
(2015) 03 MAD CK 0237

In the Madras High Court

Case No : Writ Appeal Nos. 2705, 2730, 2731 of 2012, 2394, 1033 of 2013, M.P. Nos. 1 of 2012 and 1 of 2013

N. Santosh Kumar and Others

APPELLANT

Vs

The Tamil Nadu Public Service Commission and Others

RESPONDENT

Date of Decision : 31-03-2015

Acts Referred:

Constitution of India, 1950 — Article 16, 16(1), 16(2), 16(4), 16(4-A)

Citation : (2015) LabIC 3705 : (2015) 4 MLJ 281

Hon'ble Judges : P.R. Shivakumar, J.; V. Ramasubramanian, J.

Bench : Division Bench

Advocate : R. Muthukumarasamy, Senior Counsel for A. Jenasenan, for the Appellant; C.N.G. Niraimathi, Advocates for the Respondent

Final Decision : Allowed

Judgement

V. Ramasubramanian, J.—The writ appeals arise out of the dismissal of a batch of writ petitions challenging the method of fixation of seniority among directly recruited Assistant Engineers in the Highways Department, on the ground of delay and laches.

2. We have heard Mr. N.R. Chandran and Mr. R. Muthukumarasamy, learned Senior Counsel and Mr. N. Subramaniyan, learned Counsel appearing for the appellants, Mr. S. Gomathinayagam, learned Additional Advocate General, assisted by Mr. R. Ravichandran, learned Additional Government Pleader for the State, Miss. C.N.G. Niraimathi, learned counsel appearing for the Tamil Nadu Public Service Commission Mr. K. Venkataramani and Mr. Vijay Narayan, learned Senior Counsel and Mr. N.G.R. Prasad, learned Counsel appearing for the contesting respondents.

3. On 10.07.1999, a Notification for direct recruitment Assistant Engineers in the Public Works Department and Highways Department, was issued by the Tamil Nadu Public Service Commission.

4. After a process of selection, comprising of a written examination and oral interview, the Service Commission sent individual communications to the selectees on 16.11.1999. While the candidates selected for appointment to the Public Works Department joined the services by virtue of a separate order, the candidates selected for appointment in the Highways Department joined the services, pursuant to the approval of the select list by the Government in G.O.Ms. No. 104, Highways Department dated 19.6.2000.

5. After four years of the selectees joining the Highways Department, the Chief Engineer of the Highways Department issued a proceeding dated 29.4.2004, enclosing a seniority list. The said list was made subject to the final orders to be passed in a writ petition filed in W.P. No. 41342 of 2012 filed by one S. Balakrishnan and others.

6. Immediately upon the release of the seniority list dated 29.4.2004, one Mr. R. Balakrishnan, who was selected for appointment as Assistant Engineer in the Highways department gave a representation on 16.6.2004, objecting to his placement in the seniority list. His objection was that he was a more meritorious candidate belonging to the Backward Classes and that by virtue of his higher ranking, he was allotted to the General Turn (open category) and kept against the 172nd roster point. But other persons belonging to the Backward Classes who were least meritorious were placed at a higher roster point and they were also given seniority over and above him, merely because they were placed against reserved vacancies.

7. The said representation of R. Balakrishnan was rejected by the Tamil Nadu Public Service Commission by an order dated 20.12.2004 on the short ground that the roster point by itself determined the seniority position of the candidates selected for appointment, in view of the decision of the Supreme Court in P.S. Ghalaut Vs. State of Haryana and Others, .

8. After receipt of the said communication from the Tamil Nadu Public Service Commission, R. Balakrishnan and a few others filed a writ petition in W.P. No. 34957 of 2006, challenging their placement in G.O.Ms. No. 104, Highways Department, dated 19.6.2000 and the proceedings of the Chief Engineer dated 29.4.2004. Subsequently, few more individuals filed writ petitions in W.P. Nos. 50067 of 2006, 29356 of 2007, 46868 of 2006 and 1447 of 2005.

9. The main issue raised by the writ petitioners was as to whether the 200 point roster given in Schedule III of the General Rules for Tamil Nadu State and Subordinate Services for reservation of vacancies, would be determinative of the seniority.

10. By a common order dated 18.10.2012, a learned Judge dismissed all the writ petitions on the sold ground that the petitioners were guilty of delay and laches. However, the learned Judge held on principle that the decision of the Supreme Court in P.S. Ghalaut, on the basis of which the respondents had prepared the seniority list, has already been declared by the Supreme Court to be not a good

law and that on merits, the claim of the writ petitioners was correct. In other words, the writ petitioners scored a point on merits, but lost the battle on the ground of laches. Therefore, aggrieved by the said order, the writ petitioners have come up with the above writ appeals.

COLLATERAL PROCEEDINGS AND A PRELIMINARY ISSUE ARISING THEREFROM

11. Before dwelling deep into the dispute on hand, it is necessary to take note of one collateral proceedings that has now gone up to the Supreme Court and is pending there. It appears that while those selected and appointed in the Highways Department chose to come up before the Principal Bench, the candidates selected for appointment to the Public Works Department, in pursuance of the very same notification dated 10-7-1999, chose to file a batch of writ petitions in W.P.(MD) Nos. 319 to 322, 7292 and 7293 of 2011, on the file of the Madurai Bench of this Court, seeking identical reliefs. Those writ petitions were allowed by a learned Judge by a common order dated 26.9.2012.

12. As against the said order, a batch of writ appeals came to be filed by the aggrieved parties (and not by the State or the Public Service Commission). These writ appeals in W.A.(MD) Nos. 780, 781, 813 and 828 to 830 of 2012 were allowed by a Division Bench at Madurai, by an order dated 22.11.2012, on the ground of delay and laches. As against the said order, a Special Leave Petition was filed in S.L.P.(Civil) No. 1116 of 2013. Though notice has been ordered in the Special Leave Petition, no stay has been granted. The Special Leave Petition is pending on the file of the Supreme Court.

13. In the light of the above fact that a Division Bench of this Court has dismissed the cases of persons appointed to the Public Works Department from out of the same selection, a preliminary objection is taken by the contesting respondents that these writ appeals should also follow the same fate and that in case this Bench is constrained to differ from the opinion rendered by the Madurai Bench in W.A.(MD) Nos. 780 of 2012 batch, the issue has to be referred to a Larger Bench for consideration.

14. Since the above preliminary objection is capable of being disposed of without much ado, we shall take it up first before going into the main contentions raised by the appellants.

15. In the batch of cases filed before the Madurai Bench, the writ petitions themselves were filed only in the year 2011. The Notification for recruitment was issued on 10.07.1999 and the appointment of candidates in the Public Works Department was made in the year 2000. The Division Bench that allowed the writ appeals on 22.11.2012 found on facts that the Engineer in Chief of the Public Works Department had issued proceedings dated 6.2.2002 clearly indicating that the seniority of selected candidates will be as per Serial Numbers assigned by the Public Service Commission and that the petitioners chose to file the writ petitions before the Madurai Bench only after 9 years thereof in 2011. Therefore, the decision of the Madurai Bench dated 22.11.2012 turned on the facts that were

before the Madurai Bench.

16. The dismissal of one case relating to seniority on the ground of delay and laches, cannot be cited as a precedent for another case relating to seniority. Delay and laches are questions of fact. The writ petitioners before the Madurai Bench chose to go to court only in 2011, after more than 10 years of their appointment, challenging the proceedings of the Engineer in Chief dated 28.3.2011 and 6.2.2002.

17. But in the cases on hand, the writ petitions out of which the present appeals arise, were filed in the years 2005 and 2006, at least 5 to 6 years before the selectees of the Public Works Department went before the Madurai Bench. Therefore, the contesting respondents herein cannot contend that the decision of the Madurai Bench has sealed the fate of the appellants herein.

18. On a question of fact such as delay and laches, the court is duty bound to look into the facts of each case. Therefore, we cannot simply dismiss the appeals on hand solely on the basis of the decision of the Madurai Bench. On a question of fact, there is also no scope for a reference to a Larger Bench. Therefore, the preliminary objection raised by the contesting respondents is overruled.

WHETHER THERE WAS DELAY AND/OR LACHES

19. Having rejected the preliminary issue raised by the contesting respondents that the writ appeals may have to be either dismissed following the decision of the Madurai Bench or they should be referred to a Larger Bench, we shall now take up the next question. The next question is as to whether the learned Judge was right in dismissing all the writ petitions on the ground of delay and laches. Additionally it should also be seen if the writ petitions deserved to be thrown out on the ground of limitation prescribed under Rule 35(f) of the General Rules for Tamil Nadu State and Subordinate Services.

20. To come to the conclusion that the writ petitioners were guilty of delay and laches, the learned Judge took note of only two cut-off dates. The first was that the selection process took place during the year 1997-1999 and that the writ petitioners chose to challenge the arrangement of seniority only in the year 2006 after a period of 7 to 8 years. In paragraphs 14 and 18 of the impugned judgment, the learned Judge held as follows:--

"14. Before going into the merits of the case, it must be noted that while selection process had taken place in the year 1997-1999 and the petitioners were also appointed pursuant to the selection, they have chosen to challenge the arrangement of seniority only in the year 2006 viz., after a period of 7 to 8 years. Though the petitioners contended that there was no delay because they were not aware of the select list cannot be accepted.

.....

18. Therefore, the petitioners having been selected during the year 1997-1999

and joined service subsequently cannot make any grievance that the seniority assigned by TNPSC was known to them only after a period of 6 to 7 years and thereafter come to this court for re-fixation of seniority on any ground whatsoever."

21. On the basis of the 2 periods of time that he took into account in paragraphs 14 and 18 extracted above, the learned Judge held in para 20 of his order as follows:--

"20. Therefore, whatever may be the legal justification of the petitioners case, they were guilty of laches and delay. The writ petitions are liable to be dismissed on this short ground." 22. Eventually, in the penultimate paragraph, the learned Judge held that if the writ petitioners had kept the issue alive right from the date of selection, they would have become entitled to succeed in their claim on the basis of the decision of the Supreme Court in *Bimlesh Tanwar Vs. State of Haryana and Others*, . Thus in effect, there are three observations made by the learned Judge in his impugned order. They are:--

- "(i) that the writ petitioners were selected during the period 1997-1999;
- (ii) that they came to Court after a period of 7 to 8 years in the year 2006;
- (iii) that the writ petitioners had a good case on merits in view of the decision of the Supreme Court in *Bimlesh Tanwar*."

23. Therefore, it is necessary to find out first as to whether or not the learned Judge correctly examined the entire sequence of events that lead to the filing of the writ petitions, to come to the conclusion that the writ petitioners were guilty of delay and laches. Hence, let us again take a look at the time line of events:--

"(i) The notification for direct recruitment to 210 posts of Assistant Engineers (Civil) in the Public Works Department and 269 posts of Assistant Engineers (Civil/Mechanical) in the Highways Department was issued by the Tamil Nadu Public Service Commission on 10.07.1999.

(ii) The last date for submission of application was on 10.08.1999.

(iii) The dates on which written tests were conducted were 25.9.1999 and 26.9.1999.

(iv) The date on which the Public Service Commission communicated the list of selected candidates to the Government was 11.5.2000.

(v) The date on which the Government approved the list of 269 candidates selected for appointment in the Highways Department under G.O.Ms. No. 104, Highways Department, was 19.6.2000.

(vi) The dates on which the orders of appointments were issued to the candidates in batches, were 27.6.2000, 14.7.2000 and 24.8.2000.

(vii) The date on which the publication of G.O.Ms. No. 104 Highways Department

dated 19.6.2000 was made in the Government Gazette was 12.7.2000.

(viii) The date on which the Supreme Court gave a verdict in Bimlesh Tanwar v. State of Haryana, declaring the law laid down in P.S. Ghalaut to be not a good law was 10.3.2003.

(ix) The date on which the first seniority list was released by the Chief Engineer, Highways Department by his proceedings bearing No. 22369 Estt. 3(4)/2004 was 29.4.2004.

(x) The date on which one Mr. R. Balakrishnan who was the first petitioner in W.P. No. 34957 of 2006 made a representation questioning the correctness of the seniority list dated 29.4.2004, was 16.6.2004.

(xi) The date on which the Tamil Nadu Public Service Commission rejected the representation of R. Balakrishnan regarding fixation of seniority was 20.12.2004.

(xii) The date on which another candidate by name A. Chandrasekar gave a representation questioning the correctness of the seniority list dated 29.4.2004 was 25.11.2005.

(xiii) The date on which the Public Service Commission informed the Government that the representation of A. Chandrasekar deserved to be rejected, was on 27.12.2006.

(xiv) The date on which R. Balakrishnan and others filed a writ petition in W.P. No. 34957 of 2006 was 12.9.2006.

(xv) The date on which A. Chandrasekaran filed a writ petition in W.P. No. 29356 of 2007 was 26.8.2007."

24. Therefore, from the above time line of events, it is clear that at least R. Balakrishnan the first petitioner in W.P. No. 34957 of 2006 and A. Chandrasekaran, the sole petitioner in W.P. No. 29356 of 2007, came to Court within 21 months and 8 months respectively from the date on which they got a cause of action in the form of letters of rejection of their representations. But unfortunately, the learned Judge has not taken note of the above sequence of events. Therefore, the first two components of the finding of the learned Judge namely:--

"(i) that the selection took place in 1997-1999 and

(ii) that the writ petitioners slept over the matter for 7 years,"

are factually incorrect. The appointment orders were actually issued in June, July and August 2000, the seniority list was issued in April 2004 at least in so far as the Highways Department is concerned and the writ petitions were filed in 2006 and 2007. In the meantime, at least the petitioner in one writ petition and one of the petitioners in the other writ petition gave representations and got orders of rejection in December 2004 and December 2006. Therefore, it is factually incorrect to state that the petitioners are guilty of delay and laches.

25. As a matter of fact, the additional preliminary contention of the learned senior counsel appearing for the contesting respondents is that the writ petitioners were guilty of raking up the issue of seniority after the period of limitation prescribed in Rule 35(f) of the General Rules for Tamil Nadu State and Subordinate Services.

26. But, we are obliged to point out at the outset that wherever a period of limitation is prescribed statutorily, the question of laches would not arise. The contesting respondents do not appear to have invited the attention of the learned Judge to Rule 35(f). Therefore, the learned Judge proceeded only on the ground of laches.

27. Hence, let us now see whether the writ petitioners were at least guilty of delay in terms of the prescription contained in Rule 35(f) of the General Rules for Tamil Nadu State and Subordinate Services. Rule 35(f) reads as follows:--

"Application for the revision of seniority of a person in a service, class, category or grade shall be submitted to the Appointing Authority within a period of three years from the date of appointment to such service, class, category or grade or within a period of three years from the date of the order fixing the seniority, as the case may be. Any application received after the said period of three years shall be summarily rejected. This shall not, however, be applicable to cases of rectifying orders, resulting from mistake of facts". 28. A careful look at Rule 35(f) would disclose that it has three limbs namely:--

"(i) that an application for revision of seniority may be submitted within a period of three years from the date of appointment;

(ii) that an application for revision of seniority may also be made within a period of three years from the date of the order fixing the seniority; and

(iii) that the prescription of the period of limitation is not applicable to cases of rectifying orders, resulting from mistake of facts."

In the batch of cases on hand, the earliest date on which seniority list was issued by the head of the department was 29.4.2004. Within a period of two years, many of the writ petitioners had come to Court and filed writ petitions. Only one person by name A. Chandrasekaran who was the petitioner in W.P. No. 29356 of 2007 came up with a writ petition on 26.8.2007, which was after a period of three years and four months from the date of issue of seniority list. But he had made a representation on 25.1.2005 and the same was rejected only on 27.12.2006 and hence even in his case rule 35 (f) stood satisfied, in view of the fact that he made a representation within 3 years.

29. It is of interest to note that the representations of the R. Balakrishnan and A. Chandrasekaran were not rejected on the basis of Rule 35(f) as they were made within the period prescribed in the rule. They were not even rejected on the ground of laches. This is due to the fact that the writ petitioners had agitated their rights within three years. Therefore, the official respondents themselves did

not hold the prescription contained in Rule 35(f) against the petitioners. Hence, it is not open to the contesting respondents to make legal innovations for defeating the claim of the writ petitioners.

30. As we have pointed out earlier, Rule 35(f) enables a person to make a representation for revision of seniority within three years either from the date of appointment or from the date of the order fixing seniority. Therefore, the writ petitioners were well within their right in seeking revision of seniority within three years of the date of the order fixing seniority namely 29.4.2004. This important aspect has been lost sight of by the learned Judge.

31. The learned senior counsel appearing for the contesting respondents pleaded the bar of limitation under Rule 35(f) against the writ petitioners, on the basis of a few statements contained in G.O.Ms. No. 104, Highways Department dated 19.6.2000 and the series of orders of appointment issued by the Chief Engineer on 27.6.2000, 12.7.2000, 14.7.2000 and 24.8.2000. Therefore, let us have a look at those orders to find out whether these orders actually fixed the seniority of the writ petitioners vis-?-vis the contesting respondents.

32. In G.O.Ms. No. 104, dated 19.6.2000, the Government merely ordered the approval of candidates selected by the Public Service Commission for appointment. The Government order contained a notification with a tabular statement. The tabular statement contained 6 columns. The first column related to Serial Numbers. The second column indicated the rotation against which each of the selectees was fitted. The third column contained the category against which the candidate was selected, such as general turn, Backward Classes, Most Backward Classes, Scheduled Caste etc. The fourth column contained the names and addresses of the selectees. The fifth column contained particulars about the date of birth and qualification of the candidates. The sixth column contained remarks.

33. There was no indication whatsoever in the tabular column appended to G.O.Ms. No. 104 dated 19.6.2000 that the names of the candidates had been arranged in the order of seniority. Therefore, this Government Order cannot be taken to have indicated the seniority of the selectees.

34. However, Mr. K. Venkataramani, learned senior counsel appearing for some of the contesting respondents invited our attention to paragraph 5 of G.O.Ms. No. 104 dated 19.6.2000 and contended that the Government order also fixed the seniority. Paragraph 5 of G.O.Ms. No. 104 reads as follows:--

"The Chief Engineer (General) is requested to make appointment in the vacant posts in the order of seniority". 35. Even when the Chief Engineer issued posting orders pursuant to G.O.Ms. No. 104, he did not indicate the seniority of the selectees. The Chief Engineer issued orders of posting in batches. Even in those posting orders issued on 27.6.2000, 14.7.2000 and 24.8.2000, there was no column indicating the seniority. On the other hand, the first column of the table appended to the posting orders contained only the serial number from the select

list of candidates. Therefore, it is clear that neither the Government Order approving the select list of candidates nor the orders of appointment and posting issued by the Chief Engineer contained any indication that the names of the selectees had been arranged in the order of seniority. Unless this had been done, the starting point for the period of limitation cannot be the date of appointment. In other words, the first prescription contained in Rule 35(f) indicating the starting point for the period of limitation as the date of appointment is not applicable to the cases on hand.

36. A look at the proceedings of the Chief Engineer dated 29.4.2004 would show that it was for the first time that a seniority list as on 1.1.2004 was prepared and circulated. The reason was also very obvious. In paragraph 3 of the proceedings of the Chief Engineer bearing No. 22369. Estt. 3(4)/2004 dated 29.4.2004 it was indicated that the seniority list was issued subject to the final orders to be passed in some other writ petition in W.P. No. 41342 of 2002 already pending on the file of this court. There is no indication in the Chief Engineer's proceedings dated 29.4.2004 that any other seniority list had already been issued. Therefore, it is clear that the starting point for the period of limitation as prescribed in Rule 35(f) would only be the proceedings of the Chief Engineer dated 29.4.2004. Therefore, the second limb of Rule 35(f) alone would come into operation.

37. Moreover, the contesting respondents have lost sight of three important things, while pitching their claim on the basis of Rule 35(f). These three facts are:--

"(i) The third and last limb of Rule 35(f) makes the bar of limitation prescribed under the first two limbs, inapplicable to cases of rectification of mistake of facts.

(ii) The cases on hand are not individualistic in nature, depending upon individual dates, facts and sequence of events. The cases on hand arise out of a most fundamental question as to the principle of law to be applied in the matter of fixation of seniority. The grievance of the writ petitioners was not individualistic, depending for their adjudication, upon distinct facts. These cases question the very foundation on which seniority was sought to be determined on principle. To such cases, the enabling provision under Rule 35(f) entitling the department to summarily reject the claim of the individuals, cannot be invoked.

(iii) As we have pointed out earlier, the decision of the Supreme Court in Bimlesh Tanwar was rendered only on 10.3.2003. It was only thereafter, that the Chief Engineer issued proceedings dated 29.4.2004 fixing the seniority of the selectees on the basis of the Government Circular following the ratio laid down in P.S. Ghalaut. Therefore, the writ petitioners cannot be expected to make a representation before the decision of the Supreme Court in Bimlesh Tanwar. Hence the whole argument revolving around Rule 35(f) is fallacious."

38. It is too late in the day to doubt the proposition that the starting point for the period of limitation would be the date of knowledge. Unless it was pleaded and proved by the contesting respondents that the writ petitioners had knowledge of

the fixation of seniority and that they slept over for more than three years from the date of the order fixing seniority, the question of delay cannot be held against the writ petitioners. There is nothing on record to show that the writ petitioners were ever made aware of their seniority position at any time before 29.4.2004. Therefore, it was this date that should be taken as the starting point for the period of limitation. If so done, it is clear that the writ petitioners were neither guilty of delay nor guilty of laches. Hence, the dismissal of their writ petitions by the learned Judge solely on the ground of delay and laches, cannot be sustained.

PRINCIPLE OF FIXATION OF SENIORITY

39. Having disposed of the contention relating to delay in terms of Rule 35(f) as well as the contention relating to laches, let us now proceed to consider the only other question that is left. This question is as to whether the seniority of an individual selected for appointment by the Tamil Nadu Public Service Commission would be in accordance with the roster point prescribed in Schedule III to the General Rules or should in accordance with the order of merit.

40. As we have stated earlier, the Notification for direct recruitment was published by the Public Service Commission on 10.07.1999. On the date on which the Notification was published, a decision rendered by the Supreme Court in P.S. Ghalaut Vs. State of Haryana and Others, , was holding the field. As per this decision, the seniority gained by a reserved category candidate on account of his placement at a higher level in the roster point, over and above a more meritorious candidate placed at a lower level in the roster point, was Constitutionally valid. Therefore, the Government appear to have issued a D.O. Letter No. 44129/S/98 dated 20.8.1998 of the Personnel and Administrative Reforms Department, directing the Service Commission as well as the other Appointing Authorities to treat the roster itself as the seniority list.

41. However, the decision rendered in P.S. Ghalaut by a two member Bench was declared to be not a good law, in Bimlesh Tanwar Vs. State of Haryana and Others, , by a three member Bench. This decision was rendered on 10.3.2003. But the Government of Tamil Nadu did not withdraw or cancel the D.O. Letter No. 44129/S/98 dated 20.8.1998 of the Personnel and Administrative Reforms Department, which was issued on the basis of the decision in P.S. Ghalaut. As a consequence, the Engineer in Chief of the Highways Department, issued a seniority list on 29.4.2004, only on the basis of the Government Letter dated 20.8.1998 that followed P.S. Ghalaut. Therefore, the appellants came up with writ petitions, challenging the said seniority list. Though the learned Judge found that the writ petitioners had an arguable case on merits, he dismissed the writ petitions on the ground of laches. Since we have found on facts that there was no laches on the part of the writ petitioners, we are obliged to decide the issue on merits.

42. Though the question arising for consideration before us appears to be settled

by the decision in *Bimlesh Tanwar*, the learned senior counsel appearing for the contesting respondents argued that the question is not as simple as that. It is the contention of the learned senior counsel for the contesting respondents (i) that there was nothing wrong in the Government applying the ratio laid down in *P.S. Ghalaut*, to a selection made much before *P.S. Ghalaut* was declared to be not a good law; (ii) that even dehors *P.S. Ghalaut*, the fixation of seniority was correct in view of the prescription contained in Rule 35(a) of the General Rules for Tamil Nadu State and Subordinate Services and (iii) that the roster provided in Schedule-III of the General Rules for the Tamil Nadu State and Subordinate Services is intended to ensure the benefit of reservation even in promotions in terms of Clause (4-A) of Article 16 of the Constitution.

Contention -1 (Based On *P.S. Ghalaut*)

43. The first contention advanced by the learned senior counsel for the contesting respondents is that at the time when the Notification for selection was issued in July 1999 and at the time when the appointment was made in June to August 2000, the law laid down by the Supreme Court in *P.S. Ghalaut* was holding the field. It was only in March 2003 that the same was declared to be not a good law by a larger Bench of the Supreme Court in *Bimlesh Tanwar*. Therefore, it is contended that neither the Service Commission nor the State Government could be found fault with, for preparing a seniority list on the basis of the law declared by the Supreme Court and which was in force at that time.

44. But the above contention is unsustainable. In so far as the Highways Department is concerned, the first ever seniority list appears to have been issued only on 29.4.2004 by the Engineer in Chief of the Highways Department. No other list purporting to be a clear cut seniority list issued at any time before 2004 has been brought to our notice. By the time the seniority list dated 29.4.2004 was issued, the Supreme Court had already pronounced its verdict in *Bimlesh Tanwar* that *P.S. Ghalaut* is not a good law. Therefore, the Engineer in Chief of the Highways Department should not have followed the Government Letter issued on the basis of the decision in *P.S. Ghalaut*. Once a law is declared by the Supreme Court, any Executive Instruction containing a contrary mandate will automatically become null and void.

45. As a matter of fact, we have our own doubt as to whether the State Government was right in issuing a D.O. Letter dated 20.8.1998, seeking to follow *P.S. Ghalaut* blind folded. This is due to the fact that the Rule of Reservation available in the State of Tamil Nadu, in the matter of appointment to Public Services, is little complicated. This can be well understood, only if we take note of some historical details.

46. Though Article 16(1) of the Constitution guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State and Article 16(2) prohibits discrimination on grounds only of religion, race, caste, sex etc., Article 16(4) makes it clear that the State is not

prevented from making any provision for the reservation of appointments or posts in favour of any Backward Classes of citizens which, in the opinion of the State, is not adequately represented in the services under the State. Clause (4-A) was inserted in Article 16, under the Constitution (77th Amendment) Act, 1995 which stipulates that the State is not prevented from making any provision for reservation in matters of promotion, with consequential seniority to any class or classes of posts in the services under the State in favour of Scheduled Castes and Scheduled Tribes.

47. Thus, Clauses (4) and (4-A) of Article 16 operate in two different fields. While the former enables the State to make provision for reservation of appointments in favour of Backward Classes of citizens, the latter enables the State to make any provision for reservation in matters of promotion only in favour of Scheduled Castes and Scheduled Tribes and not in favour of Backward classes.

48. Rule 22 of the General Rules for Tamil Nadu State and Subordinate Services incorporates the mandate of Article 16(4). It prescribes that where the Special Rules make the principle of reservation of appointments applicable to any service, class or category of post, selection for appointment thereto shall be made on the basis indicated in Clauses (a), (aa), (ab), (b), (c), (d), (e), (f) and (g) of Rule 22. The principles incorporated in Clauses (a), (aa), (ab), (b), (c), (d), (e), (f) and (g) of Rule 22, in broad terms, without getting into the nitty-gritties, can be summed up as follows:--

"(i) The unit of selection for appointment, for the purpose of Rule 22, should be 200, out of which, 36 are to be reserved for Scheduled Castes (including 6 to Arunthathiyars on preferential basis), 2 for the Scheduled Tribes, 53 for the Backward Classes (other than Muslims), 7 for Backward Class-Muslims, 40 for the Most Backward Classes and 62 to be filled up on the basis of merit.

(ii) Selection for appointment under Rule 22 shall be made in the order of rotation specified in Schedule III.

(iii) Out of total number of appointments reserved as per the preceding Rule, 1% in each category shall be separately reserved for the blind, deaf and orthopaedically handicapped candidates. The appointment should be made in turn and in the order of rotation as specified in Schedule III-A.

(iv) Out of total number of appointments reserved in the categories referred to in Clause (a) of rule 22, 5% in each category shall be reserved for Ex-servicemen, in so far as direct recruitment to Group-C posts are concerned. These appointments are to be made in turn and in the order of rotation as specified in Schedule-III-B.

(v) The claims of the members of the Scheduled Castes, Scheduled Tribes, Backward Classes, Most Backward Classes etc. should also be considered for the appointments that are to be filled up on the basis of merit.

(vi) Where the candidates belonging to the reserved categories are selected on

the basis of merit, the number of posts reserved for such category shall not in any way be affected."

49. Before proceeding further, it should be brought on record that Schedule III to the General Rules for Tamil Nadu State and Subordinate Services, originally contained only a 50 point roster. But it was made into a 100 point roster under G.O.Ms. No. 159 P and AR Department, dated 27.6.1994, but with effect from 22.6.1990. By a further amendment made under G.O.Ms. No. 55, P and AR Department, dated 8.4.2009, it was made into a 200 point roster.

50. In other words, appointments to State and Subordinate services were made only as per a 100 point roster during the period from 22.6.1990 to 29.4.2009. Though the actual amendment introducing the 200 point roster was made under G.O.Ms. No. 55 P and AR Department dated 8.4.2009 with effect from 29.4.2009, the 200 point roster had already been introduced by way of Executive Instructions under G.O.Ms. No. 241 P and AR Department dated 29.10.2007. Since the 100 point roster held the field for about 19 years, from June 1990 to April 2009, an amendment was made to Rule 22(c) by inserting an "Explanation". By virtue of this explanation, it was mandated that the vacancies arising on and from 29.4.2009 should be filled up as per Schedule-III in a 200 point roster and that all selections for appointment shall be started afresh from serial number 1 (or roster point 1) in the said Schedule-III with effect on and from the said date.

51. Before proceeding further, it is our duty to bring on record one more aspect of the rule of reservation which is peculiar to the State of Tamilnadu. Rule 22 of the General Rules makes the roster as well as turns and rotations stipulated in Schedules III, III-A, III-B and IV, spell out the reservation policy of the State in entirety. Therefore, reservation in the matter of appointment is not merely confined to backward classes of citizens but also extended to a few more categories such as physically challenged, women and destitute widows and ex-servicemen. In the year 2010, one more category was included under G.O.Ms. No. 145, P and AR Department, dated 30.9.2010, reserving a particular percentage of posts for people who studied in Tamil Medium (known by the acronym PSTM).

52. In other words, reservation in the matter of appointments, is not only for the Backward Classes of citizens (in terms of Article 16(4) of the Constitution) but also for other categories such as physically challenged, Ex-servicemen, women, destitute widows, persons who studied in Tamil Medium etc. To be precise, the rule of reservation provided for in Rule 22 of the Tamil Nadu State and Subordinate Services read with Schedules III, III-A, III-B and IV, is vertical, horizontal as well as internal. Therefore, the 200 point roster itself is devised in such a manner that all types of permutations and combinations have to be taken care of.

53. To put it differently, Schedule-III provides a 200 point roster generally for the

accommodation of the backward classes against different roster points. But Schedule-III-A indicates the rotation and the turn in the roster points against which blind, deaf and orthopedically handicapped candidates among those coming within the general turn, Backward Classes, Most Backward Classes and Scheduled Castes can be fitted. Schedule-III-B indicates the rotation and turn in the roster points within the general turn, Backward Classes, Most Backward Classes, Scheduled Classes and Scheduled Tribes, against which Ex-servicemen are to be accommodated. Similarly, Schedule-IV indicates the rotation and turn in the roster points within the reserved categories against which women are to be accommodated. Some of those vacancies are to be filled up by destitute widows, as per Schedule-IV (iii).

54. Therefore, in essence, all the components of the Rule of reservation found in Rule 22 and the roster points, rotations and turns provided in Schedule-III, Schedule-III-A, Schedule-III-B and Schedule-IV respectively would show that they are intended:

"(i) to ensure that at least 1% of the vacancies goes to the Scheduled Tribes, 18% of the vacancies go to the Scheduled Castes, 20% of the vacancies go to the Most Backward Classes, 26.5% of the vacancies go to the Backward Classes (other than Muslims) and 3.5% of the vacancies go to the Backward Class-Muslims; and

(ii) also to ensure that even while providing 69% of the vacancies to these reserved categories, those who are physically challenged, Ex-servicemen, women and destitute widows and persons who studied in Tamil Medium are accommodated."

Hence, the 200 point roster prescribed in terms of Rule 22(c) of the General Rules for Tamil Nadu State and Subordinate Services is very peculiar in nature.

55. At the cost of consumption of a few pages, we feel it necessary to bring on record the roster points themselves so that there is clarity about the great deal of confusion created by it. Hence, Schedules III, III-A and III-B are extracted as follows:--

SCHEDULE - III

"1. General Turn

2. Scheduled Castes (Arunthathiyars on preferential basis)

3. Most Backward Classes and Denotified Communities

4. Backward Classes (Other than Backward Class Muslims)

5. General Turn

6. Scheduled Castes

7. Most Backward Classes and Denotified Communities

8. Backward Classes (Other than Backward Class Muslims)
9. General Turn
10. Backward Classes (Other than Backward Class Muslims)
11. General Turn
12. Scheduled Castes
13. Most Backward Classes and Denotified Communities
14. Backward Classes (Other than Backward Class Muslims)
15. Backward Class Muslims
16. Scheduled Castes
17. Most Backward Classes and Denotified Communities
18. Backward Classes (Other than Backward Class Muslims)
19. General Turn
20. Backward Classes (Other than Backward Class Muslims)
21. General Turn
22. Scheduled Castes
23. Most Backward Classes and Denotified Communities
24. Backward Classes (Other than Backward Class Muslims)
25. General Turn
26. Scheduled Castes
27. General Turn
28. Most Backward Classes and Denotified Communities
29. General Turn
30. Backward Classes (Other than Backward Class Muslims)
31. General Turn
32. Scheduled Castes (Arunthathiyars on preferential basis)
33. Most Backward Classes and Denotified Communities
34. Backward Classes (Other than Backward Class Muslims)
35. General Turn
36. Scheduled Castes
37. Most Backward Classes and Denotified Communities

38. Backward Classes (Other than Backward Class Muslims)
39. General Turn
40. Backward Class Muslims
41. General Turn
42. Scheduled Castes
43. Most Backward Classes and Denotified Communities
44. Backward Classes (Other than Backward Class Muslims)
45. General Turn
46. Most Backward Classes and Denotified Communities
47. Backward Classes (Other than Backward Class Muslims)
48. General Turn
49. Backward Classes (Other than Backward Class Muslims)
50. Scheduled Tribes
51. General Turn
52. Scheduled Castes
53. Most Backward Classes and Denotified Communities
54. Backward Classes (Other than Backward Class Muslims)
55. General Turn
56. Scheduled Castes
57. Most Backward Classes and Denotified Communities
58. Backward Classes (Other than Backward Class Muslims)
59. General Turn
60. Backward Classes (Other than Backward Class Muslims)
61. General Turn
62. Scheduled Castes
63. Most Backward Classes and Denotified Communities
64. Backward Classes (Other than Backward Class Muslims)
65. General Turn
66. Scheduled Castes (Arunthathiyars on preferential basis)
67. Most Backward Classes and Denotified Communities

68. Backward Classes (Other than Backward Class Muslims)
69. General Turn
70. Backward Classes (Other than Backward Class Muslims)
71. General Turn
72. Scheduled Castes
73. Most Backward Classes and Denotified Communities
74. Backward Classes (Other than Backward Class Muslims)
75. General Turn
76. Scheduled Castes
77. Most Backward Classes and Denotified Communities
78. Backward Class Muslims
79. General Turn
80. Backward Classes (Other than Backward Class Muslims)
81. General Turn
82. Scheduled Castes
83. Most Backward Classes and Denotified Communities
84. Backward Classes (Other than Backward Class Muslims)
85. General Turn
86. Scheduled Castes
87. Most Backward Classes and Denotified Communities
88. Backward Classes (Other than Backward Class Muslims)
89. General Turn
90. Backward Classes (Other than Backward Class Muslims)
91. General Turn
92. Scheduled Castes
93. Most Backward Classes and Denotified Communities
94. Backward Classes (Other than Backward Class Muslims)
95. General Turn
96. Most Backward Classes and Denotified Communities
97. Backward Classes (Other than Backward Class Muslims)

98. General Turn
99. Backward Class Muslims
100. General Turn.
101. Most Backward Classes and Denotified Communities
102. Scheduled Castes (Arunthathiyars on preferential basis)
103. General Turn
104. Backward Classes (Other than Backward Class Muslims)
105. General Turn
106. Scheduled Castes
107. Most Backward Classes and Denotified Communities
108. Backward Classes (Other than Backward Class Muslims)
109. General Turn
110. Backward Classes (Other than Backward Class Muslims)
111. General Turn 112. Scheduled Castes
113. Most Backward Classes and Denotified Communities
114. Backward Classes (Other than Backward Class Muslims)
115. General Turn
116. Scheduled Castes
117. Most Backward Classes and Denotified Communities
118. Backward Classes (Other than Backward Class Muslims)
119. General Turn
120. Backward Classes (Other than Backward Class Muslims)
121. General Turn
122. Scheduled Castes
123. Most Backward Classes and Denotified Communities
124. Backward Classes (Other than Backward Class Muslims)
125. General Turn
126. Scheduled Castes
127. Most Backward Classes and Denotified Communities
128. Backward Classes (Other than Backward Class Muslims)

129. General Turn
130. Backward Class Muslims
131. General Turn
132. Scheduled Castes (Arunthathiyars on preferential basis)
133. Most Backward Classes and Denotified Communities
134. Backward Classes (Other than Backward Class Muslims)
135. General Turn
136. Scheduled Castes
137. Most Backward Classes and Denotified Communities
138. Backward Classes (Other than Backward Class Muslims)
139. General Turn
140. Backward Classes (Other than Backward Class Muslims)
141. General Turn
142. Scheduled Castes
143. Most Backward Classes and Denotified Communities
144. Backward Classes (Other than Backward Class Muslims)
145. General Turn
146. Most Backward Classes and Denotified Communities
147. Backward Classes (Other than Backward Class Muslims)
148. General Turn
149. Backward Classes (Other than Backward Class Muslims)
150. Scheduled Tribes
151. General Turn
152. Scheduled Castes
153. Most Backward Classes and Denotified Communities
154. Backward Classes (Other than Backward Class Muslims)
155. General Turn
156. Scheduled Castes
157. Most Backward Classes and Denotified Communities
158. Backward Class Muslims

159. General Turn
160. Backward Classes (Other than Backward Class Muslims)
161. General Turn
162. Scheduled Castes
163. Most Backward Classes and Denotified Communities
164. Backward Classes (Other than Backward Class Muslims)
165. General Turn
166. Scheduled Castes (Arunthathiyars on preferential basis)
167. Most Backward Classes and Denotified Communities
168. Backward Classes (Other than Backward Class Muslims)
169. General Turn
170. Backward Classes (Other than Backward Class Muslims)
171. General Turn
172. Scheduled Castes
173. Most Backward Classes and Denotified Communities
174. Backward Classes (Other than Backward Class Muslims)
175. General Turn
176. Scheduled Castes
177. Most Backward Classes and Denotified Communities
178. Backward Classes (Other than Backward Class Muslims)
179. General Turn
180. Backward Classes (Other than Backward Class Muslims)
181. General Turn
182. Scheduled Castes
183. Most Backward Classes and Denotified Communities
184. Backward Classes (Other than Backward Class Muslims)
185. General Turn
186. Scheduled Castes
187. Most Backward Classes and Denotified Communities
188. Backward Class Muslims

189. General Turn

190. Backward Classes (Other than Backward Class Muslims)

191. General Turn

192. Scheduled Castes

193. Most Backward Classes and Denotified Communities

194. Backward Classes (Other than Backward Class Muslims)

195. General Turn

196. Most Backward Classes and Denotified Communities

197. Backward Classes (Other than Backward Class Muslims)

198. General Turn

199. Backward Classes (Other than Backward Class Muslims)

200. General Turn."

SCHEDULE - III-A

Reservation for blind, deaf and orthopaedically handicapped persons

The following turns indicated against the rotation shall be reserved for the particular physically handicapped person:--

Therefore, it will be clear from the Schedules III, III-A and III-B alone extracted above, that the rule of reservation is vertical, horizontal as well as internal and the roster presents a complicated table like the Clark's Table in algebra.

56. Having seen the Schedules, let us also take a look at Clauses (a), (aa), (ab), (b) and (c) together with Explanation to Clause (c) of Rule 22. They are as follows:--

"22. Reservation of Appointments -

Where the Special Rules lay down that the Principle of reservation of appointments shall apply to any service, class or category, selection for appointment thereto shall, with effect on and from the 22nd June 1990, be made on the following basis:

(a) The unit of selection for appointment, for the purpose of this rule, shall be two hundred, of which thirty six shall be reserved for the Scheduled Castes including six offered to Arunthathiyars on preferential basis amongst the Scheduled Castes, two for the Scheduled Tribes, fifty three for the Backward Classes (other than Backward Class Muslims, Most Backward Classes, and Denotified Communities), seven for the Backward Class Muslims, forty for the Most Backward Classes and the Denotified Communities and sixty two shall be filled on the basis of merit:

(aa) Out of the total number of appointments reserved in the categories referred to in clause (a), in the case of appointment made by direct recruitment, one percent in each such category shall be separately reserved for the blind, deaf and orthopaedically handicapped candidates and the appointment shall be made in turn and in the order of rotation as specified in Schedule III-A to this part

(ab) Out of the total number of appointments reserved in the categories referred to in clause (a), in the case of appointment made by direct recruitment to Group "C" posts, five percent in each such category shall be reserved for Ex-servicemen and subject to availability of such candidates, the appointment shall be made in turn and in the order of rotation as specified in SCHEDULE III-B to this Part:

(b) The claims of members of the Scheduled Castes, the Scheduled Tribes, the Backward Classes (Other than Most Backward Classes/Denotified Communities) Backward Class Muslims and the Most Backward Classes/Denotified Communities shall also be considered for the thirty one appointments, which shall be filled on the basis of merit and where a candidate belonging to a Scheduled Caste, Scheduled Tribe, Backward Class (Other than Most Backward Class/Denotified Community) Backward Class Muslims or Most Backward Class/Denotified Community selected on the basis of merit, the number of posts reserved for the Scheduled Castes, the Scheduled Tribes, the Backward Classes, (other than Most Backward Classes/Denotified Communities), Backward Class Muslims or the Most Backward Classes/Denotified Communities as the case may be, shall not in any way be affected.

(c) Selection for appointment under this rule shall be made in the order of rotation specified in Schedule III to this part. Explanation.- The vacancies arising on and from the 29th April 2009 shall be filled up as per Schedule III and all selections for appointment shall be started afresh from serial number one in the said Schedule III with effect on and from the said date."

57. Keeping the above Rule position in mind, let us now go back to what happened when the Supreme court decided the case of P.S. Ghalaut, forcing the Public Service Commission and the State Government to take a decision to make the roster point itself as the foundation for fixation of seniority.

58. In P.S. Ghalaut, a dispute relating to fixation of seniority between a general category candidate and a candidate selected under the quota for Backward Classes for appointment as Lecturers in the Haryana Medical Education Services, came up before the Supreme Court. In the order of merit, the general category candidate was high up than the reserved category candidate. But in the 100 point roster maintained by the State Government, the reserved category candidate was placed higher, since the roster point against which she was appointed was above the roster point for the general turn. Holding that such placement was legally valid, the Supreme Court observed as follows:--

"It is seen that when the roster is maintained to give effect to the constitutional policy of reservation to render socio-economic justice to the sections concerned,

respective places assigned to the candidates belonging to them, general candidates, Backward Classes or Scheduled Castes or Scheduled Tribes, as the case may be, the change in the order of merit inevitably gets affected. If the original order of merit prepared by the Public Service Commission or Selection Committee remains unaffected, roster becomes redundant and always remains unimplemented. The reserved candidates always remain at the bottom of the select list unless selected as general candidates in the order of merit. To relieve such injustice and hardship, roster is maintained and vacancies are filled up in the order maintained therein." 59. On the basis of the judgment of the Supreme Court in P.S. Ghalaut, the Government of Tamil Nadu sent a letter bearing No. 44129/S/98 dated 20.8.1998 to treat the then existing 100 point roster itself as indicative of the seniority position. The State Government did not apply its mind to the fact that the Supreme Court was concerned in P.S. Ghalaut with the claim of a general category candidate as against a reserved category candidate. The Supreme Court did not have an occasion in P.S. Ghalaut to examine the case of two reserved category candidates, one selected on his own merit and another selected as against the reserved vacancy, pitted against each other. But nevertheless, the Supreme Court took a hypothetical example in P.S. Ghalaut and held as follows:--

"Take for instance Vacancies Nos. 1 and 6, as pointed out in the Chief Secretary's letter have admittedly been reserved for Scheduled Castes. Suppose recruitment was made to fill up ten vacancies, three candidates from Scheduled Castes were selected. The first one as general and second and third were selected on the basis of reserved quota. The question is whether the first candidate will be put in the quota allotted to the Scheduled Castes in the roster. Having been selected as a general candidate, though he is more meritorious than the second and third candidates, he will not get the placement in the roster, reserved for Scheduled Castes i.e. Nos. 1 and 6 points. Consequently candidates Nos. 2 and 3 will get the placement at Nos. 1 and 6 and the first candidate will get the placement in the order of merit along with the general candidates according to the order of merit maintained by the Selection Committee or the Public Service Commission. He cannot complain that having been selected in the merit, he must be placed in the placement reserved for Scheduled Castes at Point No. 1 in the roster. Equally, though general candidate is more meritorious in the order of merit prepared by the Public Service Commission or the Selection Committee, when the appointments are made and the vacancies are filled up according to the roster, necessarily and inevitably the reserved candidates though less meritorious in the order of merit maintained by the Public Service Commission would occupy the respective places assigned in the roster. Thereby they steal a march over some of the general candidates and get seniority over the general candidates. This scheme is, therefore, constitutional, valid and is not arbitrary." 60. But the ratio laid down in P.S. Ghalaut by a two member Bench of the Supreme Court was held to be not a good law in *Bimlesh Tanwar Vs. State of Haryana and Others*, . As seen from paragraph 13 of the decision in *Bimlesh*

Tanwar, two contentions were raised before the High Court. The second was whether the seniority of the selectees had to be determined as per roster points or as per the order of merit. From paragraphs 33 to 37, the Supreme Court dealt with the aforesaid question. Paragraphs 33 to 37 of the decision in Bimlesh Tanwar read as follows:--

"33. The question as to whether the determination of inter se seniority would depend upon the filling up of the vacancies so far as the reserved categories are concerned, having regard to the roster points, in our opinion, is no longer res integra.

34. In *Ajit Singh and Others Vs. The State of Punjab and Others*, a five Judge Bench of this Court has laid down the law in the following terms:

40. "It must be noted that whenever a reserved candidate goes for recruitment at the initial level (say Level 1), he is not going through the normal process of selection which is applied to a general candidate but gets appointment to a post reserved for his group. That is what is meant by "reservation". That is the effect of "reservation".

41. Now in a case where the reserved candidate has not opted to contest on his merit but has opted for the reserved post, if a roster is set at Level 1 for promotion of the reserved candidate at various roster points to Level 2, the reserved candidate, if he is otherwise at the end of the merit list, goes to Level 2 without competing with general candidates and he goes up by a large number of places. In a roster with 100 places, if the roster points are 8, 16, 24 etc. at each of these points the reserved candidate if he is at the end of the merit list, gets promotion to Level 2 by side-stepping several general candidates. That is the effect of the roster- point promotion.

42. It deserves to be noticed that the roster points fixed at Level 1 are not intended to determine any seniority at Level 1 between general candidates and the reserved candidates. This aspect we shall consider again when we come to *Mervyn Coutindo and Others Vs. Collector of Customs, Bombay and Others*, lower down. The roster point merely becomes operative whenever a vacancy reserved at Level 2 becomes available. Once such vacancies are all filled, the roster has worked itself out. Thereafter other reserved candidates can be promoted only when a vacancy at the reserved points already filled arises. That was what was decided in *R.K. Sabharwal and others Vs. State of Punjab and others*, ."

35. In *Ajit Singh (II)*, the decision of this Court in *R.K. Sabharwal* case has, thus, been explained.

36. *P.S. Ghalaut Vs. State of Haryana and Others*, relied upon by Dr. Chauhan, is a decision rendered by a two Judge bench. In that case Rule 13 of the Rules envisaged that the seniority inter se of members of the service shall be determined by the length of continuous service on any post in the service;

provided further that in the case of two or more members appointed by direct recruitment, the order of merit determined by the Commission shall not be disturbed in fixing the seniority. Despite the said Rule, it was held:

"Take for instance Vacancies Nos. 1 and 6, as pointed out in the Chief Secretary's letter have admittedly been reserved for Scheduled Castes. Suppose recruitment was made to fill up ten vacancies, three candidates from Scheduled Castes were selected on the basis of reserved quota. The question is whether the first candidate will be put in the quota allotted to the Scheduled Castes in the roster. Having been selected as a general candidate, though he is more meritorious than the second and third candidates, he will not get the placement in the roster, reserved for Scheduled Castes i.e. Nos. 1 and 6 points. Consequently candidates Nos. 2 and 3 will get the placement at Nos. 1 and 6 and the first candidate will get the placement in the order of merit along with the general candidates according to the order of merit maintained by the Selection Committee or the Public Service Commission. He cannot complain that having been selected in the merit, he must be placed in the placement reserved for Scheduled Castes at Point No. 1 in the roster. Equally, though general candidate is more meritorious in the order of merit prepared by the Public Service Commission or the Selection Committee, when the appointments are made and the vacancies are filled up according to the roster, necessarily and inevitably the reserved candidates though less meritorious in the order of merit maintained by the Public Service Commission would occupy the respective places assigned in the roster. Thereby they steal a march over some of the general candidates and get seniority over the general candidates. This scheme is, therefore, constitutional, valid and is not arbitrary." 37. We have not been able to persuade ourselves to the aforesaid view."

61. It will be of interest to note that the hypothetical situation taken up by a two member Bench in P.S. Ghalaut where two reserved category candidates are pitted against each other, was actually extracted by the Supreme Court in para 36 of the report in Bimlesh Tanwar and the Supreme Court recorded that the same was not correct. In para 40 of the report the Supreme Court eventually held as follows:--

"40. An affirmative action in terms of Article 16(4) of the Constitution is meant for providing a representation of class of citizenry who are socially or economically backward. Article 16 of the Constitution of India is applicable in the case of an appointment. It does not speak of fixation of seniority. Seniority is, thus, not to be fixed in terms of the roster points. If that is done, the rule of affirmative action would be extended which would strictly not be in consonance of the constitutional schemes. We are of the opinion that the decision in P.S. Ghalaut does not lay down a good law." 62. What was done in Bimlesh Tanwar was actually a declaration of law. Therefore, the same will have retrospective effect. In P.V. George and Others Vs. State of Kerala and Others, , the Supreme Court held that "the law declared by a court will have retrospective effect, if not

otherwise stated to be so specifically". The Supreme Court was conscious of the fact, as seen from paragraph 19 of the report in P.V. George, that when the doctrine of stare decisis is not adhered to, a change in the law may adversely affect the interest of citizens. But still the Supreme court held that the power to apply the doctrine of prospective overruling (so as to remove the adverse effect) must be exercised in the clearest possible term.

63. Therefore, it is clear that anything done as a consequence of the decision of the Supreme Court in P.S. Ghalaut, cannot stand since the Supreme Court did not apply the doctrine of prospective overruling in Bimlesh Tanwar in express terms.

64. As a matter of fact even before a three member Bench held in Bimlesh Tanwar that the law laid down in P.S. Ghalaut was not a good law, a Constitution Bench of the Supreme Court had an occasion to consider in Ajit Singh and Others Vs. The State of Punjab and Others, , the rights of the roster point promotees vis-?-vis general category candidates. The background of Ajit Singh (II) deserve to be noted. It goes as follows:--

"(i) In Union of India and others etc. Vs. Virpal Singh Chauhan etc., , the Supreme Court upheld the stand taken by the Railways that reserved category candidates who got promotion at roster points would not be entitled to claim seniority at the promotional level as against senior general category candidates who got promoted at a later point of time to the same level. The Court held that the State was entitled to provide, what came to be known in popular terms as the "catch up rule" enabling the senior general category candidates who got promoted later, to claim seniority over and above the roster point promotee who got promoted earlier.

(ii) The catch up rule formulated in Virpal was approved by a three member Bench in Ajit Singh Januja and others Vs. State of Punjab and others, . This case came to be known as Ajit Singh (I).

(iii) But, another three member Bench took a different view in Jagdish Lal and others Vs. State of Haryana and others, and held that while the rights of the reserved candidates under Article 16(4) and 16(4-A) were fundamental rights, the right to promotion was a statutory right and that therefore, the roster point promotees have to be given seniority on the very same basis as those having continuous officiation in a post.

(iv) Since Jagdish Lal took a view contrary to the views expressed in Virpal Singh and Ajit Singh (I), the State of Punjab filed Interlocutory Applications before the Supreme Court, seeking clarifications. These Interlocutory Applications were placed before a Constitution Bench comprising of 5 Judges, in view of the fact that two Benches of coordinate jurisdiction (both three member Benches) had taken diametrically opposite views. The decision rendered by the larger Bench of 5 Judges on these Applications came to be known as Ajit Singh (II), in Ajit Singh and Others Vs. The State of Punjab and Others, .

(v) Eventually, the Constitution Bench held in *Ajit Singh (II)* that the roster point promotees cannot count their seniority in the promoted category, from the date of their continuous officiation in the promoted post, vis-à-vis the general category candidates who were senior to them in the lower category and who were later promoted. As a consequence, *Virpal and Ajit Singh (I)* were declared to have been decided correctly and *Jagdish Lal* was declared to be incorrect."

65. Another facet of the right of the reserved category candidates who are selected on the basis of their own merit and allotted to the general turn, came up for consideration, though in a different context, before a Constitution Bench of the Supreme Court in *Union of India (UOI) Vs. Ramesh Ram and Others etc.*, . The decision in *Ramesh Ram* arose out of a selection held by the Union Public Service Commission to three All India Services, 15 Group-A Services and 3 Group-B Services. The question that came up for consideration before the Supreme Court as seen from paragraph 3 of the decision was follows:

"3. A three-Judge Bench of this Court, by order dated 14.5.2009 has referred these cases to the Constitution Bench as it raises an important legal question as to whether candidates belonging to reserved category, who get recommended against general/unreserved vacancies on account of their merit (without the benefit of any relaxation/concession), can opt for a higher choice of service earmarked for reserved category and thereby migrate to reserved category." 66. Though it is clear from the question extracted above, that it had nothing to do with seniority, the issue nevertheless concerned the right of the reserved category candidates who are selected on merit and placed in the list of unreserved category candidates. This can be seen from the first question drafted in para 20.I of the report in *Ramesh Ram* which reads as follows:--

"Whether the reserved category candidates who were selected on merit and placed in the list of general category candidates could be considered as reserved category candidates at the time of service allocation." Eventually, in paragraph 72, the Constitution Bench held that the reserved category candidates belonging to OBC, SC/ST who are selected on merit and placed in the list of general/unreserved category candidates can chose to migrate to the respective reserved category at the time of allocation of service.

67. Therefore, the clear dicta of the Supreme Court is that a reserved category candidate getting accommodated against the general turn, should not be made to suffer on account of being more meritorious. But what has happened in the cases on hand is that meritorious reserved category candidates, whom the Supreme Court chose to call by the acronym "MRCs" got allotted by virtue of their merit against the roster points intended for general turn (merit) and consequently got placed lower than their counter parts, who are less meritorious and who were accommodated against roster points high in the order. This is why the learned Judge could not reject the claim of the appellants as devoid of merit. Hence, the first contention of the respondents that they gained seniority on the basis of a judgment that held the filed at that time, is unacceptable.

CONTENTION-2 (BASED ON RULE POSITION)

68. Placing reliance upon Rule 35(a) of the General Rules for Tamil Nadu State and Subordinate Services, it is contended by some of the learned senior counsel for the respondents that even as per the statutory rules in force, the roster point determines the seniority of an individual and that therefore, Bimlesh Tanwar can have no application. According to the learned senior counsel for the respondents, it is not the judicial pronouncements, either in P.S. Ghalaut or in Bimlesh Tanwar, but only the statutory rule that should determine the seniority of the rivals. In support of this contention, they rely upon the ratio laid down in *Uttaranchal Forest Rangers' Association v. State of U.P.* [(2006) 10 SCC 346], wherein it was held that seniority has to be decided on the basis of the rules in force on the date of appointment. The learned senior counsel for the contesting respondents also rely upon the decision in *Union of India (UOI) and Others Vs. S.K. Saigal and Others*, wherein it was held that in the absence of a challenge to the statutory rules, the mandate of the rules cannot be ignored.

69. We have carefully considered the above submission. In order to test the varacity of the above contention, it is necessary to take note of Rule 35(a) and hence it is extracted as follows:--

"Rule 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 Tamil Nadu Public Service Commission 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." 70. A careful look at the above rule would show that it does not contain a prescription that the 200 point roster in Schedule-III to the General Rules would determine the seniority of the selectees. The above rule contains two parts. The first part states that the seniority of a person will be determined by the rank secured by him in the list of candidates drawn up by the Public Service Commission or other Appointing Authority. The second part declares that the rule contained in the first part is subject to the rule of reservation.

71. There is no reference in Rule 35(a) to the 200 point roster in Schedule-III. The second part of Rule 35(a) does not make a reference to the roster in Schedule-III, but makes a reference only to the Rule of Reservation. The Rule of Reservation and the 200 point roster are not to be taken as one and the same. The Rule of Reservation is the theoretical expression of the policy of the Government. The 200 point roster is the mathematical exposition of the manner in which the Rule of Reservation has to be worked out and implemented in practice.

72. This can be well understood only when we know the exact manner in which a select list is prepared by the Public Service Commission, whenever a direct

recruitment takes place. The Public Service Commission or for that matter, any other Appointing Authority (including this Court when direct recruitment of District Judges-Entry Level is made), follows different steps, for preparing a list of candidates selected eventually for appointment. These steps are:--

"(i) The Public Service Commission arranges the entire list first in the order of merit, without looking into the categories to which the candidates belong.

(ii) Then the Commission takes up the roster points in respect of which the recruitment had taken place. As we have pointed out earlier, the Explanation under Rule 22(c) mandated that all selections for appointment shall start afresh from serial number 1 in Schedule-III, if the vacancies sought to be filled up had arisen on and from 29.4.2009. This is due to the fact that the 200 point roster was introduced only with effect from the said date.

(iii) Therefore, if the recruitment was for 50 vacancies as against roster point numbers 1 to 50, the Service Commission would be required, as per Schedule-III, to fill up 15 vacancies under the General Turn, 10 vacancies from the Scheduled Castes including 2 among them from Arunthathiyars on preferential basis, 10 vacancies from the Most Backward Classes and 15 vacancies from the Backward Classes including 2 from Backward Class Muslims. (This is how the roster in Schedule-III is devised).

(iv) After taking the roster points against which vacancies are to be filled up, the Service Commission would first fill up all the roster points that fall under the General Turn. If we take for instance, roster points 1 to 50, points 1, 5, 9, 11, 19, 21, 25, 27, 29, 31, 35, 39, 41, 45 and 48 fall under the General Turn. Therefore, after arranging the list of selectees purely on the basis of merit, the Service Commission will first allot the top 15 candidates to these points intended for the General Turn. These top 15 candidates may be from any of the categories, reserved or unreserved.

(v) After first allotting the top 15 (the most meritorious) candidates to the roster points intended for General Turn, the Service Commission will segregate and group the remaining candidates, into the reserved categories to which they belong.

(vi) For instance, 10 vacancies are allotted to the Scheduled Castes, within the first 50 roster points namely from point No. 1 to point No. 50. These points are at serial numbers 2, 6, 12, 16, 22, 26, 32, 36, 42 and 50. Among these points, roster point Nos. 2 and 32 are intended for Arunthathiyars on preferential basis. Therefore, after allotting the top 15 candidates against the roster points for the General Turn (without reference to the community), the Service Commission will segregate the remaining candidates into Scheduled Castes, Most Backward Classes, Backward Classes other than Muslims and Backward Class Muslims. Thereafter, the candidates in each of those groups will be arranged in an order of merit inter-se. For instance, 10 Scheduled Caste candidates, who are entitled to be allotted against the roster points available within the first 50 points, will be

arranged in the order of merit among themselves. The first of them will go to roster point No. 2, the second will go to roster point No. 6, the third will go to roster point No. 12 and so on and so forth. But, if there is a candidate belonging to Scheduled Caste Arunthathiyar, he will be allotted against roster point No. 2, in view of the fact that the said roster point is intended for them. A more meritorious candidate among the Scheduled Castes, may be allotted only against roster point No. 6. These are the steps involved in the preparation of a final select list of candidates."

73. Once the Public Service Commission or the other Appointing Authority follows the above steps and prepares a final list of candidates selected for appointment, the 200 point roster stands satisfied. But the Rule of Reservation, may not get satisfied in every selection. Only if a selection is held for filling up 200 vacancies at one stroke, the Rule of Reservation as well as the 200 point roster will stand satisfied at one stroke. This is the distinction between the Rule of Reservation and the roster.

74. In other words, the Rule of Reservation is intended for application to the total cadre strength of a department in a post. The 200 point roster is a device to achieve the said goal either at one stroke when 200 vacancies are filled up together or at different intervals of time when lesser number of vacancies (than 200) are sought to be filled up on every occasion.

75. Therefore, the interpretation sought to be given by the learned senior counsel for the contesting respondents, to Rule 35(a) is misconceived. Rule 35(a) mandates that the seniority of a person should be determined only with reference to the rank obtained by him in the list of candidates drawn up by the Public Service Commission. The second limb of Rule 35(a) cautions the Public Service Commission not to tamper with the percentage of reservation.

76. Therefore, what is actually required to be done by the Public Service Commission is (i) first to prepare a merit list and (ii) to make allotments from the list, to the roster points, by following the steps indicated in paragraph 67 above. The allotment against roster points serves two purposes namely (a) it ensures that the Rule of Reservation is followed and (b) it creates a record to show the roster point from which the next recruitment is to commence. Say for instance, if the first recruitment has taken place for roster point Nos. 1 to 50 immediately after the amendment of the Rule on 29.4.2009, the next recruitment will have to commence from roster point No. 51.

77. Keeping in mind the above legal aspect, if we come back to the case on hand, it could be seen that the recruitment under the Notification dated 10.07.1999, was for appointment to 210 posts of Assistant Engineers in the Public Works Department and to 269 posts of Assistant Engineers in the Highways Department. At that time, the 200 point roster had not come in to vogue. Therefore, the recruitment was under the 100 point roster.

78. A look at G.O.Ms. No. 104, Highways Department dated 19.06.2000, by

which the Government approved the select list of 269 candidates for appointment in the Highways Department, would show that the recruitment actually started from the 41st turn in the 100 point roster under Schedule-III. Consequently, about 60 candidates were allotted from roster point Nos. 41 to roster point No. 100. The next batch of 100 candidates were allotted from roster point Nos. 1 to 100. The third batch of 100 candidates were allotted from roster point Nos. 1 to 100 and the last batch of 9 candidates were allotted from roster point Nos. 1 to 9.

79. At this juncture, it may be necessary to take note of one more aspect. Rule 22 as well as Schedules-III, III-A, III-B and IV do not employ the expression "roster". On the other hand, they employ two expressions namely (i) "Rotation" and (ii) "Turn". As we have seen earlier, a 200 point roster came into existence in the place of a 100 point roster with effect from 29.04.2009. Whenever the number of vacancies sought to be filled up are lesser than the strength of the roster, the only expression used is "Turn". This can be seen from the language of Rule 22(c). But if the number of vacancies sought to be filled up are more than the strength of the roster, then both the expressions "rotation" and "turn" would come into play.

80. For instance, in the recruitment about which we are concerned, 269 posts were sought to be filled up. At that time, the strength of the roster was only 100, under Schedule-III. This is why G.O.Ms. No. 104, Highways Department dated 19.06.2000 indicated (i) that the first batch of 60 candidates were allotted against Turn Nos. 41 to 100 in the 5th rotation (ii) that the second batch of 100 candidates were allotted against Turn Nos. 1 to 100 in the 6th rotation (iii) that the third batch of 100 candidates were allotted against Turn Nos. 1 to 100 in the 7th rotation and (iv) that the fourth batch of 9 candidates were allotted against Turn Nos. 1 to 9 in the 8th rotation.

81. If we understand the above mechanism, it will be clear that the interpretation sought to be given to the second limb of Rule 35(a) by the learned senior counsel for the contesting respondents is wholly misconceived. Rule 35(a) does not, to say the least, mandate that the 200 point roster would be determinative of the seniority of the selectees. It is merely determinative of the percentage of reservation. The second limb of rule 35 (a) merely dictates that while according seniority on the basis of merit, the appointing authority is to ensure that the percentage of reservation was not sacrificed. Therefore, the proper way of interpreting and implementing rule 35 (a) for the Service Commission is to (i) prepare a list of selectees in the order of merit and (ii) fit them against the 200 point roster in the Schedule III. Once such fitment is done and the process of appointment is over, with the selected candidates joining duty, the roster will lose its significance and will have nothing to do with the determination of seniority. Seniority will then be decided only by the rank secured by the candidates. The second limb of rule 35 (a) will also stand satisfied by this process since the rule of reservation would have been observed, due to

the fitment against roster. Therefore, the second contention of the respondents as though rule 35 (a) mandates the roster to be the seniority is only a myth.

CONTENTION-3 (BASED ON ARTICLE 16(4-A))

82. Another interesting argument was sought to be raised by one of the learned senior counsel for the contesting respondents. According to him, the State is entitled to make a provision for reservation in matters of promotion with consequential seniority to any class or classes of posts, in terms of Clause (4-A) of Article 16. Therefore, according to him, the roster was intended to benefit the reserved category candidates, so that they gain promotion at an accelerated pace, by virtue of being placed high in the seniority.

83. But the aforesaid contention is completely fallacious at least for two reasons. They are:

"(i) The benefit of Article 16(4-A) is available only to Scheduled Castes and Scheduled Tribes and the same cannot be extended to Backward Classes, by converting the roster into a seniority list;

(ii) In any case, the 200 point roster in Schedule-III contains provisions for all kinds of reservations such as vertical, horizontal and internal, in favour of Backward Classes, Backward Class Muslims, Most Backward Classes, Scheduled Castes, Scheduled Castes Arunthathiyars on preferential basis, Scheduled Tribes, Women, destitute widows, Ex-servicemen, physically challenged and persons who studied in Tamil Medium. Therefore, if the 200 point roster is converted into a seniority list, some of these categories such as physically challenged, persons who studied in Tamil Medium etc., will also get seniority over and above more meritorious candidates belonging to the other reserved categories within the Constitutional Scheme. Unfortunately, this issue has been completely overlooked both by the Service Commission as well as by the Government. Therefore, the last objection of the respondents also deserves to be rejected."

CONCLUSION

84. It will be clear from the above discussion (i) that the decision of the respondents to treat the 100 point roster itself (prevailing at that time) as the seniority list, on the basis of the decision of the Supreme court in P.S. Ghalaut, was not correct in view of the peculiarity of the roster in the State (ii) that in any case, the decision rendered in P.S. Ghalaut was declared as not a good law in Bimlesh Tanwar in the year 2003, without specifically invoking the doctrine of prospective overruling (iii) that at any rate, the first ever seniority list was released by the Engineer-in-Chief of the Highways department only on 29.4.2004, which was subsequent to the decision in Bimlesh Tanwar (iv) that all other proceedings issued prior to 29.4.2004, on which reliance is placed by the respondents to attribute knowledge of the seniority position to the appellants herein, did not speak about fixation of seniority specifically and hence the first seniority list should be taken to have been issued only on 29.4.2004 and (v) that

therefore, the seniority of the appellants vis-?-vis the other selectees under the notification dated 10.7.1999 should be determined only with reference to the rank assigned to them by the Service Commission in terms of rule 35 (a) of the General Rules for Tamilnadu State and Subordinate Services and not as per the roster. Therefore, the appellants are entitled to succeed.

85. In view of the above, the writ appeals are allowed, the order of the learned judge is set aside and the writ petitions filed by the appellants are allowed. There will be a direction to the official respondents to take the rank assigned by the Service Commission to the selectees, as the basis for fixation of seniority and issue appropriate orders within a period of 4 weeks from the date of receipt of a copy of this order. There will be no order as to costs.