

W.P. Nos. 33628 & 33635 of 2018 etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 12.02.2025

Pronounced on : 23.04.2025

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

W.P. Nos. 33628 and 33635 of 2018

and

Contempt Petition Nos. 1457 and 1464 of 2021

and

W.M.P. Nos. 39039, 39027, 39031, 39034 and 39042 of 2018

and

W.M.P. Nos. 32284 and 33039 of 2019

W.P. No. 33628 of 2018:-

- 1.H.Syril Sudhan
- 2.K.Thangaraj
- 3.R.Karunaharan
- 4.R.Renganathan

... Petitioners

-VS-

- 1.The State of Tamil Nadu
Represented by Principal Secretary to Government
Revenue and Disaster Management and Mitigation Department
Secretariat, Chennai – 600009.
2. The Additional Chief Secretary and Commissioner of
Revenue Administration
Chepauk, Chennai-600005.
3. The District Collector
Perambalur District
Perambalur-621212.
4. The District Revenue Officer
Perambalur.
5. M.Silambarasan
6. S.Srinivasan



W.P. Nos. 33628 & 33635 of 2018 etc., batch

7. K.Manimelgalai

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of (i) the third respondent herein in proceedings in Na.Ka.A3/2793/2018 dated 25.04.2018 and (ii) the proceedings of the fourth respondent in Pa.Mu.A3/4209/2017 dated 28.07.2017 and quash the same to the extent of the placement of the Respondents 5 to 7 above writ petitioners herein in the cadre of Revenue Inspector /Senior Revenue Inspector in Perambalur District and to grant all consequential benefits to the petitioners herein.

For Petitioners : Mr.M.Ravi

For Respondents : Mr.R.Neelakandan, AAG
Assisted by
Mrs.Yamuna Devi, SGP (RR1 to 4)
Mr.Vijayakumar, Senior Advocate
for M/s.G.Bharadwaj (RR5 to 7)

W.P. No. 33635 of 2018:-

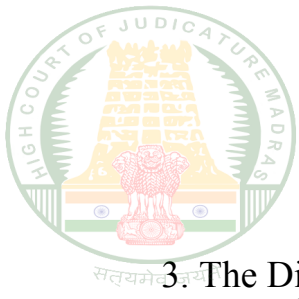
1.C.Prakash
2.K.Thangamani
3.A.Pushparani

... Petitioners

-VS-

1.The State of Tamil Nadu
Represented by Principal Secretary to Government
Revenue and Disaster Management and Mitigation Department
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2. The Additional Chief Secretary and Commissioner of
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W.P. Nos. 33628 & 33635 of 2018 etc., batch

3. The District Collector
Perambalur District
Perambalur-621212.

4. The District Revenue Officer
Perambalur District, Perambalur.

5. S.Srinivasan

6. K.Manimegalai

7. P.Sakthivel

... Respondents

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For Petitioners : Mr.M.Ravi

For Respondents : Mr.R.Neelakandan, AAG
Assisted by
Mrs.Yamuna Devi, SGP (RR1 to 4)
Mr.Vijayakumar, Senior Advocate
for M/s.G.Bharadwaj (RR5 to 7)

Contempt Petition No.1457 of 2021:-

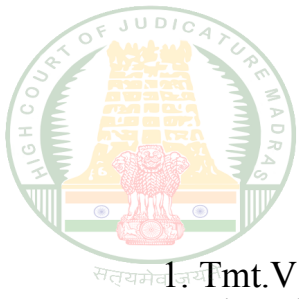
1.C.Prakash

2.K.Thangamani

3.A.Pushparani

... Petitioners

-VS-



W.P. Nos. 33628 & 33635 of 2018 etc., batch

1. Tmt.V.Santha, I.A.S.
The District Collector
Perambalur District
Perambalur-621212.

4. Thiru.C.Rajendran
The District Revenue Officer
Perambalur.

... Respondents

Prayer:- Contempt Petition filed under Section 11 of the Contempt of Courts Act to punish the respondents for willful disobedience of the order dated 02.01.2019 passed in W.P. No. 39042 of 2018.

For Petitioners : Mr.M.Ravi

For Respondents : Mr.R.Neelakandan, AAG
Assisted by
Mrs.Yamuna Devi, SGP (RR1 & 2)

Contempt Petition No.1464 of 2021:-

1.H.Syril Sudhan
2.K.Thangaraj
3.R.Karunaharan
4.R.Renganathan

... Petitioners

-VS-

1. Tmt.V.Santha, I.A.S.
The District Collector
Perambalur District
Perambalur-621212.

4. Thiru.C.Rajendran
The District Revenue Officer
Perambalur.

... Respondents



W.P. Nos. 33628 & 33635 of 2018 etc., batch

Prayer:- Contempt Petition filed under Section 11 of the Contempt of Courts Act to punish the respondents for willful disobedience of the order dated 02.01.2019 passed in W.P. No. 39034 of 2018.

For Petitioners : Mr.M.Ravi

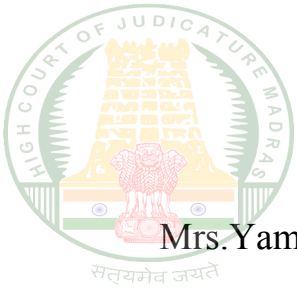
For Respondents : Mr.R.Neelakandan, AAG
Assisted by
Mrs.Yamuna Devi, SGP (RR1 & 2)

C O M M O N O R D E R

These writ petitions have been filed to call for the records pertaining to the proceedings of the third respondent dated 25.04.2018 and the proceedings of the fourth respondent dated 28.07.2017 and quash the same to the extent of the placement of the Respondents 5 to 7 above the writ petitioners herein in the cadre of Revenue Inspector /Senior Revenue Inspector in Perambalur District and to grant all consequential benefits to the petitioners herein.

2. The contempt petitions have been filed consequent to the non-compliance order of this Court dated 02.01.2019 in W.M.P. Nos. 39034 and 39042 of 2018 in W.P. Nos. 33628 and 33635 of 2018.

3. Heard Mr.M.Ravi, learned counsel for the petitioners and Mr.R.Neelakandan, learned Additional Advocate General assisted by



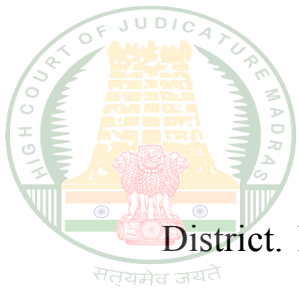
W.P. Nos. 33628 & 33635 of 2018 etc., batch

Mrs. Yamuna Devi, learned Special Government Pleader for the first to fourth

respondents in both the writ petitions and first and second respondents in both the contempt petitions and Mr. Vijayakumar, learned Senior Advocate assisted by M/s. G. Bharadwaj, learned counsel for the private respondents and perused the materials placed on record, apart from the pleadings of the parties.

4. The private respondents are the directly recruited Revenue Assistants in certain districts and transferred to Perambalur District on mutual consent. Before completion of their probation, they came on transfer to Perambalur District on mutual consent. In cases of transfer through mutual consent, there are certain conditions that the transferee will lose his seniority and his seniority cannot be fixed on the basis of his earlier service prior to his transfer.

5. The private respondents have agreed to the above conditions and only thereafter, they came on transfer to Perambalur District on mutual consent. As per the condition agreed by them, orders were passed keeping them below the junior most in the transferee district for the purpose of seniority. The petitioners in both these writ petitions are already serving in Perambalur District as Revenue Assistant / Senior Revenue Inspector and they have also completed their probation even before the entry of the private respondents to Perambalur



W.P. Nos. 33628 & 33635 of 2018 etc., batch

District. Even though the private respondents have been rightly placed below

the petitioners as per the conditions of the mutual transfer on willingness, all of a sudden, the fourth respondent had placed the private respondents above the petitioners by misquoting Rule 20 of the Tamil Nadu Ministerial Service Rules [hereinafter shortly referred to as 'the Rules']. Aggrieved over that, the petitioners in both writ petitions have filed these writ petitions challenging the orders refixing the seniority of the private respondents contrary to the Rules.

6. The learned counsel for the petitioners submitted that as the private respondents are transferred to Perambalur District on mutual consent at their request, their seniority has to be fixed below the junior most in the transferee district only in accordance with Rule 20(b)(i) of the Rules. Even though the seniority of the private respondents has been fixed in accordance with the Rules, immediately after their transfer to Perambalur District, the fourth respondent, all of a sudden, reshuffled their seniority by placing them above these petitioners without giving any prior notice to them.

7. The learned Special Government Pleader appearing for the first to fourth respondents submitted that the seniority of the private respondents has been rightly fixed by giving right construction to Rule 20(b)(i) of the Rules. It is

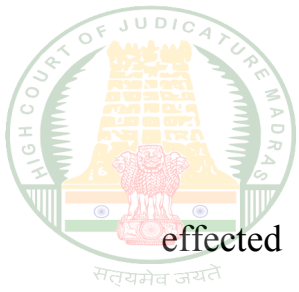


W.P. Nos. 33628 & 33635 of 2018 etc., batch

further submitted that as per Sub Rule 20(a) of the Rules, a probationer or an approved probationer may, in special cases and on grounds of administrative necessity, be transferred with the mutual consent of the appointing authorities and the authorities nominated by the head of the department for the purpose of allotment of candidates where there is more than one appointing authority. Such transfers can be effected permanently only with the consent of the commission. In the event of formation of any new District, the consent of the Commission is deemed to have been accorded for the purpose of transferring probationers and approved probationers from one unit to another unit on the ground of administrative necessities.

8. Apart from the mutual transfers effected due to administrative necessity on the basis of the mutual consent given by the appointing authorities, another type of mutual transfers can also be effected and that will arise even when the appointees desire for mutual transfers. In such cases also, as per 20(b) of the Rules, the administrative necessity referred in that sub-rule may be presumed to be existing. In the similar pattern, the Commission's consent can also be presumed to have been given.

9. However, the transfers on mutual consent between the individuals can be



W.P. Nos. 33628 & 33635 of 2018 etc., batch

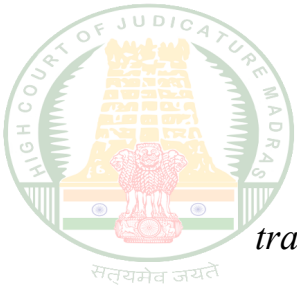
effected only when the individuals agree to certain conditions. The persons

opting to avail mutual transfers should accept the condition that the senior among the individuals should be given with the same rank to the unit where he is transferred. The same would refer to the rank which was held by the persons in whose place the senior person come to the transferee departmental unit. The junior of them who agreed to take his rank in his transferee unit with reference to the date of his first appointment in the service. Further, they will also forego the transferring allowance. So the agreement to get the seniority must be in accordance with the above condition and has to be accepted by persons coming on mutual transfers. It seems that there is a confusion with regard to the interpretation of the above Rule as the pattern employed in the Rule was complex.

10. For the sake of clarity, I feel it is appropriate to extract the 20 of the Rules to understand its meaning:-

"20. Transfers of probationers and approved probationers:

(a) Notwithstanding anything contained in rules 12 to 16 and 19, a probationer or an approved probationer may, in special cases and on grounds of administrative necessity, be



W.P. Nos. 33628 & 33635 of 2018 etc., batch

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transferred with the mutual consent of the appointing authorities and the authorities nominated by the head of the department for the purpose of allotment of candidates where there is more than one appointing authority, in the departmental unit concerned --

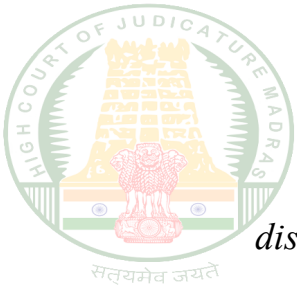
(i) from one office in a departmental unit to another office in the same departmental unit;

(ii) temporarily from an office in one departmental unit to an office in another departmental unit if both the offices belong to a department in which full members are ordinarily subject to transfers from one departmental unit to another; and

(iii) permanently from an office in one departmental unit to an office in another departmental unit:

Provided that a transfer under clause (iii) shall be made only with the consent of the Commission except in the case of Gujarathi knowing Assistants of the Commercial Taxes Department.

Provided further that the consent of the Commission may be deemed to have been accorded in the cases of transfer of Probationers and Approved Probationers from one unit to another unit, necessitated consequent on the formation of new



W.P. Nos. 33628 & 33635 of 2018 etc., batch

district.

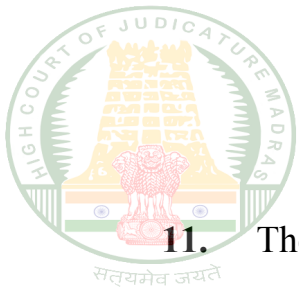
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(b) The grounds of administrative necessity referred to in sub-rule (a) may be presumed to exist and the Commission's consent referred to in that sub-rule may be presumed to have been given in the case of mutual transfers permanently from an office in one departmental unit to an office in another departmental unit if the persons desiring mutual transfers agree

--

(i) that the senior among the Assistants/Junior Assistants mutually transferred (on the basis of the date of their first appointment to the service) be given the same rank in the departmental unit to which he is transferred, which was held by the person in whose place he comes to that departmental unit and the junior of them takes his rank in the administrative unit of the departmental unit to which he is transferred with reference to the date of his first appointment in the service; and

(ii) that they will forego the travelling allowance for their journeys to the departmental units to which they are transferred."



W.P. Nos. 33628 & 33635 of 2018 etc., batch

11. The above Rule 20 of the Rules has made a provision for mutual transfer

from one unit (District) to another unit (District) either due to administrative contingencies or due to consent given by mutual transfers by two individuals working in two different units. All those transfers can be done only by getting the consent of the Commission [the recruitment Agency of the State], in case the said transfer is permanent in nature. Such transfers can be effected in cases of both probationers and approved probationers. Apart from the administrative contingencies in the departmental unit, transfer can also be effected through mutual consent of the individual employees also. In such cases also, according to Rule 20(b) of the Rules, the administrative necessity and the Commission's consent are presumed to be existing.

12. In cases where such mutual transfers are permanent in nature, persons who prefer to avail transfers to interdepartmental units through mutual consent can be having different position in their respective departmental unit with reference to their date of appointment to the service. So, in the event of mutual transfers, some arrangements have to be made only to give certainty for their seniority position in their respective administrative unit for which they have been transferred by consent. Most probably, among such two persons, who give mutual consent, one would be senior and another would be junior with



W.P. Nos. 33628 & 33635 of 2018 etc., batch

reference to their date of appointment. So, the senior person should be willing

to accommodate himself in the place of the junior person in the transferred unit.

In other words, the senior among the two individuals, who opted for transfer on mutual consent, shall not claim seniority over and above the junior's place in which he is accommodated in the transferee unit. The senior among two individuals, who opted for transfer on mutual consent, shall not be placed any position lower than the junior's place in which he is accommodated in the transferee unit.

13. But, in the case of junior among the two individuals, who opted for transfer on mutual consent, he shall not be placed in the position of the senior who had accommodated him in the transferee unit by giving mutual consent. So, the junior's seniority position in their respective transferee unit will be fixed in accordance with his first date of appointment and not in accordance with the seniority of the senior partner who had given him the vacancy to be accommodated in that administrative unit. This is obviously because a person, who is junior with reference to his first date of appointment, cannot claim undue seniority just because his partner, who had given consent for mutual transfer, was occupying a better seniority position. If the junior person is given with the same seniority of the senior person, whose place he is going to occupy,



W.P. Nos. 33628 & 33635 of 2018 etc., batch

then persons senior to him in the transferee unit will be affected. So, the junior

person can get accommodation in the transferee unit through mutual transfer, but he cannot secure the seniority of a senior person who was in partnership with him given consent for mutual transfer.

14. At the same time, the senior among the two individuals, who is willing to go on mutual transfer, cannot claim the same seniority in the transferee unit, but he can be accommodated in the position which his mutual junior partner had been occupying in that unit. So the word 'with reference to the date of his first appointment in the service' employed under Rule 20 of the Rules would assume significance only in relation to the seniority between the two individuals who have given a consent for mutual transfers. So, it is wrong to be presumed by the petitioners that the transferee persons coming on mutual transfers should be placed in the seniority ladder below the junior most in the transferee district.

15. It is equally wrong on the part of the department also to presume that the seniority of the persons transferred through mutual consent will be only in terms of their date of appointment irrespective of the seniority and the juniority of those two individuals. While the junior among those two persons, who come on mutual transfers, can retain seniority with reference to his date of

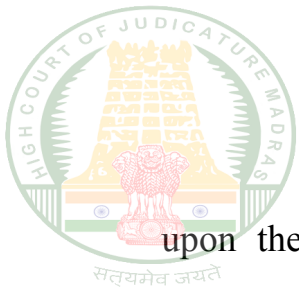


W.P. Nos. 33628 & 33635 of 2018 etc., batch

appointment, the senior among those two persons should be willing enough to

be placed in the position of the junior person in the recipients district, irrespective of his date of appointment. So, the seniority position between the two individuals who come on mutual transfer depends upon the seniority and the juniority between the two persons with reference to their date of appointment. Senior person among them has to concede to get accommodated in the seniority of the junior person to whose district he is going on transfer and the junior person shall get his seniority with reference to the date of his appointment and he cannot claim the seniority of his mutual partner, if he happened to be senior.

16. The above position of law can be better clarified with the following illustration. 'A' who is placed in 'X unit' and a person 'B' works in 'Y unit' prefer to go on mutual transfer to 'Y unit' and 'X unit' respectively. That is permissible. If 'A' is senior than 'B' with reference to their date of appointment, 'A' has to forego his seniority in the 'X unit' and he should accept the seniority position occupied by 'B' in 'Y unit'. 'B' who is junior on coming to 'X unit' cannot claim the seniority of 'A' but his seniority in 'X unit' will be fixed only in accordance with the date of his appointment. If the rule is inadequately understood that the seniority and mutual transfers will be based



W.P. Nos. 33628 & 33635 of 2018 etc., batch

upon the date of appointment of the persons involved in mutual transfer,

irrespective of their seniority and the juniority between them, it is not correct. It

is equally wrong if the mutual transfer is wrongly understood that the seniority and the juniority between the mutual partners, who come on mutual transfers, should be placed below the junior most in their respective transferee unit. As Rule 20 of the Rules has been wrongly understood because of the complexity of the language employed, I feel that both the petitioners and the department have got confused. If the department had rightly interpreted Rule 20 of the Rules as above and fixed the seniority position in accordance with the Rule, it would not have created an impression in the minds of the petitioners that the persons going on mutual transfers should be placed below the junior most in the transferee unit.

17. It appears that the respondent department was also not able to explain the way in which the petitioners should understand Rule 20 of the Rules, but they have been simply stating that the seniority of the persons going on mutual transfers will be fixed based on their date of appointment. There is no confusion in Rule 20 of the Rules, but the confusion has been caused only due to the shortsighted reading of the same and the resultant misunderstanding. Therefore, I feel that these writ petitions can be disposed by giving these



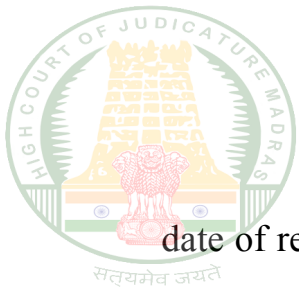
W.P. Nos. 33628 & 33635 of 2018 etc., batch

clarifications.

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18. If the fourth respondent has fixed the seniority of the persons who have come through mutual transfers to Perambalur District by adopting the pattern given under Rule 20 of the Rules, that need not be re-visited. If the department had re-fixed the seniority by not understanding Rule 20 of the Rules properly, then it is for both the district administrative units to rework and fix the seniority in accordance with the Rules and in accordance with the above interpretation. In case, the re-fixation of the seniority has been the rectification exercise in view of any mistaken earlier orders, that can be explained to the petitioners, as per the clarification given now to give a quietus.

19. In the result, **the writ petitions are disposed** with the above observations and the fourth respondent shall release the seniority list directly in accordance with the above interpretation given to Rule 20 of the Rules in this order, by giving opportunity to the petitioners to prefer an appeal, if they still feels that they are aggrieved. If the re-fixation of the seniority has already been done only in accordance with the above interpretation, it is sufficient to give a reply to the petitioners' representation in the manner known to law and in a manner understandable to the petitioners within a period of two weeks from the



W.P. Nos. 33628 & 33635 of 2018 etc., batch

date of receipt of a copy of this order and give a quietus to the matter once and

for all. Consequently, the connected Miscellaneous Petitions are closed.

20. In view of the above order passed in the writ petitions to fix the seniority of the persons came through mutual transfers to Perambalur District by interpreting Rule 20 of the Rules as clarified in this order, no further orders are required in the contempt petitions. With the said observation, **the contempt petitions are closed.** No costs.

23.04.2025

Internet: Yes

Index: Yes

Speaking Order

Neutral Case Citation: Yes

Maya

To

1. The Principal Secretary to Government of Tamil Nadu
Revenue and Disaster Management and Mitigation Department
Secretariat, Chennai – 600009.
2. The Additional Chief Secretary and Commissioner of
Revenue Administration
Chepauk, Chennai-600005.
3. The District Collector
Perambalur District
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Perambalur District, Perambalur.



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R.N.MANJULA, J.

Maya

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Dated : 23.04.2025