
(2001) 12 MAD CK 0038
In the Madras High Court

K. Madalaimuthu and Another		APPELLANT
	Vs	
State of Tamil Nadu and Others		RESPONDENT

Date of Decision : 24-12-2001

Acts Referred:

Citation : (2002) 2 MLJ 254

Hon'ble Judges : Malai Subramanian, J

Bench : Division Bench

Judgement

Malai Subramanian, J.—The petitioners in these three petitions challenge the common order passed by the Tamil Nadu Administrative

Tribunal in O.As.Nos.779 of 1995,1067 of 1995 and 1068 of 1995.

The petitioner in W.P. No. 16806 of 1998 and W.P. No. 1548 of 1999 Mr. K. Madalaimuthu and the petitioner in W.P. No. 1549 of 1999 Mr.

A. Arumuga Nainar are directly recruited as District Registrars in Tamil Nadu Registration Service and they were appointed as such in

G.O.Ms.No. 769/89, dated 4.10.1989. The above said G.O. reads that they were appointed to act regularly as District Registrars by direct

recruitment. Paragraph 11 of the said G.O. says that orders regarding the fixation of inter se seniority of the District Registrars appointed by the

transfer from the post of Sub Register Grade I and the District Registrars appointed by direct recruitment will be issued in due course. Thereafter,

the Inspector General of Registration notified in seniority list of promotee District Registrars in annexure 4 and directly recruited District Registrars

in annexure 5 of his Proceedings dated 28.1.1995.

2. Representations were made by Mr. K. Madalaimuthu in his letter dated 20.9.1992 and by Mr. A. Arumuga Nainar in his letter dated

19.5.1993 to fix their inter se seniority in the year 1986 since estimate of vacancies for the post of District Registrars for the year 1985 was issued

in G.O.Ms. No. 147, dated 10.2.1986 by fixing 6 vacancies to be filled by the Sub Registrars Grade I on promotion and 3 vacancies by Direct

Recruitment. The Secretary to Government, Commercial Taxes and Religious Endowment Department, Tamil Nadu by his letter dated 7.11.1994

rejected their request stating that according to Rule 2(1) of the Tamil Nadu State and Subordinate Service Rules, a person is said to be appointed

to a service only if the discharges for the first time, the duties of the post borne on the cadre of such service and common probation or training

prescribed for members thereof and inter se seniority in the post of District Registrars, where there is more than one method of recruitment would

have to be fixed under Rule 35(aa) of the Tamil Nadu State and Subordinate Service Rules read with Rule 2(1), meaning thereby their seniority

cannot be fixed in the year 1986 as they had not entered service at that point of time. Subsequently, the names of Thiru A. Arumuga Nainar and

Thiru K. Madalaimuthu, who are the petitioners herein were included in the seniority list issued on 28.1.1995 in Sl.Nos. 39(A) and 39(b)

respectively below Thiru M. Krishnamoorthy and above Thiru K. Durairajan, who were promotee District Registrars. This proceedings of the

Inspector General of Registration was dated 16.11.1995. In the meantime, Mr. K. Madalaimuthu filed O.A. No. 779 of 1995 for fixation of his

inter se seniority and later amended the prayer to quash the proceedings of the Inspector General of registration dated 28.1.1995 as modified by

proceedings dated 16.11.1995 and to direct the respondents to prepare the inter se seniority list in the cadre of District Registrars with reference

to the permanent posts and regular selection thereon as per the Special Rules and give further promotion to the post of Assistant Inspector General

of Registration, Deputy Inspector General of Registration and additional Inspector General of Registration. The very same petitioner also filed

O.A. No. 1067 of 1995 before the Tamil Nadu Administrative Tribunal, Madras seeking for a direction to respondents to comply with the

mandatory Rule 39(c) of Tamil Nadu State and Subordinate Service Rules, 1955 and consequently directing the first respondent, Secretary to

Government, Commercial Taxes and Religious Endowment department, Chennai to promote him as Additional Inspector General of Registration

with all consequential benefits on basis of his seniority. Similarly, the petitioner in W.P. No. 1549 of 1999 Mr. A. Arumuga Nainar filed O.A. No.

1068 of 1995 for the same relief. The Tamil Nadu Administrative Tribunal had a common order dismissing all the three original indications together

with O.A. Nos. 7429 of 1996 and 1181 of 1997.

3. It is relevant to note that O.A. No. 1181 of 1997 was filed by one Mr. K. Durairajan, who has not come before us against the common order

passed by the Tamil Nadu Administrative Tribunal. O.A. No. 7429 of 1996 was filed by Thiru A. Arumuga Nainar, petitioner in W.P. No. 1549

of 1999 seeking to quash G.O.Ms.No. 422, C.T. and R.E. Department, dated 4.12.1996, wherein the 3rd, 4th and 5th respondent in O.A. No.

7429 of 1996, functioning as Deputy Inspector General of Registration were included in the regular panel of Additional Inspector General of

Registration for the year 1996-97 and to promote him as Assistant Inspector General of Registration, Deputy Inspector General of Registration

and Additional Inspector General of Registration and place him above the aforesaid officers. Though the Tamil Nadu Administrative Tribunal

dismissed this original application also by its common order the said A. Arumuga Nainar did not choose to file any writ petition against the order

passed in O.A. No. 7429 of 1996.

4. Therefore, in these three writ petitions we are concerned only with the prayer of the petitioners in O.As. No. 779 of 1995, 1067 of 1995 and

1068 of 1995. It is relevant to say that the said Mr. A. Arumuga Nainar filed M.A. No. 1965 of 1997 in O.A. No. 1068 of 1995 amending his

prayer for a direction to the respondents to prepare the inter se seniority list of District Registrars for the permanent post as on 9.11.1989 viz., the

date on which the applicant and other direct recruits entered the Department in accordance with Special Rules for Tamil Nadu Registration Service

notwithstanding the temporary promotions earned by the promotees to the next higher cadre and place the applicant above all temporary

promotees as on 9.11.1989, with a further prayer to direct the respondents 1 and 2 to promote the applicant notionally to the cadre of Assistant

Inspector General of Registration, Deputy General of Registration on the basis of the revised seniority as per the first relief with consequential

placement in the seniority list above temporary promotees with all consequential

services and monetary benefits.

5. In short, the prayer of the petitioners in all these writ petitions is to quash the Common order dated 10.8.1998 passed by the Tribunal, direct the

State Government to prepare the inter se seniority list between the promotees and the direct recruits in the cadre of District Registrars by following

the quota as per Rule 25 of Tamil Nadu Registration Service Rules and to grant the petitioners consequential seniority/promotion over all the

promotees from 1981 onwards with all the service benefits like back wages, perquisites etc.

6. The Tamil Nadu Registration Service consists of the posts of Additional Inspector General of Registration, Deputy Inspector General of

Registration, Assistant Inspector General of Registration and District Registrars. We are now concerned only with the cadre of District Registrars.

The method of recruitment to the post of District Registrar is two fold; one - by way of promotion from the Sub Registrar Grade I functioning in

Tamil Nadu Registration Subordinate Service and the other by Direct Recruitment.

7. The Government by G.O. Ms. No. 147, dated 10.2.1986 fixed the estimate of vacancies for the post of District Registrars for the year 1985 by

recruitment by transfer and by direct recruitment as 16 and 3 respectively. Thereafter, by G.O.Ms.No. 957, dated 23.9.1986 after examining the

proposal of Inspector General of Registration and pending finalisation of the regular list of District Registrar of 1985 in consultation with the Tamil

Nadu Public Service Commission prepared a temporary list of 16 officers fit for appointment by transfer to the post of District Registrar in the

Tamil Nadu Registration Service for the year 1985. Prior to the above panel, the Government by G.O.Ms. No. 796, dated 13.7.1981 had

directed to include 34 officers named therein in the list of officers fit for appointment by transfer to the post of District Registrar for the year 1981.

In so far as these 34 officers are concerned, the Government after considering the proposal of Inspector General of Registration and the remarks

of the Tamil Nadu Public Service Commission, passed Orders in G.O.Ms.No.534, dated 28.5.1987 regularizing their service. With regard to the

panel of officers prepared by G.O.Ms.No. 957, dated 23.9.1986 their services were regularised by the Government on the recommendation of

the Departmental Promotion Committee in G.O.Ms. No. 162, dated 16.6.1995.

This panel was for the year 1985-86. Similarly by G.O.Ms. Nos.

163, 164 and 165, dated 16.6.1995, the Government, on the recommendation of the Departmental Promotion Committee regularised the panel of

officers for appointment by transfer to the post of District Registrars for the years 1986-87, 1987-88 and 1988-89.

8. Though the estimate of vacancies for the year 1985 by recruitment by transfer and by direct recruitment was fixed as 16 and 3 respectively by

G.O.Ms. No. 147, dated 10.2.1986, the Government could only issue G.O.Ms. No. 769, dated 24.10.1989 appointing the petitioners and one

Mr. K. Durairajan as District Registrar by direct recruitment for the year 1986-87 and 1987-88. No doubt they were appointed to act regularly as

District registrars by direct recruitment and posted for training. The petitioner in W.P. No. 1549 of 1999 Mr. A. Arumugam Nainar joined duty on

9.11.1989 and the petitioner in W.Ps. No. 16806 of 1998 and 1548 of 1999 Mr. K. Madalaimuthu joined duty on 22.11.1989 and both of them

successfully completed their probation. Prior to their appointment, the Inspector General of Registration by his proceedings dated 4.10.1989

forwarded the list of officers working in various cadres in the Department of Registration in the order of seniority to all the individuals concerned

and to various officers.

9. Coming to the Special Rules governing the Tamil Nadu Registration Service, originally a proportion of 1:5 was fixed amongst the direct recruits

and the promotees to fill up the substantive vacancies of District Registrars in the year 1969, but by G.O.Ms. No. 1312, Revenue, dated

26.4.1972, the Government effected the following amendment:

Direct Recruitment or recruitment by transfer from Sub Registrars of the first Grade in the Tamil Nadu Registration Subordinate Service.

Substantive vacancies of District Registrars shall be filled or reserved to be filled by direct recruitment or recruitment by transfer from the Tamil

Nadu Registration Subordinate Service in such manner that there will be atleast three directly recruited District Registrars in position at any given

time and this will be exclusive of directly recruited District Registrars occupying higher post in the Department or outside. If in any particular year a

direct recruit is to be appointed, he shall be given the first vacancy.

This argument virtually took away the quota available to the direct recruits till

then, but only provided that at any given time, there will be atleast three directly recruited District Registrars in position. The only concession given to the directly recruited District Registrars is that if in a particular year, a direct recruit is to be appointed, he shall be given the first vacancy, meaning thereby, in the year, in which a direct recruit is appointed along with the promotees, the direct recruit shall rank first in that year. That again means that a direct recruit who was appointed in a particular year cannot claim any seniority over those promotees who were appointed as District Registrars prior to that year. Of course, the Government reconsidered the position in the year 1990 and issued G.O.Ms.No. 496, dated 8.8.1990 deciding to fix the ratio of 1:5 between the direct recruitment and recruitment by transfer to the post of District Registrars in Tamil Nadu Registration Service. It is significant to note that since the petitioners were appointed by G.O.Ms.No. 769/1989, dated 24.10.1989, this G.O.Ms. No. 496, dated 8.8.1990 has no application. Therefore, in so far as the present case is concerned, G.O.Ms. No. 1312, dated 26.4.1972 providing for atleast three directly recruited District Registrars in position at any given time alone is relevant. Therefore, there can be no question of following any quota rule.

10. Before considering the rival contentions of the parties on the factual matrix and the question of law, it is necessary to look into certain rules in the Tamil Nadu State and Subordinate Service Rules (hereinafter called General Rules) for better appreciation. Rule 2(1) of the Preliminary to the General Rules reads:

A person is said to be "appointed to a service" when in accordance with these rules or in accordance with the rules applicable at the time, as the case may be, he discharges, for the first time the duties of a post borne on the cadre of such service or commences the probation, instruction or training prescribed for members thereof.

Explanation: The appointment of a person holding a post borne on the cadre of one service to hold additional charge of a higher post in the same service or a post borne on the cadre of another service or to discharge the current duties thereof does not amount to appointment to the latter service. Rule 2(7) defines "Duty" as follows:

A person is said to be "On Duty" as a member of a service-

(a) When he is performing the duties of a post borne on the cadre of such service or is undergoing the probation, instruction or training prescribed for such service;

Rule 2(3) defines "Approved Probationer" as follows:

Approved Probationer" in a service, class or category means member of that service, class or category which has satisfactorily completed his probation and awaits appointment as a full member of such service, class or category;

Rule 2(8) defines "Full Member" as follows: "full member" of a service means a member of that service who has been appointed substantively to a permanent post borne on the cadre thereof;

Rule 4(a) reads thus:

All first appointment to a service or class or category or grade thereof, State or Subordinate whether by direct recruitment or by recruitment by

transfer or by promotion, shall be made by the appointing authority from a list of approved candidates. Such list shall be prepared in the prescribed

manner by the appointing authority or any other authority empowered in the Special Rules in that behalf and shall be published in the Tamil Nadu

Government Gazette in respect of appointments to State Services and in the Notice Board in the office of the appointing authority in respect of

appointments to Subordinate Services. The list shall also be communicated to all persons concerned by Registered Post whose names are found in

such list as well as to persons senior to the junior most person included in the list whose names have not been included in the list. Where the

candidates in such list are arranged in their order of preference, appointments to the service shall be made in such order:

Explanation II: "In respect of appointment to the posts, which are under the purview of the Tamil Nadu Public Service commission, temporary list

may be drawn and published as aforesaid with reference to the qualification on the date fixed for the regular lists to set out the exigencies of service

and to avoid, administrative delay. Once a qualified candidate is included in the temporary list with reference to the qualification on the crucial date

fixed for regular list his rights for temporary appointment should be protected and he should not be overlooked in preference to a person, who was

not included in the temporary list as he was not qualified on the crucial date but

subsequently qualified. The temporary list shall be adopted for giving temporary appointments till the regular list is approved and regular appointments are made with reference to the regular list.

Rule 20(a)(i)(1) reads thus:

Where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in a post on the cadre of a service,

class or category and there would be undue delay in making such appointment in accordance with these rules and the Special Rules, the appointing

authority may temporarily appoint a person, who possesses the qualifications prescribed for the post otherwise than in accordance with the said

rules: Provided that no appointment by direct recruitment under this clause shall be made of any person other than the one sponsored by the Tamil

Nadu Public Service Commission from its regular or reserve list of successful candidates to any of the posts within the purview of the Tamil Nadu

Public Service Commission.

Rule 23(a) reads as follows:

If a person appointed temporarily either under Sub-rule (a) or Sub-rule (d) of the Rule 10 to fill a vacancy in any service, class or category

otherwise than in accordance with the rules governing appointment thereto, such vacancy being a vacancy which may be filled by direct

recruitment, is subsequently appointed to the service, class or category in accordance with the rules, he shall commence his probation if any, in

such category either from the date of his first temporary appointment or from such subsequent date, as the appointing authority may determine. If

the post is one to which appointment may be made by transfer, and the person who had been appointed thereto either under General Rule 10(a) or

10(d) is subsequently recruited thereto by transfer and included in the list of approved candidates, the appointing authority may, in his discretion,

allow such person to commence his probation if any, from the date of his first temporary appointment or from such subsequent date, as the

appointing authority may determine:

Provided that the date so determined by the appointing authority to commence probation in this clause, shall not be earlier than the date of

commencement of probation of the junior most person already in service.

Rule 39(a) and (c) are as follows:

(a) Where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of

a higher category in a service or class by promotion from lower category and there would be undue delay in making such promotion in accordance

with the rules, the appointing authority may temporarily promote a person, who possesses the qualifications prescribed for the post, otherwise than in

accordance with the rules,

(c) "A person temporarily promoted under Sub-rule (a) shall be replaced as soon as possible by the member of the service who is entitled to the

promotion under the rules".

11. With this backdrop we shall proceed to consider the contentions of the petitioners. The petitioners were appointed by G.O.Ms.No. 769, dated

24.10.1980 as District Registrars by direct recruitment for the years 1986-87 and 1987-88, in the order of preference Mr. A. Arumuga Nainar,

being senior to Mr. K. Madalaimuthu. The said A. Arumuga Nainar joined duty on 9.11.1989 while the said K. Madalaimuthu started performing

his duties on 22.11.1989. As per Rule 2(1) of the General Rules both of them started discharging their duties as District Registrars in the Tamil

Nadu Registration Service on the respective dates of joining duty. The appointment order also stipulated the period of probation for two years

within a continuous period of three years. There is no dispute that they commenced the probation and successfully completed the same.

12. The main contention of both the petitioners is that though they were appointed in the year 1989, the estimate of vacancies was made by

G.O.Ms. No. 147, dated 10.2.1986 for the post of District Registrars for the year 1985 and therefore, they should be given seniority from the

date of arising of the vacancy. The second contention is that the promotee respondents were promoted by transfer quota as according to them,

at least three direct recruits at a given time should be available in the service seems to be the quota. The further contention is that the appointing

authority viz., the Government alone is competent to prepare and publish seniority list and therefore, the seniority list drawn by the Inspector

General of Registration, who is only the Head of the Department is contrary to Law and has to be ignored. They further contend by way of main

agreement that the promotee respondents were only appointed under Rule 10(a)(i)(1) and therefore had not completed their probation and therefore, they could not be said to be full members of service on the date of their temporary initial appointment, meaning thereby their subsequent regularisation on 16.6.1995 by G.O.Ms.Nos. 162, 163, 164 and 165 will not make the promotees full members of the service on the date of their initial temporary appointment and therefore their seniority would have to be reckoned only from 1995 and as such they should be shown as juniors to the petitioners who became the members of the service in 1989 when they were directly appointed.

13. As against the above contentions, the promotee-respondents submit that they were not appointed to meet any contingency or emergency for a specific period to be called as "stop gap arrangement", but on the contrary, they were regularly appointed and possessed necessary qualifications and eligibility and either appointments were though under Rule 10(a)(i)(1) they were regular appointees. According to them, they have been discharging the duties as District Registrars uninterruptedly from the date of their first appointment. They would also submit that the contention of the petitioners that there was a quota at the time of their appointment is only a fallacy and as a matter of fact there was absolutely no quota system.

In so far as the non-completion of probation by the promotee-respondents is concerned, their submission is that according to Rule 27(b) of the General Rules if no order regarding the declaration of probation is issued within six months from the date on which the Government servant is eligible for such declaration, the probationer shall be deemed to have satisfactorily completed his probation on the date of expiry of the period prescribed. Of course, according to them a formal order declaring their probation was later issued by the Government. They would further submit that they joined service as District Registrars long before the Direct Recruitment of the petitioners and therefore, the petitioners cannot seek seniority over and above them. Their reply to the contentions of the petitioners that the promotees are not full members is, that the question of becoming a full member of service is absolutely irrelevant for the purpose of promotion to a higher post. According to them, the Inspector General of Registration, who is the Head of the Department alone was competent to draw the seniority list of the officers working in the department and the

same is approved and orders issued by the Government.

14. Moreover, according to the respondents, Rule 4 of the General Rules provides for appointment by direct recruitment or recruitment by transfer

or by promotion and more especially Explanation II to Rule 4 of the General Rules provides for appointment to the posts, which are under the

purview of the Tamil Nadu Public Service Commission; wherein it is stated that the temporary list may be drawn and published as aforesaid with

reference to the qualification on the date fixed for the regular lists to meet out the exigencies of service and to avoid, administrative delay. The

Explanation would further say that once a qualified candidate is included in the temporary list with reference to the qualification on the crucial date

fixed for regular list his rights for temporary appointment should be protected and he should not be overlooked in preference to a person, who was

not included in the temporary list as he was not qualified on the crucial date but subsequently qualified. "It is the submission of the promotee-

respondents as well as the Government that the temporary list of candidates were drawn by the Inspector General of Registration and the same

was approved by the Government pending finalisation of the regular list in consultation with the Tamil Nadu Public Service Commission and

therefore, they get the seniority on the date of their initial appointment by transfer to the post of District Registrars.

15. The main thrust of argument of the learned senior counsel Mr. M. Venkatachalapathy, appearing on behalf of one of the petitioners is that the

promotee-respondents were appointed temporarily under 10(a)(i)(1) of the General Rules and therefore, they are not entitled to the seniority from

the date of their initial appointment as District Registrars, but they can trace their seniority only from the date of their regularisation viz., 16.6.1995,

on which date, the Government Orders were issued regularising their appointment. The learned Counsel Mr.N.J.R. Prasad appearing for the other

petitioner also advanced the very same argument, of course vehemently, to bring home the point that the promotee District Registrars were

appointed only by way of a stop gap arrangement and they were holding only fortuitous posts. On the other hand Mr. K.V. Venkatapathy, learned

senior counsel appearing for the promotee-respondents met the arguments advanced by the learned Counsel for the petitioners stating that the

temporary appointments of the promotee-District Registrars were not made either as a stop gap arrangement for a specific period or to meet any contingency or emergency and it cannot be said that they are holding fortuitous posts.

16. Though vacancies for the post of District Registrars for the year 1985 were fixed as 16 for the promotees and 3 for the direct recruits for the year 1985 by G.O.Ms.No. 147, dated 10.2.86, there was no direct recruitment till 24.10.1989, on which date both the petitioners were

appointed as District Registrars by direct recruitment. The relevant rule governing the Tamil Nadu Registration Service on the date of the

appointment of the petitioners is that there will be atleast three directly recruited District Registrars in position at any given time and that would be

exclusive of directly recruited District Registrars occupying higher post in the department or outside. Virtually, there was no quota rule on the date

of appointment of direct recruits. In case, any ratio would have been fixed for direct recruitment and in the post meant for direct recruits promotees

were appointed, then the moment direct recruits were appointed, the promotees have to give way to the direct recruits, since till the appointment of

direct recruits they would have been holding only of direct recruits they would have been holding only fortuitous posts. Even though the Rule

prescribed that there will be atleast three directly recruited District Registrars in position at given time, it does not specify any ratio between the

District Registrars appointed by direct recruitment and those by promotion. In the absence of any such ratio in this case, it cannot be said that the

promotee-respondents were occupying the posts meant for direct recruits. That there was no quota meant for direct recruits appears to be a

foregone conclusion and was not seriously disputed by the petitioners.

17. The last limb of the Rule provides that if any particular year a direct recruit is to be appointed, he shall be given the first vacancy; that means as

the petitioners were appointed in the year 1989 by direct recruitment, in the same year if any Sub Registrar Grade I was promoted to the post of

District Registrar, he shall rank next to direct recruit. This is the only concession available to the direct recruits as per the Rule then existed. Of

course, the Government chose to pass G.O.Ms.No.496, dated 8.8.1990 deciding to fix the ratio of 1:5 between the direct recruitment and

recruitment by transfer to the post of District Registrars. Since the said G.O. has only prospective application, the petitioners cannot get any benefit

out of it. We make it clear that there is no quota rule on the date of appointment of the petitioners by direct recruitment and therefore, they cannot

claim that their posts were occupied by the promotees.

18. The learned senior counsel Mr.M. Venkatachalapathy as well as the counsel Mr. N.G.R. Prasad fervently argued that the temporary

appointments of the promotee District Registrars were made not in accordance with Rules but under 10(a)(i)(1) of the General Rules and

therefore, they are not entitled to trace their seniority from the date of their initial appointment to that post. Of course, the Government Orders

passed in G.O.Ms. No. 983, dated 27.9.1986 appointing Mr.A. Senthilvel and 15 others to the post of District Registrars by temporarily

promoting them from the cadre of sub Registrars Grade I speaks that the same was passed under Rule 10(a)(i)(1) of the Tamil Nadu State and

Subordinate Services Rules. The appointment of the promotee-District Registrars in this case cannot be said to be made not in accordance with

the Rules. Though these appointments were made temporarily pending regularisation in consultation with the Tamil Nadu Public Service

Commission, they cannot be said to be made de hors the Rules. According to Explanation II to Rule 4, there is a provision for drawing of a

temporary list in respect of appointments to the posts, which are under the purview of Tamil Nadu Public Service Commission from among the

qualified persons entitled to hold that post to avoid administrative delay or to meet out the exigencies of service. It further provides that once a

qualified candidate is included in the temporary list with reference to the qualification on the crucial date fixed for regular list, his rights for

temporary appointment should be protected and he should not be overlooked in preference to a person, who was not included in the temporary

list as he was not qualified on the crucial date but subsequently qualified. Though it is not a case, where a dispute arose between a qualified

candidate included in the list and a subsequently qualified candidate, the fact remains that on the date of the drawal of the list of promotion, the

petitioners were not in service at all. There is no dispute that all the appointments to the post borne on the cadre of District Registrars in the Tamil

Nadu Registration Service are within the purview of the Tamil Nadu Public Service Commission.

19. Moreover, as already said, the promotee-respondents were fully qualified and found fit to hold the post and they were not holding the post

reserved for the direct recruits. Though the initial appointment of the promotees were made temporarily pending regularisation in consultation with

the Tamil Nadu Public Service Commission, in the absence of proof that they have been holding the post reserved for direct recruits, the latter

cannot question the initial appointment of the promotees in any manner whatsoever. The direct recruits were appointed to the service only on

24.10.1989. According to Rule 2(1) of the preliminary Rules a person is said to be ""appointed to a service"" when he discharges for the first time

the duties of a post borne on the cadre of such service or commences the probation etc. The direct recruits having been appointed on 24.10.1989

can be said to be appointed to service only on that date and they cannot trace their appointments or seniority earlier to that date especially where

there is no quota for the direct recruits on the date of their appointment. The subsequent order passed by the Government regularising the services

of the promotee-District Registrars after getting the approval of Departmental Promotion Committee ratifies the initial appointment. It appears that

the Departmental Promotion Committee was constituted only in the year 1994 and till such time, the Tamil Nadu Public Service Commission was

to be consulted. Though pending consultation with the Tamil Nadu Public Service Commission, initial appointments of the promotees were made

temporarily, since Departmental promotion committee was constituted, the Government after considering the proposal of Inspector General of

Registration and the recommendation of the Departmental Promotion Committee passed G.O.Ms. Nos. 162, 163, 164 and 165, dated 16.6.1995

regularising the services of the promotee. Since the promotees were appointed as against clear post and not as against the post meant for or

reserved for direct recruits, the petitioners cannot dispute the initial appointment of the promotees to the service as fortuitous. The petitioners could

not show that the promotee-respondents were appointed by way of a stop gap arrangement for any specific period but they have been

continuously officiating from the date of their initial appointment till the date of their regularisation in 1995.

20. In fact the most relevant Rule to decide the issue is Rule 23-A of the General Rules. The first part of the Rule speaks about a vacancy to be

filled by direct recruitment. The second part, which is more relevant is hereunder:

If the post is one to which appointment may be made by transfer, and the person who had been appointed thereto either under General Rule 10(a)

or 10(d) is subsequently recruited thereto by transfer and included in the list of approved candidates, the appointing authority may, in his discretion,

allow such person to commence his probation if any, from the date of his first temporary appointment or from such subsequent date, as the

appointing authority may determine.

Though initially appointment of the promotee District Registrars was said to have been made under 10(a)(i)(1) of the General Rules, since they

have been subsequently recruited by transfer and included in the list of approved candidates, the appointing authority had the discretion either to

allow them to commence their probation from the date of their first temporary appointment or form a subsequent date as the appointing authority

may determine. In this case, admittedly the appointing authority has not determined any subsequent date for the commencement probation by the

promotee-District Registrars. That means they were deemed to have been allowed to commence the probation from the date of their first

temporary appointment. The moment they commenced their probation they were said to be appointed to the service.

The proviso to Rule 23(a) reads thus:

provided that the dates so determined by the appointing authority to commence probation in this clause shall not be earlier than the date of

commencement of probation of the junior most person already in service.

Hanging over this proviso, the learned Counsel arguing on behalf of the petitioners contended that inasmuch as the regularisation of the services of

the promotees was made in the year 1995 and the directly recruited petitioners have already commenced their probation earlier than the date of

commencement of the probation of the junior most person already in service. This analogy does not appear to be appreciable as the appointing

authority did not ""determine"" any subsequent date for commencement of the probation by the promotees. Therefore, the proviso has no application

to the facts of the present case and the latter portion of Rule 23(a)(1) of the

General Rules as quoted supra enables the promotees to claim that they have commenced their probation from the date of their first temporary appointment though they were initially appointed under Rule 10(a)(i)

(1). Therefore, the promotee-respondents get their seniority from the date of their initial appointment and their probation was deemed to have been

completed within six months from the date on which they were eligible for declaration of their probation as per Rule 27(b) of the General Rules.

21. The argument on behalf of the petitioners that the initial temporary appointments of the promoters were not made after observing the procedure

for promotion has no substance, since according to the learned Government pleader at the time of preparation of the panel for temporary

promotion the confidential records of all the eligible qualified Sub Registrars Grade I were considered by the Inspector General of Registration.

Further we wanted to verify the files relating to such temporary promotion. When the files were verified we found that there was a proforma

wherein the service, post held, the details of any departmental enquiry and the remarks of the Recording Officers were available. As a matter of

fact, as submitted by the learned Government Pleader on behalf of the respondents, totally 32 qualified promotees were considered while

preparing the panel for the year 1985-86 and only 16 were included in the panel. Similarly for the year 1986-87, 28 qualified promotees were

considered but only 14 were included in the panel. For the year 1987-88 also out of 40 qualified promotees only 22 were included in the panel.

Even in the panel for the year 1988-89 only 20 were included as against 40 qualified promotees. Thus the Head of the Department viz., the

Inspector General of Registration has taken care to exclude persons who are not fit for promotion, though qualified to hold the post. Therefore, it

was a considered exercise made by Inspector General of Registration and it cannot be said that some persons were picked up and temporarily

posted due to some exigencies as a stop gap arrangement.

22. The learned Counsel Mr. N.G.R. Prasad appearing for one of the petitioners disputed that panels pointing out that 171 temporary promotees

were made as against the lesser vacancies. We are unable to countenance such an argument as to how more persons can occupy limited posts

probably the petitioners would have failed to exclude those who have retired or

been promoted or otherwise failed to hold the post at the relevant point of time. On this ground, the preparation of panel by the Inspector General of Registration cannot be questioned. It is the further contention of the petitioners that the Inspector General of Registration is only the Head of the Department and has no right to prepare the panel. This is totally an incorrect argument because the panel, prepared and forwarded by the Inspector General of Registration, was approved by the Government and Government Orders were issued pending consultation with the Tamil Nadu Public Service Commission. Therefore, this argument is only a fallacy.

23. The learned senior Counsel Mr. M. Venkatachalapathy contends that the temporary posts the promotees were holding were not in the cadre of District Registrar and since the permanent posts held by direct recruits and the temporary posts, which promotees were allowed to officiate did not form a single cadre, the promotees cannot claim seniority over the direct recruits. In support of this contention, he drew our attention to The Direct Recruit Class-II Engineering Officers" Association and others Vs. State of Maharashtra and others, and submitted that the case of the promotees would fall under the corollary in Clause - A of paragraph 44 of the above said ruling, which would say 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. On the other hand, the learned senior counsel, Mr. K.V. Venkatapathy arguing on behalf of the promotee-respondents drew our attention to the very same ruling and insisted that it is Clause B in the said para of the above said ruling that applies to the facts of the case and not the corollary to Clause A. According to him, though the initial appointment was not made by following the procedure laid down by the rules, the appointee continued in the post uninterruptedly till the regularisation of his service in accordance with rules, and hence the period of officiating service should be counted. His contention is that the initial appointment was not made as a stop-gap arrangement for any limited period, but they were regularly appointed and the only impediment was it was done pending consultation with the Tamil Nadu Public Service Commission. Therefore, according to him, the procedure of consultation with the Tamil Nadu Public Service Commission alone was absent on the date of initial

appointment of the temporary promotees and since subsequently the Departmental Promotion Committee in the place of Tamil Nadu Public

Service Commission has accorded concurrence and the Government Order came to be issued, the promotees having officiated continuously and

uninterruptedly till the regularisation of their service, their seniority should be reckoned from the date of their initial appointment.

24. The ruling of the Apex Court in *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*,

has dealt at length the question of inter se seniority between the direct recruits and the promotees. The Apex Court has held at para 13 as follows:

But if the appointment is made after considering the claims of all eligible candidates and the appointee continues in the post uninterruptedly till the

regularisation of his service in accordance with the rules made for regular substantive appointments, there is no reason to exclude the officiating

service for purpose of seniority.

The Apex Court also quoted the ruling in *Narender Chadha and Others Vs. Union of India and Others*, to hold that the period of continuous

officiation will count for seniority where the officers were promoted although without following the procedure prescribed under the Rules but they

continuously work for a period of nearly 15 to 20 years on the posts without being reverted. Therefore, in this case, since we have already stated

that the appointments of the promotees were made in accordance with the rules, especially Explanation II to Rule 4, the period of their continuous

officiation has to be counted while determining their seniority. In this case, there was no quota Rule at the time of appointment of direct recruits-

petitioners.

25. In the *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, , the Apex Court has

further held as follows:

The question, however, is as to what is the conclusion if the quota rule is not followed at all continuously for a number of years, after it becomes

impossible to adhere to the same. Admittedly in the present cases direct recruits were not available in adequate number of appointment, and

appropriate candidates in the subordinate rank capable of efficiently discharging the duties of Deputy Engineers were waiting in their queue. The

development work of the State peremptorily required experienced and efficient hands. In the situation the State Government took a decision to fill

up the vacancies by promotion in excess of the quota, but only after subjecting the officers to the test prescribed by the rules.

In this case on hand also as stated supra for the years 1986-86, 1987-88 and 1988-89, the eligible qualified Sub Registrars Grade-I were

considered in batches and from amongst them efficient hands were picked up and included in the panel. Even though in the quoted case, there was

a quota Rule and the appointment of the promotees were made in excess of the quota, still the Apex Court went to hold that the appointees should

not be pushed down below the appointees from the other source inducted in the service at a later date if initial appointments were made after

following the procedure prescribed by the Rules for the appointment. But in this case, since there was no quota Rule at the relevant point of time

Clause B of the Rules enunciated in paragraph 44 of the Ruling viz.,

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.

squarely applies and therefore, the petitioners cannot claim seniority over and above the promotee-respondents.

26. In this connection it is relevant to note that the Apex Court in *State W.B. v. Aghore Nath Dey* 1993 S.C.C. 371 had the occasion to interpret

conclusion (B) propounded in *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, and

distinguish the same from conclusion A and the relevant passage in hereunder:

In our opinion, the conclusion B was added to cover a different kind of situation, wherein the appointments are otherwise regular, except for the

deficiency of certain procedural requirements laid down by the rules. This is clear from the opening words of the conclusion B, namely, if the initial

appointment is not made by following the procedure laid down by the "rules" and the latter expression "till" the regularisation of his service in

accordance with the "rules." We read conclusion B, and it must be so read to reconcile with conclusion A, to cover the cases where the initial

appointment is made against an existing vacancy, not limited to a fixed period of

time or purpose by the appointment order itself, and is made subject to the deficiency in the procedural requirements prescribed by the rules for adjudging suitability of the appointee for the post being cured at the time of regularisation, the appointee being eligible and qualified in every manner for a regular appointment on the date of initial appointment in such cases. Decision about the nature of the appointment, for determining whether it falls in this category, has to be made on the basis of the terms of the initial appointment itself and the provisions in the rules. In such cases, the deficiency in the procedural requirements laid down by the rules has to be cured at the first available opportunity, without any default of the employee, and the appointee must continue in the post uninterruptedly till the regularisation of his service, in accordance with the rules.

27. The same note was carried by the Apex Court in *Ajit Kumar Rath v. State of Orissa and Ors.* AIR 2000 S.C. 85, of the ruling which is relevant is hereunder:

It is thus clear that the appellant was promoted on a regular, though provisional posts pending concurrence from the Orissa Public Service

Commission. Promotion having been made in accordance with the rules, the entire period of ad hoc service beginning from 1972 to 1976 when the

appellants were appointed on regular basis on the concurrence of the Public Service Commission would have to be counted towards the seniority

of the appellant vis-a-vis, the contesting respondents.

Their Lordships based this ruling also on the *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra*

and others, . This appears to be the latest ruling on the subject and it squarely applies to the factual matrix of this case.

28. The learned senior counsel Mr. M. Venkatachalapathy relying on the ruling of the Apex Court in the *State of Tamil Nadu and another etc. Vs.*

E. Paripoornam and others, , vehemently argued that the temporary service of the candidates cannot be counted for determining the seniority. The

facts in that case are totally different. There junior professors were to be appointed directly by the public Service Commission. During the periods

from 1977 to 1982, the Government appointed temporary junior officers in each Law Colleges in the State and the appointments were made

under Rule 10(a)(i)(1) of the Tamil Nadu State and Subordinate Services Rules,

1955. In 1975 the Tamil Nadu Public Service Commission invited applications for regular appointment of junior professors and selected 26 candidates out of whom 21 were already working as temporary junior professors. The selected candidates were appointed in the list called "approved list" in the order of merit and the list was prepared by Tamil Nadu Public Service Commission on 16.8.1983 and approved by the Government on 9.9.1983. On 27.6.1985 the State Government made an order regularising the services on those 21 junior professors. Their services were regularised with effect from the dates of original appointments as temporary junior professors. On 10.9.1986, some of the junior professors were promoted and appointed as professors in the Law Colleges and that promotion was challenged before this High Court on the ground that the claim of seniors has been over looked. Accepting that plea this Court quashed the promotion of professors and directed the Government to make proper order of promotion in the light of the view expressed in the judgment. The state and the promoted professors went on appeal to the Apex Court, which held as follows:

Rule 10(a)(i)(1) provides for making up of temporary appointment when it is necessary in the public interest to do so owing to an emergency which has arisen for filling a vacancy immediately. Such appointments are made otherwise than in accordance with the procedure prescribed under the Rules. The candidates were appointed temporarily and otherwise than in accordance with the Rules. They were later selected along with others for direct recruitment by the public service commission. They were not entitled to count their temporary service for seniority.

That was a case where the temporary appointees also took part in the selection by Tamil Nadu Public Service Commission and the Tamil Nadu Public Service Commission drew a selection list of approved candidates in the order of seniority. It is significant to remember that there were no two methods of selection to the post of professors as in the case of District Registrars. Once the Public Service Commission drew a list on merit in the order of seniority, the Apex Court held that it cannot be changed and the temporary appointees cannot claim their seniority to count their temporary service. This ruling is not applicable to the facts of the present case, where there is two methods of recruitment as against the regular

posts and clear vacancies.

29. The learned senior counsel arguing for the petitioners tried to rely on the ruling of the Apex Court reported in Keshava Chandra Joshi and Ors.

v. Union of India and Ors. (1972)(Supp.)1 S.C.C. 272, wherein it was held that the promotions made in excess of quota and without following the

rules should be treated as ad hoc. That was a case where the appointments of the promotees were made in batches yearwise. The rules postulate

that appointment shall be strictly as per merits after interview, arranged in order by Tamil Nadu Public Service Commission. In the same order

when the appointments were made to the substantive vacancies from both the sources, according to the Rule, the promotees shall rank seniors to

the direct recruits in accordance with the quota prescribed under Rule 6 of U.P. Forest Service Rules. The rule itself recognised the distinction

between the substantive appointment and temporary/officiating appointment and the temporary appointments were made in excess of the quota.

Therefore, the Apex Court held that the Rule of quota being a statutory one, it must be strictly implemented and it is impermissible for the

authorities concerned to deviate from the rule due to administrative exigencies, but however, where the promotees were appointed in excess, they

have to be pushed down so that injustice to direct recruits is avoided. Only in that context, it was held that if the initial appointment made was de

hors, the Rule, the entire length of that services cannot be counted for seniority. Since in this case there is no quota rule, the benefit of the above

ruling is not available to the petitioners.

30. The learned Counsel for petitioner relying on Syed Khalid Rizvi v. Union of India and Ors. (1993) (Supp.) 3 S.C.C.375, submitted that the

promotees got their seniority only from the date of their regular promotion in accordance with the rules and within quota. That was a case where

dispute arose between the I.P.S. Officers and promotees and the Apex Court held that seniority of promotees is to be reckoned from the date of

their inclusion in selection list or from the date of their continuous officiation in the cadre post, which year is later on approval of their appointment

by Central Government and in the period of their continuous officiation prior to such date would be treated as fortuitous and not countable. In that

case due to exigencies of service, the State Government having been empowered

under Regulation 8 of Promotion Regulations read with Rule 9 of Cadre Rules appointed non-select officers to man temporary vacancies in cadre posts. The Rules provide that where the vacancies continue for more than three months, the prior concurrence of the Central Government is mandatory and if it continues for more than six months prior approval of the Union Public Service Commission is also mandatory. Any appointment in violation thereof is not an appointment in accordance with the law.

Fulfilling the conditions of eligibility for consideration for promotion to the Indian Police Service from State Service are conditions of recruitment.

The compliance of condition of recruitment are mandatory for appointment of promotion. Only in that context it was held that the promotees can get their seniority only from the date of their regular promotion in accordance with the rules and within quota. This ruling does not apply to the facts of the present case because there is no rule in the Tamil Nadu Registration Service Rules stipulating any quota to the direct recruits vis-a-vis promotees and the promotees were not non-select officers but they were selected to be included in the temporary list after proper consideration of their merit and ability pending consultation with the Public Service Commission.

31. The learned senior counsel relied on V. Sreenivasa Reddy and others Vs. Govt. of Andhara Pradesh and others, to bring home the point, that the appointment in accordance with Rules is a condition precedent to count seniority and temporary or ad hoc or fortuitous appointments etc., is not an appointment in accordance with the Rules and the temporary service cannot be counted towards the seniority. The Apex Court after discussing Rule 10(a)(i)(i) and also the definition to "appointed to service" and the definition to "approved candidate" came to hold that appointment/promotion must be in accordance with the Rules and direct recruit has his seniority from the date on which he is discharging the duty of the post borne on the cadre while a temporary appointee appointed de hors the rule or on ad hoc basis or to a fortuitous vacancy gets seniority from the date of regular appointment. It has already been seen that in this case the appointment was in accordance with Rules especially Explanation II to Rule IV and on that source alone we are unable to apply the abovesaid ruling to the facts of the present case. However, according to Rule 23(a) of the Tamil Nadu State and Subordinate Service Rules is

couched with an altogether different language the appointment

authority in his discretion allow such a person to commence his probation if any form the date of his first temporary appointment or from

subsequent date as the appointing authority may determine."" So both the rules are entirely different. In Andhra Pradesh Panchayat Raj Engineering

Service Rules the Rule provides that the probation can be commenced by temporary appointee from the date of subsequent appointment or from

such earlier date as the appointing authority may determine. But here the probation of the rank promotees had commenced from the date of their

first temporary appointment, since the appointing authority has not determined any subsequent date for the same. On this score also, the above

Ruling is inapplicable to the present case.

32. In Andhra Pradesh Panchayat Raj Engineering Service Rules, the appointment order contains a condition that the appointees shall not be

entitled to, for any seniority in the category of Assistant Executive Engineers on the basis of their regular appointments from the date of initial

appointment. Such a condition is apparently absent in the appointment orders of the promotee-District Registrars. On this count also, we are

unable to apply the ruling to the facts of this case.

33. Paragraph 11 of the Ruling is very much relevant in this case and that is hereunder:

It is true that Rule 33(a) spoken of length of services but a temporary employee appointed under Rule 19(a)(i)(1) when his services are sought to

be regularised under Rule 23(a), the appointing authority has been invested with the discretion to fix the date of initial appointment or subsequent

date as the commencement of the date of the probation. In other words", appointment to the service in accordance with the Special Rules is a

condition precedent and fixation of the date for commencement of the probation of temporary appointees under Rule 23(a) should be done in

accordance with the rules. Therefore, when the competing interests of the PSC candidates and the temporary appointees under Rule 10(a)(i)(1)

emerges, the appointing authority has been given discretion to give later date to the temporary appointees.

In the first place there is no question of ""competing interest"" in the present case and the two streams are different and there is no quota meant for

direct recruits.

Secondly, Rule 23(a) provides that if the post is one to which appointment may be made by transfer and the person who had been appointed there

to either under General Rule 10(a) or 10(d) is subsequently recruited thereto by transfer and included in the list of approved candidates, the

appointing authority may in his discretion allow such person to commence his probation if any from the date of his first temporary appointment or

from such subsequent date as the appointing authority may determine. In this case, admittedly the appointing authority has not fixed any subsequent

date for commencement of probation in so far as the promotee-respondents area concerned. In the absence of fixing such a subsequent date the

logical corollary is that the promotee-respondents were deemed to have commenced their probation from the date of their first temporary

appointment. Moreover, Rule 29(b) of the General Rules provided that if no order declaring the probation has been issued within six months from

the date on which the probationer is eligible for such declaration, the probationer shall be deemed to have satisfactorily completed his probation on

the date of expiry of the prescribed or extended period of probation. Therefore, the abovesaid ruling rendered by the Apex Court in V. Sreenivasa

Reddy and others Vs. Govt. of Andhara Pradesh and others, is not available to the petitioners in the present case.

34. The learned senior counsel Mr. M. Venkatachalapathy also drew our attention to (1996) 2 SCR 59 . That was a case, where direct recruits

were appointed to the post of Assistant Director of Industries through Public Service Commission and ad hoc promotees were appointed de hors

the Rules, but continuing as such uninterruptedly still not approved by PSC. Moreover, there were no rules providing for determination of inter se

seniority. In such circumstances, the Apex Court applied proposition (A) of Direct Recruits case and held that irrespective of the comparative

length of service the direct recruits would be senior to the ad hoc promotees. As per the Rules 50% of the post of Assistant Director of Industries

were to be filled by direct recruitment and the balance of 50% by promotion. The aforesaid rule was replaced by a new set of rules called M.P.

State Industries (Gazetted) Service Recruitment Rules, 1985. In that case the appointment of the promotees were made ""until further orders"" and

in anticipation of the approval of PSC. Subsequently also there was no reference about the concurrence of the PSC. The Apex Court has said that

the appointment of the promotees were still not approved by PSC, where as in this case on hand orders of regulation were issued and there is no

quota of 50:50 as in the above quoted case. Therefore this ruling also does not fit in, within the factual matrix of the present case.

35. The learned senior counsel also relied on Registrar General of India and Another Vs. V. Thippa Setty and Others, to hold that ordinarily

regularisation is prospective so that seniority or those who are already in regular service is not affected. It is a general principle. As pointed out by

the learned senior counsel Mr. K. V. Venkatapathy, appearing for the promotee-respondents, in Thiru A. Balakrishnan and Anr. v. Govt. of T.N.

and Ors., 1995 Supp (4) SCC 108 , the Apex Court has held that in the absence of a specific order providing otherwise, service rendered prior to

the date of regularisation shall be counted towards seniority. In this case, admittedly there was no such condition in the order of regularisation

denying the benefit, towards the seniority, of the period of service prior to the date of regularisation. Therefore, the promotee- respondent are

entitled to count such period also in fixation of their seniority.

36. As a last straw on the camel's back, the learned senior counsel appearing for the petitioners drew our attention to the ruling of the Apex Court

in State of Tamil Nadu Vs. S. Sunderaraj and Others, . In that case, it was appointment to substantive vacancies in the category of Assistant

Commercial Tax Officers in the state of Tamil Nadu. In that case, there was nothing to show that the cadre strength was fixed by the Government

in any particular year to comprise not only permanent posts but also temporary posts. Moreover, 40% of the substantive vacancy in the category of

Assistant Commercial Tax Officer have to be filled by direct recruitment. The transferees would not be accounted in the quota reserved for them

and as they were accommodated in the quota of the direct recruits they had to step down after regular appointments by direct recruitment were

made. In that context, the Apex Court held that the mere temporary appointments will not by themselves increases the cadre strength already. But

in this case according to G.O.Ms. No. 496, dated 6.8.1990 as on that date there were 106 posts of Deputy Registrars in the Tamil Nadu

Registration Department out of that 59 posts are permanent. That shows the cadre strength consists of both permanent and temporary vacancies.

Moreover, there is no quota rule available in the cadre of District Registrars in the Tamil Nadu Registration Service at the relevant point of time

when petitioners were appointed. In view of this distinction the ruling in (1999) 4 Scale at 416 has no application to the fact of the present case.

37. The learned senior counsel Mr. K.V. Venkatapathy, appearing on behalf of promotee-respondents relies on I.K. Sukhija and Others Vs.

Union of India (UOI) and Others, wherein the Apex Court has held as follows:

When the appellants were promoted though on ad hoc basis, clear vacancies were available in the promotion quota and the only reason for making

their appointments as temporary and ad hoc was that the draft recruitment rules could not be finalised till 1975.

So saying it held that the appointments of the appellants as Assistant Engineers, though temporary and ad hoc, were not by way of stop gap

arrangement. The above ruling applies to the present case on all fours. He also relied on the The Direct Recruit Class-II Engineering Officers"

Association and others Vs. State of Maharashtra and others, for the proposition that where appointments were made in accordance with rules,

seniority is to be counted from the date of such appointment and not from the date of confirmation. This aspect has already been discussed in detail

by us and proposition "B" formulated by the Apex Court squarely applies to the facts of the present case. The only deficit at the time of initial

appointment of rank promotes is the consultation with the Tamil Nadu Public Service Commission. There is a procedure to consultation with the

Public Service Commission. Merely because of this procedural lapse, the promotee respondent cannot be denied their right to seniority though

their appointments were made against regular vacancies.

38. The learned Counsel Mr. N.J.R. Prasad, appearing for one of the petitioners contended that the subsequently regularised candidates cannot

become seniors to the directly recruited appointees and they cannot steal a march over the later. In support of his contention, he drew our attention

to a rulings of the Supreme Court Dr M.A. Haque and Others Vs. Union of India (UOI) and Others, in the case of G.S. Venkat Reddy and others

etc. etc. Vs. Government of Andhra Pradesh and others, Smt. M. Nirmala and

Others Vs. State of Andhra Pradesh and Others, . In all these cases, the posts concerned were having only single entry system through the Public Service Commissions. Therefore, those rulings have no application to the present case where there are two methods of recruitment.

39. In view of the above discussions, we hold that the petitioners can have their seniority only from the date of their appointment and the

promotee-respondents can count the period of continuous uninterrupted officiation to get their seniority from the date of their initial appointment as

per proposition (B) of the The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others, and in

conformity with the ruling rendered by the Apex Court reported in Ajit Kumar Rath v. State of Orissa and Ors. AIR 2000 S.C. 85.

40. In fine, we find no reason to set aside the common order passed by the Tamil Nadu Administrative Tribunal and we hereby confirm the same

and all the writ petitions stand dismissed. There is no order as to costs.