respondent has filed a counter affidavit *inter-alia* contending that the applications were invited by notification dated 20.06.2024 and a preliminary examination (Objective type) was held on 14.09.2024. On the basis of the results of the preliminary examination candidates have been admitted for the main written examination for the posts included in Combined Civil Services Examination-II(Group-II and IIA Services) to be held on the announced dates. The 1st respondent had notified 336 vacancies as per the request made by the Commissioner of Commercial Taxes and once vacancies are notified, they cannot be decreased by the 1st respondent without the approval of the concerned department. Further, the 1st respondent is only a recruiting body who is tasked to conduct the recruitment as per the Rules framed by the Government from time to time. The vacancies were allotted for direct recruitment in the above notification. Further, the writ petition as against this respondent is not maintainable as no relief was claimed against the 1st respondent.

4. The 2nd respondent has filed a counter statement *inter-alia* denying the allegations contained in the petition. The 2nd respondent would submit that Rule 2(b) of the Special Rules of the Tamil Nadu Commercial Taxes Subordinate Service has not been rightly interpreted by the petitioners. The contention that vacancies have to be filled up in the ratio of 1/3rd (33-1/3%) by direct recruitment and 2/3rd (66-2/3%) by transfer is absolutely incorrect. This ratio has to be calculated on the total cadre strength. They would submit that the total cadre strength being 2174, 33-1/3rd percent of this would work out to 725 and these 725 vacancies have to be filled up by direct recruitment. The remaining has to be filled in by transfer. As on 01.03.2023 which is the crucial date, the total strength of direct recruits was just 96 which remains the same even to date. Therefore, the remaining 629 substantive vacancies had to be filled only by direct recruitment and not by transfer. Correspondingly, out of the total cadre strength of 2175, 1451 vacancies were available under the category of transfer / promotion.

5. The 2nd respondent would submit that the strength of DCTOs through transfer as on 01.03.2024 is 1717, which is in excess of 268 vacancies. This excess number of DCTOs by transfer was on account of the upgradation of 840 assistants to the post of Deputy Commercial Tax Officer by virtue of G.O.Ms.No.20, Commercial Taxes and Registration (A2) Department dated 09.03.2023. This Government Order has been issued as a one time relaxation of Rule 2(b)(i) of the Tamil Nadu Commercial Taxes Subordinate Services Rules. Therefore, the percentage of the promotees /transferees is much higher than that of direct recruits. The 2nd respondent would therefore submit that there is no excess of vacancies notified for direct recruitment as alleged and that the 336 seats have been notified only from out of the remaining 629 vacancies. They would submit that there is no encroachment into the vacancies kept aside for promotees. Therefore, they sought for dismissal of the writ petition.

6. The private respondents have also filed their counter affidavit *inter-alia* contending that they had applied and participated in the preliminary examinations, the results of which were published in the

official website on 12.07.2026. The respondents 3 to 19 had cleared the preliminary examination of the Combined Civil Services Examination-II (Group II and IIA Services). The main written examination was called for and hall tickets were issued. The results of the main written examination for direct recruitment were published on 27.05.2025 and respondents 3 to 7, 11 to 14, 16 to 19 are eligible to the post of DCTO and have secured the cut off marks. They would submit that the notification does not suffer from any illegality or error since the vacancy position has been considered and confirmed before publication. They would more or less repeat the defense taken by the 2nd respondent.

7. Mr.P.Rajendran, learned counsel for the petitioners would submit that for the post of DCTO there are two modes of recruitment one by direct recruitment and the other by transfer. Rule 2 of the Tamil Nadu Commercial Taxes Subordinate Service provides that appointment to the category of DCTO is through promotion from Assistant Commercial Tax Officers or recruitment by transfer from among persons who have served as Superintendents or as Assistant

Section Officers with ten years of regular service in that cadre as the case may be. Further, Rule 2(b)(i) provides that 33-1/3 percent of the substantive vacancies in the category of Assistant Commercial Tax Officers shall be filled in or reserved to be filled in by direct recruitment and the remaining 66-2/3 shall be recruited by transfer. He would submit that on 28.02.2024, the cadre strength had been announced showing a total 2174 posts available in the rank of DCTO and as on date, there were 1702 persons in position and what remain to be filled were 472 vacancies. Therefore, his argument is that, taking note of the Subordinate Service Rules, 1/3rd of 472 vacancies was to be filled through direct recruitment and the remaining through transfer. Therefore, he would argue that as per Rule 2(b), 157 persons were to be appointed through direct recruitment and remaining 315 posts were to be filled up through transfer. He would submit that the petitioners cannot carry forward the vacancies since the concept of carry forward is available only under Clause 27(f) of the Tamil Nadu Government Servants (Conditions of Service), Act, 2016 which relates only to SC/ST categories and when there is no rule to carry forward, the respondents are estopped from doing so. He would rely upon the order of this Court reported in ***1985 Writ L.R. 183 [G.Ramachandran and another Vs Government of Tamil Nadu, rep. By Secretary to Govt. Public Works Dept., Madras and others]***.,

8. The next point which was raised by the learned counsel for the petitioners is that 1/3rd reservation is with reference to vacancies and not in respect of the entire cadre strength. He would submit that a mere reading of Rule 2(b) of the Tamil Nadu Commercial Tax Subordinate Service Rules would clearly show that the reservation is based on the number of vacancies available and not on the cadre strength. He would submit that only 157 vacancies are available for filling up through direct recruitment. He would also submit that if the reservation is to be applied on post basis it should fall under one of two contingencies either under Article 16(4) of the Constitution of India or in cases where there are two modes of recruitment for the same post. In support of this argument, he would rely upon the judgments reported in ***(1999) 2 SCC 330 [State of Punjab ad others Vs Dr.R.N.Bhatnagar and Another] and (1999) 3 SCC 384 [All India Federation of Central Exercise Vs Union of India and others]***.

He would further submit that the argument regarding the relaxation of the Rule position in respect of DCTO and the appointment of 840 persons from the rank of Assistants cannot come to the aid of the respondents. He would also rely upon a judgment of the Division Bench of this Court reported in W.P.No.12766 of 1985 dated 19.06.1986 with particular reference of paragraph 6 therein which has also been quoted by the respondents. He would point out that the judgment deals only with seniority of persons in excess in the quota and does not deal with the issue of carry forward. He would submit that the Rule 2(b) very clearly refers to reservation on vacancies and not on the posts. Therefore, he would submit that the writ petition deserves to be allowed.

9. Per contra, Mr.J.Ravindran, learned Additional Advocate General appearing for the 1st respondent would submit that a plain reading of Rule 2(b) would clearly show that it relates to the total cadre strength as it states that 33-1/3rd shall be filled or **reserved to be filled**. Therefore, the Rule itself contemplates the concept of carry forward in the form of reservation to be filled in later. If the

petitioners' interpretation is accepted then the word **"reserved to be filled"** in Rule 2(b) would become redundant. He would further submit that as a one-time measure, 840 persons were upgraded to the post of DCTO and it was done only by transfer and not by direct recruitment. In other words $1/3^{rd}$ / $2/3^{rd}$ ratio was not followed when 840 persons were posted as DCTO's. As a result, as on date, there are 1712 transferees and only 96 direct recruitees. Therefore, there is a total imbalance. If the petitioners' request is given effect to, the number of persons appointed by way of direct recruitment will far exceed $2/3^{rd}$ of the total cadre strength. He would draw the attention of the Court to paragraph 4 of their counter where the Rule position has been explained and paragraph 13 where the interpretation of the Rule has been set out. He would submit that the order of this Court in ***W.P.No.12766 of 1985 [S.Sundararaj Vs. The Government of Tamil Nadu represented by Secretary]*** wherein the grievance of direct recruitees was considered namely, the transferee candidates who are promoted temporarily as ACTOs had been placed above them in the seniority list of ACTOs. He would submit that the Bench had discussed Rule 2(b) of the Special Rules where the Bench had posed a question to itself as to whether, at that relevant point of time, if 40% of the substantive vacancies were to be filled by direct recruitment, whether the vacancies could be filled in any other manner other than by direct recruitment. The Bench had answered in the negative and went on to hold that for direct recruits any appointment made by way of transfer / promotion cannot be utilised towards these vacancies and that the 40% reservation has to be given only to direct recruitees. Therefore, he would pray that the writ petition be dismissed.

10. Heard the learned counsels on either side and perused the materials available on record.

11. The issues that require the consideration of this Court are

a) Whether the notification calling for direct recruitment in respect of 336 posts is by carrying forward the reservation? and;

b) Whether the reservation of 1/3rd is to calculated based on the total cadre strength or only on the vacancies *available?.*

Rule 2(b)reads as follows: -

"2. Appointment (b)(i) 33-1/3 percent of the substantive vacancies in the category of Assistant Commercial Tax Officers shall be filled in or reserved to be filled in by direct recruitment?

(ii)The remaining 66-2/3 percent of such substantive vacancies shall be filled in by confirmation of persons recruited by transfer?.

(iii) omitted.

Provided that to the extent possible the ten percentage of the substantive vacancies so reserved shall be filled in the ratio of 1:1 between the persons recruited from the Departments of Secretariat and the persons recruited from the Office of the Commissioner of Commercial Taxes and Tamil Nadu Sales Tax Appellate Tribunal combined together and in the cyclical order namely:-

1st vacancy - Secretariat Group

2nd vacancy The other Group

3rd vacancy - Secretariat Group

4th vacancy-The other Group and so on.

Provided that surplus vacancies if any shall be initially transferred from one group to the other and when no candidates are available in both the groups the transfer of the surplus vacancies shall be made to the 90% division *pool.*

12. Rule 2(b)(i) would indicate that 33-1/3rd percent vacancies in the category of ACTOs, now renamed Deputy Commercial Tax Officers (DCTO) shall be filled in or reserved to be filled in by direct recruitment. Therefore, the fact that the rule speaks of "r***eserved to be filled by direct recruitment***" only implies that, where 1/3rd of the vacancies is not filled up, the same can be reserved to be filled at a later point of time. Therefore, the concept of carry forward is found within the very Rule itself. The Division Bench of this Court, in ***W.P.No.12786 of 1985 in [S.Sundararaj and Others Vs The Government of Tamil Nadu and others]*** relied upon by both parties, has considered the above in paragraph 16, which is as follows:

> *"16. If there are vacancies out of the required reservation of 40% in the permanent cadre of ACTOs. For direct Recruits, any appointment made either by transfer or By promotion cannot be utilized to fill up those vacancies. Such appointments being of a temporary character, Whenever direct recruits are appointed through Public Service commission, they being holders of permanent*

Posts by direct recruitment, they have a right to be Appointed to whatever posts that are taken out of the 40% posts reserved for direct recruitment."

This order was taken up on appeal to the Hon'ble Supreme Court in ***Civil Appeal No.1454/87*** and the decision of the Hon'ble Supreme Court is reported in ***1999 (4) SCALE 416 [State of Tamilnadu Vs S.Sunderaraja and Others].*** One of the arguments that was put forward by the State in that case was that the direct recruitees are appointed for permanent posts whereas transferees from other services are appointed not only for permanent posts but also for temporary posts. The Bench observed that temporary appointees cannot claim seniority over the permanent employees. The Court had recorded the statement of the State that appointments by transfer did not exceed the quota of 60% and never encroached upon the 40% reserved for direct recruitees. However, 40% has now been reduced to 33-1/3 percentage for direct recruitees. Therefore, a mere perusal of the above judgment would clearly show that the reservation for direct recruitees and transferees is based on the permanent cadre strength and not on the number of vacancies.

13. In paragraph (iv) of the 2nd respondent's counter affidavit, a tabulated statement has been set out showing the cadre strength, vacancies and the present strength under two categories (i.e) direct recruits and transferees. The total cadre strength is shown as 2129 posts. 1/3rd of the said strength, which is to be reserved for direct recruitees is 725 posts for both 2024-2025 as well as 2025-2026. 2/3rd of the total strength is to be filled by recruitment by transfer is 1449 posts for 2024-2025 and 1451 posts for 2025-2026. As on date, the total number of direct recruitees on the rolls is 96 whereas the total number of transferees are 1717 as on 2024-2025 and projected number of 1616 as on 2025-2026. Therefore, the number of transferees are far in excess of their 2/3rd percentage. The increase under the head of recruitment by transfer was on account of the enactment of the Tamil Nadu Goods and Services Act, 2017 and the need for additional manpower. The 840 posts were filled only by transfer and there were no direct recruitees. If the contention of the petitioners were accepted, then 840 posts that is now filled by transfer should have been filled up

in the ratio of 33-1/3% direct recruitees to 66-2/3% by transfer. That apart if the interpretation of the petitioners' were to be given effect to the words “reserved to be filled up direct recruitment in Rule 2(b)(i) would become otiose. The fact that these words are used only with reference to direct recruitmentss only implies that the Special Rules contemplated that out of the total cadre strength 33-1/3% shall be reserved for direct recruitment.

14. Admittedly, as on date there are only 96 direct recruitees and if the argument of the petitioners is to be taken into consideration then over a period of time the recruitment by transfer would far exceed the direct recruitees and it would never be in the ratio of 33-1/3% and 66-2/3 percent.

15. Therefore, I see no merit in the argument put forward by the petitioners and accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

29.08.2025

Index: Yes/No
Speaking order/non-speaking order
srn

To
1.The Secretary,
Tamil Nadu Public Service Commission,
Chennai – 600 003.

2.The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005.

P.T.ASHA, J.,

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