
(1995) 02 MAD CK 0106

In the Madras High Court

Case No : Writ Petition No's. 17737, 17738, 18121, 18162 and 19938 of 1994
and W.M.P. No's. 31996 and 31997 of 1994

G. Ramasamy and Others

APPELLANT

Vs

The High Court and Others

RESPONDENT

Date of Decision : 07-02-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 14, 141, 16, 226, 234
Tamil Nadu State and Subordinate Services Rules, 1955 — Rule 35
Tamil Nadu State Judicial Services (Cadre and Recruitment) Rules, 1995 — Rule 10,
11, 11(3), 11(4), 2

Citation : (1995) 02 MAD CK 0106

Hon'ble Judges : Shivaraj Patil, J;Kanakaraj, J

Bench : Division Bench

Advocate : R. Gandhi for R.G. Narendiran, Vijayakumar, J. Nagarajan, T.S. Sivagnanam, N. Paul Vasanthakumar, I. Mahaboob Sheriff, P. Selvi, N.R. Chandran for S.D. Venkateswaran, N. Radhakrishnan and Elango, for the Appellant; N. Jothi, Special Government Pleader, S. Govind Swaminathan, N.S. Sivan, G. Anbumani, J. Sivanandaraj, K.T. Paul Pandian, P. Rathinadurai, K. Mohan, K. Alagiriswami, Vijay Narayan, R. Parthiban, R. Vaigai, C. Selvaraju, S. Kamadevan, H. Hidayatullah Khan, S. Duraiswami and P.I. Tirumurthi, for the Respondent

Final Decision : Allowed

Judgement

Kanakaraj, J.—These Writ Petitions raise a very sensitive dispute between Judicial Officers belonging to the category of District Munsif-Cum-Judicial Magistrate in the Tamil Nadu State Judicial Service which post came into being by way of upgradation of erstwhile Judicial-Second Class Magistrates to the post of Judicial First Class Magistrates and integrating them with the post of District Munsif. It is sensitive because either way, one set of officers will lose several places in the seniority which may affect or even abrogate their entire future prospects in the Judicial career. We work in the hope of getting a reward. In service matters

promotion to a higher post, depends primarily, upon seniority. To continue in the same post life-long is nothing but a drudgery and frustration in life which will definitely affect the quality of work of an employee, more so in the judicial field.

2. Before dealing with the pleadings it will be good to understand the history of the case on the basis of a chronological statement of facts.

3. The Tamil Nadu State Subordinate Judiciary consisted of two separate services, one known as the Tamil Nadu Magisterial Service and the other known as the Tamil Nadu State Judicial Service. The Magisterial Service comprised of two categories, namely, (i) Sub-Magistrate who was later redesignated as Judicial Second Class Magistrate and (ii) Additional First Class Magistrate who was later redesignated as Judicial First Class Magistrate. The Judicial service also consisted of two categories of officers (i) Subordinate Judge, and (ii) District Munsif. Recruitment and promotions to these posts in the Tamil Nadu State Judicial Service was governed by Rules which were made in exercise of the power conferred by Article 234 and the proviso to Article 309 of the Constitution of India and these Rules were known as "The Tamil Nadu State Judicial Service Rules". Under these Rules, recruitment to the post of Subordinate Judge was only by promotion from the post of the District Munsif and appointment to the post of District Munsif was by direct recruitment from the Bar or by transfer from various posts in the State and Subordinate Services in the ratio of 11:9. There were as many as nine categories of posts which formed the feeder category for transfer to the post of District Munsif. Class 6 of the Feeder Category comprises of the Judicial Second Class Magistrates and Judicial First Class Magistrates in the Tamil Nadu State Magisterial Service. In the Magisterial Service, appointment to the post of Judicial First Class Magistrate was by promotion from the post of Judicial Second Class Magistrate or by transfer of service from Assistant Public Prosecutor Grade I, and appointment to the post of Judicial Second Class Magistrate was by direct recruitment from the Bar and by transfer from various departments of the Government in the ratio of 6:4. In the Judicial Service, the recruitment should be made only through the Tamil Nadu Public Service Commission. The names recommended by the Tamil Nadu Public Service Commission in the year 1965 was exhausted in the year 1967 and thereafter the vacancies which arose were being filled up by making temporary appointments by transfer from the eligible services and by direct recruitment from the Bar on the recommendation of the High Court. This inflow of temporary appointments by transfer was one of the reasons for the backlog in fixing seniority, regularisation and consequent promotions of the respective officers. During the years 1968 to 1974 nearly 110 Judicial Second Class Magistrates were appointed on transfer on purely temporary basis. Out of the said 110 Judicial Second Class Magistrates only about 37 were regularised in and by G.O.Ms. No. 1924, Home Department, dated 22.10.1975. In the year 1982 about 80 Judicial Second Class Magistrates were appointed temporarily by direct recruitment from among the Bar.

4. We must now notice certain legal proceedings initiated on behalf of the Bar for the recruitment of the District Munsifs in the State Judicial Service and the recruitment of Judicial Second Class Magistrates in the State Magisterial Service. Writ Petition, W.P. No. 12541 of 1985 was filed in the High Court seeking a direction to recruit and fill up the vacancies for the post of District Munsifs and Second Class Magistrates by-following the statutory rules. The Supreme Court passed an order on 5.8.1986 adopting the recommendation of the High Court, and directed the regularisation of such of those Magistrates who were found eligible on the basis of merit, ability and integrity. It was made clear that such Magistrates will be regularised only in the cadre of Judicial Second. Class Magistrate and not as Judicial First Class Magistrate or in the post of District Munsif. Scrutiny Committee was constituted and as many as 182 persons were recommended to be regularised. On subsequent orders of the Supreme Court, another 34 of the Magistrates were also recommended for regularisation. By G.O.Ms. No. 1053 Home (Courts-I) Department, dated 10.5.1985, 182 Second Class Magistrates were regularised and by G.O.Ms. No. 1269 Home (Courts-I) Department dated 2.6.1988, the second batch of 34 Judicial Second Class Magistrates were regularised.

5. Writ Petition, W.P. No. 11604 of 1981 was filed by the Chairman of the Tamil Nadu Bar Council and on 20.1.1982, this Court granted an interim injunction restraining the Government from regularising the services of the temporary Second Class Magistrates. Two other writ petitions, W.P. Nos. 3053 of 1984 and 3294 of 1984 were also filed seeking direction to fill up the vacancies in the posts of Magistrates and District Munsifs only in accordance with the statutory Rules. Ramanujam, J. on 10.5.1985 upheld the right of the Government to regularise the temporary Judicial Magistrates and also issued directions to fill up vacancies in the post of the District Munsifs. However, two temporary Magistrates had filed a writ petition because they were also allowed to participate in the selection process commenced by the Public Service Commission. In W.P. No. 9784 of 1985 the High Court directed that all appointments made pursuant to the selection should be made only on a temporary basis. By G.O.Ms. No. 846, Home Department dated 26.3.1986, 57 candidates were selected as District Munsifs and they were appointed on a temporary basis in view of the abovesaid interim order. For the substantial vacancies arising in the post of District Munsif during the years, 1985 to 1988 a notification was issued calling for applications from all. The persons regularised by the various Government Orders were also directed to attend the interviews which were conducted on 4.6.1988 and 5.6.1988. The results of the selection by the Public Service. Commission was announced on 7.6.1988. By G.O.Ms. No. 2064 Home (Courts) Department dated 21.9.1988, 128 candidates were selected and appointed as regular District Munsifs. Out of the selected candidates 70 members were from the Bar, 53 from the Magisterial service and five from the non-Magisterial service. The Public Service Commission ranked them according to the merit and ability and they were placed in the selection panel after applying the quota rules and communal rotation. Naturally

posting orders were issued by the first Respondent in Notification No. 103/88 dated 31.10.1988. In the meanwhile, G.O.Ms. No. 2196, Home (Courts-I) dated 6.10.1988 had come into effect from 6.10.1988. By this Government Order, a new post of District Munsif-Cum-Judicial Magistrate was created and the Tamil Nadu Magisterial Service Rules were repealed. The purport of the Government Order is to upgrade the Second Class Magistrate to the post of First Class Magistrate and integrating them with the new post of District Munsif-cum-Judicial Magistrate. The Tamil Nadu State Judicial Service Rules was correspondingly amended and a third proviso was introduced to Rule 20 of the Rules. According to the third proviso, the seniority of the upgraded and integrated District Munsif-cum-Judicial Magistrate were to be as follows:

- (a) Regular District Munsifs.
- (b) Regular Judicial First Class Magistrates.
- (c) Regular Judicial Second Class Magistrates according to their seniority.
- (d) Judicial First Class Magistrates regularised before 31.1.1976.
- (e) Judicial Second Class Magistrates regularised in the year 1988.

On 19.1.1989 without settling the seniority as between the, various incumbents of the post of District Munsif-cum-Judicial Magistrate, 14 of the 1986 appointees were promoted as Subordinate Judges which gave the cause of action for filing of the writ petition, W.P. No. 13579 of 1989. That writ petition was dismissed at the stage of admission itself, but by an elaborate order. Writ Appeal, W.A. No. 944 of 1989 was filed and the same was also dismissed on 18.12.1990. SLP No. 10214 of 1991 was filed against the order of the Division Bench and ultimately came to be dismissed on 5.12.1994. Even when the SLP was pending, the Administrative Committee No. III of the first Respondent issued R.O.C. No. 111/94 B.2 dated 12.8.1994 purporting to fix the seniority list of the integrated District Munsif-cum-Judicial Magistrate in a particular manner by giving an interpretation to Rule 2(b) and Rule 2(10) of the Judicial Services Rules. The said notification was made subject to the result of SLP 10214/91. As many as 105 persons had submitted their objections and they were all considered by the Administrative Committee No. III on 15.9.1994. Thereafter the matter was placed before the Full Court on 23.9.1994 and the minutes of the Administrative Committee were approved by the Full Court. In pursuance thereto a seniority list was prepared and published in the Tamil Nadu Government Gazette dated 12.10.1994, which is challenged in all these writ petitions. A learned single judge of this Court had admitted the writ petition and had granted stay and at the same time placed the matter before My Lord the Chief Justice for consideration as to the posting of the case before an appropriate Division Bench. It is thus, these matters had come before us. We had extended the interim orders from time to time and have decided to dispose of the matter finally without giving room for any final order in the miscellaneous petitions.

6. We will now briefly refer to W.P. No. 17737 of 1994. This writ petition has been filed by four directly recruited District Munsifs from the Bar in the selection conducted in the year 1988. They were appointed by G.O.Ms. No. 2064, Home, dated 21.9.1988. They were, however, issued with posting orders only on 31.10.1988 and they joined the post after 1.11.1988. The facts of W.P. No. 17738 of 1994 require to be noticed. This writ petition has been filed by two Second Class Magistrates who were selected by the Tamil Nadu Public Service Commission for the year 1988. They were ranked as 2 and 15 respectively. They came to be appointed by the order dated 21.9.1988 in the substantial vacancies. Posting orders were issued only on 31.10.1988. In and by the impugned seniority list they have been pushed back to the 204 and 172 respectively. They have filed objections against the provisional seniority list. W.P. No. 18162 of 1994 has been filed by a member of the Bar who had been selected by the Public Service Commission in the year 1988, He was ranked as 109 and he joined the post on 11.11.1988. W.P. No. 18121 of 1994 has been filed by four directly recruited candidates from the Bar during the year 1988 and they were ranked as Nos. 65, 22, 30 and 37 respectively by the Public Service Commission. They were also appointed by the Government Order dated 21.9.1988 and they were given posting orders on 31.10.1988. In the impugned seniority list they have been assigned Rank Nos. 291 to 362. W.P. No. 19938 of 1994 has been filed by a candidate selected by the Public Service Commission in the year 1988. However, the prayer in this writ petition is slightly different. The prayer is to declare G.O.Ms. No. 1269 Home (Courts-I) Department dated 2.6.1988, in and by which the services of 216 temporary Second Class Magistrates were regularised from the date of their original appointment. Since all the writ petitions challenge the impugned seniority list on the basis of certain common grounds, it is not necessary to refer to each of the affidavits filed in support of the writ petitions. We will refer to the common grounds of attack against the impugned seniority list. They are as follows:

The impugned seniority list was made subject to the result of the Supreme Court decision in SLP No. 10214 of 1991. In the proceedings culminating in SLP No. 10214 of 1991 the inter se seniority was fully discussed and the claim of the Magistrates to be assigned ranking over and above the regular District Munsifs was well and truly rejected. The earlier proceedings therefore, operate as a res judicata and debar the Respondents from raising any further contention on the question of inter se seniority. Necessarily therefore, the High Court must amend the seniority list in accordance with the judgments rendered earlier. Secondly, it is pointed out that even if the strict principles of res judicata do not apply, the decision of the Supreme Court in the said SLP is a law declared under Article 141 of the Constitution of India and will bind all the parties especially the High Court and the Government. Thirdly, it is pointed out that no individual orders have been passed upgrading the Second Class Magistrates to the post of First Class Magistrates. Consequently, it cannot be claimed that the Second Class Magistrates have been integrated with the post of District Munsif-Cum-Judicial

Magistrate. G.O.Ms. No. 2064 dated 21.9.1988 is an order of appointment of regular District Munsifs and they had been selected in respect of vacancies arising during the years 1985 to 1988. Therefore, the persons mentioned in G.O.Ms. No. 2064 dated 21.9.1988 had been regularly appointed in respect of vacancies which had arisen long before the integration on 6.10.1988. The further contention is that the seniority of the selected candidates, selected by the Public Service Commission, will depend purely on the ranking given by the Service Commission and such a ranking can never be altered. Rules 2(b) and 2(10) relate only to the commencement of the probation and has nothing to do with the seniority. A separate contention has been raised in W.P. No. 19938 of 1994 challenging regularisation of the Second Class Magistrates on the ground that it is contrary to the-earlier directions of the Supreme Court.

7. Apart from the Registrar of the High Court, several other Respondents have filed individual counter affidavits in detail and raise a common ground of attack against the writ petition. It is therefore sufficient to notice the common grounds of defence taken in all the writ petitions. We will now set out the common grounds seriatim. The first main ground of defence is that the principles of res judicata do not apply because

- (a) Cause of action for the earlier proceedings was different.
- (b) The parties in the earlier case are different from the parties who have been impleaded in the present proceedings.
- (c) The point directly and substantially in issue, in the earlier proceedings was totally different from the point now raised before the Court.

The second main contention urged on behalf of the Respondents is that, in none of the earlier proceedings the applicability of Rules 2(b) and 2(10) were raised and considered by the courts. In fact those rules have not even been adverted to by any of the courts while rejecting the claim of the 18 Magistrates. It is, therefore, argued that the Supreme Court had no occasion to declare the law on the applicability of the Rules 2(b) and 2(10) and that this Court is free to take an independent decision on the applicability of the Rules 2(b) and 2(10) and decide the inter se seniority. The Respondents further contend that Rules 2(b) and 2(10) are in the definition clause and they pervade the entire scheme of the Rules. According to them, the definition clause cannot be read in isolation. If the Rules 2(b) and 2(10) read along with the third proviso to Rule 20 the one and only meaning that can be given is that persons can reckon or count their seniority only from the date on which such persons discharge the duties of the office in the post of District Munsif-cum-Judicial Magistrate. So construed, the Petitioners had never become the members of the service on 6.10.1988 and consequently they cannot take seniority over the Respondents who were integrated into the post of District Munsif-cum-Judicial Magistrate with effect from 6.10.1988. So far as the contention that individual orders are necessary for upgrading the Second Class Magistrates, it is pointed out that the Government Order, G.O.Ms. No. 2196

dated 6.10.1988 is a complete order which upgrades all the incumbents in the office of the Second Class Magistrates. So far as the validity of G.O.Ms. No. 1269 dated 2.6.1988, it is contended that the attack on the second said Government Order is belated and in any event the said Government Order is perfectly in accordance with law.

8. On the above pleadings and arguments of the counsel elaborating their respective stands, we raise the following issues for our consideration:

(1) Are the Respondents barred by the principle of res judicata from supporting or sustaining the impugned seniority list because of the judgment of the Supreme Court in SLP No. 10214 of 1991 confirming the judgments of the Division Bench in W.A. No. 944 of 1989 and the single judge in W.P. No. 13579 of 1989.

(2) Even if the principles of res judicata do not apply, are the parties governed by the law declared by the Supreme Court in the said SLP No. 10214 of 1991? If so, what was the law declared by the Supreme Court?

(3) De hors issues 1 and 2, is the impugned seniority list based mainly on the application of Rules 2(b) and 2(10) and third proviso to Rule 20 of the Tamil Nadu State Judicial Service Rules legal, valid and enforceable, on first principles?

(4) Are the Petitioners justified in challenging the regularisation of the Magistrates?

(5) Is individual upgradation and integration necessary to treat the Respondents as District Munsif-Cum-Judicial Magistrate in the newly created post?

(6) Is the impugned seniority list vitiated by the failure to comply with the principles of natural justice and the failure to give reasons for rejecting the objections of the Petitioners?

(7) To what relief are the parties entitled to?

9. Issue No. 1 - Res judicata.

The question is whether the earlier proceedings commencing from W.P. No. 13579 of 1989 and ending with SLP No. 10214 of 1991 constitute a bar and operate as res judicata against the stand taken by the Respondents in these proceedings. Since considerable emphasis has been placed by the Petitioners on this aspect of the case and since the said argument has been repudiated with equal force by the Respondents we will begin from the beginning of the earlier proceedings. W.P. No. 13579 of 1989 was filed by 18 Magistrates, two of whom were selected by the Tamil Nadu Public Service Commission and the others by a committee of Hon''ble Judges to the post of Sub-Magistrates. In the year 1973-74 the post of Sub-Magistrates was re-designated as Judicial Second Class Magistrates and the post of the Additional First Class Magistrate was re-designated as Judicial First Class Magistrate. According to the Petitioners, they had been regularised in the service from the year 1974. They then refer to the

non-recruitment of District Munsifs from the year 1974. All the Petitioners in the said writ petition had been appointed as District Munsifs on a purely temporary basis and not by a regular selection. They had however, been regularised as Judicial Second Class or First Class Magistrates as the case may be. Reference is then made to the notification calling for applications to fill up the post of District Munsif in a regular manner made on 5-2-1985. Such of the Petitioners who have qualified for appointment also applied under the said notification. 58 candidates were selected out of whom 56 alone were appointed. 17 persons were selected by transfer from the temporary District Munsifs. Similarly in the year 1988 the selection of 128 candidates by the Public Service Commission to the post of District Munsif is also referred to. Some of the Petitioners had been selected in the year 1988 selection. It is admitted that these selected candidates were appointed on a temporary basis only because a writ petition was filed challenging the selection and on no other ground. It is then stated that under G.O.Ms. No. 2168 dated 6.10.1988 the upgradation and integration took place. It was claimed that the Petitioners in the said writ petition were, therefore, regular District Munsif-cum-Judicial Magistrates. On the other hand, it was alleged that the candidates selected by the Public Service Commission in the year 1986 and 1988 by direct recruitment had been appointed only on a temporary basis. It was, therefore, claimed that 18 Petitioners were senior to the direct recruits in the inter se seniority list. Reference is also made to third proviso to Rule 20 of the Tamil Nadu State Judicial Service Rules. Since 18 promotions were made to the post of subordinate Judges overlooking the Petitioners and apprehending further promotion, the said writ petition had been filed. The following sentence in paragraph 17 of the writ petition has a considerable bearing on the issue in question. It is as follows:

If for any reason the Respondents choose to come forward with a stand that proviso 3 to Rule 20, refers only to those who were selected by the Public Service Commission as regular District Munsifs, that proviso is liable to be struck down as it is irregular, illegal and violative of Articles 14 and 16 of the Constitution of India.

It was also contended that the date of first appointment as District Munsif and length of continuous service as District Munsif alone should be the basis for the fixing seniority. They claimed that they had been regularly appointed as District Munsifs from the date of their first appointment. They refer to Rule 2(b) and Rule 2(10) of the Tamil Nadu State Judicial Service Rules, and claimed that they have been appointed to the service. They understood the third proviso to Rule 20 as depriving them of their right to seniority from the date of their first appointment as District Munsif. On the above facts, the Petitioners prayed for the issue of a writ of certiorarified mandamus to quash the third proviso to Rule 20 and for a direction to prepare the seniority list taking into account the date of their first appointment as District Munsif. It cannot, therefore, be disputed that the Petitioners therein considered the third proviso to Rule 20 as a stumbling-block in having their seniority fixed above the direct recruits of the year 1986 and 1988.

In fact, Mr. C. Selvaraj, Learned Counsel for some of the Respondents had used the very words namely, that the third proviso to Rule 20 was a stumbling-block to the claim of the Magistrates. The writ petition came to be disposed of by S. Ramalingam, J. at the stage of admission itself on 5.10.1989. Therefore, there was no chance of the Respondents filing any counter affidavit. Learned judge has posed the question for consideration in the following manner:

In the year 1988, the Tamil Nadu Public Service Commission selected 128 candidates for the post of District Munsifs. After such selection and appointment of the District Munsifs through the Public Service Commission, the Government considered the question of fixation of inter-se seniority between the persons who were thus directly recruited through the Public Service Commission as District Munsifs and persons who had already been working either as Magistrates or as District Munsifs, like the Petitioners herein.

Learned judge specifically says that the claim of the Petitioners was that they should be fixed above the persons who were recruited as District Munsif through the Public Service Commission in the year 1988. Learned judge has observed that the Services of District Munsif- cum-Judicial Magistrate came into force only on 6.10.1988. Learned judge also says that the service of the Petitioners therein as regular Magistrates was an inferior service till it was upgraded and equated to the cadre of the District Munsif. Dealing with the third proviso, learned judge observed:

A First Class Magistrate was promoted and appointed as a District Munsif. Therefore, after integration of these posts into a combined category, if an erstwhile Judicial Magistrate of the First Class is placed below a regularly appointed District Munsif in the matter of seniority, there is nothing illegal or improper about it.

10. It was the contention of Mr. Vijay Narayan for some of the Respondents that the observations of S. Ramalingam, J. were out of context and purely obiter. We are unable to accept this contention because we have already extracted some of the passages in the affidavit filed in support of that writ petition which warrants the observations of the learned Judge. It has to be, however, noticed that the argument as now pressed before us and adumbrated by us as Issue No. 3 was not elaborated before the learned judge. We are, however, constrained to observe that all points which were available to the Petitioners should have been urged and it will not be proper for the Petitioners therein to say that one of the grounds was not urged and they should be allowed to urge such a ground once again in the proceedings before us. It appears to us that Explanation IV to Section 11 CPC takes care of such a situation and will certainly come to the aid of the Petitioners before us.

11. We have yet to travel some more distance on the plea of res judicata. The said judgment of S. Ramalingam, J. came up for challenge before a Division Bench of this Court in W.A. No. 944 of 1989 and the judgment of the Division

Bench is reported in *Meenakshi Sundaram v. Government of Tamil Nadu* 1991 (I) M.L.J. 573. The Division Bench has also traced the history of the case and the regularisation of the temporary services of the Judicial Second Class Magistrates in two batches under G.O.Ms. No. 1053 dated 10.5.1988 and G.O.Ms. No. 1269 dated 2.6.1988 whereby 182 and 34 temporary Judicial Magistrates were regularised. They then referred to the direct recruitment of the District Munsifs on 26.3.1986 (56 candidates) and 128 candidates on 21.9.1988. They then referred to the integration G.O.2168 dated 6.10.1988.

Observes the Division Bench:

...at this stage the Tamil Nadu State Judicial Service consisted of three categories of Classes of District Munsifs: (1) Those who were regularly appointed through the Tamil Nadu Public Service Commission on 26.3.1986 and 21.9.1988; (2) Those who were selected and appointed by the Tamil Nadu Public Service Commission from out of the regularised Judicial Second Class Magistrates; and (3) those who became District Munsifs on 6.10.1988 consequent upon the principle of integration.

The Division Bench then refers to the category of temporary appointments under Rule 11(3) of the Tamil Nadu State Judicial Service Rules. So far as regular appointments to the post of District Munsif, the Division Bench refers to Rule 7 and Rule 5 of the Tamil Nadu State Judicial Service Rules. They point out that, in the case of the Magistrates those requirements of Rules 5 and 7 were not adhered to. They refer to the fact that all the Judicial Magistrates appeared before the Public Service Commission and took a chance for selection as regular District Munsifs. Such of those Magistrates who were not able to get selection by the Public Service Commission, came to be designated as District Munsif-cum-Judicial Magistrate only by G.O.Ms. No. 2196 dated 6.10.1988. The Division Bench then considers Rule 20 of the Tamil Nadu State Judicial Service Rules, relating to the determination of the seniority of the members of the State Judicial Service. It has to be remembered that as and from the date of the amendment of the Tamil Nadu State Judicial Service Rules, the service constituted of a new post called District Munsif-cum-Judicial Magistrate. After referring to Rule 20(1) the Division Bench observed:

The emphasis in the rule is upon the ranking assigned in the list prepared by the Tamil Nadu Public Service Commission and neither upon the date of appointment, nor upon the formal order of joining.

(emphasis supplied)

The Division Bench elaborates its decision by referring to the three stages involved in a person's service namely,

(a) selection for appointment;

(b) appointment; and

(c) posting and actual joining in service. Rule 20 of the Rules provides for the ranking assigned by the selecting authority in the select list of candidates to be the criteria.

They specifically highlight the point that the third proviso to Rule 20 was introduced only in the context of the integration and the principles to be adopted in determining the inter se seniority. The Division Bench has clearly distinguished the case of the appointees by the Tamil Nadu Public Service Commission and hold that they got selected as District Munsifs prior to 6.10.1988. It is again reiterated that the third proviso to Rule 20 was necessitated and designed to meet an extra-ordinary situation prevailing in the particular Judicial Service and in the context of integration of the Magisterial Service and the Judicial Service. While upholding the third proviso to Rule 20, the Division Bench observed:

Though the grievance of the Appellants is not justified but even assuming, without accepting that hardship would be caused to the Appellants, it cannot be overlooked that in service jurisprudence questions of rationalisation and integration are of a complicated administrative nature where, in doing broad and substantial justice, some may have to suffer, but that, by no stretch of imagination, can provide justification to the courts for interference in exercise of the jurisdiction under Article 226 of the Constitution of India.

Again the Division Bench giving several reasons, which prompted the Government to introduce the third proviso to Rule 20, says in the fourth reason as follows:

(d) the need for their getting selected through the regular process of selection prescribed by the rules governing the State Judicial Service;

One other important observation of the Division Bench which should be noticed by us is as follows:

Both this Court as well as the apex court, as already noticed, categorically laid down that persons regularly appointed in accordance with the rules and those appointed outside or in relaxation of certain rules belonged to different or distinct classes or streams or categories and, therefore, there cannot be any comparison between them or justification or scope for fixing inter se seniority among them, treating them to be equals or as belonging to a single unit or class.

Again they observed:

...it is now well settled, cannot be considered sufficient to confer a benefit or right upon those persons in the matter of fixation of inter se seniority to the detriment of the other members of the service who, under relevant rules, have a secured and specified place and ranking of their own determined by the Tamil Nadu Public Service Commission, which alone would be the determinative factor in relation to the fixation of inter se seniority amongst the members constituting the service as a whole.

(emphasis supplied)

12. In the grounds of appeal in SLP No. 10214 of 1991 certain very interesting aspects have been brought to our notice. It is admitted that on the date of the integration namely, 6.10.1988 there was not a single District Munsif in service. They refer to the fact that the appointees under G.O.Ms. No. 2064 dated 21.9.1988 got posting orders only on 31.10.1988, and started discharging service in the post of District Munsif-cum-Judicial Magistrate only on and after 1.11.1988. The very Rules 2(b) and 2(10) which are now the subject matter of issue No. 3 was adverted to in ground (C) of the said grounds. Necessarily we have to presume that these grounds were fully urged before the Apex court in the Special Leave Petition. Notwithstanding such arguments the Supreme Court passed an order on 5.12.1994 which is extracted below for the sake of convenience and completion.

We have heard Learned Counsel for the parties. We see no ground to interfere with the well reasoned judgment of the Division Bench of the High Court. We agree with the reasoning and the conclusions reached therein. SLP is dismissed.

Intervention application is also dismissed.

I.A. filed by Respondent No. 2 is dismissed as withdrawn.

13. In such state of affairs it is idle to contend that the issue raised now before us in the form of issue No. 3 was not argued in the earlier proceedings. The best that can be said in favour of the Respondents is that Rules 2(b) and 2(10) of the Tamil Nadu State Judicial Service Rules were not adverted to either by the Division Bench or by the Apex Court. But the substance of the same have definitely been adverted to by the Division Bench in the passages quoted above.

14. There is one other important aspect which is closely related to the issue on the applicability of the principles of res judicata. We have already noticed that before S. Ramalingam, J. in W.P. No. 13579 of 1989 no counter affidavit was filed because the writ petition was dismissed at the stage of admission. However, when Writ Appeal, W.A. No. 944 of 1989 was being disposed of after hearing both sides, the Government filed a counter-affidavit. It is worthwhile to notice the stand taken by the Government and the Registrar in the said Writ Appeal. Reference is made to the Tamil Nadu References to Magistrates in Laws (Special Provision) Act, 1980 which was enacted in September, 1980 which did not come into force for a long time until after the integration G.O.Ms. No. 2196 dated 6.10.1988. It is explained why the District Munsif selected in the year 1986 were given postings only in a temporary manner because of the order in W.M.P. No. 14751 of 1985 in W.P. No. 9784 of 1984. The reason for introducing the word "regular" before the word "District Munsif" in the third proviso to Rule 20 is stated as follows:

The District Munsifs referred to above are those appointed regularly upto 1975 and during the year 1975. Therefore, it was decided that the expression

"regular" might be inserted before the word District Munsif referred to above. Accordingly, the said proviso to the proposed rule was amended.

In paragraph 13 of the counter affidavit the stand of the Government is made explicit by saying that only those District Munsifs who had been appointed under Rule 11(4) of the Tamil Nadu State Judicial Service Rules will not be considered for seniority meaning thereby that candidates regularly selected by the Public Service Commission will be considered for seniority in accordance with the third proviso to Rule 20. In respect of the temporary District Munsifs recruited under Rule 11(4) of the Rules, it was made clear that their seniority will be fixed only after regularisation. In other words, the Government understood the third proviso to Rule 20 of the rules, as District Munsifs recruited by the Public Service Commission as regular District Munsifs and District Munsifs recruited under Rule 11(4) of the Rules as District Munsifs who needed further regularisation before being considered for seniority. They, therefore, sought for dismissal of the writ appeal.

15. Further in the Writ Appeal, three persons selected by the Public Service Commission in the year 1988 got themselves impleaded and they also filed a counter affidavit. We have already referred to the grounds of appeal in the SLP No. 10214 of 1991. We will now refer to the counter affidavit filed by the Registrar of the High Court on 1-2-1993 in SLP No. 10214 of 1991. The counter affidavit supports the judgment of the Division Bench in Writ Appeal No. 944 of 1989, regarding 56 District Munsifs directly recruited by the Public Service Commission in the year 1986. The specific stand is as follows:

As such the aforesaid 56 District Munsifs have been recruited through Tamil Nadu Public Service Commission on regular basis in accordance with the Rules and therefore they cannot be termed as Temporary District Munsif as stated by the Petitioners.

They also make a distinction between the direct recruits and the temporary District Munsifs appointed under Rule 11(4) of the Rules. The counter affidavit seeks to sustain the seniority of 56 District Munsifs recruited in the year 1986 over and above the temporary District Munsifs appointed under Rule 11(3) of the Rules. But so far as the candidates recruited in the year 1988 the High Court sought to make a difference between the candidates recruited from the Bar and the candidates recruited from the Magisterial Service. They took the specific stand that the directly recruited candidates from the Bar had joined the service only in November, 1988. Therefore, their seniority has to be fixed below the 214 regularised Second Class Magistrates. But there was, however, no reference to Rules 2(b) and 2(10) of the Judicial Service Rules. An additional counter affidavit was filed on 18.10.1994, by which date the impugned, seniority list had been prepared and published. Consequently in this additional counter affidavit, the entire reasoning of the Administrative Committee which prepared the impugned seniority list was set out. The counter affidavit sought the blessings of the Apex Court on the impugned seniority list which was specifically made subject to the

decision of the Supreme Court in SLP No. 10214 of 1991. In the earlier counter affidavit dated 1.2.1993 the High Court had sought for dismissal of the SLP whereas in the second counter affidavit the High Court sought for consideration of the impugned seniority list and sought for appropriate orders. What is more, a separate application was filed on behalf of the Registrar, High Court seeking permission to give promotion on the basis of the impugned seniority list. It is in this context that the Supreme Court had passed the order on 5.12.1994 which we have extracted already. The application to implement the impugned seniority list was dismissed as withdrawn, apparently because the SLP itself was dismissed upholding each and every one of the findings of the High Court in Writ Appeal No. 944 of 1989 and Writ petition No. 13579 of 1989.

16. In our opinion, apart from the principle of *res Judicata* and the law as declared by the Supreme Court, it will be incorrect to implement the impugned seniority list for two good reasons. The first is the impugned seniority list was made subject to the result of SLP No. 10214 of 1991 and since the SLP has been dismissed, the seniority has to be revised. The second reason is that the High Court having specifically asked for permission to implement the impugned seniority list and having withdrawn the same apparently after the Apex Court expressed its opinion on the main question, the respect and regard for the apex court warrants a revision of the seniority in accordance with the judgments rendered in W.P. No. 13579 of 1989 and Writ Appeal No .944 of 1989 which were confirmed by the Supreme Court. When specific grounds have been raised in the SLP and when the High Court had pleaded these very grounds now raised under Issue No. 3 in respect of the impugned seniority list certainly this Court cannot presume or assume that those points were not urged before the Supreme Court. The normal and legal presumption is that those points were also urged before the Supreme Court and did not find favour with the Apex Court.

16-A. One of the cardinal principles of *res judicata* contained in Section 11 CPC and which are relevant for our case is Explanations in, IV and V and we quote the same.

Explanation III: The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV: Any matter which might and ought to have been made ground of defence or attack in such former suit be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V: Any relief claimed in the plaint which is not expressly granted by the decree shall for the purposes of this section, be deemed to have been refused.

17. With this background we will refer to the decisions cited at the Bar on the applicability of the rules of *res judicata*. In *The Direct Recruit Class-II Engineering Officers" Association and others Vs. State of Maharashtra and*

others, a similar question relating to the rivalry for seniority in service between the direct recruits and the promotees was in issue. It was also a case where the right of the engineers was espoused in a representative capacity. That was also a case where a considered judgment of the High Court was confirmed by dismissing a SLP in limine applying the principles of *res judicata*. The Apex Court observed:

The binding character of judgments of courts of competent jurisdiction is in essence a part of the rule of law on which the administration of justice, so much emphasised by the Constitution, is founded and a judgment of the High Court under Article 226 passed after a hearing on the merits must bind the parties till set aside in appeal as provided by the Constitution and cannot be permitted to be circumvented by a petition under Article 32. An attempted change in the form of the petition or the grounds cannot be allowed to defeat the plea as was observed at page 595, *Daryao and Others Vs. The State of U.P. and Others*, of the reported judgment, thus:

We are satisfied that a change in the form of attack against the impugned statute would make no difference to the true legal position that the writ petition in the High Court and the present writ petition are directed against the same statute and the grounds raised by the Petitioner in that behalf are subsequently the same.

18. In *Mathura Prasad Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy*, it is stated that an erroneous decision ousting jurisdiction or usurping jurisdiction will not operate as *res judicata*. We are not concerned with such a case. In *Supreme Court Employees Welfare Association v. Union of India* AIR 1990 S.C. 335 it was held that even an erroneous decision may operate as *res judicata* between parties in a subsequent proceeding.

19. Per contra, it is argued that the principle of *res judicata* has no place at all because the parties in the earlier proceedings were different and the earlier decision cannot bind all the persons in the present impugned seniority list. Secondly, it was also argued that the issue now raised as Issue No. 3 was not directly and substantially in issue before the earlier proceedings. It is also argued that the cause of action for the earlier proceedings was different. According to Mr. K.T. Palpandian and Mr. Vijay Narayan the cause of action for the earlier writ petition, W.P. No. 13579 of 1989 was the attempt of the High Court to promote 14 of the 1986 direct recruits to the post of Subordinate Judges. It was then apprehended by some of the Magistrates that more such promotions would be given from the direct recruits of the years 1986 and 1988. The contention is that only question which was decided in the earlier proceedings was whether temporary service of the Magistrates in the post of District Munsif should be taken into account or not. Secondly, the validity of the third proviso was also questioned in those proceedings. The argument is that the validity of the third proviso has been upheld and the Respondents do not quarrel about the same. Similarly, they do not quarrel about the non-inclusion of their temporary service.

Accepting the findings in the earlier proceedings, it is argued that while applying the third proviso, the Respondents have now found that the 1988 direct recruits had not become members of the service and therefore, they cannot be called as regular District Munsifs. It is only when the incumbents got posting orders, they can be deemed to have been appointed to the service. Prior to that they are not members of the service at all. We have already noticed the fact that the argument in this form was not projected before the High Court or the Supreme Court. At any rate the judgments delivered in the earlier proceedings do not refer to such an argument. This argument on behalf of the Respondents, though attractive, is in our opinion, fallacious. So far as 1986 direct recruits are concerned, this argument was in fact advanced and rejected by the courts. While doing so the case of the 128 direct recruits of the year 1988 has also been discussed. If one carefully analyses the stand taken by the Government and the High Court in the earlier proceedings at the stage of the writ appeal and S.L.P., one could easily see that the broad distinction made by the Respondents was in respect of those District Munsifs who were acting temporarily under Rule 11(3) of the Tamil Nadu State Judicial Service Rules and those District Munsifs who had been regularly recruited by the Public Service Commission.

It is clear that the court had accepted the stand that persons regularly recruited by the Public Service Commission should be placed above the persons regularised under Rule 11(4) of the Tamil Nadu State Judicial Service Rules. This, in our opinion, is the ratio of the judgments rendered in the earlier proceedings. To this extent we have quoted several passages of the judgment of the Division Bench in W.A. No. 944 of 1989. If this much is accepted the same ratio will apply in respect of 128 District Munsifs directly recruited in the year 1988 and they will be entitled to be placed above the Magistrates regularised, upgraded and integrated. We are, therefore, clearly of the opinion the ratio involved in the present set of writ petitions, and the ratio of the earlier proceedings is one and the same namely, that the directly recruited District Munsifs should be deemed to be regular District Munsifs in the sense that they were not recruited under Rule 11 of the Tamil Nadu State Judicial Service Rules, but recruited in accordance with the Rules by the Public Service Commission. This aspect of the case will be elaborated by us while discussing Issue No. 3. We are, therefore, convinced that the earlier proceedings culminating in the order of the Supreme Court in SLP No. 10214 of 1991 will certainly operate as *res judicata* against the present stand of the Respondents. So far as the question of parties being different, it has to be remembered that though only 18 Magistrates filed the writ petition, at the stage of SLP all the directly recruited District Munsifs were impleaded in I.A. No. 4 of 1991 in SLP No. 10214 of 1991. Therefore, both the sides were adequately represented. As rightly pointed out by Mr. N.R. Chandran, it is a class litigation and it cannot be said that the viewpoint of either side was not placed before the Courts. In this connection, we have already referred to the grounds of SLP and an application separately filed by the High Court in I.A. No. 2 of 1991. In addition, Mr. N.R. Chandran argues that the prayer in the writ petition, W.P. No.

13579 of 1989 and the judgment rendered therein must be deemed to be a judgment in rem. We do not therefore accept the plea that the parties in the two sets of proceedings are different and therefore, the principles of res judicata should not be invoked.

20. Mr. Vijay Narayan brought to our notice the judgment of the Supreme Court in Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others, to suggest the manner of culling out a ratio of the decision. In that case, the apex court has pointed out that the facts and the arguments of the parties should be taken note of to find out the correct ratio of the decision. For instance, Learned Counsel argues that there is a major premises on which the earlier judgments were rendered and there was equally a minor premises on which the same opinions were given. The contention is that the ratio on the major premises does not refer to the points raised in the present set of cases. In other words, the argument is that the issue was not raised earlier and the mere fact that it was raised at the appellate stage, will not debar the Respondents from raising the issue. To the same effect is the argument of Mr. K.T. Palpandian and for this purpose he relies on the judgment of this Court in Venkataratnama v. Krishnama AIR 1921 Mad 21. Mr. Vijay Narayan also relies on the judgment of the Full Bench of this Court in Phillip Jeyasingh Vs. The Joint Registrar of Co-operative Societies and Others, to which we will make a reference when we discuss the next issue. Municipality of Taloda Vs. The Charity Commissioner and Others, is peculiar to the facts of the said case and does not advance the case of the Respondents. Kumarandiy Kudumban v. Venkatasubramania AIR 1927 Mad 645 does give room for the proposition that where every attempt is made to bring all the persons interested before the Court and where the right of all other similar claimants are also urged, Explanation VI to Section 11 CPC will be attracted. Several other decisions have been cited on the principles of res judicata which we do not want to consider in detail because we have already set out the broad principles and the facts of the present case to come to a definite conclusion on the applicability of the rule of res judicata. But there is one judgment of the Supreme Court namely, State of U.P. Vs. Nawab Hussain, which throws considerable light on issues like the present case. In that case the writ petition filed under Article 226 of the Constitution of India impugning an order of dismissal was challenged on the ground that reasonable opportunity had not been given. The writ petition was dismissed. The same person filed a suit challenging the same order on different grounds. Holding that the suit was liable to be dismissed on the application of the doctrine of res judicata, the essence of the doctrine is expressed in the following words:

This doctrine is based on two theories: (i) the finality and conclusiveness of judicial decisions for the final termination of disputes in the general interest of the community as a matter of public policy, and (ii) the interest of the individual that he should be protected from multiplication of litigation. It, therefore, serves not only a public but also a private purpose by obstructing the reopening of matters which have once been adjudicated upon. It is thus not permissible to

obtain a second judgment for the same civil relief on the same cause of action, for otherwise the spirit of contentiousness may give rise to conflicting judgments, of equal authority, lead to multiplicity of actions and bring the administration of justice into disrepute. It is the cause of action which gives rise to an action, and that is why it is necessary for the courts to recognise that a cause of action which results in a judgment must lose its identity and vitality and merge in the judgment when pronounced. It cannot therefore survive the judgment, or give rise to another cause of action on the same facts. This is what is known as the general principle of *res judicata*.

Similarly the judgment of the Supreme Court in *K. Dheenadhayalan Vs. State of Tamil Nadu and Another*, comes to the aid of the Petitioners. In that case also the inter se seniority between direct recruits and promotees was in question and it was held that the period of training will not count as period spent on probation. We are not concerned with that issue because it turned on the Special Rules for the service. In that case also there was a previous litigation in which the subsequent Petitioners was not a party. In dealing with the applicability of the earlier decision, the Supreme Court observed:

In regard to the contention of the Petitioner that he was not a party to the writ petitions decided by the High Court and that, therefore, the principles laid down in the High Court judgment should not be applied to him, we think the submissions to be without force. The principles propounded by the High Court are principles of general application and drawn from the rules governing the service and the concepts implied therein. They are not principles applicable peculiarly only to the parties to the writ petitions.

We, therefore, hold that the Respondents are barred by principles of *res judicata*, more especially the High Court and the Government, from implementing the impugned seniority list, because it adopts a wholly different interpretation to the third Proviso to Rule 20 of the Rules, totally different from the interpretation given by the courts in the earlier proceedings. We may, however, point out at this stage that notwithstanding our findings as above, we do propose to consider the points now urged by the Respondents and as reflected in the impugned seniority list so that the parties can leave the Court with satisfaction that their case has been considered one way or the other.

Issue No. 2 - Article 141.

21. It is the argument of the Petitioners that even if the principles of *res judicata* do not in terms apply to the facts of this case, the law laid down by the Supreme Court as reflected in the judgment dated 5.12.1994 in SLP No. 10214 of 1991 is a law which all the parties are bound to obey and implement. In support of this argument Mr. N.R. Chandran, learned Senior Counsel, contended that it is not as if the Supreme Court has not given reasons for their order dismissing the SLP. We have already noticed the order of the Supreme Court. They do say that they agree with the reasonings of the High Court and the conclusions reached therein.

in W.A. No. 944 of 1989. Therefore, it is argued that the findings of the High Court should be taken as the law laid down by the apex court. In support of this argument reliance is placed on *Kesho Ram and Co. and Others etc. Vs. Union of India (UOI) and Others*, and *Union of India (UOI) Vs. All India Services Pensioners' Association and Another*, . In the first mentioned case, Section 3 of E.P. Urban Rent Restriction Act, 1949 which had earlier been upheld by the Supreme Court, was again challenged by the tenants on the ground that some points had not been urged or considered in the earlier case. The Supreme Court held that on the principles of *res judicata* and also in view of Article 141 of the Constitution of India, the law declared by the Supreme Court in the earlier case was binding on the Petitioners in the subsequent case. In the latter case, the Central Administrative Tribunal did not follow the judgment of the Supreme Court while dismissing the Special Leave petition. It has been held that the Special Leave petitions were dismissed with adequate reasons and therefore, the decision had become one under Article 141 of the Constitution of India and was binding on all the courts. It is, therefore, contended that inasmuch as SLP No. 10214 of 1991 has been dismissed specifically affirming the reasons given by the Division Bench of this Court in W.A. No. 944 of 1989 the findings and observation of the Division Bench should be taken as the decision of the apex court and should bind all the parties. In meeting this contention Mr. Vijay Narayan refers to *Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others*, and argues that the ratio decidendi of the earlier judgment should be restricted to the major premises on which arguments were advanced and a decision rendered. He says that considering the facts of the earlier case the only ratio was that the third proviso to Rule 20 is legal and valid and that the temporary service of the Magistrates cannot be counted for the purpose of seniority. He also relies on the following passage in the judgment of the Full Bench in *Phillip Jeyasingh Vs. The Joint Registrar of Co-operative Societies and Others*, :

The Court said that when no reason is given, but a SLP is dismissed simpliciter, it cannot be said that there has been a declaration of law by the Supreme Court under Article 141.

Again the Full Bench observed:

In the present case, we have already quoted the order of the Supreme Court in the civil appeal. We find that the question which is before us has not been considered by the Supreme Court and no declaration of law has been made by the Supreme Court.

22. On this issue it is difficult to accept the arguments advanced on behalf of the Petitioners. Even though the Supreme Court has specifically observed that the findings and conclusions of the High Court was affirmed while dismissing the S.L.P., it has to be remembered that neither Rule 2(b) or Rule 2(10) had been referred to, in any of the judgments. In fact, the argument of the Respondents in this case is that they are bound by the decision of the Supreme Court on the

question of the validity of the third proviso to Rule 20 and they are now only adopting a particular mode of application of the third proviso. They accept that all the regular Judicial Magistrates of the First Class shall be placed according to their existing seniority below the order of seniority of the regular District Munsifs. They are only pointing out that only those persons who have received posting orders and have joined duty, become members of the service and they alone can be treated as regular District Munsifs. This aspect of the case was certainly projected in the grounds of appeal of SLP No. 10214 of 1991. But there is nothing on record to show that the point was considered either by the Division Bench or by the apex court. Therefore, we are unable to say that on this question the law has been declared by the Supreme Court. Consequently, we do not accept the argument that the law has been declared on issue No. 3 raised by us and therefore, there is no question of the law being binding on all the parties. It has to be remembered that this finding is not in any way in conflict with our finding on Issue No. 1 because the doctrine of res judicata is totally different and is governed by the full text of Section 11 CPC to which we have already made a reference. In fine, we find Issue No. 2 against the Petitioners and in favour of the Respondents.

23. Issue No. 3 - Validity of the impugned seniority list:

We have already indicated that notwithstanding the technical objections raised by the Petitioners based on the earlier proceedings culminating in SLP No. 10214 of 1991 we propose to decide the main issue raised by the Respondents that the impugned seniority list is perfectly legal and in accordance with law. A perusal of the minutes of the meeting of the Administrative Committee No. III dated 10.8.1994 gives the correct picture in respect of the basis on which inter se seniority was fixed. It is necessary to notice once again the substance of the third proviso to Rule 20. We will do well to quote the proviso itself.

Provided also that as on the date on coming into force of this proviso, all the regular Magistrates of the first class shall be placed according to their existing seniority below the order of seniority of the regular District Munsifs and below them, all present Judicial Magistrates of Second Class shall be placed according to their existing seniority and below them all the Judicial Magistrates of Second Class whose services have been regularised before the 31st January, 1976 shall be placed according to the existing seniority. All the Judicial Second Class Magistrates whose services have been regularised during the year 1988 shall be placed below those Judicial Second Class Magistrates whose services were regularised prior to 31.1.1976 according to their existing seniority.

It is very clear that the groups of officers mentioned in the proviso take their places in the seniority list one after the another. The seniority as among the groups is not disputed. The dispute is mainly whether the candidates recruited directly in the years 1986 and 1988 are regular District Munsifs in which case they have to be placed at the top. The argument is that only such of those District Munsifs who have started discharging the duties of the post can be called

as regular District Munsifs. For this purpose, reference is made to Rule 2(b) which is as follows:

Rule 2(b) Definitions: (1) "Appointed to the service"--A Person is said to be "appointed to the Service" when in accordance with these rules, he discharges for the first time the duties of the post borne on the cadre of the service or commences the probation prescribed for members thereof.

In this case we have already noticed that though the order of appointment in respect of the District Munsifs directly recruited in the year 1988 were appointed by G.O.Ms. No. 2064 dated 21.9.1988 they were given posting orders only on 31.10.1988 and they joined the respective posts only during the month of November, 1988. In the meanwhile on 6.10.1988 the regularised Magistrates had become integrated with the new post of District Munsif-cum-Judicial Magistrate and they are deemed to have started functioning from 6.10.1988. Therefore, as on 6.10.1988 it is only those District Munsifs who are discharging the duties of the post they can be placed above the regularised, upgraded and integrated District Munsifs. Reference is also made to Rule 2(10) of the Rules which is as follows:

(10) "Member of the service".--"Member of the Service" means a person who has been appointed to the service and who has not retired or resigned, been removed or dismissed, been substantively transferred or reduced to another service or been discharged otherwise man for want of vacancy. He may be a probationer, an approved probationer or a full member of the service.

Therefore, the Administrative Committee was of the opinion that neither the date of the selection nor the date of appointment can be considered as the date on which the appointee discharged for the first time the duties of the post to which he was appointed. They, however, admit that those provisions will not affect the inter se seniority of the officers appointed under the Notification by the Public Service Commission. The Administrative Committee then proceeded to notice that out of 128 candidates selected and appointed on 21.9.1988, 70 were recruited from the Bar and 53 were comprised of persons already in Magisterial Service. Administrative Committee proceeds to say that those 53 Magistrates came to be integrated on 6.10.1988 and therefore, they were regular District Munsifs on 6.10.1988 itself. They say that they commenced to discharge their duties as such, from 6.10.1988. The Administrative Committee therefore, chooses to place 53 candidates above 75 candidates recruited from the Bar. In our opinion, this totally changes the ranking as given by the Public Service Commission. This is also in direct violation of the judgment of the Division Bench in W.A. No. 944 of 1989. We have already quoted the relevant passage. But since we are on the very point we will again quote the said conclusion of the Division Bench which has been upheld by the Supreme Court.

...it is how well settled, cannot be considered sufficient to confer a benefit or right upon those persons in the matter of fixation of inter se seniority to the

detriment of the other members of the service who, under relevant rules, have a secured and specified place and ranking of their own determined by the Tamil Nadu Public Service Commission, which alone would be the determinative factor in relation to the fixation of inter se seniority amongst the members constituting the service as a whole.

(emphasis supplied).

Therefore, on this aspect of the case the seniority list is definitely vitiated because it has sought to upset and reverse the ranking given by the Public Service Commission and notified under G.O.Ms. No. 2064 dated 21.9.1988. We do not see how this reversal of the ranking given by the Public Service Commission is in accordance with the Division Bench judgment. Administrative Committee then proceeds to list the regular District Munsifs as those who were appointed under G.O.Ms. No. 846 dated 26.3.1986 being 56 in number. These District Munsifs had joined duty much earlier to 6.10.1988 and were regularised on 3.9.1990 in and by G.O.Ms. No. 1998. The order of regularisation says that the directly recruited "District Munsifs were regularised from the date of their joining duty as District Munsifs. Thereafter, the Administrative Committee has ranked a regular Judicial First Class Magistrate at No. 57. Three permanent Judicial Second Class Magistrates are ranked 58, 59 and 60. 1975 regularised Second Class Magistrates are then listed. 1988 regularised Judicial Second Class Magistrates are then listed. That takes us upto 290th rank. Thereafter the directly recruited District Munsifs appointed under G.O.Ms. No. 2196 are listed, in accordance with the seniority given by the Public Service Commission. This is precisely the stand taken by the Respondents and they seek to justify these rankings.

24. On first principles, the answer of the Petitioners to this kind of ranking is as follows:

There is no dispute that only when a person starts discharging duties of the post that he becomes appointed to the service. Equally, there is no dispute that a member of the service is a person who has been appointed to the service. But what is ignored by the Respondents is that as and when the appointed candidates joined duty they take seniority from an anterior date. This is the purport of Rule 20 which categorically says that the date of commencement of probation shall be the date on which he joins duty irrespective of his seniority in the list. Learned Counsel for the Petitioners also rely on Rule 35(a) and Rule 35(aa) of Part II of the General Rules of the Tamil Nadu State and Subordinate Services Rules which are as follows:

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 T.N.P.S.C. 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.

35.(aa) The seniority of a person in a service, Class, Category or grade shall, where the normal method of recruitment to the service, class, category or grade is not solely by direct recruitment or by transfer, or by promotion, but by direct recruitment, by recruitment by transfer and promotion unless the individual has been reduced to a lower rank as a punishment, be determined with reference to the date of which he is appointed to the service, class, category or grade.

Examining the issue purely on the first principles, we are of the opinion that even though a person is appointed to service only when he starts discharging the duties of the post, we are concerned with those persons who have subsequently been given posting orders and who have become appointed to the service and have become members of the service. It is only in respect of those persons who are on the date of the impugned seniority list members of the service that the seniority is being fixed. In our opinion they take seniority from an anterior date namely, the date of appointment and in accordance with the ranking given by the Public Service Commission. This could only be the normal and proper interpretation of Rules 2(b) and 2(10) and third proviso to Rule 20 of the Rules. This interpretation will not tamper with the ranking given by the Public Service Commission. Therefore, this should be the harmonious interpretation acceptable to all the parties. This interpretation is also very well illustrated by the order of regularisation given to 56 candidates directly recruited in the year 1956. These 56 candidates were appointed under G.O.Ms. No. 846 dated 26.3.1986 in accordance with the ranking given by the Public Service Commission. In mat ranking if we carefully see one V. John Louis is ranked No. 4 and below him is one Kanagasabapathy. The order of regularisation namely G.O.Ms. No. 1998 dated 3.9.1990 shows that they were regularised from the date of their joining duty as District Munsifs. We find that the said Kanagasabapathy had joined duty on 16.6.1979 and he was regularised from mat date. But John Louis joined duty only on 11.4.1980 and he was regularised only from that date. But the seniority of John Louis is maintained above Kanagasabapathy. This in our opinion, is the crux of the whole matter. It is only in this manner that the Rules have to be understood namely that when persons become members of service they take seniority from an anterior date as per the ranking given by the Public Service Commission.

The above discretion effectively answers the point raised by Mr. Vijay Narayan that the word "regular" must be given the meaning "on regularisation". According to him, since the word "regular" has not been defined in Rules, the only meaning that could be given in the present context is the date on which they are regularised. He proceeds to say that the only date from which 128 District Munsifs appointed on 21.9.1988 can be regularised is the date on which they entered service or joined the post. He relies on the regularisation in respect of 56 District Munsifs who were recruited under G.O.Ms. No. 846 dated 26.3.1986. We have already noticed that these candidates were regularised by G.O.Ms. No.

1998 dated 3.9.1990 from the respective dates of their joining duty as District Munsifs. In doing so, the Government relaxed the Rule 6 of the Rules which required a period of training as a prerequisite before regularisation. For the reasons already given by us we do not accept this contention. We have already indicated that the broad concept of regular appointments signifies a recruitment in accordance with the rules. It is only those recruitments which are in accordance with Rules to suit a temporary contingency or for some other reason of delay etc., that the question of regularisation becomes necessary. For instance, the appointments under Rule 11(3) certainly require regularisation under Rule 11(4). In the case of the recruitment by the Public Service Commission both in the year 1986 and 1988, the recruitments were regular and perfectly in accordance with the rules. The appointees were, however, appointed in a temporary capacity only because of certain interim orders of the High Court when the selection itself was challenged. For instance, in the year 1986 the selection under G.O.Ms. No. 846 dated 26.3.1986, W.P. No. 9784 of 1985 had directed that all appointments made pursuant to the selection should only be temporary. Similarly, even in respect of the selection made during the year 1988 there were certain interim orders passed by the High Court in W.P. No. 6853 of 1988. There was also similar writ petition, W.P. No. 7767 of 1988 in respect of this selection. Therefore, but for the selection itself being challenged there were no other irregularity in the selection by the Public Service Commission. Those selections should be deemed to be regular selections and did not warrant a further regularisation by the Government as in the case of Rule 11(3) appointment.

25. We will now briefly refer to the arguments of the different counsel on the question of inter-se seniority with reference to third proviso to Rule 20 of the rules. Mr. K.T. Palpandian argued that but for a posting order there is no appointment order. He even goes to the extent of saying that though Article 234 of the Constitution of India empowers the Governor to appoint the persons and they were so appointed on 21.9.1988, no right flowed under the said order, G.O.Ms. No. 2064 dated 21.9.1988. In our opinion, this is a far fetched argument and we have already explained that it is only after a posting order a person becomes "appointed to service." But question really is when such posting orders are given the appointees may join the post on different dates due to various reasons of health, convenience, and other fortuitous circumstances. The point that is to be considered is, when such appointees join the post, they will commence probation from the date of joining, but they will take seniority from an anterior date. The entire argument of the Respondents misses the crucial difference between commencement of probation and seniority. It is well known in service jurisprudence to give seniority to a person from a retrospective date even though he might not have acted in the post, but on the ground that he had been wrongly denied the post. The other argument of Mr. K.T. Palpandian is that till posting order is given the matter is in the realm of contract and only when appointee joins the post, he gets the status. He specifically points out that as on

5.10.1988 these direct recruits were not in service. But here again we have to point out that as and when the direct recruits become members of service, they take seniority from an anterior date. The other arguments that the proviso carves out an exception and should be read without reference to the main Rule 20(1) is also without substance. It is not correct to approach the issue only from the point of view of the definition clause contained in Rule 2(b) and Rule 2(10) of the Rules. In interpreting Rule 20 and the third proviso to Rule 20 wherever the context requires we will have to refer to the definition clause. Looked in this way, it cannot be disputed that on the date of the impugned seniority list of the 128 appointees had become the member of service having taken charge of their office on different dates, in November, 1988. The only question is the date on which they should be given seniority in the post of District Munsif-cum-Judicial Magistrate. As on 6.10.1988, they had been well and truly appointed as District Munsifs and we have no materials to hold that their appointments were irregular or not in accordance with the Rules. Therefore, they were regular District Munsifs on 6.10.1988, though they had not become members of the service. At the risk of repetition, we again point out that as and when they become members of service they take seniority from an anterior date. This is the purport of the decision of the Division Bench of this Court in W.A.944 of 1989. The counsel for the Petitioners have relied on certain decisions on the functions of a proviso and have also referred to "Words and Phrases" for projecting their case. We do not propose to refer to them because there is doubt or ambiguity. The following passage in *Tribhovandas Haribhai Tamboli Vs. Gujarat Revenue Tribunal and others*, does not in any way advance the case of the Respondents:

It has to operate in the same field and if the language of the main enactment is clear, the proviso cannot be torn apart from the main enactment nor can it be used to nullify by implication what the enactment clearly says nor set at naught the real object of the main enactment, unless the words of the proviso are such that it is its necessary effect.

26. Mr. Jothi appearing for the Government and the High Court says that the selected candidates as per G.O.Ms. No. 2064 dated 21.9.1988 can take their position only after they become members of service and on 6.10.1988 they were not District Munsifs-cum-Judicial Magistrates. The argument of Mr. Vijay Narayan is mainly based on the proposition that regular means "on regularisation" and we have already dealt with this argument. Mr. Vijay Narayan, however, sought to explain the disturbance caused to the ranking given by the Public Service Commission in G.O.Ms. No. 2064 dated 21.9.1988 because those candidates who had been selected from the Magisterial service were already in service as Magistrates and on integration they had become District Munsif-cum-Judicial Magistrates. Therefore, he argues it necessarily follows that those 53 candidates had to be placed above the candidates selected from the Bar and to this extent it was necessary to alter the ranking given by the Public Service Commission. We have already pointed out that this reversal of the ranking given by the Public Service Commission is contrary to the judgment of the Division Bench in W.A.

No. 944 of 1989 confirmed in SLP No. 10214 of 1991.

27. Miss. R. Vaigai for some of the Respondents in W.P. No. 17737 of 1994 more or less repeats the same argument, but has cited a line of decisions for the proposition that candidates in a panel or in a list of selected candidates have no right to be appointed. There is no quarrel about this proposition, and we do not propose to refer to those decisions. But in this case, by G.O.Ms. No. 2064 dated 21.9.1988 the words used are as follows:

The following persons are appointed to act temporarily as District Munsif, without prejudice to the orders of the High Court to be passed in the Writ Petitions pending before it.

We have already pointed out the difference between the temporary in this G.O. and the word "temporary" in the case of appointees under Rule 11(3) of the Rules. We have also pointed out that as and when appointees become members of the service they take seniority from an anterior date. Miss. R. Vaigai also argues that there is nothing unreasonable about the fixation of the seniority as per the impugned seniority and the same does not call for interference at our hands. But the question is whether the seniority as fixed is in consonance with law and in compliance with the judgment of the Division Bench in W.A. No. 944 of 1989 as confirmed in SLP No. 10214 of 1991.

28. Mr. Govind Swaminathan has only brought to our notice a decision of the Supreme Court in Chandul Lal v. Ram Doss 1969 S.L.R. 475. The question before the court was whether on the date of nomination for election to the Jammu and Kashmir Legislative Assembly the Petitioner was holding office of profit under the Government and whether he was, therefore, disqualified. The apex court held that on the face of it a person cannot occupy an office until he enters upon the office, and the entry upon an office is not necessarily simultaneous with the appointment to the office. We do not think that it is necessary to elaborate on this aspect of the case because we have already held that though the appointees become members of service subsequent to 6.10.1988, they take seniority from an earlier date. Mr. K. Alagiriswamy for some of the Respondents says that in the absence of rules, the date of joining duty is certainly a proper and relevant consideration for fixing inter se seniority. Mr. C. Selvaraj for some of the Respondents brings to our notice the judgment of the Supreme Court in Ashok Gulati and Others Vs. B.S. Jain and Others, and relies on the following passage:

According to the accepted canons of service jurisprudence, seniority of a person appointed must be reckoned from the date he becomes a member of the service.

We do not think that the said stray sentence can be accepted as the ratio especially when there are specific Rules in this case. In fact the subsequent passage in the very same judgment clarifies the position, and cuts at the root of the Respondents' case.

The date from which seniority is to be reckoned may be laid down by rules or

instructions (a) on the basis of the date of appointment (b) on the basis of confirmation (c) on the basis of regularisation of service (d) on the basis of length of service, or (e) on any other reasonable basis.

He also refers to certain judicial dictionaries for explaining the meaning of the seniority and length of service. We do not think that it is necessary to go into all these definitions, when Rule 20 and the third proviso to Rule 20 are specific as to how the seniority should be fixed as between certain groups of officers. It is only when there is a difficulty or doubt we go to the dictionary or words and phrases.

29. We will now proceed to discuss the most important decisions on the aspect of the seniority which in our opinion gives the correct guide-lines and a clue to solve the problem posed in these writ petitions. Before doing so, it is good to remind ourselves about the manner of culling out the ratio of the decisions. We have already referred to one such decision which requires as to see the facts of the case, the arguments and the issue raised before going into the decision of the court on the actual issues raised. That judgment is reported in Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others, . We will quote one more judgment on this aspect and that is found in The State of Orissa Vs. Sudhansu Sekhar Misra and Others, .

A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic this is what Earl of Halsbury LC said in *Quinn v. Leatrem* 1901 AC 495.

With this background we will examine the decisions chronologically so that we will be able to appreciate the trend in the view of the Supreme Court on the subject in question. *State of U.P. Vs. Rafiquddin and Others*, relates to the determination of seniority of members appointed as Munsifs to the State of Uttar Pradesh. In that case there was a series of recruitments by the Public Service Commission in the year 1970 and 1972. By some arrangements the authorities had decided to relax eligible standards because sufficient candidates could not be selected in the first selection. Therefore, further lists were sent on the basis of the lowering of the standards. In the year 1977, the State Government had published a seniority list of unplaced candidates belonging to the third list of the year 1970 challenged the seniority list on the basis of their selection in the year 1970 irrespective of their appointment in the year 1975. Rejecting their case, the Supreme Court held that

The appointment to service is made from the list forwarded by the Commission to the State Government. Seniority in the service is determined on the basis of the year of the competitive examination irrespective of the date of appointment and the inter se seniority of candidates recruited to the service is determined on the basis of their ranking in the merit list.

To come to the above conclusion, they relied on Rule 22 relating to seniority

which specifically stated that seniority shall be determined by the year of competitive examinations on the results of which the candidate is recruited and the position in the list prepared under Rule 10. Therefore, though the year of competitive examination was given importance, it was due to a specific rule in that State but there is one other observation of the Supreme Court which has to be borne in mind. It is as follows:

There is no escape from the conclusion that the unplaced candidates were not appointed to the service on the basis of the result of the competitive examination of 1970. Their appointment was made in breach of the Rules, in pursuance to the decision of the high level committee. It is well settled that where recruitment to service is regulated by the statutory rules, recruitment must be made in accordance With those Rules and any appointment made in breach of rules would be illegal. The appointment of "unplaced candidates" made out of the third list was illegal as it was made in violation of the provisions of the Rules.

The above judgment was rendered on 6.11.1987. In *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, rendered on 2.5.1990, after elaborately discussing the issues several propositions were laid down by the Supreme Court. The first two of which are relevant for our case. They are as follows:

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

But it has to be remembered that the date of appointment is referred to because in that case the dispute was whether the date of appointment or the date of confirmation which should be taken into account for the purpose of assigning seniority. In *State of Tamil Nadu and another etc. Vs. E. Paripoornam and others*, rendered on 19.8.1991, arose out of the Tamil Nadu State and Subordinate Services Rules, the High Court relied on the regularisation of the services of certain temporary appointments and gave them preference. The Supreme Court set aside the decision and held that the order of regularisation itself denied the incumbents the temporary service for the purpose of seniority. Observed the Supreme Court:

Secondly, Rule 35(a) provides for determining the inter se seniority of the candidates selected by the Public Service Commission. It states that the seniority

of a person in a service, class or category or trade shall be determined unless he has been reduced to a lower rank as a punishment, by the rank obtained by him in the list of approved candidates drawn by the Public Service Commission or other appointing authority as the case may be. Since the parties in these cases appeared for selection before the Public Service Commission for regular recruitment as Junior Professors, the list of approved candidates prepared by the Public Service Commission in the order of merit and accepted by the Government should be the basis for determining their inter se seniority. It is not open to the parties to claim that their temporary service as Junior Professors upon regularisation should be counted for the purpose of determining the seniority in the cadre.

30. Dr. M.A. Haque v. Union of India 1993 (II) M.L.J. 47 is an important decision which appears to us to be very close to the facts of the present case. Certain Medical Officers were recruited on an ad hoc basis as Assistant Divisional Medical Officers between the years 1968 and 1984. The Union Public Service Commission was recruiting from time to time candidates, but such direct recruits were not sufficient to fill up the posts. Such vacant posts were always filled up by ad hoc appointees. The ad hoc appointees sought for regularisation by filing a writ petition. The Supreme Court had given guide-lines for such regularisation. But inter se seniority between the ad hoc appointees and the direct recruits was left open to be decided later. It is thereafter that the question was mooted before the apex court about the inter se seniority between two groups. The Supreme Court referred to the two guide-lines given by the Constitution Bench in *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, which we have quoted above and proceeded to see which of the guide-lines applied to the case before them. They held that the ad hoc appointees were not appointed according to the rules but were regularised only by Court orders. They held that the ad hoc appointees will not come under either Clause "A" or Clause "B" quoted above. The Supreme Court laid emphasis on the fact that the ad hoc appointees did not go through the Public Service Commission. Ultimately, they decided to prepare the seniority list only of all those candidates who had gone through the Public Service Commission in accordance with the rank given by the Public Service Commission. One passage in the said judgment relied on by the Petitioners is as follows:

...both outsiders and insiders should be determined according to the dates of their regular appointment through the UPSC and the Petitioner-applicants (ad hoc appointees) should be placed in the seniority list after those direct recruits who are recruited till this date.

The above judgment was rendered on 18.2.1993. As to the relief to be given to the ad hoc appointees, the Supreme Court wondered whether the decision in *Dr P.P.C. Rawani and Others Vs. Union of India (UOI) and Others*, could be applied. We will refer to this decision at the time of granting relief.

31. The next decision is in our opinion, affords the key to the solution of the

entire case. That is, Bhey Ram Sharma and others Vs. Haryana State Electricity Board and others, . An advertisement was issued on 30.6.1967 for the recruitment to the post of Assistant Engineer Class II (Electrical) and Apprentice Engineers (Electrical). The Appellants before the court had applied for the post of Assistant Engineers (Electrical). The conditions required the candidates to undergo an apprenticeship period for a period of six months. While offering the appointment the period of apprenticeship was extended to one year. Appellants were appointed as Assistant Engineers Class II with effect from 1.1.1969. On 14.7.1968 another advertisement was issued for recruiting candidates to the post of Assistant Engineers Class II. The Respondents before the apex court were selected and appointed between October and December, 1968 as Assistant Engineers Class II. In the seniority list the Respondents were shown above the Appellants. The importance of this decision with reference to the facts of our case depends upon the case of Respondents 6, 16, 17 and 28 before the Supreme Court. Those Respondents were appointed on 23.10.1968, 21.11.1968 and 6.12.1968 respectively. They, however, joined the service later. Observed the apex court:

It is well known that while determining the seniority of an officer, the date of his appointment is more important factor than the date of his joining. In many compelling circumstances like accident, the distance at which a particular candidate resides and the time taken by him to join cannot be ignored.

(Emphasis supplied)

Therefore, the seniority of those four Respondents was upheld and placed above the Appellants. The ratio of the Supreme Court is given in the following passage:

It is almost settled that while determining the inter se seniority-amongst officer recruited from different sources or between officers appointed by the same process at different times, the date of entering the service is relevant. A person who enters in the service first shall rank senior unless there is some Rule providing otherwise which can be held to be consistent with Articles 14 and 16 of the Constitution.

The Apex Court has approved the appointment of the Appellants on 18.4.1969 but giving a notional seniority with effect from 1.1.1969. The apex court has also recognised the appointments of Respondents 6, 16, 17 and 28 in October-November, 1968, though they joined after 1.1.1969. In our opinion, this judgment gives the key to solve the entire case. Firstly seniority can be given based on a notional date. This is precisely in consonance with what we had observed earlier, that Rules 2(b) and 2(10) cannot have effect on the assigning of the seniority to the directly recruited and appointed candidates under G.O.Ms. No. 2064 dated 21.9.1988. Secondly, the Supreme Court also recognised the fact that the date of appointment is more relevant than the date of joining on the question of assigning seniority.

32. But Mr. K.T. Palpandian has relied on a recent judgment of the Supreme

Court dated 5.10.1994 and reported in V. Sreenivasa Reddy v. Government of A.P. AIR 1994 S.C.W. 4868. No doubt, in this case, there is reference to an identical Rule in Part I of the Andhra Pradesh State and Subordinate Services Rules. But question involved in the said case was not identical to the present case. In fact, the actual ratio is in favour of the Petitioners herein. In that case the appointments before the Supreme Court were temporary appointees under Rule 10(a)(i)(1) of the Rules. In the year 1981 there was a Public Service Commission recruitment. The 10(a)(i)(1) appointees were able to get regularisation by orders of the Government. The regularisation took place on 11.6.1984. The Public Service Commission candidates selected in the year 1981 were appointed on 14.5.1984. The Government upheld the seniority of the Service Commission candidates, from the date of their appointment. The Administrative Tribunal upheld the case of the Service Commission candidates. The Supreme Court has referred to all the earlier decisions and the reference to the definition clause "appointed to a service" did not play any serious part in the discussion. In fact, the Supreme Court has referred to the Constitutional Bench judgment in *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, for the proposition that the appointment in accordance with the Rules is a condition precedent to count seniority and that temporary or ad hoc appointees or fortuitous appointments is not an appointment in accordance with the Rules, and such service cannot be counted for seniority. Again they referred to a decision in *Keshav Chandra Joshi and others etc. Vs. Union of India and others*, and held that the seniority is to be counted from the date on which the appointment is made to the post in accordance with the rules. The ratio of the judgment is given in the following words:

It would thus be clear that by operation of Special Rules and Rules, that PSC candidate gets his seniority from the date on which he starts discharging his duties on the post borne on the cadre and his seniority shall be determined with effect from that date while the temporary appointee under Rule 10(a)(i)(1) who is subsequently appointed in accordance with the Rules, the temporary service rendered prior to his appointment shall not be counted towards his seniority or the temporary service even if counted towards probation shall not be counted for the purpose of seniority.

But it has to be remembered that in that case there was no dispute regarding the date of appointment and the date of joining duty. The Supreme Court had practically assumed that for the purpose of the case, whether the date of appointment or the date of joining of the Public Service Commission candidates was taken note of, the temporary candidates had to be denied seniority over them. In fact, towards the end of the judgment the apex court observes:

The temporary appointees cannot be put on a higher pedestal over the PSC candidates who stood the test of merit and became successful and secured ranking according to the merit in the approved list of the candidates prepared by

the PSC. In Piara Singh's case AIR SCW 2315 this Court reiterated that the temporary candidates always be replaced giving way to the regular recruits through the prescribed agency and appointments of the regularly selected candidates cannot be withheld or kept in abeyance for the sake of temporary or ad hoc employees.

33. A perusal of the above judgment leaves us with the impression that the meaning of the word "regular" which we had attempted to give on first principles is the correct approach. The only silver lining in all the Supreme Court cases is that they are uniform in stating that the recruitment in accordance with the Rules should get preference over recruitments made in ad hoc or temporary manner like Rule 11(3) of our Rules. Therefore, where recruitment is made by the Public Service Commission, it must be deemed to be a regular recruitment and candidates appointed under such recruitments on 21.9.1988 should be deemed to be regular District Munsifs even though they might have joined duty later. Giving any other interpretation would only lead to the anomaly of tampering with the ranking given by the Public Service Commission as has been done by the Administrative Committee in these cases. Therefore, on the third issue we hold in favour of the Petitioners and set aside the impugned seniority list because it is contrary to the views expressed by us as above.

34. Issue No. 4: W.P. No. 19938 of 1994: The Petitioners are challenging regularisation of 216 Magistrates in accordance with G.O.Ms. No. 1269 Home (Courts-I) Department dated 2.6.1988. It has to be remembered that regularisation was made on 2.6.1988 and the writ petition was filed only on 30.11.1994. That apart, we have seen from the various Supreme Court judgments that such regularisation has become part of the service jurisprudence in this country. Though the Supreme Court condemns such regularisations it has on many occasions conceded the regularisation, but given them a ranking below the Public Service Commission candidates. The further argument that regularisation cannot be done in a mass scale but each case has to be considered, we are of the opinion that the regularisation was based on common principles and there was no need to consider or identify particular candidates or posts. As rightly submitted by the Respondents it was a policy decision and there could be no quarrel about the same. In this view of the matter we reject the contention of the Petitioners and dismiss the writ petition, W.P. No. 19938 of 1994.

35. Issue No. 5: Individual upgradation: Here again the attack is on a mass upgradation and integration of the Magistrates with the post of District Munsif-cum-Judicial Magistrates. This again is a policy decision which had been hanging fire for about 12 1/2 years and had come to fruition under the impugned G.O.Ms. No. 2196 dated 6.10.1988. In fact a perusal of the earlier G.O.Ms. No. 202 dated 31.8.1976 shows that the principles had been adopted in the entire country and there can be no quarrel about the same. We are of the opinion that there is no need for individual upgradation or integration. All the posts had been upgraded

and therefore, there was no scope for any individual consideration. We, therefore, reject this contention advanced on behalf of the Petitioners.

36. Issue No. 6 - Principles of natural justice: Considerable emphasis was made on the provisional seniority list dated 12.8.1994, calling for objections to be filed on or before 25.8.1994. A series of objections were placed before the Administrative Committee. There were as many as 105 objections and Mr. R. Gandhi, learned Senior Counsel had issued notice on 6.9.1994 objecting to the fixation of the seniority, these objections had been summarised by the Registry and a note was put up against each objector giving the gist of objections. The complaint is that gist was hardly well prepared and it did not contain the essence of the objections. The complaint is that the Administrative Committee did not go through the objection and consider them properly. They have proceeded to overrule the objections based on the gist prepared by the Registry. No doubt, the Full Court meeting also accepted the recommendation of the Administrative Committee. But it has to be remembered that the Administrative Committee has given reasons for rejecting the objections and no exception can be taken to the manner of consideration of the objections. It has to be remembered that the Administrative Committee comprises of Honourable Judges and they can certainly be expected to give their utmost consideration while dealing with the objections. It cannot be said that they had not applied their minds. We wholeheartedly accept the contention of the Respondents that the objections are well and truly considered and there is no scope for any complaints in this regard. In this view of the matter we reject the contention based on the violation of principles of natural justice. We hold that the seniority list cannot be faulted on the ground of violations of the principles of natural justice.

37. Issue No. 7: On the basis of our finding on Issue Nos. 1 and 3 we hold that the impugned seniority list is vitiated and is accordingly set aside. We hold that the candidates recruited in the year 1986 and 1988 by the Tamil Nadu Public Service Commission are regular District Munsifs from the date of appointment namely 26.3.86 and 21.9.88 respectively (according to the rank given by TNPSC). Necessarily, they have to be placed at the top of the seniority list in accordance with rank given by the Public Service Commission. Consequently, the seniority list must be revised in accordance with our decision.

38. Before parting with the case we have to observe that the predicament in which some of the judicial officers are placed namely, languishing in the service for several years without any improvement or promotion is only due to the fact that the Respondents did not resort to recruitment in accordance with the Rules then and there. It is this aspect of the case, Mr. R. Gandhi was trying to point out on the basis of the earlier directions of the Supreme Court. Consequently, resort to recruitment on temporary or ad hoc basis always results in pain and grievance when such officers are asked to go back to the parent department or sought to be ousted. This is precisely the reason why the Supreme Court has also directed regularisation in some cases which we have already noticed above. The delay in

recruitment and the consequent resort to temporary appointment, not in accordance with the Rules, has snowballed into the present predicament and has given rise to conflicting claims of the two groups of officers. Therefore, neither group need feel defeated or depressed by the result of the case. It is here that we think that the judgment of the Supreme Court in *Dr P.P.C. Rawani and Others Vs. Union of India (UOI) and Others*, has to be looked into. In this case, the Appellants were ad hoc appointees on various dates between 1968 and 1977. Certain directions were given to regularise their services with reference to their original dates of appointments. Those appointees were willing to be regularised from 1.1.1973, on which date Group "B" and "A" services were merged together by a Government Order. The Doctors who were regularly appointed by the Union Public Service Commission as Group "A" Doctors were likely to be affected in seniority because the ad hoc appointees were appointed much earlier. The Public Service Commission appointees therefore, wanted their interests to be protected in the matter of seniority. Being placed in a piquant situation the apex court adopted a method which would safeguard the interests of both the groups. Though the Public Service Commission was not inclined to accept the proposal, the Supreme Court adopted the proposals and gave directions accordingly. In the essence, the proposal seems to suggest the creation of separate seniority list and the creation of certain supernumerary posts. It appears to us that in respect of present judicial officers concerned in the seniority list also there can be two seniority lists, one in respect of the upgraded officers and the other in respect of direct recruits. The Government can think of fixing a ratio between these two classes for further promotion to the post of Subordinate Judges. The modalities have to be worked out only by the Government, the High Court and the Public Service Commission. In the alternative the Respondents can always work out a method of giving Selection Grade and Special Grade to incumbents who have been working in the same post for several number of years. These are only our suggestions and we do not give any directions in this regard.

39. Since in some of the cases, the provisional list was challenged we prefer to mould the prayer and only set aside the final seniority list. In this view of the matter, W.P. Nos. 17737, 17738, 18121 and 18162 of 1994 are allowed and the Notification No. 99/94 in R.O.C. No. 111/94. Con.B2 dated 5.10.1994 is set aside, being Annexure "F" to the counter affidavit filed by the Registrar High Court, Madras with a direction to revise the seniority in accordance with the directions given in this judgment. There will, however, be no order as to costs.